

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



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OFFICE OF THE MAYOR

COUNTY OF MAUI

**DEPARTMENT OF PLANNING**

August 17, 2016

OFFICE OF THE  
COUNTY CLERK

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RECEIVED

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Mike White, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

A handwritten signature in black ink, appearing to be "Mike White", is written over a horizontal line.

8/23/16

Mayor

Date

Dear Chair White and Members:

**SUBJECT: APPLICATION FOR A CONDITIONAL PERMIT (CP) FOR A  
TRANSIENT VACATION RENTAL (TVR), LOCATED AT  
100 PULELEHUA STREET, PINEAPPLE HILL, LAHAINA,  
ISLAND OF MAUI, HAWAII; TMK: (2) 4-2-007:009  
(CP 2015/0006)**

The Department of Planning (Department) is transmitting for your review and action the Conditional Permit application for a transient vacation rental (TVR) filed by Steiner Family Trust 2010, Julie Steiner, Trustee. A summary of the application is as follows:

APPLICATION SUMMARY	
Application - CP	The CP is for the establishment and operation of a transient vacation rental home in an existing four (4) bedroom single-family dwelling within the Pineapple Hill Subdivision at Kapalua.
Applicant	Steiner Family Trust 2010, Julie Steiner, Trustee
Owner	Steiner Family Trust 2010, Julie Steiner, Trustee
Tax Map Key	(2) 4-2-007:009
Address	100 Pulelehua Street, Pineapple Hill Subdivision, Kapalua, Lahaina, Maui, Hawaii
Area	24,390 square feet
Land Use Designations	State Land Use District: Urban Maui Island Plan: Within Urban Growth Boundary Kihei-Makena Community Plan: Project District 1 (Kapalua) Title 19, Zoning: Lahaina Project District 1 (Kapalua) Multi-Family Special Management Area (SMA)

Honorable Alan Arakawa, Mayor  
For Transmittal to:  
Honorable Mike White, Chair  
August 17, 2016  
Page 2

Brief Description	The Applicant is requesting a CP to establish and operate a four (4) bedroom transient vacation rental in an existing dwelling. The Applicant cannot apply for a short-term rental home permit as permits cannot be applied for in Project District Zoning; therefore, the only application applicable for review of short-term rental housing in a project district is a CP for a transient vacation rental home.
Public Hearing	Held by Maui Planning Commission (Commission) on February 23, 2016, in Wailuku, Maui, Hawaii.
Testimony	Verbal and written testimony were given on this application. Letters from neighbors expressing concerns over this application are included in the Staff Report.
Recommendation	The Commission recommended denial of the CP by a vote of seven (7) ayes with one (1) Commissioner excused.

The Commission reviewed the subject application at its February 23, 2016 public meeting. The Commission recommended denial of the CP.

1. Letter from William Spence, Planning Director, to Ms. Julie Steiner dated March 11, 2016, with the Maui Planning Commission's recommendation for Council denial of the CP for a transient vacation rental;
2. Department's Recommendation to the Commission, dated February 23, 2016;
3. Department's Staff Report to the Commission, dated February 23, 2016;
4. Department's Supplemental Report to the Commission addressing in part the Applicant's responses to neighbors' concerns, dated February 23, 2016;
5. Power point presentation to the Commission dated February 23, 2016;
6. Adopted Minutes of the February 23, 2016 Commission meeting; and
7. CP Application dated August 6, 2015, and stamped on August 20, 2015.

Honorable Alan Arakawa, Mayor  
For Transmittal to:  
Honorable Mike White, Chair  
August 17, 2016  
Page 3

Should you have any questions, please feel free to transmit them to the Department via transmittal through the Office of the Mayor.

Sincerely, -

A handwritten signature in black ink, appearing to read 'William Spence', with a stylized flourish at the end.

WILLIAM SPENCE  
Planning Director

Attachments

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)  
Kurt F. Wollenhaupt, Staff Planner (PDF)  
Maui Planning Commission Members (PDF)  
Julie Steiner, c/o Chelsea Harding, Steiner Properties

WRS:KFW:lk

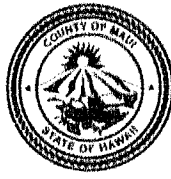
Project File  
General File

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ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 11, 2016

Ms. Julie Steiner  
c/o Ms. Chelsea Harding  
Steiner Properties Ltd.  
Suite 822 - 470 Granville Street  
Vancouver, BC V6C 1V5  
CANADA

Dear Ms. Steiner:

**SUBJECT: RECOMMENDATION OF DENIAL TO COUNTY COUNCIL BY MAUI  
PLANNING COMMISSION OF A CONDITIONAL PERMIT (CP) FOR A  
TRANSIENT VACATION RENTAL HOME (TVR), TO BE LOCATED AT  
100 PULELEHUA STREET, LAHAINA, ISLAND OF MAUI, HAWAII;  
TMK: (2) 4-2-007:009 (CP 2015/0006)**

At its regular meeting on February 23, 2016, the Maui Planning Commission (Commission) reviewed the above request and after due deliberation and receipt of testimony and exhibits, voted to recommend to the County Council denial of a conditional permit for a transient vacation rental. The record of proceedings including Staff Report, minutes, and testimony shall be forwarded to the County Council for deliberation at a future date. You shall be contacted regarding the time and place for such deliberations.

Thank you for your cooperation and understanding. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at [kurt.wollenhaupt@mauicounty.gov](mailto:kurt.wollenhaupt@mauicounty.gov) or at (808) 270-1789.

Sincerely,

A handwritten signature in black ink, appearing to read "William R. Spence", is written over a horizontal line.

WILLIAM SPENCE  
Planning Director

xc: William R. Spence, Planning Director (PDF)  
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)  
John S. Rapacz, Planning Program Administrator (PDF)  
Kurt F. Wollenhaupt, Staff Planner (PDF)  
Julie Steiner (PDF)  
Chelsea Harding (PDF)  
Project File  
General File

WRS:KFW:nt:aj

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BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Applications of

STEINER FAMILY TRUST 2010  
JULIE STEINER (Trustee)  
STEINER RESIDENCE  
TRANSIENT VACATION RENTAL (TVR)

To Obtain a Conditional Permit to Allow a  
Transient Vacation Rental on a 24,390 Square  
Foot Parcel Located at 100 Pulelehua Street,  
at Maui Tax Map Key No. (2) 4-2-007:009,  
Lahaina, Maui, Hawaii.

DOCKET NO.  
CP 2015/0006

Steiner Residence  
Transient Vacation Rental

(KWollenhaupt)

MAUI COUNTY PLANNING DEPARTMENT'S RECOMMENDATION  
TO THE MAUI PLANNING COMMISSION  
FEBRUARY 23, 2016 MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HI. 96793

Conditional Permit

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BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Applications of

STEINER FAMILY TRUST 2010  
JULIE STEINER (Trustee)  
STEINER RESIDENCE  
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DOCKET NO.  
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Steiner Residence  
Transient Vacation Rental

(KWollenhaupt)

**CONCLUSIONS OF LAW**

**Conditional Permit**

The application complies with the applicable standards for a Conditional Permit as established in the Planning Department's Report to the Maui Planning Commission, February 23, 2016, Docket No. CP 2015/0006 as follows:

A Conditional Permit is reviewed pursuant to Title 19, Zoning, Chapter 19.40 Conditional Permits; Maui County Code, 1980, as amended. The intent of the Conditional Permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Upon finding that reasons justifying granting of a Conditional Permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience and welfare, and will be in harmony with the area in which it is to be located; issuance of a Conditional Permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

Should the Commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the Commission shall recommend denial of the request and may instruct the Applicant to seek a change in zoning should the facts warrant such an application.

Every Conditional Permit shall be conditioned upon the proposed development fully complying with all requirements of Title 19 and other applicable governmental requirements.

The Planning Department finds that the proposed continued use meets the criteria for the issuance of a Conditional Permit based upon the analysis provided in the Department's Staff Report.

### **RECOMMENDATION**

#### **Conditional Permit**

The Maui County Planning Department recommends that the Maui County Planning Commission recommend approval of the Conditional Permit to the Maui County Council, subject to the following conditions:

1. That the Conditional Permit shall be valid for a period of one (1) year from the effective date of this ordinance; provided, that an extension of this permit beyond this 1-year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by Ordinance.
3. That the Applicant and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his/her/their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of approval of this Conditional Permit, or prior to starting operations, whichever is first. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable TMK and permit numbers.
4. The permit holder shall have a current transient accommodations tax license and general excise tax license for the short-term rental home.
5. That the Applicant shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so use the property as represented may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That full compliance with all applicable governmental requirements shall be rendered.

7. That the Applicant shall serve as manager of the short-term rental home; provided that, the permit holder may designate:
  - a. An immediate adult family member of the permit holder to serve as manager. Immediate family includes a person's parents, spouse or partner through a civil union, children and their spouses, siblings, stepparents, stepchildren, adopted children and their spouses, and hanai children;
  - b. An individual with an active State of Hawaii real estate license to serve as manager; or,
  - c. An adult to serve as a temporary manager for up to forty-five days in a twelve-month period.
8. The manager of the short-term rental home shall:
  - a. Be accessible to guests, neighbors, and County agencies. For purposes of this section, "accessible" means being able to answer the telephone at all times, being able to be physically present at the short-term rental home within one hour following a request by a guest, a neighbor, or a County agency, and having an office or residence within thirty driving miles.
  - b. Ensure compliance with state department of health regulations, this chapter, permit conditions, and other applicable laws and regulations;
  - c. Enforce the house policies; and
  - d. Collect all rental fees.
9. That the transient vacation rental home shall only be rented when the manager is accessible.
10. That the Applicants shall hold no more than one conditional permit for transient vacation rental home use or a short-term rental home permit.
11. That upon approval of the Conditional Permit, the Applicant shall send a copy of the signed Ordinance, a copy of the House Rules, and twenty-four (24) hour contact information to the owners and lessees of abutting properties and properties directly across the street from the TVR home.
12. That the Applicant shall notify the Department and the owners and lessees of abutting properties and properties directly across the street from the TVR home of any changes in the manager's addresses or telephone numbers. Such notification shall be sent prior to, or immediately after, the change in contact information occurs.
13. That the Applicant shall provide photographic evidence that a two square foot (2 sq. ft.) sign is displayed along the main access road, identifying the name of the TVR establishment, the permit number, the name of the manager, the manager's twenty-four (24) hour telephone number, and the words "Department of Planning, Zoning Administration & Enforcement Division: (808) 270-7253" prior to starting TVR home operations.
14. The house policies shall include, at a minimum, the following provisions:

- a. Quiet hours from 9:00 p.m. to 8:00 a.m., during which time the noise from the home shall not unreasonably disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area;
- b. Amplified sound that is audible beyond the property boundaries of the home is prohibited;
- c. Vehicles shall be parked in the designated onsite parking area and shall not be parked on the street; and,
- d. No parties or group gatherings other than registered guests shall occur.

The House policies shall be prominently displayed in the dwelling and shall be included in the rental agreement, which shall be signed by each registered adult guest.

- 15. That all advertising shall include the permit number. Reservation websites shall include the house policies or a working link to the house policies. Reservation websites shall also include the maximum occupancy as no more than two (2) persons per bedroom, including children over the age of two (2) years old.
- 16. That the TVR home shall be rented to only one (1) group.
- 17. That the maximum occupancy shall be no more than two guests per bedroom, including children over the age of two (2) years old, for this four (4) bedroom TVR home.
- 18. That no parties or group gatherings other than registered guests shall occur.
- 19. That the TVR home shall not operate when the manager is not accessible. Being accessible means being able to answer the telephone at all times, being able to be physically present at the TVR home within one (1) hour following a request by a guest, a neighbor, or County agency, and having an office or home within thirty (30) driving miles.
- 20. That a fire escape plan shall be posted in the interior of each sleeping room. The exit plan(s) are unique to each bedroom and shall include, at a minimum, the following:
  - a. Complete floor plan of short-term rental home;
  - b. "You are here" marked on the exit plan;
  - c. Arrows indicating the exit path for only that sleeping room;
  - d. Meeting place to assemble after exiting building; and
  - e. Location(s) of all fire extinguishers.
- 21. That a fire extinguisher with a minimum rating of 2A10B:C shall be installed within a seventy-five feet (75') travel distance of all interior portions of the facility. The fire extinguisher(s) shall be mounted in a clearly visible and accessible location to potential users.

22. That all smoke detectors shall be operable and tested monthly. A smoke detector shall be installed in each sleeping area. A log of the monthly testing shall be maintained by the Applicant and submitted as part of the renewal request.
23. That the TVR home operation shall be available for bi-annual fire inspections.
24. That the TVR home operation shall be subject to periodic inspections by County enforcement personnel at reasonable times upon presentation of appropriate credentials.
25. That the Applicant shall provide written verification of tax payments when filing a Conditional Permit renewal request. The written verification shall be the State of Hawaii Department of Taxation, Form A-6, "Tax Clearance Application."
26. As represented by the Applicant, that each rental period be for a minimum of seven (7) consecutive days and is limited to one rental period during any calendar month. The rental period beginning date shall determine the month in which the rental is occurring.

Be advised that compliance with Codes, Covenants, and Restrictions (CC&Rs) of any applicable Homeowner's or Apartment Owner's Association is the sole responsibility of the Applicant.

That Conditional Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, §19.530.030 of the Maui County Code, as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the Maui County Code*.

In consideration of the forgoing, the Maui County Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendations prepared for the February 23, 2016, meeting as its Findings of Fact, Conclusions of Law, and Recommendation and to authorize the Director of Planning to transmit said Recommendation to the Maui County Council on behalf of the Maui Planning Commission.

APPROVED:

  
WILLIAM SPENCE  
Planning Director  
County of Maui

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Application of

STEINER FAMILY TRUST 2010  
JULIE STEINER (Trustee)  
STEINER RESIDENCE  
TRANSIENT VACATION RENTAL (TVR)

To Obtain a Conditional Permit to Allow a  
Transient Vacation Rental on a 24,390 Square  
Foot Parcel Located at 100 Pulelehua Street, at  
Maui Tax Map Key No. (2) 4-2-007:009,  
Lahaina, Maui, Hawaii.

DOCKET NO.  
CP 2015/0006

Steiner Residence  
Transient Vacation Rental

(KWollenhaupt)

MAUI COUNTY PLANNING DEPARTMENT'S REPORT  
TO THE MAUI PLANNING COMMISSION  
FEBRUARY 23, 2016, MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HI. 96793

Conditional Permit

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BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Application of

STEINER FAMILY TRUST 2010  
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Lahaina, Maui, Hawaii.

DOCKET NO.  
CP 2015/0006

Steiner Residence  
Transient Vacation Rental

(KWollenhaupt)

**DESCRIPTION OF THE PROJECT**

This matter arises from an application for a Conditional Permit (CP) filed on August 20, 2015, by Julie Steiner, Trustee, of the Steiner Family Trust 2010 (Applicant). The Applicant is proposing that the existing four (4) bedroom single-family residence built in 2008 be allowed transient vacation rental (TVR) use. The 24,390 square foot lot is located at 100 Pulelehua Street, Lahaina, Maui, Hawaii (Project Site) within the single-family home planned Pineapple Hill residential community located within the Lahaina Project District 1 (Kapalua) Multi-Family zoning district. The property is owned by the Steiner Family Trust 2010 and identified by Hawaii TMK (2) 4-2-007:009. See **Exhibit 1** for a regional location map, **Exhibit 2** for a property location map with an aerial photograph, **Exhibit 3** for the residential site plan, **Exhibit 4** for the parking plan, **Exhibit 5** for the floor plan and elevations. Photographs of the single-family home are shown in **Exhibit 6**. The Applicant's description of their proposed operation is shown in **Exhibit 7**.

Reason for a Conditional Permit. The Conditional Permit (CP) for transient vacation rental use is the only vehicle the Applicant has to legally rent out this property on a short-term basis (less than 180 days). The Applicant cannot apply for a Short-Term Rental Home (STRH) permit since the property is zoned Lahaina Project District 1 (Kapalua) - Multi-Family and there is no mention within this zoning district that short-term home rental permits may be processed under the new STRH Maui County Code Section 19.65.

The dwelling is located within the gated Pineapple Hill community which was built in two phases. Phase 1 has a County zoning classification of Agricultural which allows STRH applications to be processed. There are three (3) permitted short-term rental homes in Phase 1. Phase 2 of Pineapple Hill being zoned Lahaina Project District 1 (Kapalua) - Multi-Family must process applications for rental on a short-term basis through the Conditional Permit process as a TVR - Transient Vacation Rental. The end result whether a home is rented out as a STRH or a TVR is similar; however, the application and review process are considerably different. There does not appear to be a specific reason why Project Districts were "left out" of the STRH application process when Ordinance 19.65 for short-term rental homes was adopted, but no discussion is evident on whether or not Project District zoning should include the ability to consider short-term rental homes.



Consequently, property owners in Phase 2 of Pineapple Hill must apply for the TVR, rather than the STRH; whereas, property owners in Phase 1 of Pineapple Hill may apply for an STRH. (See **Exhibit 8** for map of Pineapple Hill showing Phase 1 and Phase 2 and **Exhibit 9** for a map showing the three approved STRH locations shown as pink squares in Phase 1.)

Another option not under current consideration would be for a County Code Amendment to specifically allow Project District 1 (Kapalua) – Multi-Family to process STRH applications according to Code Section 19.65; however, this process is a lengthy one that may or may not be supported by property owners at Pineapple Hill Phase 2 and their Homeowner's Association and would require public hearing review by the Maui Planning Commission and County Council.

### **BRIEF HISTORY OF APPLICATION**

This is a new application for a TVR. After review of the Pineapple Hill subdivision, zoning maps and history, and Ordinance 19.65 related to short-term rentals, it was determined that the requirements for renting out these single-family homes on a short-term basis must be reviewed under different processes for Phase 1 and Phase 2 dwellings. The Phase I subdivision of Pineapple Hill was done in 1987. As such by the time the Lahaina Project District 1 (Kapalua) (PD1) land zoning map was done in 1989, it was likely decided to exclude Phase 1 from Project District (PD1) zoning because Phase 1 lots had already been subdivided and houses were already being built. Because Pineapple Hill Phase 1 is NOT a part of the PD1 zoning map, the underlying zoning for the subdivision is County Agriculture (AG). Phase 1 and Phase 2 have a State Land Use designation of Urban. Given these designations, the only requirement for an STRH permit for homes in Phase 1 would be the prevailing STRH permit application which has been used successfully in the case of three (3) STRH properties located at:

1. WOODROSE PLACE STRH, 112 Woodrose Place, 4 bedrooms,
2. SILVERSWORD STRH, 622 Silversword Drive, 4 bedrooms, and
3. PARADISE MILES AWAY, 1206 Summer Road, 4 bedrooms.

There is no requirement for a State Special Permit for homes in Phase 1 because the State Land Use designation is Urban, not AG. By way of reference, the Community Plan for both Phase 1 and Phase 2 is Project District 1 (Kapalua).

For Phase 2, the requirements for renting out a dwelling for less than 180 days are completely different and such is the case of this application. The Phase 2 parcel was included in the Project District zoning map and has as subclassification of Multi-Family (MF). Under Maui County Code 19.74.303, this classification (MF) for Project District 1 (Kapalua) has no short-term use listed. As such, STRH is not a permitted use. Since the STRH bill (MCC 19.65) did not change the zoning codes of Project District 1 (Kapalua) Multi-Family or that of other project districts, the STRH application may not be used. Therefore, since the Applicant's property is located in Phase 2 they are required to submit this Conditional Permit which requires Maui Planning Commission recommendation and County Council final action.

## **DESCRIPTION OF THE PROPERTY**

1. Julie Steiner of Steiner Family Trust 2010 is proposing a transient vacation rental in an existing dwelling on an approximately 24,390 square foot lot located at 100 Pulelehua Street in Kapalua in the gated residential community of Pineapple Hill. The Property is located in a well developed residential subdivision. The property is owned by Steiner Family Trust 2010 and identified by Hawaii TMK (2) 4-2-007:009.
2. Land Use Designations --
  - a. State Land Use District -- Urban
  - b. West Maui Community Plan -- Project District 1 (Kapalua)
  - c. County Zoning -- Lahaina Project District 1 (Kapalua)  
Multi-family
  - d. Maui Island Plan -- Subject parcel is within the Urban Growth  
Boundary
  - e. Other -- Special Management Area
3. Surrounding Uses --

North --	Open Space Gulch (Golf Course)
East --	Honoapiilani Highway
South --	Residential
West --	Residential
4. There is (1) permitted STRH operation within 500 feet of the subject property: Silversword Properties LLC STRH located at 622 Silversword Drive in Pineapple Hill Phase 1 as previously described. There are three (3) other STRH approved operations within the Pineapple Hill Phase 1 development. As of the date of this report, there are 40 permitted STRH operations in the West Maui Community Plan region out of a total maximum limit of 88 STRH operations. There are 10 permitted B&B operations in West Maui out of a total maximum of 88 B&B operations. There are no approved bed and breakfast operations within 500 feet of the subject property. A map of STRHs and B&Bs in the general West Maui region is shown in **Exhibit 10**. There is of course no cap or limit to the number of TVRs in a given Maui region as each TVR must be considered on its own merits as a Conditional Permit.

## **APPLICABLE REGULATIONS**

### **CONDITIONAL PERMIT**

A Conditional Permit is reviewed pursuant to Title 19, Zoning, Chapter 19.40 Conditional Permits; Maui County Code, 1980, as amended. The intent of the Conditional Permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Upon finding that reasons justifying granting of a Conditional Permit exist, and that the

proposed use would not be significantly detrimental to the public interest, convenience and welfare, and will be in harmony with the area in which it is to be located; issuance of a Conditional Permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

Should the Commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the Commission shall recommend denial of the request and may instruct the applicant to seek a change in zoning should the facts warrant such an application.

Every Conditional Permit shall be conditioned upon the proposed development fully complying with all requirements of Title 19 and other applicable governmental requirements.

#### 19.04.040 - Definitions.

"Transient vacation rentals or use" means occupancy of a dwelling or lodging unit by transients for any period of less than one hundred eighty days, excluding bed and breakfast homes and short-term rental homes.

"Short-term rental home" means a residential use in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty days, in no more than two detached single-family dwelling units, excluding bed and breakfast homes. Each short-term rental home shall include bedrooms, one kitchen, and living areas. Each lot containing a short-term rental home shall include no more than two detached single-family dwelling units used for short-term rental home use, with no more than a total of six bedrooms for short-term rental home use, as specified within the zoning district provisions of this title.

### **PROCEDURAL MATTERS**

- On August 20, 2015, the Maui Planning Department received application and fee payments from the Applicant for a Conditional Use Permit .
- On December 22, 2015, the Maui Planning Department mailed a notice to the Applicant and appropriate State and County agencies notifying them of the scheduled public hearing on this application for February 23, 2016.
- On January 12, 2016, for US addresses and January 13, 2016, for Canadian addresses, the Applicant mailed a letter of notification and location map to all owners and recorded lessees located within 500 feet of the subject property describing the application and notifying them of the scheduled hearing date, time and place by either certified or registered mail receipt. Copies of the letter, location map, list of owners, certified and registered mail receipts are on file in the Planning Department.
- On January 22, 2016, a notice of hearing on the application was published in the Maui News by the Maui Planning Department.
- The subject action does not involve an action that triggers compliance to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements.
- The Maui Planning Commission shall make a recommendation on the Conditional Permit to

the Maui County Council.

- The Maui Planning Commission shall transmit findings, conclusions and recommendations for the Conditional Permit to the County Council.

### **REVIEWING THE PROPOSED TVR UNDER SHORT-TERM RENTAL GUIDELINES**

As this project concerns the use of an existing residential dwelling for short-term rental use as a transient vacation rental, the Department used the safety and inspection criteria required for short-term home rental applications as part of its review. The Applicant submitted a completed STRH Inspection Form signed by an ASHI certified home inspector and signed by the Applicant. Additional requirements and conditions of approval will be placed upon this project should approval be granted such as the posting of a sign similar to that for STRH approved dwellings with a 24-hour contact number, the requirement for an on-island Manager to be available, the posting of house rules and quiet hours, the posting of emergency evacuation plans in each sleeping room, the notification of adjacent property owners of this permit should approval be granted, the requirement that all advertising shall include the Conditional Permit number, the limitation that the maximum occupancy of each sleeping room shall be two guests per bedroom including children over the age of two (2) years old, and additional safety requirements such as placement of smoke detectors and fire extinguishers throughout the home.

### **ANALYSIS**

#### **LAND USE**

1. The proposed use is in conformance with the goals, objectives and policies of the Hawaii State Plan. It will provide additional opportunities for employment and economic growth in the visitor industries.
2. The subject property is in the State Urban District and County Lahaina Project District 1 (Kapalua) Multi-Family zoning district.
3. As stated in the Maui County Charter, as amended in 2002:

“The General Plan shall indicate desired population and physical development patterns for each island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments. The general plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development.”

The County of Maui 2030 General Plan Countywide Policy Plan, adopted by the Maui County Council on March 19, 2010, is the first component of the decennial General Plan update. The Countywide Policy Plan replaces the General Plan as adopted in 1990 and

amended in 2002. The Countywide Policy Plan acts as an over-arching values statement and umbrella policy document for the Maui Island Plan and the nine Community Plans that provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future. The plan includes:

1. A vision statement and core values for the County to the year 2030
2. An explanation of the plan-making process
3. A description and background information regarding Maui County today
4. Identification of guiding principles
5. A list of countywide goals, objectives, policies, and implementing actions related to the following core themes:
  - A. Protect the Natural Environment
  - B. Preserve Local Cultures and Traditions
  - C. Improve Education
  - D. Strengthen Social and Healthcare Services
  - E. Expand Housing Opportunities for Residents
  - F. Strengthen the Local Economy
  - G. Improve Parks and Public Facilities
  - H. Diversify Transportation Options
  - I. Improve Physical Infrastructure
  - J. Promote Sustainable Land Use and Growth Management
  - K. Strive for Good Governance

The proposed project is in keeping with the following Countywide Policy Plan goals, objectives and policies:

### **Population, Land Use, the Environment and Cultural Resources**

#### Population

##### **Objective**

1. To plan the growth of resident and visitor population through a directed and managed growth plan so as to avoid social, economic and environmental disruptions.

##### **Policy**

- c. Maintain a balance between resident and visitor population by controlling and regulating growth of visitor facilities.

### **Economic Activity**

#### General

##### **Objective**

1. To provide an economic climate which will encourage controlled expansion and diversification of the County's economic base.

Policy

- a. Maintain a diversified economic environment compatible with acceptable and consistent employment.

Objective

1. To provide a balance between visitor industry employment and non-visitor industry employment for a broader range of employment choices for the County's residents.

Policy

- a. Encourage industries that will utilize the human resources available from within Maui County rather than having to import workers.

Visitor Industry

Objectives

1. To encourage exceptional and continuing quality in the development of visitor industry facilities.
2. To control the development of visitor facilities so that it does not infringe upon the traditional social, economic, and environmental values of the community.

Policy

- a. Limit visitor industry development to those areas identified in the appropriate community plans, and to the development of projects within those areas which are in conformance with the goals and objectives of those plans.

Objective

3. To ensure that visitor industry facilities shall not disrupt agricultural and social pursuits and will not be allowed to negatively impact the County's natural and cultural pursuits.
4. The Maui Island Plan (MIP) was adopted by the County Council on December 28, 2012. The plan provides direction for future growth, the economy, and social and environmental decisions through the year 2030. The plan looks comprehensively at many factors that influence the physical, social and economic development of the island. In addition to establishing a directed growth strategy to identify areas appropriate for future urbanization and revitalization, the plan also identifies and addresses key environmental, housing, and economic development issues relevant to Maui's current and future generations. The plan is intended by the County Council, Planning Department, and Maui Planning Commission as a policy foundation for day to day decisions and is specifically intended to be used to assist in reviewing discretionary permits. According to the Directed Growth Plan (DGP) in the MIP, the subject property is located in the Urban Growth Boundary.

The permit request is also in conformance with the following plan goals, objectives, and policies:

Economic Development

Goal

- 4.2. A healthy visitor industry that provides economic well being with stable and diverse employment opportunities.

Objective

- 4.2.1 Increase the economic contribution of the visitor industry to the island's environmental well-being for the island's residents' quality of life.

Policies

- 4.2.1a Engage the visitor industry in the growth of emerging sectors where practicable.
- 4.2.1.d Provide a rich visitor experience, while protecting the island's natural beauty, culture, lifestyles, and aloha spirit.
- 4.2.1.e Diversify the tourism industry by supporting appropriate niche activities such as ecotourism, cultural tourism, voluntourism, ag-tourism, health and wellness tourism, educational tourism, medical tourism, and other viable tourism related businesses in appropriate locations.
- 4.2.1.f Recognize the important economic contributions that the visitor industry makes and support a healthy and vibrant visitor industry.

Objective

- 4.2.3 Maximize residents' benefits from the visitor industry.

Land Use

Goal

- 7.3 Maui will have livable human-scale urban communities, an efficient and sustainable land use pattern, and sufficient housing and services for Maui residents.

Objective

- 7.3.4 Strengthen planning and management of the visitor industry to protect resident quality of life and enhance the visitor experience.

Policies

- 7.3.4.c Manage short-term rentals and bed and breakfast homes through a permitting and regulatory process in accordance with adopted ordinances and community plan policies.

- 5. According to the West Maui Community Plan, the property is identified as Project District 1 (Kapalua) and is consistent with the land use map of the Community Plan. The proposed action is in keeping with the following Community Plan recommendations:

**Economic Activity**

Goal: A diversified economy that provides a range of stable employment opportunities for residents, allows for desired commercial services for the community, and supports the existing visitor industry and agricultural industries, all in a manner that will enhance both the community's quality of life and the environment.

Objectives and Policies

- d. Provide a diversified economic base which offers long term employment to West Maui residents, and maintains overall stability in economic activity in the areas of: a) Visitor accommodations, b) visitor-related service/commercial services, ...

**Planning Standards**

1. Land Use Standards

- a. All zoning applications and/or proposed land use maps and developments shall be consistent with the West Maui Community Plan and its land use policies.

6. Maui County Zoning. As previously stated in the introduction to this report, the Conditional Permit (CP) for transient vacation rental use is the only vehicle the Applicant has to legally rent out this property on a short-term basis (less than 180 days). The Applicant cannot apply for a Short-Term Rental Home permit since the property is zoned Lahaina Project District 1 (Kapalua) - Multi-Family and there is no mention within this zoning district that short-term home rental permits may be processed under the new STRH Maui County Code Section 19.65. Pineapple Hill was built in two phases. Phase 1 has a County zoning classification of Agricultural which allows STRH applications to be processed. There are three (3) permitted short-term rental homes. Phase 2 of Pineapple Hill being zoned Lahaina Project District 1 (Kapalua) - Multi-Family must process applications for rental on a short-term basis through the Conditional Permit process as a TVR or Transient Vacation Rental. The end result whether a home is rented out as a STRH or a TVR is similar; however, the application and review process are different. Consequently, property owners in Phase 2 of Pineapple Hill must apply for the TVR, rather than the STRH permit; whereas, property owners in Phase 1 of Pineapple Hill may apply for a STRH.

Each Conditional Permit is unique and must be reviewed upon its own merits and the requirements for a Conditional Permit are as follows:

- Reasons justifying granting of a Conditional Permit must exist.
- The proposed use can not be significantly detrimental to the public interest, convenience and welfare.
- The proposed use must be in harmony with the area in which it is to be located, and the proposed use must be similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location

The issuance of a Conditional Permit is subject to such terms and conditions and for such period of time as the facts may warrant. The terms and conditions of the permit are designed to mitigate any potential impacts so that the proposed use in harmony with the local neighborhood and is not detrimental to the public interest, convenience and welfare.

In their permit application, the applicant states the following reasons of justification for the permit request:

*"Pineapple Hill Estates is a community of single-family residences. Homes in the community are both owner-occupied full time residences and secondary vacation homes with some of these used as rental properties. All homes in Pineapple Hills Estates are situated on no less than a quarter acre. The property has only three immediate neighbors. The closest neighbor is to the northwest on the lot below the subject property and is used as secondary vacation home. The owner of this property is also the owner of the neighboring house, kiddie corner to the west. The third neighbor is located directly across the street on Pulelehua to the southwest. It is also used as a secondary vacation home. There are no neighbors to the south, as the subject property faces Crestview Road and past that, the Honoapiilani Highway. The east side of the house faces a large gully/ravine.*

*The nature of the property should attract more affluent tourists looking for privacy, seclusion, and solitude. This type of tourism, which allowing for harmonious co-existence within the*



*neighborhood, will benefit local businesses and general community.”*

With the addition of conditions to the permit as recommended by the Department and strict enforcement, the use of the existing single family home for rentals of less than 180 days can likely be in harmony with the existing neighborhood. The Department is proposing the same permit conditions that are standard to short-term rental homes permitted under MCC 19.65. A description of the terms and conditions being recommended by the Department are as follows.

**Permit time period and renewal process.** The Department’s recommended condition for this application allow for an initial one-year permit period, due to the number and location of protest letters received from the notice of public hearing and that past rental operations were identified. Renewals are subject to MCC 19.40 which requires that all owners of properties located within 500 feet receive a notice that a permit renewal application has been filed and that they may file a protest to the renewal within 45 days of receiving the notice. If one or more protests are received by the Department, then the renewal application will be reviewed by the Maui Planning Commission with final approval authority by the County Council. The permit may only be transferred with approval by the County Council.

**Professional manager and neighbor notification.** The Applicant has stated that she will use a local manager, who will be responsible for managing the property, including the enforcement occupancy limits and quiet hours. The conditions normally recommended by the Department require the property manager to hold a State of Hawaii real estate license as required under State Law. Immediate neighbors are to receive a notice with the permit approval, conditions, and the manager’s contact information. The TVR home shall not operate when the manager is not accessible. Being accessible means being able to answer the telephone at all times, being able to be physically present at the TVR home within one (1) hour following a request by a guest, a neighbor, or County agency, and having an office or home within thirty (30) driving miles. In addition, a sign is also required to be posted at the edge of the property with the manager’s name and phone number.

Act 204, Session Laws of Hawaii 2015, became effective January 1, 2016, and requires that operators of transient accommodations designate an on-island local contact and display that contact’s name, phone number and email address inside the unit, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that a unit’s TAT license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link.

**House Rules.** The house rules recommended by the Department require onsite parking and a notice of quiet hours from 9:00 p.m. to 8:00 a.m. that must be posted prominently in the house and on the website. The house may only be rented to one group at a time and to a maximum number of eight (8) guests, including children over the age of two.

**Existing neighborhood.** The applicant states in their application that the proposed use is in harmony with the existing neighborhood. Pineapple Hill Phase 1 has three (3) existing permitted short-term rental homes as of the date of this report. The CC&Rs allow for short-term rental provided that it is only for a minimum of seven (7) consecutive days within one calendar month. The Department is recommending that the CC&R condition be added as a permit condition so that the proposed use is in conformance with the established rules of operating which are based upon providing a harmonious use of the property within the larger Pineapple Hill neighborhood.

**Permit review criteria.** Review criteria for the existing short-term rental home permits pursuant to MCC 19.65 were developed for the same use of renting out a single family home for less than 180 days. These criteria were created with the intent of keeping the proposed rental use in harmony with existing residential neighborhoods. Since each Conditional Permit is unique and must be reviewed upon its own merits and there are few specific guidelines for review, the Department has determined that it would be illustrative to use the previously established short-term home rental criteria in examining this CP for a Transient Vacation Rental. In considering the character of the neighborhood, MCC Chapter 19.65.030 (N) states the following:

Short-term rental homes shall conform to the character of the existing neighborhood in which they are situated. Prior to issuing a permit, the department or applicable planning commission shall consider the following:

1. If a proposed short-term rental property is subject to any homeowner, condominium association, or other private conditions, covenants, or restrictions, then correspondence from the association or other entity responsible for the enforcement of the conditions, covenants or restrictions is required. The correspondence shall include specific conditions that determine whether or not the proposed short-term rental home use is allowed. The correspondence shall be used to assist the department in determining the character of the neighborhood. If no such association or entity exists, this requirement shall not apply. The director and the planning commissions shall not be bound by any private conditions, covenants, or restrictions upon the subject parcel. Any such limitations may be enforced against the property owner through appropriate civil action.

**Response:** There was correspondence provided by the Pineapple Hill at Kapalua Owner's Association. The letter gives the specific Association Rule for transient vacation rentals: "Each rental or lease period must be for a minimum of seven (7) consecutive days. Each residence is limited to having one rental period beginning during each calendar month."

2. Existing land-use entitlements and uses.

**Response:** The property has no other land use entitlements other than those given out right through zoning. The property is zoned Lahaina Project District 1 (Kapalua) Multi-Family. The allowed uses are defined in MCC Chapter 19.73.030 as follows: principal uses are multifamily developments, including multifamily dwellings, townhouses and duplexes; and single family detached dwellings. There are no accessory uses allowed. Special uses and structures allowed are recreation and social centers; service areas and structures; and utility installations.

3. The applicable community plan.

**Response:** The proposed subdivision is designated in the Community Plan as Project District 1 Kapalua which is a 220 acre area, including the 2 hotels, golf courses, and multi-family and single family dwellings. The West Maui Community Plan describes Project District 1 (Kapalua) as follows:

"This project district is within the Kapalua Resort makai of Honoapiilani Highway between the proposed Napili Regional Park and Lower Honoapiilani Highway at Honokahua Bay, as identified on the West Maui Community Plan Land Use Map. The

project district is intended to provide a mixture of visitor-oriented facilities, including hotel accommodations, single-family and multi-family residences, and supporting commercial services within an open-space setting organized around a central village core. This central core should function as a town center, containing public spaces, public uses and facilities, commercial services, and residential areas. Visitor accommodations should not exceed 1050 rooms. The residential component should be limited to 900 units in a mixture of single-family and multi-family densities. The golf course and open space system should continue the open space theme established within the existing portions of the resort."

4. Community input.

**Response:** As of February 8, there have been fifteen (15) protest letters submitted. See **Exhibit 11** for map of protest letter locations. Neighbors have cited concerns about noise, unsafe elements, parking violations, previous problems with overcrowding, and the inability to control unauthorized rentals. They also stated that they purchased their home in this subdivision because of its residential character and that short-term rentals are not allowed under county code regulations governing Project Districts.

In addition, Chapter 16.65.060 of the Maui County Code states the following:  
"The department or appropriate planning commission may consider, but is not limited to, the following factors in reviewing, and approving or denying, an application:

- a. The number and distance from the subject parcel to other permitted short-term rental homes;

**Response:** *There is one permitted STRH home within 500 feet of the subject Property in Pineapple Hill Phase 1 and two additional permitted STRH homes within Pineapple Hill Phase 1. There is one additional application for a Conditional Permit for a TVR in Phase 2 and this property is located at 107 Pulelehua Street.*

- b. The number and substance of protests for the short-term rental home application and protests related to the cumulative short-term homes in the larger neighborhood or area;

**Response:** *The overall map showing the location of property owners in protest to this application is seen in **Exhibit 11**. **Exhibits 12 and 13** copy each of the protest letters. From the Notice of Mailing of Public Hearing on the CP done on January 12, 2016, for US addresses, and January 13, 2016, for Canadian addresses, the following protests have been received:*

*WITHIN 500 Feet of the Subject Property, ten (10) protest letters have been received as follows shown in **Exhibit 12**:*

- *Dave Lede, 101 Pulelehua Street, 102 Pulelehua Street, and 104 Pulelehua Street, Ph 2. One (1) protest letter from this owner of three parcels within 500 feet of the subject property covers the three (3) separate parcels. Mr. Lede owns 102 Pulelehua Street immediately next to the subject property, 101 Pulelehua Street across the street from the subject property, and 104 Pulelehua Street two lots from the subject property, **Exhibit 12 A**,*

- Sherman Brown, 220 Crestview Road, Ph2, **Exhibit 12 B**,
- Debra and John Hilton, 108 Pulelehua, Ph 2, **Exhibit 12 C**,
- Jim Waters, 226 Crestview Road, Ph 2, **Exhibit 12 D**,
- Joanne and Lorry Lokey, 105 Pulelehua Street, Ph 2, **Exhibit 12 E**,
- Melissa and Alan Crawley, 222 Crestview Road, Ph 2, **Exhibit 12 F**,
- Douglas and Juetta West, 112 Pulelehua Street, Ph 2, **Exhibit 12 G**, and,
- Robert J. Walden, 628 Silversword Drive, Ph 1, **Exhibit 12 H**.

OUTSIDE 500 Feet of the Subject Property, five (5) protest letters have been received as follows shown in **Exhibit 13**:

- Fred and Lynda Allen, 229 Crestview Road, Ph 2, **Exhibit 13 A**,
- Lawrence and Pamela Coon, 122 Pulelehua Place, Ph 2, **Exhibit 13 B**,
- O'Dell and Sandra Crittenden, 118 Pulelehua Place, Ph 2, **Exhibit 13 C**,
- Joseph and Heidi Henschel, 239 Crestview Road, Ph 2, **Exhibit 13 D**, and,
- Ralph Pais, 616 Silversword Drive, Ph 1, **Exhibit 13 E**.

The Applicant has addressed these concerns expressed in protest letters in their communication labeled as **Exhibit 14**. **Exhibit 14 will be sent under separate cover.**

- c. Existing or past complaints about rental operations on the property;  
**Response:** There are no Police Reports on this property regarding excessive noise or other complaints; however, the adjacent neighbor Dave Lede in protest letter seen in **Exhibit 12 A** states his opinion that "100 Pulelehua Street was rented to short term vacationers last year without a conditional permit. The renters complained about daytime construction noise on my property but proceeded to have loud parties late into the night. The noise and disruption will only get worse if the Commission grants a conditional permit for the property and legitimizes its use for transient vacation rentals." Statement from Dave Lede. No Request for Service filed according to County record.

- d. Existing or past noncompliance with government requirements and the degree of cooperation by the applicant to come into compliance; **Response:** *The Applicant submitted a CP application in order to come into compliance for a Transient Vacation Rental and allowed the Planning Department staff to inspect the property on December 21, 2015, and has followed the public hearing noticing requirements.*

*A report from the Pineapple Hill Homeowners Association indicates two (2) instances of short-term rentals in the last six (6) months for this owner, otherwise the owner has complied with all the HOA rules related to such rentals. **Exhibit 15** copies a statement from the Applicant regarding past short-term rentals. The Applicant states that all applicable TAT and GET taxes were paid for these two (2) rentals.*

*A Request for Service 12-0002391 regarding the use of the property for rental was filed in September of 2012 and an advertisement from VRBO #298254 was filed apparently indicating that the subject property called Landing at Pineapple Hill was available for rental in 2012. Per night room rates from 2012/2013 ranged from a low of \$1000/night up to \$2850 night during the festive season. That VRBO number no longer registers on the VRBO web site. It should be noted that this advertisement was done over three (3) years ago and has been pulled from the web site.*

- e. Correspondence received by the department pursuant to section 19.65.030(N)(1)." **Response:** *Excerpts from the Declarations of CCRs for Pineapple Hill at Kapalua do allow for occasional transient vacation rentals for periods of seven (7) days or more as stated in the Association Rules for Pineapple Hill at Kapalua under the category USE: The Lot Owners shall have the right to rent or lease their residence subject to the limitations as set forth in the Declaration or Bylaws of Pineapple at Kapalua. No Owner shall rent their residences more than one (1) time per calendar month and for not less than seven (7) consecutive days. (See **Exhibit 16** for a copy of the Covenants, Conditions, and Restrictions and Association Rules of Pineapple Hill at Kapalua.) See **Exhibit 17** for a letter from the Pineapple Hill Land Owners Corporation regarding this application for a Conditional Permit and specific language regarding rental of residences at Pineapple Hill.*

Under the provisions of the Short-Term Rental Home permit, STRH management must be available 24-hours a day to respond to noise and other complaints. The Department believes this is appropriate also for this Transient Vacation Rental application and included 24-hour available management in the permit conditions.

## **INFRASTRUCTURE AND PUBLIC FACILITIES AND SERVICES**

1. Water -- Potable and non-potable water is supplied by the private Kapalua Water Company. The system is private, thus the proposed use does not create adverse impacts to the county water system.

2. Wastewater -- Wastewater services are provided by the private Kapalua individual wastewater system. The system is private, thus there are no impacts to the County wastewater system.
3. Flood -- The subject property is located in Zone X as indicated by the Flood Insurance Rate Map, which defines areas of the 100-year flood with base flood elevations and flood hazard factors. Zone X has minimal flooding risk. The proposed use is to be conducted in an existing dwelling. No new construction is proposed.
4. Roadways -- Access to the project site is from paved roads specifically Honoapiilani Highway to Office Road to Simpson Drive and finally to the gated entrance of the Pineapple Hill Subdivision. Roads are private within the Pineapple Hill subdivision and are built to urban standards with sidewalks, curbs and gutters. There are no impacts anticipated to county roadways.
5. Public Services --

Fire -- Fire protection is from the Napili substation located approximately one mile away.

Police -- The Maui Police Department is located at the Lahaina Station approximately seven (7) miles away.

Medical Services -- Maui Memorial Medical Center is located approximately 30 miles away and is located in Wailuku. MMMC provides acute, general, and emergency care services from its 231 bed facility. There is a proposed West Maui Medical Center currently in the development process.

Solid Waste -- Trash from the subdivision area is collected by Aloha Waste.

There are no impacts anticipated to public services.

### **SOCIO-ECONOMIC IMPACTS**

The proposed project seeks to allow transient vacation rentals and hence will likely provide an economic stimulus in the form of jobs and operations related to the operation of the TVR. Although many have expressed concerns that short-term rentals take away from the inventory of homes available for rental from the resident Maui population, this argument is best applied to more market rate homes as contrasted from expensive resort-style dwellings. This home has an assessed value of \$2.7 million. There is little indication that the use of Pineapple Hill Phase 2 homes for TVR use will result in significant negative effects on the inventory of rentable housing for local residents.

### **ENVIRONMENTAL IMPACTS**

No environmental impacts are anticipated as this application concerns the use of a single-family dwelling for short-term residential activity and environmental impacts would likely be no greater than if the owners' family were in residence on a full-time basis.

## **OTHER GOVERNMENTAL APPROVALS**

The Applicant shall be bound by any other permits as may be necessary in order to ensure the health and safety of transient vacation rental operations.

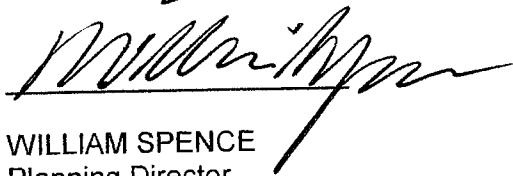
## **TESTIMONY**

As of February 8, 2016, the Planning Department has received considerable testimony regarding this application and this testimony was previously referred to in ***Exhibits 11 through 14***.

## **ALTERNATIVES**

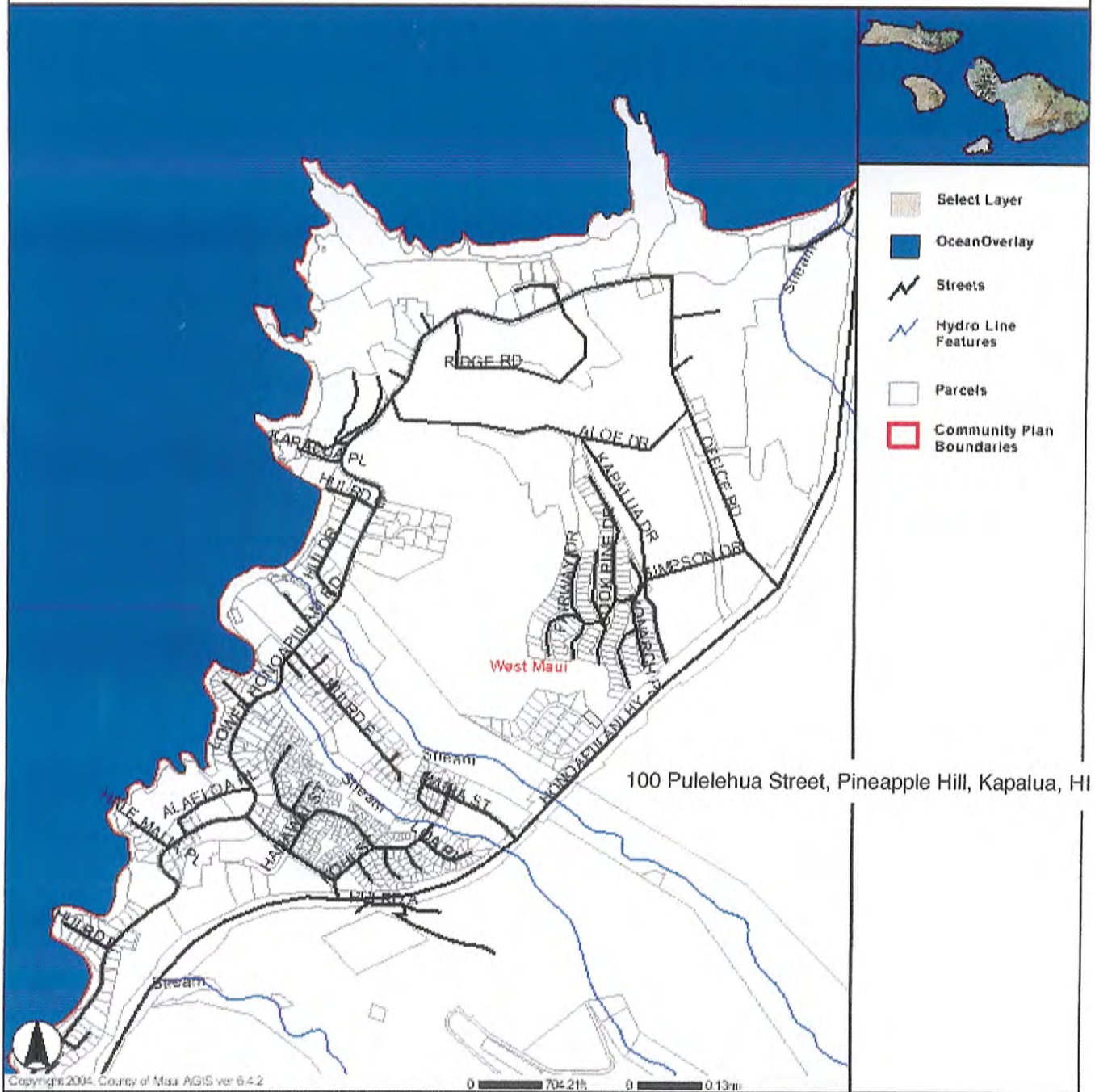
1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberations on the application.
2. Recommendation of Approval to the County Council. The Commission is not the authority on conditional permits and, therefore, can only make a recommendation to the County Council to approve or deny the conditional permit. The County Council is the authority to act on conditional permits.
3. Recommendation of Denial to the County Council. The Commission is not the authority on conditional permits and, therefore, can only make a recommendation to the County Council to approve or deny the conditional permit. The County Council is the authority to act on conditional permits.

APPROVED:

A handwritten signature in black ink, appearing to read 'William Spence', written over a horizontal line.

WILLIAM SPENCE  
Planning Director  
County of Maui

# Pineapple Hill - Regional Map

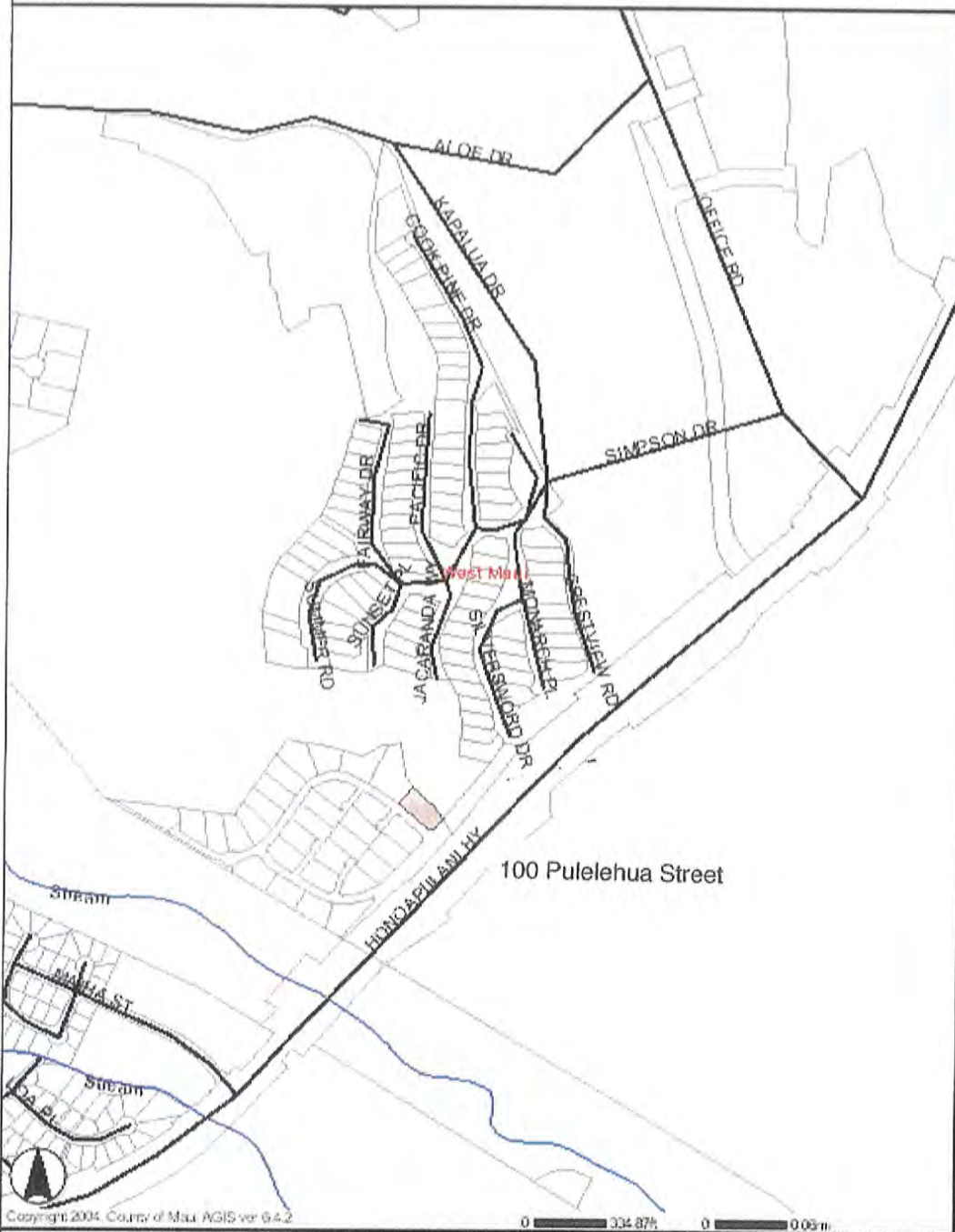


Refer to the Accela GIS Administrators Guide for instructions on how to set the disclaimer text displayed in this area.





# 100 Pulelehua Street - Pineapple Hill Phase 2



- Select Layer
- OceanOverlay
- Streets
- Hydro Line Features
- Parcels
- Community Plan Boundaries

Copyright 2004, County of Maui, AGIS ver 6.4.2

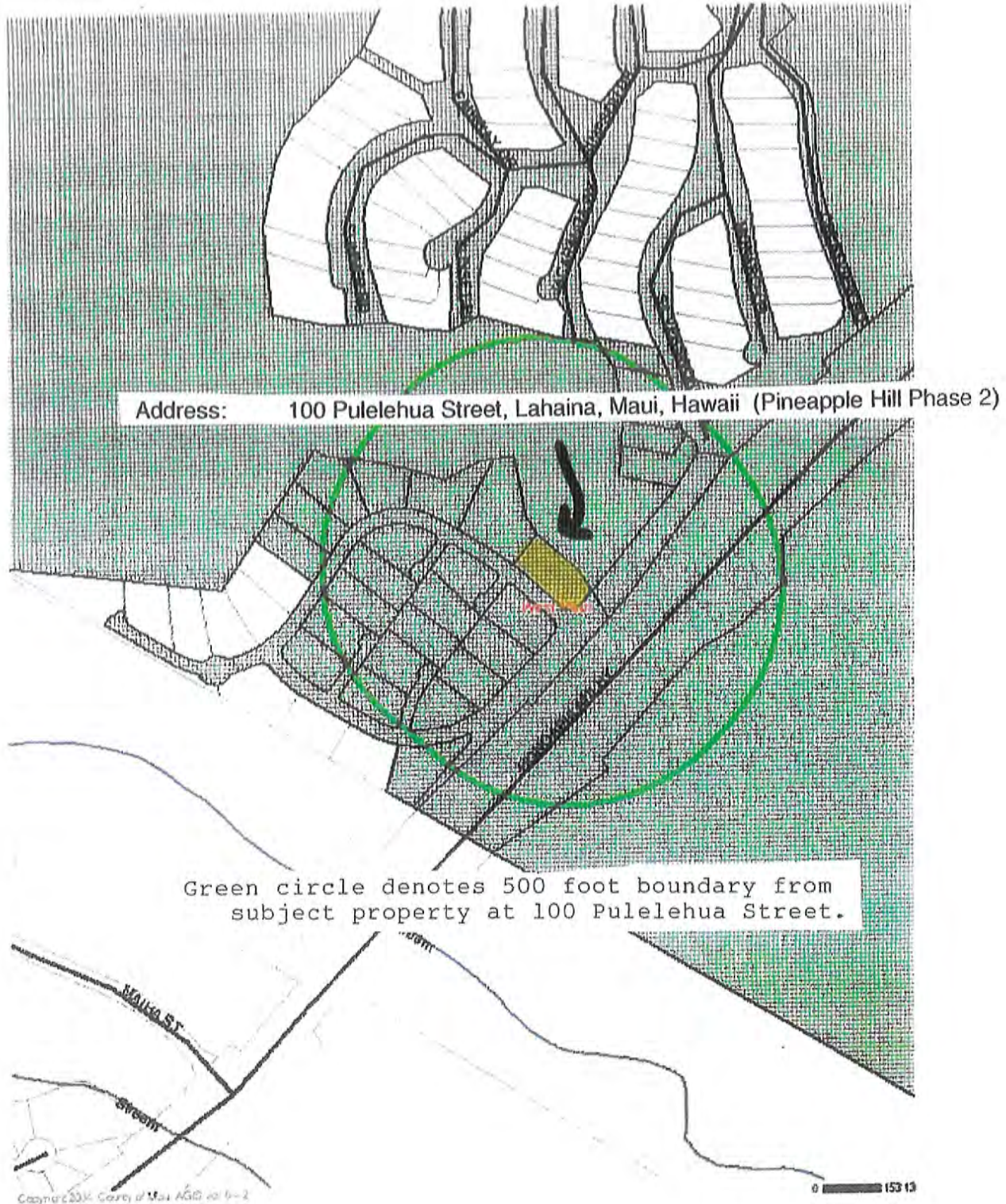
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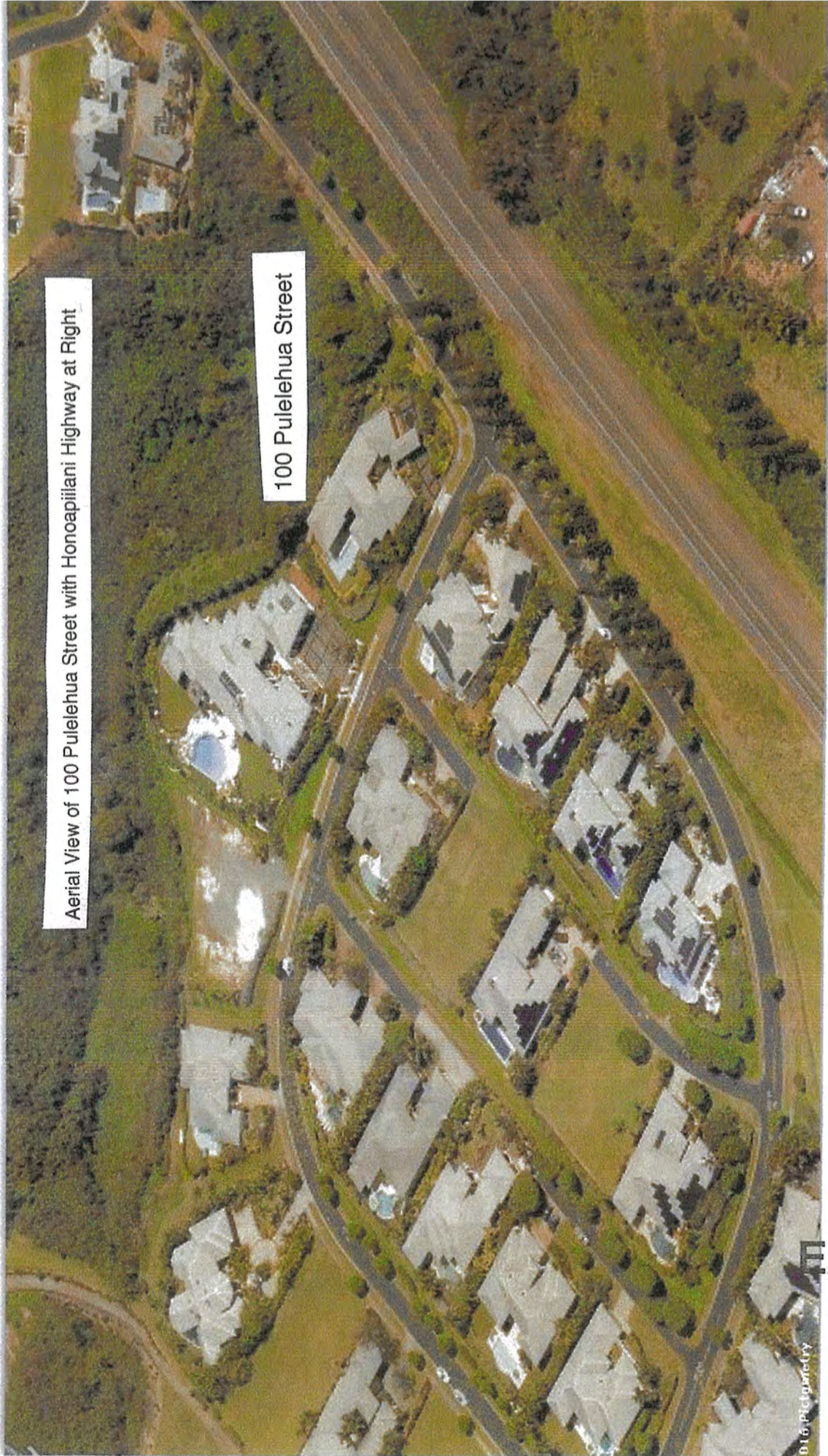




Project: STEINER RESIDENCE TRANSIENT VACATION RENTAL  
CONDITIONAL PERMIT (CP)  
Address: 100 Pulelehua Street, Lahaina, Maui, Hawaii (Pineapple Hill Phase 2)  
Description: Transient Vacation Rental in Single-Family Dwelling  
TMK: (2) 4-2-007:009  
Permit Nos.: CP 2015/0006

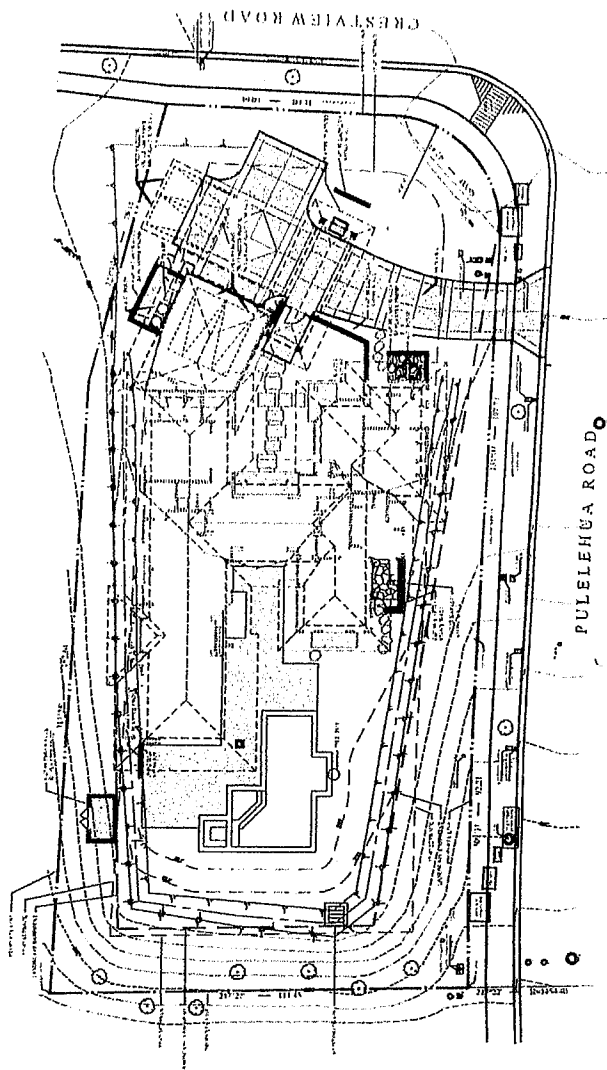






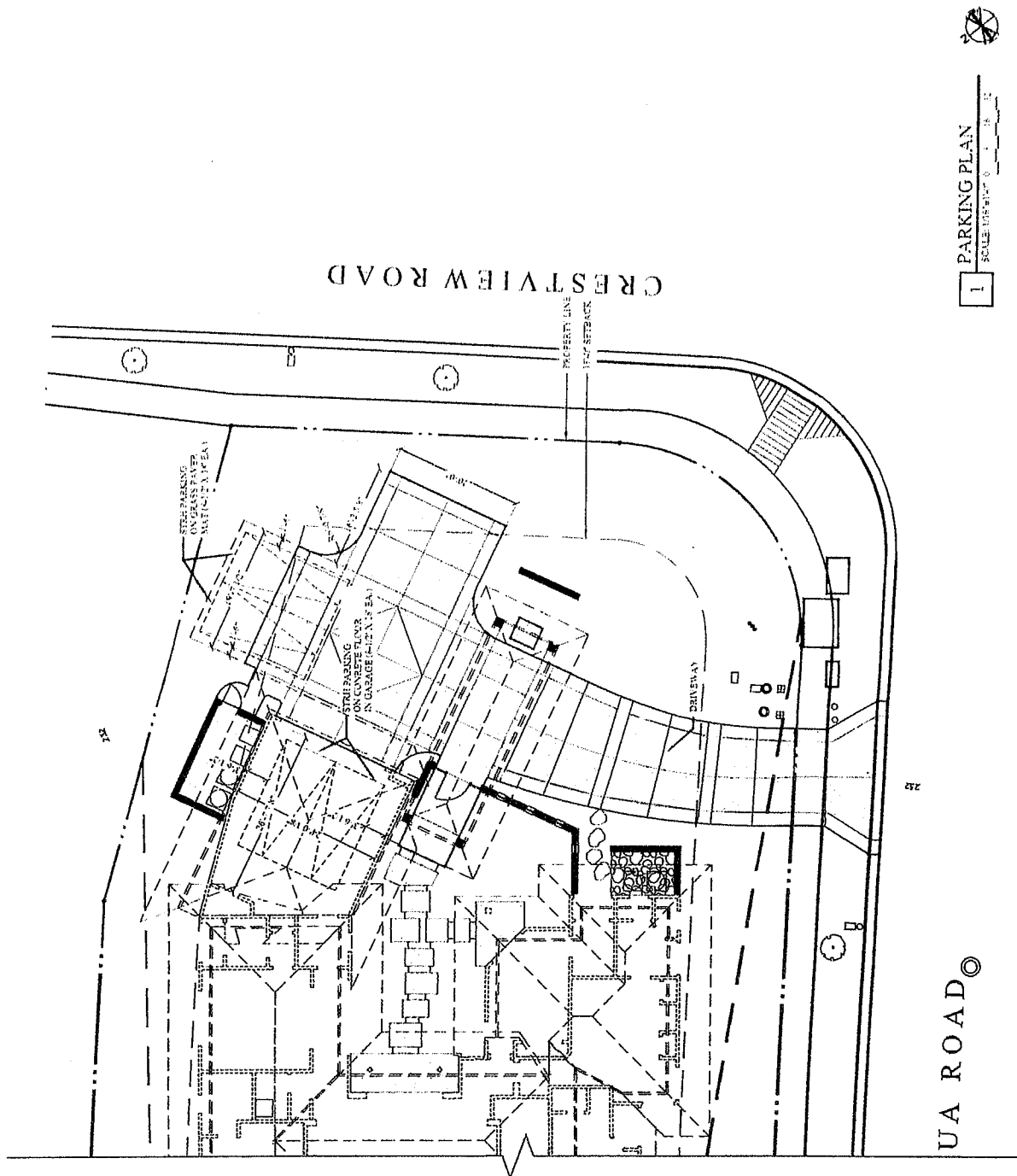
Aerial View of 100 Pulelehua Street with Honoapiilani Highway at Right

100 Pulelehua Street



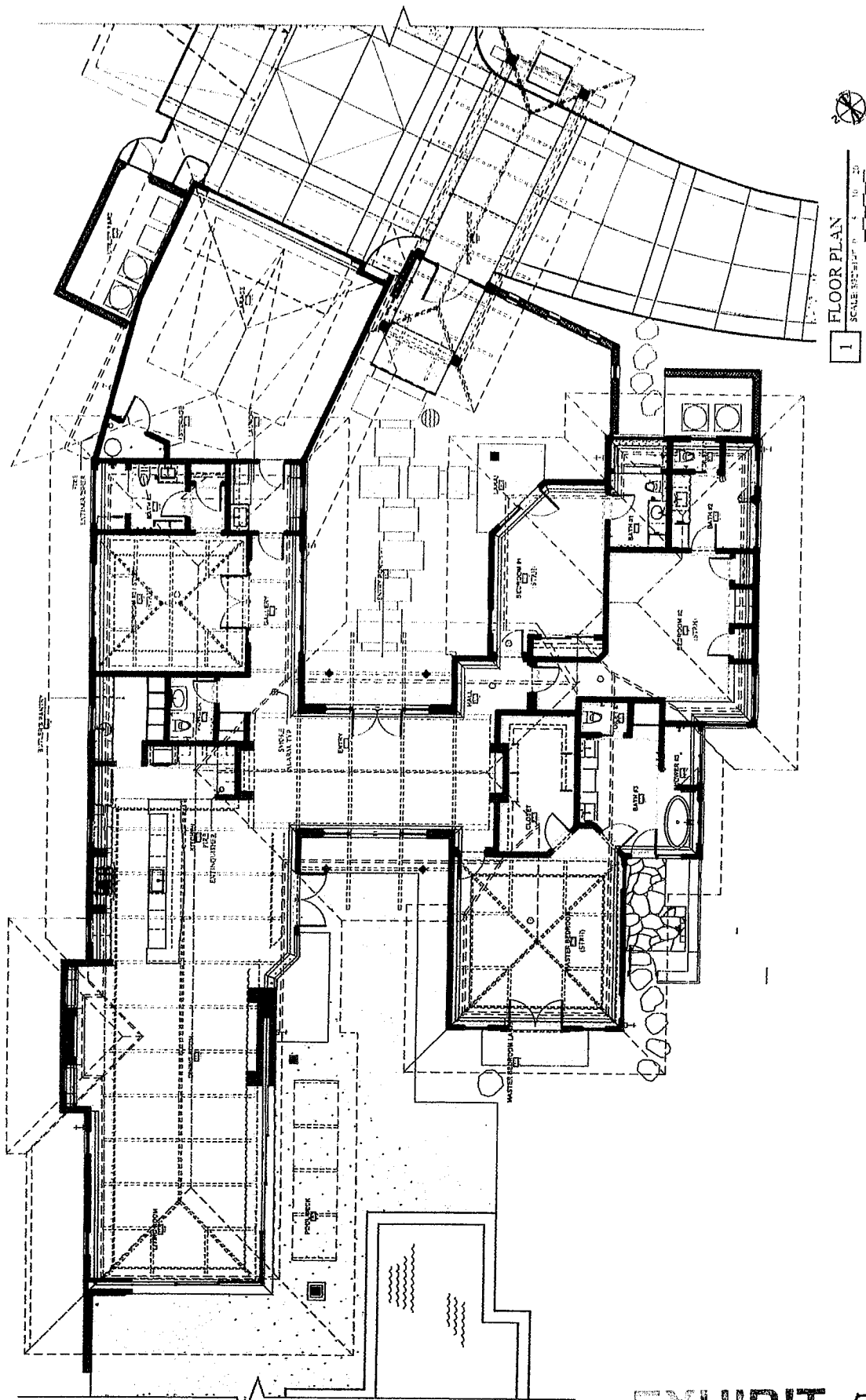
Site Plan





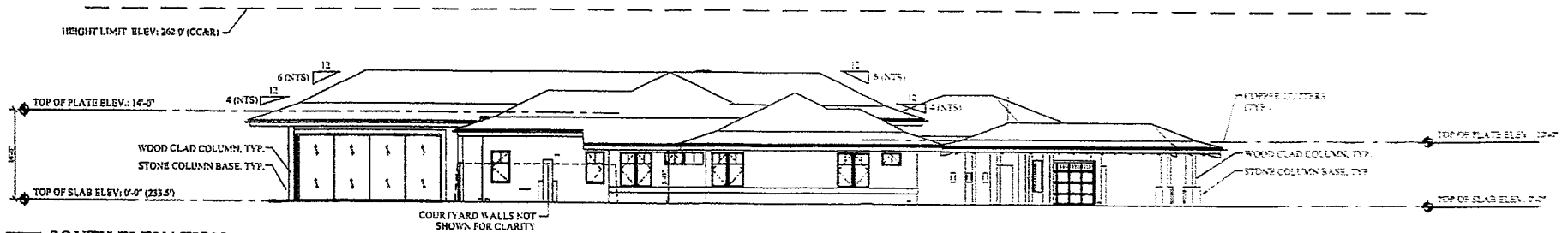
Parking Plan

EXHIBIT 4



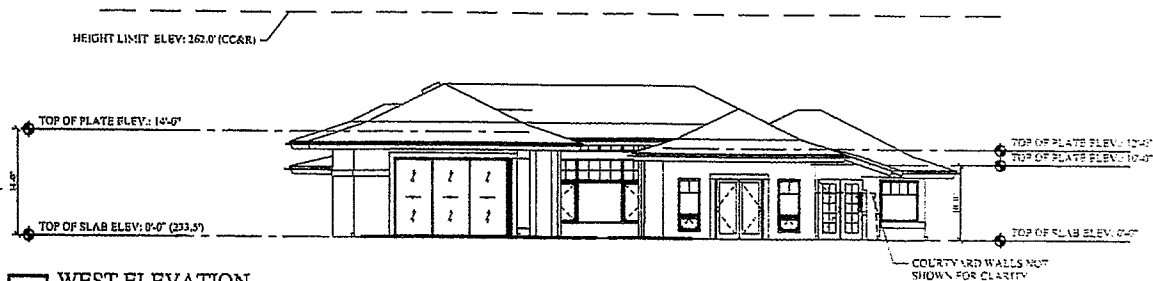
Floor Plan of 4-Bedroom Dwelling

EXHIBIT 5



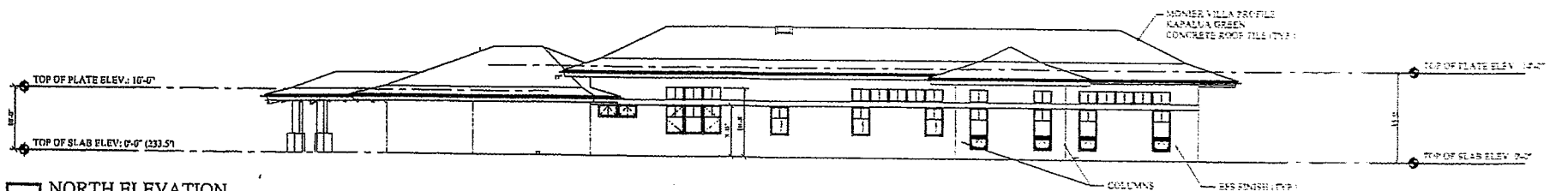
**A SOUTH ELEVATION**

SCALE: 1/16"=1'-0" 0' 8' 16' 32'



**B WEST ELEVATION**

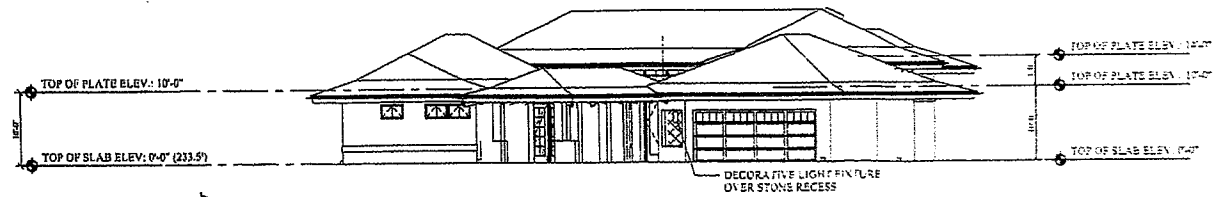
SCALE: 1/16"=1'-0" 0' 8' 16' 32'



**C NORTH ELEVATION**

SCALE: 1/16"=1'-0" 0' 8' 16' 32'

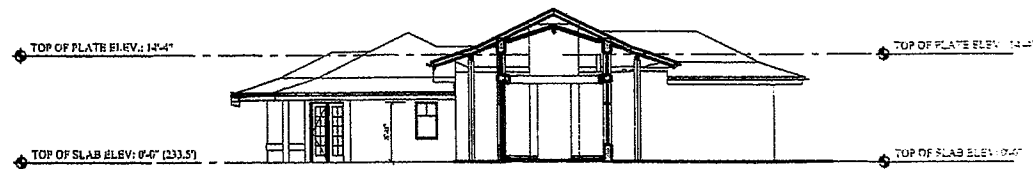
HEIGHT LIMIT ELEV: 262.0' (CCAR)



**D** EAST ELEVATION

SCALE: 1/16"=1'-0" 0' 8' 16' 32'

HEIGHT LIMIT ELEV: 262.0' (CCAR)



**E** NORTH ELEVATION

SCALE: 1/16"=1'-0" 0' 8' 16' 32'



#1 Main Entrance from Crestview Road



Photographs of Dwelling

#1 Main Entrance of Lot from corner of Crestview and Pulelehua





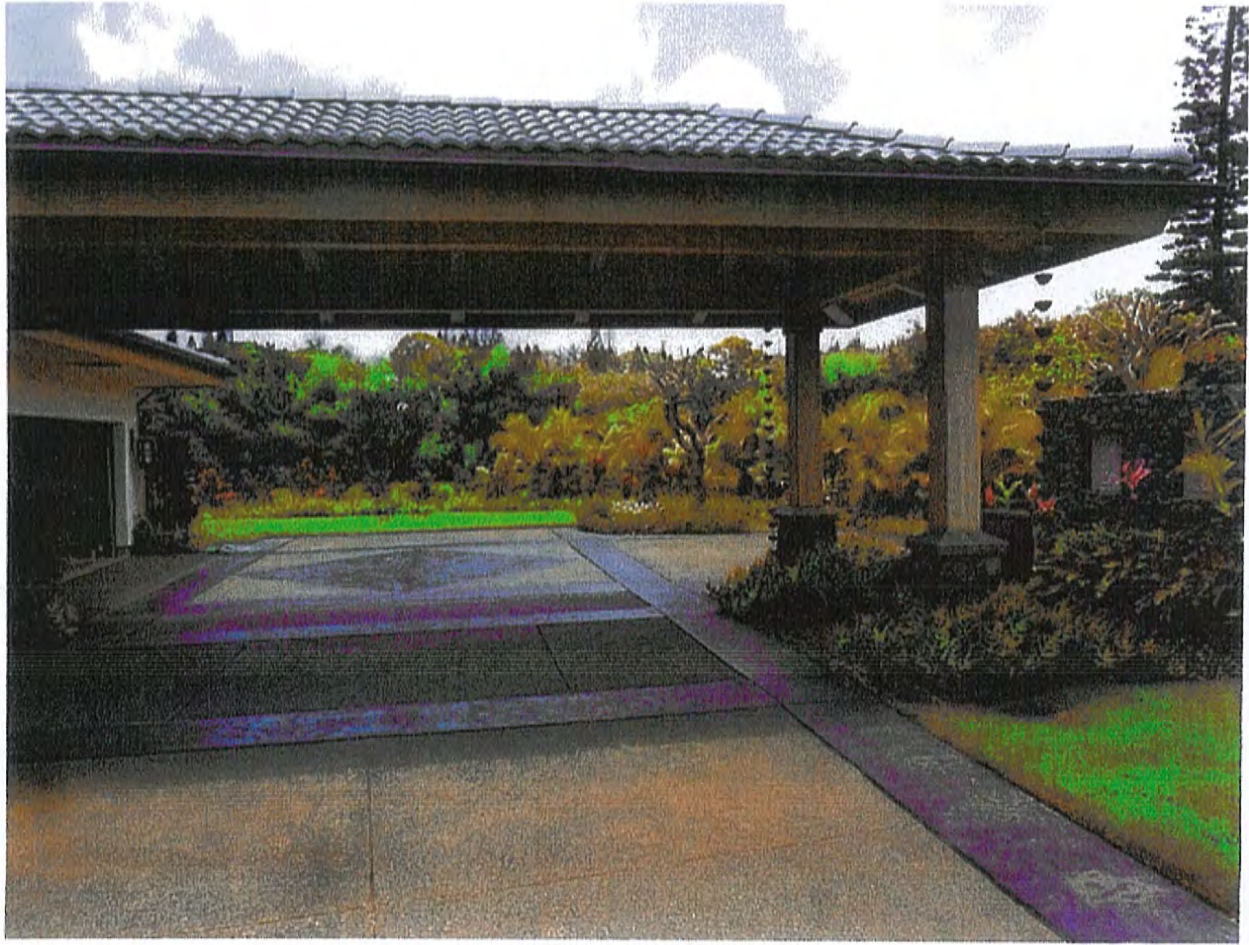
#1 1 Main Entrance of Lot from Pulelehua Street-main access road



#2 Main Driveway







#2 Main Driveway closeup

#3 Parking area driveway







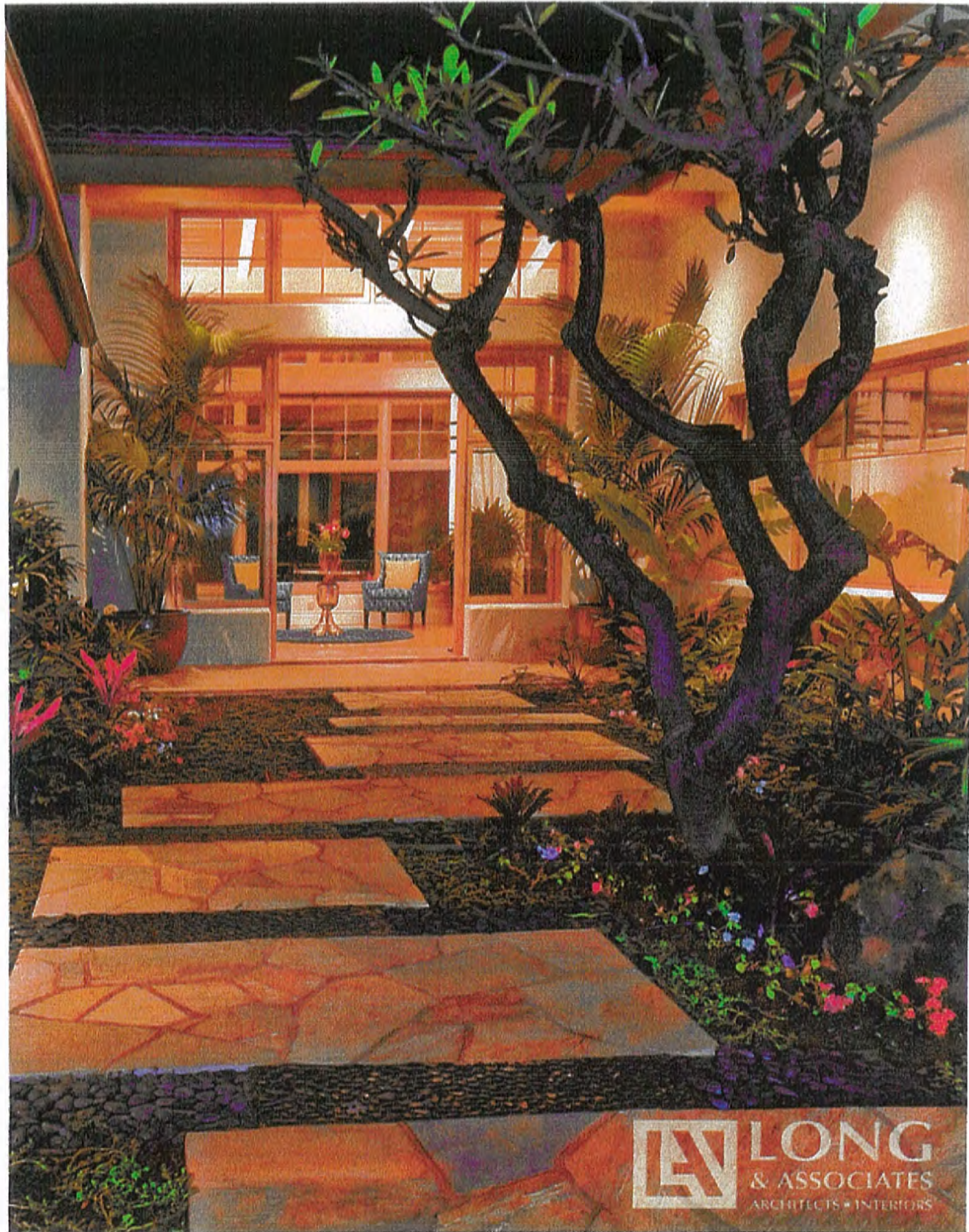
#3 Parking area driveway additional view



#3 Parking area double Garage



#4 Exterior View – front courtyard to main entry







#4 Exterior View-front of the house and driveway



#4 Exterior view- courtyard from driveway





#4 Exterior view – rare of house west

#5 View from property facing east







#5 View from property facing south-east



#5 View from property facing north





#5 View from property to the north-west



#6 Interior Rooms-great room





#6 Interior Rooms-foyer





#6 Interior Rooms-dining and kitchen



#6 Interior Rooms-living room



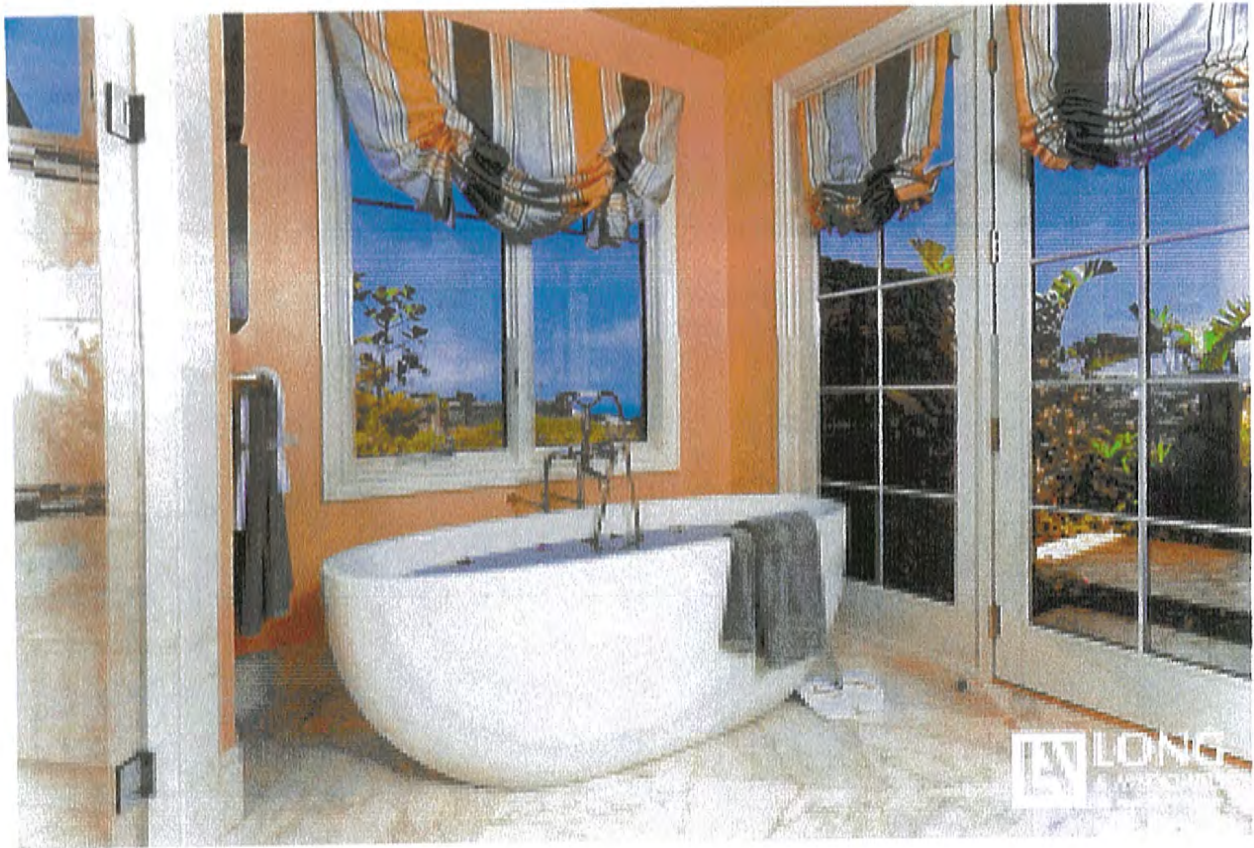


#6 Interior Rooms-first master bedroom king

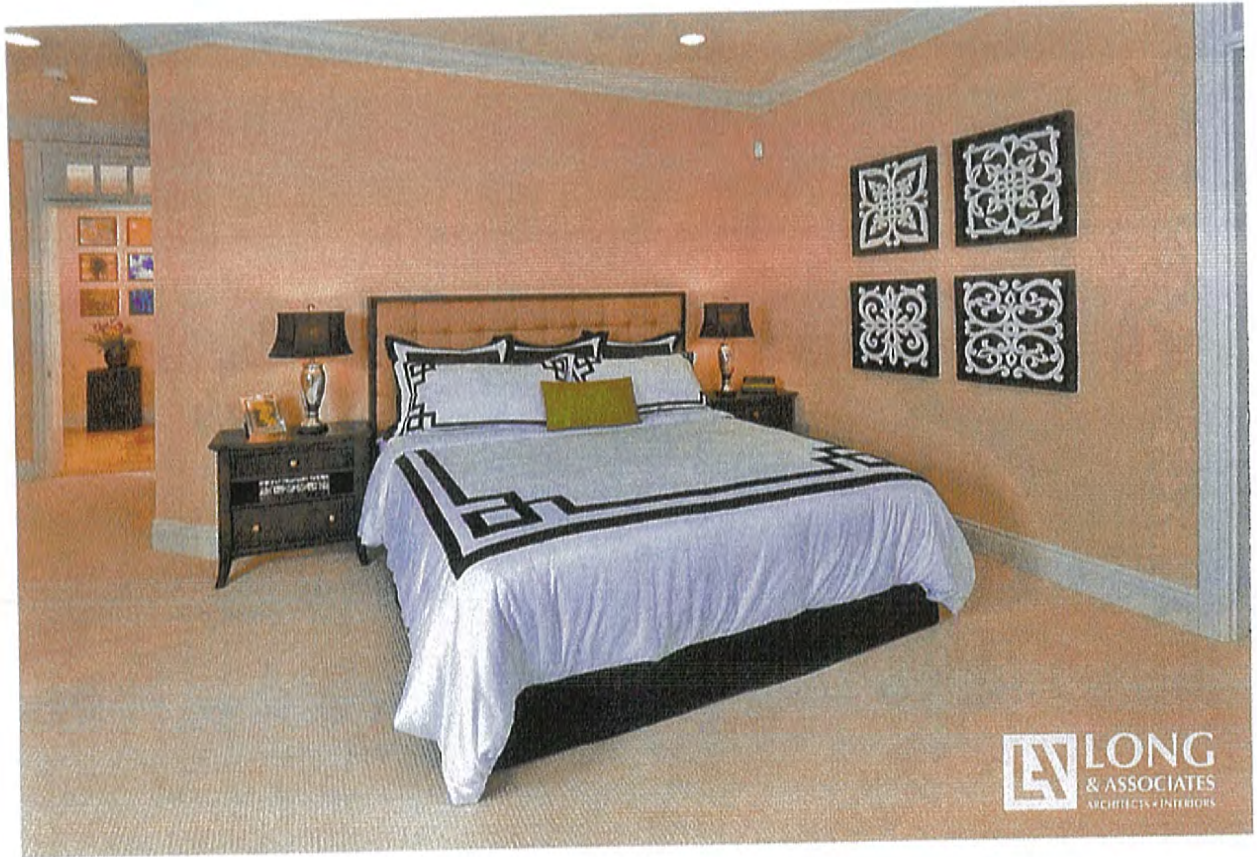


#6 Interior Rooms-first master bedroom bath



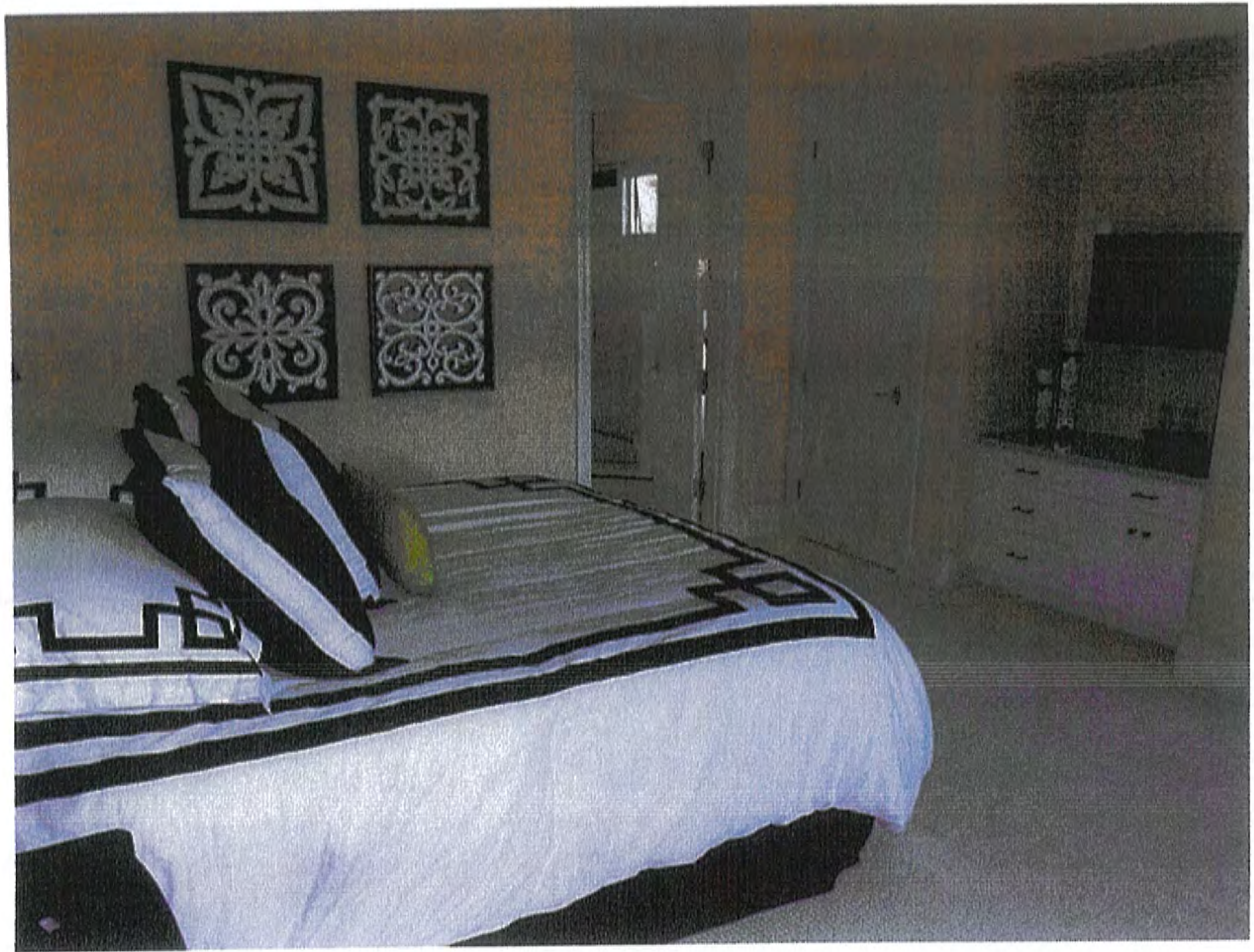


#6 Interior Rooms-first master bedroom bath-additional view

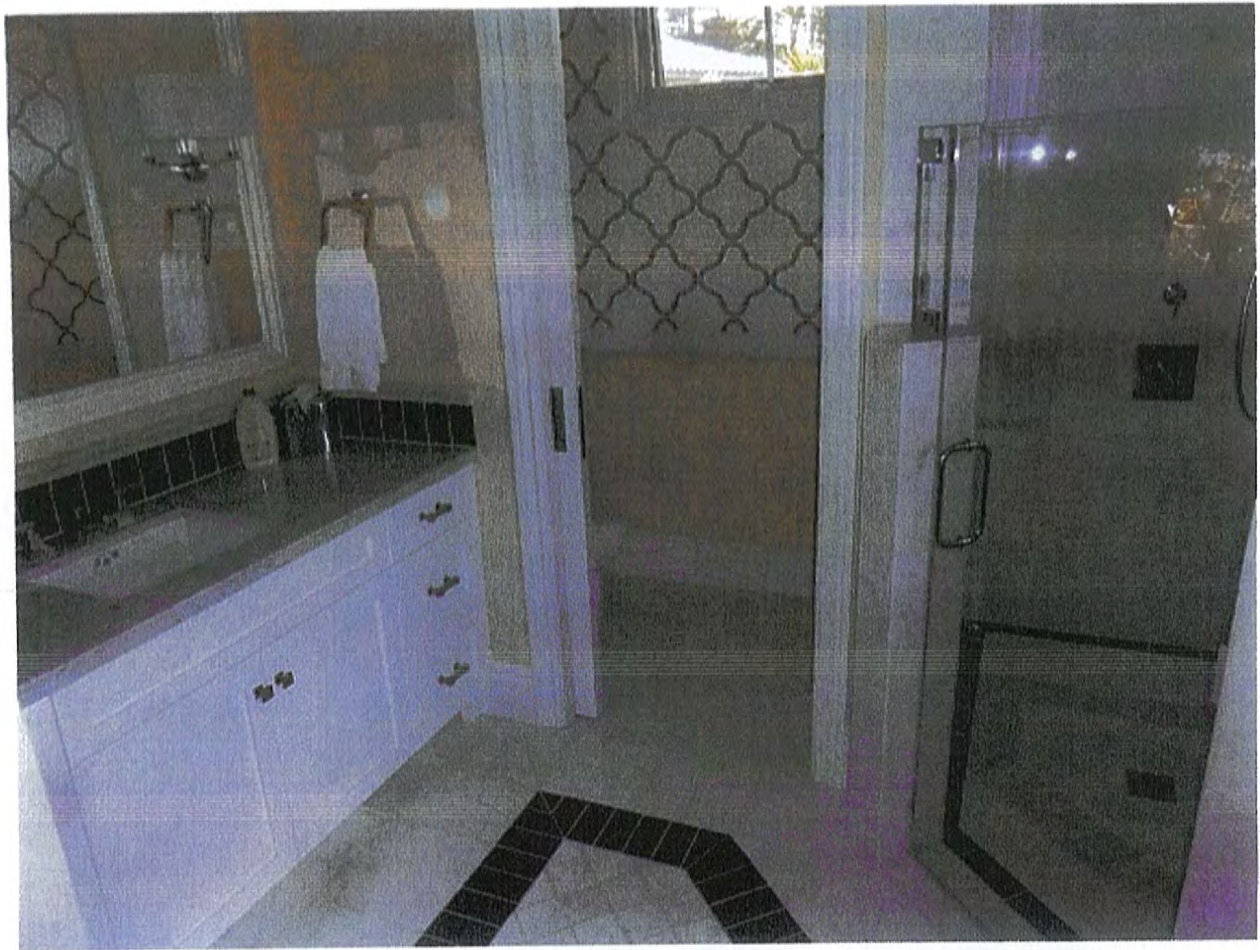


#6 Interior Rooms-second master bedroom king





#6 Interior Rooms-second master bedroom king alternative view

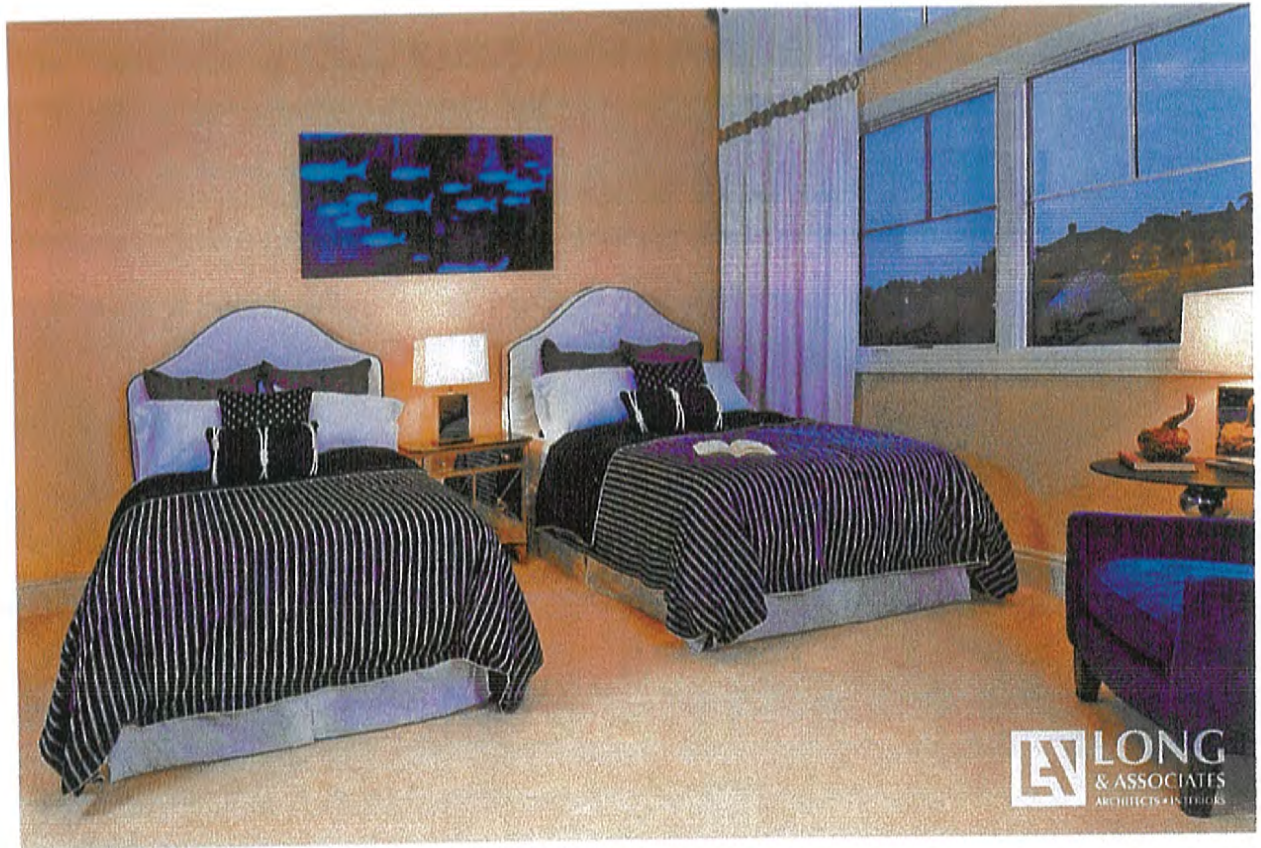


#6 Interior Rooms-second master bedroom bath



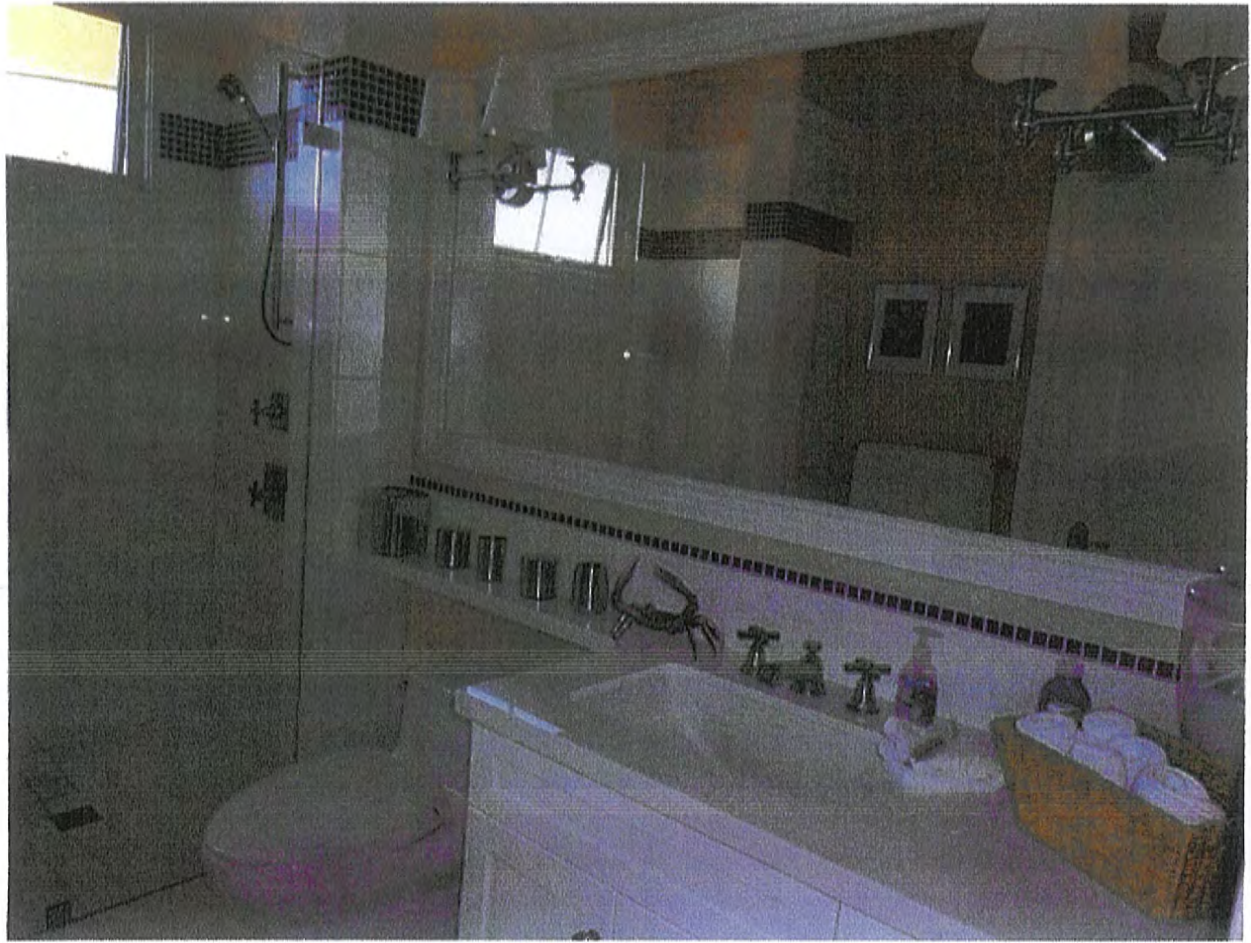


#6 Interior Rooms-third bedroom queen



#6 Interior Rooms-fourth bedroom x 2 doubles





#6 Interior Rooms-fourth bedroom bath





#6 Interior Rooms-kitchen

**LONG**  
& ASSOCIATES  
ARCHITECTS • INTERIORS

The subject property is located in Phase II of the Pineapple Hill Estates. It is zoned Kapalua Project District 1-Multi Family. Since this zoning is not listed as allowable under the STRH permit application, the owners of the property, on advice of the planner at the County of Maui, must apply for the alternative option, a Conditional Permit allowing Transient Vacation Rental.

The property is owned by a family trust; it is a single family dwelling built in 2008 and purchased in 2010 directly from the builder in brand-new condition. This single story dwelling offers peaceful surroundings, a private pool, spa and extended patio areas that are easily accessible for mobility challenged or restricted individuals. Cleaning service and local on-site management offered should provide a comfortable stay and memorable experience.

Pineapple Hill Estates is a community of single-family residences. Homes in the community are both owner-occupied full time residences and secondary vacation homes with some of these used as rental properties.

All homes in Pineapple Hill Estates are situated on lots no less than a quarter acre. The property has only three immediate neighbors. The closest neighbor is to the northwest on the lot below the subject property and is used as secondary vacation home. The owner of this property is also the owner of the neighboring house, kiddie corner to the west. The third neighbor is located directly across the street on Pulelehua to the southwest. It is also used as a secondary vacation home. There are no neighbors to the south, as the subject property faces Crestview Road and past that, the Honoapiilani Highway. The east side of the house faces a large gulley/ravine.

The nature of the property should attract more affluent tourists looking for privacy, seclusion and solitude. This type of tourism, while allowing for harmonious co-existence within the neighborhood, will benefit local businesses and general community.

The shortage of affordable housing is an issue that has been addressed by the Maui Planning Commission. This home would fall under the category of a luxury vacation property. A conditional permit allowing transient vacation rentals at this location would not have a negative effect on the existing pool of affordable rental housing on the island.

All rentals at the property will be in accordance with Pineapple Hill Bylaws which restrict vacation rentals to a minimum of seven (7) night rentals with no more than one (1)

rental per calendar month. This results in a maximum of twelve (12) vacation rentals being permitted per year. Bylaws require "quiet hours"; no mopeds, motorcycles or golf carts are permitted on roadways, reducing possible disturbances to neighbors.

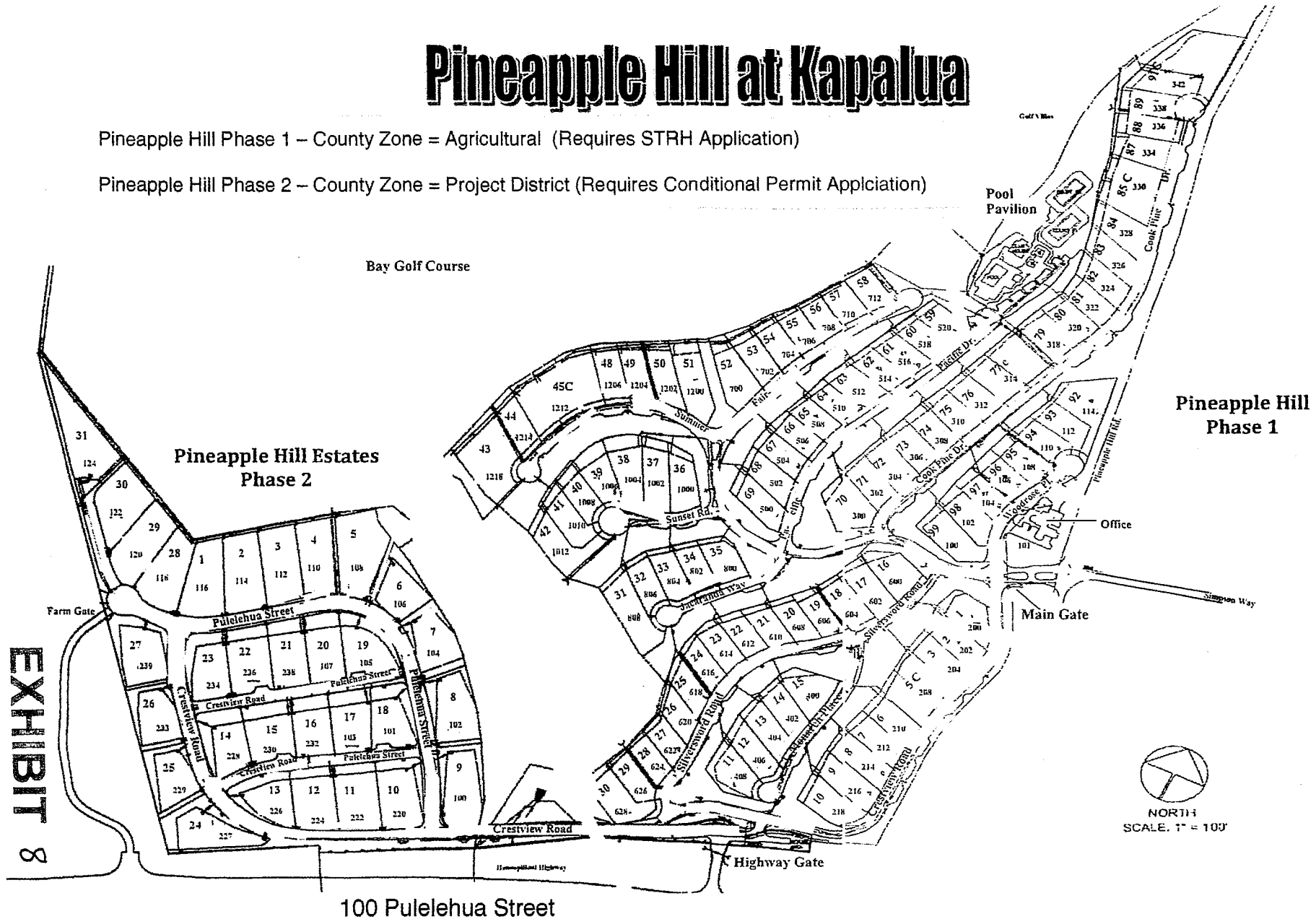
Granting a Conditional Permit at this property will provide an alternative venue for visitors from the busier hotel or condominium style accommodation. With four bedrooms on one level in a gated community, it will allow groups and families to experience a more tranquil stay with both increased privacy and peacefulness that a private home can offer.



# Pineapple Hill at Kapalua

Pineapple Hill Phase 1 – County Zone = Agricultural (Requires STRH Application)

Pineapple Hill Phase 2 – County Zone = Project District (Requires Conditional Permit Application)

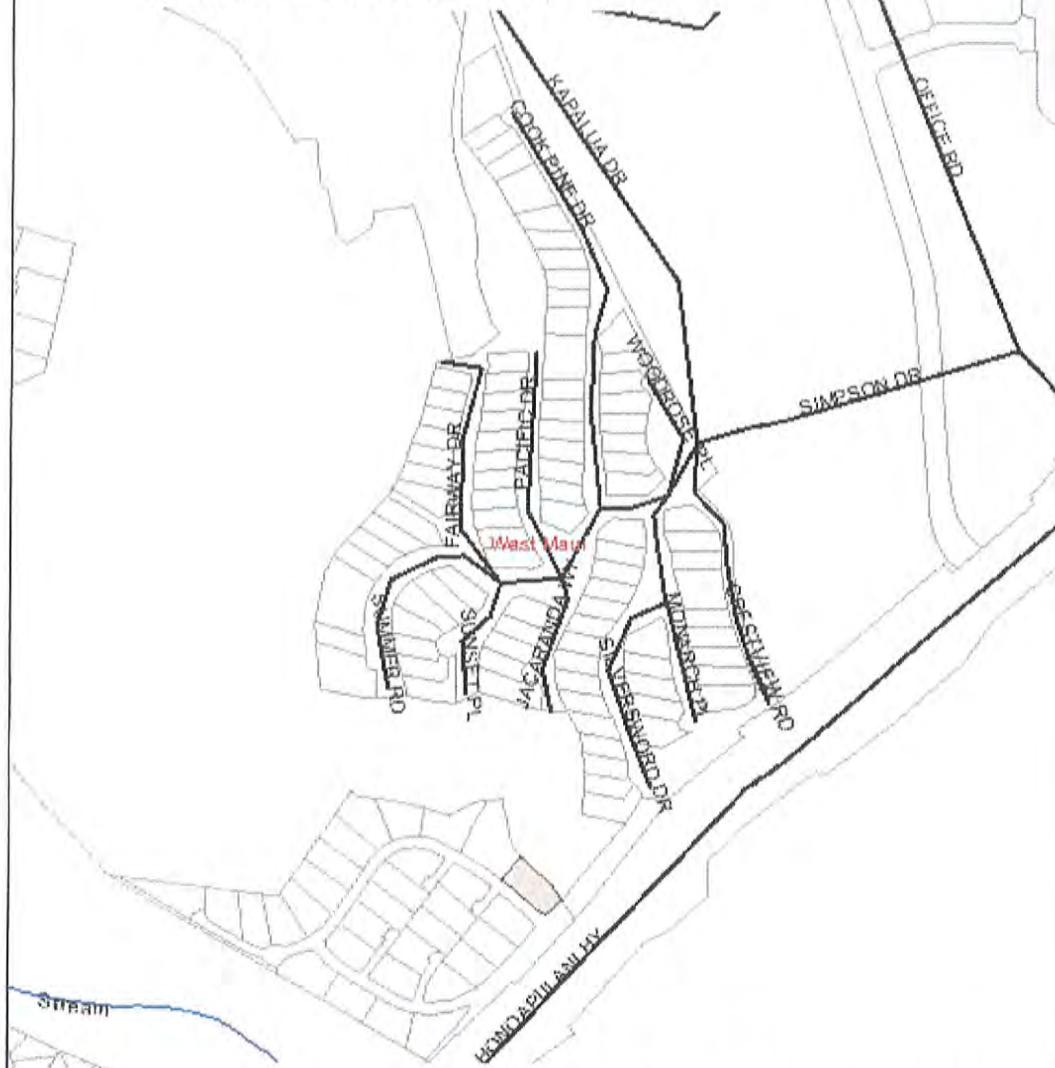


# Pineapple Hill Phase 1 and 2

Pineapple Hill Phase 1 – County Zone = Agricultural  
(Requires STRH Application)



- Select Layer
- OceanOverlay
- Streets
- Hydro Line Features
- Parcels
- Community Plan Boundaries



Pineapple Hill Phase 2 – County Zone = Project District  
(Requires Conditional Permit Application)



Copyright 2004, County of Maui AGIS ver 6.4.2

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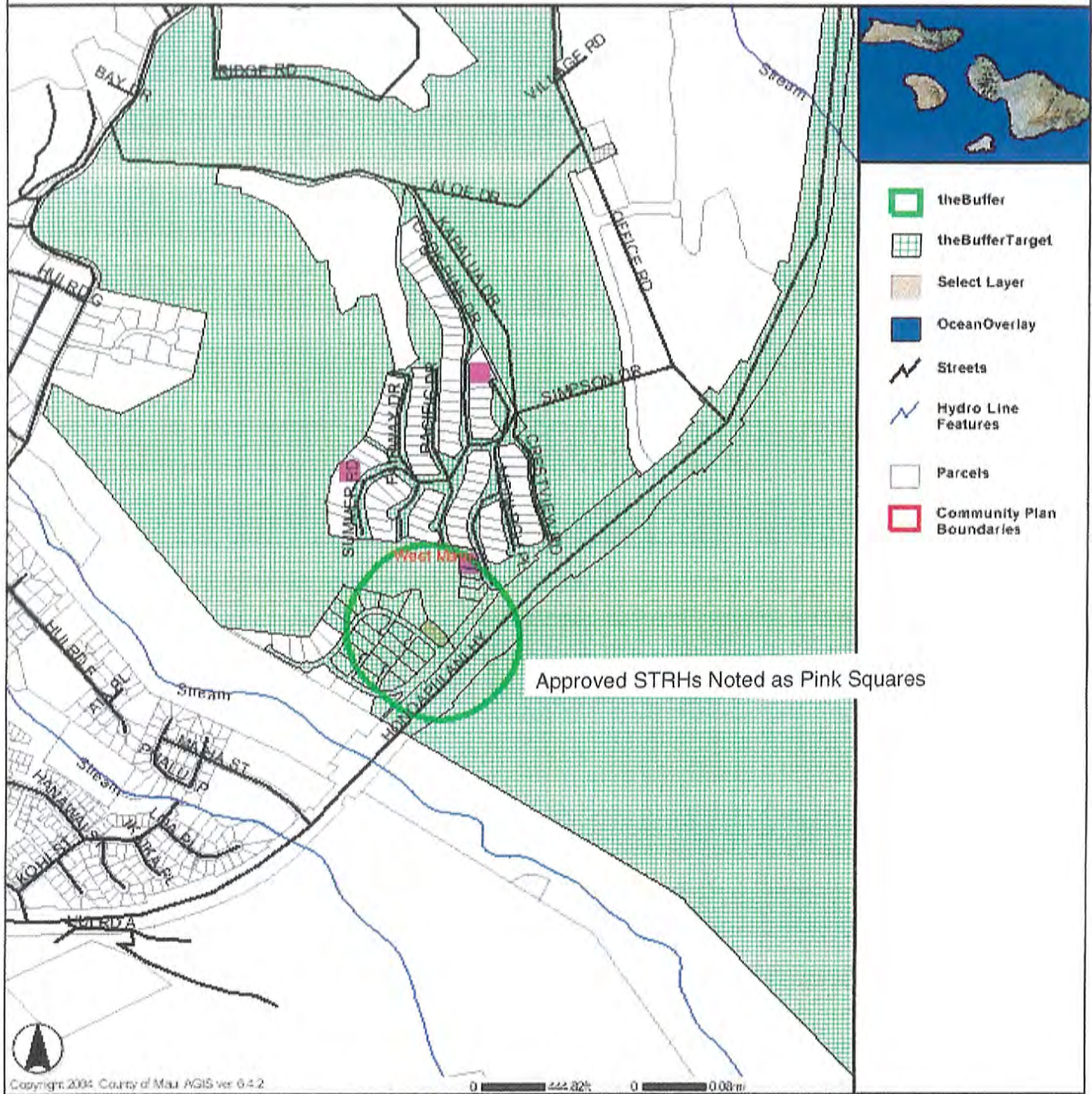
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Refer to the Accela GIS Administrators Guide for instructions on how to set the disclaimer text displayed in this area.





### 3 Approved STRH in Pineapple Hill Phase 1

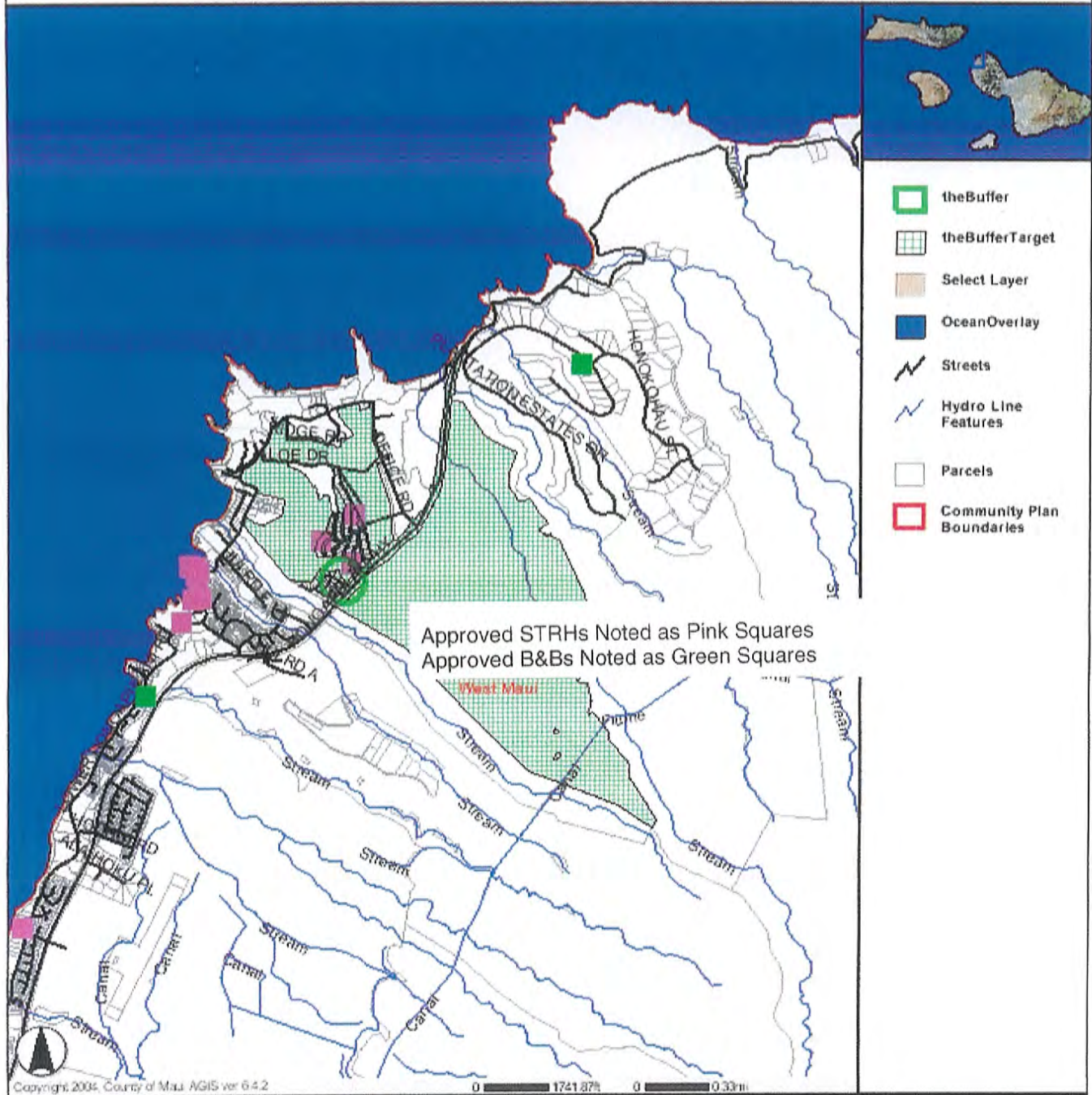


Refer to the Accela GIS Administrators Guide for instructions on how to set the disclaimer text displayed in this area.



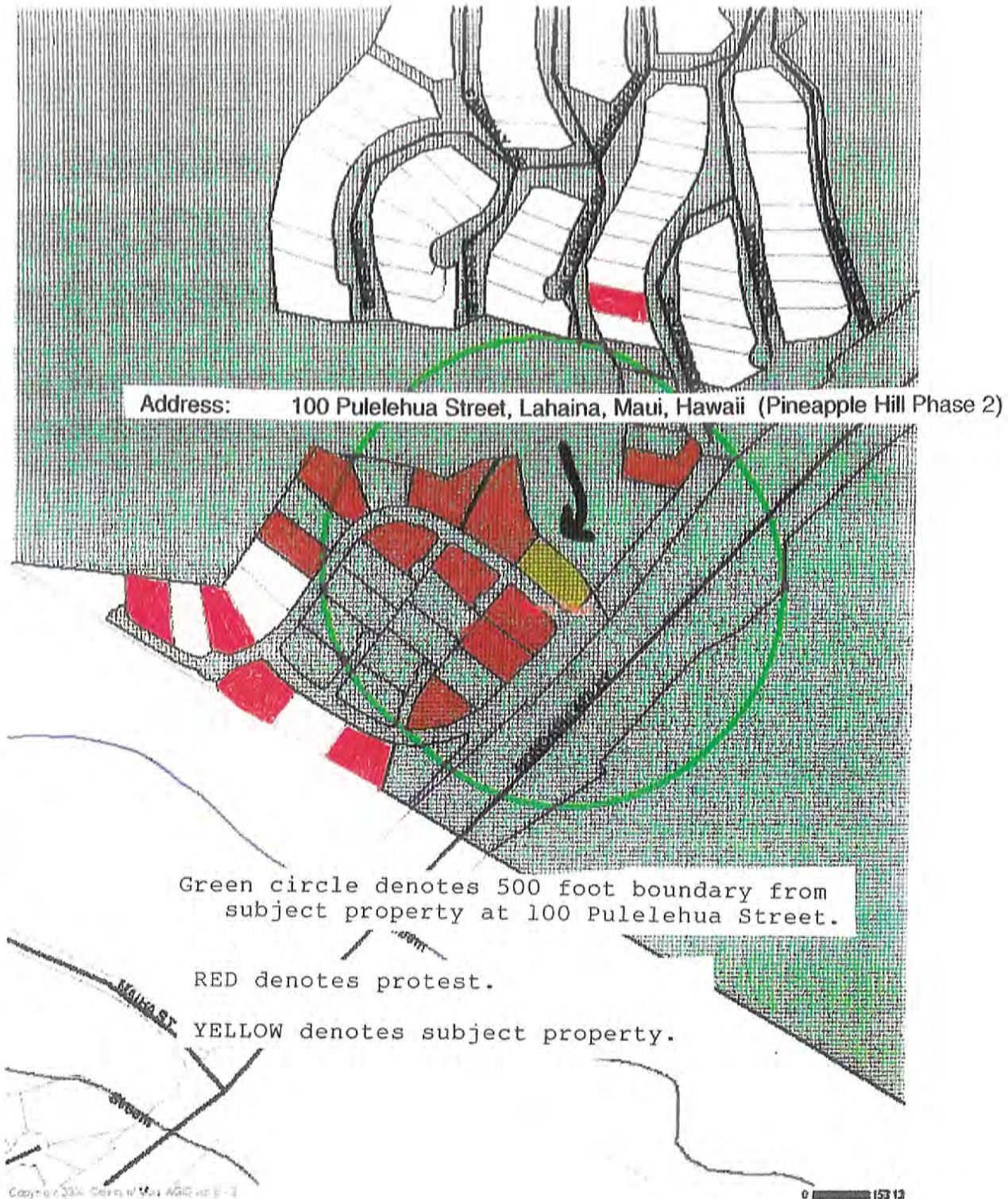


# SRTHs and B&Bs in Kapalua/Napili Region





Project: STEINER RESIDENCE TRANSIENT VACATION RENTAL  
CONDITIONAL PERMIT (CP)  
Address: 100 Pulelehua Street, Lahaina, Maui, Hawaii (Pineapple Hill Phase 2)  
Description: Transient Vacation Rental in Single-Family Dwelling  
TMK: (2) 4-2-007:009  
Permit Nos.: CP 2015/0006



Dave Lede  
c/o 1200, 1067 West Cordova Street  
Vancouver, BC V6C 1C7

January 29, 2016

Maui Planning Commission  
c/o Maui Planning Department  
2200 Main Street, Wailuka Maui  
Hawaii 96763

**Re: 100 Pulelehua Street, Lahaina, Hi  
Application for Conditional Permit for Transient Vacation Rental**

Dear Sirs/Mesdames:

I write to object to the application of Julie Steiner dated January 11, 2016, seeking a conditional permit to use 100 Pulelehua Street, Lahaina, HI, for transient vacation rentals.

I own the property next door – 102 Pulelehua Street. I also own 104 Pulelehua Street (next to 102 Pulelehua Street) and one of the properties across the street – 101 Pulelehua Street. I have enclosed a map showing where my properties are located in relation to 100 Pulelehua Street.

Pulelehua Street is in Phase 2 of Pineapple Hill in Kapalua, Maui. It is a residential gated community and is not zoned for short term vacation rentals.

Last year, I completed construction of my vacation home at 102 Pulelehua Street – next door to Ms. Steiner's property. I chose the area for its beautiful setting, privacy and security, but also because I wanted to be in a quiet area amongst homeowners and not transient renters and tourists. 104 Pulelehua Street is vacant and I intend to keep it that way to preserve the privacy of my vacation home. 101 Pulelehua Street is where I lived during the construction of my vacation home and is currently for sale.

According to the County of Maui website, no conditional permits have been issued for transient vacation rentals in Phase 2 of Pineapple Hill. I hope it stays that way for the good of the neighborhood.

Section 19.40.010 of the Maui County Code provides:

The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Ms. Steiner's application is not consistent with the intent of conditional permits.

Transient vacation rentals are not "similar, related or compatible" with a single family residential neighborhood in a gated community, and there is nothing "unique" about the proposal to use 100 Pulelehua Street for transient vacation rentals such that its likely effect on the surrounding area "cannot be determined in advance". The proposed use would introduce short term vacationers and tourists into what would otherwise be a quiet

**EXHIBIT** 12 A



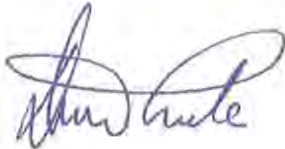
residential community, produce more traffic and noise and reduce privacy and security for residents. These are the inevitable results of allowing transient vacation rentals in a neighborhood not designed or zoned for that purpose.

As the next door neighbor, I probably have the most to lose if transient vacation rentals are permitted at 100 Pulelehua Street and sincerely hope that you deny the application. There is no shortage of properly zoned and permitted short term vacation rental properties in the Kapalua and Napili area, whether single family homes or multi-bedroom condominiums. A search of VRBO or similar websites will turn-up dozens of properties available for rent. There is no need to add them to Phase 2 of Pineapple Hill, which has no amenities for short term vacationers.

100 Pulelehua Street was rented to short term vacationers last year without a conditional permit. The renters complained about daytime construction noise on my property but proceeded to have loud parties late into the night. The noise and disruption will only get worse if the Commission grants a conditional permit for the property and legitimizes its use for transient vacation rentals.

If the Commission decides to grant Ms. Steiner's application despite my objection, please consider limiting the term of the conditional permit to one year so that negative impacts on my properties and those of my neighbors will be relatively short-lived. Also, please consider imposing a condition that each rental period must be for a minimum of seven consecutive days, and that only one rental period may begin during any calendar month. This is a requirement of Section II.C. of the Association Rules of Pineapple Hill at Kapalau (copy enclosed). Although the requirement is intended to limit the impact of short term vacation rentals in Phase 1 of Pineapple Hill (where zoning permits such use) it would also apply in Phase 2 if the Commission issues a conditional permit to Ms. Steiner.

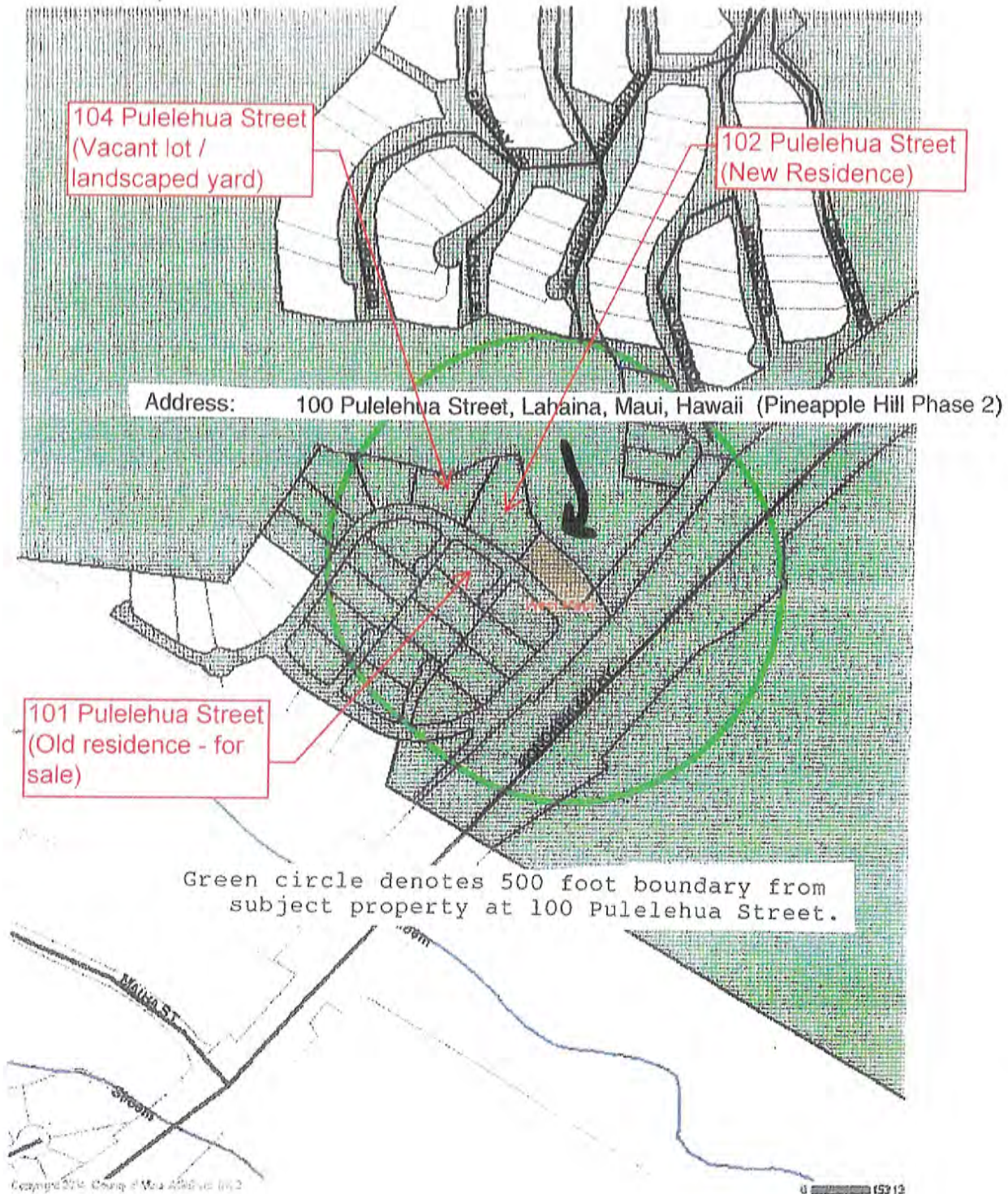
Yours truly,

A handwritten signature in blue ink, appearing to read "Dave Lede". The signature is stylized with a large, looping initial "D" and a cursive "Lede".

Dave Lede

Encl.

Project: STEINER RESIDENCE TRANSIENT VACATION RENTAL  
CONDITIONAL PERMIT (CP)  
Address: 100 Pulelehua Street, Lahaina, Maui, Hawaii (Pineapple Hill Phase 2)  
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# **Pineapple Hill at Kapalua Index for Rules Documents**

Basic Association Rules	Pages 2-8
Rules for Pool Service Personnel	Pages 9-10
Rules for Housecleaning Personnel	Pages 11-12
Rules for Landscapers	Pages 13-14
Rules for Home Management/Maintenance Personnel	Pages 15-17
Design Review Deposit Guidelines	Page 18-19

# **ASSOCIATION RULES OF PINEAPPLE HILL AT KAPALUA**

These rules are intended to promote harmonious living, to protect all owners, residents, guests and invitees from annoyance and nuisance caused by improper use of Pineapple Hill at Kapalua (hereinafter referred to as the "Residential Property"), and to protect the value, reputation and desirability of the Property. The cooperation of all owners, residents, guests and invitees is required to achieve this goal.

These rules may be amended by the Board of Directors of the Pineapple Hill at Kapalua Association (the Board of Directors being referred to hereinafter as the "Board" and the Pineapple Hill at Kapalua Association being referred to hereinafter as the "Association") as provided in the Bylaws of the Association. Certain sections in these Rules have been taken either in whole or in part from the Bylaws of the Association.

The full authority and responsibility of enforcing these rules may be delegated by the Board to the Managing Agent and/or Resident Manager. All persons on the premises, whether as owners, residents, guests or invitees, shall be bound by these rules and standards of reasonable conduct.

Violation of these Association Rules will empower the Board, the Managing Agent, the Resident Manager and their agents to:

1. Enter the Lot in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; and/or
2. Enjoin, abate or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such breach, and all costs thereof, including attorney's fees, shall be borne by the defaulting Lot Owner.

## **I. DEFINITIONS:**

A. "Owner" or "Lot Owner" means a person owning a Lot or as co-tenant of a Lot an undivided interest in the common areas; provided that to such extent and for such purposes, including exercise of voting rights, as shall be provided by agreement of sale or lease registered under HRS Chapter 501 and/or recorded under HRS Chapter 502, a vendee under an agreement of sale or lessee or sub-lessee of a Lot or interest therein shall be deemed to be the Owner of such Lot.

B. "Resident" means any person, including an owner, lawfully occupying a residence for any period of time, including, but not limited to, any person occupying a residence pursuant to the terms of a written or oral sublease.

C. "Guest" means any person on the premises pursuant to the invitation of a resident.

D. "Invitee" means any tradesman including contractors and sub-contractors authorized to be on the premises by a resident.

E. "Person" means an individual, firm, corporation, partnership or other legal entity.

F. "Adult" means any resident over 18 years of age.

G. "Property" or "premises" means the entire Pineapple Hill at Kapalua project, consisting of Lots and common areas.

H. "Common Areas" is defined in Section C.6 of the Declaration and means Lot 100 and includes among other items, roadways, pavements, walkways (except within a Lot), all landscaping (except within a Lot not part of an easement in favor of the Association), manager's house, tennis courts, swimming pool, recreation areas, maintenance area, trash areas as well as common utility facilities.

## II. USE

A. Lots and houses built on Lots shall be used only for residential purposes and shall not be used for any gainful occupation, profession or trade or other non-residential purposes.

B. No Lot Owner shall enter into any rental pool with other Lot Owners nor enter into any Time Sharing plans (as defined in Chapter 514E, Hawaii Revised Statutes, as may be amended from time to time).

### Section II C.

#### C. Rental of Residences.

1. Lot Owners shall have the right to rent or lease their residences subject to the limitations as set forth in the Declaration or Bylaws of Pineapple Hill at Kapalua and other applicable laws. *Each rental or lease period must be for a minimum of seven (7) consecutive days. Each residence is limited to having one rental period begin during any calendar month.*

2\*. *A Lot Owner who currently rents or who intends to rent its residence must register its Lot with the Association Office as a Rental Property. Until the registration process outlined below has been completed, the gate access devices of a Lot Owner who rents its residence will be set in the deactivated mode. A Lot Owner is presumed to have an intent to rent their residence if*

*a) The Lot Owner has solicited in the past twelve (12) months, or is currently soliciting, rentals using any form of media*

*b) The Lot Owner has engaged the services of a rental property management agent at any time in the past six (6) months*

*c) The Lot Owner has rented its property during the prior twelve (12) months*

3. *In registering their homes as rental properties, Lot Owners shall provide the name and contact information of at least one agent present on Maui who will represent the owner regarding any issues with, and/or facilitate access for, its respective rental guests.*

4. *At least one week prior to a scheduled occupancy of a rental property, the Lot Owner of the property shall provide the Association Office with a completed Notice of Occupancy of Rental Property form. Upon receipt of the form, the Association Office will arrange to have the gate entry system activated to allow access for the identified occupant upon arrival. For security reasons, in order for the gate entry system to remain activated during the stay, the identified occupant must register at the office by the end of the first business day following their arrival. Office hours are 7:30 AM to 4:30 PM*

5. *Office Registration by an identified occupant will include names of all persons in the identified occupant's group, the location and length of their stay, the identified occupant's status (owner/non-paying guest/renter), the identified occupant's vehicle(s), and the identified occupant's contact information while on Maui.*

6. *The Lot Owner must update its Rental Property registration with the Association before the Association Annual Meeting each year and notify the Association in writing when it ceases to operate its residence as a rental property. The Association will remove the Lot from its registered list of rental properties one year after the last known use of the residence as a Rental Property.*

7. *Non-compliance with these rental property procedures, and any other rules, laws, or provisions of the Declaration or Bylaws of Pineapple Hill applicable to rental properties, will result in the imposition of fines that will range from \$100 to \$3,000 per day. The following schedule applies to violation of the rental frequency rules-*

*i First violation: Warning letter by certified mail, return receipt required*

*ii. \$1000 per day for each violation within any monthly period*

*iii. \$2000 per day for each violation during any subsequent period*

*iv. \$3000 per day for violations during any subsequent period (after the \$2000 fines were imposed)*



### **III. OCCUPANCY**

**A. No more than one (1) family or more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) shall occupy a residence. The term "family" shall mean one or more persons, all related by blood, adoption or marriage. Notwithstanding the foregoing, in no event may the number of occupants in any one residence exceed the maximum number of occupants permitted by any applicable regulations of the Hawaii Board of Health or any other governmental agency.**

**B. Lot Owners shall be responsible for the conduct of all persons residing in or visiting their residences. If the Lot Owner is unable to control the conduct of such persons and/or their guests so as to conform with the intent and meaning of the provisions of the Declaration, the Bylaws, or these Association Rules, such owner shall, upon the written request of the Board of Directors, Managing Agent or Resident Manager, immediately initiate all such action as may lawfully be taken, including but not limited to the initiation of legal action, to remove such persons from the premises without compensation for lost rentals or other damages resulting there from.**

### **IV. PETS**

**A. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, except dogs, cats, birds and other common household pets of such kind as shall be determined by the Board to be allowed on the Property.**

**B. No pets shall be allowed in common areas including roads, recreational or landscaped areas of the Property.**

**C. A resident with a pet shall be responsible for any and all actions of such pet including but not limited to cleaning up after the pet and for any damage caused by the pet. The Lot Owner shall be responsible for any such damage if not paid for by a tenant in the case of a rental property.**

**D. Any pet which causes a nuisance or a disturbance shall, upon written notice by the Board or the Managing Agent, be immediately and permanently removed from the Project by the person keeping such pet and/or the Managing Agent, the Resident Manager, or their agent. Any cost involved in boarding the pet shall be paid by the person keeping such pet.**

**E. No visiting pets are permitted.**

### **V. GENERAL RULES**

**A. The Resident Manager shall not be required to provide access to residences for delivery service, tradesmen or other invitees. A key may be left with security if a signed authorization form has been filed with the office.**

**B. All refuse or debris must be placed in garbage bags and kept in covered containers in the trash enclosure for the residence or taken to the dumpster at the service entrance to the Property. In no event shall such containers be maintained so as to be visible from neighboring Lots, roads or common property. Large boxes, moving, packing, crating refuse and construction material must be taken to the dumpster. Trash and/or trash bags must be out of view from the street at all times. The Board may arrange for pick up service from each residence on a schedule to be determined by the Board.**

C. No Owner or occupant of a residence shall post any "For Sale" signs or other realty sign, advertisement, sign, bill poster, or any other sign on or about the residential Property, including any magnetic signs on vehicles which are clearly visible from the outside. The Board of Directors shall establish rules for Open House procedures to include provisions for temporary signs, open house hours, conduct of real estate brokers and invitees and any other requirements the Board feels necessary to promote the harmonious environment of Pineapple Hill at Kapalua, but not to encumber the efforts of those Owners attempting to market their property. Rules and regulations established by the Board of Directors shall include any provisions as allowed under the Declaration of Covenants, Conditions & Restrictions of this property, the KRA Covenants and those established by the Developer.

D. No solicitation or canvassing will be allowed within the Property without written permission from the Board, except for newspaper delivery personnel.

E. Maintenance fees and other assessments are due on the 1st of each month. A late charge of \$100.00 shall be assessed on all maintenance fees not received by the 10th of each month. In addition, interest shall be charged on the outstanding balance until paid at the rate specified in the Bylaws. The Managing Agent is instructed by the Board to refer all delinquencies of ninety (90) or more days to the Association's attorney for appropriate action. In such cases, the delinquent owners are responsible for the payment of attorney's fees and costs as well as the late charges and interest.

F. All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other Owners or occupants.

G. No Owner or occupant, except as otherwise permitted by this Declaration, shall install or cause to be installed any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the house or protruding through the walls, windows, or roof thereof.

H. Nothing shall be allowed, done, or kept in any house or common areas which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

I. No Owner or occupant shall keep on his Lot any campers, recreational vehicles, commercial vehicles, vehicles with signs or insignia painted on or visible from the outside, boats, and other similar vehicles, except in an enclosed garage facility for that purpose. In addition, no commercial vehicles of any nature are permitted to park in the Property overnight.

J. No motorcycles, motor scooters, mopeds, motorized bicycles or any form of the foregoing shall be permitted anywhere on the Property at anytime.

K. There shall be no camping on any Lot.

L. No outside clotheslines or other outside clothes drying or airing facilities shall be maintained upon any Lot.

**M. For Parking, Commercial Activity, and Noise Violations**

Owners that park commercial vehicles on the project or conduct commercial activities as defined by the CC&R will be fined. Also noise complaint's that result in the calling of security or the police and substantiated by least two owners will be fined. Following a first warning the fine will be \$100.00 for the next occurrence and \$500.00 for each additional occurrence.(2010)

## **VI. RECREATIONAL FACILITIES;**

### **A. General Rules**

1. Use of all recreational facilities shall be limited to residents and their guests. Residents must notify their guests that there are no attendants provided by the Association and that persons using the swimming pool and tennis courts do so at their own risks.
2. The recreational facilities may be used during such hours as shall from time to time be determined and posted by the Board.
3. There shall be no running, jumping, shouting, ball playing or any loud or boisterous behavior of any kind in the recreational areas. Persons engaged in these activities or any other form of conduct deemed unacceptable by security or the Resident Manager shall be required to leave the facility. Lot Owners shall be responsible for the conduct of and adherence to the rules by their guests.
4. Pets are not allowed in the recreational areas at any time.
5. No radios, stereos or other audio equipment or devices shall be allowed in the recreation area unless used with earphones or similar sound restricting device.

### **B. Party Pavilion**

1. The facility shall be under the immediate supervision of the Resident Manager and/or Managing Agent. Hours of use shall be 8:00 a.m. to 10:00 p.m.
2. The facility shall not be used for profit making purposes or commercial activity.
3. Private parties, meetings and other similar functions shall be allowed. Reservations may be made with the office. Party Pavilion may be used on Holidays, with preference to all community events. Reservations will not be accepted more than two (2) months prior to the requested date. *\* A \$500 deposit will be required for any events held where more than twenty people are expected to attend. If the pavilion is returned in the same condition as before the event, the deposit will be immediately returned or voided.*
4. Owners are responsible for any damage to the facility and for compliance with all rules and regulations. If necessary, the Association will bill Owners for any damage to the facility or extra cleaning required after its use. Only Owners may make reservations for private parties, meetings or other functions. An Owner must be present at all functions.
5. No furniture is to be removed from the pavilion building.
6. Decoration of the pavilion and/or pool area shall be subject to approval by the Resident Manager prior to the date of the function. The party sponsor must remove decorations and clean the pavilion and/or pool area by 11:00 a.m. the day following the event.

### **C. Swimming Pool**

1. Swimming pool hours shall be from 8:00 a.m. to 9:00 p.m. and there shall be no swimming while the pool is being cleaned.



2. Children under the age of 14 shall not be permitted in the swimming pool or swimming pool area unless accompanied by a responsible adult resident.

3. Bathers must shower before entering the swimming pool.

4. No flotation gear or toys are permitted in the swimming pool or swimming pool area. Masks, snorkels and goggles are permitted, but swim fins are not permitted. Flotation gear does not include safety devices such as water wings or life preserver vests or rings worn by persons who cannot swim or are not strong swimmers.

5. All persons using the swimming pool, including children, shall wear bathing suits. No children wearing diapers shall be allowed in the swimming pool. Hairpins, bobby pins and curlers can clog and mar the pool and must be removed before swimming.

6. The safety equipment of the swimming pool area shall not be used for any purpose other than for its intended use.

7. Pool furniture shall not be removed from the swimming pool area. Standing or walking on pool furniture is prohibited.

8. Glassware and other breakable items are prohibited from the pool area. However, non-breakable containers are permitted four (4) or more feet from the swimming pool.

9. No one shall interfere in any manner with the swimming pool apparatus or plumbing devices.

10. No person with a bandage or open wound of any type may use the swimming pool.

11. No lifeguard will be on duty. Persons using the swimming pool do so at their own risk.

12. All suntan oil and creams must be removed from the body and swimming attire before entering the swimming pool.

13. No "horseplay" is allowed in the swimming pool area.

14. The swimming pool and recreation areas intended for the use of residents/Owners and guests will be permitted only to the extent that residents are not inconvenienced.

15. Residents and guests shall keep the area clean and free of litter.

#### **D. Tennis Courts**

1. Hours of play shall be from 8:00 a.m. to dark.

2. Use of the court will be on a first come, first served basis.

3. Only non-marring tennis shoes will be permitted on the tennis courts.

4. The tennis courts may be used for playing tennis only.

5. Children under the age of 14 may not use the tennis courts unless accompanied by a responsible adult resident.

6. All persons using the tennis courts do so at their own risk.

#### **E. Parking and Miscellaneous Vehicles**

- 1. Vehicles must be parked in marked stalls, if parked on roads or other common property.**
- 2. Vehicles which are parked in violation of parking regulations will be towed away at the vehicle owner's expense.**
- 3. The use of skates and/or skateboards and playing on the roads is prohibited. Surfboards and bicycles must be stored out of view from any other Lot, road or Common Property.**
- 4. The speed limit on all roads shall not exceed 10 MPH. Non-motorized bicyclists shall follow standard traffic rules at all times.**
- 5. *Parking spaces on streets are intended for guest use, not regular owner use.***

**\*copy in italics are changes that have been made in 2013.**



**Specific Rules for**  
**Pool Service Personnel at Pineapple Hill**

- Working hours are from 7:30 am until 5:00 pm, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
- There is **no** working at Pineapple Hill on Saturday and Sunday or identified National Holidays.
- There will be no operation of machinery or pool equipment like vacuums etc. or back-washing before **8:00am** on any day.
- When back washing or emptying of a pool or spa, the water must go into the stone swales or a Pineapple Hill HOA approved drainage area. If you are unsure of the location for the property (ies), please contact the office.
- There is no leaving or discarding items or wrappings in the common area landscaping at any time.
- There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
- There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
- The speed limit within Pineapple Hill is 10 mph and will be enforced. Please slow down.
- At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. **There are cameras at the gates and refuge area – We are watching.**
- Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
- Radio or any sound devices are not to be used except with headphones, ear buds or something similar.
- No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
- Profane language will not be tolerated.
- Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
- There is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**



Name of Owner(s): \_\_\_\_\_

**Violations and Penalties**

All Rules mentioned here, and any other infractions considered worthy of a fine by the Pineapple Hill Homeowners Association will be enforced as follows:

**1<sup>st</sup> Offense: Written warning to Owner and Company**

**2<sup>nd</sup> Offense: \$100.00 fine to the Company**

**3<sup>rd</sup> Offense: \$500.00 fine to the Company**

**4<sup>th</sup> and additional Offenses: \$1000.00 fine to the Company**

**Gate card to be permanently deactivated at the discretion of the Pineapple Hill Board of Directors**

**If fines are not paid within 30 days from the date of the violation, gate cards will be deactivated until payment is received.**

**Name: \_\_\_\_\_ email: \_\_\_\_\_ Phone#: \_\_\_\_\_**

**I have read and agree to the Rules and Penalties as stated in this document:**

\_\_\_\_\_  
Name - Please Print

\_\_\_\_\_  
Make of Vehicle

\_\_\_\_\_  
color

\_\_\_\_\_  
Lic. Plate #

\_\_\_\_\_  
Company Name - Please Print

**Other Employees covered by these Rules:**

\_\_\_\_\_  
name

\_\_\_\_\_  
Make of Vehicle

\_\_\_\_\_  
color

\_\_\_\_\_  
Lic. Plate #

\_\_\_\_\_  
name

\_\_\_\_\_  
Make of Vehicle

\_\_\_\_\_  
color

\_\_\_\_\_  
Lic. Plate #

**Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave. Thank you.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Swipe Card Issued: 1: \_\_\_\_\_ \*Amount paid (\$10.00 per card): \$ \_\_\_\_\_**

**2: \_\_\_\_\_ 3: \_\_\_\_\_**

**\*\$10.00 a card is refundable upon return of the swipe card in usable condition**

Revised on 04.01.2013



**Specific Rules for**  
**Housecleaning Services at Pineapple Hill**

- Working hours are from 7:30 am until 5:00 pm, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
  - There will be no operation of outdoor machinery of any kind before 8:00am on any day.
  - There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
  - Please inform the office of all hired individuals coming into Pineapple Hill if you want the office to let them through the gate. Otherwise, it is up to the primary housecleaner to let them in. Hired individuals must know the address and Owners name to be allowed through the gates. (Under no circumstances will they be allowed to tailgate through the gate.)
  - There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
  - The speed limit within Pineapple Hill is 10 mph and will be enforced. **Please slow down.**
  - At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. Please break down cardboard and place in the cardboard recycling bin.  
**There are cameras at the gates and refuge area – We are watching.**
  - Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
  - Radio or any sound devices are not to be used except with headphones, ear buds or something similar. Please inform your hired personnel
  - No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
  - Profane language will not be tolerated.
  - Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed at Pineapple Hill.
  - If needed there is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**







**Specific Rules for**  
**Landscaping Crews at Pineapple Hill**

As consideration for the right to access Pineapple Hill the persons or company listed here agree to be bound by the following:

- Working hours are from **7:30 am until 5:00 pm**, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be **out of the gate by 5:00 pm**. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later may or may not be approved.
- There is **no** working at Pineapple Hill on Saturday and Sunday or identified National Holidays.
- There will be no operation of machinery of any kind before **8:00am** on any day.
- There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You **must** swipe your card before entering, for our records.
- Landscapers who pull a trailer must take special care driving through Pineapple Hill. Any damage to Pineapple Hill property or landscaping will be the landscaper's responsibility to fix or replace.
- There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
- The speed limit within Pineapple Hill is 10 mph and will be enforced. ***Please slow down.***
- At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. **There are cameras at the gates and refuge area, we are watching.**
- All trees, plants, palm or other cut material must be hauled to the refuse area. Nothing can be left in the landscape easements, common areas or in the gulch between Phase 1 and 2.
- Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters.
- Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over **without** parking on the grass. Absolutely no parking in vacant lots.
- Radio or any sound devices are not to be used except with headphones, ear buds or something similar.
- No Pets are allowed to be brought into Pineapple Hill, even if they are kept inside the bed or the cab of truck or automobile.
- Profane language will not be tolerated.
- Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
- There is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.

☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**





**Specific Rules for**  
**Home Management/Maintenance Companies at Pineapple Hill**

- Working hours are from 7:30 am until 5:00 pm, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
  - There will be no operation of outdoor machinery of any kind before 8:00am on any day.
  - Please inform the office of all hired contractors coming into Pineapple Hill If you want the office to let them through the gate. Otherwise, it is up to the Home Manager to let them in. (Under no circumstances will they be allowed to tailgate through the gate.)
  - There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
  - There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
  - The speed limit within Pineapple Hill is 10 mph and will be enforced. **Please slow down.**
  - At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. Please break down cardboard and place in the cardboard recycling bin.  
**There are cameras at the gates and refuge area – We are watching.**
  - Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
  - Radio or any sound devices are not to be used except with headphones, ear buds or something similar. Please inform your contractors.
  - No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
  - Profane language will not be tolerated.
  - Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
  - If needed there is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**



Name of Owner(s): \_\_\_\_\_

### Violations and Penalties

All Rules mentioned here, and any other infractions considered worthy of a fine by the Pineapple Hill Homeowners Association will be enforced as follows:

**1<sup>st</sup> Offense: Written warning to Owner and Company**

**2<sup>nd</sup> Offense: \$100.00 fine to the Company**

**3<sup>rd</sup> Offense: \$500.00 fine to the Company**

**4<sup>th</sup> and additional Offenses: \$1000.00 fine to the Company**

**Gate card to be permanently deactivated at the discretion of the Pineapple Hill Board of Directors**

**If fines are not paid within 30 days from the date of the violation, gate cards will be deactivated until payment is received.**

**Name: \_\_\_\_\_ email: \_\_\_\_\_ Phone#: \_\_\_\_\_**

**I have read and agree to the Rules and Penalties as stated in this document:**

Name - Please Print	Make of Vehicle	color	Lic. Plate #
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Company Name - Please Print

**Other Employees covered by these Rules:**

name	Make of Vehicle	color	Lic. Plate #
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name	Make of Vehicle	color	Lic. Plate #
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**Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave. Thank you.**

Signature	Date
-----------	------

**Swipe Card Issued: 1: \_\_\_\_\_ \*Amount paid (\$10.00 per card): \$ \_\_\_\_\_**

**2: \_\_\_\_\_ 3: \_\_\_\_\_**

**\*\$10.00 a card is refundable upon return of the swipe card in usable condition**

**Revised on 4.01.201**

# *Design Review Deposit and Fine Guidelines*

## *Interior Only Renovations/Repairs: \$50,000 or less*

*No Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Any changes in exterior doors or windows*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Interior Only Renovations/Repairs: Over \$50,000*

*\$1500.00 Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes*
- *Any demolition will require a separate dumpster*
- *Also list what will be replaced including cabinets/appliances/fixtures*
- *Any stone or cement work*
- *Any changes in exterior doors or windows*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations and Repairs: \$50,000 or less*

*DRC will set deposit-if any*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Any changes in exterior doors or windows*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations and Repairs: \$50,000 to \$249,999*

*\$1500.00 Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations, Repairs and Remodels: Over \$250,000*

*\$5000.00 Deposit*

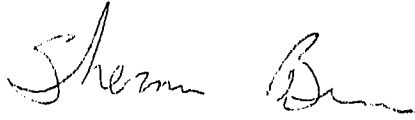
- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *3 copies of any architectural drawings.*
- *Any stone work*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*
- 

*Fines of \$1,000 to \$10,000 may be levied for not getting DRC approval on required projects, or for not completing project as approved.*

To whom it may concern,

As the owner of 220 Crestview Rd, I strongly opposed the issuance of a Short Term Rental Permit to 100 Pulelehua(Steiner) TMK#4.2.007.0000 Permit #CP2015/0006 Attn: Kurt Wollenhaupt and 107 Puelehua TMK#4.2.007.020.000 Permit#CP2015/00008 Attn:Gina Flammer .These residences are located very near to my home and the admittance of non owners or full time rental residents to our gated community on a casual short term basis will drastically impact the safety and security of our community.

Respectively,



Sherman Brown

DEF  
CURRENT DAY RECEIVED  
16 FEB -4 11:54

EXHIBIT 12B



# 220 Crestview Road

Parcel: 420070100000 Acres: 0.52

Name	BROWN, SHERMAN T IV TRUST	Land Value	\$1,442,000.00
Site	220 CRESTVIEW RD	Building Value	\$2,586,100.00
Sale	\$615,000 on 12-2002 Vacant= Qual=	Misc Value	\$0.00
Mail	8100 E UNION UNIT 1502 DENVER CO 80237	Just Value	\$0.00
		Assessed Value	\$4,028,100.00
		Exempt Value	\$0.00
		Taxable Value	\$4,028,100.00



The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Date printed: 02/04/16 : 17:15:27



**From:** Debra Hilton <debrahilton100@gmail.com>  
**To:** <gina.flammer@mauicounty.gov>, <kurt.wollenhaupt@mauicounty.gov>  
**Date:** 2/3/2016 10:44 AM  
**Subject:** TMK# 4.2.007.020.0000 and TMK# 4.2.007.009.0000  
**CC:** <fra100@aol.com>, jdbdh <jdbdh@aol.com>

Dear Ms. Flammer and Mr. Wollenhaupt,

Please be advised that we are strongly opposed to any change to the present county standards in regards to rentals in Phase 2 of Pineapple Hill. Please deny the application to the county for conditional vacation rentals to the properties referenced below:

107 Pulelehua  
TMK# 4.2.007.020.0000  
Permit #CP2015/0008

100 Pulelehua  
TMK# 4.2.007.009.0000  
Permit #CP2015/0006

Last year we bought our home in Pineapple Hill Estates Phase 2 (108 Pulelehua) because of the quiet and private nature of this neighborhood which we think would be adversely affected by conditional vacation rentals.

Thank you.  
Yours sincerely,  
Debra and John Hilton  
108 Pulelehua

EXHIBIT 12 C

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# 108 Pulelehua Street

Parcel: 420070050000 Acres: 0.58

Name	HILTON,DEBA V GIFT TRUST	Land Value	\$1,546,500.00
Site	108 PULELEHUA ST	Building Value	\$1,814,700.00
Sale	\$1,550,000 on 02-2005 Vacant= Qual=	Misc Value	\$0.00
Mail	46 BRINKLER RD BARRINGTON IL 60010	Just Value	\$0.00
		Assessed Value	\$3,361,200.00
		Exempt Value	\$0.00
		Taxable Value	\$3,361,200.00



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Date printed: 02/03/16 : 16:40:29

## Jim Waters

226 Crestview Rd • Lahaina, HI 96761  
Phone: 6305367970 • E-Mail: jwaters@basintools.com

Date: January 29, 2016

Maui Planning Commission  
c/o Maui Planning Department  
250 South High St  
Wailuku, Maui 96793

Dear Kurt Wollenhaupt:

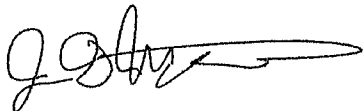
It has come to our attention that you have received a request for a conditional use permit for the property at 100 Pulelehua in Lahaina. We believe that the request is for a permit that would allow transient vacation rental. We would like to state our very strong objection to any such permit. We selected this property specifically because this area is zoned such that transient vacation rentals are not allowed.

Such rentals add traffic and noise that we do not want. I understand why some may feel that they should be able to do what they want with their property. However, every homeowner here knew the zoning rules before they bought or built their homes. Some may have thought they could rent regardless of the rules. We are appreciative of recent efforts by the county to enforce the zoning rules.

We do not believe that there is any justification for either changing the zoning or for the requested conditional use permit.

Your consideration in this matter will be greatly appreciated.

Sincerely,



Jim Waters  
Home Owner (parcel #4-2-007:13)

**EXHIBIT** 12 D



## 226 Crestview Road

Parcel: 420070130000 Acres: 0

Name	WATERS, KARLEEN K REVOC TRUST	Land Value	\$1,316,000.00
Site	226 CRESTVIEW RD	Building Value	\$1,774,600.00
Sale	\$950,000 on 05-2011 Vacant= Qual=	Misc Value	\$0.00
	119 STANTON AVE	Just Value	\$0.00
	AMES IA 50014	Assessed Value	\$3,090,600.00
Mail		Exempt Value	\$0.00
		Taxable Value	\$3,090,600.00



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Date printed: 02/03/16 : 21:01:23



**From:** <lorry.lokey27@gmail.com>  
**To:** <kurt.wollenhaupt@co.maui.hi.us>  
**Date:** 2/5/2016 2:46 PM  
**Subject:** Re: 100 Pulelehua St.- Conditional Use Application  
**CC:** <gina.flammer@co.maui.hi.us>

Kurt Wollenhaupt, Planner  
Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Subject: 100 Pulelehua St. Conditional Use Permit

Dear Mr. Wollenhaupt:

Joanne and I can hardly believe that anyone would consider trashing our neighborhood with short term rentals of less than a year. All of us on the upper end of Pineapple Hill paid millions for our homes on their generous double lots, and we expect that to entitle us to peaceful living without the audacious behavior of transients who often have no care for people around them.

We object to a short term use of a property in Phase !! of Pineapple Hill for rental purposes and ask that this proposal be cancelled as one that only would ultimately bring down the value of our neighborhood. Please deny this application.

Sincerely yours,

Lorry I. Lokey

[lorry.lokey27@gmail.com](mailto:lorry.lokey27@gmail.com) ..... 650/722-2288.....105 Pulelehua

**Kurt Wollenhaupt - Re: 100 Pulelehua St.- Conditional Use Application**

---

**From:** <lorry.lokey27@gmail.com>  
**To:** "Kurt Wollenhaupt" <Kurt.Wollenhaupt@co.maui.hi.us>  
**Date:** 2/5/2016 8:08 PM  
**Subject:** Re: 100 Pulelehua St.- Conditional Use Application

---

I most certainly am opposed to a permit for 107; it's next door to me. I also oppose any permit in Phase Two of Pineapple Hill which contains the largest and most expensive homes we worked hard to earn.....A permit anywhere in Phase Two is going to affect all of us.

**From:** Kurt Wollenhaupt  
**Sent:** Friday, February 05, 2016 5:21 PM  
**To:** lorry.lokey27@gmail.com  
**Subject:** Re: 100 Pulelehua St.- Conditional Use Application

Dear Mr. Lokey:

Are you also objecting to the transient vacation rental permit for 107 Pulelehua Street which will also be heard on the 23rd of February. There are 2 permits under consideration at 100 and 107 Pulelehua. Ms. Gina Flammer is handling the 107 Pulelehua project.

Kurt Wollenhaupt

>>> <lorry.lokey27@gmail.com> 2/5/2016 2:45 PM >>>  
Kurt Wollenhaupt, Planner  
Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Subject: 100 Pulelehua St. Conditional Use Permit

Dear Mr. Wollenhaupt:

Joanne and I can hardly believe that anyone would consider trashing our neighborhood with short term rentals of less than a year. All of us on the upper end of Pineapple Hill paid millions for our homes on their generous double lots, and we expect that to entitle us to peaceful living without the audacious behavior of transients who often have no care for people around them.

We object to a short term use of a property in Phase !! of Pineapple Hill for rental purposes and ask that this proposal be cancelled as one that only would ultimately bring down the value of our neighborhood. Please deny this application.

Sincerely yours,

Lorry I. Lokey

lorry.lokey27@gmail.com ..... 650/722-2288.....105 Pulelehua



105 Pulelehua			
Parcel: 420070190000 Acres: 0.46			
Name	LOKEY,LORRY 1991 TRUST	Land Value	\$1,362,600.00
Site	105 PULELEHUA ST	Building Value	\$1,476,600.00
Sale		Misc Value	\$0.00
Mail	498 WALSH RD MENLO PARK CA 94027	Just Value	\$0.00
		Assessed Value	\$2,839,200.00
		Exempt Value	\$0.00
		Taxable Value	\$2,839,200.00



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Date printed: 02/05/16 : 20:19:41



To: Kurt Wollenhaupt

From: Melissa and Alan Crawley

Re: 100Pulelehua Street  
TMK# 4.2.007.009.0000  
Permit# CP2015/0006

Date: February 3, 2016

Dear Mr. Wollenhaupt:

We are writing to oppose consideration for approval of the Conditional Use Permit under review for the property stated above. We are fulltime residents of Pineapple Hill Phase II.

The use of a property in Pineapple Hill Phase II as a vacation rental for transient purposes is not similar or compatible to the existing conditions. Expensive rentals encourage multiple families to split the cost. What was a single-family home now becomes a revolving door to many people who, wanting to enjoy their vacations, are not necessarily sensitive to the rules of the neighborhood. This will fundamentally impact the quality of life of those who live here.

In addition, the negative effect on the surrounding environment is entirely foreseeable. The impact of granting a Conditional Use Permit is well known:

- Once permits are allowed, vacation rental operators will likely buy homes and the character of the community will change.
- Vacation rentals increase noise, traffic and put pressure on our HOA to manage a constant flow of renters who have no incentive to follow established neighborhood rules.

The idea that granting a permit will lead to economic benefits for the community in terms of hiring gardeners, cleaners and an overall higher standard of property upkeep is simply not true. The homes already employ these services, as they are regularly maintained by and for the current owners.

We respectfully ask that you see beyond the county tax income to consider those who made a sizable investment by buying homes in Pineapple Hill Phase II knowing that the existing zoning ordinance protected them from the negative impact of transient rentals.

Sincerely,

Melissa and Alan Crawley  
Pineapple Hill Estates II  
222 Crestview Road  
Lahaina, HI 96761

**EXHIBIT** 12 F



### 222 Crestview Road

Parcel: 420070110000 Acres: 0.48

Name	CRAWLEY, VERNON ALAN	Land Value	\$1,363,200.00
Site	222 CRESTVIEW RD	Building Value	\$1,562,800.00
Sale	\$4,422,514 on 06-2008 Vacant= Qual=	Misc Value	\$0.00
Mail	222 CRESTVIEW RD LAHAINA HI 96761	Just Value	\$0.00
		Assessed Value	\$2,926,000.00
		Exempt Value	\$0.00
		Taxable Value	\$2,926,000.00



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Date printed: 02/03/16 : 18:13:00

**Kurt Wollenhaupt - Conditional Use Permit 100 Pulelehua Street Lahaina HI**

---

**From:** D\_West <dwestmaui@aol.com>  
**To:** <kurt.wollenhaupt@co.maui.hi.us>  
**Date:** 2/3/2016 6:09 AM  
**Subject:** Conditional Use Permit 100 Pulelehua Street Lahaina HI  
**CC:** <gina.flammer@co.maui.hi.us>

Kurt Wollenhaupt, Planner  
Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Subject: 100 Pulelehua St. Conditional Use Permit

Dear Mr. Wollenhaupt

As full time residents of Pineapple Hill Phase II for the last 13 years, I would like to strongly oppose any consideration for approval of a use in our neighborhood that is not now permitted, in particular the use as a vacation rental for transient purposes.

Having put up with illegal uses of an adjacent residence as a vacation rental I have seen and heard it all. From weddings with amplified sounds with dozens of attendees to children screaming day and night and jumping and splashing in pools. The neighborhood is normally quiet except when the vacation renters arrive. I don't blame them for wanting to have fun. I blame the owner for disobeying the rules of the county and our community. To change this neighborhood to one that is different than when I purchased our lot and built our home is unfair to us and prevents us from enjoying the neighborhood as we expected it to be when we purchased it.

I realize that Phase I of Pineapple Hill is allowed through application to have transient rentals complying with the HOA and county rules. However Phase II of Pineapple Hill is different than Phase I. Our lots are twice as big and are custom homes not developer designed models. It is unacceptable to think that our neighborhood could turn into a rental area. The "Conditional Use" should be rejected for our community. It puts a burden on our HOA to try to enforce its own rules to prevent noise, parking violations and the constant traffic that is associated with 2

**EXHIBIT 12 G**

to 4 families occupying one home. This is what occurs when an expensive rental is justified by the renters if there are multiple families in the home at one time. What was \$1000/night becomes \$250/night if it's divided among 4 couples. It also turns homeowners into police by having to complain and call security for noise violations, not to mention the loss of enjoyment we've experienced. To add more of this to our neighborhood creates a nightmare for us. It's like buying a home and having the county change the rules and put a bar next to you. That's how bad it is when the renters party all night long.

We ask that you not consider county tax income from rentals as a reason to grant this Conditional Use Application, but rather to consider the desires of the owners who have to put up with the consequences of the vacation rentals in our quiet neighborhood.

Thank you for taking the time to listen.

Sincerely,

Douglas and Juetta West  
West Family Trust  
Lot 3 Pineapple Hill Estates II  
112 Puleluhua Street  
Lahaina, Hawaii 96761





## 112 Pulelehua Street

Parcel: 420070030000 Acres: 0.47

Name:	WEST, FAMILY TRUST	Land Value	\$1,013,300.00
Site:	112 PULELEHUA ST	Building Value	\$2,246,100.00
Sale:		Misc Value	\$0.00
Mail:	WEST, DOUGLAS/JUETTA TRS	Just Value	\$0.00
	112 PULELEHUA ST	Assessed Value	\$3,259,400.00
	LAHAINA HI 96761	Exempt Value	\$225,000.00
		Taxable Value	\$3,034,400.00



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Date printed: 02/03/16 : 16:20:38

January 30, 2016

Department of Planning  
250 S. High St.  
Hailuka, HI 96743

COUNTY OF MAUI  
DEPT OF PLANNING - CURRENT

FEB 05 2016

RECEIVED

Dear Sirs,

Please be advised we are strongly opposed to any change to the present county standards which do not allow any rentals in phase II of Pineapple Hill. Please deny the applications to the county for conditional vacation rentals to the properties referenced below.

(Auclair)  
of the letter)

Or email Gina at:

107 Pulelehua  
TMK# 4.2.007.020.0000 (in the heading  
Permit # CP2015/0008  
Attention: Gina Flammer

Or email Kurt:

100 Pulelehua (Steiner)  
TMK# 4.2.007.009.0000  
Permit # CP2015/0006  
Attention: Kurt Wollenhaupt

Yours Sincerely:

Robert J. Walden  
628 Silversword Dr.  
Pineapple Hill  
Lahaina, HI 96761

EXHIBIT 12 H



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### 628 Silversword Drive

Parcel: 420030300000 Acres: 0

Name	WALDEN,ROBERT J III TRUST	Land Value	\$663,200.00
Site	628 SILVERSWORD DR	Building Value	\$1,001,400.00
Sale	\$826,976 on 04-2001 Vacant= Qual=	Misc Value	\$0.00
Mail	WALDEN,ROBERT J III TRS	Just Value	\$0.00
	628 SILVERSWORD	Assessed Value	\$1,664,600.00
	LAHAINA HI 96761	Exempt Value	\$0.00
		Taxable Value	\$1,664,600.00



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Date printed: 02/09/16 : 14:54:29

**Kurt Wollenhaupt - 100 Pulelehua St.- Conditional Use Application**

---

**From:** Fred Allen <fra100@aol.com>  
**To:** <kurt.wollenhaupt@co.maui.hi.us>  
**Date:** 2/2/2016 4:08 PM  
**Subject:** 100 Pulelehua St.- Conditional Use Application  
**CC:** <gina.flammer@co.maui.hi.us>

Kurt Wollenhaupt, Planner  
Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Subject: 100 Pulelehua St. Conditional Use Permit

Dear Mr. Wollenhaupt

We are long time (15 years), full time permanent residents of Pineapple Hill Phase II. We strongly oppose any consideration for approval of a permit to allow a use in our neighborhood not now permitted.

We built our dream home here in this area of Pineapple Hill to escape the many rental properties so rampant in west Maui.  
We love our home and don't want to see the result of rentals being allowed here.

All lots here in Phase II are estate size (20,000 sq. ft. plus), all with custom Architect designed homes, unlike Phase I where lots are half the size with homes pre-designed by the developer. Any comparison is just plain wrong!

The proposal to deviate from the intended use through a "Conditional Use" is outrageous.

Many of us here in Phase II are full time and most of the others choose not to use their home for income purposes and intend to become full time when they can.

Attempts by a couple of financially distraught owners to circumvent the County with nightly rentals has been a nightmare. The HOA management and security can not contain the noise, parking, gated entry, and inconvenience to residents.

**EXHIBIT** 13A



This is a bad idea for this beautiful area to allow rental no matter how they may promise to be good and not disturb. There is no control and we residents get stuck having to constantly complain and mostly to no avail. I urge you PLEASE deny the application and keep our neighborhood the way it was intended and as we believed it would allow be.

Thank you for your consideration.

Sincerely,

Fred and Lynda Allen  
Lot 25 Pineapple Hill Estates II  
229 Crestview Rd  
Lahaina, Hawaii 96761

## **Kurt Wollenhaupt - Conditiona Use Permit/Pineapple Hill Phase II**

---

**From:** <mauimema3@aol.com>  
**To:** <kurt.wollenhaupt@mauicounty.gov>  
**Date:** 2/2/2016 3:11 PM  
**Subject:** Conditiona Use Permit/Pineapple Hill Phase II

---

February 6, 2016

Maui County Planning Department  
Maui Planning Commission  
250 South High Street  
Wailuku, HI. 96793

Ladies and Gentlemen,

I am writing to strongly oppose the Conditional Use Permit applications for TMK 4-2-007-020, 107 Pulelehua Place and TMK 4-2-007-009, 100 Pulelehua Street located in Pineapple Hill Phase II.

We have been owners and full time residence in Pineapple Hill Phase II for 15 years and built our home here with the understanding our zoning would not allow rentals. We have had bad experiences with rental attempts from adjacent neighbors and find the HOA and security are unable to control them.

Authorizing a Conditional Use Permit for Pineapple Hill Phase II would be detrimental to the small (31 lots) private neighborhood.

Thank you for your consideration on this matter

Respectfully,

Lynda K. Allen  
Lot 25  
229 Crestview Road  
Lahaina, HI. 96761



### 229 Crestview Road

Parcel: 420070250000 Acres: 0.48

Name	LEN, FRED R SEPARATE PROPERTY TRUS	Land Value	\$1,407,800.00
Site	229 CRESTVIEW RD	Building Value	\$1,908,600.00
Sale	\$620,000 on 08-2002 Vacant= Qual=	Misc Value	\$0.00
Mail	229 CRESTVIEW RD	Just Value	\$0.00
	LAHAINA HI 96761	Assessed Value	\$3,316,400.00
		Exempt Value	\$200,000.00
		Taxable Value	\$3,116,400.00



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Date printed: 02/02/16 : 20:19:13

February 2, 2016

Maui County Department of Planning

Maui Planning Commission

250 South High Street

Wailuku, HI. 96793

Dear Sirs,

Please be advised that we are extremely opposed to the granting of the Conditional Use Permit for TMK 4-2-007-009, 100 Pulelehua Street and TMK 4-2-007-020 107 Pulelehua Street located in Pineapple Hill Phase II.

We have been owners and residents in Pineapple Hill Estates Phase II for 11 years. We built our home here with the intent of living in a quite safe and beautiful area free from noise traffic and unsafe elements. Living in a gated community we were under the expectations we would not have strangers free lancing around our property the Conditional Use Permit would allow for that. We selected Pineapple Hill with the understanding that rentals were not allowed by County Code. With the granting of the Conditional Use Permit we would be subject to under warranted liability of which we strongly object to.

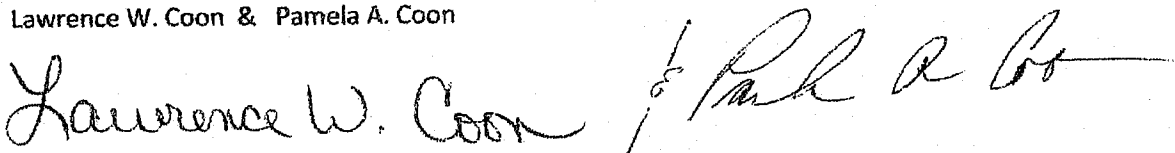
Having bad and unreasonable experiences with rentals in the area and the HOA and County unable to eliminate them or control them additional rentals with a Conditional Use Permit would be detrimental to our small and private neighborhood.

This is now even more critical in that my wife is now confined to a wheel chair with not knowing who is in the neighborhood full of strangers is unacceptable.

We ask that you please deny the requests from the above mentioned properties.

Respectfully

Lawrence W. Coon & Pamela A. Coon

The block contains two handwritten signatures in black ink. The first signature, on the left, is 'Lawrence W. Coon' written in a cursive style. To its right is a second signature, 'Pamela A. Coon', also in cursive. The two signatures are connected by a small vertical line.

Lot 30 Pineapple Hill Estates Phase II

122 Pulelehua Place

Lahaina, Hawaii 96761

**EXHIBIT** 13 B





## 122 Pulelehua Place

Parcel: 420070300000 Acres: 0.48

Name	COON FAMILY TRUST	Land Value	\$1,377,300.00
Site	122 PULELEHUA PL	Building Value	\$1,796,200.00
Sale	\$855,000 on 05-2003 Vacant= Qual=	Misc Value	\$0.00
Mail	COON, LAWRENCE W/PAMELA A	Just Value	\$0.00
	CO-TTEES	Assessed Value	\$3,173,500.00
	P O BOX 10126	Exempt Value	\$200,000.00
	LAHAINA HI 96761	Taxable Value	\$2,973,500.00



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Date printed: 02/02/16 : 20:21:25

**Kurt Wollenhaupt - Conditional Use Permits**

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**From:** Sandra Crittenden <delcrittenden@hotmail.com>  
**To:** "gina.flammer@mauicounty.gov" <gina.flammer@mauicounty.gov>,  
"kurt.wollenhaupt@mauicounty.gov" <kurt.wollenhaupt@mauicounty.gov>  
**Date:** 2/2/2016 2:07 PM  
**Subject:** Conditional Use Permits

Dear Sirs,

Please be advised that we are strongly opposed to any change to the present county standards which do not allow any rentals in Phase II of Pineapple Hill. Please deny the applications to the county for conditional vacation rentals to the properties referenced below:

107 Pulelehua (Auclair)  
TMK# 4.2.007.020.0000  
Permit # CP2015/0008  
Attention: Gina Flammer

100 Pulelehua (Steiner)  
TMK# 4.2.007.009.0000  
Permit # CP2015/0006  
Attention: Kurt Wollenhaupt

Thank you,  
O'Dell and Sandra Crittenden  
118 Pulelehua Pl  
Pineapple Hill  
Lahaina, HI 96761



118 Pulelehua Place

Parcel: 420070280000 Acres: 0.47

Name	CRITTENDEN,ODELL	Land Value	\$1,361,100.00
Site	118 PULELEHUA PL	Building Value	\$1,341,600.00
Sale	\$3,350,000 on 05-2015 Vacant= Qual=	Misc Value	\$0.00
Mail	118 PULELEHUA PL LAHAINA HI 96761	Just Value	\$0.00
		Assessed Value	\$2,702,700.00
		Exempt Value	\$0.00
		Taxable Value	\$2,702,700.00



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Date printed: 02/02/16 : 20:22:31



Protest against application for Conditional Permit - TMK (2) 4-2-007:009

To: Maui Planning Commission  
Attn.: Kurt Wollenhaupt

By: Joseph H. Henschel and Heidi B. Henschel  
resident and domiciled at 239 Crestview Rd., Lahaina

This application does not meet the standards of Maui County Code 19.40.01, and should therefore be denied.

It is an attempt to misuse the constructive intent of this Code provision, in unintended ways, for the sole purpose of enriching the owners of one property, to the detriment of the interests of their neighbors in the community.

It proposes a use which is dissimilar, unrelated, and incompatible with the use which has been permitted by existing zoning, upon which all owners have relied for many, many years.

It fails the test demanded by the Code, which requires a "special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance."

Owners at Pineapple Hill Phase 2 have all purchased their property, over the years, knowing that our Multi-Family zoning protected us from transient rentals in the neighborhood. (By contrast, buyers at the nearby and pre-existing Phase 1 knew that limited rentals were permissible under their zoning, and consequently there is a smaller percentage of primary homeowners there.) The applicants for this Conditional Permit, who they purchased their house, must have known that their zoning did not allow vacation rentals.

We ourselves bought our home in Phase 2, expressly because the zoning assured that there would be no transient rental problems, after a long search for a neighborhood which offered this kind of reliable protection. We have seen elsewhere how transients affect a community. Unfortunately, we now have hard experience with a property currently conducting (unlawful) transient vacation rentals, across the street from us. Recent abuses of the community include extreme noise, rubbish, indecent exposure, and public lewdness. The County has been incapable of enforcing its laws to prevent any of this.

Once transient rentals are allowable by Conditional Permit here, it also is inevitable that houses for sale in our Phase 2 neighborhood will be bought by more operators of transient rentals, and the character of the community will be altered permanently.

EXHIBIT 13 D



There are 31 lots at Pineapple Hill Phase 2, but 6 have no building yet upon them. Of the remaining 25 lots with houses, 9 or 10 are full-time or primary homes, including newer residents such as ourselves, who must pay Hawaii income tax, but have not been residents long enough yet to be eligible for the Maui County Homeowner Exemption. One new house, never occupied, is for sale following foreclosure. That leaves 14 or 15 second homes, some owned by people who intend to become primary residents after upcoming retirement. It is not a vacation community.

David Lede, the owner of the house next door to the applicant, has told the Commission that he has observed the applicant's house in use as an unlicensed transient vacation rental, last year, with out-of-control occupants causing late-hours disturbance. Would a liquor commission grant a tavern license to someone who has been operating an unlicensed bar, with his patrons engaging in misconduct? Why expect a better experience if a lawless operator (living in a foreign country) is granted a Conditional Permit? Hasn't the effect on the surrounding environment already been demonstrated?

Why should the Planning Commission be asked to pretend that the issuance of the Conditional Permit would have special impact or uniqueness? Or that its effect on the surrounding environment cannot be determined in advance? This alone should be cause for denial of the application, according to the County Code.

Why should the Commission be asked to pretend that the proposed use would be similar, related, or compatible with the present community standard, when it would inevitably alter and harm that standard, probably irrevocably? This alone should be cause for denial of the application, according to the County Code.

We thank you sincerely for your public service, and rely upon you as our neighbors and representatives in this splendid county, to protect our home from this unwarranted and harmful encroachment.



### 239 Crestview Road

Parcel: 420070270000 Acres: 0.56

Name	HENSCHEL,JOSEPH HOWARD	Land Value	\$1,498,200.00
Site	239 CRESTVIEW RD	Building Value	\$2,430,200.00
Sale	\$4,350,000 on 04-2014 Vacant= Qual=	Misc Value	\$0.00
Mail	239 CRESTVIEW RD LAHAINA HI 96761	Just Value	\$0.00
		Assessed Value	\$3,928,400.00
		Exempt Value	\$0.00
		Taxable Value	\$3,928,400.00



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Date printed: 02/04/16 : 15:16:16

16-350  
Pais/Huston  
616 Silversword Dr.  
Lahaina 96761  
January 25, 2016

Maui Planning Department  
2200 Main Street  
Wailuku, Maui, HI 96793

RE: Tax Map Key: 420070090000  
100 Pulelehua St., Lahaina  
Application for Transient Vacation Rental

16 JAN 28 P2:52  
DEPT. OF PLANNING  
CURRENTLY RECEIVED

Dear Sir/Madam:

We write to oppose the proposed use of the referenced property for transient vacation rental purposes. Like most owners of homes in the Pineapple Hill development, we bought our home there with the goal of living in a residential neighborhood with other part time or full time residents, and not a vacation rental environment. Having owned condominiums in the adjacent Kapalua Golf Villas development for many years we are very familiar with the differences in how long term residents use and enjoy their property from short term vacationers.

We object to short-term, transient vacation rentals of homes in Pineapple Hill as we believe it would adversely impact the overall feel and experience of living in this residential community. We urge you to turn down this application.

Thank you for your consideration.

Sincerely,

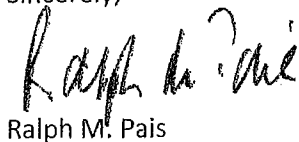
  
Ralph M. Pais

EXHIBIT 13 E

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### 616 Silversword Drive

Parcel: 420030240000 Acres: 0

Name	PAIS,RALPH & HUSTON,GAYL TRUST	Land Value	\$1,182,900.00
Site	616 SILVERSWORD DR	Building Value	\$953,700.00
Sale	\$51,100,000 on 06-1997 Vacant= Qual=	Misc Value	\$0.00
Mail	11235 CROW CANYON RD CASTRO VALLEY CA 94552	Just Value	\$0.00
		Assessed Value	\$2,136,600.00
		Exempt Value	\$0.00
		Taxable Value	\$2,136,600.00



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Date printed: 02/02/16 : 20:23:51



EXHIBIT 14. (Sent under separate cover.)

Applicant's Response to Neighbor Protests.

February 4, 2016

Kurt Wollenhaupt  
Department of Planning  
County of Maui  
2200 Main Street, Suite 315  
Wailuku, Maui, HI 906793

Dear Sir:

Re: TVR application – 100 Pulelehua St, Kapalua

I am writing to address certain issues that have arisen from the recent TVR Application for my property at 100 Pulelehua Street in Lahaina.

As a matter of full disclosure, I am writing to confirm that as per information provided to the County by the Pineapple Hill HOA, two rentals did occur at our property within the past six months.

As owner of the property, I made application for the Conditional Permit in late August 2015. Both of these rentals were booked in advance of my application to the County.

I can confirm that both TAT and GET taxes on the income from these rentals were submitted to the taxing authority as required.

It was not our intention to purposely circumvent the County rules but these rentals had been booked in advance of our application. Being that we did comply with tax laws, we proceeded.

While rentals without a permit are not permitted by the County, we would like to advise that the rentals that occurred were in full compliance with HOA bylaws of Pineapple Hill. Both rentals were in excess of 7 nights and no more than one rental per calendar month occurred. No more than 8 people occupied the home. The HOA was notified of the rentals in accordance with the bylaws.

We completed full screening of our guests including family status (ie. any children), employment, and nature of their stay. In fact, one of the families who most recently stayed at the property, are past guests of the previous owners. They required a large property to accommodate themselves, their grown children and their mates.

My husband and I have not rented the property as a business venture or a money making type endeavor. Our intent for renting the property, once a TVR is obtained, and the most recent rentals, is simply to assist in offsetting the high costs of maintaining a large property such as this.

We personally occupy our home at least three times a year for a period of 4-6 weeks each stay. Typically, our personal stays would be during times considered as "peak" rental periods. This shows that we are not planning to operate as rental only property.

We purchased our home in Pineapple Hill for the same reasons as our neighbors who have submitted protest letters against our application. This property is our home. We love the unique design of our custom built house, the tranquility of the large lot and exclusivity a gated community allows.

**EXHIBIT** 15

We know many families and business people, similar to ourselves, who look to vacation at a property that is as beautiful as their personal homes. It is important that tourists in the luxury market of Hawaii have rental options and their needs fulfilled. We will not accept rentals from "party" type groups.

To address the concerns of some of our neighbors, I have confirmed with the HOA manager that no complaints were received by HOA with respect to behavior of the renters noted above. Both groups were families looking to enjoy the benefits of a large, luxury property with the added privacy that the large lots in Pineapple Hill Phase II can offer.

We look forward to the Planning Departments recommendation to grant a TVR permit for our home so that we may have the opportunity to show how high quality luxury home rentals can be successful for both the guests, neighbors and homeowners alike.

Sincerely,

Julie Steiner

PINEAPPLE HILL AT KAPALUA  
DECLARATION OF MERGER AND CONSOLIDATION AND RESTATEMENT  
OF DECLARATIONS OF COVENANTS, CONDITIONS & RESTRICTIONS

THIS DECLARATION (this "Declaration") is made effective November 1, 2001, by PINEAPPLE HILL ESTATES LLC, a Hawaii limited liability company ("Declarant"), whose address is 1000 Kapalua Drive, Kapalua, Hawaii 96761.

BACKGROUND OF AND REASONS FOR THIS DECLARATION

Declarant is the "Declarant" under that certain Declaration of Covenants, Conditions & Restrictions Pineapple Hill at Kapalua dated August 28, 1987 ("the Pineapple Hill Phase 1 Declaration"), that is recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") in Liber 21091 at Page 64, by virtue of that certain Assignment and Assumption of Declarant's Rights under Declaration dated October 19, 2001, that is recorded in the Bureau as Document No. 2001-167705, from Kapalua Land Company, Ltd., Declarant's sole member. The Pineapple Hill Phase 1 Declaration affects and governs the use, in a planned community, of those certain parcels of land identified in the Pineapple Hill Phase 1 Declaration as Lots 1 through 100, inclusive, as shown on File Plan No. 1886 that is recorded in the Bureau ("Pineapple Hill Phase 1" or "Phase 1"). Due to the consolidation of Phase 1 Lot Nos. 4 and 5, into Lot 4A and the consolidation of Phase 1 Lots Nos. 90 and 91, into Lot 90A, there are currently a total of 98 Lots in Pineapple Hill Phase 1.

Declarant is also the "Declarant" under that certain Declaration of Covenants, Conditions & Restrictions for Pineapple Hill at Kapalua, Phase 2, that is dated November 29, 2000 ("the Pineapple Hill Phase 2 Declaration"), that is recorded in the Bureau as Document No. 2000-169044. The Pineapple Hill Phase 2 Declaration affects and governs the use, in a planned community, of those certain parcels of real property identified as Lots 1 through 39, inclusive, as shown on File Plan No. 2280 that is recorded in the Bureau, and Lot 1A-2 ("Lot 1A-2") of the "Pineapple Hill Estates Large Lot Subdivision" (collectively, "Pineapple Hill Phase 2" or "Phase 2").

As set forth in Paragraph 42 of the Pineapple Hill Phase 1 Declaration and Paragraph 42 of the Pineapple Hill Phase 2 Declaration, Declarant has the right to, by executing and recording a Declaration of Merger, merge Pineapple Hill Phase 1 and Pineapple Hill Phase 2 into a single unified Project. As further set forth in those Paragraphs, upon such merger the Owners' association for each of Pineapple Hill Phase 1 and Pineapple Hill Phase 2 shall be merged into a single Association governing the entire Project and their respective Declarations shall be construed as and deemed to be one unified Declaration.



Declarant is executing and recording this Declaration in order to merge Pineapple Hill Phase 1 and Pineapple Hill Phase 2 into a single unified Project. In addition, in accordance, with Paragraph 42 of the above-referenced declarations for each of said phases, this Declaration restates their respective declarations in their entirety as a single unified Declaration of Covenants, Conditions and Restrictions for Pineapple Hill (the "Declaration") as set forth in Part B below. Finally, by executing and recording this Declaration Declarant is also exercising its right, pursuant to Paragraph 44 of the Declaration, to make certain amendments to the Declaration.

#### PART A -- DECLARATION OF MERGER

NOW, THEREFORE, Declarant hereby declares that all of Pineapple Hill Phase 1, being Lots 1 through 100, inclusive, as shown on File Plan 1886 (collectively, "Phase 1"), and all of Pineapple Hill Phase 2, being Lots 1 through 39, inclusive, as shown on File Plan No. 2280 and Lot 1A-2 (collectively, "Phase 2"), all of which are more particularly described in Exhibit A, be and are hereby merged into a single, unified Project, and shall, at all times, be held, sold, conveyed, encumbered, leased, occupied and improved subject to the covenants, conditions and restrictions set forth in the consolidated and restated Declaration set forth below. The covenants, conditions and restrictions set forth in the Declaration shall run with said real property and shall be binding upon all persons acquiring any right, title or interest in and to said real property, and shall inure to the benefit of the Declarant, the Pineapple Hill at Kapalua Owners' Association and each person who becomes an owner of any such interest, and each successor in interest of such owner.

#### PART B - CONSOLIDATION AND RESTATEMENT OF DECLARATIONS OF COVENANTS, CONDITIONS & RESTRICTIONS WITH AMENDMENTS

AND DECLARANT HEREBY FURTHER DECLARES that all of Pineapple Hill Phase 1, being Lots 1 through 100, inclusive, as shown on File Plan 1886, and all of Pineapple Hill Phase 2, being Lots 1 through 39, inclusive, as shown on File Plan 2280, and Lot 1A-2, all of which are more particularly described in Exhibit A, are held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the KRA Covenants, the declarations, restrictions, and conditions set forth herein, and in the Bylaws of the Pineapple Hill at Kapalua Owners' Association (the "Bylaws") attached hereto as Exhibit C and made a part hereof and adopted hereby, as the same may from time to time be amended, which declarations, restrictions, and conditions shall constitute covenants running with the Land and shall be binding on, and shall inure to the benefit of, the parties hereto, their successors and assigns, and all subsequent owners and lessees of all or any part of the Land and the Project and their successors, heirs, personal representatives, and assigns.

1. Name. The subdivision project established hereby shall be known as "Pineapple Hill at Kapalua".

2. Description of Land. The Land is described in **Exhibit A** attached hereto and is submitted to the covenants, conditions and restrictions of this Declaration in fee simple.

3. Description of the Project.

a. The Project shall consist of one hundred twenty-eight (128) house lots ("Lots") and the common areas, all as more fully described below.

b. The Project is designed so that the individual Lot Owner may build a house on the Lot at a future date, at the Lot Owner's discretion. The design of the house for any Lot in Phase 1 shall be chosen only from a designated selection of model types available for that Lot number as shown on **Exhibit B** attached hereto and incorporated herein by reference, unless such Lot shall be consolidated with one or more contiguous Lots, in which case such consolidated Lot shall be subject to the requirements set forth in Paragraph 5(f) below.

c. The Declarant intends to install or has installed all of the necessary offsite improvements (roadways, utilities, etc.).

4. Description of House Lots.

a. Each Lot is intended for the construction of a single family residence. The number of the lots in Pineapple Hill Phase 1 and their location and total approximate area are shown on File Plan 1886, and the number of the lots in Pineapple Hill Phase 2 and their location and total approximate area are shown on File Plan 2280.

b. Each Lot has immediate access to the common areas as defined below.

5. Obligations of Owners.

a. Each and every Lot Owner may, but is not obligated to, construct a house, garage and other ancillary structures on the Lot. The design of the house and garage for any Lot in Phase 1 shall be chosen only from a designated selection of model types available for that particular Lot as shown on **Exhibit B**. The house, garage and other structures, improvements and installations on a Lot in Phase 2 do not have to be selected from those designated model types, but must comply with the Supplemental Design Guidelines for Pineapple Hill at Kapalua, Phase 2 that are attached hereto as **Exhibit G**. In addition no structure of any kind on a Lot in Phase 2

shall be taller than the Maximum Finished Building Ridge Elevation for the Lot that is designated on Exhibit B. In addition, the design of any improvements or landscaping on any Lot in Phase 1 or Phase 2 must comply with the Design and Construction Requirements for Homes in Pineapple Hill at Kapalua that are attached hereto as Exhibit F. The exact design and location of the house, garage and any other structures on the Lot must be approved by Declarant prior to construction. In addition, each Lot Owner must submit to Declarant for Declarant's approval a landscaping plan for the Lot and all easement areas appurtenant to the Lot. Until construction of a house is commenced, each Lot Owner, including the Declarant to the extent that it retains any unsold Lots, shall be obligated to pay an additional maintenance fee to keep the Lot in a clean and neat landscaped condition so that the Lot is visually indistinguishable from the adjacent common areas. Once a Lot Owner has started construction of a house, the exterior construction shall be completed within eighteen (18) months of the start of construction. For purposes of calculating the eighteen (18) month period, construction shall be deemed to start on the date on which grading or trenching for the house's foundation begins, whichever is earlier. The eighteen (18) month period shall be extended for any period of time during which the Lot Owner is actually and necessarily delayed in completing construction if said delay is caused by fire, earthquake, Acts of God, the elements, war or civil disturbances, strikes or other labor disturbances, or economic controls making it impossible to obtain the necessary labor or material, or other matters or conditions beyond the control of the Lot Owner. The sum of one hundred dollars (\$100.00) per day shall automatically be assessed against the Lot Owner by the Association for each day the exterior construction and landscaping continues beyond the eighteen (18) month period or any extension period permitted by this paragraph.

b. After completion of construction of a house, garage and any other structures by the Lot Owner of any of Lot 1 through Lot 99, inclusive, as shown on File Plan No. 1886, the Lot Owner shall, within 30 days after completion of construction, grant an easement to his neighbor in accordance with Exhibit D and paragraph 7(g) below at the Lot Owner's expense. The form of the grant of easement is attached hereto as Exhibit E. If a Lot Owner fails to grant such an easement to his neighbor within 30 days after completion of construction, then the Declarant may do so at such Lot Owner's expense and the Declarant is hereby appointed as attorney-in-fact for such Lot Owner, which appointment shall be deemed to be coupled with an interest, to grant such an easement.

c. The Pineapple Hill at Kapalua Owners' Association (the "Association") is an unincorporated association formed under the laws of the State of Hawaii. Each Lot Owner shall join the Association and shall be a member of the Association and shall abide by and comply with the Bylaws of the Association.

d. Each and every Lot Owner (including the Declarant to the extent

that it retains any unsold lots) shall become a member of the Kapalua Resort Association (the "KRA") and shall comply with all of the provisions of the KRA and shall be liable for all assessments for common expenses from and after the date of substantial completion of the subdivision improvements or from and after the conveyance of the Lot to the Lot Owner whether by agreement of sale or otherwise, whichever occurs first.

e. Each and every Lot Owner shall be obligated to comply with all appropriate rules, regulations, ordinances, laws and statutes of all governmental agencies.

f. A Lot Owner owning more than one contiguous Lot may either (i) construct a single house on one of each of the Lots (from a selected House Design in the case of a Phase 1 Lot) or (ii) except in the case of Phase 2 Lot Nos. 6 to 9 and Nos. 24 to 27, construct on and across those Lots a larger single family residence and other improvements as shall be approved in writing by the Declarant, in its sole and absolute discretion. The Lot Owner must submit a set of construction plans, sketches, and a scale model, in a scale and proportion specified by the Declarant. The foot print (being the line of the exterior faces of all buildings and structures but excluding overhangs, awnings and trellises) of the proposed residence and garage and any other structures shall not exceed thirty-five percent (35%) of the square footage of the combined Lots. The design of the residence must be consistent in architectural character and style with the Design and Construction Requirements for Homes and (i) for Phase 1 Lots, the designs specifically created for the Project referred to in Paragraph 5(a) above, or (ii) for Phase 2 Lots, the Supplemental Design Guidelines. The Lot Owner must consolidate the contiguous Lots into a single Lot prior to construction, at said Lot Owner's own expense. In the event of such a consolidation, the resulting consolidated Lot shall be treated as a single Lot for all purposes under this Declaration, including assessments and voting rights. Once consolidated, a Lot may not be resubdivided unless the subdivision will result in restoring the Lots to their original dimensions and permitted uses and the Lot Owner receives the Declarant's prior written approval. The Declarant reserves the right to determine the Lot line set back requirements, which may exceed the Lot line set back requirement for a single Lot.

6. Common Areas. The term "common areas" as used in this Declaration means Lot 100 of Phase 1 and Lots 32 through 39 and Lot 1A-2 of Phase 2, and includes (a) all roadways, pavements, walkways (unless included within a Lot) and all landscaping (except landscaping in a Lot that is not part of an easement area in favor of the Association), the manager's house, tennis courts, swimming pool, maintenance yard and area, trash areas, and other areas and buildings of common use; and (b) any and all other apparatus, buildings and installations of common use (such as utility lines, drainage swales, gates, fences, etc.) and all other parts of the project necessary or



convenient to its existence, maintenance and safety, when normally in common use.

7. Other Easements. The Lots and common areas shall have and be subject to easements as shown on the File Plan including the following easements:

a. Each Lot shall have appurtenant thereto nonexclusive easements in the common areas designed for such purposes, for ingress to, egress from, utility services for, drainage, and maintenance and repair of such Lot; in the other common areas for use according to their respective purposes.

b. If any common areas now or hereafter encroaches upon any Lot, a valid easement for such encroachment and the maintenance thereof, as long as it continues, does and shall exist. If a house or other improvements are partially or totally destroyed and then rebuilt, minor temporary encroachments during construction by the common areas upon any Lot or by any Lot upon the common areas shall be permitted, and valid temporary easements for such encroachments and the maintenance thereof shall exist.

c. The Association shall have the right, to be exercised by its Board of Directors (the "Board") or the Managing Agent, to enter each Lot from time to time during reasonable hours as may be appropriate for the operation of the Project or at any time for making emergency repairs therein which may be necessary to prevent damage to any Lot or house or common area.

d. The Association shall have (a) a 15-foot landscaping maintenance and utility easement over a designated area of the front of each Lot in Phase 1, (b) a landscaping and maintenance easement over all sloped areas to the rear of each Lot in Phase 1 as shown on File Plan 1886, and (c) landscaping and maintenance easements over all of Phase 2 Lot No. 32 and the portions of Phase 2 Lots 6 through 27 designated as such on File Plan 2280, all intended to develop and preserve a clean and neat appearance compatible with the adjoining Lots and the overall design and aesthetics of the Subdivision. The Association shall maintain these easement areas and the cost of maintenance shall be a common expense of the Lot Owners, and each Lot Owner shall not plant any plants within these easement areas without the prior approval of Declarant.

e. If a Lot Owner fails to maintain his or her Lot in a clean and neat manner, the Association shall have the right, after five (5) working days written notice, to enter the Lot from time to time during reasonable hours as may be appropriate for the operation of the Project for purposes of making necessary repairs or maintenance and shall do so at the Lot Owner's expense. Such charges shall become additional assessments to the Lot Owner affected.

f. Each Lot owner shall have an easement in common with the owners of all other Lots to use all pipes, wires, ducts, cables, conduits, public utility lines, drainage swales, and other common areas located in any of the other Lots (if any) or common areas serving his Lot. Each Lot shall be subject to an easement in favor of the owners of all other Lots to use the pipes, ducts, cables, wires, conduits, public utilities, drainage swales and other common areas serving such other Lots and actually located in such Lots.

g. Each Lot Owner shall grant a 6-foot wide easement over a designated area of the Lot to the adjoining Lot side yard on one side of the Lot (except for Phase 1 Lot Numbers 10, 11, 30, 31, 42, 43, 91, 92, 59, 58, and the Phase 2 Lots) in accordance with Exhibit D to use and enjoy in any manner and for any purpose not inconsistent with existing rules and regulations of the Association and the laws of the County of Maui and the State of Hawaii. If the Lot Owner erects a two-story residence on his Lot, the easement area where the structure is two-story shall be increased by an additional 4 feet. Use of this 4 foot wide portion of the easement shall be restricted to any lawful use except the placement and maintenance of any permanent structure or improvement. If a two-story residence is destroyed or otherwise removed from the Lot and if the Lot Owner should rebuild a one-story residence, the additional 4 foot wide portion of the easement shall terminate, allowing the Lot Owner to rebuild to the designated building line of the structure 6 feet from the property boundary. The easement area shall be measured from the designated building line of the structure to the property boundary shared with the adjoining Lot Owner except as otherwise provided herein. Each Lot Owner receiving an easement shall be solely responsible for the care and maintenance of the easement area. All landscaping in the easement area must first be approved by Declarant.

h. Each Lot in Phase 2 shall have an easement over all adjacent Lots in Phase 2, and shall be subject to an easement in favor of such Lots, for the natural flow of surface water and run-off in the Project as it exists upon Declarant's completion of the grading, roadway construction, and other subdivision improvements for Phase 2.

i. The Declarant reserves the right at its expense and for the benefit of the Project or adjacent property or other Kapalua Resort property (i) to grant over, across, and under the common areas easements for utilities, sanitary and storm sewers, cable television, walkways, roadways and rights of way, and (ii) to relocate or realign any existing easements and rights of way over, across, and under the common areas, including without limitation, any existing utilities, sanitary and sewer lines and cable television and connect same, over, across and under the common areas, provided that such easements and such relocations and connections of lines shall not materially impair or interfere with the use of any Lot. In addition, the Association through the Board is authorized to give, convey, transfer, cancel, relocate,

and otherwise deal with any and all utility and other easements now or hereafter located on or affecting the Project.

8. Common Interest and Voting. Each Lot Owner shall have an equal, undivided interest as tenant in common with all other Lot Owners in all common profits and expenses of the Project and Association and for all purposes including voting (the "common interest"); provided that the foregoing shall not be deemed to alter the undivided interests in Lot 100 of Phase 1 that were conveyed to the owners of each residential Lot in Phase 1 and the undivided interests in Lots 32 through 39 and Lot 1A-2 of Phase 2 that will be conveyed to the owners of each residential Lot in Phase 2. Each Lot shall have appurtenant thereto 1 vote.

9. No Further Subdividing. The Lots subject to this Declaration shall not be further subdivided, except for the subdividing of previously consolidated lots as provided for in Paragraph 5(f) above. The Lots subject to this Declaration shall not be subjected to a condominium property regime.

10. Purposes and Restrictions. The Lots shall be occupied and used only as single family residences, whether as permanent or temporary residences, lodgings or rental, and for no other purposes. The Lot Owners shall have the absolute right to rent or lease their houses, subject to the limitations, restrictions, covenants and conditions contained in this Declaration, the Bylaws, and applicable laws and ordinances. Each Lot Owner shall not use his Lot or house for any purpose which will injure the reputation of the Project, or suffer anything to be done or kept in his house or Lot or elsewhere in the Project which will (a) jeopardize the soundness of any common area on the premises, (b) interfere with or unreasonably disturb the rights of other owners and occupants, or (c) reduce the value of the premises.

Unless otherwise permitted by the Association and the Declarant, no more than one family or more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) shall occupy a Lot; provided, however, that nothing in this section shall be deemed to prevent the leasing or renting of any Lot from time to time by the Lot Owner thereof to one family or not more than two (2) person not of the same family (excluding live-in household employees and temporary guests) for residential purposes only, and in accordance with applicable laws and ordinances and not for transient accommodation purposes. The term "family", as used in this Declaration, shall mean one or more persons, all related by blood, adoption or marriage; and the term "transient accommodation" shall mean accommodations of less than 7 days.

A Lot Owner will not make any alterations in or additions to the exterior of the house once built (including awnings, jalousies or screens) without the written approval of the Declarant, except for normal maintenance and repair, which

maintenance or repair shall restore the exterior to its original appearance.

11. Alteration and Transfer of Interests. The common interest and easements and membership in the Association shall not be separated from the Lot to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Lot even though such interest or easements or membership are not expressly mentioned or described in the conveyance or other instrument.

12. Managing Agent. Operation of the Project shall be conducted for the Association by a responsible managing agent or manager who shall be selected by the Board in accordance with the Bylaws.

13. Casualty to Common Areas; Casualty to House. In the event of damage or destruction of all or part of the common areas, the common areas shall be rebuilt, repaired or restored. In the event of damage or destruction to all or part of a house, the Lot Owner affected shall decide within 30 days after such casualty whether to rebuild, repair or restore the house. If the affected Lot Owner decides not to rebuild, repair or restore the house, he shall remove all the debris (including any portion of the house left standing after such damage or destruction) within 60 days after the casualty and shall restore the Lot (including landscaping) to such a condition as to be indistinguishable from the adjacent common areas, as a vacant, landscaped Lot.

14. Repair and Maintenance - General.

a. Every Owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his Lot the omission of which would adversely affect any common area or any other Lot, and shall be responsible for all loss and damage caused by his failure to do so.

b. Every Owner shall reimburse the Managing Agent for any expenditures incurred in repairing or replacing any common areas or equipment thereof damaged or lost through the fault of such Owner or any person using the Project under him, and shall give prompt notice to the Managing Agent or Manager of any such damage, loss, or other defect when discovered.

c. No Owner shall use or keep anything on the common areas which would in any way hinder the full use and enjoyment thereof by any other Owner or occupant. It is intended that the exterior of each house shall present an attractive appearance, and to effect that end the Owners of each house hereby agree that the Board may require the painting or repair of each lanai, patio, outside doors, windows, trim, fences, railings and other exterior portion of the houses be consistent with the original construction and regulate the type and color of paint to be used. Should the Owner fail to do so, the Board is authorized to contract for said painting and repair and



to assess such Owner the cost of such painting and repair.

d. No Owner shall do any work which would jeopardize the soundness or safety of the common areas, reduce the value thereof, or impair any easement or hereditament, nor may any Owner add any exterior lighting, mirrored window glass or any material structure or excavate any additional basement or cellar, without in every such case the written consent of the Declarant, or its successor or assigns, first being obtained.

15. Maintenance and Repair of Houses. All maintenance of and repairs to any house (other than maintenance of and repairs to any common areas contained therein, and not necessitated by the negligence, misuse or neglect of the Owner of such Lot) shall be made by the Owner of such Lot.

16. Maintenance and Repair of Common Areas. All maintenance, repairs and replacements to the common areas, whether located inside or outside of the Lots, shall be made by the Association and be charged to all the Owners as a common expense, unless necessitated by the negligence, misuse or neglect of a Lot Owner, in which case such expense shall be charged to such Lot Owner.

17. Additions or Alterations by Board. Whenever in the judgment of the Board the common areas shall require additions or alterations, the Board may proceed with such additions or alterations and shall assess all Owners for the cost thereof as a common expense.

18. Additions or Alterations by Lot Owners. After construction of a house is complete, no Owner shall make any additions or alterations or improvements to his house which may affect the common areas or change the exterior appearance of the buildings. No Owner or occupant may make any landscaping changes to any Lot or common area without the approval of the Association and the Declarant.

19. Use.

a. Except as permitted by this Declaration, the KRA Covenants and the Declarant, no Owner or occupant of a house shall post any "For Sale" sign or other realty sign, advertisement, sign, bill, poster, or any other sign on or about the Project, including any magnetic signs on vehicles or signs in vehicles which are clearly visible from the outside.

b. All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other Owners or occupants.

c. No garbage, refuse, or trash of any kind shall be thrown, placed,

kept or burned on any Lot or common area other than the disposal facilities provided for such purposes.

d. Except as otherwise permitted by this Declaration, the federal Telecommunications Act of 1996, or approved in advance by Declarant, no Owner or occupant, shall install any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the house or protruding through the walls, windows, or roof thereof, provided however that nothing contained herein shall be construed or enforced in a manner that would violate any applicable law that permits such installations notwithstanding restrictive covenants to the contrary.

e. Nothing shall be allowed, done, or kept in any house or common areas which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

f. No Owner or occupant shall keep on his Lot any campers, recreational vehicles, commercial vehicles, vehicles with signs or insignia painted on or visible from the outside, boats and other similar vehicles, except in an enclosed garage facility for that purpose. In addition, no commercial vehicles of any nature shall be permitted to park in the Project overnight.

g. No Owner or occupant may conduct any commercial activity from his or her Lot. Each Lot Owner shall use his or her Lot as a single family residence only.

h. No motorcycles, motor scooters, mopeds, motorized bicycles or any form of the foregoing shall be permitted anywhere on the Project at anytime.

i. No on-street parking is allowed on Pulelehua Street, Pulelehua Place or the portion of Crestview Road in Phase 2.

## 20. Common Expenses.

a. The Owner of each Lot shall be liable for and pay an equal share of the common expenses of the Project (the "proportionate share"). Common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including without limitation the KRA dues, all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Lot and the interest in the common areas or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability

a. The Board shall thereupon contract to repair or rebuild the damaged portions of the common areas, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and Declarant. The insurance proceeds shall be used to pay the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this paragraph. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common areas, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the General Operating Reserve (if established), and, if the General Operating Reserve is insufficient for this purpose, the Board shall levy a special assessment on the Owners of Lots in proportion to their respective common interests.

b. The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(1) An architect or engineer (who may be an employee of the Board) shall be in charge of the work.

(2) Each request for payment shall be made on seven (7) days' prior notice to the Board or its agent and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Board the sum requested does not exceed the value of the work done to the date of such certificate.

(3) Each request shall be accompanied by waivers of liens satisfactory to the Board, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Board, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record.

(4) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

(5) Such other conditions not inconsistent with the foregoing as the Board may reasonably request.

c. Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board shall be paid or credited to the Owners of the Lots in proportion to their respective common interests.

d. To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Lot Owner. To the extent that any loss, damage or destruction to the property of any Lot Owner is covered by insurance procured by such Owner, such Owner shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Lot Owner, or the Association. All policies of insurance referred to in this Declaration shall contain appropriate waivers of subrogation.

31. Notice to Board. A Lot Owner who mortgages his interest in a Lot, or his mortgagee, must notify the Board of the name and address of his mortgagee within ten (10) days after the execution of the same.

32. Notice of Unpaid Common Expenses. The Board, whenever so requested in writing by a purchaser or mortgagee of an interest in a Lot, shall promptly report any then unpaid assessments for common expenses due from the Owner of the Lot involved.

33. Notice of Default. The Board, when giving notice to a Lot Owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such or Lot interest therein whose name and address has theretofore been furnished to the Board.

34. Examination of Books. Each Owner and each mortgagee of a Lot shall be permitted to examine the books of account of the Association at reasonable times, on business days, but not more often than once a month.

35. Mortgage Protection. Notwithstanding any other provisions hereof:

a. The liens created hereunder upon any Lot shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured only by any recorded first mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Lot if falling due after the date of such



foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Paragraph 22 hereof and each assessment shall be separate, distinct and personal debts and obligations of the Lot Owner against when the same are assessed; and

b. No amendment to this paragraph shall affect the rights of the holder of any first mortgage recorded in the Bureau of Conveyances of the State of Hawaii prior to the filing of such amendment who does not join in the execution thereof.

36. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the common areas, all compensation payable for or on account of the taking of any building or improvements on the land shall be payable to the Board. The Board shall arrange for the repair and restoration of the common areas (including any buildings and improvements) in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and Declarant. The Board shall disburse the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof the Board is expressly authorized to pay such excess costs from the General Operating Reserve (if established) and if the General Operating Reserve is insufficient for this purpose the Board shall levy a special assessment on the Owners of the Lots in proportion to their common interest. In the event sums are received in excess of the cost of repairing and restoring the remaining common areas (including any buildings and improvements), or in the event all the common areas are so taken or condemned, such excess proceed or said proceeds, as the case may be, shall be divided among the Owners of the Lots in accordance with their interests in the common areas.

37. Abatement and Enjoinment of Violations by Lot Owners. The violation of any rule or regulation adopted by the Board, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth herein or in the Bylaws:

a. to enter the Lot in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or

b. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including

attorneys' fees, shall be borne by the defaulting Lot Owner.

38. Right of Access. A Lot Owner shall grant a right of access to his Lot to the Manager and/or the Managing Agent and/or any other person authorized by the Board, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Lot and threatening another Lot or the common areas, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common areas in his Lot, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Owner is present at the time or not.

39. Pets. The Board shall, from time to time, determine the policy concerning household pets. No animals shall be kept, bred or used in any part of the project for any commercial purpose.

40. Invalidity. The invalidity of any provision of this Declaration shall not impair or affect the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had not been included herein.

41. Operation of the Project. The operation of the Project shall be governed by this Declaration, the Bylaws, the Association Rules adopted by the Board and the KRA Rules.

42. Declarant's Reserved Rights. The Declarant, its successors and assigns, reserves the right to grant nonexclusive easements for access and utility purposes over and across the existing roadways and common areas in the Project, as may be required from time to time. The rights of the Declarant under this Paragraph 42 shall extend to Maui Land & Pineapple Company, Inc., Kapalua Land Company, Ltd., and their successors and assigns.

43. Effect of This Declaration of Merger. Consistent with the provisions of Paragraphs 42(d)(iii) and (v) of the Pineapple Hill Phase 1 Declaration and Paragraphs 42(d)(iii) and (v) of the Pineapple Hill Phase 2 Declaration, the Owners' association provided for in Phase 1 and Phase 2 is by this Declaration of Merger merged into a single Association governing the entire project. Within ninety (90) days following the recordation of this Declaration of Merger, a special meeting of the Association of the overall project shall be called to elect a new Board of Directors to replace any existing Board of Directors and to govern the overall project. The procedure for calling and holding such meeting and all other meetings of such association shall be the procedure for calling and holding special meetings of the

Association set forth in this Declarations and the Bylaws.

44. No Rental Pool or Time Sharing. No Lot Owner shall enter into any rental pool with other Lot Owners without the written consent of the Declarant. No Lot Owner shall enter into any time sharing plans (as defined in Chapter 514E, Hawaii Revised Statutes, as may be amended from time to time) without the prior written consent of the Declarant.

45. Amendment and Duration of Declaration.

a. Except as otherwise provided herein, this Declaration may be amended by a vote of seventy-five percent (75%) of the Lot Owners and the written approval of the Declarant, its successors or assigns, effective only upon recording of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association and of the Declarant, provided, however, that at any time prior to the transfer of title of the last Lot in the Project, the Declarant may amend this Declaration and the Bylaws in any manner.

b. The covenants and restrictions of this Declaration shall run with and bind the land, provided, that in the event that any of the foregoing provisions of this Paragraph would violate the Rule against Perpetuities or any other limitation on the duration of the provisions of this Declaration imposed by law, then the provisions of this Declaration shall be deemed to remain in effect only for the maximum permissible period permitted by law, or until twenty-one (21) years after the death of the last survivor of the now living descendants of Joseph Kennedy, whichever is earlier. This Declaration shall be automatically extended for ten (10) year periods unless terminated by recording an instrument directing such termination signed by not less than one hundred percent (100%) of the Lot Owners and the Declarant, its successors or assigns.

46. Controlling Declaration. This Declaration is made subject to the provisions of the KRA Covenants and in case of any conflict, the provisions of the KRA Covenants shall control, except for the rights reserved in the Declarant, its successors or assigns.

47. Binding Effect. All of the covenants, agreements and conditions herein contained shall extend to and be binding upon the heirs, successors, personal representatives and assigns of any Lot Owner.

48. Disclaimer. Nothing herein contained, nor any advertising or other documentation in connection with the Project or the Kapalua Resort, shall be construed as obligating the Declarant or any other person to develop any land other than the Land described in Exhibit A, or to construct any improvements (including any houses or

recreational facilities) other than the improvements described herein, nor as granting any Lot Owner any membership or other interest in any entity, club, or facility (recreational or otherwise) other than the Project and the Kapalua Resort Association.

49. Costs and Expenses. Whenever the consent of the Declarant is required by this Declaration, the Declarant shall have the right to charge its reasonable costs and expenses incurred by the Declarant in reviewing any matter to which its consent is required, including costs and expenses to third parties such as architects, engineers, attorneys, etc.

50. Dispute Resolution. In the event of any dispute or conflict between any Lot owner, the Association, the Board of Directors or Declarant with respect to the design and construction of the subdivision improvements or the operation and management of the Project (except in those instances where the consent or approval of the Declarant is required at the Declarant's discretion), or any other disagreement, controversy, dispute or conflict between any Lot Owner, the Association, the Board of Directors or Declarant (except as set forth above), shall be resolved as follows:

a. Meeting. In the event of any dispute or conflict as described above, and as a condition precedent to Submission of Disputes to a Professional (subparagraph (b) below), Mediation (subparagraph (c) below) and Arbitration (subparagraph (d) below), the parties to the dispute and any third parties involved in the dispute shall meet promptly in an effort to resolve the dispute.

b. Submission of Dispute to a Professional. If the dispute is not resolved as a result of the meeting described in subparagraph (a) above, and as a condition precedent to Mediation (subparagraph (c) below) and Arbitration (subparagraph (d) below), the dispute shall be referred to a Professional (an architect, engineer, attorney, accountant, etc.) selected by Declarant for non-binding resolution of the dispute within 15 days of that meeting. The Professional shall issue its non-binding resolution of the dispute within 15 days of the date of submission.

c. Mediation. If the dispute is not resolved as a result of Submission of the Dispute to A Professional as described in subparagraph (b) above, and as a condition precedent to Arbitration (subparagraph (d) below), the dispute shall be referred to the American Intermediation Society ("AIS") for nonbinding mediation before a mediator designated by AIS. Referral of the dispute to AIS shall occur within 15 days of the date a Professional issues its resolution of the dispute. The parties to the dispute shall meet with the AIS mediator within 15 days of the date the dispute is referred to the AIS. No formal discovery shall occur in connection with the mediation. All oral and written communications to and from the mediator and the parties to the dispute shall be confidential and inadmissible for any purpose in any subsequent arbitration or litigation, and the parties shall agree to execute a standard



form AIS Confidentiality Agreement prior to commencing the mediation. The mediator shall issue his nonbinding resolution of the dispute within 30 days of his meeting with the parties to the dispute. The mediator's resolution shall be in the form of an oral, nonbinding opinion which addresses the merits of each party's position and assesses which party is likely to prevail on the merits at arbitration. The mediator's resolution, or any reference thereto, shall be confidential and inadmissible for any purpose in any subsequent arbitration or litigation.

d. Arbitration. If the dispute is not resolved as a result of Mediation as described in paragraph (c) above, the dispute shall be decided by binding arbitration. The arbitration shall be held before a single arbitrator selected by mutual agreement of the parties. In the event the parties are unable to reach agreement on the arbitrator, an arbitrator shall be designated through application to the Circuit Court of the Second Circuit, State of Hawaii, pursuant to the provisions of Section 65B-4, Hawaii Revised Statutes. The arbitration shall be conducted in accordance with the appropriate American Arbitration Association Rules (depending on the type of dispute), as modified by the rules specified in this subparagraph and in subparagraph (e) below. The parties shall have the right to join other third parties in any arbitration proceeding. Thereafter, the parties or such other third party shall be bound by and have the benefit of this arbitration agreement and the arbitrator's decision or award to the same extent as the parties. The decision or award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Chapter 658, Hawaii Revised Statutes, in any court of competent jurisdiction thereof.

e. Discovery in Arbitration. The parties to the arbitration shall be entitled to such discovery as would be available to them in the court of general jurisdiction in the county where the project is located and the arbitrator will have all of the authority of the court incidental to such discovery including, but not limited to, orders to produce documents or other materials and orders to appear and submit to deposition and to impose appropriate sanctions including, but not limited to, awarding against a party for failure to comply with any order. The rules of evidence for such court of general jurisdiction in equity matters will apply during the arbitration.

f. Notice of Arbitration. Notice of the demand for arbitration shall be filed in writing with the other party or parties, and a copy shall be filed with the Declarant. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or by any shorter contractual limitations period.

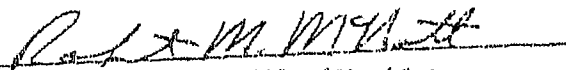
g. Waiver of Litigation. The provisions specified in this Paragraph 49 are and shall be the exclusive remedy for the resolution of any claim or dispute as

described above between any Lot Owner, the Association, the Board of Directors and the Declarant. The parties waive the right to commence litigation against the others over any such claim or dispute.

h. Award of Attorney's Fees, Expenses and Costs. The losing party in such arbitration (as determined by the arbitrator) shall pay all costs and expenses of the arbitration, including the prevailing party's reasonable attorneys' fees (as determined by the arbitrator) unless the arbitrator determines that there is no losing party, in which event each party shall bear the costs of its own witnesses and attorneys' and the other costs of the arbitration including the arbitrator's fee shall be paid equally by the parties.

IN WITNESS WHEREOF, Declarant has executed this Pineapple Hill at Kapalua Declaration of Merger and Consolidation and Restatement of Declarations of Covenants, Conditions & Restrictions with Amendments as of the date first set forth above.

PINEAPPLE HILL ESTATES LLC, a Hawaii  
limited liability company  
By Kapalua Land Company, Ltd.  
Its Managing Member

By   
Name: ROBERT W. MCNATT  
Its: V.P. LAND PLANNING & DEV.

STATE OF HAWAII

COUNTY OF MAUI

)  
) ss:  
)

On this 19th day of October, 2001, before me appeared Robert M. McNatt to me personally known, who, being by me duly sworn, did say that he is the VP Land Planning & Development of Kapalua Land Company, Ltd., a Hawaii corporation, the managing member of PINEAPPLE HILL ESTATES LLC, a Hawaii limited liability company, and that the foregoing instrument was duly authorized by and signed in behalf of said company, and said person acknowledged said instrument to be the free act and deed of said company.

Debra A. Mahon  
Notary Public Debra A. Mahon  
State of Hawaii

My commission expires: Oct. 1, 2004

EXHIBIT A

FIRST:

PINEAPPLE HILL AT KAPALUA, PHASE 1

All of those certain parcels of land situate at Napili 2 and 3 and Honokahua, District of Lahaina, Island and County of Maui, State of Hawaii, of the "PINEAPPLE HILL SUBDIVISION", as shown on File Plan No. 1886, filed in the Bureau of Conveyances of the State of Hawaii, described as follows:

<u>LOT</u>	<u>Area</u>
1	12,757 square feet,
2	11,850 square feet,
3	11,047 square feet,
5-A	20,478 square feet,
6	10,050 square feet,
7	10,987 square feet,
8	11,878 square feet,
9	12,269 square feet,
10	13,409 square feet,
11	13,387 square feet,
12	12,283 square feet,
13	12,145 square feet,
14	11,734 square feet,
15	14,823 square feet,
16	12,432 square feet,
17	11,050 square feet,
18	10,884 square feet,
19	10,678 square feet,
20	10,217 square feet,
21	9,486 square feet,
22	9,606 square feet,
23	10,125 square feet,
24	10,296 square feet,
25	10,594 square feet,
26	10,371 square feet,
27	9,325 square feet,
28	9,881 square feet,
29	10,358 square feet,



LOTArea

30	15,574 square feet,
31	18,163 square feet,
32	10,449 square feet,
33	11,053 square feet,
34	10,133 square feet,
35	11,337 square feet,
36	13,382 square feet,
37	14,420 square feet,
38	15,764 square feet,
39	12,523 square feet,
40	9,998 square feet,
41	11,640 square feet,
42	15,074 square feet,
43	26,842 square feet,
44	11,389 square feet,
45	11,202 square feet,
46	10,484 square feet,
47	12,939 square feet,
48	10,974 square feet,
49	11,383 square feet,
50	13,102 square feet,
51	16,455 square feet,
52	15,169 square feet,
53	11,524 square feet,
54	10,194 square feet,
55	9,435 square feet,
56	8,925 square feet,
57	8,776 square feet,
58	8,788 square feet,
59	9,059 square feet,
60	9,468 square feet,
61	9,539 square feet,
62	9,500 square feet,
63	9,824 square feet,
64	9,547 square feet,
65	9,331 square feet,
66	9,726 square feet,
67	10,616 square feet,
68	11,644 square feet,
69	12,014 square feet,

<u>LOT</u>	<u>Area</u>
70	13,258 square feet,
71	10,272 square feet,
72	10,541 square feet,
73	10,724 square feet,
74	10,002 square feet,
75	10,576 square feet,
76	10,174 square feet,
77	10,058 square feet,
78	11,702 square feet,
79	13,032 square feet,
80	9,718 square feet,
81	9,889 square feet,
82	10,701 square feet,
83	11,340 square feet,
84	12,521 square feet,
85	10,923 square feet,
86	10,547 square feet,
87	10,930 square feet,
88	10,315 square feet,
89	9,840 square feet,
90-A	35,115 square feet,
92	15,441 square feet,
93	9,719 square feet,
94	9,963 square feet,
95	11,920 square feet,
96	10,429 square feet,
97	10,146 square feet,
98	11,508 square feet,
99	13,646 square feet,
100	and 19.100 acres.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Lease of right of way in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company dated October 9, 1901, recorded in Liber 4162 at Page 301; leasing and demising rights-of-way, each twenty-five feet in width over, across and under the premises described herein, besides other

land, for a term of 35 years from the date hereof, and thereafter from year to year until terminated.

3. Declaration of Covenants and Restrictions dated December 29, 1976, but effective as of December 29, 1976, recorded in Liber 11922 at Page 26, as supplemented by instruments dated June 16, 1977, but effective June 22, 1977, recorded in Liber 12291 at Page 406, dated January 12, 1979, but effective January 1, 1979, recorded in Liber 13502 at Page 442, and dated June 21, 1979, recorded in Liber 13796 at Page 741. Said Declaration was amended by instrument dated August 14, 1985, recorded in Liber 19005 at Page 629.
4. Water Facilities and Transmission Line Land Lease dated August 2, 1977, but effective as of July 1, 1977, recorded in Liber 12492 at Page 453, by and between Maui Land & Pineapple Company, Inc., "Lessor", and Kapalua Water Company, Ltd., "Lessee".
5. Grant in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company dated December 30, 1981, recorded in Liber 16169 at Page 516; granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity over, under, upon, across and through the premises described herein.
6. Private Water System Agreement dated August 7, 1985, recorded in Liber 18858 at Page 203, by and between Maui Land Pineapple Co., Inc., "Subdivider", and the County of Maui and its Department of Water Supply, "County".
7. Private Water System Agreement dated July 17, 1986, recorded in Liber 19693 at Page 171, by and between Maui Land & Pineapple Co., Inc., "Subdivider", and the County of Maui and its Department of Water Supply, "County".
8. -AS TO LOTS 1 TO 10, INCLUSIVE:-
  - (A) Easement "1" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "2" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
9. -AS TO LOTS 11 TO 15, INCLUSIVE:-

- (A) Easement "3" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "4" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
10. -AS TO LOTS 16 TO 30, INCLUSIVE:-
- (A) Easement "5" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "6" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
11. -AS TO LOTS 18 AND 19 ONLY:- Easement "7" (6 feet wide) for drainage purposes, as shown on File Plan No. 1886.
12. -AS TO LOTS 24 AND 25 ONLY:- Easement "8" (6 feet wide) for sanitary sewer purposes, as shown on File Plan No. 1886.
13. -AS TO LOTS 25, 26, 27, 28 AND 29:- Easement "9" for sanitary sewer purposes, as shown on File Plan No. 1886.
14. -AS TO LOTS 28 AND 29 ONLY:- Easement "10" (6 feet wide) for drainage purposes, as shown on File Plan No. 1886.
15. -AS TO LOTS 31 TO 35, INCLUSIVE:-
- (A) Easement "11" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "12" for landscaping and utility purposes, as shown on File Plan No. 1886.
16. -AS TO LOTS 36 TO 42, INCLUSIVE:-
- (A) Easement "13" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "14" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
17. -AS TO LOTS 43 TO 51, INCLUSIVE:-



- (A) Easement "15" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "16" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
  - (C) Easement "17" for sanitary sewer purposes, as shown on File Plan No. 1886.
18. -AS TO LOTS 49 AND 50 ONLY:- Easement "18" (6 feet wide) for drainage purposes, as shown on File Plan No. 1886.
19. -AS TO LOTS 52 TO 55, INCLUSIVE:- Easement "19" for sanitary sewer purposes, as shown on File Plan No. 1886.
20. -AS TO LOTS 52 TO 58, INCLUSIVE:-
- (A) Easement "20" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
  - (B) Easement "21" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
21. -AS TO LOTS 59 TO 69, INCLUSIVE:-
- (A) Easement "22" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
  - (B) Easement "23" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
22. -AS TO LOTS 70 TO 91, INCLUSIVE:-
- (A) Easement "24" for landscaping and maintenance purposes, as shown on File Plan No. 1886.
  - (B) Easement "25" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
23. -AS TO LOT 79 ONLY:- Easement "26" (15 feet wide) for sanitary sewer and drainage purposes, as shown on File Plan No. 1886.
24. -AS TO LOTS 88 AND 89:- Easement "27" (6 feet wide) for drainage

purposes, as shown on File Plan No. 1886.

25. -AS TO LOT 91 ONLY:- Easement "28" (10 feet wide) for waterline purposes, as shown on File Plan No. 1886.
26. -AS TO LOTS 92 TO 99, INCLUSIVE:-
  - (A) Easement "29" (15 feet wide) for landscaping and utility purposes, as shown on File Plan No. 1886.
  - (B) Easement "30" for landscaping and maintenance purposes, as shown File Plan No. 1886.
27. -AS TO LOTS 94 AND 95 ONLY:- Easement "31" (6 feet wide) for drainage purposes, as shown on File Plan No. 1886.
28. -AS TO LOTS 96 AND 97 ONLY:- Easement "32" (6 feet wide) for sanitary sewer purposes, as shown on File Plan No. 1886.
29. -AS TO LOT 100 ONLY:-
  - (A) Easement "33" (15 feet wide, area 16,499 square feet) for sanitary sewer purposes, as shown on File Plan No. 1886.
  - (B) Easement "34" (15 feet wide, area 4,043 square feet) for sanitary sewer purposes, as shown on File Plan No. 1886.
  - (C) Easement "35" (25 feet wide, area 3,439 square feet) for slope purposes, as shown on File Plan No. 1886.
  - (D) Restriction of rights of vehicle access into and from Honoapiilani Highway (F.A.P. No. RF-030-1(3)) except where such access is permitted, as shown on File Plan No. 1886.

SECOND:

PINEAPPLE HILL AT KAPALUA, PHASE 2

ITEM 1:

All of those certain parcels of land situate at Napili 2 and 3 and Honokahua, District of Lahaina, Island and County of Maui, State of Hawaii, of the "PINEAPPLE HILL AT KAPALUA PHASE 2 SUBDIVISION", as shown on File Plan No. 2280, filed in the Bureau of Conveyances of the State of Hawaii ("File Plan No. 2280"), described as follows:

LOTArea

1	20,541 square feet,
2	21,041 square feet,
3	20,491 square feet,
4	20,565 square feet,
5	25,374 square feet,
6	20,485 square feet,
7	21,206 square feet,
8	23,477 square feet,
9	24,458 square feet,
10	22,799 square feet,
11	20,796 square feet,
12	19,409 square feet,
13	19,072 square feet,
14	20,652 square feet,
15	19,834 square feet,
16	19,507 square feet,
17	20,633 square feet,
18	19,576 square feet,
19	20,477 square feet,
20	20,656 square feet,
21	20,334 square feet,
22	19,782 square feet,
23	20,105 square feet,
24	25,007 square feet,
25	20,749 square feet,
26	20,036 square feet,
27	24,580 square feet,
28	20,406 square feet,
29	20,982 square feet,
30	21,012 square feet,
31	25,227 square feet,
32 (landscaping)	8,219 square feet,
33 (road)	61,887 square feet,
34 (road)	62,560 square feet,
35 (road)	4,645 square feet,
36 (road)	7,334 square feet,
37 (road)	5,372 square feet,
38 (road)	7,377 square feet,
39 (road)	11,673 square feet.

ITEM 2:

All of that certain parcel of land situate, lying and being on the west side of Honoapiilani Highway (F. A. P. No. RF-030-1(3)) and on the east side of Lower Honoapiilani Road at Napili 2 & 3 and Honokahua, Lahaina, Island and County of Maui, State of Hawaii, more particularly described as follows:

**LOT 1A-2, of the "PINEAPPLE HILL ESTATES (LARGE-LOT) SUBDIVISION"**, being portion(s) of the land(s) described in and covered by Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1, to L. Konia, bearing Tax Key designation 4-2-004-portion 024 (2), and thus bounded and described:

Beginning at a point at the southeasterly corner of this lot, being also the northeasterly corner of Lot 1A-3 of Pineapple Hill Estates (Large-Lot) Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 4,876.15 feet South and 3,177.16 feet East and running by azimuths measured clockwise from True South:

1. 143° 31' 20" 66.07 feet along the remainder of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot 1A-3 of Pineapple Hill Estates (Large-Lot) Subdivision to a point;
2. 221° 00' 171.87 feet along the remainder of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot 1A-1 of Pineapple Hill Estates (Large-Lot) Subdivision to a point;
3. Thence along same on a curve to the right having a radius of 1,022.00 feet, the chord azimuth and distance being:  
223° 19' 30" 82.92 feet to a point;
4. 225° 39' 88.75 feet along same to a point;
5. 212° 32' 105.10 feet along Lot 30 of Pineapple Hill (File Plan 1886) to a point;
6. 278° 40' 85.51 feet along Lot 100 of Pineapple Hill (File Plan 1886) to a point;
7. Thence along the northwesterly side of Honoapiilani Highway (F.A.P. No. RF-



030-1(3)) on a curve to the left with the point of curvature azimuth from the radial point being:

137° 52' 53", and the point of tangency azimuth from the radial point being:  
136° 10' 26", having a radius of 7,120.23 feet, the chord azimuth and distance being:  
47° 01' 39.5" 212.19 feet to a point;

8. 37° 14' 38" 296.82 feet along same to the point of beginning and containing an Area of 0.576 acre.

TOGETHER WITH, as to ITEM 1 and ITEM 2, above, a nonexclusive access easement over Easement "C" affecting Lot 100 of the "PINEAPPLE HILL AT KAPALUA" subdivision, as shown on File Plan 1886, which Easement "C" is more particularly described as follows:

Access and Utility Easement C over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across a portion of Lot 100 of Pineapple Hill (File Plan 1886) and being more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, being also the northeasterly corner of Lot 1A-2 of Pineapple Hill Estates (Large-Lot) Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 4,495.23 feet South and 3,512.05 feet East and running by azimuths measured clockwise from True South:

1. 98° 40' 61.90 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot 1A-2 of Pineapple Hill Estates (Large-Lot) Subdivision;
2. 225° 39' 42.07 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across a portion of Lot 100 of Pineapple Hill (File Plan 1886);
3. Thence over and across same on a curve to the left with the point of curvature azimuth from the radial point being: 315° 39', and the point of tangency azimuth from the radial point being: 293° 56' 54", having a radius of 175.00 feet,

the chord azimuth and distance being:  
214° 47' 57" 65.89 feet;

4. Thence over and across same on a curve to the right with the point of curvature azimuth from the radial point being: 113° 56' 54", and the point of tangency azimuth from the radial point being: 172° 38' 04", having a radius of 83.50 feet, the chord azimuth and distance being: 233° 17' 29" 81.84 feet;
5. Thence over and across same on a curve to the left with the point of curvature azimuth from the radial point being: 352° 38' 04", and the point of tangency azimuth from the radial point being: 319° 12' 30", having a radius of 34.50 feet, the chord azimuth and distance being: 245° 55' 17" 19.84 feet;
6. 229° 12' 30" 5.00 feet over and across same;
7. 319° 12' 30" 52.61 feet over and across same;
8. Thence along the northwesterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) on a curve to the left with the point of curvature azimuth from the radial point being: 139° 15' 33", and the point of tangency azimuth from the radial point being: 137° 52' 53", having a radius of 7,120.23 feet, the chord azimuth and distance being: 48° 34' 13" 171.21 feet to the point of beginning and containing an Area of 0.264 acre, more or less.

TOGETHER WITH, as to ITEM 1, only:

(A) A nonexclusive drainage easement to discharge storm water and surface run off through Easement "F" over Lot 1A-1 of the Pineapple Hill Estates (Large Lot) Subdivision, which Easement "F" is more particularly described as follows:

Drainage Easement F over and across a portion of R.P. 1663,

Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across a portion of Lot 1A-1 of Pineapple Hill Estates (Large-Lot) Subdivision and being more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the azimuth and distance from the northwesterly corner of Lot 1A-3 of Pineapple Hill Estates (Large-Lot) Subdivision being:  $119^{\circ} 24'$  28.92 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 4,405.62 feet South and 2,337.21 feet East and running by azimuths measured clockwise from True South:

1.  $188^{\circ} 26'$  35.63 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across a portion of Lot 1A-1 of Pineapple Hill Estates (Large-Lot) Subdivision;
2.  $278^{\circ} 26'$  46.06 feet over and across same;
3.  $235^{\circ} 34' 45''$  37.75 feet over and across same;
4.  $191^{\circ} 08' 19''$  19.67 feet over and across same;
5.  $203^{\circ} 14'$  11.98 feet over and across same;
6.  $293^{\circ} 14'$  25.00 feet over and across same;
7.  $23^{\circ} 14'$  11.98 feet over and across same;
8.  $35^{\circ} 19' 41''$  22.11 feet over and across same;
9.  $55^{\circ} 34' 45''$  28.26 feet over and across same;
10.  $278^{\circ} 26'$  29.89 feet over and across same;
11.  $8^{\circ} 26'$  38.50 feet over and across same;
12.  $98^{\circ} 26'$  90.50 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot 1A-3 of Pineapple Hill Estates (Large-Lot) Subdivision;
13.  $119^{\circ} 24'$  8.03 feet over and across same to the point of beginning and containing an Area of 0.114 acre,

more or less.

SAID ITEMS 1 AND 2 BEING THE PREMISES DESCRIBED in Warranty Deed With Reservations and Covenants from MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, to PINEAPPLE HILL ESTATES LLC, a Hawaii limited liability company, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-110127.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Lease of right of way in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company dated October 9, 1961, recorded in Liber 4162 at Page 301; leasing and demising rights-of-way, each twenty-five feet in width over, across and under the premises described herein, besides other land, for a term of 35 years from the date hereof, and thereafter from year to year until terminated.
3. Declaration of Covenants and Restrictions dated December 29, 1976, but effective as of December 29, 1976, recorded in Liber 11922 at Page 26, as supplemented by instruments dated June 16, 1977, but effective June 22, 1977, recorded in Liber 12291 at Page 406, dated January 12, 1979, but effective January 1, 1979, recorded in Liber 13502 at Page 442, and dated June 21, 1979, recorded in Liber 13796 at Page 741. Said Declaration was amended by instrument dated August 14, 1985, recorded in Liber 19005 at Page 629.
4. Grant dated December 30, 1981, recorded in said Bureau in Liber 16169, Page 516, in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity over, under, upon, across and through said parcel, among other lands.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Unilateral Agreement and Declaration for Conditional Use dated August 24, 1989, recorded in said Bureau in Liber 23752, Page 583.
6. Terms and provisions, covenants, conditions and reservations contained in Subdivision Agreement (Large Lots) dated August 10, 1990, recorded in said



Bureau as Document No. 90-124627, by Maui Land & Pineapple Company, Inc., a Hawaii corporation.

7. Restriction of abutter's rights of vehicle access into and from Honoapiilani Highway except where access is permitted, which rights were acquired by the State of Hawaii, as set forth by Final Order of Condemnation dated December 31, 1990, recorded in said Bureau as Document No. 91-003977.
8. Terms, provisions, covenants, conditions and reservations contained in Subdivision Agreement (Large Lots) dated April 20, 2000, recorded in said Bureau as Document No. 2000-059492, by County of Maui, Department of Public Works and Waste Management, and Maui Land & Pineapple Company, Inc.
9. Terms, provisions, covenants, conditions and reservations contained in Warranty Deed With Reservations and Covenants from Maui Land & Pineapple Company, Inc., a Hawaii corporation, to Pineapple Hill Estates LLC, a Hawaii limited liability company, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-110127.
10. As to ITEM 2 above only:

a. Designation of Drainage Easement "D-1", in favor of the State of Hawaii, as set forth by Final Order of Condemnation dated December 31, 1990, recorded in said as Document No. 91-003977, being more particularly described as follows:

HONOAPIILANI HIGHWAY, Federal Aid Project No. RF-030-1(3), Alaeloa to Honokahua, DRAINAGE EASEMENT D-1, being a portion of Lot 2-A-1 of Kapalua Development Subdivision, being also a portion of Royal Patent 1663, Land Commission Award 5524, Part 1 to L. Konia, situated at Napili 2 and 3, Lahaina, Maui, Hawaii, and thus bounded and described:

Beginning at the southwest corner of this piece of land, on the northwest side of Honoapiilani Highway, Federal Aid Project No. RF-030-1(3), the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 22,168.69 feet North and 2,629.47 feet West, thence running by azimuths measured clockwise from true South:

1. 180° 48' 30" 203.05 feet along the remainder of Lot 2-A-1 of Kapalua Development Subdivision;

2. Thence along same on a curve to the right with a radius of 7,220.23 feet, the chord azimuth and distance being:

225° 11' 08" 50.55 feet;

3. 270° 58' 10" 140.96 feet along the remainder of Lot 2-A-1 of Kapalua Development Subdivision;

4. 37° 15' 296.82 feet along the northwest side of Honoapiilani Highway, Project No. RF-030-1(3), along the remainder of Lot 2-A-1 of Kapalua Development Subdivision to the point of beginning and containing an area of 20,454 square feet or 0.470 acre, more or less.

- b. A portion of Drainage Easement E in favor of the State of Hawaii and being more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, being also the southeasterly corner of the above described lot and the northeasterly corner of Lot 1A-3 of Pineapple Hill Estates (Large-Lot) Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 4,876.15 feet South and 3,177.16 feet East and running by azimuths measured clockwise from True South:

1. 163° 41' 279.91 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across portions of Lot 1A-2 and 1A-1 of Pineapple Hill Estates (Large-Lot) Subdivision;

2. 238° 00' 61.52 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and

across a portion of Lot 1A-1 of  
Pineapple Hill Estates (Large-  
Lot) Subdivision;

3. 285° 09' 143.35 feet over and across same;
4. 242° 52' 74.40 feet over and across same;
5. 272° 39' 63.26 feet over and across a portion  
of R.P. 1663, Apana 1, L.C.  
Aw. 5524, Apana 1 to L.  
Konia, being also over and  
across portions of Lots 1A-1  
and 1A-2 of Pineapple Hill  
Estates (Large-Lot) Subdivision;
6. Thence along the northwesterly side of Honoapiilani Highway  
(F.A.P. No. RF-030-1(3)) on a  
curve to the left with the point  
of curvature azimuth from the  
radial point being:  
  
136° 51' 28", and the point of  
tangency azimuth from the  
radial point being:  
  
136° 10' 26", having a radius  
of 7,120.23 feet, the chord  
azimuth and distance being:  
  
46° 30' 57" 84.99 feet;
7. 90° 57' 48" 140.96 feet over and across a portion  
of R.P. 1663, Apana 1, L.C.  
Aw. 5524, Apana 1 to L.  
Konia, being also over and  
across portions of Lots 1A-2  
and 1A-1 of Pineapple Hill  
Estates (Large-Lot) Subdivision;
8. 45° 10' 46" 50.55 feet over and across a portion  
of R.P. 1663, Apana 1, L.C.  
Aw. 5524, Apana 1 to L.

Konia, being also over and across a portion of Lot 1A-1 of Pineapple Hill Estates (Large-Lot) Subdivision;

9. 0° 48' 08" 203.05 feet over and across a portion of R.P. 1663, Apana 1, L.C. Aw. 5524, Apana 1 to L. Konia, being also over and across a portion of Lots 1A-1 and 1A-2 of Pineapple Hill Estates (Large-Lot) Subdivision to the point of beginning and containing an Area of 22,642 square feet or 0.520 acre, more or less.

c. A Restriction of Vehicular Access Rights along Honoapiilani Highway (F.A.P. No. RF-030-1(3)).

11. AS TO LOT 2: Designation of Easement "E-9" (area 45 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.

12. AS TO LOT 4:

a. Designation of Easement "E" (area 2,196 square feet), for waterline purposes, as shown on File Plan No. 2280, in favor of Kapalua Water Company, Ltd.

b. Designation of Easement "E-8" (area 43 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.

13. AS TO LOT 5: Designation of Easement "E-7" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.

14. AS TO LOT 6:

a. Designation of Easement "F" (area 1,825 square feet), for drainline purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.



b. Designation of Easement "L-7" (area 6,983 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.

15. AS TO LOT 7: Designation of Easement "L-6" (area 3,955 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
16. AS TO LOTS 7 AND 8: Designation of Easement "L-5" (area 6,987 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
17. AS TO LOTS 8 AND 9: Designation of Easement "L-4" (area 7,372 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
18. AS TO LOT 10: Designation of Easement "E-3" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
19. AS TO LOT 13: Designation of Easement "E-2" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
20. AS TO LOTS 10 TO 13, INCLUSIVE: Designation of Easement "L-1" (area 17,747 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
21. AS TO LOTS 14 TO 18, INCLUSIVE: Designation of Easement "L-2" (area 26,730 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
22. AS TO LOT 15: Designation of Easement "E-5" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
23. AS TO LOTS 16 AND 17: Designation of Easement "A" (area 6,001 square feet), for utility purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association, Kapalua Water Company Ltd. and Kapalua Waste Treatment Company Ltd.
24. AS TO LOT 18: Designation of Easement "E-4" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric

Company, Ltd.

25. AS TO LOTS 19 TO 23, INCLUSIVE: Designation of Easement "L-3" (area 21,904 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
26. AS TO LOTS 20 AND 21: Designation of Easement "B" (area 5,871 square feet), for utility purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association, Kapalua Water Company Ltd. and Kapalua Waste Treatment Company Ltd.
27. AS TO LOT 24: Designation of EASEMENT "E-1" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
28. AS TO LOTS 24, 25 AND 34: Designation of Easement "L-8" (area 10,608 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
29. AS TO LOTS 25 AND 26: Designation of Easement "L-9" (area 7,229 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
30. AS TO LOT 26: Designation of Easement "E-6" (area 43 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
31. AS TO LOTS 26 AND 27: Designation of Easement "L-10" (area 5,448 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
32. AS TO LOT 27: Designation of Easement "L-11" (area 6,825 square feet), for landscaping and maintenance purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association.
33. AS TO LOT 28: Designation of Easement "E-10" (area 43 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.
34. AS TO LOT 31: Designation of Easement "C" (area 1,310 square feet), for sewerline purposes, as shown on File Plan No. 2280, in favor of Kapalua Waste Treatment Company, Ltd.

35. AS TO LOT 32:

a. Designation of Easement "D" (area 1,111 square feet), for construction access purposes, as shown on File Plan No. 2280, in favor of Kapalua Land Company, Ltd.

b. Designation of Easement "E-11" (area 42 square feet), for electrical purposes, as shown on File Plan No. 2280, in favor of Maui Electric Company, Ltd.

36. AS TO LOT 34: Restriction of rights of vehicle access into and from Honoapiilani Highway, as shown on File Plan No. 2280.

37. AS TO LOTS 33 TO 39, INCLUSIVE: Designation of Easement "G" (area 160,848 square feet), for utility purposes, as shown on File Plan No. 2280, in favor of Pineapple Hill at Kapalua Owners' Association, Kapalua Waste Treatment Company, Ltd., Kapalua Water Company, Ltd., GTE Hawaiian Telephone Company, Ltd., Maui Electric Company, Ltd. and Hawaiian Cablevision Company.

END OF EXHIBIT "A"

## EXHIBIT "B"

## PINEAPPLE HILL AT KAPALUA, PHASE 1

LOT #	AREA (SQ. FT.)	FINISHED ELEVATION	MODEL TYPE*
1	12,757	311 FEET	7, 8, 12 (ONE STORY)
2	11,850	315 FEET	7, 8, 9, 10, 11, 12
3	11,047	317 FEET	7, 8, 9, 10, 11, 12
5-A	20,478	321 FEET	7, 8, 9, 10, 11, 12
6	10,050	321 FEET	7, 8, 9, 10, 11, 12
7	10,987	319 FEET	7, 8, 9, 10, 11, 12
8	11,878	317 FEET	7, 8, 9, 10, 11, 12
9	12,269	313 FEET	7, 8, 9, 10, 11, 12
10	13,409	311 FEET	7, 8, 12 (ONE STORY)
11	13,387	281 FEET	7, 8, 12 (ONE STORY)
12	12,283	283 FEET	7, 8, 9, 10, 11, 12
13	12,145	285 FEET	7, 8, 9, 10, 11, 12
14	11,134	289 FEET	7, 8, 9, 10, 11, 12
15	14,823	291 FEET	7, 8, 12 (ONE STORY)
16	12,482	279 FEET	7, 8, 12 (ONE STORY)
17	11,050	275 FEET	7, 8, 9, 10, 11, 12
18	10,884	273 FEET	7, 8, 9, 10, 11, 12
19	10,678	271 FEET	7, 8, 9, 10, 11, 12
20	10,217	267 FEET	7, 8, 9, 10, 11, 12
21	9,486	265 FEET	7, 8, 9, 10, 11, 12
22	9,606	263 FEET	7, 8, 9, 10, 11, 12
23	10,125	261 FEET	7, 8, 9, 10, 11, 12
24	10,286	259 FEET	7, 8, 9, 10, 11, 12
25	10,594	257 FEET	7, 8, 9, 10, 11, 12
26	10,371	255 FEET	7, 8, 9, 10, 11, 12
27	9,825	253 FEET	7, 8, 9, 10, 11, 12
28	9,881	251 FEET	7, 8, 9, 10, 11, 12

LOT #	AREA (SQ. FT.)	FINISHED ELEVATION	MODEL TYPE *
29	10,358	251 FEET	7, 8, 9, 10, 11, 12
30	15,574	249 FEET	7, 8, 12 (ONE STORY)
31	18,163	231 FEET	7, 8, 12 (ONE STORY)
32	10,449	233 FEET	7, 8, 9, 10, 11, 12
33	11,053	235 FEET	7, 8, 9, 10, 11, 12
34	10,133	237 FEET	7, 8, 9, 10, 11, 12
35	11,337	237 FEET	7, 8, 12 (ONE STORY)
36	13,382	209 FEET	7, 8, 12 (ONE STORY)
37	14,420	209 FEET	7, 8, 9, 10, 11, 12
38	15,764	209 FEET	7, 8, 9, 10, 11, 12
39	12,523	207 FEET	7, 8, 9, 10, 11, 12
40	9,998	207 FEET	7, 8, 9, 10, 11, 12
41	11,640	205 FEET	7, 8, 9, 10, 11, 12
42	15,074	203 FEET	7, 8, 12 (ONE STORY)
43	26,842	179 FEET	CUSTOM HOME
44	11,389	179 FEET	7, 8, 9, 10, 11, 12
45	11,202	181 FEET	7, 8, 9, 10, 11, 12
46	10,484	181 FEET	7, 8, 9, 10, 11, 12
47	12,939	181 FEET	7, 8, 9, 10, 11, 12
48	10,974	183 FEET	7, 8, 9, 10, 11, 12
49	11,383	183 FEET	7, 8, 9, 10, 11, 12
50	13,102	185 FEET	7, 8, 9, 10, 11, 12
51	16,455	189 FEET	7, 8, 12 (ONE STORY)
52	15,169	195 FEET	1, 2, 6 (ONE STORY)
53	11,524	195 FEET	1, 2, 3, 4, 5, 6
54	10,194	193 FEET	1, 2, 3, 4, 5, 6
55	9,435	193 FEET	1, 2, 3, 4, 5, 6
56	8,925	191 FEET	1, 2, 3, 4, 5, 6
57	8,776	191 FEET	1, 2, 3, 4, 5, 6

\*See Kapalua Land Company for specific model plans, which are incorporated herein by reference.

\*\* Elevations shown are feet above mean sea level. Finish Grade Elevations are for the buildable portions of Lots.

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LOT #	AREA (SQ. FT.)	FINISHED ELEVATION	MODEL TYPE*
58	8,788	189 FEET	1, 2, 6 (ONE STORY)
59	9,059	215 FEET	1, 2, 6 (ONE STORY)
60	9,468	217 FEET	1, 2, 3, 4, 5, 6
61	9,539	219 FEET	1, 2, 3, 4, 5, 6
62	9,500	221 FEET	1, 2, 3, 4, 5, 6
63	9,824	221 FEET	1, 2, 3, 4, 5, 6
64	9,547	223 FEET	1, 2, 3, 4, 5, 6
65	9,331	223 FEET	1, 2, 3, 4, 5, 6
66	9,726	225 FEET	1, 2, 3, 4, 5, 6
67	10,616	227 FEET	1, 2, 3, 4, 5, 6
68	11,644	229 FEET	1, 2, 3, 4, 5, 6
69	12,014	231 FEET	1, 2, 6 (ONE STORY)
70	13,258	259 FEET	1, 2, 6 (ONE STORY)
71	10,272	257 FEET	1, 2, 3, 4, 5, 6
72	10,541	255 FEET	1, 2, 3, 4, 5, 6
73	10,724	253 FEET	1, 2, 3, 4, 5, 6
74	10,002	251 FEET	1, 2, 3, 4, 5, 6
75	10,576	249 FEET	1, 2, 3, 4, 5, 6
76	10,174	245 FEET	1, 2, 3, 4, 5, 6
77	10,058	243 FEET	1, 2, 3, 4, 5, 6
78	11,702	243 FEET	1, 2, 3, 4, 5, 6
79	13,032	245 FEET	1, 2, 3, 4, 5, 6
80	9,718	247 FEET	1, 2, 3, 4, 5, 6
81	9,899	247 FEET	1, 2, 3, 4, 5, 6
82	10,701	245 FEET	1, 2, 3, 4, 5, 6
83	11,340	243 FEET	1, 2, 3, 4, 5, 6
84	12,521	239 FEET	1, 2, 3, 4, 5, 6
85	10,923	237 FEET	1, 2, 3, 4, 5, 6
86	10,547	233 FEET	1, 2, 3, 4, 5, 6

\*See Kapalua Land Company for specific model plans, which are incorporated herein by reference.

\*\* Elevations shown are feet above mean sea level. Finish Grade Elevations are for the buildable portions of Lots.

LOT #	AREA (SQ. FT.)	FINISHED ELEVATION	MODEL TYPE *
87	10,930	231 FEET	1, 2, 3, 4, 5, 6
88	10,315	227 FEET	1, 2, 3, 4, 5, 6
89	9,840	226 FEET	1, 2, 3, 4, 5, 6
90-A	35,115	225 FEET	1, 2, 3, 4, 5, 6
92	15,441	271 FEET	1, 2, 6 (ONE STORY)
93	9,719	271 FEET	1, 2, 3, 4, 5, 6
94	9,963	273 FEET	1, 2, 3, 4, 5, 6
95	11,920	277 FEET	1, 2, 3, 4, 5, 6
96	10,429	281 FEET	1, 2, 3, 4, 5, 6
97	10,146	283 FEET	1, 2, 3, 4, 5, 6
98	11,508	287 FEET	1, 2, 3, 4, 5, 6
99	13,646	291 FEET	1, 2, 6 (ONE STORY)

PINEAPPLE HILL AT KAPALUA, PHASE 2

LOT #	AREA (SQ. FT.)	FINISHED GRADE ELEVATION**	MAXIMUM FINISHED BUILDING RIDGE ELEVATION**
1	20,541	171 FEET	196 FEET (ONE STORY)
2	21,042	172 FEET	197 FEET (ONE STORY)
3	20,492	170 FEET	195 FEET (ONE STORY)
4	20,564	170 FEET	195 FEET (ONE STORY)
5	25,374	171 FEET	196 FEET (ONE STORY)
6	20,485	181 FEET	206 FEET (ONE STORY)
7	21,205	192 FEET	217 FEET (ONE STORY)
8	23,479	212 FEET	237 FEET (ONE STORY)
9	24,390	232 FEET	262 FEET (TWO STORY)
10	22,799	234 FEET	264 FEET (TWO STORY)
11	20,797	234 FEET	264 FEET (TWO STORY)

\*See Kapalua Land Company for specific model plans, which are incorporated herein by reference

\*\* Elevations shown are feet above mean sea level. Finish Grade Elevations are for the buildable portions of Lots.

LOT #	AREA (SQ. FT.)	FINISHED GRADE ELEVATION**	MAXIMUM FINISHED BUILDING RIDGE ELEVATION**
12	19,409	234 FEET	264 FEET (TWO STORY)
13	19,072	234 FEET	264 FEET (TWO STORY)
14	20,452	214 FEET	239 FEET (ONE STORY)
15	19,508	214 FEET	239 FEET (ONE STORY)
16	19,508	214 FEET	239 FEET (ONE STORY)
17	20,632	214 FEET	239 FEET (ONE STORY)
18	19,225	214 FEET	239 FEET (ONE STORY)
19	20,082	194 FEET	219 FEET (ONE STORY)
20	20,655	194 FEET	219 FEET (ONE STORY)
21	20,334	193 FEET	218 FEET (ONE STORY)
22	19,460	192.5 FEET	217.5 FEET (ONE STORY)
23	19,898	191 FEET	216 FEET (ONE STORY)
24	25,008	229 FEET	259 FEET (TWO STORY)
25	20,749	210 FEET	235 FEET (ONE STORY)
26	20,036	192 FEET	217 FEET (ONE STORY)
27	24,580	178.5 FEET	203.5 FEET (ONE STORY)
28	20,406	168 FEET	193 FEET (ONE STORY)
29	20,982	164 FEET	189 FEET (ONE STORY)
30	21,012	156 FEET	181 FEET (ONE STORY)
31	25,227	148 FEET	173 FEET (ONE STORY)

\*See Kapalua Land Company for specific model plans, which are incorporated herein by reference.

\*\* Elevations shown are feet above mean sea level. Finish Grade Elevations are for the buildable portions of Lots.

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## ASSOCIATION RULES OF PINEAPPLE HILL AT KAPALUA

These rules are intended to promote harmonious living, to protect all owners, residents, guests and invitees from annoyance and nuisance caused by improper use of Pineapple Hill at Kapalua (hereinafter referred to as the "Residential Property"), and to protect the value, reputation and desirability of the Property. The cooperation of all owners, residents, guests and invitees is required to achieve this goal.

These rules may be amended by the Board of Directors of the Pineapple Hill at Kapalua Association (the Board of Directors being referred to hereinafter as the "Board" and the Pineapple Hill at Kapalua Association being referred to hereinafter as the "Association") as provided in the Bylaws of the Association. Certain sections in these Rules have been taken either in whole or in part from the Bylaws of the Association.

The full authority and responsibility of enforcing these rules may be delegated by the Board to the Managing Agent and/or Resident Manager. All persons on the premises, whether as owners, residents, guests or invitees, shall be bound by these rules and standards of reasonable conduct.

Violation of these Association Rules will empower the Board, the Managing Agent, the Resident Manager and their agents to:

1. Enter the Lot in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; and/or
2. Enjoin, abate or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such breach, and all costs thereof, including attorney's fees, shall be borne by the defaulting Lot Owner.

### I. DEFINITIONS:

- A. "Owner" or "Lot Owner" means a person owning a Lot or as co-tenant of a Lot an undivided interest in the common areas; provided that to such extent and for such purposes, including exercise of voting rights, as shall be provided by agreement of sale or lease registered under HRS Chapter 501 and/or recorded under HRS Chapter 502, a vendee under an agreement of sale or lessee or sub-lessee of a Lot or interest therein shall

be deemed to be the Owner of such Lot.

- B. "Resident" means any person, including an owner, lawfully occupying a residence for any period of time, including, but not limited to, any person occupying a residence pursuant to the terms of a written or oral sublease.
- C. "Guest" means any person on the premises pursuant to the invitation of a resident.
- D. "Invitee" means any tradesman including contractors and sub-contractors authorized to be on the premises by a resident.
- E. "Person" means an individual, firm, corporation, partnership or other legal entity.
- F. "Adult" means any resident over 18 years of age.
- G. "Property" or "premises" means the entire Pineapple Hill at Kapalua project, consisting of Lots and common areas.
- H. "Common Areas" is defined in Section C.6 of the Declaration and means Lot 100 and includes among other items, roadways, pavements, walkways (except within a Lot), all landscaping (except within a Lot not part of an easement in favor of the Association), manager's house, tennis courts, swimming pool, recreation areas, maintenance area, trash areas as well as common utility facilities.

## II. USE

- A. Lots and houses built on Lots shall be used only for residential purposes and shall not be used for any gainful occupation, profession or trade or other non-residential purposes.
- B. No Lot Owner shall enter into any rental pool with other Lot Owners nor enter into any Time Sharing plans (as defined in Chapter 514E, Hawaii Revised Statutes, as may be amended from time to time).
- C. The Lot Owners shall have the right to rent or lease their residences subject to the limitations as set forth in the Declaration or Bylaws of Pineapple Hill at Kapalua. No Owner shall rent their residence more than



one (1) time per month and for not less than seven (7) days. Rentals shall be strictly for residential purposes only.

### III. OCCUPANCY

- A. No more than one (1) family or more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) shall occupy a residence. The term "family" shall mean one or more persons, all related by blood, adoption or marriage. Notwithstanding the foregoing, in no event may the number of occupants in any one residence exceed the maximum number of occupants permitted by any applicable regulations of the Hawaii Board of Health or any other governmental agency.
- B. All persons, including Lot Owners, occupying a residence for more than five (5) consecutive days must register with the Reception Office at or before the time that such occupancy commences. Registration shall consist of completion of a registration form with such information as may be required by the Board from time to time. Lot Owners are responsible for the registration of the occupants in their residences.
- C. Lot Owners shall be responsible for the conduct of all persons residing in or visiting their residences. If the Lot Owner is unable to control the conduct of such persons and/or their guests so as to conform with the intent and meaning of the provisions of the Declaration, the Bylaws, or these Association Rules, such owner shall, upon the written request of the Board of Directors, Managing Agent or Resident Manager, immediately initiate all such action as may lawfully be taken, including but not limited to the initiation of legal action, to remove such persons from the premises without compensation for lost rentals or other damages resulting therefrom.

### IV. PETS

- A. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, except dogs, cats, birds and other common household pets of such kind as shall be determined by the Board to be allowed on the Property.

- B. All residents must register their pets with the Managing Agent within five (5) days of their arrival at the Property. Any person failing to register a pet may be required by the Board to remove such pet from the property upon written notice.
- C. No pets shall be allowed in common areas including roads, recreational or landscaped areas of the Property.
- D. A resident with a pet shall be responsible for any and all actions of such pet including but not limited to cleaning up after the pet and for any damage caused by the pet. The Lot Owner shall be responsible for any such damage if not paid for by a tenant in the case of a rental property.
- E. Any pet which causes a nuisance or a disturbance shall, upon written notice by the Board or the Managing Agent, be immediately and permanently removed from the Project by the person keeping such pet and/or the Managing Agent, the Resident Manager, or their agent. Any cost involved in boarding the pet shall be paid by the person keeping such pet.
- F. No visiting pets are permitted.

#### V. GENERAL RULES

- A. The Resident Manager shall not be required to provide access to residences for delivery service, tradesmen or other invitees. A key may be left with security if a signed authorization form has been filed with the office.
- B. All refuse or debris must be placed in garbage bags and kept in covered containers in the trash enclosure for the residence or taken to the dumpster at the service entrance to the Property. In no event shall such containers be maintained so as to be visible from neighboring Lots, roads or common property. Large boxes, moving, packing, crating refuse and construction material must be taken to the dumpster. Trash and/or trash bags must be out of view from the street at all times. The Board may arrange for pick up service from each residence on a schedule to be determined by the Board.
- C. No Owner or occupant of a residence shall post any "For Sale" signs or other realty sign, advertisement, sign, bill poster, or any other sign on or

about the residential Property, including any magnetic signs on vehicles which are clearly visible from the outside. The Board of Directors shall establish rules for Open House procedures to include provisions for temporary signs, open house hours, conduct of real estate brokers and invitees and any other requirements the Board feels necessary to promote the harmonious environment of Pineapple Hill at Kapalua, but not to encumber the efforts of those Owners attempting to market their property. Rules and regulations established by the Board of Directors shall include any provisions as allowed under the Declaration of Covenants, Conditions & Restrictions of this property, the KRA Covenants and those established by the Developer.

- D. No solicitation or canvassing will be allowed within the Property without written permission from the Board, except for newspaper delivery personnel.
- E. Maintenance fees and other assessments are due on the 1st of each month. A late charge of \$100.00 shall be assessed on all maintenance fees not received by the 10th of each month. In addition, interest shall be charged on the outstanding balance until paid at the rate specified in the Bylaws. The Managing Agent is instructed by the Board to refer all delinquencies of ninety (90) or more days to the Association's attorney for appropriate action. In such cases, the delinquent owners are responsible for the payment of attorney's fees and costs as well as the late charges and interest.
- F. All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other Owners or occupants.
- G. No Owner or occupant, except as otherwise permitted by this Declaration, shall install or cause to be installed any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the house or protruding through the walls, windows, or roof thereof.
- H. Nothing shall be allowed, done, or kept in any house or common areas which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

- I. No Owner or occupant shall keep on his Lot any campers, recreational vehicles, commercial vehicles, vehicles with signs or insignia painted on or visible from the outside, boats, and other similar vehicles, except in an enclosed garage facility for that purpose. In addition, no commercial vehicles of any nature are permitted to park in the Property overnight.
- J. No motorcycles, motor scooters, mopeds, golf carts (except those owned or authorized by the Association), motorized bicycles or any form of the foregoing shall be permitted anywhere on the Property at anytime.
- K. There shall be no camping on any Lot.
- L. No outside clotheslines or other outside clothes drying or airing facilities shall be maintained upon any Lot.

#### VI. RECREATIONAL FACILITIES;

##### A. General Rules

- 1. Use of all recreational facilities shall be limited to residents and their guests. Residents must notify their guests that there are no attendants provided by the Association and that persons using the swimming pool and tennis courts do so at their own risks.
- 2. The recreational facilities may be used during such hours as shall from time to time be determined and posted by the Board.
- 3. There shall be no running, jumping, shouting, ball playing or any loud or boisterous behavior of any kind in the recreational areas. Persons engaged in these activities or any other form of conduct deemed unacceptable by security or the Resident Manager shall be required to leave the facility. Lot Owners shall be responsible for the conduct of and adherence to the rules by their guests.
- 4. Pets are not allowed in the recreational areas at any time.
- 5. No radios, stereos or other audio equipment or devices shall be allowed in the recreation area unless used with earphones or similar sound restricting device.

##### B. Party Pavilion

1. The facility shall be under the immediate supervision of the Resident Manager and/or Managing Agent. Hours of use shall be 8:00 a.m. to 10:00 p.m.
2. The facility shall not be used for profit making purposes or commercial activity.
3. Private parties, meetings and other similar functions shall be allowed. Reservations may be made with the office provided that no reservations may be made on the day preceding nor the day of the following legal holidays: New Year's Day, Thanksgiving Day and Christmas Day. Reservations will not be accepted more than two (2) months prior to the requested date. Owners are responsible for any damage to the facility and for compliance with all rules and regulations. If necessary, the Association will bill Owners for any damage to the facility or extra cleaning required after its use. Only Owners may make reservations for private parties, meetings or other functions. An Owner must be present at all functions.
4. No furniture is to be removed from the pavilion building.
5. Decoration of the pavilion and/or pool area shall be subject to approval by the Resident Manager prior to the date of the function. The party sponsor must remove decorations and clean the pavilion and/or pool area by 11:00 a.m. the day following the event.

C. Swimming Pool

1. Swimming pool hours shall be from 8:00 a.m. to 9:00 p.m. and there shall be no swimming while the pool is being cleaned.
2. Children under the age of 14 shall not be permitted in the swimming pool or swimming pool area unless accompanied by a responsible adult resident.
3. Bathers must shower before entering the swimming pool.
4. No flotation gear or toys are permitted in the swimming pool or swimming pool area. Masks, snorkels and goggles are permitted, but swim fins are not permitted. Flotation gear does not include



safety devices such as water wings or life preserver vests or rings worn by persons who cannot swim or are not strong swimmers.

5. All persons using the swimming pool, including children, shall wear bathing suits. No children wearing diapers shall be allowed in the swimming pool. Hairpins, bobby pins and curlers can clog and mar the pool and must be removed before swimming.
6. The safety equipment of the swimming pool area shall not be used

# **Pineapple Hill at Kapalua**

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The full authority and responsibility of enforcing these rules may be delegated by the Board to the Managing Agent and/or Resident Manager. All persons on the premises, whether as owners, residents, guests or invitees, shall be bound by these rules and standards of reasonable conduct.

Violation of these Association Rules will empower the Board, the Managing Agent, the Resident Manager and their agents to:

1. Enter the Lot in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; and/or
2. Enjoin, abate or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such breach, and all costs thereof, including attorney's fees, shall be borne by the defaulting Lot Owner.

## **I. DEFINITIONS:**

A. "Owner" or "Lot Owner" means a person owning a Lot or as co-tenant of a Lot an undivided interest in the common areas; provided that to such extent and for such purposes, including exercise of voting rights, as shall be provided by agreement of sale or lease registered under HRS Chapter 501 and/or recorded under HRS Chapter 502, a vendee under an agreement of sale or lessee or sub-lessee of a Lot or interest therein shall be deemed to be the Owner of such Lot.

B. "Resident" means any person, including an owner, lawfully occupying a residence for any period of time, including, but not limited to, any person occupying a residence pursuant to the terms of a written or oral sublease.

C. "Guest" means any person on the premises pursuant to the invitation of a resident.

D. "Invitee" means any tradesman including contractors and sub-contractors authorized to be on the premises by a resident.

E. "Person" means an individual, firm, corporation, partnership or other legal entity.

F. "Adult" means any resident over 18 years of age.

G. "Property" or "premises" means the entire Pineapple Hill at Kapalua project, consisting of Lots and common areas.

H. "Common Areas" is defined in Section C.6 of the Declaration and means Lot 100 and includes among other items, roadways, pavements, walkways (except within a Lot), all landscaping (except within a Lot not part of an easement in favor of the Association), manager's house, tennis courts, swimming pool, recreation areas, maintenance area, trash areas as well as common utility facilities.

## II. USE

A. Lots and houses built on Lots shall be used only for residential purposes and shall not be used for any gainful occupation, profession or trade or other non-residential purposes.

B. No Lot Owner shall enter into any rental pool with other Lot Owners nor enter into any Time Sharing plans (as defined in Chapter 514E, Hawaii Revised Statutes, as may be amended from time to time).

### Section II C.

#### C. Rental of Residences.

1. Lot Owners shall have the right to rent or lease their residences subject to the limitations as set forth in the Declaration or Bylaws of Pineapple Hill at Kapalua and other applicable laws. *Each rental or lease period must be for a minimum of seven (7) consecutive days. Each residence is limited to having one rental period begin during any calendar month.*

2\*. A Lot Owner who currently rents or who intends to rent its residence must register its Lot with the Association Office as a Rental Property. *Until the registration process outlined below has been completed, the gate access devices of a Lot Owner who rents its residence will be set in the deactivated mode. A Lot Owner is presumed to have an intent to rent their residence if*

a) *The Lot Owner has solicited in the past twelve (12) months, or is currently soliciting, rentals using any form of media*  
b) *The Lot Owner has engaged the services of a rental property management agent at any time in the past six (6) months*

c) *The Lot Owner has rented its property during the prior twelve (12) months*  
3. *In registering their homes as rental properties, Lot Owners shall provide the name and contact information of at least one agent present on Maui who will represent the owner regarding any issues with, and/or facilitate access for, its respective rental guests.*

4. *At least one week prior to a scheduled occupancy of a rental property, the Lot Owner of the property shall provide the Association Office with a completed Notice of Occupancy of Rental Property form. Upon receipt of the form, the Association Office will arrange to have the gate entry system activated to allow access for the identified occupant upon arrival. For security reasons, in order for the gate entry system to remain activated during the stay, the identified occupant must register at the office by the end of the first business day following their arrival. Office hours are 7:30 AM to 4:30 PM*

5. *Office Registration by an identified occupant will include names of all persons in the identified occupant's group, the location and length of their stay, the identified occupant's status (owner/non-paying guest/renter), the identified occupant's vehicle(s), and the identified occupant's contact information while on Maui.*

6. *The Lot Owner must update its Rental Property registration with the Association before the Association Annual Meeting each year and notify the Association in writing when it ceases to operate its residence as a rental property. The Association will remove the Lot from its registered list of rental properties one year after the last known use of the residence as a Rental Property.*

7. *Non-compliance with these rental property procedures, and any other rules, laws, or provisions of the Declaration or Bylaws of Pineapple Hill applicable to rental properties, will result in the imposition of fines that will range from \$100 to \$3,000 per day. The following schedule applies to violation of the rental frequency rules-*

- i *First violation: Warning letter by certified mail, return receipt required*
- ii. *\$1000 per day for each violation within any monthly period*
- iii. *\$2000 per day for each violation during any subsequent period*
- iv. *\$3000 per day for violations during any subsequent period (after the \$2000 fines were imposed)*

### III. OCCUPANCY

A. No more than one (1) family or more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) shall occupy a residence. The term "family" shall mean one or more persons, all related by blood, adoption or marriage. Notwithstanding the foregoing, in no event may the number of occupants in any one residence exceed the maximum number of occupants permitted by any applicable regulations of the Hawaii Board of Health or any other governmental agency.

B. Lot Owners shall be responsible for the conduct of all persons residing in or visiting their residences. If the Lot Owner is unable to control the conduct of such persons and/or their guests so as to conform with the intent and meaning of the provisions of the Declaration, the Bylaws, or these Association Rules, such owner shall, upon the written request of the Board of Directors, Managing Agent or Resident Manager, immediately initiate all such action as may lawfully be taken, including but not limited to the initiation of legal action, to remove such persons from the premises without compensation for lost rentals or other damages resulting there from.

### IV. PETS

A. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, except dogs, cats, birds and other common household pets of such kind as shall be determined by the Board to be allowed on the Property.

B. No pets shall be allowed in common areas including roads, recreational or landscaped areas of the Property.

C. A resident with a pet shall be responsible for any and all actions of such pet including but not limited to cleaning up after the pet and for any damage caused by the pet. The Lot Owner shall be responsible for any such damage if not paid for by a tenant in the case of a rental property.

D. Any pet which causes a nuisance or a disturbance shall, upon written notice by the Board or the Managing Agent, be immediately and permanently removed from the Project by the person keeping such pet and/or the Managing Agent, the Resident Manager, or their agent. Any cost involved in boarding the pet shall be paid by the person keeping such pet.

E. No visiting pets are permitted.

### V. GENERAL RULES

A. The Resident Manager shall not be required to provide access to residences for delivery service, tradesmen or other invitees. A key may be left with security if a signed authorization form has been filed with the office.

B. All refuse or debris must be placed in garbage bags and kept in covered containers in the trash enclosure for the residence or taken to the dumpster at the service entrance to the Property. In no event shall such containers be maintained so as to be visible from neighboring Lots, roads or common property. Large boxes, moving, packing, crating refuse and construction material must be taken to the dumpster. Trash and/or trash bags must be out of view from the street at all times. The Board may arrange for pick up service from each residence on a schedule to be determined by the Board.



C. No Owner or occupant of a residence shall post any "For Sale" signs or other realty sign, advertisement, sign, bill poster, or any other sign on or about the residential Property, including any magnetic signs on vehicles which are clearly visible from the outside. The Board of Directors shall establish rules for Open House procedures to include provisions for temporary signs, open house hours, conduct of real estate brokers and invitees and any other requirements the Board feels necessary to promote the harmonious environment of Pineapple Hill at Kapalua, but not to encumber the efforts of those Owners attempting to market their property. Rules and regulations established by the Board of Directors shall include any provisions as allowed under the Declaration of Covenants, Conditions & Restrictions of this property, the KRA Covenants and those established by the Developer.

D. No solicitation or canvassing will be allowed within the Property without written permission from the Board, except for newspaper delivery personnel.

E. Maintenance fees and other assessments are due on the 1st of each month. A late charge of \$100.00 shall be assessed on all maintenance fees not received by the 10th of each month. In addition, interest shall be charged on the outstanding balance until paid at the rate specified in the Bylaws. The Managing Agent is instructed by the Board to refer all delinquencies of ninety (90) or more days to the Association's attorney for appropriate action. In such cases, the delinquent owners are responsible for the payment of attorney's fees and costs as well as the late charges and interest.

F. All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other Owners or occupants.

G. No Owner or occupant, except as otherwise permitted by this Declaration, shall install or cause to be installed any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the house or protruding through the walls, windows, or roof thereof.

H. Nothing shall be allowed, done, or kept in any house or common areas which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

I. No Owner or occupant shall keep on his Lot any campers, recreational vehicles, commercial vehicles, vehicles with signs or insignia painted on or visible from the outside, boats, and other similar vehicles, except in an enclosed garage facility for that purpose. In addition, no commercial vehicles of any nature are permitted to park in the Property overnight.

J. No motorcycles, motor scooters, mopeds, motorized bicycles or any form of the foregoing shall be permitted anywhere on the Property at anytime.

K. There shall be no camping on any Lot.

L. No outside clotheslines or other outside clothes drying or airing facilities shall be maintained upon any Lot.

**M. For Parking, Commercial Activity, and Noise Violations**

Owners that park commercial vehicles on the project or conduct commercial activities as defined by the CC&R will be fined. Also noise complaint's that result in the calling of security or the police and substantiated by least two owners will be fined. Following a first warning the fine will be \$100.00 for the next occurrence and \$500.00 for each additional occurrence.(2010)

## VI. RECREATIONAL FACILITIES;

### A. General Rules

1. Use of all recreational facilities shall be limited to residents and their guests. Residents must notify their guests that there are no attendants provided by the Association and that persons using the swimming pool and tennis courts do so at their own risks.
2. The recreational facilities may be used during such hours as shall from time to time be determined and posted by the Board.
3. There shall be no running, jumping, shouting, ball playing or any loud or boisterous behavior of any kind in the recreational areas. Persons engaged in these activities or any other form of conduct deemed unacceptable by security or the Resident Manager shall be required to leave the facility. Lot Owners shall be responsible for the conduct of and adherence to the rules by their guests.
4. Pets are not allowed in the recreational areas at any time.
5. No radios, stereos or other audio equipment or devices shall be allowed in the recreation area unless used with earphones or similar sound restricting device.

### B. Party Pavilion

1. The facility shall be under the immediate supervision of the Resident Manager and/or Managing Agent. Hours of use shall be 8:00 a.m. to 10:00 p.m.
2. The facility shall not be used for profit making purposes or commercial activity.
3. Private parties, meetings and other similar functions shall be allowed. Reservations may be made with the office. Party Pavilion may be used on Holidays, with preference to all community events. Reservations will not be accepted more than two (2) months prior to the requested date. *\* A \$500 deposit will be required for any events held where more than twenty people are expected to attend. If the pavilion is returned in the same condition as before the event, the deposit will be immediately returned or voided.*
4. Owners are responsible for any damage to the facility and for compliance with all rules and regulations. If necessary, the Association will bill Owners for any damage to the facility or extra cleaning required after its use. Only Owners may make reservations for private parties, meetings or other functions. An Owner must be present at all functions.
5. No furniture is to be removed from the pavilion building.
6. Decoration of the pavilion and/or pool area shall be subject to approval by the Resident Manager prior to the date of the function. The party sponsor must remove decorations and clean the pavilion and/or pool area by 11:00 a.m. the day following the event.

### C. Swimming Pool

1. Swimming pool hours shall be from 8:00 a.m. to 9:00 p.m. and there shall be no swimming while the pool is being cleaned.

2. Children under the age of 14 shall not be permitted in the swimming pool or swimming pool area unless accompanied by a responsible adult resident.

3. Bathers must shower before entering the swimming pool.

4. No flotation gear or toys are permitted in the swimming pool or swimming pool area. Masks, snorkels and goggles are permitted, but swim fins are not permitted. Flotation gear does not include safety devices such as water wings or life preserver vests or rings worn by persons who cannot swim or are not strong swimmers.

5. All persons using the swimming pool, including children, shall wear bathing suits. No children wearing diapers shall be allowed in the swimming pool. Hairpins, bobby pins and curlers can clog and mar the pool and must be removed before swimming.

6. The safety equipment of the swimming pool area shall not be used for any purpose other than for its intended use.

7. Pool furniture shall not be removed from the swimming pool area. Standing or walking on pool furniture is prohibited.

8. Glassware and other breakable items are prohibited from the pool area. However, non-breakable containers are permitted four (4) or more feet from the swimming pool.

9. No one shall interfere in any manner with the swimming pool apparatus or plumbing devices.

10. No person with a bandage or open wound of any type may use the swimming pool.

11. No lifeguard will be on duty. Persons using the swimming pool do so at their own risk.

12. All suntan oil and creams must be removed from the body and swimming attire before entering the swimming pool.

13. No "horseplay" is allowed in the swimming pool area.

14. The swimming pool and recreation areas intended for the use of residents/Owners and guests will be permitted only to the extent that residents are not inconvenienced.

15. Residents and guests shall keep the area clean and free of litter.

#### D. Tennis Courts

1. Hours of play shall be from 8:00 a.m. to dark.

2. Use of the court will be on a first come, first served basis.

3. Only non-marring tennis shoes will be permitted on the tennis courts.

4. The tennis courts may be used for playing tennis only.

5. Children under the age of 14 may not use the tennis courts unless accompanied by a responsible adult resident.

6. All persons using the tennis courts do so at their own risk.

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#### E. Parking and Miscellaneous Vehicles

1. Vehicles must be parked in marked stalls, if parked on roads or other common property.
2. Vehicles which are parked in violation of parking regulations will be towed away at the vehicle owner's expense.
3. The use of skates and/or skateboards and playing on the roads is prohibited. Surfboards and bicycles must be stored out of view from any other Lot, road or Common Property.
4. The speed limit on all roads shall not exceed 10 MPH. Non-motorized bicyclists shall follow standard traffic rules at all times.
5. *Parking spaces on streets are intended for guest use, not regular owner use.*

\*copy in italics are changes that have been made in 2013.



**Specific Rules for**  
**Pool Service Personnel at Pineapple Hill**

- Working hours are from **7:30 am until 5:00 pm**, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
- There is **no** working at Pineapple Hill on Saturday and Sunday or identified National Holidays.
- There will be no operation of machinery or pool equipment like vacuums etc. or back-washing before **8:00am** on any day.
- When back washing or emptying of a pool or spa, the water must go into the stone swales or a Pineapple Hill HOA approved drainage area. If you are unsure of the location for the property (ies), please contact the office.
- There is no leaving or discarding items or wrappings in the common area landscaping at any time.
- There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
- There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
- The speed limit within Pineapple Hill is 10 mph and will be enforced. Please slow down.
- At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. **There are cameras at the gates and refuge area – We are watching.**
- Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
- Radio or any sound devices are not to be used except with headphones, ear buds or something similar.
- No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
- Profane language will not be tolerated.
- Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
- There is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**



**Name of Owner(s):** \_\_\_\_\_

## Violations and Penalties

All Rules mentioned here, and any other infractions considered worthy of a fine by the Pineapple Hill Homeowners Association will be enforced as follows:

**1<sup>st</sup> Offense: Written warning to Owner and Company**

**2nd Offense: \$100.00 fine to the Company**

**3<sup>rd</sup> Offense: \$500.00 fine to the Company**

**4<sup>th</sup> and additional Offenses: \$1000.00 fine to the Company**

**Gate card to be permanently deactivated at the discretion of the Pineapple Hill Board of Directors**

If fines are not paid within 30 days from the date of the violation, gate cards will be deactivated until payment is received.

**Name:** \_\_\_\_\_ **email:** \_\_\_\_\_ **Phone#:** \_\_\_\_\_

I have read and agree to the Rules and Penalties as stated in this document:

Name - Please Print	Make of Vehicle	color	Lic. Plate #
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Company Name - Please Print \_\_\_\_\_

**Other Employees covered by these Rules:**

name	Make of Vehicle	color	Lic. Plate #
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<b>name</b>	<b>Make of Vehicle</b>	<b>color</b>	<b>Lic.Plates #</b>
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**Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave. Thank you.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Swipe Card Issued: 1: \_\_\_\_\_ \*Amount paid (\$10.00 per card): \$ \_\_\_\_\_

2: \_\_\_\_\_ 3: \_\_\_\_\_

**\*\$10.00 a card is refundable upon return of the swipe card in usable condition**



**Specific Rules for**  
**Housecleaning Services at Pineapple Hill**

- Working hours are from **7:30 am until 5:00 pm**, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
  - There will be no operation of outdoor machinery of any kind before **8:00am** on any day.
  - There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
  - Please inform the office of all hired individuals coming into Pineapple Hill if you want the office to let them through the gate. Otherwise, it is up to the primary housecleaner to let them in. Hired individuals must know the address and Owners name to be allowed through the gates. (Under no circumstances will they be allowed to tailgate through the gate.)
  - There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
  - The speed limit within Pineapple Hill is 10 mph and will be enforced. **Please slow down.**
  - At no time will garbage, green waste or any other items **from outside** Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. **Please break down cardboard and place in the cardboard recycling bin.**  
**There are cameras at the gates and refuge area – We are watching.**
  - Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
  - Radio or any sound devices are not to be used except with headphones, ear buds or something similar. Please inform your hired personnel
  - No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
  - Profane language will not be tolerated.
  - Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed at Pineapple Hill.
  - If needed there is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**

Name of Owner(s): \_\_\_\_\_

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Name: \_\_\_\_\_ email: \_\_\_\_\_ Phone#: \_\_\_\_\_

I have read and agree to the Rules and Penalties as stated in this document:

Name - Please Print	Make of Vehicle	color	Lic. Plate #
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Company Name - Please Print

Other Employees covered by these Rules:

name	Make of Vehicle	color	Lic. Plate #
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name	Make of Vehicle	color	Lic. Plate #
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Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave.  
Thank you.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Swipe Card Issued: 1: \_\_\_\_\_ \*Amount paid (\$10.00 per card): \$ \_\_\_\_\_

2: \_\_\_\_\_ 3: \_\_\_\_\_

**\*\$10.00 a card is refundable upon return of the swipe card in usable condition**

Revised on 04.01.15



**Specific Rules for  
Landscaping Crews at Pineapple Hill**

As consideration for the right to access Pineapple Hill the persons or company listed here agree to be bound by the following:

- Working hours are from 7:30 am until 5:00 pm, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be **out of the gate by 5:00 pm**. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later may or may not be approved.
- There is **no** working at Pineapple Hill on Saturday and Sunday or identified National Holidays.
- There will be no operation of machinery of any kind before **8:00am** on any day.
- There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You **must** swipe your card before entering, for our records.
- Landscapers who pull a trailer must take special care driving through Pineapple Hill. Any damage to Pineapple Hill property or landscaping will be the landscaper's responsibility to fix or replace.
- There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
- The speed limit within Pineapple Hill is 10 mph and will be enforced. ***Please slow down.***
- At no time will garbage, green waste or any other items from outside Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. **There are cameras at the gates and refuge area, we are watching.**
- All trees, plants, palm or other cut material must be hauled to the refuse area. Nothing can be left in the landscape easements, common areas or in the gulch between Phase 1 and 2.
- Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters.
- Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over **without** parking on the grass. Absolutely no parking in vacant lots.
- Radio or any sound devices are not to be used except with headphones, ear buds or something similar.
- No Pets are allowed to be brought into Pineapple Hill, even if they are kept inside the bed or the cab of truck or automobile.
- Profane language will not be tolerated.
- Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
- There is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.

☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**

Name of Owner(s): \_\_\_\_\_

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Gate card to be permanently deactivated at the discretion of the Pineapple Hill Board of Directors

**If fines are not paid within 30 days from the date of the violation, gate cards will be deactivated**

until payment is received.

Name: \_\_\_\_\_ email: \_\_\_\_\_ Phone#: \_\_\_\_\_

I have read and agree to the Rules and Penalties as stated in this document:

Name - Please Print	Make of Vehicle	color	Lic. Plate #
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**Company Name - Please Print**

**Other Employees covered by these Rules:**

name	Make of Vehicle	color	Lic. Plate #
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name	Make of Vehicle	color	Lic. Plate #
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Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave. Thank you.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Swipe Card Issued: 1: \_\_\_\_\_ \*Amount paid (\$10.00 per card): \$ \_\_\_\_\_

**2:** \_\_\_\_\_

**3:** \_\_\_\_\_

\*\$10.00 a card is refundable upon return of the swipe card in usable condition

Revised on 04.01.2013





**Specific Rules for**  
**Home Management/Maintenance Companies at Pineapple Hill**

- Working hours are from **7:30 am until 5:00 pm**, Monday – Friday, and are strictly enforced. No one is allowed through the gate before 7:30 am and must be out of the gate by 5:00 pm. If a special occasion arises when these hours need to be adjusted, contact the office (669.4800). It will be evaluated on a must-need basis and ability to come early or stay later, may or may not be approved.
  - There will be no operation of outdoor machinery of any kind before **8:00am** on any day.
  - Please inform the office of all hired contractors coming into Pineapple Hill if you want the office to let them through the gate. Otherwise, it is up to the Home Manager to let them in. (Under **no** circumstances will they be allowed to tailgate through the gate.)
  - There is no tailgating behind cars into Pineapple Hill. This will be strictly enforced. You must wait and swipe the card you are given, for our records.
  - There will be no entering Pineapple Hill through the exit gates. If there are problems with the gates please call the office (669.4800) or dial 000 (3 zeros) on the gate keypad.
  - The speed limit within Pineapple Hill is 10 mph and will be enforced. **Please slow down.**
  - At no time will garbage, green waste or any other items **from outside** Pineapple Hill, be placed into or by the dumpsters or bins at Pineapple Hill. Please, place items in the correct bins. No plastic bags are allowed in the green waste dumpster, empty them first and then throw away in the regular dumpsters. Please break down cardboard and place in the cardboard recycling bin. There are cameras at the gates and refuge area – **We are watching.**
  - Parking will be in designated stalls or whenever possible in appropriate driveways. If you need to park on the street please park as far over without parking on the grass. Absolutely no parking in vacant lots.
  - Radio or any sound devices are not to be used except with headphones, ear buds or something similar. Please inform your contractors.
  - No Pets are allowed to be brought into Pineapple Hill. Even if they are kept inside the bed or the cab of truck or automobile.
  - Profane language will not be tolerated.
  - Motorcycles, mopeds, skateboards, skates and rollerblades are not allowed on property.
  - If needed there is a Portable Toilet located in the refuge area for your use. Please do not use the Pool Pavilion bathrooms.
- ☆ **All Contractors, sub-contractors and service personnel are the responsibility of the home owner, who will be notified in case of any problems mentioned above or at the discretion of the Pineapple Hill HOA Board or Resident Manager.**

Name of Owner(s): \_\_\_\_\_

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Name: \_\_\_\_\_ email: \_\_\_\_\_ Phone#: \_\_\_\_\_

I have read and agree to the Rules and Penalties as stated in this document:

Name - Please Print \_\_\_\_\_ Make of Vehicle \_\_\_\_\_ color \_\_\_\_\_ Lic. Plate # \_\_\_\_\_

Company Name - Please Print \_\_\_\_\_

Other Employees covered by these Rules:

name \_\_\_\_\_ Make of Vehicle \_\_\_\_\_ color \_\_\_\_\_ Lic. Plate # \_\_\_\_\_

name \_\_\_\_\_ Make of Vehicle \_\_\_\_\_ color \_\_\_\_\_ Lic. Plate # \_\_\_\_\_

Any person you have asked to assist you or you have hired to work with you, either for one day or longer, is under the primary business owners' responsibility. Any fineable offense will be payable by the business owner who has signed these rules. Please UPDATE your employee list when they are hired or leave. Thank you.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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Revised on 4.01.201

# *Design Review Deposit and Fine Guidelines*

## *Interior Only Renovations/Repairs: \$50,000 or less*

*No Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Any changes in exterior doors or windows*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Interior Only Renovations/Repairs: Over \$50,000*

*\$1500.00 Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes*
- *Any demolition will require a separate dumpster*
- *Also list what will be replaced including cabinets/appliances/fixtures*
- *Any stone or cement work*
- *Any changes in exterior doors or windows*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations and Repairs: \$50,000 or less*

*DRC will set deposit-if any*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Any changes in exterior doors or windows*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations and Repairs: \$50,000 to \$249,999*

*\$1500.00 Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *Any stone work*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*

## *Exterior Renovations, Repairs and Remodels: Over \$250,000*

*\$5000.00 Deposit*

- *Send the office a list of the changes and/or repairs including any color and material changes.*
- *Any demolition will require a separate dumpster*
- *3 copies of any architectural drawings.*
- *Any stone work*
- *Repainting or changes in paint color*
- *Any landscaping changes, especially planting of trees*
- *Contractor who will be doing the work (for gate access)*
- *Start and finish dates*
- 

*Fines of \$1,000 to \$10,000 may be levied for not getting DRC approval on required projects, or for not completing project as approved.*

## **House Policies**

1. No motorcycles, motor scooters, roller blades or skateboards are permitted inside gates.
2. All Owners and occupants shall exercise extreme care about causing or permitting noise that may disturb other Owners or occupants.
3. "Quiet Time" begins at 9 pm and ends at 8 am. Amplified sounds that are audible beyond the property boundaries of our home are prohibited. We recommend you move any "party" inside the home by 8 pm to avoid any noise problems with our neighbors. In the event the security guard is called out to our home to respond to a complaint by another Owner or occupant due to a violation of either of these rules, a \$1,000 charge shall be deducted from your security deposit for each incident. (This penalty is charged to all Owners by the Homeowners Association for each complaint.
4. All vehicles shall be parked inside the property and shall not be parked on the street.
5. This property is a NON-SMOKING home and smoking is strickly prohibited in the home or near an open windows, or doorways. Any degree of disregard to this condition is subject to a minimum \$500 charge for damages.
6. Guest agrees to abide by all House Rules of the property and the Owner, including, but not limited to, agreeing to cook only in areas designated for cooking and adhering to a no pets allowed policy.
7. Guest shall be liable for all acts of their family, friends, employees, and any other invitees otherwise on the property during the rental period.
8. Guest may not sublet or assign this agreement, nor shall Guest permit any use of the property without the prior approval of the property Owner, including, but not limited to, Swimming Pool, Hot Tub, Tennis Courts, Owner Cabana (where applicable) by other non-registered guest and more especially unsupervised children.
9. Guest understand that there are certain risk inherent to persons and property located near the Ocean, as well as at the Swimming Pool, Hot Tub, Tennis Courts, etc. Guest and other permitted persons shall under all circumstances use the Swimming Pool, Hot Tub, Tennis Courts, etc. at their own risk.

10. Guest acknowledges the need to use a Calling Card or Cellular Phone for all long distance calls.
11. Guest shall be responsible for returning all House and Gate Keys upon departure. Lost key charge is \$50.
12. There will be no functions held at the property without prior written approval of the Owner. No parties or group gatherings other than registered guest shall occur.
13. Guest shall immediately notify the Owner of any Loss or Damage to the property.
14. Guest acknowledges that the Owner would not rent the property without the Guest acceptance of these conditions.
15. The property shall be in the same condition upon check-out as at check-in, other than normal usage that would be expected for a typical check-out cleaning. Damage or the need for additional cleaning may result in additional fee being incurred.

\_\_\_\_\_  
Agreed to and accepted:

\_\_\_\_\_  
Date



## PINEAPPLE HILL

January 21, 2016

Subject: Conditional Use Permit

Sent: Email/Regular mail

Steiner Residence – 100 Pulelehua

TMK#4-2-007-009 CP: 2015/0006

Attention: Kurt Wollenhaupt

Aloha,

I am writing on behalf the Homeowners Association of Pineapple Hill. The association is against the issuing of any Conditional Use permit if it is in opposition to any of our CC&R's, By-laws and Association Rules, especially those that state, there can only be one rental per month and must be for a duration of more than 7 days.

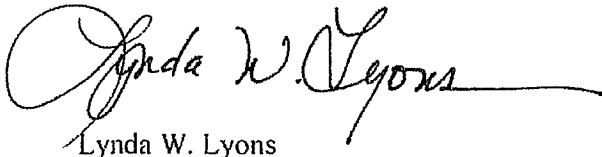
Concerning short term rentals, the exact wording is as follows:

Association Rules: Section II C. Rental of Residences states:

*1. Lot Owners shall have the right to rent or lease their residences subject to the limitations as set forth in the Declaration or Bylaws of Pineapple Hill at Kapalua and other applicable laws. Each rental or lease period must be for a minimum of seven (7) consecutive days. Each residence is limited to having one rental period begin during any calendar month.*

We ask that any consideration for a conditional use permit to this or any other residence should contain the stipulation that the CC&R's and Association Rules of Pineapple Hill at Kapalua will be followed, without modification, by these rental homes for the quiet enjoyment of all owners. Please contact me at your convenience if there are any questions.

Mahalo Nui loa,



Lynda W. Lyons

Pineapple Hill Land Owners Corp.

Resident Manager

808.669.4800

residentmanagerph@gmail.com

ADDITIONAL INFORMATION FOR MPC MEETING  
OF FEBRUARY 23, 2016

**ITEM C-4, CP 2015/0006**

**EXHIBIT 14.**

STEINER FAMILY TRUST 2010  
CONDITIONAL PERMIT FOR TVR  
AT 100 PULELEHUA STREET, KAPALUA

TMK (2) 4-2-007:009

**APPLICANT'S RESPONSE TO  
NEIGHBOR PROTESTS**

## **Kurt Wollenhaupt - Fwd: TVR Application - 100 Pulelehua**

---

**From:** Chelsea Harding <charding@steinerproperties.ca>  
**To:** Kurt Wollenhaupt <Kurt.Wollenhaupt@co.maui.hi.us>  
**Date:** 2/14/2016 11:14 AM  
**Subject:** Fwd: TVR Application - 100 Pulelehua  
**CC:** Julie Steiner <julielousteiner@gmail.com>, Irina Reznikov <ireznikov@steinerproperties.ca>  
**Attachments:** Planning Dept Protest Letter Response - February 12-16.pdf; ATT00001.htm; Planning Dept Protest Letter Response - February 12-16.pdf; ATT00001.htm; Planning Dept Protest Letter Response - February 12-16.pdf; ATT00001.htm

---

Dear Kurt,

Further to our discussion, please find attached Mrs. Julie Steiner's response to protest letters received by the County regarding the Conditional Permit application for 100 Pulelehua.

Sincerely,

Chelsea Harding  
Steiner Properties Ltd.  
main 604-688-8103 ext. 2  
Cell 604-318-1602

February 12, 2016

Kurt Wollenhaupt  
Department of Planning  
County of Maui  
2200 Main Street, Suite 315  
Wailuku, Maui, HI 906793

Dear Sir:

**Re: TVR application – 100 Pulelehua St, Kapalua**

I am writing in response to the various protest letters received by the County of Maui from our neighbors in Pineapple Hill Phase II with concern over the application for a Conditional Permit allowing Transient Vacation Rentals at 100 Pulelehua Street.

Based on the letters, the consistent concerns are with respect to the potential for increased traffic and noise in the neighborhood, security issues, the monitoring and management of guest activities (unruly behavior) and conflict with existing zoning.

I wish to clarify that my husband and I firstly own the property for our personal use with the intent of being full time occupants down the road. Our consideration for renting the property, if a Conditional Permit allowing TVR's is obtained, is simply to assist in offsetting the high costs of maintaining a large property such as this.

We certainly are not "financially distraught" as noted of other problematic owners. Rather we own multiple homes and as a prudent people, we see the value in earning a modest rental income to assist in the high maintenance costs a home such as this entails. As with other homeowners in the area, we currently employ landscapers, pool maintenance staff and a housekeeper who assists in caring for the property when we are off island.

We personally occupy our home at least three times a year for a period of 4-6 weeks each stay. Typically, our personal stays would be during times considered as "peak" rental periods. This shows that we are not planning to operate as rental only property.

We purchased our home in Pineapple Hill five years ago for the same reasons as our neighbors who have submitted protest letters against our application. This property is our home. We love the unique design of our custom built house, the tranquility of the large lot and exclusivity a gated community allows.

Quality of Guests

We will be taking great care in screening the potential renters of our home. Our nightly rentals will be in the range of \$1200 to \$2400 per night depending on the time of year. The HOA bylaws for Pineapple Hill limit the number of guests to a home at an occupancy of 8. At the nightly rate where it is, you are primarily dealing with professional business persons and their families or wealthy retirees, who look to

vacation at a property that is as beautiful as their personal homes. It is important that tourists in the luxury market of Hawaii have rental options too and their needs fulfilled. We will not be accepting rentals from "party" type groups, weddings or other events which would add an excess of visitors to the property. In addition, as owners, we will have our own policy of not renting to families with children under the age of 10 out of liability concerns as well as potential wear and tear on our home. This is our personal decision and again shows the care we have for our property.

We understand there have been problematic homeowners in the community who have had no regard for their neighbors or the bylaws of the HOA. These owners have been fined by the HOA and been a nuisance to their neighbors. We are not those people.

#### NOISE

As owners, we too have endured excessive noise and traffic from ongoing construction in the neighborhood and are sensitive to these concerns.

All rentals will be supplied with the rules of the HOA as well as "House Rules" which include quiet hours between 9pm and 8am. Like most of our neighbors in the Pineapple Hill Phase II, we have speakers built into the lanai area, however, the music is not audible from street level. As noted by many of the complainants, Pineapple Hill Phase II has large lots which allow for privacy. The size of these lots will also assist in limiting the potential impact to our neighbors. The sound system on the exterior is not such that it could be heard by our neighbors.

The lot for 100 Pulelehua is only contiguous to one neighbor, which is 102 Pulelehua (Mr. Dave Lede). The outdoor living area of our property backs onto Mr. Lede's garage and the rear side of his home. Due to the nature of the lots in Pineapple Hill Phase II, each lot is at a lower grade than the property behind them to insure views for all owners. As such, Mr. Lede's property is at an approximately 15-20 feet lower level than our property. From our yard, we look at the roofline of Mr. Lede's home. The outdoor living area of both properties face northwest towards the golf course and ocean. As such, the entire structure of Mr. Lede's large home is located between our two outdoor living spaces. A rental guest using our outdoor living area is unlikely to affect Mr. Lede's outdoor living area.

To the north we have a large ravine, to the south we are backed onto Crestview Road and the highway. The other immediate neighbor is located across the street at 220 Crestview Road (Mr. Sherman Brown) to the South-West. We have used this sound system extensively and never had any complaints.

As noted previously, we will not allow rentals to hold private events, parties or weddings at the property. We would be in agreement to including these provisions into our Conditional Permit.

#### TRAFFIC AND PARKING

The HOA bylaws restrict street parking by guests. Our property has a large double garage as well as a large driveway which could privately accommodate multiple vehicles. However, based on the limited number of guests at the property, we expect no more than 2 vehicles at the property per rental. This is no more vehicles than if we as homeowners were in occupancy at the property. All vehicles will be restricted to parking within our driveway.



The HOA bylaws do not permit any mopeds, motorcycles, golf carts, or other motorized vehicles within the gates of Pineapple Hill. As such, there should be no more traffic at the property during rental periods than if we as owners were using the property.

Our home is the first property in Pineapple Hill Phase II when coming in from the access gate off the highway. We understand that residents are concerned with increased traffic but to access our property, only one home has to be driven past to access 100 Pulelehua.

### ZONING

There has been significant discussion with respect to the intention behind the zoning and the intent to “never” allow rentals. We do not believe this to be the case. Both Pineapple Hill Phase I and Phase II share a common set of HOA bylaws. These bylaws do permit vacation rentals with specific rules which include:

- Minimum 7 night rentals
- No more than 1 rental per calendar month
- Maximum 8 occupants in the home
- All rentals must be reported to Pineapple Hill Resident Manager in advance of stay with details provided on number of guests, names of all guests, dates of occupancy. All guest must check-in with HOA office with 24 hours of arrival with ID.

As a homeowner who follows the HOA bylaws, rentals at the property should not have a significant impact on the HOA staff. We concur that if a homeowner disregards these rules, problems may ensue. We are not those homeowners.

The fact that the HOA bylaws, since inception have allowed for rental provisions for BOTH phases of Pineapple Hill shows that the difference in zoning for the two phases was oversight.

The comments from some owners that Phase II should be held to a different standard than Phase I because of the size of lots, design of the homes and frankly the higher property values is pretentious. These two neighborhoods share neighborhood amenities such as common pool, tennis courts. Both Phase I and Phase II share gates into the property.

Three STRH permits have already been granted in Phase I. The comments we have heard from the resident manager is that these rentals are going very well with no complaints from neighbors.

When we purchased our home from an on-island developer and architect, we inherited their rental bookings as well as their ads on VRBO. In early 2011, there were upwards of 20-30 homes in Kapalua advertising homes for rent, without the appropriate county permits. This was not a unique situation.

We have in the past done rentals at this property. However, we would like to clarify that all rentals have been in accordance with the HOA Bylaws and all required taxes on the rental income have been remitted (TAT & GET). As confirmed with the resident manager, there have been no complaints with respect to guests at our property.

When a homeowner puts the time and effort into bringing their home into compliance with County bylaws for rentals, they are not going to abuse the program. It is not an easy process to complete but we wish to bring our home into compliance with the County. An on island, licensed property manager will be a requirement of the Conditional Permit as is required by an STRH permit. If granted a

Conditional Permit, we will be hiring an on island property manager in addition to the local housekeeper we already employ.

We do not wish to create discord with our neighbors or disrupt the neighborhood. We believe as conscientious owners with respect for both our personal property and our community, we can prove that regulated rentals can harmoniously co-exist in Pineapple Hill Phase II without issue.

As the current zoning for our property is not included in the STRH provisions, on recommendation of County staff, we are seeking a Conditional Permit for Transient Vacation Rentals.

Sincerely,

Julie Steiner  
100 Pulelehua Street,  
Lahaina, HI 96761  
TMK# 4.2.007.0000

ADDITIONAL INFORMATION FOR MPC MEETING  
OF FEBRUARY 23, 2016

**ITEM C-4, CP 2015/0006**

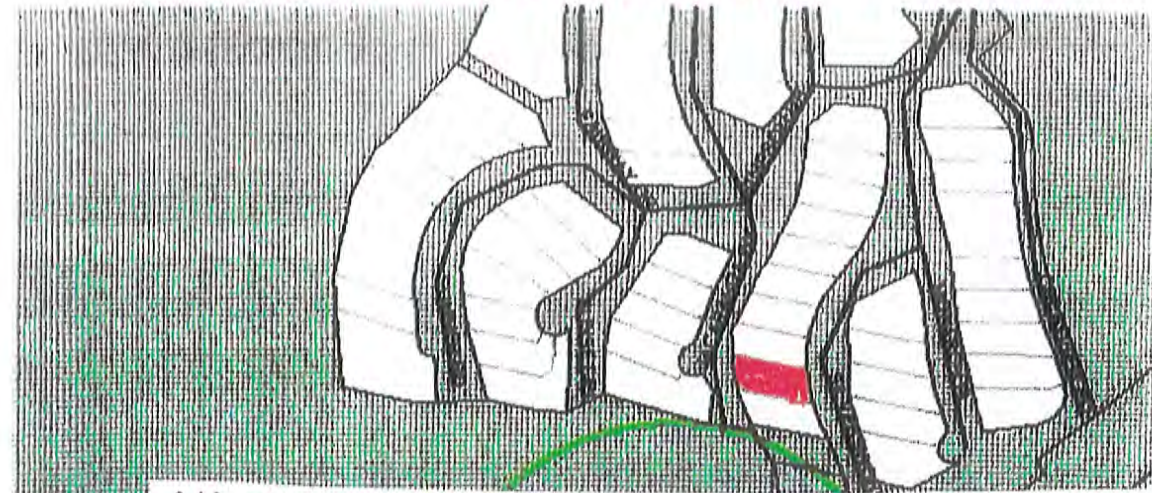
STEINER FAMILY TRUST 2010  
CONDITIONAL PERMIT FOR TVR  
AT 100 PULELEHUA STREET, KAPALUA

TMK (2) 4-2-007:009

**UPDATED MAP WITH LOCATION OF PROPERTY OWNERS  
IN OPPOSITION TO PROJECT ALONG WITH  
3 ADDITIONAL LETTERS**

Project: STEINER RESIDENCE TRANSIENT VACATION RENTAL  
CONDITIONAL PERMIT (CP)  
Address: 100 Pulelehua Street, Lahaina, Maui, Hawaii (Pineapple Hill Phase 2)  
Description: Transient Vacation Rental in Single-Family Dwelling  
TMK: (2) 4-2-007:009  
Permit Nos.: CP 2015/0006

**UPDATED MAP FOR CP 2015/0006 AS OF 2/19/2016**



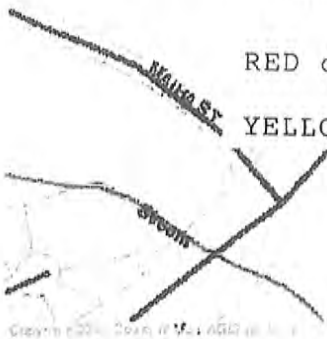
Address: 100 Pulelehua Street, Lahaina, Maui, Hawaii (Pineapple Hill Phase 2)



Green circle denotes 500 foot boundary from  
subject property at 100 Pulelehua Street.

RED denotes protest.

YELLOW denotes subject property.



Protest against application for Conditional Permit-TMK (2) 4-2-007:009

To: Maui Planning Commission  
Attn: Kurt Wollenhaupt

By: The Amanda A. Muñoz Trust and the Joseph G. Muñoz Trust  
Rosalina Muñoz, Trustee  
Resident, 224 Crestview Rd., Lahaina, HI 96761

This application does not meet the standards of the Maui County Code 19.40.01 and should therefore be denied.

It is an attempt to misuse the constructive intent of this Code provision, in unintended ways, for the sole purpose of the enrichment of the owners of one property, to the detriment of the interests of their neighbors in the community.

It proposes a use which is dissimilar, unrelated and incompatible with the use which has been permitted by existing zoning, upon which all owners have relied on for many many years.

It fails the test demanded by the Code, which requires a "special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance."

Owners at Pineapple Hill Phase 2 have purchased their property, over the years, knowing that the Multi-Family zoning protected them from transient rentals in the neighborhood. (By contrast, buyers at the nearby and pre-existing Phase 1 knew that limited rentals were permissible under their zoning and consequently, there is a smaller percentage of primary homeowners there.) The applicants for this Conditional Permit and their representative/s, must have known that the zoning in Phase 2 does not allow vacation rentals.

We bought our home expressly because the zoning assured us that there would be no transient rental problems. Unfortunately, we have had first-hand experience that this property has conducted (unlawful) transient vacation rentals in the past. My husband and I and the rest of our family have been subjected to noise, traffic and have occasionally feared for our safety because of the presence of transients and strangers. The County has been incapable of enforcing its laws to prevent any of this.

Once transient rentals are allowed by Conditional Permit in the neighborhood, it will be inevitable that houses for sale in Phase 2 will be bought by more operators of transient rentals thereby, altering the character of the community permanently.

224 Crestview is my primary home. My husband and I have looked forward for years to retire in this community and we have paid good hard-earned money for it. This is not a vacation community as falsely claimed in the application and we do not want it to be. I strongly urge the Commission to deny this application, especially because the applicant has been involved in illegal rental activity in the past.

We thank you for your public service and rely upon you as our neighbors and representatives to protect our right to the quiet enjoyment of our home from this unwarranted and harmful encroachment.





### 224 Crestview Road

Parcel: 420070120000 Acres: 0

Name	MUNOZ, AMANDA A TRUST	Land Value	\$1,339,200.00
Site	224 CRESTVIEW RD	Building Value	\$2,082,600.00
Sale	\$3,000,000 on 11-2010 Vacant= Qual=	Misc Value	\$0.00
Mail:	ATTN ROSALINA MUNOZ 224 CRESTVIEW RD LAHAINA HI 96761	Just Value	\$0.00
		Assessed Value	\$3,421,800.00
		Exempt Value	\$200,000.00
		Taxable Value	\$3,221,800.00



The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS —THIS IS NOT A SURVEY—  
Date printed: 02/19/16 : 19:05:15

## Kurt Wollenhaupt - 107 Pulelehua - Conditional Use Application

ALSO FOR 100 PULELEHUA STREET

**From:** Fred Allen <fra100@aol.com>  
**To:** <Gina.Flammer@co.maui.hi.us>  
**Date:** 2/2/2016 2:19 PM  
**Subject:** 107 Pulelehua - Conditional Use Application  
**CC:** <kurt.wollenhaupt@co.maui.hi.us>

Gina Flammer, Planner  
Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Please consider this letter as our objection to, and request for denial of the pending application for "conditional Use Permit" for the subject residence. We purchased our property here (Lot 24) in Phase II of Pineapple Hill EstatesII specifically because of the private nature of this development. The fact that all lots are 20,000sq ft. or larger and that all homes are custom designed sets it apart from the first phase of Pineapple Hill with smaller lots and, developer designed homes.

This proposal to deviate from the intended use to allow short term rentals will destroy the very nature of the intended development. This is not an area that should allow short term rentals. Past attempts at unauthorized rentals have proven that, due to the price, families will "Pool" together the result being several families sometimes totaling up to 18 occupants crowd into a home in this quiet private neighborhood. The noise and parking violations as well as misuse of amenities is uncontrollable. It makes living here for the residents unbearable especially during busy Holiday periods. Management and security can not keep it under control.

We urge you to consider our privacy and keep this use as intended. Please deny this request.

Thanks you for you consideration.

Palmer Way, LLC  
Owner, Lot 24, TMC 4-2-007-024-0000  
227 Crestview Rd.  
Pineapple Hill Estates II  
Kapalua, Hawaii



227 Crestview Road

Parcel: 420070240000 Acres: 0.57

Name	PALMER WAY,LLC	Land Value	\$1,236,600.00
Site	227 CRESTVIEW RD	Building Value	\$0.00
Sale	\$575,000 on 09-2002 Vacant= Qual=	Misc Value	\$0.00
Mail:	ATTN: FRED ALLEN	Just Value	\$0.00
	5741 PALMER WAY	Assessed Value	\$1,236,600.00
	CARLSBAD CA 92008	Exempt Value	\$0.00
		Taxable Value	\$1,236,600.00



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Date printed: 02/19/16 : 19:02:53

ref 100 /  
Maui Planning Commission  
250 South High Street  
Wailuku, Maui, Hawaii 96793

COUNTY OF MAUI  
DEPT. OF PLANNING - CURRENT

FEB 18 2016

RECEIVED

Reference: Tax key map #420070090000

Honorable members of the Maui Planning Commission,

I love and respect Maui, its people, their heritage and their traditions as well as rules. I made a large investment in buying a home in paradise because I was told that it was a secure residential community. Also, that the homes were single family. I believe that most folks that bought in our community knew that it was residential and not commercial. I have traveled to Hawaii since the middle seventies and dreamed of having a home but waited to be able to afford to buy one. Each time I visited the islands I found accommodations to stay at hotels and other properly registered facilities that were and are owned by local residents that are committed to the community and depend on visitors to make a living for their families. They set up their business by properly registering the operation and maybe even took out large loans and debt trying to make a legitimate living. They are committed to Maui and made their businesses to deal with transient visitors. The single family residents were not zoned to handle transient people that have no respect for their neighbors or their neighbors' investments. This is not fair to the people that have risked their money on a business then have to compete with people that discount facilities to unknown visitors. The people that buy a single residence home under the pretense of becoming residents and then begin to turn it in to a business so that it can pay for their annual vacation have no respect for our community, the rules, the authorities, their neighbors or even the state of Hawaii. They are only thinking of themselves and should not be allowed to take revenue away from honest hard working Hawaiian residents.

I love my home and the islanders that I have become close to for over 40 years. My family has supported many causes for several years such as Hale Makua, West Maui Island Hospital, Maui Prep, and other West Island improvement and preservation efforts. Do you think that these people that want you to bend the rules to let them turn a residential area into a commercial enterprise for their benefit really care about the neighborhood or the community?

Please help the local business men who have staked their careers on having accommodations for visitors and help those of us with long term investments and love of everything Hawaiian by denying all of the requests to rent out single family residence. I can think of thousands of other reasons to deny these requests and would be happy to supply more information if needed or requested.

Please do not allow these people to abuse our beautiful community.

Thank you,  
Respectfully submitted



Paul Somerville  
236 Crestview Rd  
Lahaina, HI 96761





236 Crestview Road

Parcel: 420070220000 Acres: 0

Name:	SOMERVILLE, PAUL G TRUST	Land Value	\$1,320,400.00
Site:	236 CRESTVIEW RD	Building Value	\$1,454,400.00
Sale:	\$3,080,000 on 05-2004 Vacant= Qual=	Misc Value	\$0.00
Mail:	3 SADDLEBROOK LN HOUSTON TX 77024	Just Value	\$0.00
		Assessed Value	\$2,774,800.00
		Exempt Value	\$0.00
		Taxable Value	\$2,774,800.00



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Date printed: 02/19/16 : 19:06:40



ADDITIONAL INFORMATION

STEINER FAMILY TRUST 2010  
CONDITIONAL PERMIT FOR TVR  
AT 100 PULELEHUA STREET, KAPALUA

TMK (2) 4-2-007:009

**ADDITIONAL OPPOSITION LETTER RECEIVED AFTER  
THE PUBLIC HEARING AT THE MAUI PLANNING COMMISSION**

**Kurt Wollenhaupt - Letter of opposition for a conditional use permit being granted to 100 Pulelehua and 107 Pulelehua in the Pineapple Hills Estate Phase 2**

---

**From:** melissa donaldson <melissa@donaldsoninsurance.com>  
**To:** <Kurt.Wollenhaupt@co.maui.hi.us>  
**Date:** 3/9/2016 9:40 AM  
**Subject:** Letter of opposition for a conditional use permit being granted to 100 Pulelehua and 107 Pulelehua in the Pineapple Hills Estate Phase 2

---

Maui Planning Dept.  
250 So. High St.  
Wailuku, Maui, Hawaii 96793

Please consider this letter as our objection to, and request for denial of the pending application for "conditional Use Permit" for the subject residences listed above.

We purchased our property located at 124 Pulelehua Place in Phase II of Pineapple Hill Estates specifically because of the private nature of this development. We purchased our home two years ago. We have a 17 year old son with special needs who will live with us indefinitely. Due to our unique circumstances we were seeking to purchase a home in a community that was gated and private. In fact, we hired an attorney to research the zoning laws prior to purchasing in this development in order to verify that it would remain private for homeowners and their guests exclusively. The fact that all of the lots are 20,000 square feet. or larger and that all homes are custom designed sets it apart from the first phase of Pineapple Hill with smaller lots and, developer designed homes.

This proposal to deviate from the intended use to allow short term rentals will destroy the very nature of the intended development. This is not an area that should allow short term rentals. Past attempts at unauthorized rentals have proven that, due to the price, families will "Pool" together the result being several families sometimes totaling up to 18 occupants crowd into a home in this quiet private neighborhood. The noise and parking violations as well as misuse of amenities is uncontrollable. It makes living here for the residents unbearable especially during busy Holiday periods. Management and security can not keep it under control.

We urge you to consider our privacy and keep this use as intended. Please deny this request. Thanks you for your consideration.

Melissa and Keith Donaldson  
Owner  
124 Pulelehua Place  
Pineapple Hill Estates II  
Kapalua, Hawaii

--  
Thank you,

Melissa and Keith Donaldson

---

Donaldson Insurance Agency, Inc.

2030 Lincoln Blvd.

Santa Monica, CA 90405

office (310) 392-9621

cell (310) 874-0740

[Melissa@donaldsoninsurance.com](mailto:Melissa@donaldsoninsurance.com)

[www.donaldsoninsurance.com](http://www.donaldsoninsurance.com)





## 124 Pulelehua Place

Parcel: 420070310000 Acres: 0.58

Name	DONALDSON,KEITH	Land Value	\$1,247,500.00
Site	124 PULELEHUA PL	Building Value	\$1,450,500.00
Sale	\$2,761,152 on 10-2013 Vacant= Qual=	Misc Value	\$0.00
Mail	724 NOWITA PL VENICE CA 90291	Just Value	\$0.00
		Assessed Value	\$2,698,000.00
		Exempt Value	\$0.00
		Taxable Value	\$2,698,000.00



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Date printed: 03/09/16 : 15:04:31



**100 Pulelehua Street,  
Pineapple Hill Estates,  
Lahaina, Maui, Hawaii**

Request for Conditional Permit  
Maui Planning Commission Meeting  
February 23, 2016



# Steiner Residence



**LONG**  
& ASSOCIATES  
ARCHITECTS • INTERIORS

# Project Team

- **Applicant/Land Owner:**  
Steiner Family Trust 2010  
Ms. Julie Steiner
- **Planning Team:**  
Steiner Properties Ltd.  
Ms. Chelsea Harding  
Ms. Julie Steiner
- **On-Island Property Caretaker:**  
Ms. Julie Kindy



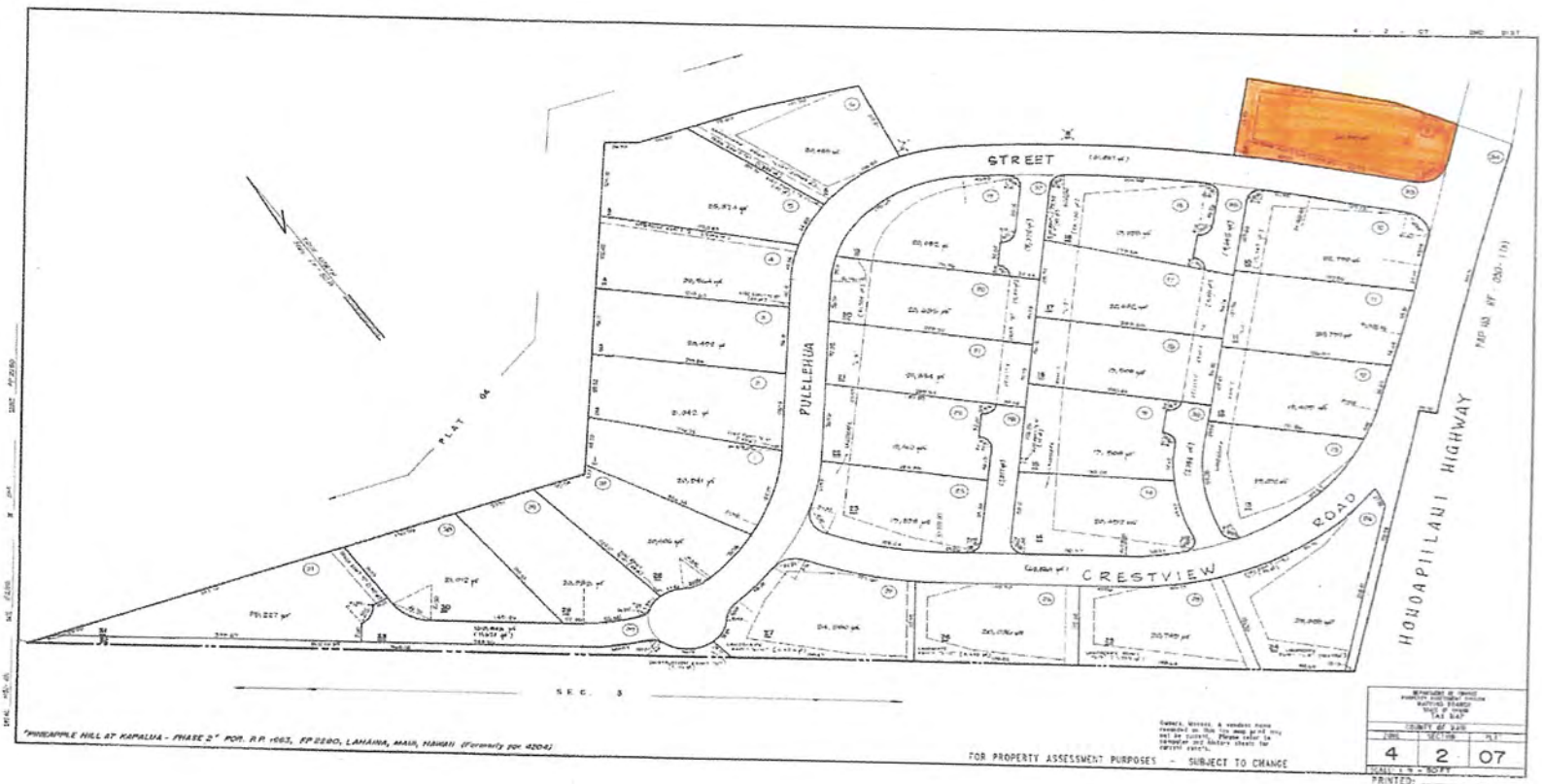
# Request

To obtain a County of Maui Conditional Permit in the Lahaina Project District 1 (Kapalua)-Multi Family zone for operation of a TVR (Transient Vacation Rental), allowing short-term vacation rentals in accordance with Pineapple Hill CC&Rs.

# Property Details

- Total land area: 24,390 Square Feet
- Located at 100 Pulelehua Street of Pineapple Hill Estates Phase II with only three immediate neighbors
- State Land Use: Urban
- Maui Island Plan: Urban Growth Boundary
- Community Plan: Project District-1
- Zoning: Lahaina Project District 1 (Kapalua)-Multi Family

# Tax Map Key

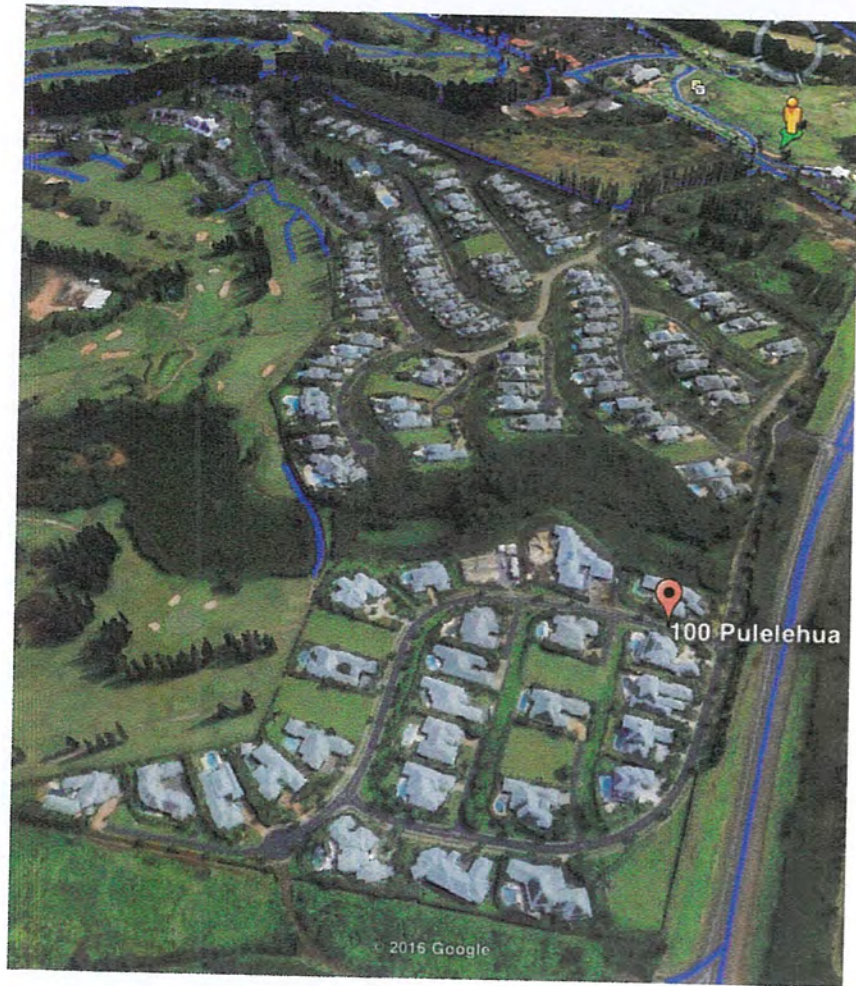




## Regional Location at Kapalua



# Neighborhood Aerial





# 100 Pulelehua Street

## The Main Dwelling:

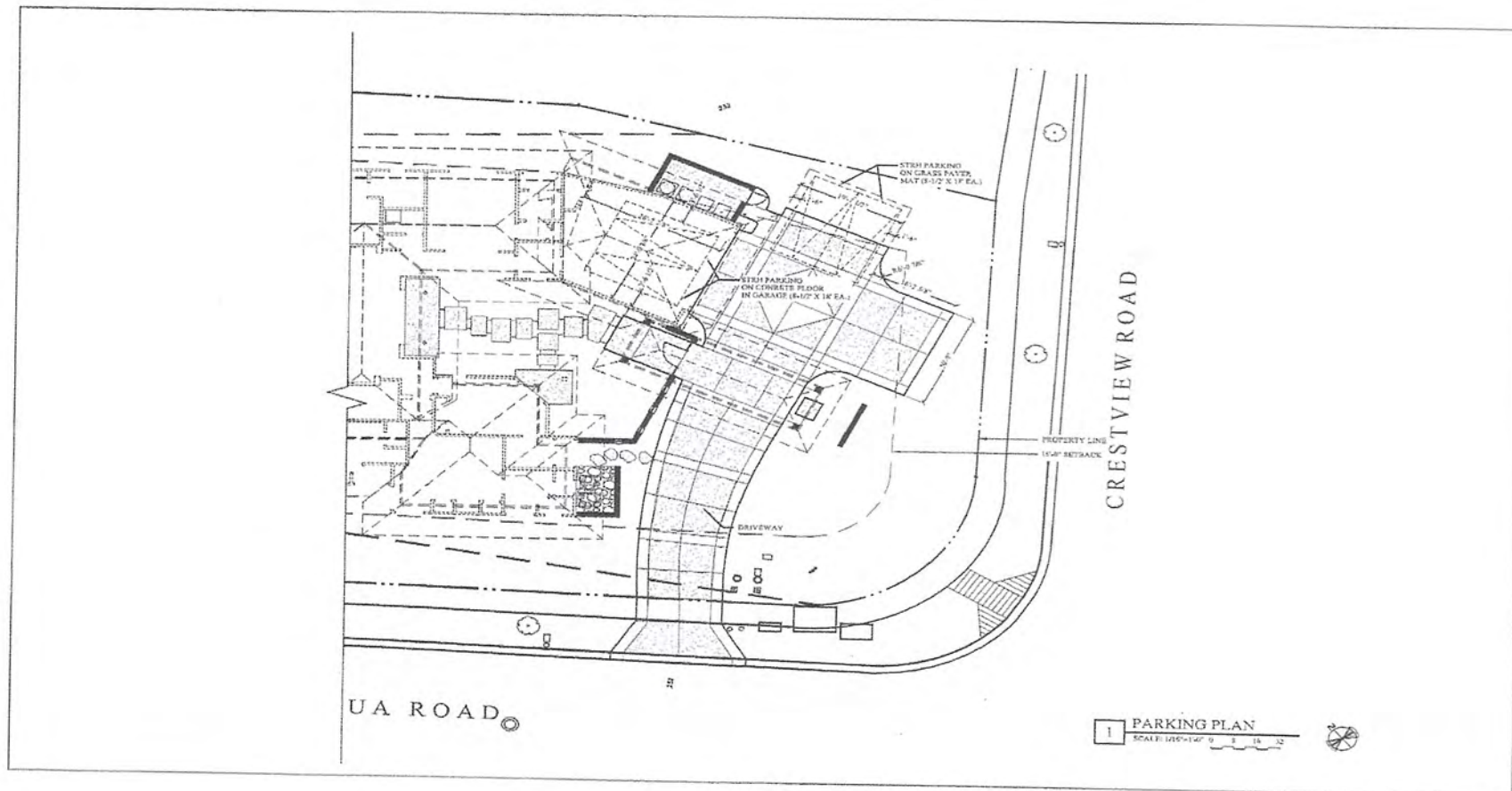
- Single family house built in 2008
- Purchased in 2010 as family vacation home directly from on-island developer/architect
- Includes 4 bedrooms, 4 ½ bathrooms, kitchen, great room, attached garage, partially covered lanai, pool, spa, paved driveway, and tropical landscaping.

# Architectural Plan





# Parking Plan





# House Photos





# House Photos





# House Photos



# 100 Pulelehua Street

## The Property:

- Single story dwelling on half-acre lot.
- Peaceful surroundings that are easily accessible for mobility challenged or restricted individuals.
- Three immediate neighbors with their primary residences all off island.
- Subject lot only contiguous to one neighbor, 102 Pulelehua.
- Due to the nature of the lots in Pineapple Hill Phase II, each lot is at a lower grade than the property behind them to insure views for all owners. As such, the 102 Pulelehua property is at a level approximately 20 feet lower than our property, providing increased privacy for both properties. See photos.
- To the north is a large ravine, to the south property is backed onto Crestview Road and the highway (no immediate neighbors). See Photos.
- The other two closest neighbors are located across the street to the West at 220 Crestview and 101 Pulelehua (vacant, listed for sale). See photos.



# View to North-West

Lede residence below at 102 Pulelehua





# View to West

Vacant, for sale at 101 Pulelehua





# View to South-West

Brown residence, 220 Crestview Road





# View to North Ravine





# View of Steiner House Facing North

## Corner of Pulelehua and Crestview Road



# House Policies and Rules

Guests are required to abide by the following house policies in accordance with Pineapple Hill CC&Rs:

- Quiet hours of 9:00 p.m. to 8:00a.m. All guests shall be required to exercise extreme care about causing or permitting noise that may disturb neighbors.
- No motorcycles, scooters, mopeds or motorized bicycles shall be permitted anywhere in Pineapple Hill.
- All vehicles shall be parked in the designated on-site parking area. See photo.
- No parties, group gatherings or weddings will be allowed.
- All guests shall be provided a copy of HOA bylaws by on-island licensed property manager (to be contracted on receipt of TVR approval).
- A sign shall be placed at the entrance of the property with manager's contact information.



# Property Parking Driveway





# Property Parking

## Double garage



# Reason For a Conditional Permit

- Property is located in Pineapple Hill Estates Phase II and is zoned Lahaina Project District 1 (Kapalua) Multi –Family
- This zoning does not mention short-term home rental permits (STRH) as allowable under the new STRH Maui County Code Section 19.65, leaving Conditional Permit (TVR) as the only alternative
- Conditional Permit process has existed for years and was used for short-term rental homes in the past prior to the passage of the 19.65 section of the Code



# Conditional Permit Intent/Criteria

## 19.40.010

The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

(Ord. 1684 § 2 (part), 1988)



# Property History

- A small number of rentals have occurred at this property in the past.
- All rentals have been in accordance with the HOA Bylaws.
- All required taxes on the rental income have been remitted (TAT & GET).  
Hawaii Tax I.D. No: W 24725833-01
- There have been no complaints with respect to guests at the property.

# Neighbor Concerns

- **Quality of Guests:**  
All guests are prescreened, no parties or large events
- **Noise:**  
Quiet hours and all other related bylaws strictly enforced
- **Traffic and Parking:**  
No street parking permitted, no increased traffic
- **Zoning:**  
CC&Rs clearly allow regulated short term rentals

# Conclusion

- A guest staying in this property for an approved rental in accordance with HOA bylaws is similar to the owner's use of the property as a vacation home.
- Pineapple Hill Phase II is similar to the topography and development of Pineapple Hill Phase I, which allows STRH rentals. To-date three STRH permits have been granted in Phase I with success.
- The proposed use will occur within an existing residence. There will be no increase in impact to public resources or existing traffic.
- The property will provide the "luxury market" tourists an excellent rental option. This type of tourism, while allowing for harmonious co-existence within the neighborhood, will benefit local businesses and general community.



**MAHALO!**





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

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:05 a.m., Tuesday, February 23, 2016, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Ball: Call this meeting to order. It is February 23<sup>rd</sup>. What we're gonna do is we are going to go immediately into executive session for a little bit. I'm sorry that everybody got comfortable. You can put your name on your seats, same seats when you come back to discuss a few matters. So if there are...if there's a motion to move into executive session to cover the Item C-1.

Mr. Medeiros: So move.

Chair Ball: Is there a second to that?

Mr. Hedani: Second.

Unidentified Speaker: Who was second?

Chair Ball: Hedani second. All in favor of the motion say, "aye" and raise your hand.

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried. Okay, we will clear the room and then we'll let you guys know when we come back into regular session. Thank you.

The Commission went into executive session from approximately 9:07 a.m. to 9:17 a.m.; the regular meeting was then reconvened at 9:23 a.m.

Chair Ball: ...back to order. Can we get the sign-in sheet, Paul? Thank you all for your patience. We'll now start out with public testimony. If you'd like to testify at this time you may do so. You will be allowed three minutes. You will not be allowed to testify again when the agenda item comes up however. So we will just go down the list, and if you did not sign in, that's okay, and you'd like to testify just come forward after we go through this list.

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chair Ball: We will start with Frank Gymme or is he Gymme Frank? Followed by Barry Ewing?

Maui Planning Commission  
Minutes – February 23, 2016  
Page 2

Mr. Ewing: I'll wait till the item.

Chair Ball: Okay. Carole Eiserloh?

Ms. Eiserloh: I will wait.

Chair Ball: Okay. Julie Steiner?

Ms. Steiner: I'll wait until—

Chair Ball: Okay. I can't read your first name, Steiner, another Steiner. Michael or Mickel? Later? Okay, Mark Jesling?

Chair Ball: I'll wait. Jeff Kern?

Mr. Kern: I'll wait.

Chair Ball: Fred Allen? Fred Allen?

Mr. Allen: I'll wait.

Chair Ball: Is it Lynn Allen? Joseph Henschel?

Mr. Henschel: I'll wait, sir.

Chair Ball: Okay. I think it's Ethel Bilway? Glenn Kosaka?

Chair Ball: Mike Moran?

Mr. Moran: Wait.

Chair Ball: Walt Kubiak?

Mr. Kubiak: I'll wait.

Chair Ball: Richard DeLeon? Richard, you're gonna wait? Richard DeLeon.

Unidentified Speaker: He can't get past the crowd. Give him a second.

Chair Ball: Okay.

Seeing none, moving onto James Magliozzi?

Mr. Magliozzi: I'll wait.

Chair Ball: Thank you. Next up Melissa Bale?

Mr. Murai: Thank you Mr. Chair. This, my comments are I guess for the benefit of the public and for the parties. This Item C-1 is calendared as a public hearing on the request for a Community Plan Amendment and the Special Management Area Use Permit. However, now

with regard to the Community Plan Amendment what this commission is tasked with is whether and what kind of recommendation the commissioners gonna pass up to the Council. In other words, the Commission does not have the final say on the community plan amendment. All the commission does is make recommendations to the Council. As such, it is not a contested case hearing subject matter.

On the other hand, while this is a hearing on the SMA Use Permit as well, the commission will be taking public testimony and hearing from the Department on the SMA Use Permit matter. However, the commission will not be taking action on that matter today because it's kind of a, I guess it's kind of a chicken and egg kind of thing where the SMA Permit application cannot be heard until...if and until the community plan amendment is matter is heard by the Council. So there will be no decision making on the SMA Use Permit although public testimony will be taken today. That matter would be taken up some time in the future at the point after the Council...well, after any recommendations to the Council and Council action. Did I cover everything?

Chair Ball: Think so.

Mr. Murai: Thank you.

Chair Ball: All right. Thank you, Paul go ahead.

Mr. Paul Fasi: Thank you for that clarification Corp. Counsel. So today we're here to give a recommendation on the community plan amendment to the Council. The land use designations on this current parcel, State Land Use District is Urban. The Maui Island Plan it is in the Urban Growth Boundary. The Kihei Community Plan is Multi-Family. The County Zoning is H-2, Hotel. It is in the Special Management Area. But we are specifically here today to talk about the community plan amendment.

Back in 70's this particular parcel was part of a parcel known as the Kamaole Super Block which was then designated at that time for intense hotel development which is why it was originally hotel. In 1994...98, I'm sorry, it got changed from Hotel to Multi-Family. In '94, there was an SMA Use Permit that was approved for a 48-unit condominium project on this parcel. Back then it was 48 units. The applicant is proposing 39 units today. So it has been scaled back.

As currently designed the proposed project meets Title 19 zoning standards of the H-2, Hotel District but not the community plan. The community plan, the community plan height maximum right now is 75 feet. I believe they're way below that at about 45 feet is the highest. Seventy-five feet meaning as you go further inland they can go up to 75 feet, and of course they're not proposing that.

Also, the issue of drainage is a matter of concern with some of the applicants today and just basically what's happening on this parcel is that up mauka there's immediately about 300 or so acres according to the Maui County Master Drainage Plan that collects the rainfall and it funnels down into this gulch. But further mauka of these 300 acres, you know, you start getting into Ulupalakua, you start getting up into Polipoli and its massive funneling that channels down to this gulch that traverses through the parcel. They're not proposing to build on or inside the



gulch naturally. It is two buildings, 35 and 45 stories on either...on one side of the gulch. The development will mitigate—

Chair Ball: That's feet not stories.

Mr. Fasi: Yeah, feet sorry, 45 stories, thank you.

Chair Ball: ...(inaudible)...

Mr. Fasi: Just a slight minor detail. The applicant has proposed to mitigate 100 percent of post development runoff and in fact I believe they're gonna do an additional 20 percent of mitigation for drainage on their particular piece of property. So in essence what's happening is they're actually taking that 1.4 acres of drainage out of the drainage equation. So 1.4 acres compared to the 300 plus acres that immediately affect this particular parcel is not much. There's nothing they can do about it. It's just the lay of the land and that's just what happens when it rains in 100-year flood.

I'm going to turn the presentation over to the applicant so they can give you an overview of what the particular project is and give you the details of the project. But today I just want to reiterate that concentrate on the community plan amendment aspect and we will get into the Special Management Area aspect after the Council reviews this project. Thank you.

Chair Ball: You guys have an overhead? You guys wanna, you guys can sit down over there if you want? Sit down on those chair right there.

Mr. Jordan Hart: Good morning Mr. Chair and Commissioners. My name is Jordan Hart of Chris Hart & Partners. I'm here to present the Nani Loa Condominium Hotel Project. The project is proposing to change the Kihei-Makena Community Plan from Multi-Family to Hotel and is seeking a SMA Major Permit for the development of the project. Victory Development is the landowner and applicant. Mr. Todd Liebl and Greg Walker are here today representing Victory Development. At Chris Hart & Partners we have Raymond Cabebe who is the project planner, David Sereda is the landscape architect and myself, Jordan Hart. Civil engineer for the project is Otomo Engineering, Mr. Stacy Otomo is here, and the traffic engineer is Phillip Rowell. We did schedule Phillip Rowell to be here but he had a conflict and could not attend today so he will not be available.

This is a location map, the project site here mauka of South Kihei Road, makai of the north-south collector.

Mr. Higashi: Pull the mic and slower. I'm hard of hearing.

Mr. Hart: I apologize. I was trying to accelerate based on the amount of the time we're gonna be spending here today. This is an oblique aerial photograph. What this depicts is roughly the conclusion of construction for the Kihei Kai Nani project. The Kihei Kai Nani project was partially completed and the subject parcel was subdivided off, the mauka end of the project site with a perpetual easement access, easement for access and utilities to the project site. This has been the condition from the completion of development. And part of the configuration for

the Kihei Kai Nani as those residents purchased and inhabited their units. This is the roadway access from South Kihei Road. It's a utility and access easement. Here's an aerial photograph of the project site, the north-south collector road. These are other projects that either exist or have been proposed at various times, Aloha Villages, the Kihei Kai Nani, Kihei Ekahi, Kihei Banyan. As Mr. Fasi mentioned, the project is within the County's Urban Growth Boundaries for the Maui Island Plan. The project is abutting Hotel designation in the Kihei-Makena Community Plan but is designated Multi-Family. The applicant is requesting to change their community plan designation to Hotel. This is a zoning map for the County of Maui. This is what has been referred to as the Kamaole Super Block as you can see this is all H-2 zoning which is high density hotel zoning surrounded by medium density hotel zoning, H-1 lower density and BR Resort/Commercial. This is an oblique aerial photograph of the project site. The project site is here. The Kihei Kai Nani, Kamaole Shopping Center, Hale Pau Hana, Kamaole Beach Park II, currently existing north-south collector road.

The project is 39 units. It's two buildings consisting of a three and four-story building that's two and three layers of units above surface parking which will be underneath the buildings. It includes lanais, common area amenities. There are 83 parking stalls. This is a site plan of the project site. This is the existing drainageway. It is gonna be unchanged as a result of the project. These are photographs of the project area. These are Kihei Kai Nani buildings next to the project site. This is the culvert where the drainage drains from the project site onto the surface parking lot of the Kihei Kai Nani and runs makai to the ocean.

This is the landscape site plan for the project. At this time I'd like to bring up landscape architect, David Sereda from Chris Hart & Partners to go over the landscape.

Mr. David Sereda: Good morning. My name is David Sereda, landscape architect, Chris Hart & Partners. I'll go quickly through some of the highlights of the landscape plan. We landscaped the property primarily for privacy and shade and aesthetics. The...we're meeting the County requirements for shade trees with 16 native milo trees despite the fact that most of the parking or a substantial amount of the parking is shaded underneath the building but we are still using the shade tree requirement from the County Code elsewhere on the site.

We're using a number of native shrubs and groundcover. And we are providing screening around all four sides of the property with native Naio and A'alii shrubs which will grow to six to eight feet high or taller if you let them which will provide a lot of screening and privacy especially along the frontage adjacent to the neighboring properties. We're using eight different tree species and we will have 100 percent drip irrigation for the property.

Here's some of the species that we're proposing. You can see Ilima, Naio, A'alii, Ice Plant, Beach Vitex would be the native species. And here we have Coconut and Milo would be the native species for the trees. Thank you.

Mr. Hart: This table identifies the density of the project site and surrounding neighbors. You can see the Nani Loa project has 21.7 acres per unit. It's abutting Kihei Kai Nani has 34.7 and so what this is intended to indicate is that the project despite its small size is appropriately situated among its neighbors in the context of density. They're not proposing to maximize a small site, they're proposing to develop a small site consistent with existing patterns of

development surrounding them.

This lower table is the lot coverage and floor area ratio. So what is permitted in H-2 is 35 percent lot coverage and 150 percent floor area ratio. And what is permitted in A-2, Multi-Family zoning is 35 percent and 90 percent. And so the proposed project is below both of those permitted levels of density. They are proposing a project that's less dense than would be permitted under the Kihei-Makena Community Plan and the County zoning. I would like to go back and just kinda indicate what I'm talking about. That would be these developments surrounding the project site. The project is the lowest level of density of its nearby neighbors.

This is a site plan depicting the driveway access and utility access. The layout of the Kihei Kai Nani development and then on the upper portion it's showing a height relationship to surrounding developments. So the Kihei Ekahi is significantly taller. The Kihei Kai Nani is comparable height descending downslope.

One other thing to address is the table at the bottom which depicts the proposed heights of the buildings. Building No. 1 35 feet is two stories of units above surface parking. Building No. 2 is three stories of units above surface parking. H-2 Hotel zoning permits 160 feet in height. The Kihei-Makena Community Plan permits 75 feet in height at this location. So the project is proposing to be significantly lower than would be permitted by the Kihei Community Plan which will be the maximum of the overlay of zoning and Hotel designation for H-2. Also to note if the project were designated Multi-Family it would be lower than that height limitation as well.

These are elevations of the proposed project so you can see the character of design. This would be the relationship to the existing drainageway. I'll go through these. I believe these were shown at the EA. This is the circle roundabout that separates the Kihei Kai Nani from the proposed project site. The drainage culvert is here. That would be building two there. These will be looking from the north-south collector road. These do not accurately reflect the grass or landscaping in the mauka parcel, but this would accurately represent the backend or the mauka end of the proposed project site. Again, there's Kihei Ekahi ...(inaudible)...

Common area amenities. This is a lighting plan suffice to say that the project will comply with Maui County Code and will consist of downward shielded lighting as is a standard requirement. At this time, I'd like to bring up Stacy Otomo of Otomo Engineering to discuss the project's drainage plan.

Mr. Stacy Otomo: Good morning, Chair Ball and Members of the Maui Planning Commission. My name is Stacy Otomo. What we have here is a graphic representing the magnitude of the drainage area coming through the Nani Loa property which is indicated right here in the green. The drainage area actually goes mauka of Piilani Highway, encompasses about 307 acres. Of this it is calculated in the 1997 Drainage Master Plan that approximately 660 cubic feet per second passes through this drainageway and through the Nani Loa Property.

This is again a graphic of what's there in terms of the drainage around the area. What's depicted in this graphic is the Nani Loa development right here, the drainageway comes through this area. There's an existing headwall here with a box culvert that basically comes from this headwall, it outlets right here and some of the pictures that you saw previously that box culvert

is two feet high by seven and a half feet wide box culvert. It's trying to take 660 cubic feet per section which is not adequate. So what happens to the drainage is part of it goes through here. When this capacity is exceeded water flows on both sides of the existing circular area and down the Kihei Kai Nani driveway towards South Kihei Road. That is an existing condition with or without this project. What you see here in the blue was depicted there was we took two sections right here and right here and figured out how high the water would come in existing drainageway and the inundation limits for a 100-year flood is reflected here in the blue. So it doesn't quite reach the limits of where the new construction is gonna be. It's gonna be contained in the existing drainageway so we're not changing any of the drainage pattern within this particular area. Again, these are just the hydraulic models that we run that shows the inundation limits on the previous slide.

Generally what we're doing is allowing the 100 flow to pass through the project, go through the existing drainage system that's there and overflow to where it's going right now. What we're planning on the site is to exceed the Public Works criteria for drainage standards. We're not only gonna maintain the increase in runoff developed from the development but we're gonna maintain an additional 20 percent of the existing on the site so the bottom line is that there'll be less runoff coming off of this site after the development albeit, you know when you compare a one and a half acre parcel to the 300-acre drainage area it's fairly small but we're exacerbating the problem of drainage.

Mr. Hart: At this time...this is Jordan Hart from Chris Hart & Partners, I'll discuss roadways. So the access is from South Kihei Road. The access is a shared driveway with the Kihei Kai Nani. The project site has a recorded easement for the use of this area for utilities and access. The applicant has been in communication with the mauka landowner to secure construction access. They'll be able to discuss that further. I, myself, have been in communication with the north property owner. I corresponded with them via email. They are open to allowing construction access from the north parcel if the mauka parcel is not become an option.

The traffic report was prepared by Phillip Rowell who is a licensed engineer specializing in traffic studies. We did receive comment from the Maui Police Department. They did not identify this location as a significant area of safety concern or excessive congestion in the context of South Kihei Road. The traffic studies were taken in March and April of 2014 for the signalized intersections and for the...I'm sorry for the unsignalized intersections and Ke Alii Alanui occurred in September of 2014.

The standard requirement for the preparation of traffic studies is that the traffic studies be conducted when school is in session as opposed to you know, hotel high season and so that's when the traffic studies were conducted.

This is information about levels of service. Basically it indicates delays. There's...the ratings go from A to F. And A being the least level of delay, with F being the most extreme. So the lower table indicates the relationship for traffic from South Kihei Road to the project entrance. There is no intersection. This would be the intersection that we're discussing. It is basically a driveway going onto South Kihei Road. So in the context of the existing traffic from the community it's passing right by the project entrance with no inhibition there was a discussion the last time about how that worked and basically the north bound is an uncontrolled route and that



just means they drive through as they please. There's no signal stopping them when residents want to leave the driveway. The southbound will currently stop if they're trying to take a left into the project driveway because there is no left turn lane. As was discussed the last time at planning commission Public Works had recommended the restriping of that area of South Kihei Road so that a left-turn lane could be included so that when south bound trips are trying to take a left that South Kihei Road can continue and the applicant is open to that. The delay that would be experienced is the current delay which is people who live in the project trying to take a left south and cut across northbound traffic. There's no delay taking a right to head north. So these are basically existing traffic counts based on the traffic study. The A.M. peak in the subject intersection there are 870 cars passing and in P.M. there was 1,144 cars passing. The project horizon for this traffic study was sent to the 2020 based on projections of existing proposed developments the future A.M. peak is 1,010 vehicles passing this intersection and the P.M. peak is 1,370 vehicles. Nani Loa's contribution is determined by using the trip generation handbook from the institute of traffic engineers which is the standard for doing traffic studies as reviewed by Department of Public Works for the State Department of Transportation. The project contributes 24 trips in the A.M. peak which is 2 percent of the traffic that's occurring and the project contributes 28 trips in the P.M. peak which is 2.1 percent of the traffic that would be occurring in the location. So to reiterate although no traffic improvements are actually warranted by standards established in the preparation of the traffic study Public Works did request a left-turn lane and the project is open to proposing that or is you know, willing to do that as indicated in our past meeting with you.

This is the project site. Driveway, there is currently a signalized flashing crosswalk at the north end of the...on the north side of the driveway access. This is an aerial photograph of the existing condition. This depicts the future left-turn lane. What would occur is that the center median would be restriped. The side of the South Kihei Road would also be restriped and it would allow for a left-turn lane here. This is the mitigation that was proposed by Public Works and is supported and embraced by the applicant.

There was another issue that was brought up and it was phasing of utility improvements into the project's access and utility easement and so the applicant has determined a method of phasing the work so that basically not more than 55 stalls would be impacted at any one time, 55 stalls would be provided on the project site at that same so that basically while the applicant is improving their utility easement to provide the utilities for their proposed project there would be parking for the existing Kihei Kai Nani residents on their project site. When that is completed the applicant would focus on construction of the site itself. And so the way that is shown is basically there would be four phases none exceeding 55 stalls of impact at any time and that parking would be provided at the project site. It's not 100 percent convenient for the Kihei Kai Nani but they are neighbors and they do share a legal access and so it would just have to be part of the process.

In the context of addressing nuisance to neighbors from the construction phase the applicant is committed to scheduling work with Kihei Kai Nani. They're open to scheduling the most disruptive types of work during their low visitor season. And then obviously all standard requirements of the County of Maui and SMA process of observing best management practices through development would be observed.

Construction would occur during normally permitted construction times which is daytime hours. Through the preparation of the Draft EA we did receive comment from the following agencies, Environmental Management, Department of Finance, Housing and Human Concerns. I would note there was a significant comment about affordable housing. The project does comply with and will participate in the County's Workforce Housing Program which means it will have to either provide or contribute to the workforce housing fund or units. We received comments from the Department of Public Works, the Department of Water Supply. One other item that was brought up was the use of water. To reiterate the project does have water meters, County water meters. However, after our last meeting they have determined to provide an irrigation well on site.

In addition to that there was discussion of how the relationship to the existing R1 water line worked in regard to this project. It's currently approximately 5,500 feet to the north of the project site that is at Welakahao and also at the police station. There is no current plans to extend it to the Piilani Highway mauka of the project site, but the project is gonna be fitted to receive R1 water at the time that is available. So it will be prepared to receive R1 if that's an option. It is providing an irrigation well on site and then it also will use its existing County water meters for domestic and fire protection.

The project did also receive comment from Accounting and General Services, the State Department of Health, U. S. Fish and Wildlife. There was an assessment on whether or not the proposed project interfered with the drainageway and whether or not a Department of Army Permit was needed. The conclusion was that it does not interfere with the drainageway and that no Department of the Army Permit is warranted.

Regarding the public process for this project beginning in October of 2014 Victory Development met with the association board for Kihei Kai Nani and presented the project. They also presented the project to the full board of the Kihei Kai Nani. December of 2014 the project was presented again to the board president. In April of 2014, another update to the full board...I'm sorry the board president was completed. In May of 2015 the project was presented to the Kihei Community Association Design Review Committee. In September of 2015 there was a community meeting, the owner...Chris Hart & Partners mailed them out but the owner had 900 invitations mailed out because it's a densely populated area, there were 23 attendees after 900 meeting notices were mailed out. In June of 2015 the Maui Planning Commission reviewed the Draft Environmental Assessment and received comments from the commission and we adjusted the Draft EA. It finally became the Final EA. In August of 2015 received comments from the County of Maui Urban Design Review Board and made design adjustments based on those comments. In November of 2015, the Maui Planning Commission reviewed the completeness of the Final EA based on previous public input, comments, agency comments, planning commission comments and a Finding of No Significant Impact was determined. In December 8, the Finding of No Significant Impact was published.

Today as discussed procedurally you're hearing public testimony and having a public hearing on the SMA Major Permit and the community plan amendment and there's an anticipated recommendation to the Maui County Council on the community plan amendment. As you all know there's no way to receive an SMA Major Permit without community plan designation being in line with the zoning and proposed use and so after the project goes to Council for decision on

the community plan amendment it would be coming back to the planning commission for a decision on the SMA Major Permit to allow the development of the project. I'm not gonna rehash the summary. That's the conclusion of my presentation. Thank you very much.

Chair Ball: Thank you, Jordan. At this time, we'll open it up for public testimony.

**a) Public Hearing**

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

Kahu Richard Deleon: Aloha ka kou.

Chair Ball: Aloha.

Kahu Deleon: My name is Kahu Richard Maele Deleon. I live in South Kihei, Maui. And my issue is about the Victory Development and because why...it bothers me because it's changing zoning. People that bought properties 20, 30 years ago was based on residential. When it change it again to high end density or hotels, it changes the dynamics of why the bought the property in the first place. So that's my question. Is someone set some kind of precedence or a ripple effects that you can change things in the middle of the game, it's moving the goal post around. So what kind of ripple effects that's gonna cause within the communities that gonna purchase or are allowed to buy properties at a different value, a different price which it's already outreachable. So I oppose based on that dynamics of the changes of zoning. So for me personal as a host and a state everybody loves, right? So to all of you it's nothing personal...(inaudible-turned and spoke to the audience)...

Chair Ball: Kahu address...and use the mic please.

Kahu Deleon: Yes, well my kupuna always told me to respect my elders, excuse my back, yes. So that's my mana'o. That is my thought. So it's about changing the zonings or changing it in the middle of the game which I oppose. Thank you very much.

Chair Ball: Any questions for the testifier? Kahu, Commissioner Hedani?

Mr. Hedani: Richard?

Kahu Deleon: Yes.

Mr. Hedani: The property that you're talking about is zoned H-2.

Kahu Deleon: It's zoned Residential.

Mr. Hedani: It's zoned H-2. Hotel.

Kahu Deleon: It's already Hotel zoned?

Mr. Hedani: It's already—

Kahu Deleon: So why is it changing then?

Mr. Hedani: It was recommended through the community plan for residential, but the zoning underlying the property is H-2, Hotel and it's been that for 20 years.

Kahu Deleon: ...(inaudible)...for how long?

Mr. Hedani: Since Kihei Kai Nani was built.

Chair Ball: Okay, thank you. Any further questions for the testifier? Seeing none, thank you.

Kahu Deleon: Thank you.

Chair Ball: Kahala?

Ms. Kahala Maui: Good morning everybody and thank you for hearing me. Okay, I hear that you're telling Richard that this was zoned as H-2 for 20 years now. So my question to you now changes to what is this C-1 about? It says Multi-Family to Hotel, okay. My testimony is more for all of this because I see vacation, vacation, vacation, vacation coming up, okay. What are we doing besides incarcerating our homeless people? What are we doing to help our residents get a home? If you keep on building all these vacation rentals and all these hotels not only are your desecrating the land, nobody ever thought about the lineal descendants of these properties before they quite titled them and rushed them out for money. And what are these rich investors gonna do with all this money? When they desecrate the land and they cannot feed their children natural food are you gonna feed your kid that dirty dollar that you just made? Most of these people that own these vacation properties don't even live here. That money that they rake in from those vacation properties goes back to where they live. And how does that affect the residents here? What about those of whom whether Hawaiian or non-Hawaiian have lived here for generations and are forced off these islands because they cannot afford to live in their homeland. And the more vacation rentals we have, the higher the rent goes. How is that supposed to work? You're supposed to be here to serve your community not people from elsewhere in the world. And I apologize if I offend any investors behind him but those million dollars that they're raking in, what's that doing for our people, what's that doing for our residents, what's that gonna do for your children when you can no longer take of them? And how does that affect everybody? We're destroying the ocean, we're destroying the land. Nobody ever came to me before they built resorts on the land that I am an heir to. Nobody came to me and offered me a dollar for that yet and still I live in my home island and I don't even have a house of my own. I can't even afford it. Why? 'Cause everything is vacation. And do you think that I'm alone? Do you think that I'm the only person? No, I'm just the only person here with a mouth. Okay, what about all the hundreds out there what are we gonna do keep on building prisons and incarcerating them? But do you guys think about that and you think about the morality of the choices that you make and the permits that you give and the zoning that you do and all the vacation rentals that you have and when you no longer have a resident to work in these vacation properties so be it. Everything collapses, right? Enjoy yourselves and have a good day.



Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Let's see, Michael Reed Gach?

Mr. Michael Reed Gach: Thank you I am pleased to present to the Planning Commission. It's news to me what you just said. It's been in the Maui News that this property for the Victory property is a Multi-Family Residential Hotel, H-2. Other notices all around my community have been told this to me. So I'm like well, what is, what is correct here? Look, the bottom line is in my testimony is anybody who knows this neighborhood, I am a resident of South Kihei. I'm an owner of Kihei Kai Nani and I'm an owner of Kihei Akahi. Yeah, when I bought in this is a vacant lot. It wasn't told to me that it was a hotel when I bought these properties. So somebody is lying, number one. Number two, there is congestion on this huge block and it's...and if you approve of it or if this is a hotel then there's precedent to create other hotels in back of the shopping centers, in back of these...the Banyan and Kihei Akahi, Kihei Kai Nani and this is a perfect recipe for gridlock. And that is not sweet, nice way to greet aloha here for our beautiful beaches and for the hotel...for hotel...other hotels as well as for the condominiums. I feel that the Planning Commission and I feel honored to say this to you has a great responsibility in terms of the pollution in Kamaole Beaches. I swam in these oceans 20 years ago. I know there was tremendous amounts of fish. It's not there anymore. People are other fishing but they're not catching anything because it just doesn't exist and I appreciate your smile because you know what I'm talking about. So it's environmental, it's in terms of the infrastructure. There is no infrastructure in South Kihei Road. It's just gonna get much, much worse. And the thoroughfare of bringing people through Kihei Akahi...through Kihei Kai Nani where there's residents within 35 feet and more of this Victory property having them bring their cars through this private property is, is not appropriate. There are people in the swimming pool at Kihei Kai Nani that's within 35 feet and it will be..well, as an owner and because of this gulch and the water that goes through I mean it's just gonna be devastating for all the reasons I've said. Thank you so much for listening to my testimony. Thank you.

Chair Ball: Thank you. Any questions for...Commissioner Higashi?

Mr. Higashi: I have a question based upon the fact that before you bought this property wasn't this particular area the ahupua'a that went from the mountain to the ocean and that this particular gulch area was a natural resource for water to flow to the ocean?

Mr. Gach: Right.

Mr. Higashi: So when the developments can in into this particular area did the people consider that if they're building in an area that is a natural drainage—

Mr. Gach: Yes.

Mr. Higashi: Would you think that they would be thinking about future developments coming in so that this water that's flowing is now becoming a problem?

Mr. Gach: Yes, yes. And the gulch goes right through the driveway of Kihei Kai Nani as you know and the Planning Commission here has a responsibility for looking at that issue. And it is a big issue, but my issue is the ecological and my issue is, and so environmental and secondly,

my issue is South Kihei Road infrastructure is not built for hotel...that many people. Already there's gridlock. Already there's congestion. You know that if you, if you just drive by at any time it's not just oh, certain little times. There's congestion all the time and it's frustrating that you can't get through these...this entire block. Do you know that, sir?

Mr. Higashi: Yes. I also know that Kai Nani has a population unit of 150 or so units there.

Mr. Gach: At where?

Mr. Higashi: At Kai Nani condo area.

Mr. Gach: Kihei Kai Nani.

Mr. Higashi: Yeah. And above that where Victory is supposed to be having their development proposal there's 39 units.

Mr. Gach: Right.

Mr. Higashi: So when you look at the idea about the natural hazard and the amount of water that's coming through there it would not have a major impact on this particular ahupua'a that has the natural drainage that goes down to the ocean that's natural.

Mr. Gach: Okay.

Mr. Higashi: So the concern right now I think for us Commissioners is that for my personal standpoint is that the County originally when former Elmer Carvalho was Mayor

Chair Ball: Commissioner Higashi is there a question to the testifier?

Mr. Higashi: Well, anyway I was getting back to the point about why Kihei is a tourist area because he designated that particular area for tourism and Central Maui is for the local people. Did you know that?

Mr. Gach: I know that condominiums have been built to put hotels in back of the condominiums you know, when there's already gridlock happening on the block does not seem like a very good way to plan.

Chair Ball: Thank you. Any further questions for the testifier?

Chair Ball: Okay. Autumn Ness? Sorry, please identify yourself too when you all come up to the podium. I forgot to mention that.

Ms. Autumn Ness: Aloha everybody. My name is Autumn Ness. I'm here representing myself and working families in Kihei in strong opposition to Victory Development's request for a community plan amendment from Multi-Family to Hotel. The community plan says that these 39 units should be multi-family homes that's because the community recognizes the dire need for housing for local people. This isn't part of my testimony but I just...I learned today that 20 years

ago the County decided that Kahului is for the people who live here and Kihei is for tourist. That would be great if I could afford a second car for my family, but the cost of living has go up so much in the last 20 years. I'm a family of three with only car because we can't afford another one so my husband has to ride his bicycle to work. We're not, you know, poor people. I just can't afford another car. It's not an option for me as someone who lives here to live in Kahului. So moving on.

Just a quick question of how many of you have tried to rent a home to live in in the last five years? Have you been a part of the rental market for you to find a home in the last five years? So you guys know a little bit about what I'm talking about. For the rest of you I'm gonna explain the details. I live in Kihei. Sorry, I'm gonna explain the details of the process and why keeping 39 units zoned as Multi-Family not Hotel not zoned, sorry in the Kihei Community Plan. It's so very important.

I live in Kihei and over the last year I have personally experienced the absurdity of the housing market and witnessed three of my friends struggle with homelessness because of it. My husband, my three-year-old child and I had to move a few months ago because our landlord raised our rent by \$250 a month at the same time that he started doing major renovations to our yard making it totally unusable so we had to move. Since tenants are required to give 30-day notices and most rentals rent the month prior to being available, you only have 30 days to find a place to live, right? It's like this race.

Right now two bedrooms you're lucky to find a two-bedroom for \$1,800 that's if you score, right? And the vast majority of landlords require that you prove that your take home household income is three times what your rent is, right? They require paperwork to prove that. That means that my husband and I would need a take home pay of \$5,400 a month to rent an \$1,800 a month two-bedroom. In reality, our take home pay after taxes is \$4,000 so we're already short, right? A BC-2 zoned County paid worker who makes \$18 an hour, this is someone with a good County job who makes \$18 an hour after take home pay, after taxes and insurance they have a take home pay of \$1,900 a month. That's less than what we make, a County well-paid, County mid-range worker, right? A two worker family working a mid-range County level job has a take home salary of \$3,800. Using the formula that landlords want you to only spend a third of your income on rent this working couple is eligible to rent something for \$1,266.

Ms. Takayama-Corden: Three minutes.

Ms. Ness: That does not exist, right? Some landlords require you to provide bank statements. I had to bring copies of my savings account statement to prove that I have enough savings on hand to pay rent should I become unemployed suddenly. At each home viewing that we went to, I'm not exaggerating there were 20 sometimes 30 families vying for the viewing. There's was people shoved into this little house, all kind of getting aggressive handing their paperwork at the landlord, right?

Chair Ball: Autumn?

Ms. Ness: What?

Chair Ball: Please conclude your statement.

Ms. Ness: Am I three minutes already.

Ms. Takayama-Corden: You're three minutes going on four.

Ms. Ness: Geez, okay. Anyway my conclusion is as two employed people with a child we didn't find a place to live. We were two months away...two days from being homeless. Our plan was to rent a U-Haul for an extended period of time, put all our belonging in the U-Haul and couch surf. I have a three-year-old daughter in school and we have two full-time jobs. That was my plan to not be homeless. We got really, really lucky and found a place to live but I helped three people employed, not mentally...no mental problems, responsible capable people who have been homeless in the last year in Kihei. This is a reality.

Chair Ball: Yeah, thank you.

Ms. Ness: Taking 39 units out of multi-family and zoning them for hotel is going to exacerbate the problem.

Chair Ball: Got it. Thank you.

Ms. Ness: I have the rest of my testimony here.

Chair Ball: Any questions for the testifier? Yes, Commissioner Robinson?

Mr. Robinson: Thank you for your testimony. I think a lot of people don't connect what's happening out there when they come into these type of developments and thank you for coming and sharing how hard it is for people out there and I hear you and I understand. A question for you now is you do have...you did find a place to live?

Ms. Ness: We found a place. One of my friends right now stayed on our couch a couple weeks ago because he has a dog and he's single and he can't find a place to live. You know, he has money, he has a job.

Mr. Robinson: Thank you for your testimony. I encourage you when it comes in front of the Council that you...you along with some of your friends share that with you...and I think that will, that will go a long way. Thank you.

Ms. Ness: I would appreciate it if you guys recommended to the Council before that's not ... (inaudible)...

Chair Ball: Any further questions for the testifier? Thank you, Autumn.

Ms. Ness: I have the rest of my testimony. It has numbers like real people numbers who have real jobs if you guys could please read it?

Chair Ball: You can hand it in.



Ms. Ness: Can I give this to you?

Chair Ball: Next up is Debra Mader?

Ms. Ness: There's the Craig's List listings in here for rentals so you guys can—

Chair Ball: Thank you Autumn. You're out of order now.

Ms. Debra Mader: Aloha, Debra Mader, Kihei resident, homeowner. I am speaking in opposition to Item C-1. I do not want the community plan amended from Multi-Family to Hotel which is what Uncle Richard was trying to convey. Maybe he used the word, zoning instead of the community plan amendment, but this is what he was referring to.

Chair Ball: If you could pull back from the mic?

Ms. Mader: Just wanna make sure my voice was heard. When we moved to Kihei we purchased a condominium at Koa Resort. At the time it was 90 percent owner occupied. It was a place where teachers and small families such as mine with a newborn had a decent place to live. Fast forward seven years, it's now 90 percent vacation rentals they're posted on the VRBO this is one example. Kihei is getting a high school. If it was only meant to be for tourists why would be getting a high school in Kihei? Why would we have a community center? Why would be having mom meet up groups and parent nights and Kihei Community Association? The community plan is set forth to defend the community and it's grown and it's changed and it's not just a vacation place any more. I live three blocks from the proposed project. I'm all in favor of multi-family. I, too, own nearby at Keonekai Villages, a long-term rental property. We made it very nice, brand new on the island and when we put it on Craig's List the average rental there is \$1,800 and there's some people asking over \$2,000 for two bedrooms in Kihei, tiny like 600, 400 square feet. We asked 1,475 well below market because we wanted to give families a chance and it's plenty for us. Within six hours we had 40 people banging down our door. Families, kanakas, people...disabled veterans. My husband and I had one property to give and all these families within a few hours. So we picked the family that was expecting a baby and that had no credit and that didn't have a savings but they had enough money for first month and security. They've been excellent tenants ever since. We need more multi-family. This is a community. This is a homey neighborhood. We love our neighbors, we work together and we just don't feel there is a need for a hotel here. It's...the housing crisis in Maui is such that if we keep building vacation hotels and allowing all of these vacation rentals to hit the market we're just pushing out all the people that live and work here. And I hope that you just consider this testimony. I'll be more than happy to answer questions from my own experience.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name.

Ms. Mader: Debra Mader.

Mr. Hedani: Debra, what caused the change at Koa Resort?

Ms. Mader: The crash of the housing market. There was some retired folk there that had lived for a long time, lost their retirement, had to sell because they couldn't afford to stay on Maui any more due to the high cost of living. So people who live off island snatched up the properties and just listed them as vacation rentals because they make more money renting to vacationers than they do to local people. You could maybe make 1,800 a month tops renting to local long-term, vacation you make three grand a month.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I would just like to correct you about my statement about Kihei being—

Chair Ball: Commissioner Higashi we're only gonna do questions here. We don't have to correct the testifier.

Mr. Higashi: Your question or comment about Kihei being Hotel zoned area is not something that also includes residential area, it doesn't mean that it should be all hotel.

Ms. Mader: What's your question?

Mr. Higashi: Do you, do you right now believe that Kihei should be all residential versus hotel?

Ms. Mader: No, that's not my statement. I was commenting on your statement to the earlier testifier saying that Kihei is a zoned community for tourism only. And my comment to that was it is a mixed community and we already have more than adequate hotel and transient accommodations available. What we have a dire shortage of is long-term rentals and affordable properties for people who live and work here and are from here.

Mr. Higashi: Thank you.

Ms. Mader: Mahalo.

Chair Ball: Any further questions? Commissioner Medeiros?

Mr. Medeiros: Mine is just a quick statement.

Ms. Mader: Question or statement?

Mr. Medeiros: No I just wanted to tell you what Maui needs is more landlords like you.

Ms. Mader: Mahalo.

Chair Ball: Thank you, Debra.

Ms. Mader: I would be more than happy to support or to submit supporting documents for all that I have said with the statistics and all of those things, Chair.

Chair Ball: Terez Lindsey.

Ms. Terez Lindsey: Good morning everyone. So my name is Terez Amato Lindsey. I am here on behalf of the Sierra Club and we are testifying, of course, on C-1, the Victory Development amendment. So the Sierra Club stands essentially as everyone pretty much well knows that we support the community plan. The community plan is the process by which the people are able to have an influence about what goes on in their neighborhood. So the Sierra Club firmly believes that people deserve a voice and therefore, the plan should be upheld as it was.

So a little history, this particular property in question already experienced a lot of discussion in the last community plan update. Back in '93 the Planning Commission in their Kihei-Makena Community Plan review recommended that this land be redesignated from Hotel to Multi-Family. So it was originally Hotel and then the community decided hey, we don't think that's a good use for the land let's change it to Multi-Family. Well, apparently the Maui Planning Department also agreed and in 1997, they recommended that the County Council Land Use Committee vote to change this parcel and the five adjacent vacant parcels from Hotel and Business/Commercial Use to Multi-Family. So this is kind of already a said and done thing. So in response to the overwhelming community support for the Multi-Family designation the County Council adopted that designation and the final adopted Kihei-Makena Community Plan in 1998. The Kihei-Makena Community Plan also clearly states, that further hotel expansion in Kihei is not desired. On Page 17 of the Kihei-Makena Plan under Land Use Objectives and Policies the plan states a clear goal, limit hotel uses to those areas presently planned for hotel use and limit hotel development until adequate public facilities and services are established to meet existing needs. This land was specifically not planned for hotel use in the Kihei Community Plan. Now the newest landowner wants to amend the community plan to go against what was decided through the community planning process. Our traffic concerns in the Kamaole area have not improved nor have the drainage conditions. Adequate public facilities and services are not available to support 39 more units on this landlocked parcel. The appropriate community plan designation for this 1.4 acre parcel is Multi-Family. The adjacent homeowners have been trying to make that case. Please do not vote on the community plan amendment today and instead approve the intervention and allow the neighbors who know this land well to make their case. They have watched the traffic patterns and the drainage patterns for years. They have worked to get the property zoned as Multi-Family rather than Hotel in the 1998 Makena-Kihei Community Plan update.

Ms. Takayama-Corden: Three minutes.

Ms. Lindsey: Planning Staff may get to visit the site a few times but residents know it really well. This local knowledge should be valued by the commission. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Hedani?

Mr. Hedani: When...in 1993 when the community plan was changed what was it changed...what was the prior community plan designation for the property?

Ms. Lindsey: It was originally Hotel, Commercial and Business,.

Mr. Hedani: So the original community plan was Hotel and it was changed in the community plan to Residential Multi-Family?

Ms. Lindsey: That's correct. When the community was able to get together and really look at the area and what was going on—

Mr. Hedani: For this parcel as well as five other parcels?

Ms. Lindsey: Correct. For the five adjacent.

Mr. Hedani: At the time that the community plan was changed from Hotel to Multi-Family Residential did the community obtain the consent of the owner?

Ms. Lindsey: I am not sure specifically what that was, but I know that the land I believe has changed ownership in that time period. So originally it was approved and passed that way that it would be Multi-Family.

Chair Ball: Okay, any further questions? Seeing none, thank you.

Ms. Lindsey: Thank you.

Chair Ball: Don and Debbie Cary?

Mr. Kerry: Pass.

Chair Ball: Tom and Linda Doll? Okay, that's all I have that is signed up at this time. If anyone else would like to testify at this time come forward. Sir, please identify yourself and you have three minutes.

Mr. Kasper Rasmussen: Aloha and good morning. My name is Kasper. I work down the hill from the thing that you are talking about. I've been working down there for 14 years. I'm a homeowner in Kihei. And I'm testifying on behalf of myself. And having dealt with guests, owners, property issues, beach issues, life guard, what happens out in the ocean, the run off, the storms, the drainage situation and all of those things, I think, and I've heard a lotta testimony about here is we need somebody who cares.

I know you guys have a tough job, you have to decide who's gonna be able to build and what they're gonna be able to build on there, but I think in the end the individual who we have sitting behind me here Gregg, I'm a avid scuba diver, so is Gregg, turtles and things out there is something we care very deeply about and what happens out in the reef and I know he does too. I think he's a caring individual and I stand in front of you because I think you should let him have it. Let him go at it and do the right thing with the land and I think he can. This is not a guy from California or Montana that's trying to make buck. This is a local guy, one of us, that's trying to take care of the community the right way. It's 26 or 36, where I'm at we have 80, we're right on the beach and we're not containing any runoff neither is anybody else around there because we were all built back in the old days. He's doing something about it. He's thinking about it, and I think he's doing the right thing. Obviously he needs some guidance from you guys as to what



you wanna see, but I think overall, if you don't let him go ahead, we're gonna get somebody from Montana that doesn't care. Thank you very much. Have a good day.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Lucienne deNaie: Switching gears to Item C-1. I am now testifying on behalf of Maui Tomorrow Foundation, Executive Director of the foundation Albert Perez apologizes that he can't be here today. I am the newly elected president of Maui Tomorrow and am testifying on behalf of the board. We are concerned about the precedent that's being set in the reverting...community plan amendment to revert back to the higher density in this area. People have referred to the fact that it was originally zoned Hotel, but you know everything in Kihei was zoned like in mass after the 1970's 701 plan and it was like someone looking at a piece of paper and not looking at all at the lands to see how it would all work out. Well, the community planning process is a chance to kind of like update from what we now know on the ground. That's how it works. That's...otherwise we just pass one community plan and never look at it again there'd be no need. People could just amend it and you know, you wouldn't need citizens to weigh in, you wouldn't need the updates of the technical reports and so forth. But the case here is it did get changed and I was at many of those meetings personally. It got changed after a lot of thought. The idea was there was plenty of hotel and hotel like uses already in Kihei we needed to balance it with residential. That was the dream of the 701 plan and so you can't just give out the entitlements and then not also follow through on the intention to have that balance. The Environmental Impact Statement on this is not really up to par that's why it's being challenged. So you're being asked to base your decision on this statement that really just claims no impact, no impact, no impact whereas if you were digging down deeper there are impacts and based on that really Maui Tomorrow encourages you to defer your decision making on this. Let folks have their day in court and give you the benefit of their advice, the intervenors. I read the rational for not letting them intervene and I have to say it reminds me very much of when some members of this board heard from some intervenors on the Wailea Resort and said, oh no, no, no, you know their interests were the same as the public. Well guess what? That didn't hold up in court. And you know, it really doesn't when people take the trouble to intervene their interest usually area far more different, far more intense than those of the general public. These folks will have all the traffic pass right through their parking lot. The general public doesn't have that condition. The general public will never see that. They really deserve to be heard and you deserve to give them...I mean, they deserve your consideration. So we thank you for taking that opportunity to let our public process really function.

Chair Ball: Any questions for the testifier? Seeing none, thank you. I saw someone wanted to testify.

Mr. Philip Mayall: Good morning, my name is Philip Mayall. We have a home on Omiko Place which is just up the hill from the proposed development. I'll just read you a little thing I wrote. I don't know how many of you got it or not but it's a email and it says, dear civic leaders I'm writing in regard to the proposed changes of the Nani Loa Condominium Hotel on South Kihei Road.

Mr. Higashi: Sir, can you speak in the mic?

Mr. Mayall: Sure. So, better? Thanks. I'll just say I listened to the birds this morning and they're still louder than the morning traffic. They compete, the birds can still be heard and then I think about adding the layers of noise and industrial sized air conditioners, trash compactors, delivery trucks and additional car traffic and hotel staff and visitors and paving over what's been the bird's home for a long, long time and I think that once these changes are made they will probably never be undone. Chances are slim that the parking lots would every become bird sanctuaries. I understand the developers need to develop and I don't have a problem with that, but I do have a problem with them trying to bulldoze their way to changing the existing plan. They're proposing mixing single-family homes and hotels. I use the word plural because when one of these parcels is rezoned it's only reasonable that the others will have an expectation of being granted the same consideration. I'm sure Victory Development would be glad to get approval for a 10-story or 20-story or 30-story hotel if they could. I understand that they've been entrusted with their investor's money and their responsibility is to make as much money as they can and move onto the next drive by development. But those of us who are not Victory Development have a different responsibility. Responsibility of considering whether we want to take step toward being a noisier more congested, more polluted area or we want to take a step toward being the anti-Las Vegas where people want to take a deep breath, hear the birds and feel peace and rejuvenation in a paradise like setting? I think that if in the future Maui decides that they really do need one more hotel there will be plenty of victory developments available to accommodate that. I think the name Victory itself implies winners and losers. If I have to choose I would go with the many people whose homes and lives would be impacted by the construction of a hotel on this site. There would be the noise and disruption of construction but it wouldn't end. The construction traffic would be replaced by the delivery trucks and the visitor traffic. So I urge you to deny the proposed changes to Victory. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time? Please come forward.

Ms. Mahinalani Kealakai: Aloha, I am Mahinalani Kealakai known to my people as her highness Kahanu. I am a heir to the largest heiau in all the Hawaiian Islands. I am said today. This is the first time I'm doing this, but I am sad to see what's happening to our island. I lived on Oahu and being in traffic it got worse, okay. And whatever you people have to do I hope it's gonna be for our future of all our people and not just making money because the thing is our people still suffer and now I find that it's non Kanaka Maolis that are being also hurt. So as far as Kihei is concerned, I'm an employee of a security company and I was said that the coconut trees were being marked to be knocked down. This to me was ordered by our queen to have coconut trees for our future children. This is coconut trees. It's healthy. I also heard that there's gonna be four-story timeshare. The thing is I told the people that was coming to visit nobody listens anymore. It's supposed to be just two-story and already we have like some of the people are talking and saying traffic is bad. I don't wanna see Maui become like Oahu or Waikiki. Please whatever is happening today I'm not one that my brains is so big, I don't read the paper, I don't watch news because it's all negatives. You people are here to listen, but are you folks gonna really listen? Nobody listens anymore? I just came from another meeting and it was for the Kanaka Maolis aloha aina and how they talk about submitting paperwork that nobody listens they just put it on the shelves. Come on, this is our future for Maui let's make it a better place and not make it like Oahu. We don't need another Waikiki and stop. Four stories is no and this

hotels that have a lotta empty rooms go do a timeshare with them because it makes more sense to have empty rooms than rooms that have people. Please you are looking at your children also. And I thank you for listening to me.

Chair Ball: Thank you. Any questions?

Ms. Kealakai: Nice seeing you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Tracy Ozuna: Aloha. My name is Tracy Ozuna and I was fortunate to buy in the Iliwai Loop just directly behind the proposed rezoning change. You know, I've been so fortunate to live out here and pursue the American dream of owning a home and having a car and being able to work on this beautiful aina. And I'm fortunate enough there's a sliver of ocean view in my line of sight where I can just see the wind line coming up and that makes me so happy every morning just to have this little line of sight. And if this zoning goes through it's almost like it's a form of spot zoning. So as soon as the one zone is rezoned, all of these other adjacent properties are going to petition you and say can I can be a hotel too? Can I build a four-story hotel as well? Because we are setting precedence here. This is a residential neighborhood in a housing crisis. There are thousands of people on this island vying for any property that they can come into contact with. For me, I was fortunate enough to buy because it was cheaper for me to buy a home out of what I thought I could do than to find another rental. Mortgage is cheaper that it would be for me to rent a home in my neighborhood. And fortunately I had enough credit to be able to do that and not everyone does. Most people don't. And if you rezone all of this, more people will not be able to afford to buy homes. And I mean, the gain to the public for the rezoning is so small compared to the hardships that are going to affect the residents and surrounding the neighborhood. It's not just about the congestion, it's not just about the detrimental effects it will have to our land by having a higher population in this area than it was deemed appropriate, the environmental studies, everything. Our water in this whole Kamaole, you know...all along these beaches already the pollution down there just from the runoff and everything going down is so much greater in the last ten years and that where does it stop. It should be balanced to restore adequate residential growth alongside any urban developments. There has to be balance. I mean, what he said about the love birds, you know, in the morning. We are so fortunate, we have wild love birds in our neighborhood. There's so few places where even the birds can go to just...I'm sorry, I'm not getting everything across that I want to say, but we're just so fortunate to live on this beautiful island. We have to protect it and that's your responsibility and you have to create balance for us because we're not in charge of that that's your area of expertise and by rezoning this one little plot, you can change an entire community, and that would be so unfortunate not only for myself but for our future generations. For my keiki who are growing up here who will probably never be able to own a home at the rate that things are going at this pace. We have to plan for the future. We can't just think about right now.

Chair Ball: Thank you.

Ms. Ozuna: Thank you.

Chair Ball: Is there any questions for the testifier? Seeing none, thank you.

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

Chair Ball: For those of you that did not testify you could do so now. If you've already testified you will not be allowed to testify at this time. With that being said, I will go through the list and you can tell me if you still want to testify. Gymme Frank?

Ms. Gymme Frank: I do have a handout. Thank you. I'm Gymme Frank. My family has owned Unit 160 at the Kihei Kai Nani in Building 8 since the early '80s. I urge you not to change the designation of Lot 1A from multiple family to H-2. This would set a precedent for changing all of the vacant land surrounding Lot 1A from multiple family to H-2. South Kihei Road there is nonstop traffic because the area has become so overgrown during the past 30 years. There may be a serious liability issue which the County will be taking on if they permit the zoning to be changed to hotel. I am submitting multiple copies of eight photos that I took during various days and times in order to demonstrate the nonstop traffic entrance to the KKA. If the zoning stays multiple family the impact on additional traffic on South Kihei Road would be minimal. If it is changed to Hotel zoning this could result in as many as over 100 additional vehicles trying to enter Kihei Kai Nani driveway from South Kihei Road during the day. Thank you for the time you've given me to speak to you today about the proposed new build out development mauka of Kihei Kai Nani Condominium. Kihei Kai Nani was built in 1970 there are 180 units which share the one driveway with parking on either side the width of which is no longer up to Code for new construction. We request that Maui County not change zoning of Lot 1A to...from multiple family to Hotel. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Next up is Barry Ewing?

Mr. Barry Ewing: Hi, I'm Barry Ewing. I've been a resident of Kihei Kai Nani for ten years and I've been a realtor for 27 years. I've never seen a project, a hotel project where you drive through some inexpensive condominiums and those are the least expensive condominiums along there to drive into a luxury hotel. Now come on whoever heard of that? And this is not a street it's our driveway. You take a look at this and you can put it on the microfiche.

Chair Ball: Pass it around. Continue.

Mr. Ewing: Pass that around. Our driveway in some areas in the parking there is less than 20 feet, 17 feet and if we have trucks and construction equipment and trash trucks going up and down that driveway at times there's over 300 people walking up and down that driveway. I mean there's sidewalks on one side but most people use the driveway. And the property values if you allow this project is just going to plummet for a couple years of construction those people will not be able to sell their units they will not be able to rent their units. A 150 of the 180 units there people do rent, not all the time but they do rent. And if you put the notion out that there's gonna be construction for two years, Air B&B, VRBO, Expedia, Home Key, Flip Key, all of those they'll put that word out and they will not be able to rent their units. Who wants to be in there with construction going on? So the poor people that own those units they're not high end, these are just working class people that own those units will not have any income coming in during

that time. And urge the planners not to agree to this project. It doesn't make sense. As far as the drainage goes that needs to be a catch basin right there. That's what needs to be there, that and part of the five acres. You funneled all the water down, the County's done it, funneled all the water down to that point and that needs to be a basin not a hotel. Thanks.

Chair Ball: Any questions for the testifier? Commissioner Lay?

Mr. Lay: So you live on that area below?

Mr. Ewing: Yes, I live on the property and in the last two years or last five years we've had two of those major floods and it's all about, it's all about...

Mr. Lay: Okay, well I have a question about that so do you live at the beginning where you turn in or are you at the top portion?

Mr. Ewing: I live in the middle by the pool.

Mr. Lay: Okay, so what they're thinking of doing now when the development and projects going and moving along is they're gonna be moving their parking area and you're parking on the top.

Mr. Ewing: Up in their dirt.

Mr. Lay: In your residence or people with you are they retired? What's the majority of the people that live in this area?

Mr. Ewing: Retired.

Mr. Lay: So they're—

Mr. Ewing: Or retirement age.

Mr. Lay: There might be some difficulty with getting back and forth from your parking area that's —

Mr. Ewing: Of course. We have all kinds of handicapped spaces in there right now for people. Gonna park 'em up there on a dirt parking lot?

Mr. Lay: Okay, thank you very much.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name?

Mr. Ewing: Barry Ewing.

Mr. Hedani: Barry, when was the Kihei Kai Nani constructed?



Mr. Ewing: 1970. They're 45 years old. And let me—

Mr. Hedani: Let me ask a question.

Mr. Ewing: Go ahead.

Mr. Hedani: At 45 years old is the project still in good shape?

Mr. Ewing: Fairly good shape yes.

Mr. Hedani: So there's another 45 years in lifespan for the project?

Mr. Ewing: Yeah, the only problems that we have of course is like everybody else's is the plumbing, you know, is getting older, but other than that...

Mr. Hedani: The question also that I had is you mentioned that 150 of the 180 units in Kihei Kai Nani are operated as a hotel?

Mr. Ewing: Absolutely.

Mr. Hedani: So they're not used as multi-family residential?

Mr. Ewing: No.

Chair Ball: Any further questions? Seeing none, thank you. Carole Eiserloh?

Ms. Carole Eiserloh: Good morning Mr. Spence and Members of the Planning Commission. My name is Carole Eiserloh and my husband Lothar and I have owned our Kai Nani Condo since 1984. We've resided there since 2006. First I would like to say that I'm very distressed that we were not notified about the Victory EA meeting in November as promised by Paul Fasi to Beth Belanger the then president of the association and me after the initial June EA meeting. We certainly would have been here to critique Victory's presentation which in our view did not address the recommendations by the planning commission in the initial EA meeting. We strongly object to Victory Development's request for a community plan amendment changing their MF status to H-2 on their Nani Loa development.

In 1970 this area was part of the Kamaole Super Block which allowed high density hotel development. But in 1998, the Kihei-Makena Community Plan changed the H-2 zoning to MF as Maui residents saw the rapid development taking place in Kihei and Makena to the detriment of the community and environment and recognizing need for multi-family land use designation...this is a quote directly from the community plan which provide housing opportunities to areas which are in close proximity to infrastructure systems and other urban services and quote again, provide a garden setting. It limited hotel uses again this is from your plan, to those areas presently planned for hotel use. Maui County has labeled nearly every vacant property in South Kihei as H-2 which is the highest density hotel zoning allowing 12 stories and 150 percent floor area ratio. This totally contradicts the Kihei-Makena Community Plan which states all zoning applications and/or proposed land uses and developments shall be

consistent with the land use map and objectives and policies of the Kihei Community Plan. Clearly there is a conflict between the two documents. If Victory Development is given H-2 status a precedent will be established and every owner of vacant property in the Kamaole Super Block could petition for the same. And although Victory's current plan call for lower structures if given this designation they can modify their plans or sell to another developer who will. To tamper with the long and hard won efforts of Maui residents who worked hard to balance the needs of the community undermines our democratic ideals. The plan considers the future needs of our island. I shudder to think how Kihei-Makena would look now if this plan had not been implemented in 1998. The planning commission needs to consider whether it is more important to increase hotel homes to meet the growing needs for multi-family housing. We sincerely hope you will not override the Kihei-Makena Community Plan and turn South Maui into another Waikiki. Remember Maui no ka oi. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none...Commissioner Hedani?

Mr. Hedani: Yes, can you tell me what the underlining zoning is for the Kihei Kai Nani project?

Ms. Eiserloh: When it was built it was considered to be Hotel. In 1970 at the same time that the Super Block was created. However our structures are—

Mr. Hedani: So it's H-2?

Ms. Eiserloh: Pardon me?

Mr. Hedani: So it's H-2?

Ms. Eiserloh: I don't know if it was H-2. Our structures are...they're two and three-story. We don't have even any four-story buildings.

Mr. Hedani: Right.

Ms. Eiserloh: They're two and three-stories. They're all one-bedroom units.

Mr. Hedani: So to your knowledge. The Kihei Kai Nani is zoned Hotel?

Ms. Eiserloh: Yes, it was zoned Hotel at the time of construction.

Mr. Hedani: It is zoned Hotel today.

Ms. Eiserloh: Yes it is.

Mr. Hedani: Okay.

Ms. Eiserloh: However I should...I do wanna enter one correction. Barry mentioned that it was all vacation rentals. Actually we have quite a few that are being use as multi-family and long-term rental in the current project. There are also a number of people who are resident there. And many of the people who rent their units out do not rent them out on a year round basis.

They use their...many of them are retirees. They come and they spend the whole winter and then they may rent their places out at some other time. So they're not in a state of rental actually for many of them for much of the year, some not at all because they strictly keep them for their own use. They do not use them for vacation rentals.

Mr. Hedani: Right. So although your property is zoned Hotel, its use can be for residential purposes?

Ms. Eiserloh: That's correct. It is being used for that way and it's being used as multi-family as well, yes.

Chair Ball: Further questions? Seeing none, thank you.

Ms. Eiserloh: Thank you very much.

Chair Ball: Julie Steiner? How about Michael Steiner? No? Mark Jelsing?

Mr. Mark Jelsing: Hi, aloha Commission Members. I have serious safety issues.

Chair Ball: Can you identify yourself Mark?

Mr. Jelsing: I have serious issues about safety with this development and people have already testified about the incredible congestion. In the area we have hordes of pedestrians going by, bicycles whizzing by, runners and cars, no left-hand turn lane and if we're gonna add construction to this mix for two years, cement trucks, supply trucks, some 50 odd employees running through, driving through our driveway which is extremely narrow as people have already pointed out. I'm afraid for the safety of our residents, our guests and also adjoining condominiums in the area if this were allowed to happen, if this development were allowed to happen. So that's a issue of pedestrians and vehicle is one. And the other is the water issue. We've had several hundred-year floods, one in 2007, one in 2011. You can look them up on YouTube and it's a raging river that goes through our driveway. It's not just a simple smaller amounts of water draining through the driveway. It's two or three feet of a raging river and a renter of ours at the time was swept away. He made the mistake of wanting to cross our driveway during one of these flood events and he was swept away, but he was a...a bystander was there and was able to pull him out. But I'm afraid if we're...if this development is allowed to take place we're gonna have more water issues. I think the gulch needs to be kept as it is so it's not to exacerbate the problem. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing one, Commissioner Hedani?

Mr. Hedani: Hi.

Mr. Jelsing: Hi.

Mr. Hedani: I saw pictures I think that was presented earlier about the flooding that occurs in the parking lot for Kihei Kai Nani. From my perspective, the solution would have been to put drainage underground to make the parking lot. But at the time the project was built I guess a

decision was made to keep it surface probably for cost reasons. The question that I have is would Kihei Kai Nani be interested in participating in burying the drainage through your easement at this particular point in time to alleviate that problem?

Mr. Jelsing: I'm sorry, I couldn't speak to that. I'm not on the board of directors or have any authority at the complex. I've been an owner since 2002. I'm just afraid that these 100-year flood events are going to be much more frequent in the future due to climate change.

Mr. Hedani: Right, no I understand.

Mr. Jelsing: And it's a really, a big safety issue as far as—

Mr. Hedani: I agree, and that's why I'm saying would Kihei Kai Nani to me from my perspective it's a perfect time for Kihei Kai Nani to participate in burying the drainage underground so that you eliminate that hazard and you can use their property for parking while you're creating this drainage system and do it at the same time they put in their utilities so that the problem is solved permanently for Kihei Kai Nani. I understand, I understand your perspective. It's something that the board has not approved so...but I'm hoping that it's something that you folks would consider for the future.

Mr. Jelsing: Okay, thank you.

Chair Ball: Any further questions for the testifier? Thank you. Jeff Kern?

Mr. Jeff Kern: Can I leave...(inaudible)...in front of the podium and you know, if I pass out...(inaudible-not speaking into a mic)...

Chair Ball: Maybe Jordan can help you pass out the pictures and then you go to the podium.

Mr. Kern: Okay. Good morning, Commissioners. I'm Jeff Kern and I live at Kihei Kai Nani. I just wanna quickly go through some—

Mr. Higashi: Can you speak in the mic?

Mr. Kern: Yep. Wanna quickly go through some historical—

Chair Ball: Go ahead Jeff.

Mr. Kern: Okay what I have here is *Maui News* from 1982 where Kihei Road was completely...half the lanes were washed away and then it shows the beach, the primary dune and a secondary dune were washed away and then the County was working on it on the bottom picture. Okay, so what happened was after that episode the County built a wall right there so now the water comes down our driveway, hits the wall and goes south to the low point in the road and then it goes down and takes out the lifeguard shack and takes out the access path and stuff. Okay, and this was 2007, December.

So then...so this is 2011 now it happened at night so I couldn't get pictures but you can see the

debris level is the same as 2007 on a raised sidewalk portion of the wall that the County put in and then it went down the same spot but the County Parks moved the lifeguard slightly to the north so it didn't take out the lifeguard shack, it took out a bunch of sand, the irrigation lines and then the access path that the people use. It's a heavily used area for tourists. And so it's just the damage. Just wanna show the damage that's on Kam II all the time. And I work in a volunteer group, South Maui Volunteers and we clean up all that every time something happens like that, we go in there and we do it and we do the sand fencing and get it back up to snuff and everything else.

Okay, and so this just shows the, you know, major storm events, I probably missed a few, it's at least major, five major storm events in the last 36 years and all these haven't been the 360 cubic foot 100-year floods, they've been less than that but they made substantive damage and what I use for a gauge instead of 50-year or 100-year when it goes to that second level of that raised sidewalk that's a significant flooding storm and that's the one that our volunteer group works for months and years to recapture the beach damage. So I go that.

And then I got pictures here showing that the collector road that was just put in, okay they decided to put in a...one, 48-inch culvert, okay, and then they did a huge spillway. Okay this road dips down and comes back up and look at all the metal tubes they put here so cars don't go off of there. So the County road can't even handle the anticipated water and they're scared of it. Okay, and Nani Loa or you know, they can't take care it ...(inaudible)... and this is the picture of the lot, okay that's Lot 1A and what is this lot is, it's all kind of a gulch, it's real high by Kihei Ekahi. It's at least 15, 16 feet from the bottom of the ditch and on this side it looks like about 8 feet. So it's not as high as you think. So but I was wondering how high is that retaining wall gonna be at the ditch and across the south property line, I mean, the east property line. And this is the existing culvert on their side. You've never seen a picture of this and this was one the engineers just said they're gonna ...(inaudible)...unchanged, but the landscape plan show they have a parking area over this going at least 20 feet over this existing 7 by...7 ½ by 2 culvert, but this is their side that you haven't seen. And so you know, with all that being said like Barry was saying, you know, the best forward thinking approach would be is for the County, Public Work or whoever does it, buy the five-acre parcel and this 1.4 ...(inaudible)... and do a step retention basin or something like that. Nobody wants to...they admit the problem's there but you just wanna throw another ...(inaudible)... in it. Let's take care of the problem. Let's start doing a retention basin. Let's go upcountry see if we can do some. Nobody's entertaining that they're just saying oh let's just...our rules say it's okay so we gotta do it. Okay, that's the problem of 1970 nobody wanted to take the initiative, no wanted to look forward thinking on it.

Chair Ball: Thank you. Are there any questions for the testifier? Commissioner Hedani?

Mr. Hedani: Do you have any recommendations for solving the drainage problem?

Mr. Jelsing: Well, just what I said my recommendations would be for...and if the County was more forward thinking back when it was affordable bought the Lot 1A and bought the five-acre parcel behind it and that's a start of a retention basin, it could be a ...(inaudible)..., it could be just a big lagoon or whatever that could have been real cheap then and I'm sure both lots will be for sale now too. But something like that needs to be done because you know, in 1970 it wasn't required and there wasn't as many hired services either. You gotta be fair to developers of



Kihei Kai Nani, all the subdivisions weren't in, all the roads weren't in, just this collector road, all those hard surfaces on our lot, a big angle, I invite you guys to come over here and look at that, it goes down, it goes up, it's all hard surface now. And so that adds to it. It used to be dirt now it's hard surface so that adds to that point and then like I say the County got all those pipes in there so a car doesn't go off of there. And another thing I don't understand is how can the County road, I know it's existing that's coming in there and then you have the County road drainage from the road itself is all going 100 percent on private property out to the ocean and isn't there supposed to be a storm drain or something? Yeah, I don't understand how all the road stuff works, but you know, when they got that road done I was really curious to see what they were gonna do because like on the other one I showed you and like Hart showed you a little bit those are the drainage at Piilani Highway and the next road over and so I was really curious to see what the County was gonna do with the collector road. 'Cause the collector road is right...the collector road is right across here so all this is going right here. So I was dying to see what they did with it. So what they did was put one 48-inch culvert which the engineer can confirm, a 48-inch round culvert is about the same size as our 2 x 7 ½. It's about the same square foot. You know, I think it's a difference about one or two square foot difference. I think it's two square foot more than what we have. And so what they do, they had to anticipate the spillway on those other pictures that you have there so they made...so what they did is they put this 48-inch culvert in, they know it's gonna not handle it and they put it up about four feet where it has to fill up about four feet back up and so a little reservoir, small reservoir system to the subdivision and then it's gonna spill over it, okay. And they know it's gonna spill over, know it's gonna spill over hard as you can see all steel pipe barriers they put in there. And I don't know if a brand new road should have been put in that way or not, I don't know it's not my area of expertise but I was really curious to see if they were gonna put a double culvert you know as they've gone there. So I don't understand the whole thing and my answer to your question would be purchase those two lots. I mean, we buy Lipoa Point, we're looking at Jaws and this and that for people, well this is, this is something big too so let's put some money where our mouths is. Everybody thinks they wanna do the right thing but nobody's doing it.

Mr. Hedani: So your solution basically would be take the hotel property and turn it into a lagoon?

Mr. Jesling: Yeah, yeah. Well, a...you know, you're saying lagoon, but I don't know, I don't know all the different steps. There's other things than just a lagoon for drainage. I don't know all of that, you know, but something like that because the development's gonna be more hard surfaces.

Mr. Hedani: Thank you.

Mr. Jesling: Yeah, thanks.

Chair Ball: Commissioner Robinson? Jeff you have another question.

Mr. Robinson: I have a question.

Chair Ball: Jeff?

Mr. Robinson: Jeff was there any flooding from 1970 to 2000?

Mr. Jesling: Yeah, the pictures I showed you was 1982. In 1980 there was the—

Mr. Robinson: Okay. Is it your stance that Victory Development needs to take care of this drainage problem that the County of Maui needs to take care of this project? Does Kihei Kai Nani have any responsibility of helping their own, helping themselves take care of this problem?

Mr. Jesling: Sure everybody's got a responsibility in this and as far as you know, 1.4 acres all sort of caught into this thing and...(inaudible)...it had but my guess, my answer to that be is have them go put it on pilings and raise it up and let it spill over under them then they can say they're not involved in it all. You know have driveways on the extreme right and left and have the whole thing raised up and let the ditch flow like it does and they would kinda be out of the picture. But they do have some hard surfaces there and what they wanna contain plus the 20 percent like the engineer mentioned it doesn't amount to much.

Mr. Robinson: Well, it's, it's I'm—

Mr. Jesling: ...(inaudible)...answer.

Mr. Robinson: --yeah, I know. I'm trying to focus on the current problem. So there's a...I've heard three testifiers say that there's a safety concern at Kihei Kai Nani, people are being swept away, et cetera, et cetera, but but, so has there been anything with your board saying we need to do something now? Because whether Victory is there or not you're still gonna have a safe—

Mr. Jesling: Yes, there's been...I'm not on the board, there's been slight discussion at one time. ...(inaudible)...discuss maybe resloping the driveway and to look at expense of that. And the problem with putting it underground, you'd have to put two 8 x 5 or two 6 ½ diameter culverts in underground and I don't know if you're gonna get a permit to dump that out in the ocean or if we could dig up our driveway and put those in and where we're gonna go with it. I don't know how do you get approvals of that, I don't know how the state...

Mr. Robinson: You as a individual owner if that was a option would be favorable of that?

Mr. Jesling: Of trying to go underground with it?

Mr. Robinson: Yeah.

Mr. Jesling: I guess maybe if we could get the approval...if you could get the discharge approvals out to the ocean and I don't know how everybody screen that.

Mr. Robinson: Thank you.

Chair Ball: Any further questions for the testifier? Seeing none, thank you. Trying to get the people that are on this item. Ethel Belway?

Ms. Ethel Belway: My name is Ethel Belway and I have been owner at...of a condo at Kihei Kai

Nani for 35 years. In those early years we did not have a three-foot thick wide cement wall directly across the road from Kihei Kai Nani driveway built to block the rain and runoff. Before the wall was constructed the County was considering a low cinder block wall to be continued along the road line to divert storm water into the drainage creeks to protect the beach from being damaged. The next couple of rain storms proved that this low cinder block wall was not enough to stop the water and a large cement wall was built by the County. I have experience two rain storms that damage Kamaole Beach II before the wall was built. During 1983 a group of volunteers and condo owners in the area formed the group to save the beach after the big storms. We erected sand fences with permission from the County to promote sand dune formations. Other actions were considered to slow the damage from the rain storms and the run off from our Kihei Kai Nani driveway which is the end of the gulch. In 1980 and 82 Kamaole Beach II had a parking lot. The pictures are in my letter. After the storm damaged the parking lot several times the County took steps to protect the park. They determined that removing the parking lot and planting the area with grass and palm trees would slow the rain runoff from large paved areas such as the Kihei Kai Nani and Kihei Ekahi driveways. Beach parking was just provided on the roadside fronting Kamaole Beach II. In a letter of October 23, 2014...2015 Chris Hart & Partners stated that with the high level of traffic passing through this intersection it is understandable that left turns are difficult. Victory Development is agreeable to restriping South Kihei Road to provide a left-turn storage lane in to the Kihei Kai Nani driveway if it is proved by the County. Yesterday I counted the parking spaces provided for parking at Kamaole Beach II there are 23 spaces. Directly across from Kihei Kai Nani driveway a blinking pedestrian crossing was installed and the area around it is marked off taking up about two parking spaces, and a driveway exit from Hale Pau Hana is just north of the crossing. These two items illustrate that the width of the road at the entrance of Kihei Kai Nani does not leave any space to put in a left-turn lane as Victory Development is agreeing to. Widening the road in this area would be almost impossible cause one side is the entrance to Kihei Kai Nani drive and the other side is the big, thick cement wall that cannot be removed. It shows how congested this area really is. Since parking in the area is limited many questions must be considered. Where would the construction workers park? Would they take up the beach parking spaces? If they did, where would the beach parking be? Would they park in all of the shopping centers parking lots surrounding the area? Where would the owners of Kihei Kai Nani park during the time the driveway is turned up installing water and sewer and utility lines. And if they did put a turn lane in there it would take away lot of the parking spaces for the beach. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Sorry, I skipped Joseph Henschel? No, I didn't? Mike Moran?

Mr. Mike Moran: Okay, I had to check the clock. It's still good morning. Good morning Chair Ball and Commissioners. Again, Commissioners I often say this but there's a lot of new folks here today. We appreciate you guys working as volunteers unpaid and as our Kihei gentleman mentioned one time all we get out of this is a free lunch. I never worked so hard for a free lunch. So we certainly appreciate your efforts.

Mr. Walker has been forthcoming with KCA for years and we have positive comments about prior projects in Kihei, but we are unable to past this Nani Loa one. When we examined the EA last November noting claim of no impact on the ocean because the project is uphill 1,000 feet seemed to defy the laws of gravity, but today we are onto the SMA and the amendment to the

Kihei-Makena Community Plan. But now we are more confused as we read the project is a half-mile, no 1,000 feet, no 1,200 feet from the ocean. With due respect it seems they are not where the project is or where the ocean is, but wherever they are no impact on makai, this is an unreasonable conclusion.

We had testified previously further claiming that the project will not impact traffic because it's already an F-rated intersection without the project seems absurd. So if it's already a failure adding even more vehicles does not make it even worse as we stated then if you're backed up on the street as the 10<sup>th</sup> car in line awaiting to proceed onto South Kihei Road is it not a greater impact if you were the 15<sup>th</sup> or the 20<sup>th</sup>. Is this asking the traffic engineers to create a worse rating than F? But today we note that the rating has improved and we're not sure why. What changed that it went from an F to I think it was a C?

Request to change the Kihei-Makena Community Plan from Multi-Family to Hotel changing the community plan goes against the KCA's effort to have the Kihei-Makena Community Plan prevail over zoning. It was our understanding that the Commission is to be guided by following the community plan. How can the Commission be expected to do this if one just bypasses or changes the plan. Are you expected to make just capricious decisions?

You heard and saw examples in prior testimony on the same project at meetings last year regarding impacts of building, flooding, ocean degradation, traffic, et cetera. All this remains, nothing has changed. Some of the testimony is being repeated today. Commissioners do we need more high-end residential projects in South Kihei? I thought we were looking for residential projects or residences not those our residents can't afford just bringing in more people with wealth, with more cars added to traffic from outside Maui and having less development for those living here. And we would also hope—

Ms. Takayama-Corden: Three minutes.

Mr. Moran: --we can ask if we would hope that as Corp. Counsel explained for the benefit of all that they were taking testimony today on the SMA, but no decisions will be made and we would hope that the public would be able to clarify whether they would be allowed future testimony on the SMA if this comes back to your Commission. Thank you very much.

Chair Ball: Thank you. Any questions for the testifier? And yes, you will be able to testify again when the SMA comes back to the Commission.

Mr. Moran: Terrific. Thank you for clarifying that. We get asked that question several times and now I have an answer. Thank you.

Chair Ball: Yeah, and just for clarification anything that comes here we open it up for public testimony so...

Mr. Moran: Thank you.

Chair Ball: Thank you, Mike. Next is...James Magliozzi? Melissa Crawley. Don and Debbie Perry? Tom and Linda Doll? Would anyone else like to testify at this time? Please come

forward. Seeing...maybe someone outside?

Unidentified Speaker: Nobody wants to.

Chair Ball: Oh, thank you. Okay, public testimony is now closed. We will move to the recommendation from Mr. Fasi.

Mr. Fasi: Thank you, Chair. The Planning Department recommends to the Maui Planning Commission that it recommend approval to the Maui County Council on the community plan amendment from Multi-Family to Hotel. It is subject to two conditions and it is in my recommendation on Page 3. The Department also recommends that the Commission defer the matter on the SMA until the appropriate time. Thank you.

Chair Ball: Okay. At this time, we are going to address D-1, the Communication as it is related to C-1 Item. So if we could get the Director announce D-1?

Mr. Spence: So Commissioners, Item D-1 is a Communication item. We have a Petition to Intervene on the SMA Permit application. Mr. Tom Pierce and Mr. Peter N. Martin, attorneys for the Association of Apartment Owners of Kihei Kai Nani, Phase One, Inc., submitting a Petition to Intervene and a Request for Stay of Contested Case Proceeding date February 9, 2016 on the applications by Victory Development for the community plan amendment from Multi-Family to Hotel and the SMA Permit.

Chair Ball: Corporation Counsel?

Mr. Murai: Jordan, is Mr. Nakamura gonna be appearing for the Motion to Intervene.

Ms. Arsima Muller: No, Arsima Muller.

Mr. Murai: Oh okay, okay so you'll be appearing on behalf of your client?

Ms. Muller: Yes.

Mr. Murai: Okay. Commissioners, what we're doing is because we have a Motion to Intervene pending so prior to entering into any decision making regarding the public hearing matter and the only thing we'll be ruling on is the request for a community plan amendment. I recommend that we hear the Motion to Intervene first.

Now as was mentioned earlier, there is, there is...well, why don't we hear...Mr. Chair, I recommend that we hear the party or the intervenors and the applicant's positions regarding the Motion to Intervene with regard to the community plan amendment.

Chair Ball: Okay, so we'll move to Item D-1, and if the petitioner would like to come forward?

Mr. Murai: Actually we'll hear from the intervenor first.

Chair Ball: Oh sorry. The intervenor would like to come forward?



**D. COMMUNICATIONS**

1. **MR. TOM PIERCE and MR. PETER N. MARTIN (of counsel), attorneys for the ASSOCIATION OF APARTMENT OWNERS OF KIHEI KAI-NANI, PHASE ONE, INC., submitting a Petition to Intervene and Request for Stay of Contested Case Proceeding dated February 9, 2016 on the applications by VICTORY DEVELOPMENT for a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**

Mr. Tom Pierce: Good morning, Mr. Chair. Tom Pierce, I'm here on behalf of the Kihei Kai Nani Association. And as I understand it what we'd like to do right now, and I think it's fine is just to take the separate or the more narrow issue which is to our request to intervene on the community plan amendment. Is that how the Council or the Commission would like to deal with it? That's fine with me if that's how?

Chair Ball: Corporation Counsel?

Mr. Murai: Mr. Piece, you know, what the...I believe what the Commission is intending to do is they're treating the community plan amendment request as a separate matter although, you know, although the public hearing lumps the two together. So I guess what, what we'd like to hear is it's the commission's belief that because the community plan amendment we're not the final arbiter of that. You know, that's for the Council. And therefore, this is...this portion is not a contested case hearing and therefore there is no right to intervene. What I think the Commission may decide to do is defer...well, you know, rule on your motion to intervene with regard to the community plan amendment with the understanding that it's the commission's belief that there is no a right to intervene at this stage.

Mr. Pierce: Sure.

Mr. Murai: However, should the Council act on it and send it back to us at that point the request for an SMA Use Permit becomes ripe and I believe what the Commission may decide to do is to continue your motion with regard to the Motion to Intervene...well, to deny your Motion to Intervene with regard to the community plan amendment but to defer or continue your motion to intervene in the SMA Use Permit application until that matter becomes ripe, you know, until it becomes up, it's properly before the Commission.

Mr. Pierce: Okay, I think I understand that. I also have a Motion for a Stay pending but for the sake of keeping things simple I'm ready to address the issue of the community plan amendment, our Petition to Intervene on that. And if you'd like we can try to get it, I don't know if the Commission wants to try to get that in before lunch but I'm happy to give it a 10-minute shot.

Mr. Murai: Let me mention, I glad you mentioned the Motion to Stay. You know, my take on it

is that based on what the Commission intends to do in effect you do, you know, because we're not taking it up on the...we're not taking up the SMA today, in effect you do kinda get a stay.

Mr. Pierce: Well, then what I would ask is for three minutes to testify on behalf of Kihei Kai Nani as to why the Commission on their own volition would want a stay.

Mr. Murai: That's fine, well up to the Chair.

Mr. Pierce: But to keep things clear once again, I'm happy to begin with the Petition to Intervene with respect to the community plan amendment.

Mr. Murai: Sure, please.

Mr. Pierce: And then, Mr. Chair if I may I'd just like to hook up my computer just to assist the Commission with a couple of points on that one? It will just take a second.

Chair Ball: We will break at noon just to let everybody know till 1:00, be 1:08 now.

Unidentified Speaker: Today?

Chair Ball: Today not tonight.

Mr. Pierce: Okay, Mr. Chair I'm ready.

Chair Ball: Okay, let's have order again. Go ahead.

Mr. Pierce: Commissioners, thank you and once again, I appreciate what Mike Moran what said, we appreciate you all taking the time to consider our petition and we understand and recognize that you all are volunteering volunteering your time on this. As was mentioned before I do represent Kihei Kai Nani Association. I would contend that the issue with respect to the community is somewhat of a novel issue. The position that's been presented by Victory Development and apparently I think this is Corp. Counsel's opinion as well is that there's no final decision here. But the law actually says something a little different and this is a recent case, a 2010 case called Kaleikini v. Theilen and in that case the Supreme Court talked about what a final decision is and this is also referring back to the PASH case which many of you may be aware of which was another very important intervention case over on the Big Island.

It says, the second point in the PASH requirements calls for an examination whether the agency's action represents a final decision and order. That's what the standard one that we're all familiar with or a preliminary ruling such that deferral of review would deprive the claimant of adequate relief. So the question is in this instance, would your recommendation...the point here is, and we recognize this is that all you're doing today and I shouldn't say all you're doing what you're doing is actually a very significant thing, you're making a recommendation to County Council and we gotta believe that the reason that rules got written the way they are and the ordinance got written the way it was that the County Council anticipated that you all have

certain abilities to dig into the issues in a way that the County Council might not be and that you have developed a certain level of experience and understanding of these issues. So we think that the opportunity to, and I apologize for this, now I'm back up on the screen, the opportunity for you to hear this as a contested case may make a difference and I'll explain why.

The rule that is applicable here is Maui County Code, 19.510.20(A)(7), it says the Commission shall transmit to the County Council...it doesn't just say a recommendation. It says, findings, conclusions and recommendations for...and then it goes onto say essentially among other things zoning and things like that, but also community plan amendments and it sets a time frame for when you have to do it. But findings and conclusions we contend is the same as findings of fact and conclusions of law that you're being asked to do that. And what I would point out Commissioners as far as your decision making today is to ask what is it that...the question is, one of the reasons that a contested case is so valuable to a commission is it provides an opportunity for you to get a chance to really dig into the facts and understand them. So let's talk about if you were gonna make your decision today what has been presented to you actually that's substantive? And I went through and poured through the Environmental Assessment as well as through the Planning Director's report that he's presented to you today and what you find is on Page 16 of the Planning Director's report is this one paragraph that says, that...it's located within an area that's been zoned Hotel, we all understand that. The community plan is Multi-Family and then it just says existing land development in the area largely reflects this settlement path in the context of the Kihei-Makena Community Plan and a community plan amendment from Multi-Family to Hotel is consistent with existing land use patterns in the area. Well, that's what we would call a conclusory statement. There's nothing supporting it in terms of the facts. You haven't been presented today with any kind of information identifying how and why this got changed from community plan...in the community plan, the Kihei-Makena Community Plan from Hotel to Multi-Family. But I think it's very important to point out not only was that a community process where there was live deliberations that took place in the Kihei-Makena area but then it did go to the County Council and obtained County Council approval. So that's an ordinance just like zoning. It has...in fact, the Supreme Court and the Appellate Courts in two separate recent cases have dealt with the Kihei-Makena Community Plan specifically in cases that have come up here from Maui. One of them was the GATRI case, and the other one was the Leone case. And in both of those cases the Appellant Court said that the Kihei-Makena Community Plans specifically that one has the force and effect of law. That means that it's not just another document. It's not just a document that is supposed to be we aspire to it the force and effect of law. They were very clear. Those were exactly the words that they used. So the question is what do you have before you to make your decision or your recommendation to the County Council which we contend is a very important decision and one that actually the contested case process could assist with. So you have the planning Director's report, you have one paragraph from the Planning Director in terms of why you should do it and it's conclusory it doesn't have any background.

The EA doesn't give much more. One of the things it talks about is, it says, well and we heard it today from the Victory folks, they said well, we're gonna be required to deal with workforce housing. But I won't claim to fully understand the workforce housing ordinance right now, but what I will say is that there's a difference between 25 percent which I think is gonna be the

requirement that they provide somehow either in terms of in-kind multi-family or through, through financial payments for that to be done somewhere else. There's a difference between 25 percent and 100 percent and that's something that the Commission might want to dig into and that's the kind of thing that happens in a contested case process is that we'd have an opportunity to ask questions, get the right people in here and hear what would be the difference to Kihei and to the folks who live in Kihei whether they be travelers coming to Kihei or whether it be the residents. And once again, there's a fair opportunity here for Victory to make their case as well as well as for Kihei Kai Nani. But what is the real understanding of why multi-family was what the community plan...excuse me, what the community said in the ...(inaudible)...and the community groups that made that recommendation and why the County Council actually approved. So the workforce housing is one of the main issues that's talked about in the EA on Page 16, and that would be that part.

Let me just look at my notes Commissioners for one moment please. The other thing I would just mention is that the rules permit an applicant to file concurrently. But that is not necessarily how it has to be. In other words, the other way that Victory could have done this is they could have submitted for a community plan amendment first. So we would contend that based upon the language that I provided to you earlier identifying what the Supreme Court has said is a final decision which is either a final decision or preliminary rules such that deferral, a review would deprive the claimant of adequate relief. And when we look at the Maui County Code section that's related to it which identifies that the Commission is not just making a recommendation it's making findings and conclusions we would contend here today that we're entitled to intervene in this part and have a contested case on the community plan amendment.

So Mr. Chair, I'll leave the rest of my arguments for the second...for other parts. I would like to come back and testify on behalf of Kihei Kai Nani respect to the stay, but I think unless you would like me to do that right now, Mr. Chair, I'll keep that separate. But I would like to reserve those three minutes to do that please?

Chair Ball: Let's keep that separate. At this time, we will break for lunch and we will reconvene at 1 o'clock.

A recess was called at 12:00 p.m., and the meeting was reconvened at 12:03 p.m.

Chair Ball: Okay, we'll call this meeting back to order. Welcome back everyone. We will now hear from the other side on the Petition to Intervene.

Ms. Arsima Muller: Good afternoon Commissioners my name is Arsima Muller with Carlsmith Ball representing the applicant, Victory Development. On February 17<sup>th</sup> Victory Development filed a Motion to Dismiss the Petition to Intervene. And as set out in that motion one of the basis for that was because just on the CPA alone they're...petitioners are not entitled to a contested case. This is as Corp. Counsel explained not a final decision by the Commission. And as I understood Mr. Pierce's arguments this morning he's not arguing that it is a final decision. He's arguing that it is a preliminary ruling such a deferral of review would deprive the claimant of adequate relief. And he cites the Kaleikini v. Theilen for that. The Kaleikini only refers back to

PASH and if you look at PASH which is 79 Hawaii 425, the Supreme Court held that a preliminary ruling is one that ended the proceeding because there's no, no other avenues for the applicant. And in this case that's clearly...it's clearly not the case. After the Commission makes a recommendation it will go to the County Council. And if you look at Maui County Code 19.510.020, Subsection (A)(6)(a) it says that for all actions requiring final action by the Council, by the County Council the commission will make a recommendation. So it's clearly contemplated it's the County Council that will make a final determination not the commission.

Mr. Pierce also states that the commission's recommendation is effectively a findings of fact, conclusions of law. Well, the regulations state that you have to make findings and conclusions, but it also states that you make a recommendation. It doesn't say that you make a final order. It's the County Council that makes the final order and on that basis we don't believe that the petitioners are entitled to intervene just on the issue of CPA which is what we're addressing today. Thank you.

Chair Ball: Thank you. Corporation Counsel? Can you advise us on our options?

Mr. Murai: Mr. Chair, I'm not sure whether the Commission has had...heard enough from the parties that they're ready to deliberate on the motion. And if the Commission is ready then I suppose the Chair can solicit, solicit a motion.

Chair Ball: Is the Commission...does the Commission have any questions at this time? Commissioner Robinson?

Mr. Robinson: Are we able to commission the attorneys?

Mr. Murai: We ask the attorneys, sure.

Chair Ball: Who do you want to talk to?

Mr. Robinson: To Victory's attorney please.

Chair Ball: Arsima.

Ms. Muller: Yes?

Mr. Robinson: Aloha, thank you. In a synopsis can you explain to me the hardship that would be if we were to allow them to intervene at this junction instead of later on?

Ms. Muller: Well, it would be duplicative because they are –

Chair Ball: Arsima identify yourself for the record?

Ms. Muller: I'm sorry. Arsima Muller again for Victory Development. It would be duplicative because the...sorry, the Maui County Code provides procedures for after this Commission



makes a recommendation. It then goes to County Council which then allows for protest. So we would then have a public hearing here and then again at the County Council. And again, when we have the SMA that would be another hearing if the commission decides to grant their petition. So we're looking at three opportunities for a hearing which they're not entitled to.

Mr. Robinson: Thank you.

Chair Ball: Any other questions? So I think what we're trying to get at we're only discussing the community plan amendment because the special use permit we're not even gonna deal with. So we would...do we have to take action on that as far as deferring that to another date, I mean, the Special Management Area Permit?

Mr. Spence: Yes.

Chair Ball: Okay, so we'd look at probably deferring the Special Management Use Area Permit until such time where it becomes relevant to us which would be after the Council decides on the community plan amendment. So if there's a motion to defer that?

Mr. Lay: Motion to defer.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Lay, second by Mr. Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: This is to defer the SMA?

Chair Ball: Special Management Area, yes. Further discussion? Seeing none, all in favor of the motion raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's eight ayes.

Chair Ball: Motion carried.

**It was moved by Mr. Lay, seconded by Mr. Medeiros, then**

**VOTED: To Defer Action on the Special Management Area Use Permit Portion  
of the Petition to Intervene.  
(Assenting - I. Lay, J. Medeiros, L. Hudson, M. Tsai, W. Hedani,  
S. Duvauchelle, K. Robinson, R. Higashi)**

Chair Ball: Okay, now we'll move onto the community plan amendment. Corporation Counsel?

Mr. Murai: Chair, may I suggest that we, the Commission address the motion that's before it which would be the Motion to Intervene. Having deferred on the SMA portion, I would also, I would then recommend that the Commission consider whether to allow intervention in the community plan amendment portion of the public hearing and deliberation and whether to address today or defer until the SMA comes back up the Motion to Intervene in that matter. In other words, we're treating the Motion to Intervene as almost like two motions for separate issues. And then there's also the matter of a stay of the proceedings requested by the movants and I believe Mr. Pierce did reserve...Mr. Pierce is here? Oh yeah, you did reserve some time to address the Motion to Stay is that correct?

Mr. Pierce: That's correct. I'd just like to essentially—

Chair Ball: Hold on, can you come to the podium please and identify yourself?

Mr. Pierce: Hi, Mr. Chair. Tom Pierce on behalf of Kihei Kai Nani. With respect to the Environmental Assessment it's my understanding if I understand the procedural state that we're at it's the Commission's position that that is not ripe for review because we're not yet intervenors. If that is the case what I would like to at least do is testify on behalf of Kihei Kai Nani just as a public testimony part on their behalf as to the reasons why I think the Commission may want to wait until the Environmental Assessment challenge is being heard which is at the Circuit Court level and I can explain that later. But did I answer the question there Mr. Chair?

Chair Ball: Yes, Yes, you did.

Mr. Murai: I don't know if Ms. Arsima do you have any response or would you like to respond?

Ms. Muller: If understood Mr. Piece correctly, sorry this is Arsima Muller again, if I understood Mr. Pierce correctly if the Commission is going to defer then he's not going to raise the motion to stay in which case he's just going to testify as public testimony. That's my understanding. If he's not going to argue the Motion to Stay then we don't need to address it from our point of view.

Mr. Tom Pierce: This is Tom Pierce again on behalf of Kihei Kai Nani. Let me just add one thing here perhaps it would be helpful either from Corp. Counsel or from the Commission to understand the Commission's position with respect to the Motion for the Stay because it is separate from the Petition to Intervene.

And then because I was basically making an assumption I had thought I'd heard before that the Commission was already inclined to not address the Motion to Stay based upon the deferral of the Petition to Intervene. That's how I was understanding it, but I may have that wrong. So it might be helpful for the parties to hear a clarification on that from the Commission.

Chair Ball: Corporation Counsel.

Mr. Murai: Mr. Pierce, actually you know, your ...(inaudible)... is correct. It was the...it was my

understanding of the Commission's intention to defer the Motion to Stay as well. I just remembered that you wanted to say a few words about it and although you had count it as public testimony I had interpreted it as maybe as arguing for or against the stay.

Mr. Pierce: Sure, and I guess that's correct. That's what it would be. It just wouldn't be procedurally...It might be procedurally a little bit different from your perspective. So that's fine. Either way, I would just like to have that opportunity.

Mr. Murai: So we just...I just wanted to make sure you had the opportunity to argue that part of your motion and are you for or against the Commission's inclination or consideration of continuing the, you know, that part of your motion that relates to the stay? And I'm not sure whether the Commissioners had any questions about that for counsel, but...

Chair Ball: I don't even know what the hell we're talking about at this point. Commissioner Robinson?

Mr. Robinson: Yeah, if we can get back on track on...

Chair Ball: Thank you. Go ahead.

Mr. Robinson: So on D-1 did we not just defer D-1?

Chair Ball: Only the Special Management Area.

Mr. Robinson: Only half of it?

Chair Ball: Yeah.

Mr. Murai: For sake of clarity—

Chair Ball: Corporation Counsel?

Mr. Murai: --and to make sure we have a good record, I stand to be corrected if I'm wrong, but when we voted to defer, I thought we were voting to defer action on the SMA Permit portion and if that is the case, we would also be deferring by separate motion consideration of the Motion to Intervene. In other words, because we, the Commissioners already voted to defer on the SMA Permit application the Commission may then consider whether to...when the Commission decides on the Motion to Intervene as I suggested treat those as two separate motions almost. Did answer your question, Commissioner? So again, I'm sorry, so we have not as far as I'm concerned, and like I say, I could be...stand to be corrected, we have not yet...the Commission has not yet decided on the Motion to Intervene yet.

Chair Ball: On the community plan amendment.

Mr. Murai: On the community plan amendment. However, the Commission has as far as I

understand voted to defer the SMA Permit portion of it because it's not ... (inaudible)...

Chair Ball: Okay, so we're going back to community plan amendment. Can we defer that also or we have to either deny intervention or what?

Mr. Robinson: No, no we have to—

Mr. Murai: I would recommend that the Commission first before it decides on the community plan amendment rule on the Motion to Intervene as it relates to the community plan amendment.

Mr. Lay: Okay, make a motion?

Chair Ball: Commissioner Lay?

Mr. Lay: I make the motion to defer the intervention until after we get the SMA to come back before us.

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Discussion? That's not what you were recommending though? What you were recommending is for us to either approve or deny intervention.

Mr. Murai: Well, I certainly don't intend to pretend to tell the Commissioners what to decide.

Mr. Robinson: What's our options?

Mr. Murai: Your options would be to—

Chair Ball: Okay for argument sake here let's thumb it down and let's say we say we're gonna deny the intervention on the community plan amendment what happens?

Mr. Hedani: Then it's denied.

Mr. Murai: Then it's denied and then the intervenors would lack standing to participate as a party in the community plan amendment portion of it.

Chair Ball: Okay, and then on the opposite side we say, okay, we're gonna, we're gonna allow this Petition to Intervene then what happens?

Mr. Murai: Then they would become parties to the action.

Chair Ball: Okay, and then what happens with that? ... (inaudible) ... different meeting and we go today, what's the result of that?

Ms. Muller: Commissioners might I add my two cents?

Chair Ball: Hold on. No. Corporation Counsel?

Mr. Murai: Well, it depends on...assuming you granted the Motion to Intervene it would depend on what the intervenors wanted to do. You could simply...you could proceed with your deliberation unless absent some requests from the intervenors.

Chair Ball: Commissioner Hudson?

Mr. Hudson: I'm a little confused. We understand that the SMA thing is already done so we put that on the side. The next question is whether we grant the Petition to Intervene on the community plan amendment. But the community plan amendment isn't done yet, right? I mean still it has to go in front of County Council? So how could we—

Chair Ball: ...(inaudible)...

Mr. Hudson: How could we approve this?

Mr. Murai: Approve what, the intervention?

Mr. Hudson: The intervention?

Mr. Murai: Well, maybe I should defer to Mr. Pierce, 'cause I...I'm not...I don't want to argue one side's position or the other and also Ms. Arsima. Counsel you understand the question that is before?

Mr. Pierce: Yes. Tom Pierce on behalf of Kihei Kai Nani. So the...if the Commission granted intervention today, then we would go into what the rules permit which will be the contested case process which would mean that you at that point decide whether you're gonna hire a hearings officer or appoint a hearing officer or be the hearing officer yourself and then we would set a schedule for deliberation of facts, where the opportunity for there to be facts presented. So what would happen during that process is we'd have an opportunity to question some of the consultants that Victory hired and we would also have an opportunity to present some of our own consultants or experts with respect to those issues and then a final decision would be made. So that's what the contested case process would do and I would just point out that what the County Council is gonna do when they go up, Victory's counsel is correct it will mean that there will be another public hearing but it will not be a contested case opportunity. If we were to get a contested case opportunity this is our one shot at it. Once the County Council makes a decision it's gonna be as Ms. Muller pointed out it's gonna be a final decision and that's a legislative act at that point in time. We agree with that. There will be nothing else for anyone to decide with respect to that. That will be the final decision on that and we're not disputing that part. Hopefully that was helpful.



Chair Ball: You do have another opportunity during the Special Management Area Use Permit part of that.

Mr. Pierce: That's right. We just will not...you know, the point that we would make out to the Commission is that once this land is if in fact it goes from Multi-Family to H-2, to Hotel there will not be another opportunity to talk about that. So for example one of the things that we would get into if we were doing this is what are the chances for example that the Victory actually after they obtained the community plan amendment they actually sell the property and who would the next owner be and would the next owner be able to come in with a more intensive use than is being proposed today and we think the answer is yes, they would be able to. So we see a lot of significant impacts with that and as we said, we don't think that there's been enough that's been presented to the Commission in terms of why a community plan amendment is warranted in this situation. So that's what we would get into in the contested case proceedings. Thank you.

Chair Ball: Arsima you want...

Ms. Muller: Yes. Arsima Muller for Victory Development. I think, I mean, Mr. Pierce went into the we'ds, but before that you have to make the preliminary decision. For today's purposes we treated the petition to intervene as two petitions to intervene. The Petition to Intervene on the CPA and a Petition to Intervene on the SMA. We only addressed the Petition to Intervene CPA. That is because the Commission already deferred on any action on the SMA. So before we go through all that process and Mr. Pierce just outlined we still have to determine whether or not there is a right to intervene in the CPA. And since Mr. Pierce raised additional arguments I would like to point out that the County Code actually provide for protests and there is a right to appeal. So Mr. Pierce's statements that there is no other avenue for them after the Council makes a final determination is simply not correct. All right, thank you.

Chair Ball: Thanks. Commissioner Robinson?

Mr. Robinson: We had a intervenor a while ago at the homeless camp in Lahaina and the argument there was the party that wanted to intervene had some special rights or some special...they were more, they were more important than the rest of the public. Their interest was tightly, was more tightly modified than their neighbors. And I think that's where we're at now. We're not at the SMA part where the effect is. We're talking about the, about the classification of the land and does the Kai Nani people have stronger feelings than the other 10 testifiers that we have here. And this is still gonna go before the Council and like you said, this is, you know, this is...I don't think this is how the process that we want it to be, I think...I don't think there needs to be intervention at this point. I think intervention at the SMA is a proper time. I think you know, you want to intervene at every single aspect, but I don't think...to me, I don't think that they're special. I think this is a bigger topic, a bigger issue for the whole neighborhood and it's not just their develop...Kai Nani owners that are petition to intervene. I don't think this is the right location for them.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Let's just cut to the chase. I'd like to make a motion to deny.

Chair Ball: We have a motion to defer actually so...

Mr. Medeiros: No...

Chair Ball: We have a motion to defer intervention first right now on the table. So we have to vote on that first if we're ready for that. Corporation Counsel?

Mr. Murai: I'm sorry Mr. Chair, which motion is pending? Motion to defer?

Chair Ball: Motion to defer, CPA.

Unidentified speaker: No.

Chair Ball: Yeah.

Chair Ball: Commissioner Lay and Commissioner Hedani.

Mr. Robinson: Ivan would you like to withdraw your motion?

Mr. Lay: What would be the actions of this followings what would happen then?

Mr. Murai: Well, I would recommend that the board deal with the Motion to Intervene first, and then...so in other words, it's up to you, the movant and whoever second whether to withdraw your motion, but I think procedurally it's probably more appropriate that you decide hearing the Motion to Intervene then take action on whether it's to approve, deny or defer to dispose of the community plan amendment portion after you deal with the intervention.

Mr. Hedani: This is getting more confusing.

Vice-Chair Tsai: Chair...I think we have a motion on the floor right now and we're in discussion. I say we vote on the motion that's currently which is for deferring and then if it doesn't pass we can always have a new motion, well, not always that's what we're supposed to do, so...

Chair Ball: Commissioner Hedani?

Mr. Hedani: Mr. Chairman, if the maker of the motion consents, you know, I would move to withdraw my second.

Chair Ball: Is there a withdrawal from the maker of the motion?

Mr. Lay: A motion to withdraw my motion.

Chair Ball: And seconder agrees to withdraw. No, I'm not making motion; I'm just asking the

two that made the motion and seconder.

Mr. Hedani: Yes.

Chair Ball: Okay, motion's off the table. Do we have a new motion?

Mr. Medeiros: Yes.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I move to deny intervention.

Chair Ball: There's a motion by Commissioner Medeiros to deny intervention.

Mr. Spence: On?

Chair Ball: On community plan amendment.

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Further discussion? Commissioner Robinson?

Mr. Robinson: I think this is the right course. We still have time to let them intervene at the SMA portion. I think this gets the...you know, they still have a lotta time to testify in front of the Council. So it's not like they don't have any say. They can still go ahead and still...

Chair Ball: And here, it's gonna come back here again.

Mr. Robinson: No, but I'm saying before it comes in an SMA they still can present their case at the Council prior to this.

Chair Ball: Director?

Mr. Spence: I would also point out Commissioners that since there's two applications. If you were to...if they were to intervene on the community plan amendment then they would go down that course, and when the SMA comes around again, they could intervene on that as well. So there would be multiple bites at the apple, you know, it becomes overly burdensome and time consuming at that point.

Chair Ball: Commissioner Hedani?

Mr. Hedani: From my perspective I think that the Commission is basically just making a recommendation to the County Council on the community plan amendment. From my perspective I don't wanna go down a whole new road of creating an entirely new procedure for community plan amendments, you know, that hasn't been preceded by other cases. So from

my perspective I'm here to vote at this point, you know, on the motion to deny. And since the proposed intervenors are so apt and good at appealing to the Circuit Courts I'm sure they'll have additional recourse if they don't agree with us.

Chair Ball: Okay, further comments? All in favor of the motion raise your hand and say, "aye"?

Mr. Spence: That's eight ayes.

Chair Ball: Motion to deny is carried.

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

**VOTED: To Deny the Petition to Intervene on the Community Plan Amendment.**  
**(Assenting - J. Medeiros, W. Hedani, I. Lay, L. Hudson, K. Robinson, M. Tsai, S. Duvauchelle, R. Higashi)**

Chair Ball: Okay, let's go back to Item 1. Commissioner Tsai?

Vice-Chair Tsai: ...(inaudible)...have question.

Chair Ball: Mr. Paul Fasi. Okay, so we're gonna go back to Item 1, Victory Development, and we have further questions for Victory Development also. We're continuing your hearing. Paul? Question for Staff on the hearing? Sorry, 'cause we went from C-1 to D-1 and now we're back to C-1.

Mr. Tom Pierce: Sorry Mr. Chair, Tom Pierce. I just wanted to ask that when...when you would think it most appropriate for me to do that three minutes of testimony on the...(inaudible)...

Chair Ball: We have the public testimony closed so there's...there's no new items I mean, I don't see what the point of that, but the problem is do we have to reopen now public testimony?

Mr. Murai: Tom, correct me if I'm wrong, but I thought you were when you were reserving three minutes I thought you were speaking to the motion...the portion of your motion relating to a stay?

Mr. Pierce: The stay of...that's correct, the stay of the any decisions pending, pending the Environmental Assessment which is currently being challenged.

Mr. Murai: And it's my understanding that that motion has been continued along with the motion to intervene in the SMA portion.

Mr. Pierce: I see, so...okay, that's fair enough. I think that will work under the circumstances. I guess, you know, we would, we would argue that the community plan amendment Mr. Chair, the only thing it's resting upon is the environmental assessment. So the Commission is gonna be

making a decision on a, on a environmental assessment that may in fact be found to be faulty or the findings of significant impact that were resulted from that may be found otherwise. That was the reason for suggesting the stay is that we are challenging that in Circuit Court. And if the Circuit Court rules in our favor on that we would have been making a decision on an environmental assessment which is the only thing that the community plan amendment is based upon.

Chair Ball: Well, let's clarify that. Are you saying that the recommendation is a decision? Because we're not making a decision today, we're just making a recommendation to the County Council on the CPA?

Mr. Pierce: Well, yes Mr. Chair. It would be our position that that recommendation needs to be as the Maui Code section that I cited needs to be based upon findings and conclusions and we don't think that you can get to those if in fact the environmental assessment turns out to be faulty based upon the Circuit Court action.

Chair Ball: Okay, well we can wait for that to come out but until then we'll continue on with this portion of it and get our questions answered and if the Court finds that to be so then they'll do so at the time. I think it serves the public better good to hear more questions from the Commissioners than it does to wait for some documents that may—

Mr. Murai: Just to be clear Mr. Pierce, there's no...I mean, I'm aware of your Circuit Court action, but there's no request to the Circuit Court to issue an order for stay?

Mr. Pierce: We don't think that that's the place. We think that the Circuit Court in this instance wouldn't have jurisdiction to decide whether you all to stay something or not. We think that's within the purview of this Commission. But I'll rest there Mr. Chair. I think I understand...I think the Commission understands our position on that. Thank you very much.

Chair Ball: Yes, thank you. Did you have a question?

Mr. Robinson: The stay is on the SMA on D-1, not on C-1 is that's correct?

Mr. Murai: Yes.

Mr. Robinson: So we deferred D-1?

Mr. Murai: No, no, no. Well, D-1 is just the motion to intervene.

Mr. Robinson: The motion to intervene.

Mr. Murai: And for a stay.

Mr. Robinson: And for a stay.



Mr. Murai: And C-1 is the public hearing.

Mr. Robinson: Right.

Mr. Murai: And action on the public hearing matter.

Mr. Robinson: But there's no, but there's no recommendation...there's no request for stay for the community plan amendment? So this isn't the place to hear his testimony for a stay anyway? I'm trying to keep the two separate that's why and it keeps on intermingling, right? Okay. So we're on path?

Chair Ball: Yeah.

Mr. Robinson: Thank you.

**C. PUBLIC HEARING** (Action to be taken after public hearing.)

- 1. VICTORY DEVELOPMENT requesting a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**

Chair Ball: Okay, we're on Item C-1, Victory Development. Commissioner Tsai had questions for the Staff Planner, Paul Fasi.

Vice-Chair Tsai: Hello Paul, we're back to questions. Thank you for your time. So going back to your presentation in the morning and I just wanna get clarification on time line here. And I'm hearing you said that in the 70's this particular development was Hotel?

Mr. Fasi: That is correct.

Vice-Chair Tsai: And then you also stated that in 1994 it was changed to Multi-Family?

Mr. Fasi: 1998.

Vice-Chair Tsai: '98 I'm sorry. Yeah, but then in 1994 this was approved for condo development?

Mr. Fasi: That is correct.

Vice-Chair Tsai: So in 98—

Mr. Fasi: A 48-unit condominium project.

Vice-Chair Tsai: So two questions I have regarding that. If 1994 based on the 70's decision isn't a hotel and condo totally two separate zoning requirements?

Mr. Fasi: You can have a condominium in a Hotel zoned area.

Vice-Chair Tsai: Okay. And in '98 what made it change to Multi-Family? Do you have any data on that?

Mr. Fasi: I was not. I don't...I can't answer that.

Chair Ball: Director?

Mr. Spence: At the break I did look up the community designations and tried to look at the community, you know, the table in the back, the community plan and everything and do a little research on the zoning for the various properties. The...it apparently was Hotel prior to 1998 this particular property. And the zoning, you know, my preference would for comprehensive zoning but it's never been a practice of the County the appropriate zoning would have been for Apartment so they never changed it. The zoning for this property is still Hotel and whenever it was established. So that's...

Vice-Chair Tsai: So it never got changed Director to Multi-Family?

Mr. Spence: No. But you can do apartments and you can do condominiums within the hotel zoning. What this applicant is asking to do is to build condominiums that individual owners could rent out which would be permitted. It's the same thing at Nani Loa or excuse me—

Chair Ball: Kai Nani.

Mr. Spence: --Kihei Kai Nani. They are also zoned H-2, the...what Commissioner Hedani prompted me in his discussion prompted me to look it up, Kihei Kai Nani is zoned H-2 with a little bit BR-Resort. Their community plan is also Hotel. So the adjoining is they operated like a hotel with short-term rentals that's...but they're individually owned units. That's what this applicant is asking for exactly the same thing. They have individual condominiums that the owners could short-term rent. It's a condotel.

Vice-Chair Tsai: Okay, thank you Director for that. But what I don't understand then is why in '98 it was changed to Multi-Family and was it and only for this particular property?

Mr. Spence: Okay, I did not look through the minutes. Apparently it changed...(inaudible)...Maui Planning Commission level and then onto the County Council for final adoption. I was involved somewhat at that time in the community plan, that particular community plan. I don't, I don't recall a whole lot of discussion about this area. I recall much more discussion about project districts mauka of Piilani Highway, big project districts over by Maalaea. This was...I don't recall this being a pressing issue. I could be wrong; I'd have to do some research on that.

Vice-Chair Tsai: So you're confirming that this is only for this particular property not Kihei Kai Nani. So why was, I guess my confusion is why was this particular property converted to Multi-Family while the whole Kamaole Big Block, whatever they called it.

Unidentified Speaker: Super Block.

Vice-Chair Tsai: Super Block.

Mr. Spence: I can't say. I can't say. There's a lot of...most of the properties in that area are still zoned H-2, Hotel.

Vice-Chair Tsai: But this particular one was somehow—

Mr. Spence: Well, the community plan changed, the zoning did not. Community plan...that's what...they're requesting to change the community plan in order to make the different layers line up.

Vice-Chair Tsai: But if the community plan changed wouldn't it change the entire Super Block?

Mr. Spence: No. No, individual. This is a procedure laid out in County law but individual property owners can approach the County to change the community plan designation and/or the zoning on their property.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Please explain to me who makes the community plan?

Mr. Spence: It's a long process. I can do 30 seconds or less.

Mr. Hudson: The CliffsNote version please.

Mr. Spence: Okay, CliffsNote version. It starts in the Planning Department. The Planning Department takes the existing community plan, looks at the current conditions, what has changed since the last community plan was adopted and we recommend changes to those plans. It goes to the Community Plan Advisory Committee, the CPAC, for six months. They make recommendations to the Planning Commission. The Planning Commission will consider all the information thus far and they will make recommendations to the Council. So the CPAC will make changes to what the Planning Department recommends. This Planning Commission or any Planning Commission will make changes to that whatever the CPAC does and then ultimately make a recommendation to the Council and the Council is gonna adopt it in whole or they can make their own changes and usually do at their level.

Mr. Hudson: Who sits on the CPAC?

Mr. Spence: The CPAC are political appointees.

Chair Ball: Members of the public.

Mr. Spence: Members of the public. They are one appointed by each Council member and four appointed by the Mayor.

Mr. Hudson: Thank you.

Chair Ball: Staff Planner Fasi?

Mr. Fasi: The consultant, Jordan Hart has a historical slide on here and that will help explain Commissioner Tsai's question and if you look at...this is the before slide, but if you look at the slide that's relevant today, you'll notice on the north south of this parcel that's it's still zoned Hotel. But this is the earlier slide from 1985.

Mr. Jordan Hart: This is Jordan Hart from Chris Hart & Partners. So I was also not involved in this community plan amendment. My understanding of the backstory on it was that in the preparation for the community plan update there was a hotel moratorium that lasted for approximately one year. At that time all of the undeveloped parcels in the Kamaole Super Block were designated to Multi-Family not only this project but some others and I'll go back to that current community plan map it will show what other areas were redesignated. And so this is the current community plan that we're operating off of which is 18 years old now.

Vice-Chair Tsai: Thank you Paul. Thank you Jordan.

Mr. Fasi: Any time. You'll notice on this particular slide that the north and south lots are also zoned, currently zoned Hotel in the community plan.

Chair Ball: Further questions? Commissioner Robinson?

Mr. Robinson: Mr. Fasi when was the...when was this property purchased from the current owners?

Mr. Fasi: Approximately 2006, approximately.

Mr. Robinson: And I thought we saw during the EA as part of this they had the documents showing that they had, they had the easements and all that part of stuff and part of that purchase, right?

Mr. Fasi: That is correct.

Mr. Robinson: It was also stated in there that it was Multi-Family not that it was Hotel I thought in that paperwork on the EA as part of the purchase of what the zoning was, I mean the community plan on that or am I incorrect?

Mr. Fasi: No, I think you are correct.

Mr. Robinson: So when they purchased it, they knew the current status?

Mr. Fasi: I believe so.

Mr. Robinson: Thank you. I got a question for Jordan. Jordan, that's really good information that...sorry...

Chair Ball: Go ahead, Commissioner Robinson.

Mr. Robinson: That was really good information. Can you confirm that or can you elaborate on that in a large area of what you just told us?

Mr. Hart: Which?

Mr. Robinson: About it was a moratorium is what you...do you have any data with that?

Mr. Hart: So that's anecdotal recollection from conversation with my father who was at the Planning Department at that time. I'm sure the Planning Department has their own records. A lot of things happen at various times, but I'm sure there's information on it in the record. Yeah, I don't have the full portion of the detail, but that's generally what did take place is that in preparation for the community plan they wanted to take a step back and reconsider what was going on in the vicinity and that's what they did.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Director, has that ever been used again since then or that there was a temporary moratorium to try to take a breath?

Mr. Spence: I don't recall. I know there was a...when I started in 1992 there was I recall a moratorium of hotels and that was when Linda Lingle was Mayor. I would have to, I would have to look at the history but I know there was a stop to more hotel development at that particular time whatever 22 years ago. I can't tell you the exact reasons.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I guess this is a question for the Director also. I served on two Community Plan Advisory Committees one that had like 300 members on it during Elmer Cravalho's time and that was kinda difficult to manage. Another one that had like 25 or 50 members on the



Community Plan Advisory Committee. And now I understand there's nine plus four so there's like 15 people on the Community Plan Advisory Committee as you just described it.

Mr. Spence: It has always...for community plan perhaps I can't say in the 80's, the Community Plan Advisory Committees have always been 13. It used that on the General Plan Advisory Committee that would have been a larger number.

Mr. Hedani: Or the 300 might have been—

Mr. Spence: Three hundred and—

Mr. Hedani: It might have been a combination of all nine community plan areas possibly. The question that I have is when the Community Plan Advisory Committee makes a recommendation in this case 1994 which eventually was adopted in 1998, do they consult with the individual landowners that own those properties before they down zone property from Hotel to Multi-Family?

Mr. Spence: No.

Mr. Hedani: So they just do it on their own?

Mr. Spence: Well, a—

Mr. Hedani: And the second question that I have at that point is if they down zone the property are the owners entitled to just compensation for the devaluation of their property?

Mr. Spence: Okay, the latter is a legal question. I would...my guess would be no, they're not entitled to just compensation simply because there's still an economic use of the property. They could build condominiums. That's not a bad thing.

Mr. Hedani: Not a hotel.

Mr. Spence: Not a hotel. But for...through the community plan processes many landowners are very aware of the process and actually come to the CPAC meetings and come to the Planning Commission meetings and make requests, I would like to be Hotel instead of Business. I would like to up zone from Rural to Single-Family, those kinds of things. But even last minute, and this is and that's something that the community is not very fond of even at last minute where all the community plans I was involved with there's quite a few changes up at the Council level. Last minute requests, last minute changes of different things. And that's the way our process is set up. Many landowners are very aware, there are other landowners that they don't know that at all. So it's discussed in public and they didn't know their property was being discussed.

Mr. Hedani: Wow.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Okay, a question for the developer or Jordan. Well, traffic's always a big issue especially in that area South Kihei Road. So in our previous meeting we had looked into or discussed a possibility doing construction period to utilize that portion of north-south connector using for construction vehicles, even parking for the construction crew. Is that valid still?

Mr. Hart: Oh, yes. The applicant is intending to do so and they've...bring up Greg Walker of Victory Development to talk about the discussions with the abutting property owners.

Mr. Greg Walker: Hi Greg Walker, Victory Development. Yes, I've had multiple conversations with the landowner adjacent to us and we have already walked the property. We've determined a route, we've got it in writing, we've got an agreement at the attorneys right now to be signed and that would be the length of our construction period as well as parking vehicles and staging equipment. It's our hope once we get our utilities down on the driveway with our instructed plan that we put up a dust fence and we do everything we can to minimize the impact to Kihei Kai Nani.

Vice-Chair Tsai: Okay, so you're not gonna use that road or South Kihei Road for all the construction ...(inaudible)...

Mr. Walker: That would be correct.

Vice-Chair Tsai: Okay, thank you.

Mr. Walker: And right now there is a rock wall that is right on the property against the north-south collector road that allows us access easily through that road.

Vice-Chair Tsai: Great. Thank you.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, so our left-turn going into the project, you said we're gonna make a collector road...well, you know for your left turn into the project how is that going to be developed?

Mr. Hart: The right of way currently exists and so it would just consist of restriping the existing right of way.

Mr. Lay: Would we lose parking stall, beach parking stalls on the right-hand side?

Mr. Hart: There potentially could be a loss of beach parking stalls. Let me...If you see the diagram here there is a...it looks like there's one stall so there's the...one moment...there's a white car parked here I believe that's a single stall and there's hashed portions around it and so you would, you would likely lose that stall in order to basically allow the south bound to continue. So the south bound would basically rather than proceeding straight it veer slightly you know to

the right and you'd be driving in what's currently hashed mark and a single parallel stall and then you'd merge back with the current alignment of the lane and continue south. And so in that median would be, would be this left-turn lane so the vehicles could stack there to take the left.

Mr. Lay: So your cars would swerve around there. They would have go against your curbside and then come back out?

Mr. Hart: Well, I wouldn't say that they would swerve. I mean it would be, it would all designed and approved by Public Works so it wouldn't be taking any kind of angles that are not normally seen in traffic. But yes, it would, you would basically go to the right a little bit in order to add this what's gonna be a third lane basically...it's not a lane, but a stacking location for vehicles.

Mr. Lay: See if you're losing one stall I don't mind that much that but if we're gonna lose more than that beach parking right now is really hard over there. I was just there this weekend and you're like a stalker following people walking on the side of the road, hoping he turning to open their. So that would be a concern of mine. And how far back is your collector road gonna be?

Mr. Hart: The stacking lane, it's not...none of that is defined at this point and just to back up the reason it's not currently defined is because based on the standards that are accepted for preparing a traffic study there's no mitigation required. But public works did recommend this, this left-turn pocket lane as an option to improve the situation and so that the applicant's open to it. So it would certainly be defined like we could have it defined at SMA, but at this point the conversation is there's an opportunity in the right-of-way to provide this, is the applicant open to it? Yes, the applicant's open to it and that's where we are now.

Mr. Lay: Yeah, my concern is always losing public access.

Chair Ball: Jordan, is there...did the traffic study take into consideration that storage lane in their study at all?

Mr. Hart: No, their study is based on it not existing.

Chair Ball: To see what the counter effect would be of that, right? Traffic might speed up a little bit more, I don't know, right because you're now creating flow instead of slowing it down by having a couple of cars turn in there once in a while, I don't know.

Mr. Hart: If I could address traffic again. The only action that has any delay is the property...leaving the project driveway. South Kihei Road in both directions there's no obstruction, no signal, no stop sign. So they just proceed right past the project site. The only people who experience a delay are people who are taking a left across northbound traffic to head south on South Kihei Road. So basically what I'm trying to say is the people who are currently impacted are current residents and there's gonna be a slight increase by 39 more units where there...if you're trying to take a left out of the driveway you're gonna have to wait for a gap. If you're gonna take a right you just merge right into traffic going the same direction as you area. And traffic on South Kihei is unobstructed in both directions. The only, the only delay is if

you're heading south and you wanna take a left across northbound traffic into the driveway and for that, the left-turn pocket lane is proposed.

Chair Ball: I just don't know the unintended consequences if you create a storage lane and somebody let's that person turning out of Kihei Kai Nani south why would the traffic flowing on the other side of that I don't know, I mean...(inaudible)...

Mr. Hart: I will say that there are a lot of configurations like this existing on South Kihei Road where you have a stop line where you wait to take a left and it's currently supported...it's Public Works recommendation.

Chair Ball: Well, just because it's Public Works recommendation doesn't mean it works. I only got a couple of meetings... Commissioner Robinson?

Mr. Robinson: Jordan, it's unfortunate that your traffic guy wasn't here today, very.

Mr. Hart: I understand completely.

Mr. Robinson: Looking at the photographs over there, I see us losing more than just one stall. I see us losing four, five, six, seven stalls. So if you look up higher to where the...if you look, okay, look on your picture on the right, I don't see any cars parked on the street on the whole street above.

Mr. Hart: So—

Mr. Robinson: That's a concern.

Mr. Hart: To respond to your comment is that this is the first stall here.

Unidentified speakers from Audience: No.

Mr. Hart: Well, I'm sorry.

Mr. Robinson: It's unfortunate your guy is not here.

Mr. Hart: We're addressing an aerial photograph of the situation.

Mr. Robinson: Got you.

Mr. Hart: So apparently you know—

Mr. Robinson: You guys didn't really do the...like a predrawing of it, it's more of a conceptual right now is that we're looking at?

Mr. Hart: Absolutely.

Mr. Robinson: Okay.

Mr. Hart: We don't even have community plan designation to get an SMA Major Permit at this point.

Mr. Robinson: Okay, 'cause I think when we come back I think if the picture ends up being the same it might be a big problem.

Chair Ball: Director?

Mr. Spence: Commissioners if I could make a suggestion simply because it's 2 o'clock and you have three more public hearing items. I think the questions that Commission Robinson is asking are good ones, the kind of questions the Commission is bringing up. Those are really related to Special Management Area Permit where you're gonna dig into much more of the detail, the actual operation and the design and those kinds of issues. If it please the Commission this is gonna come back to you for those kinds of details, what's before the Commission today is not the SMA Permit but the Community Plan Amendment.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Move to approve as recommended.

Mr. Medeiros: Second.

Chair Ball: There's a motion by Commissioner Tsai, second by Medeiros to approve recommended.

Mr. Murai: On the community plan amendment.

Mr. Spence: Just the community plan amendment.

Chair Ball: Further discussion? Commissioner Hedani?

Mr. Hedani: Yeah, I just wanted to clarify that it's a motion to approve the community plan amendment recommendation to the Council and that discussion on the SMA is deferred until we get it back.

Chair Ball: Yes. Correct. Thank you. Commissioner Lay?

Mr. Lay: Commissioners I may not be here when it comes back so I'd just like to mention a couple issues that you might wanna bring up when it does come back. One would be drainage during the project when it's going on, the mud like that where is that gonna stop? Talking about all that after, but you know, that's gonna be happening when they're developing the project. And also, what else...oh, that's about it. That will be an important one to me about the drainage



when the construction is going on that all that mud's gonna be coming down if it does rain and wanted to know what kind of precautions they're gonna be doing to prevent that from happening.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Just a brief comment...(audio feedback)...I think it's good that we have like nine people on the commission because that means nine different opinions. If we all had the same opinion then there would be no need for the commission. In my opinion the community plan was made with input by the community and for the community. While I understand that community plans can be changed in my opinion, the change must be necessary for the community to improve the community. I don't see that here. The owner purchased the thing in 2006, he was aware or should have been aware of the zoning requirements. I'd like to thank Jordan though for addressing the water concerns. I appreciate that very much. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: The thing that bothers me about the community plan amendment that was done in 1998 to change it from Hotel, H-2 to Multi-Family is it can be done without the consent of the owner of the property. I think what that puts the County in a position of devaluing property, down zoning property without discussion with the rights of the private property owner, without consideration. To me the community plan should be something that everyone comes together and agrees on. An owner comes forward and says I'd like to change this from X to Y and the deliberations go on and it's decided yes or no. When 9 people or 15 people make unilateral decisions on other people's property without their consent it really bothers me to some degree as something that is not fair to the person who's in this particular case paying Hotel, H-2 zoned property tax payments based on H-2 zoned property and not being entitled to use it. You know we heard today from some of the testifiers saying you know, we'd like to see it be a retention basin basically for drainage for 300 acres up mauka some place coming down from Haleakala.

In this particular case, I think the development itself has addressed all of the concerns that they can address within the four corners of their property. The Kihei Kai Nani next door only addressed those concerns that were applicable at the time the property was constructed way back when. They wouldn't qualify today under today's drainage guidelines because all of...you know, although I've heard a lot about protection of the reef and whatnot, all of the drippings from all of the cars in their parking lot today goes straight down into the center of the driveway and goes straight out into the ocean. Whereas the proposed development has retained their drainage onsite and their parking is underground where it's not gonna be flowing into the drainage system as far as petrochemical pollution is concerned.

And to take it one step further, the Kihei Kai Nani has H-2 zoning. The Kihei Kai Nani has community plan H-2 community plan. All...this particular development was part of the Kihei Kai Nani until it was split up and all they're asking for at this point is the exact same zoning that Kihei Kai Nani has today.

One way that I think we can address later possibly to come up with a win-win situation is for Kihei Kai Nani to make a decision whether or not they want to eliminate the drainage hazard that they have on their property which is a real hazard and see whether or not they can work with the developer in terms of implementing that on their behalf at Kihei Kai Nani's expense in order to solve the problem on their property while the whole place is dug up for utilities to be put in place. But I think they've done everything right. I think that they should be entitled to a community plan change for H-2 in concert with what Kihei Kai Nani already has.

Chair Ball: Commissioner Robinson?

Mr. Robinson: We have a lack of information regarding why that change happened in '98. I don't wanna presume that the landowner did or did not know 'cause we don't know. The landowner might have said can I get a reduction in classification so I can save on some taxes. You know, there's no research either way. I mean, you know, if I don't plan on building there for 10 years and I'm a Hotel, and you know, maybe he asked for it, we don't know, you know. All we know is that they purchased it as a MF/H-2 and so now we're stuck here trying to decide what it is, and we're the Planning Department, we're not the Reaction Department. And with trying to plan, you know, instead of trying to react to what happened you know, in '98 again with the lack of information from the, from the Planning Department to actually know why it was changed, I mean it must have been brought up somewhere in some minutes, somehow would have helped I think save attorneys and save a lot of people because there's a...you know, they wanna intervene on just this one action. It's hard for me to just go ahead and change a zoning, I mean change a use without any information. And I think the developer itself I like what they've done with the heights, you know, they've made adjustments. They've heard us at our planning commission before on parking and try to do everything, it might not be everything that the Kai Nani wanted but you know we've had some developers that do zero. So I think as far as development I think they're trying. But the challenge right now is, is how are we gonna react with everyone that's gonna look at this '98 paper and say yeah we're the same part. You know you guys gave us a moratorium. We're supposed to be H-2 as well. I don't have enough information for me to comfortably vote either way. Thank you.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: You did call me. As the maker of the motion I echoing what Commissioner Hedani has said. We can't go back and change what happened in '94, '98 and the 70's. I mean obviously there was a inconsistency with the community and how the zoning came about. But the way I feel is that we're faced with a situation right now to make it consistent to Kihei Kai Nani, what's happening around the whole neighborhood in that area and it's well within the regulations and what other uses have occurred and is occurring. So I don't see any problem with that. I think that the developer done a tremendous job putting together a really nice package. And personally I feel that if we do offer them another alternative, say go in Multi-Family, say go in with a affordable housing, you guys gonna see, the community gonna see a much higher density, you know, this type of development that's gonna attract more people and create more traffic issues and other things that we haven't considered. So I believe this is actually the best use currently and that's the reason why I made the motion.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I agree with Commissioner Tsai and Commissioner Hedani. You know the zoning, it's zoned for a hotel on both sides of that property and Kihei Kai Nani which is makai said of the property. It's surrounded by Hotel. For some reason in '98 it was taken away from them, you know. But even if it was taken away from them because they did have the option for applying for a community plan amendment. They're doing the right thing by applying and going through the motions and doing what they need to do the same thing whoever in '98 did when they changed it. If the people that disagree with me that you know, they shouldn't be allowed to apply and change, you know, I'm sorry, but somebody applied and changed it to begin with. So I'm gonna support the change.

Chair Ball: Director?

Mr. Spence: I was just gonna mention probably between now the Council will probably look back through some old minutes and find out if there's any mention of why it was changed, if the landowner knew, et cetera, et cetera. ...(Inaudible)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: One of the problems that we come across today is that we have hotel developments occurring on a spot basis in Residential Districts, yeah, short-term home rentals. It's a very controversial issue. This Commission voted unanimously at one point to recommend to the Council because the Council is the decision making legislative body to put a moratorium on it until residential housing, affordable housing can catch up.

Chair Ball: It wasn't unanimous.

Mr. Hedani: You weren't chairman at the time so it's not your problem.

Chair Ball: No, it wasn't unanimous.

Mr. Hedani: Oh it was one dissent?

Chair Ball: I think there were two dissent.

Mr. Hedani: Almost unanimous. But the problem that we have today is it's kinda like whackamo where you put a cap or in this case it was a moratorium on hotel development in hotel development areas like the Lahaina...well, the Lahaina 701 General Plan was done at the same time the Kihei 701 General Plan was done, and where they identified hotel properties is probably where the hotel properties should have gone. If those had been approved for hotel development the whackamo scenario that we have right now with hotels popping up in residential areas wouldn't take place as severely as it is right now. So that's my perspective on it.

Chair Ball: Okay, all in favor of the motion?

Unidentified Speaker: Can you repeat the motion?

Mr. Spence: The motion is to recommend to the County Council approval of the community plan amendment as recommended by Staff.

Chair Ball: All in favor raise your hand and say, "aye".

Commission Members: Aye.

Mr. Spence: That's five ayes. Nays?

Chair Ball: Opposed?

Mr. Spence: Three nays.

Chair Ball: Motion carried. We will take a five-minute recess.

**It was moved by Mr. Tsai, seconded by Mr. Medeiros, then**

**VOTED: To Recommend Approval of the Community Plan Amendment from Multi-Family to Hotel to the County Council and Defer Action on the Special Management Area Use Permit Until the Council has Acted on the Community Plan Amendment, as Recommended by the Department.**

**(Assenting - M. Tsai, J. Medeiros, W. Hedani, S. Duvauchelle,  
R. Higashi)**

**(Dissenting - L. Hudson, I. Lay, K. Robinson)**

A recess was called at 2:12 p.m., and the meeting was reconvened at 2:19 p.m.

Chair Ball: Okay, we'll call this meeting back to order on Item C-2, Director?

Mr. Spence: Commissioners, yes this is the second of four public hearing items for today. This is Mrs. Helen Lu'uwai requesting a time extension for a Conditional Permit in Makena and our Staff Planner this afternoon is Gina Flammer.

- 2. MRS. HELEN LU'UWAI requesting a time extension on the Conditional Permit to continue to operate the Lu'uwai Transient Vacation Rental (TVR) and hold Special Events at 5100 Makena Road, TMK 2-1-007: 088, Makena, Island of Maui. (CP 2006/0007) (G. Flammer)**

Ms. Gina Flammer: Good afternoon, Commissioner Members. Before I turn it over to the

consultant, Rory Frampton, I'm gonna just give you a real quick history. The applicant applied in 2006 and what she applied for was a District Boundary Amendment from Rural to Urban and a change in zoning from Interim to R-3 as well as the Conditional Permit. So there was a lot of effort by the applicant. The permits were or the actions were granted at the end of 2007. They became effective in January of 2008. The first two actions, the DBA and the change in zoning those are permanent actions. The third, the Conditional Permit as you know is granted for a certain period of time.

So the applicant did file a timely request for the Conditional Permit. The process for time extensions for that is that the applicant sends out notice of the request for the time extension to all owners of properties within 500 feet. It only takes one protest to send it back to the very original process that it went through. First to you and then to the County Council. There was one letter of protest. As you see it's Exhibit 22. I don't know if they're here today or not. I know they are part-time residents. They did know about today though and there's also been six letters of support. One has been handed out today that I think you have in packet. So I'm gonna turn it over to Rory Frampton now to give you a little more history.

Mr. Rory Frampton: Thank you, Gina. I'll try to be real quick as well. As Gina noted...I just wanted to comment just hearing that discussion that just happened earlier one of the reasons the applicant had to come in and do the change in zoning and the district boundary amendment was to bring it, the property into compliance with the community plan designation which was single family. The underlying zoning was actually apartment and so anyways, there was kind of a mess in land use designations from way back when and so they got that cleaned up. They also came in and got the Conditional Permit back at a time when people really weren't doing that. They were one of the first people certainly in the Wailea-Makena area that actually got their property legalized. It had been operated as a bed and breakfast with a member of the family actually running the property. He lived on property with people doing a traditional bed and breakfast during the 90's and through the 2000's the family has since kinda reorganized the ownership of the property and they're using as a transient vacation now. Again, they got it legal. As one of the testifiers mentioned earlier today it's a way. It was a way for the family to keep the property in family ownership and to use it from time to time and generate some income to pay taxes and a mortgage. And the property taxes alone are like \$20 thousand a year. So this became...the use for transient vacation rentals became a very important component of or a part of the family being allowed to keep the property in their hands.

The property is modest in its development. There's a lot of lawn space. There's incredible views and the setting is just...some of you may have been down there. It's not like surrounding areas that have really built out their properties almost wall to wall concrete. So it is kind of a nice, refreshing break in that typical developed...development of properties in the area. If you see some of the testimonies in support, a letter from the Protect Kahoolawe Ohana at the end of the report I think is really powerful. And so what we would like to ask for you to consider is the staff has recommended a 20-year extension. We'd like to request that the language be worded in such a way that it's 20-years from when the ordinance gets approved rather than 20 years from the previous time period which would have been 2010. But anyway so we'd like to have it 20 years from when this new extension gets approved so that they won't have to come back.



And so I have...I'm familiar with the letter that came in that was opposed and I'm very familiar with the property having been life-long friends of the Luuwais. And if you have any questions we can answer any of those technical questions. That's all I have.

Chair Ball: Okay, at this time we'll open it up for public testimony. Anyone that would like to testify at this time may do so? Tom?

**a) Public Hearing**

Mr. Tom Croly: Aloha, Tom Croly. Just a brief perspective. I knew Boogie and Vi when they operated this as bed and breakfast in the early 2000's. In some ways they were an inspiration to me to open up my bed and breakfast after that. Boogie and Vi left and they went to the Big Island I believe and their family members continue to run this and it's you know, well accepted down there and I would encourage the Commission to grant the extension of this Conditional Permit to allow this short-term rental to continue. Thank you

Chair Ball: Any questions for the testifier? Seeing none, thank you. Further testimony? Seeing none, public testimony is now closed. Recommendation from Staff?

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

Mr. Glenn Kosaka: Good morning Mr. Chairman and Commissioners. My name is Glenn Kosaka and I'm here to testify regarding item C-2, the Luuwais in Makena request for an extension of the Conditional Permit. I work with one of the applicants, Mrs. Luuwai and I've known the family for 40 years. This is not about making money. This is about being able to preserve the property for their family. This is family property. The Makena Resort area contains many, many, a whole multitude of beautiful fancy hotels and accommodations. Luuwai's Makena offers a unique and refreshing, a truly beautiful experience not available in the fancy hotels. This place is a family home. Right now it's a little larger than Papa John Luuwai's fishing shack but the feel of the place is the same.

The warmth and aloha of the place can perhaps best be expressed with the following anecdote. One day I was standing in the front lawn with Anela Rosa, one of the Luuwais. And she was gazing out at the ocean at Molokini and Kahoolawe and in a very soft voice, she and I were the only ones standing there, but in a very soft voice and with glazed eyes she said, this is the most beautiful place in the world. Now I have never forgotten that small moment in history and I hope that this Commission would recommend approval of their request to recommend approval to the County Council so that the Luuwai Family can continue to maintain their heritage. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, we will continue on.

Ms. Zandra Amoral-Crouse: Hi, good morning. My name is Zandra Amoral-Crouse and I'm not going to...I was not going to testify but the Luuwai Family when I was growing up my very best friend was the granddaughter of...Davelyn Luuwai-Thomson was my very best friend and spent many weekends in Makena with Grandpa Luuwai and the brothers and sisters and her aunties

and uncles. And it's been very difficult. I know that most of you realize like with the Medeiros Family in Makena. It's difficult when a surrounding area gets developed and land prices go up and taxes are increased based upon the surrounding value. So my simple and short testimony is support the Luuwais because this is a family entity and we don't want to see another family being forced out of Makena. That's my testimony and I thank you for letting me cut in. Now I gotta head over to Kaunoa. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you.

Ms. Amoral-Crouse: Mahalo.

Mr. David Ward: Good morning Planning Commission. My name is David Ward and I'm here testifying on my own behalf and I'd like to testify in favor of Item C-2 on the agenda today, the Luuwai Conditional Permit.

This family is a part of our community and is really giving in a lot of ways. And I know first-hand experience that they do use this property for nonprofits, for things for nonprofits including the canoe clubs. And it's...you know these folks have owned this property for generations as we heard and it's a tough situation. You know there's been development in that area, prices have gone up and they're doing what they can to maintain the property and their family. So I'm just hopeful that you guys can, you know, help them in any way to help maintain that property. So again, I'm just here to testify in favor of Item C-2.

Chair Ball: Any questions for the testifier? Commissioner Lay?

Mr. Lay: Dave, I know you have some background in developments and projects and everything and the Luuwais has been a local family with a lot of changes going on around them, pricey homes, hotels, everything, bringing up the cost of the taxes. Do you think this, I mean is this one way where they can help to stay there?

Mr. Ward: Yeah, absolutely. This is, this is the way that they've devised in order to keep this property in their family. It's a tough situation. I think you know we heard it earlier. It's a really tough situation to deal with. They've been here, you know, they were there when they were the only house there and now there's been development all around them including a project that I've, that I've actually worked on, but because of that development the real property taxes have gone up significantly because of the values of the homes around them and this is a way that they can keep this property in their family and use it for...continue to use it for themselves and also share it with others.

Mr. Lay: Okay, thank you.

Chair Ball: Further questions? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Lucienne de Naie: Aloha, my name is Lucienne de Naie. I've not signed up yet. I'd like to

testify on two items C-1, and C-2. I'd like to testify as just a private individual on C-2 the Luuwai permit in support of it. The Luuwai Family as you've heard have really, you know, taken what life has given them in this place that their family has lived for generation and adapted their home place to be a wonderful resources for folks who visit our community and also for those of us who, you know, ask for use of it and are able to do other events there. I've been to some family reunions down there in the old days and it is a magical place. I know the Luuwai Family very well. They're very sincere in trying to find a balance to take care of things there. They're really expert in the ways of the ocean and fishing and so, you know, they're trying to do everything the right way and they are struggling to keep one last place...there's just them and the Changs and the Garcias and that's all that's left of old Makena. So please show them some kokua here. They've been trying to do things the right way.

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

**b) Action**

Ms. Flammer: Okay, the Department...since this is a renewal we only have one condition that we're changing and that's the time period for the permit. The Department is recommending 20 years and maybe Corp. Counsel could weigh in to make sure we have the right language. We're recommending 20 years from the effective date from this ordinance. We just wanna make sure that that means it's from when the County Council passes the time extension.

Mr. Murai: That's how I read it.

Ms. Flammer: Okay, thank you for that. And that's the only recommendation that we have.

Chair Ball: Okay. We have questions now. Commissioner Robinson?

Mr. Robinson: Sorry, I just have one. Is the applicant is Ms. Helen Luuwai with that length would you add a second applicant or would that kick them out if...we'd wanna put the trust or is there is some kind of...I don't know, I just wanted to follow up with that.

Chair Ball: Rory you have an answer for that?

Ms. Flammer: Actually if we take a look at the ordinance itself it will show who holds the actual permit. ... (inaudible)...exhibit...oh, and four. Actually that's a really good question. It's actually in the trust.

Mr. Robinson: Okay.

Ms. Flammer: The permit goes to the entity that owns the property which is a trust.

Mr. Robinson: I move to accept the recommendation of the Staff.

Vice-Chair Tsai: Second

Chair Ball: It's been moved by Commissioner Robinson, second by Commissioner Tsai? Further discussion? In the act of disclosure I've known the Luuwais for I don't know probably 40 years. I know I don't look that old but through various canoe paddling outings and neighborly...so anyway, I will still be voting if need to on this. Commissioner Higashi?

Mr. Higashi: I personally agree that we should support our local families who have got caught in this whole rise in real estate and the tax situation becomes one that they need to supplement taking care of their property. So I'm totally for the motion.

Chair Ball: Commissioner Lay?

Mr. Lay: I, too have seen the problems before when the local people have lost their residence or can't stay there and I'm glad that you guys are doing something to retain that. There's not too many landowners from our past that still own the properties.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I support this too. Medeiros have a long history in Kihei not as long as you guys okay, but you know it's heartwarming to see an old family hang onto the past and you know, I'm familiar with the property. I love you guys. I love it.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I have one question for Gina. This is the first time we're approving a time extension for 20 years for transient vacation rental?

Ms. Flammer: Is that a question? I think I have an answer for that. We've done 20 years for other types of permits. Maybe our Director has off the top of his head?

Chair Ball: Director?

Mr. Spence: This is falling under the Conditional Permit Law and not under the Transient Vacation Rental Law. So there's been actually quite a few conditional permits granted for 10, 20 years. It's not that unusual.

Ms. Flammer: I think the most recent one that you folks may have seen was for Arabella Arks ceramic studio. She was given 20 years for that Conditional Permit. That may be the closest.

Chair Ball: I think the Half Way to Hana Store.

Ms. Flammer: Was Half Way to Hana, yeah that was Paul's yeah.

Mr. Hedani: One other question, Gina. If the property is sold from the trust does the permit terminate?

Ms. Flammer: That would be Condition 3 that Rory was referring to. It is nontransferable unless the Council approves the transfer by ordinance provided that the transfers of ownership to and from an individual owner's revocable living trust and the assumption of the trustee's duty by a successor trustee including but not limited to exercising the rights established on the Condition Permit shall not constitute and shall not be deemed a transfer requiring Council approval. So it would depend, I think a transfer within a family within the same revocable trust would be fine, but the way I read it maybe Corp. Counsel if it's sold to somebody that's not a part of this revocable living trust then it would go back to the County Council for approval.

Mr. Hedani: I concur with all of the comments that were made by others.

Chair Ball: Okay, any further comments? We shall vote. All in favor of the motion raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's eight ayes.

Chair Ball: Motion carried.

**It was moved by Mr. Robinson, seconded by Mr. Tsai, then**

**VOTED: To Recommend Approval of the Twenty (20)-Year Time Extension on the Conditional Permit to the County Council as Recommended by the Department.**  
**(Assenting - K. Robinson, M. Tsai, J. Medeiros, L. Hudson, I. Lay, W. Hedani, S. Duvauchelle, R. Higashi)**

Chair Ball: Okay moving onto Item C-3.

Mr. Spence: Commissioners, the next public hearing item is Daniel and Judith Auclair requesting a Conditional Permit in order to operate the Auclair Residence Transient Vacation Rental on Pulelehua Street in Kapalua. The Staff Planner this afternoon is Mr. Kurt Wollenhaupt.

- 3. DANIEL L. And JUDITH Y. AUCLAIR requesting a Conditional Permit in order to operate the Auclair Residence Transient Vacation Rental at 107 Pulelehua Street, Pineapple Hill Phase 2, TMK: 4-2-007: 020, Kapalua, Island of Maui. (CP 2015/0020) (G. Flammer)**

Mr. Kurt Wollenhaupt: Good morning or afternoon now Members of the Maui Planning Commission. My name is Kurt and I'm actually the Staff Planner on the Item C-4 which will be 100 Pulelehua and Gina Flammer is the consultant, the planner for 107, but I just wanted to since I've been involved in what's happened to Kapalua to give you a real brief overview and



then we'll start into Item C-3.

First question is well what's the issue at Pineapple Hill Phase 2 Kapalua and why are we even here? Isn't there a Short-Term Rental Home Ordinance and why aren't they applying for a Short-Term Rental Home Permit? Well, that's because the two applicants today the Auclairs and Steiners, they own in Phase 2 Kapalua. So we have two phases out there. How it was ever developed goes back into the annals of history. So we have 100 and 107. This is 100, this is the Steiner residence which will be the second one you review today. This is 107 Pulelehua. This is the item that Gina Flammer will be doing. This is all of Pineapple Hill. All State, State Urban. It's all community planned project district, but here lies the issue. Phase 1 is zoned Agricultural. The law clearly states that a short-term home rental permit can be applied for in the Ag zone, no problem. Go to through the STRH. You've seen so many of them.

This is Phase 2. The zoning there however is Project District. There's no mention of Short-Term Home Rentals in Project District. They can't apply for a STRH. Therefore their remedy is as you've ...(inaudible)...Ms. Luuwai's application to apply for a transient vacation rental through the Conditional Permit process. So when we look at the Conditional Permit what is our threshold? What are you as Commissioners is gonna be reviewing today? Really this is the question is the transient vacation rental in harmony with the existing project district to other permitted uses and not significantly detrimental to the public interest and welfare. And it says in the Code is...here are three criteria: Would this TVR be similar, related and compatible? The SRC of the hearing here today similar, related and compatible to other permitted uses in the district? So that's what we'll be looking at today.

So Pineapple Hill has said Phase 1 no problem apply for an STRH. In fact, three have been granted. Three STRHs are currently operating there. Phase 2 however has Project District zoning they have to apply for a Conditional Permit and whatever recommendation is made today is a recommendation to the Council. So this is just an overview. We might be using this later if the Steiners or the Auclairs need it, but this is Phase 2. These are estate sized lots, lots that are larger than in Phase 1 certainly. There are differences between Phase 1 and Phase 2. This is the Steiner residence at 100. This is 107 Pulelehua the Auclair residence.

So that's just kind of an overview that I wanted to give before Tom Croly and Gina Flammer take on Item C-3 which is the Auclair. If you had any questions about just why we're here, I'm happy to answer but they'll be giving a detailed presentation.

Chair Ball: Okay.

Ms. Gina Flammer: Okay, I think the only thing I wanna to add to that is how is this different than a short-term rental? Well, the Department wanted to keep them as similar as possible. So though the process is different we tried to create the same end product where the TVR is gonna look exactly like a short-term rental and we did that through the conditions. So when we get to the recommendation, I can explain a little bit more. There's a lotta conditions on there that make it look just like the short-term rental. So with that being said, I'd like to turn it over to the project consultant, Tom Croly.

Mr. Tom Croly: Thank you, Gina. Tom Croly on behalf of Dan and Judy Auclair, owners of 197 Pulelehua in Pineapple Hill Phase 2. As Kurt just said we're here for a Conditional Permit only because the Short-Term Rental Permit was not included as an option for us because of the very unique zoning to just these 31 lots in the Kapalua development.

As has already been pointed out the applicants are asking for the use of a four-bedroom, four-bath home for rentals period of less than 180 days at a time. They are asking for permission to use their rentals in consistency with the subdivision's CC&Rs and specifically are amenable to a condition that no parties or events may ever be held on the property.

As Kurt just outlined the zoning here is unique. It's Lahaina Project District 1. Now I wasn't around when Kapalua was developed but there are some unique districts within Kapalua that came about when they did the project district for the whole area of Kapalua. The zoning is a little bit convoluted in that as Kurt pointed out in Phase 1 where you have these quarter lots and these luxury homes terraced that's actually Agricultural zoning so go figure. And this the zoning is actually Multi-Family where you have these very large estate homes on half acre lots. So that's why we're here for a County Conditional Permit similar to the Luuwai's permit that was just, you know, approved for an extension.

The area where this is located is in the Kapalua Resort. And as you kind of already saw from what Kurt showed you there's two phases in Pineapple Hill, Phase 1 and Phase 2. Phase 1 has 99 lots that are about a quarter acre a piece. Phase 2 has 31 lots that are about a half an acre a piece. They all share the same CC&Rs, they all share same gate that you come through to access the development. They all share the resident manager who monitors the visitor access to the property.

Most of the homes in both developments are used as people's second homes. In Phase 2, 21 of 31 of the homes or lots are owned by out-of-state owners. The resort transportation for Kapalua comes into the development, again extending how it's just part of the Kapalua Resort and in Phase 1 to date there have been three short-term rental home permits that have been issued. There are some other applicants in Phase 1 who are also going forward with Short-Term Rental Home Permits. And to my understanding, none of those permits that have been issued have generated complaints or any problems.

So again, the applicant's purchased this four-bedroom, four-bath luxury home to utilize as their part-time vacation home and also as part of a 1031 exchange for those, you know, understanding tax purposes the idea of renting out was in their thoughts when they bought it. And specifically they have never operated as a short-term rental home. They purchased the home, they contracted me to help them get through the permitting process and we're here before you. The applicant's do intend to reside part-time on the property.

One of the reasons that the applicants chose this development and this home was that the CC&Rs specifically affirmed the ability to rent and the conditions upon which they would rent short-term. Now the CC&Rs will never give them the ability to do something that the County

hasn't said is legal to do and that's why we're here before you for a permit. But when these CC&Rs were developed clearly the expectation for this community was that these homes would be used in this manner.

And the first part of the CC&Rs is written here and that is the lot owners shall have the right to rent or lease their residences subject to the limitations set forth in the declaration of bylaws. And I highlighted the next one which is each rental or lease period must be for a minimum of seven consecutive nights. Each residence is limited to having one rental period during any calendar month. These owners expect that the rentals that they would be having would be two and three-week and maybe seasonal type rentals, someone coming in for as long as five months at a time that can't be done without a permit. So if you're gonna go in to rent your residence to someone for the period of the winter season you need to get a Conditional Permit in order to do that. CC&Rs continuing and you have these in your packet they go into very specifics about exactly how they will manage these short-term rentals. Lot owner who currently rents or intends to rent its residence must register. There's a registration process outlined here. They give the criteria for which someone is expected to be in the rental business based on what they've done in the past. In registering their homes lot owners shall provide the name and contact of at least one agent on Maui who will be present and represent the owners regarding any issues. They do have and have set up to employ a local agent, Mark Marchello. He was available this morning unfortunately we've been pushed out into the afternoon and I don't think he'll be available here for you today. But I will tell you that Mark manages other permitted short-term rentals in West Maui and is compliant and knowledgeable about what it takes to properly vet the guests and make sure that someone renting this property has...understands all the rules that we go along with it.

At least one week prior to the scheduled occupancy of a rental on the property, the lot owner shall...the lot owner of the property shall provide the association with a complete notice of occupancy and rental property form. So again, they have forms and so forth within the community expecting that this use is going to take place. They wanna register the guests and make sure that their clickers to allow access to the property are properly activated. Again, if they're not compliant with this there's specific rules to say you're going to be fined if you don't follow these rules for the short-term rentals in this neighborhood.

Jumping into the property itself, you can see from these pictures the type of home it is which is consistent with all of the homes in this neighborhood. They're high end luxury homes with beautiful views and swimming pools and you know, fancy bathrooms and such.

So we're here about the Conditional Permit and I won't belabor the point. Kurt already pointed out exactly the criteria that you're supposed to be evaluating that the use that we're asking for is similar, related or compatible with the other uses in this area. And that the proposed use will be in harmony with the area in which it's to be located and that there will not be significant detrimental...detriment to the public convenience and welfare.

As far as similar, related and compatible I would assert that the use that these folks are asking to make of their property is identical. If you are an owner living in the property and someone's

renting next door to you can say that's not the same as the way I am using it. But if you are a second property owner and you're using your property as a vacation home and you're only spending a portion of the year here which is the case for most of the folks who own in this subdivision that is an identical use to someone leasing the property for a week or month or a few months than, you know, than someone who's just using it as a vacation home.

The proposed use will be in harmony with the area in which it's located. I submit that the area which it's located is Kapalua resort. That is the use of the Kapalua Resort is one of vacation homes and exactly what the applicants have asked to do here. There is precedent for these conditional permits. Currently there are 12 conditional permits allowing short-term rental use that are active. Three were issued because the use that they asked for was more bedrooms than were allowed by the B&B or STR Ordinances. The B&B and STR Ordinances top out on six bedrooms. So there's three permits where there were seven bedrooms. I think Oprah as 12 bedrooms on hers and so some were because of additional bedrooms. However, nine were identical to this. It was because the zoning at the time that they submitted did not allow the use so they went the conditional permit route to permit the use they wanted.

Additional permits that were previously granted some of them were converted to short-term rental home permits, some were converted to B&B permits. However, some just like the one that you approved extension of stayed as conditional permits and they have been renewed as such.

Gina will go over the permit conditions, but I do wanna point out the permit conditions parallel our short-term rental permits except we did add some additional conditions to stay in conformity with the CC&Rs in this area.

The standard STRH conditions for a four-bedroom home is a maximum occupancy of eight guests. All guests must park on site. Amplified sound audible beyond the property boundaries is prohibited at all times. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m. That means talking, that's means being loud in the pool. No parties or group gatherings and a sign shall be put up so that anyone with an issue has the information as to the number to call whether it be to the County to complain about something or whether it be to the manager to say, hey take care of an issue that, you know, might be ongoing.

The specific conditions related to the CC&Rs in here are the rentals shall be limited to one rental per month of at least seven days. That means a maximum of 12 rentals per year. They can only have one per month that begins in each month. So the most number of rentals they're ever gonna have is 12 in a given year, and that the applicant shall provide their information of their manager and so forth to their neighbors. So I thank you for hearing me out on that. I know they'll be some public testimony and you might have some questions afterwards. So I'll turn it over to whomever next.

Chair Ball: Okay, does that conclude then your presentation.

Mr. Croly: For mine, yes.

Chair Ball: What about you Gina?

Ms. Flammer: The only thing I wanted to do was just point out the handout and just make sure everybody understood what it is. I know there's not a key to it. So this is in the staff report, but I updated it to show that we got two new letters. So everything in red was a protest letter and then the number corresponds to the exhibit where the actual letter is. So there's a star for the one that just came in for Summerville. There was a letter of support as well. So it's a green lot. So in total we have about 30 lots in the neighborhood. There's about 17 protest letter, one actually lot with a protest, one owner does own three, you see that as number 26. There was one letter of support, two of the lots are requesting the use and then you have 11 lots that didn't have any comments on this, and that concludes my remarks.

Chair Ball: Okay, at this time we'll open it up for public testimony.

**a) Public Hearing**

Chair Ball: If you'd like to testify at this time you may do so. Please identify yourself. You have three minutes.

Mr. Fred Allen: My name's Fred Allen. I reside at 229 Crestview Road, Pineapple Hill, Phase 2 which is as you know a small 31-lot private just west of Honoapiilani Highway and north of Napili Park. We have been full-time residents in this neighborhood for over 14 years. I was taken back a bit when we received the notice that an application for a use other than what is permitted by the zoning was applied for and wondered how it even got accepted over the counter. There's no need for additional transient rentals in this area. Why would the County consider granting a CUP allowing for such when there are 100 lots immediately across the canyon in Phase 1 already zoned to allow permits. Why disrupt this neighborhood unnecessarily when there are plenty of high end rentals available in other Kapalua Resort communities including the 100 lots, the single-family homes in Pineapple Hill, Phase 1 just to the north and already zoned and designed with off street parking to allow and accommodate rentals with no special use permit required.

Our neighborhood in Phase 2 is unique and different from Phase 1 to the north in that these lots are twice the size and all homes individually designed. There is no provision in the layout on this side for off street parking which alone should be a reason enough to deny a transient rental in our area. By comparison, the 100 plus lots or 100 lots in Phase 1 development are half-acre in size with provisions for full out parking on the streets to accommodate visitors and renters. All lots in Phase 1 except double lots were designed by the developer, Kapalua Land who actually ran a rental program in the beginning years after opening. I might point out that Phase 1 was done 10 years prior to Phase 2, and Phase 2 obviously the bigger lots it's not comparable to Phase 1. Phase 2 is just not set up or compatible with the transient rental. Attempts to circumvent the zone and County requirements have been made with disastrous results. We lived there and have seen it. It is not uncommon for these high priced rentals to attract multiple families to share the cost resulting in three or four families and sometimes as many as 18 to 20



occupants. They paid a lotta dollars and don't...and most renters don't have consideration for the people that do live there. And I take exception to the fact that there are several of us that are full time residents in our area.

Ms. Takayama-Corden: Three minutes.

Mr. Allen: And who benefits? Two applicants one of which has been a violator to the County and HOA regulations in the past. Who does not benefit and who is harmed? Well, you have at least 17 letters before you and most of us that care to keep this neighborhood as intended and we expect there are additional, there's an additional five vacant lots we have not heard from and may not have knowledge of these applications. As well, there is one bank-owned house that's for sale.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Lynda Allen?

Ms. Lynda Allen: My name is Lynda Allen and I'm here to testify in opposition to the Conditional Use Permit for our 31 subdivision lot at Pineapple Hill, Phase 2. I would like to say to the committee that we have had several illegal renters in our community and we definitely have...even had taken pictures of as many as 18 people checking into a residence at one time. And how the property managers think for one second that they're gonna be able to control how many occupants come and stay in these residences and control the noise and control the bands that might...and we've had that happen as well, is just absolutely ludicrous and I don't understand how they think that they can get away with saying all these things that they will be able to control. It's obvious to us that they cannot control it. We've had neighbors that have moved away with ailing husbands because they couldn't stand rental properties on either side of them. So they just gave us. Our management, our property management is not able to control what is going on right now with, especially with the illegal renters who are still renting illegally by the way, and the Council and I don't know if the Commission is aware...are aware of these people, but they've been a real thorn in our side for the last two or three years now. And like I said our management is not able to control it, and neither has the County been able to control it. And you can fine these people all you want you're not gonna...you'll never see them on...you can fine them all you want, you're never gonna see it. And I know something else just popped in my head and it just flew right out. So anyway with that, I'm asking that you please disallow any CUP permit in Phase 2, Pineapple Hill. Thank you.

Chair Ball: Questions for the testifier? Commissioner Robinson?

Mr. Robinson: Hi. You testified that you have complained about these people before or the renters?

Ms. Allen: Oh sure, illegal renters, yes.

Mr. Robinson: So after today in a case they were to be denied what would change?

Ms. Allen: Nothing would change. That was my point.

Mr. Robinson: Unfortunately, it's not going to change.

Ms. Allen: That was point...making my point of the property manager saying that they will control eight people and absolutely no bands and you know, there's no way that they can control all that. Who, who are we gonna call at 11 o'clock at night or 10 o'clock at night when we're being disturbed? We'll call the property managers, but by the time they arrive it's already impacted our management office, it's already impacted our security. By the time the property manager gets there to shame on you, the problem will have gone away. But except for us it hasn't gone away. So...

Chair Ball: Commissioner Hedani?

Mr. Hedani: I think the one difference is if it's approved then the problem will be permanent and legal is the problem.

Ms. Allen: If it's approved the problem would be permanent absolutely.

Mr. Hedani: The question that I have is what was the intention of the CC&Rs relative to seven day rental agreements?

Ms. Allen: The intention of those CC&Rs were for Phase...the Phase 1 subdivision of Pineapple Hill. There are two different subdivisions. Phase 1 and Phase 2.

Mr. Hedani: We're dealing with Phase 2, yes?

Ms. Allen: Well, I'm talking about Phase 2.

Mr. Hedani: Right and Phase 2 in your CC&Rs there's a provision for one rental per month not less than seven days. What was the intention of that? Is that for family?

Ms. Allen: Well, I think the intention was that nobody wanted to write and draw up any new CC&Rs for a different subdivision. That's the only difference that I can see for the CC&Rs. They just used, they rubber stamped the CC&Rs just to...as...to expedite the construction of the lots in Phase 2.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Higashi has a question.

Chair Ball: I called on you.

Mr. Robinson: Yeah, that's all right.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Ms. Allen you know on the CC&Rs?

Ms. Allen: Yes.

Mr. Higashi: Was Phase 2 residents actively involved in the development of that CC&R?

Ms. Allen: No, we were not.

Mr. Higashi: So you were not involved in that?

Ms. Allen: Phase 2 came along 10 years after Phase 1, so no. Phase 2 was not involved in the construction of the CC&Rs for Pineapple Hill.

Mr. Higashi: So Phase 2 never tried to amend the CC&R in that particular area?

Ms. Allen: Not to my knowledge.

Chair Ball: Question? Do you know how much they rent those? The ones, the illegal ones out for?

Ms. Allen: Can't answer that, sorry. I should know that but, I can't.

Chair Ball: It's just a question for the Department when they start making fines that make sense 'cause otherwise it's just the cost of doing business.

Ms. Allen: But I'm sure somebody in here would know.

Mr. Spence: Firstly, Staff Planner Kurt Wollenhaupt indicates that it runs for \$2,000 a night.

Chair Ball: Any further questions?

Ms. Allen: And higher, yeah. That would be a minimum I would think.

Chair Ball: Seeing none, thank you Lynda.

Ms. Allen: Thank you so much.

Chair Ball: Walt Kubiak?

Mr. Walt Kubiak: Hi, I'm Walt Kubiak, I'm the owner and broker of Maui West Side Properties and I'm representing two owners here today. I'm representing Richard Brown and David Lede. David Lede owns three lots. He owns Pulelehua 101, 102, 104 and Sherman is Crestview 220. I'm gonna read a statement from Sherman and then I'm gonna read something from David.

Okay, so Sherman's statement is: As the owner 220 Crestview Drive I strongly oppose the issuance of a short-term rental permit for the residence at 100 Pulelehua and also 107...I'm actually here for both so I don't know if I have to come back again. My home is directly across from this location. The admittance of non-owners of full-time rental residence to our gated community on a casual short-term basis will drastically impact the safety and security of our community. And that's Sherman's statement. That's 220 Crestview.

And David's statements are about the same for both so I'll just read one of them. So Mr. Lede he resides in Vancouver so he's not able to be here today which is why he asked me to come down and represent him here. I actually represent Dave in some real estate dealings and I also do property management for him at condo hotels. So he doesn't rent anything in his...in Kapalua and he no intention of ever doing it. Mr. Lede objects to the application, both of the applications seeking Conditional Permits to use 107 Pulelehua and 100 Pulelehua for transient vacation rentals. Pulelehua Place is in Phase 2 of Pineapple Hill in Kapalua Maui. It's a residential gated community is not zoned by the County for short-term vacation rentals. Last year Mr. Lede completed construction of his vacation home at 102 Pulelehua. He chose this area in Pineapple Hill for its beautiful setting, privacy and security, but also because he wanted to be in a quiet area amongst homeowners and not transient renters. 104 Pulelehua is a vacant lot which is right below, 102 Mr. Lede bought that and has landscaped it just to preserve his view so that lot will never be built on. 101 Pulelehua is the home that David owned prior to building 102. That house is currently in escrow and the buyers of that house will be full-time owners and they also are opposing this. I don't have an actual statement from them but they're also opposing the vacation rental.

According to the County of Maui website no conditional permits have been issued for transient vacation rentals in Phase 2 of Pineapple Hill. Mr. Lede would like it to stay that way. I'm just scanning for you.

Ms. Takayama-Corden: Three minutes.

Mr. Kubiak: Transient vacation rentals are not similar, related or compatible with a single family residential neighborhood in a gated community and there's nothing unique about the proposal to use either for transient vacation rentals such that its likely effect on the surrounding area cannot be determined in advance. The proposed use would introduce short-term vacation as in tourists into what would otherwise be a quiet residential community, produce more traffic and noise and reduce privacy and security for residents. These are the inevitable results of allowing transient vacation rentals in a neighborhood not designed or zoned for that purpose. There's no shortage of property zoned. If permitted short-term vacation rental properties in the Kapalua and Napili area including hotels, condominium resorts and single-family homes. A search of the VRBO or similar websites will turn up dozens of properties available for rent. There's no need to add them Phase 2 of Pineapple Hill has no amenities for short-term vacations.

Chair Ball: Thank you. Any questions for the testifier?

Mr. Robinson: I want to question.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Is anybody that you know of in Phase 2 part of the, part of the Pineapple Hill Board of Directors?

Mr. Kubiak: That I know personally? No.

Mr. Robinson: Yeah. Because I'm looking through this paper and see remedies for people but it's through the discretion of the, I guess the Board of Directors and I would encourage maybe somebody in Phase 2 might wanna get on it.

Mr. Kubiak: That I don't know. I will want to say one more thing. I am a property manager, short-term property manager and I will confirm that when you're checking people into residential homes there is no way to tell who's checking in. We actually don't rent residential homes. We rent only condominiums and condo hotels where we control entry and exit. When you're renting into a gated community such as this, the first family shows up and the next thing you know...

Mr. Robinson: That wasn't a question...(inaudible)...thanks.

Chair Ball: Thank you.

Mr. Kubiak: Thank you.

Chair Ball: Thank you, Walt. Okay, moving on here. Melissa Crawley? She went home, beat the traffic. Okay, that's all for my list. So if anyone else who would like to testify please come forward and identify yourself.

Mr. Joseph Henchel: I which to address the application C-3 and also ask you permission afterwards to address the slightly difference circumstances in the C-4 application. We're here to please for your protection to preserve our residential neighborhood. I'm Joseph Henchel. My wife and I are residents of Maui, ....(inaudible)... in Maui.

Chair Ball: Can you identify yourself please for the record?

Mr. Henchel: Joseph Henchel.

Chair Ball: Thank you.

Mr. Henchel: We searched long and hard for the right house. It had to be in a residential neighborhood with no TVRs, no transient rentals. Finally, we found...thank you, Kurt....Pineapple Hill, Phase 2 and bought our home and our realtor and the HOA office told us that Phase 2 did not allow transient rentals. Everyone else in our neighborhood bought knowing and relying upon zoning going back to the 1980's which does not allow TRVs and Phase 2 was added to Phase 1 they left the CCRs as they were because it didn't matter the zoning overruled



anything that was in the CCRs. Phase 2 would not interfere with the rights of Phase 1 owners and vice versa. The permit applicants bought in September 2015. They could have bought in so many other neighborhoods that allowed TVRs, but they apparently hoped with your assistance to get a TVR income without paying for a TVR permissible property. They don't respect the existing community standard. They hope to make money at the expense of their neighbors. The state motto is Ua Mau ke Ea o ka Aina i ka Pono. That the spirit of the land be perpetuated in righteousness. Like the spirit of aloha itself, this is not some tourist board slogan. It reflects the indispensable and precious ideals by which we here intend to live. Why'd we have zoning to protect neighborhoods from harmful exploitation to perpetuate righteously the spirit of the land. Good zoning deserves respect and preservation. It's a way of guaranteeing that we keep faith with our community. The County Code 19.40.01 says that a conditional permit requires "special impact or uniqueness such that the effect on the surrounding environment cannot be determined in advance". But there's no special impact or uniqueness here. Just an opportunity for a new owner to profit to the detriment of the neighbors. They propose a use that's neither similar, related nor compatible. This too, violates the intent for conditional permits as expressed in the Code. We have right now that we have personal experience with this across the street an unlawful TVR which the County has perilous to discipline and we know from experience transients don't know nor do they care to follow the rules of our community.

Ms. Takayama-Corden: Three minutes.

Mr. Henchel: And I understand this. At this house we experience noise issues and rubbish and even public lewdness and nudity. When a four-bedroom house is advertised online it sleeps 10, it sleeps 12. You get four or five rented cars clogging the street. The notion that all guest parking will be onsite, it won't happen here.

Chair Ball: Thank you. Any questions for the testifier? None?

Mr. Henchel: Mr. Chairman, would you like me to address the other application later or right now?

Chair Ball: Up to you. You can do it now or when the item, agenda item comes up.

Mr. Henchel: I'll continue with your permission.

Chair Ball: Okay.

Mr. Joseph Henchel: Unlike Pineapple Hill, Phase 1 which has parking areas that is zoned for TVRs, Phase 2 has some narrow roads and no parking areas because we are not zoned for TVRs. It's a road safety issue. Lord help us if emergency vehicles need to pass by a TVR that is active at the wrong time, ambulances, fire engines, et cetera. If a conditional permit is granted we all know, we'll be back when it's expiring begging for relief and I ask why start down this road when we know where it leads. We know too that lure of money will generate more conditional permit applications and we know that more TVR operators will buy the houses

for sale in our community and we will never get our neighborhood back and it's our home. The application by the Auclairs provides falsified statistics aimed at convincing you that ours is a vacation neighborhood not a residential one. It would have been so simple to find out that their numbers weren't true. It makes me believe that this was done deliberately. What does this say about their disrespect for this Commission and for the law and why should you trust any of their other assurances? We're scared ladies and gentlemen. Look at how many of us have filed letters protesting this application. We don't see that the use is similar or related or compatible. We rely upon you our representatives, our neighbors at this point, ...(inaudible)...with regard to the Steiner application I want to emphasize there have been multiple allegations of unlawful TVRs by that owner of luxury retreats. I assume the evidence could be subpoenaed if we were going through all that and they've caused disturbances. Liquor Control Commission, somebody been operating an illegal tavern and then they came and asked you for a license to operate legally and their illegal tavern had disturbed the community, would you consider, would they consider giving them the license? I don't think so. Why expect a better experience if a foreign located...(inaudible)...had the permit. Hasn't the effect on the surrounding environment been demonstrated? The letter of the law will persuade you I hope to reject this application, the righteous spirit of the land will tell you I hope to reject this application. Please protect us. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Robinson?

Mr. Robinson: What was your last name again, sir?

Mr. Henchel: My last name is Henchel, sir.

Mr. Robinson: And you said there was across the street from you there was a illegal rental?

Mr. Henchel: And it has I am told been operating for a very, very long time. We were not aware of that when we purchased. We are—

Mr. Robinson: Number 18.

Mr. Henchel: --we are here and it's across and I suppose slightly to the northeast from us.

Mr. Robinson: But we're not talking about the applicant today are we?

Mr. Henchel: The Auclairs have never to our knowledge, their new owners they've never operated a TVR. Steiners I've heard from multiple sources and I don't have personal knowledge have operated unlawful TVRs through luxury retreats.

Mr. Robinson: Thank you so much.

Mr. Henchel: Thank you, Mr. Robinson.

Chair Ball: Any further questions for the testifier? Thank you. Would anyone else like to testify

at this time?

Mr. Dan Auclair: Hi, I'm Dan Auclair and I'm the owner of 107 that's under consideration today. I'd like to just clarify a point. When the Steiners at—

Chair Ball: Sir, you can address—

Mr. Auclair: I can't ask—

Chair Ball: --address the Commission.

Mr. Auclair: Okay, sorry. So there is somebody here that can clarify a point that was just brought up.

Chair Ball: You're one of the applicants though.

Mr. Auclair: I'm one of the applicants.

Chair Ball: Right? Okay.

Mr. Auclair: And I'm trying to just clarify a couple of things.

Chair Ball: Are you the—

Mr. Auclair: 107, I'm Auclair.

Chair Ball: Okay, go ahead, continue.

Mr. Auclair: Okay, so I don't know the Steiners. I've never met them. As other people have said, I'm new to this. I'm the naïve person that came in thinking this was okay. But there has been illegal renting going on. That's been made very clear to me after the fact. And I think what you're seeing is a response to the illegal renting. There apparently is at 116 which was just pointed out, people that have been holding events, having bands, having lots of activity that has disturbed the neighborhood without question. I don't think if you would had legal short-term renting in there you would have seen such a response. One thing I'd like to point out is that there is a very strong process to vet each renter. A renter has...every renter has to, in the party has to sign a form saying he understands the rules. He recognizes that he can be fined and they recognize that they can be evicted. There is a vetting process that can control the right kind of renters. Two, because of the one rental per month we're not gonna see mostly one-week renters. It's not economically justifiable. What we're gonna see is two, three or a longer periods of renting. My intent is to do it strictly by the books. I won't violate...I mean I won't tolerate any violation of the rules. Mark Marcello as we said earlier wanted to be here today. He's got five rentals today that are short-term rentals. He's never had a complaint. He's available 24-hours a day. He's with Whalers Realty that's been a realty firm as you know in West Maui for a long time and I have a lot of faith that he'll be able to enforce the rules

vigorously.

A last point which is maybe a minor point but because of the strong opposition to short-term rentals there's only a few of us in Phase 2 that wish to pursue short-term rentals. Myself, the Steiners, the one person that wrote a letter in favor of short-term rentals also is interested in doing that so at the most we're gonna have four, five short-term rentals out of 30 because everybody else is opposed to it so clearly they're not gonna apply for short-term rentals. So I think the disturbance to neighborhood will really be a minimal amount and I request that you give it a chance. Allow these two for a year and see what happens. See if there are complaints. Now if the Steiners, if he was correct about the Steiners and the site manager is here Linda, she can confirm this. If they did have complaints on the Steiners don't approve it. But it's my belief that they were referring to 116 not 100. So 116 there's no question. Tons of complaints, lots of issues. I don't know about the Steiners let's find out by asking them. So that's just a few comments from me. Thank you.

Chair Ball: Thank you.

Mr. Robinson: Question?

Chair Ball: Let's hold off on questions. 'Cause actually...hold on, let's hold off on questions because we're actually in public testimony right now. I probably should have closed that before we went to you. But if there's anyone else who like to testify at this time they may come forward and do so.

Ms. Jackie Walden: I'm Jackie Walden. I live in Pineapple Hill, Phase 1. Jackie Walden, okay. It's my understanding that because of the different zoning between Phase 1 and Phase 2, the people that bought in Phase 2 thought they were protected from rentals because they're zoned Multi-Family. And based on that the CC&Rs applying to Phase 1 allowing one rental per month they thought they were being protected because they were a different zoning. So when this comes up asking for special consideration, that...they thought they were protected from that. So that's my question, how can they come along with just saying, well we want conditional approval now because we don't like these rules. So I don't think that's quite fair to change the game in the middle...the rules in the middle of the game.

Chair Ball: Thank you. Any questions for the testifiers? None? Oh, sorry, Commissioner Hedani?

Mr. Hedani: Are you the original purchaser of the lot?

Ms. Walden: Yes we are.

Mr. Hedani: At the time you purchased your property were you under the impression that rentals were not permitted?

Ms. Walden: We are in Phase 1 which we knew...that's a different thing, we knew that there

were rentals one per month purchase, but I'm speaking for the people that purchased in Phase 2 thinking that they were...they did not have to deal with the rentals because they were zoned differently.

Chair Ball: Further questions for the testifier? Seeing none, thank you. Continuing with public testimony? Anyone would like to testify at this time can do so? Seeing none, public testimony is closed. Can we get the recommendation from the Staff, Gina?

Ms. Flammer: Did you wanna do questions first?

Chair Ball: Sorry, there was a question for the applicant. If Mr...-

Mr. Auclair: Auclair.

Chair Ball: --Auclair, sorry. Thank you.

Mr. Lay: Okay, I have a question. On your fines, let's say a person renting like that they make loud noise they get fined. Who benefits from the fine? Is it for you or is it...just wondering where does that money go?

Mr. Auclair: I don't know. Can I ask our consultant? If the fine is imposed by the CC&Rs so I would assume to the community.

Mr. Lay: Yes, for me that's what I would think too because they're the ones who are suffering. The people around them are the ones that are being imposed upon the loud music or whatever that's making their life inconvenient in that area with that TVR going on. So, I'm hoping that fine goes back to the community.

Mr. Auclair: It definitely doesn't go to the owner I know that.

Mr. Lay: Okay.

Mr. Auclair: It goes to the community.

Mr. Lay: Okay, thank you.

Mr. Auclair: It would give the owner motivation to fine people though if it went to the owner.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Aloha. So how long do you plan on being in Maui with this home?

Mr. Auclair: On a regular basis?

Mr. Robinson: Yes.



Mr. Auclair: Okay, just a little history. So my wife and I purchased this home through a 1031 as Tom mentioned. 1031 allows us to postpone capital gains on real estate.

Mr. Robinson: I understand.

Mr. Auclair: So my brother and I owned an office building in Sunnyvale, California which is the middle of Silicon Valley. We've owned it for 40 years. Initially of course it took a lot of investment, a lot of work and eventually it paid off very well. And we were able to exchange that basically for the home here. So we're required in order to meet the terms of a 1031 to keep this property as investment property otherwise we'll end up paying a huge amount of tax which I understand is reasonable too, but we decided to take advantage of the 1031. My brother is older than I am. He came down with cancer. We were more or less forced to sell the unit but the timing was good. He's doing well, but who knows what will happen in the future. So my wife and I have been coming to Maui since we got married in 1974. We've always loved Maui. We come almost every year. I've been here three times—

Mr. Robinson: I apologize. How long do you plan on staying on Maui, and all this stuff is great information but everybody is here—

Mr. Auclair: I'm leading up to that. So our plan is to eventually spend three to four months a year here.

Mr. Robinson: Three to four months?

Mr. Auclair: Yes.

Mr. Robinson: And you don't mind being here three to four months and all your neighbors are really can't stand you because of what you did?

Mr. Auclair: You know, that's a very good point and until today I didn't understand how strongly everybody felt about that. I am concerned about that because I'm off on the wrong foot. I've met other neighbors and they've been very cordial and I think once my neighbors get to know me and we've gone a year with no complaints, they'll say hey Dan you know you're managing it well. So I am concerned, yes.

Mr. Robinson: Okay, thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Sir, I have a question about the people that are living in Phase 2 seem to be pretty well off financially and won't need to go into vacation rentals and what is your situation that you reason for you to get into vacation rentals?

Mr. Auclair: Obviously I'm not quite as well off as most of the people there, but the key thing is

is that I have to keep it as investment property because of the 1031 exchange. I can't not make it an investment property. Right, so that means I have to put it on the market. I have to have it at least available for rent. Now I suppose I could have...even that wouldn't fly with the IRS, but I need to keep it investment property.

Chair Ball: Commissioner Robinson?

Mr. Auclair: Now, I'm, I'm...I won't deny that I'm financially in good shape, but having this ability to rent short-term provides two benefits. One it will probably provide more income and more expense, but I think it will net out higher. But two, it will give my wife and I the ability to use the property more than if it were a long-term rental. Right, because we can book ourselves in for a month of the year right now. Long-term we may convert it and not have it be a rental. But short-term we have to have it year round.

Chair Ball: Continue Commissioner Robinson?

Mr. Robinson: So since it's a 1031 property and are you the sole owner of this home or are...like you said, you and brother are the owners?

Mr. Auclair: No. No, my brother opted to do something more conservative and not buy a home.

Mr. Robinson: So it's on a Schedule E then?

Mr. Auclair: So we split. Yeah, he split. He did something...

Mr. Robinson: So is this a Schedule E then or is it under your ownership?

Mr. Auclair: This will be a Schedule E.

Mr. Robinson: And actually you know I have a 1031 as well, and it's also an investment property and you don't have to make money from an investment property 'cause not all things are guaranteed to be profitable.

Mr. Auclair: That's right.

Mr. Robinson: And you can also be a long-term rental and rent it out for 180 days and since you're only gonna be here six months that is also an option to you. So I don't want you to think that you're stuck I mean, to have upset neighbors and having to be a TVR.

Mr. Auclair: I agree 100 percent. Those are our options that we have.

Mr. Robinson: Thank you.

Mr. Auclair: Yes.

Chair Ball: Any questions? Further questions? Commissioner Hedani?

Mr. Hedani: Mr. Auclair, when you purchased the property, when you did your exchange did you have a chance to review the CC&Rs?

Mr. Auclair: Yes.

Mr. Hedani: Under Paragraph 2 of the CC&Rs, the use clause, it states, lots and houses built on lots shall be used only for residential purposes and shall not be used for any gainful occupation, profession or trade or other non-residential purposes.

Mr. Auclair: Yes.

Mr. Hedani: Do you consider a TVR a commercial operation?

Mr. Auclair: I'm not sure I can answer that question. And I also, of course, read the part where it said, you could rent once a month for a minimum of seven days. So that's what I based my purchase on not on that comment which I think is primarily aimed at excluding people running businesses from their home.

Mr. Hedani: You don't consider a hotel a business?

Mr. Auclair: Yes, but I don't think that was the intent of that paragraph. It's more someone that was in the construction business and used it as an office or somebody that was selling items out of their home, that kind of thing.

Mr. Hedani: Thank you.

Chair Ball: Further questions for the applicants? Is there a motion? Recommendation from Gina Flammer, please?

**b) Action**

Ms. Flammer: The Department is recommending with the addition of 26 conditions that you recommend approval to the County Council. If you'd like I could quickly go through them. It's...you have a copy. I know the neighbors don't have a copy.

Chair Ball: Has the Commission reviewed all the conditions?

Ms. Flammer: I do wanna point out we're only recommending one year.

Chair Ball: One?

Ms. Flammer: One year for the term of the permit.

Chair Ball: Director?

Mr. Spence: And just a little bit for the Commission's information. Conditional Permits as has been pointed out are...you know, cannot be determined in advance. That's one of the things and you can't determine all the impacts in advance. That's one reason why we're recommending one year. This particular person has not rented in the past. That's not often the case with applicants. So he is you know, genuinely attempting to do it the right way. The...this is a soft recommendation. We didn't know that it would get so many objections, you know, when we actually filed the...when we signed the report and wrote it up and everything. As a Department I think we, we say, you know, give the person a chance. As you know, some vacation rentals are big problems, yet other vacation rentals have fit in very well. So this is, you know, it's up to the Commission to make a recommendation to the Council. The Council ultimately decides on Conditional Permits, but you know, it's...well, I'll just leave it at that. It's up to you guys...(inaudible)...

Chair Ball: Commissioner Higashi?

Mr. Higashi: I move that we deny the application for TVR.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Higashi, second by Commissioner Medeiros. Discussion? Commissioner Hudson?

Mr. Hudson: I don't know how the term "harmony" comes into play when you have so many people opposed to it. I don't think this is in harmony in the area for which it's designed. Doing some quick numbers, you have 30 lots and 16 are opposed, 4 are vacant, 7 had no responses. You have 84 percent of the respondents opposed to this. This is not harmonious. I think this is actually the exact opposite. Thank you.

Chair Ball: Further comments? Discussion? Commissioner Robinson?

Mr. Robinson: I just have a comment with the testimony we had today about the trouble with stopping these TVRs and enforcement. I mean, I'm sure they have a security force there and it's just you know, it's not a, it's not a small neighborhood thing. It's all the way up to Pineapple Hill, Phase 2. So this is bad. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I moved to deny based upon the fact that asking the question to Phase 2 residents they were not really actively involved in the development of the CC&R which I think is a major concern about what's happening there. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: This is for a recommendation to the Council.

Mr. Spence: Correct.

Mr. Hedani: So the motion is to recommend to the Council that they deny it.

Unidentified Members: Yeah.

Mr. Ball: Right. Commissioner Duvauchelle?

Ms. Duvauchelle: I was just gonna add that as a neighborhood maybe this would be a good time to go back revisit your CC&Rs and you know, it is confusing. You've got the seven day within the CC&Rs which lead the other gentleman to maybe believe that he was gonna be able to do the vacation rental on a 1031. So I would really strongly since everybody feels so passionately, I would really recommend that you back get your association together and work on your CC&Rs.

Chair Ball: Okay, all... Commissioner Hedani?

Mr. Hedani: My personal perspective on this is basically just based on the map that we received that shows the red and the green and for me, you know, in other applications that have come before us whenever there are three or four opposition to, you know, to the project it gave me cause for concern. With this particular map I think it is the most impressive I've seen so far in terms of opposition to the application and I think it's kind of against the intent of the subdivision and the intent of the original purchasers of that subdivision and I think it's a stretch to use the seven-day rental clause which probably was intended for like relatives where you have relatives coming over and wanting to stay in your house or a friend that you wanna lend your house to. To be able to register with the management of the association. So I support the motion for denial or recommendation for the Council to deny.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I seconded the motion. Like everybody is saying 17 to what, 2 or 3? I mean, the neighborhood is telling me that this kind of operation does not fit, you know. I think that I wouldn't recommend it to the Council that they pass this through not if the neighborhood says no. That's it.

Chair Ball: Further comments? All in favor of the motion, raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's seven ayes.

Chair Ball: Motion is carried to deny. Recommendation to Council to deny.



Unidentified Speaker: Gotta have no vote.

Chair Ball: Everybody voted.

Mr. Robinson: No.

Chair Ball: Yeah you only have seven.

Mr. Robinson: Oh yeah, that's right.

Chair Ball: That's why I'm the Chair.

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

**VOTED: To Recommend Denial of the Conditional Permit to the County Council.**  
**(Assenting - R. Higashi, J. Medeiros, L. Hudson, I. Lay, W. Hedani, S. Duvauchelle, K. Robinson)**  
**(Excused - M. Tsai)**

Chair Ball: Okay, moving on, Public Hearing 4, Director?

Mr. Spence: Commissioners, this is an application by Ms. Julie Steiner of the Steiner Family Trust 2010 requesting, also requesting a Conditional Permit in order to operate the Steiner Residence Transient Vacation Rental at 100 Pulelehua, Pineapple Hill and our Staff Planner is Mr. Kurt Wollenhaupt.

Chair Ball: Hold on Kurt, one question to the Commission. I didn't call for a break. Do you guys wanna just keep powering through and if you gotta take a break go and take a break on your own or you guys wanna all for call for a formal?

Mr. Hudson: As needed.

Chair Ball: As needed, okay. Kurt?

- 4. MS. JULIE STEINER, Trustee of STEINER FAMILY TRUST 2010 requesting a Conditional Permit in order to operate the Steiner Residence Transient Vacation Rental at 100 Pulelehua Street, Pineapple Hill Phase 2, TMK: 4-2-007: 009, Kapalua, Island of Maui. (CP 2015/0006) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon Members of the Maui Planning Commission. The Item C-4 in front of you does have similarities and parallels to the one that you just heard for the Auclair Family. This is a matter by Ms. Julie Steiner, who is in the audience today along with her husband. Ms. Steiner will be doing her Power Point presentation and will present an overview of her application for a Conditional Permit in order to operate transient vacation rental

in Pineapple Hill, Phase 2 for a four-bedroom, single-family residence built in 2008. There are similarities between this application and the one that was just previously heard. As had been indicated, the applicant has gone through the requirements for the application for a conditional permit. I gave an explanation and overview of why we're here today and I'm happy to answer additional questions but in light of the time I think that if Ms. Steiner continues with her presentation then you can ask me questions specifically on this one.

Ms. Julie Steiner: Good afternoon, my name is Julie Steiner and I'm the owner along with my husband of 100 Pulelehua. So this is a photo of our home. We're in the same position as the Auclairs, well a little bit different. It's our, it's our family vacation home. And the whole reason for our application for the permit is to offset the cost of running such a home. This is just our team that put this together. It's basically myself and our a woman named Chelsea Harding who works for us in Vancouver. We do have currently a property caretaker, Julie Kendy who's, who lives in Maui. However, if we were to be granted a TVR we would have a full-time, on island caretaker.

Mr. Higashi: Speak a little louder.

Ms. Steiner: Oh sorry, sure. I'll get closer.

Mr. Higashi: Thank you.

Ms. Steiner: The request is as mentioned by Kurt we are looking for a transient vacation rental permit and we are looking for it in accordance with our Pineapple Hill CC&Rs. This is just a description of the home where we're located. We've basically gone through this with the beginning of the discussion. This is just an overview of where our property is located. Again, another regional location in Pineapple Hill. We have an aerial photo of it. I'm just gonna whip through all this because you've already heard it. Our main house is a single-family home. It was built in 2008. We purchased it as a family vacation home from an on island developer and architect. It was mentioned that the house had been rented and when we purchased our home it was rentals that were, that came with the home. So originally the developers and architects were struggling to sell the home so I guess they went forward, had rentals. When we acquired the home or purchased the home we had these renters that were given to us at the time so we took them thinking that that was legit. Just based on the CC&Rs we thought that was, that was legitimate.

This is a overview of our home. Pretty much self-explanatory. The next is the parking plan. We've got a double car garage as well as parking at the rear of the garage that would hold two cars and a large driveway. However, with the restrictions on the amount of people that can stay in our home and the amount of people that we would only want in our home would be no different than ourselves living there probably two cars.

Pictures of the insides of our home. This is just an overview of the property itself for a single-family dwelling on an half an acre. It's quite, it's accessible for physically challenged. We've had a friend staying there that is wheelchair accessible only and it worked well for that. So I just

think that's a unique opportunity for a rental.

We have three immediate neighbors as was described earlier and those are secondary homes for the three immediate neighbors. We are only contingent to one neighborhood which is 102 Pulelehua and that home is one of David Lede's homes. His home, the picture that follows doesn't really show it very clearly however, this home is just below us. That's his home that he I believe has just sold or is trying to sell in the...to the right of the picture is where David...well, he doesn't live there but when he uses it that's the backside of his home. It's a driveway and garage. The front of his home, so his living area is on the other side of his 10,000 square foot home, so our areas don't really come into contact like I don't see how our...anybody being on the outside of our like pool deck, lanai would impact his usability of his outside area. His property is also about 20 feet below us.

And I'm not sure if this is the appropriate time or not to defend the statement that we had...in his letter he suggested that we had noisy parties there that complained about his construction and then went onto party at our home. These were actually our friends that were there and they did complain and they were doing it probably on our behalf because his construction went on for four years in our neighborhood. You're only actually allowed to build for a year and a half. We never complained. Just saying.

Also to the north of our property is a large ravine and to the south behind us is Crestview Road and the highway. So there's nobody on any of really those two sides of our property. The other neighbors closest to us are across Pulelehua Road. It's Sherman Brown, who's the other fellow that would be our neighbor and he's actually across the street from us. Kind of got Sherman's house. And the large ravine I was talking about which that's an older photo, it's completely overgrown now and those neighbors we can't even see their house so I doubt they can our house, and they're beyond the 500 feet boundary.

House policies and rules same idea as the Auclairs we would, we would be in accordance with the Pineapple Hill CC&Rs. Quiet hours, I personally don't see how renting it to a family is any different than ourselves being there. We wouldn't allow large parties or groups to gather or weddings unless of course it's our daughter who we hope will get married and have their wedding there. All guests would be provided with a copy of HOA Bylaws and like I said earlier if we were to be granted a TVR we would have a licensed property manager within the area, the designated area. And every other house and policy rule would be followed.

There's our large driveway to park hopefully only two cars in, same with the garage. And as stated by Kurt the reason we are looking for a Conditional Permit is that in Pineapple Hill, Phase 2 the zoning doesn't mention Short-Term Home Rental Permits so we cannot apply for a STRH. So that's only leaves conditional permit for TVR as our alternative.

I don't think I really need to reiterate the conditional permit intent and criteria. You've gone over that. The history of our home is a small number of rentals have occurred at the property. Like I said, when we, we when purchased our home it came with these rentals. When we have done rentals they've been in accordance with the HOA Bylaws. We've submitted all the required

taxes on the rental income and we have never received any complaints with respect to guests at the property personally or Belinda who is the resident property manager of Pineapple Hill.

As far as the comments from opposition the quality of guests seems to be a major issue. This house is our home. It's our home away from home. And we wouldn't want parties staying in our house. We wouldn't allow that. We wouldn't want children under the age of 10 just for wear and tear. We aren't looking to operate it as a money making facility. It's really just to offset some of our costs of running a large second home. We can't be there full time. Our primary home is in Vancouver so when the house is not being occupied we would like to rent it out.

As far as no noise, we would strictly adhere to the bylaws enforced the 9:00 p.m. to 8:00 a.m. quiet hours. Traffic and parking as I've shown in our photos we have a lot of parking area for people staying in the home and also like I said, the maximum you're allowed in the HOA is eight people staying at your home. I would not foresee more than two cars staying at our home which would be no different than if we were using our home as well as our grown children.

And the zoning, clearly we were in the same boat as the Auclairs where the CC&Rs clearly allow regulated short-term rentals. What we're trying to do is just, we're just trying to be upfront. We're trying to do the right thing, getting a permit and do it all legally. Unfortunately, 116 Pulelehua seems to be the big detriment to this whole neighborhood that's why they're not here, they're not applying for permits, they are just doing it illegally. That is not our intention. We're trying to go through all the proper channels to acquire the right permits.

That's about all I can tell you. We love Maui. We'd love to spend more time here. Being Canadian we are restricted. We can be here six months on the year. Our final, the third child is in university now so we see ourselves spending more and more time here once she graduates. Other than that, I'll leave it to you to ask me any questions. Thank you for your time. Sorry it's so late.

Chair Ball: Questions from the Commission...sorry, let's open this up for public testimony at this time they may do so.

**a) Public Hearing**

Chair Ball: If anyone would like to testify at this time they may do so? Seeing none, public testimony is now closed. Gina or who's doing this Kurt?

Mr. Wollenhaupt: The Department has had, you know a long, long debate here and there certainly are issues, perhaps issues greater than we're going to solve today as to the very anomalous zoning in Pineapple Hill, Phase 1 and Phase 2. Regardless of where the Commission may go today there would seem to merit some discussion about trying to rectify some of these issues of split zoning, but that's a debate for another day.

That being the case the Department did look over the application, reviewed in its entirety, and does recommend approval for a one-year with the 26 conditions. These conditions parallel that

which you looked at before and it would be our hope that if the applicant followed those conditions to the strict letter of the rule, if the applicant followed all of the CC&Rs at Pineapple Hill that this property would be similar to that of a single-family residence in a neighborhood. It would only be one group. There would be people who would value their harmony. It would be a quiet neighborhood and people who are in the home would respect your neighbors. So with that, our recommendation would be for one year. To be the recommendation to be...this Commission would recommend to the Council a one-year conditional permit. Thank you.

Chair Ball: Okay, questions from the Commission? Commissioner Hedani?

Mr. Hedani: I guess I had a question for the applicant.

Chair Ball: Okay. Mrs. Steiner?

Ms. Steiner: Julie Steiner, excuse me, Julie Steiner.

Mr. Hedani: Mrs. Steiner this is just a matter of curiosity. For a house as beautiful as this house is what is the rental rate?

Ms. Steiner: The rate, rate? In low season it would be about 1,400 and over the holidays 2,000.

Mr. Hedani: Per night?

Ms. Steiner: Yes.

Mr. Hedani: Per night?

Ms. Steiner: Per night.

Mr. Hedani: 2,000 during peak season.

Ms. Steiner: Correct.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I have a question for Kurt please. Kurt do you have records of the GET and the TATs for this property?

Mr. Wollenhaupt: They have paid them. They have their licenses and all that. I don't have the specific A-6 tax form. They file a Canadian tax form, but I asked that if they had. They did show me their numbers. So I have every reason to believe they paid all of their taxes in the past. We didn't—

Mr. Robinson: Well, GET is not Canadian.



Mr. Wollenhaupt: Right, but they do have a GET and a TAT license.

Mr. Robinson: And do you know what year they got that?

Mr. Wollenhaupt: I don't have that. It would be the year that they purchased home were their first. I think that Mr Steiner is here, he'd probably be the best one to ask, ask that question so you get him on the record.

Mr. Nick Steiner: Hi, Nick Steiner. When we bought the home in December 2010 it was owned by Jeffrey Long and Associates, and at that time he was renting the home so we inherited some rentals form him hoping that we'd be able to continue obviously. It's like a drug, once you had some, I guess it's good. So we had a tax number from the very first rental and all the way along. I'm sure the offices in one of these buildings can give you any rentals and tax remitted.

Chair Ball: Commissioner Robinson?

Mr. Robinson: After five years why finally try to be legal?

Mr. Steiner: Five years ago there was 25, 30 homes VRBO so you're going with the flow. You're not thinking that it was a major issue. And then ourselves included, oh not it is an issue. I'm looking at *The Maui News* paper and they're saying this oh this fell in the pond. Okay, let's get of Dodge and get off the VRBO and say let's go get a permit.

Mr. Robinson: Last question. When was your rental?

Mr. Steiner: Over the Kapalua Golf Tournament. These people wanted –

Mr. Robinson: January?

Mr. Steiner: Yeah.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I have a question Mr. Steiner.

Mr. Steiner: Yep.

Mr. Higashi: Did you ever have any contact with your neighbors in Phase 2 regarding rental? Since you had it a long time.

Mr. Steiner: No, you know I see, hear Herchel's concerns so I know I can't go in the hot tub without my bathing suit anymore, all the lewdness but I think I make more...I think when I...quite often we have two foursomes come down like ourselves and three couples and when we're outside drinking wine and having a good time I think we probably make more noise than any

renter would have ever made.

Mr. Higashi: So how long did you have this rental thing going?

Mr. Steiner: Oh, when we bought the house it came with rentals.

Mr. Higashi: What year?

Mr. Steiner: December 2010.

Mr. Higashi: 2010. So for five years you haven't noticed any difference in traffic or unusual cars going in.

Mr. Steiners: No. Cars coming in there's been 40, 50 cars parked on our street from's construction. That's...it was like the airport parking. That's the only incident that we've seen.

Mr. Higashi: Did you get involved with the CC&R development of Phase 1 or 2?

Mr. Steiners: Apparently it's very difficult. You have to get the president's seal of approval and it's hard to get on that board without Avery really embracing you.

Chair Ball: Further questions? Commissioner Hedani?

Mr. Hedani: It's not for the applicant. It's for Staff actually.

Mr. Steiner: Okay, all done? Thank you.

Mr. Hedani: Kurt, He's had a TAT license since 2010. He's operated illegally since 2010. Why does the Department bend over backwards to recommend approval for something like this?

Mr. Spence: He's looking at me.

Mr. Wollenhaupt: I'm gonna qualify. What I learned from the applicant, I'll qualify a little bit I did understand that when they bought the house they did have apparently they inherited a couple of short-term rentals, I don't know how many. Okay, fair enough. During the course of my investigation I did call the Pineapple Hill HOA representative who's here today and I asked I'd like to know if it's possible because at Pineapple Hill it's a little different, every person who short-term rentals and I've...in fact, I understand that even the owners themselves when they come onto residence on property they have to sign in. So they have to sign themselves in. I'm not sure if that's in the case, but indeed they do have to sign in other people who are short-term rental. So if I'm renting I have to go to the office and I'm here, I'm a short-term rental and here's my short-term rental. I just have to present myself. So they know who's short-term renting and they know who's not. And so we did find out that the applicant had rented I believe twice in the last six months. One apparently for the Kapalua Golf Tournament. So that gets back to the question, we had the discussion with the Director. There obviously was a lot of opposition that

came, but I think the Department oftentimes tend to think if objections are based upon the possibility of a community problem. If an objection is based we believe this might be the outcome should this happen then I think we'd want to err of the side, well perhaps these people need to be given a chance. If there's such, such convincing evidence that there have been problems, there have been requests for service, there have been complaints, there have been police out there, then we would move then into the denial. But on, certainly on the Auclair we couldn't see that. On the Steiner we did see that that was a rental, but we never saw any police reports. So that's...it was in the balance that we made on the balance of just one year and as indicated if they were to get this permit a year from now they would have to renote all the neighbors within 500 feet. If there was one neighbor that simply said I don't want this in writing then we come back and go through this again.

Chair Ball: I think that there's a disservice to the Steiners and the—

Mr. Wollenhaupt: Auclair?

Chair Ball: --Auclairs from the Department because you know they're kinda set up. Like the Commissioners had said that they...I mean this is overwhelming number of, you know, complaints, not complaints but letters of opposition. Where we've always in the past, look you get neighbor, you tell your applicants to go talk to their neighbors, right? I mean, these applicants seem like very nice people. It may have gotten rid of some these I don't know. I mean it just would seem something that the Department would do for their applicants and say, hey look you got all these complaints this is not gonna fly. I mean, this is an unprecedented amount of...not complaints but opposition letters. You guys might wanna go talk to your neighbors, right? And here's the map of your neighbors and go talk to?

Mr. Wollenhaupt: We do send, we do send the letters of opposition as they were coming. I believe I gave fair warning to certainly Ms. Harding who is the representative that this will be an uphill battle.

Chair Ball: Because I know we've approved ones with denial letters, with multiple denial letters but they applicant went and talked to their neighbor and they hashed out whatever their problems were with their neighbors, right? I mean, we don't live there so this is up to them and their neighborhood to figure this out. And I'm not...I'm just making a comment to the Department that they could probably help applicants. You don't have to do it, I mean, the applicant would have to go and do it.

Mr. Wollenhaupt: My observation on...and Pineapple Hill, Phase 2 residents is that they perhaps need to get to know each other better, I'd make that recommendation.

Chair Ball: ...(inaudible)...

Mr. Wollenhaupt: The Conditional Permit is an odd, it's an odd permit. You know, with a short-term rental we have criteria. If you have this many complaints, if you have this police, the conditional permit is just so open ended. Is it similar, related, compatible? And we have to say

well, yeah you have people that are opposing because they think this could happen, but if it's operated like a house with all these rules it's pretty similar—

Chair Ball: Well, I understand that side, but there's the human side of it, right?

Mr. Wollenhaupt: Right.

Chair Ball: Go talk to your neighbors, you figure this thing out, if it doesn't get figured out they're gonna show up here and say look we hate them because we hate the lewdness of Mr. Steiner.

Mr. Wollenhaupt: Well, actually the...I think the lewd part has to do with another...has to do with another property.

Chair Ball: That's a joke. Commissioner Robinson?

Mr. Robinson: Kurt have you personally seen any complaints from Phase 2 from any other owners in the course of the year, across your desk or the Department?

Mr. Wollenhaupt: Okay, there's something called the request for service which is the online complaint system. There was a complaint filed way back in 2000 and...there was an RFS that was filed for a short-term rental in September of 2012 for the Steiners. Just that they were renting and because there was a VRBO website and then that was taken down and I presume the rentals then stopped. So that's the only evidence that I've ever seen of specific requests for service.

Mr. Robinson: So when you took this application you assumed that it wasn't gonna be that bad because you didn't have, you didn't have these 15 people opposing prior because they never complained about the rental to the County. They just were just upset about it? Is that...(Inaudible)...understanding?

Mr. Wollenhaupt: One of the first, one of the first things Gina and I and Danny all do is we look and see okay have there been police out there? There's a program we have. Have there been requests for service? Have there been complaints? And these applications came in and they were, they were pretty clear and open and we understood these people. This the only way they could even get it.

Mr. Spence: Right.

Chair Ball: Director?

Mr. Spence: And I should say something 'cause I'm ultimately responsible for staff recommendations. What Kurt is saying is correct. When we look at individual applications we look for things like what you're talking about. We look for have there been complaints in the past? Yes, no? You know these came in really clean. It came in really clean. Auclairs have not operated at all. How can you tell what the impact is unless...you know, you can't even

make an assumption on the kind of operator he is or would be because it...(inaudible)... The other one we haven't had complaints about noise or anything. It was just about okay, they were operating and so they pulled down ads and everything, we figure everything's cool. So people are...and these people are coming in making the effort to become legal and get the proper permitting I think that's a big, big plus on their side. We...it really was...we knew that, we knew that there was some opposition. It grew after we signed the staff report recommending approval. You know but at the same time you know, I think my opinion is to give these people a chance. If the Commission doesn't feel that way, that's the way the Commission feels that your prerogative. But the way that these came in we believe that these are good responsible operators and so we recommended approval for a short period of time to give it a try.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Director I understand that we have the push of trying to get everybody legal which is...which everybody is for. My concern is from August 20<sup>th</sup> from when they apply they're allowed to continually operate without a permit. That I don't understand.

Mr. Spence: Were we aware that they were operating?

Mr. Wollenhaupt: Well, okay I'll...we opened the door, I may as well just...we opened the door, I'll just walk...(inaudible)...

Mr. Robinson: Yeah, let's get it, yeah.

Mr. Wollenhaupt: I made it known to the applicant's representative that I would not like to see that we have short-term rentals going on. And then I called the homeowners association, I said, I really want to know, I want to know everyone who's renting out there and they had to go to board and they had to get Avery and everyone, okay, are we gonna release this? They did release it and they did have that short-term rental. So that was...I wasn't pleased, but okay, they indicated that it had been booked before.

Mr. Robinson: We're not giving permission for people to...because they put a application in to continue to break County Code.

Mr. Wollenhaupt: No, no, no. No.

Mr. Robinson: Okay, they're it on themselves.

Mr. Wollenhaupt: We, we—

Mr. Robinson: Yeah, they're it on their own.

Mr. Wollenhaupt: We tell them, we say, you're not to be, you're not being doing something, you no permit, when you have no permit.



Mr. Robinson: They just continued on their own.

Unidentified Speaker: That's right.

Mr. Robinson: Thank you.

Chair Ball: Who, who is the all-powerful Avery that you guys keep talking about?

Mr. Wollenhaupt: That's Linda, Linda Lyons is the head of the HOA if you had any—

Chair Ball: Okay, Linda maybe—

Mr. Spence: You should identify yourself.

Chair Ball: --come forward.

Mr. Spence: And speak into the microphone and be heard.

Ms. Linda Lyons: I'm Linda Lyons, resident manager of Pineapple Hill.

Chair Ball: Do you have an answer for that question, Linda?

Ms. Lyons: Who Avery?

Chair Ball: Yes.

Ms. Lyons: He's the president of the board. He's been the president for eight or nine years at this point.

Chair Ball: Is he like Madonna or Oprah where he don't have a real name or does he have—

Ms. Lyons: No. He's been around. He's seen a lot.

Chair Ball: You have two names.

Ms. Lyons: Yeah, he runs a pretty tight ship when it comes to this kind of thing. I mean, we've gone from when I got there four and a half years ago to having, okay if you have, you know, if you're renting too often because we're allowed rentals. We've allowed rentals since day one since the CC&Rs were developed in 1987 and then brought across to Phase 2. They've been the same. They were brought in, they were notarized, they were here in the County somewhere, you know, it's all of that. So...

Chair Ball: Does he have a last name?

Ms. Lyons: Avery Loy.

Chair Ball: Thank you.

Mr. Robinson: But you guys rent with permits, right?

Ms. Lyons: No, well no. See it was never...until this whole thing, until this STRH thing came down we've always allowed it. For if it's more than seven days, once a month, you know, and our biggest problem up till then was we had people that did it more than once a month, but it was allowed when I first got there. So the problem was just people that did multiples throughout the month and that kind of thing.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Yes, I have a question.

Ms. Lyons: Sure.

Mr. Higashi: As the resident manager isn't it your responsibility to check on these people who have vacation rentals to see whether they have a permit or not?

Ms. Lyons: Well, actually that's interesting. It's come up in conversation amongst the board. I have asked that question multiple times. I was told that we follow what our CC&Rs have to say and that's, and that's why I think it got confusing once this ordinance came down and that were...is a law in place that you had to have a permit. I went out there and let everybody know time to get a permit. And...but through the association and I am governed by what the board tells me to do that if they have...you know, since we allow it in our CC&Rs it's up to them to go to the County and get it that we weren't mandating them to do so. I know.

Chair Ball: Okay, further questions? Thank you. Where are we? Further questions from the Commission? Seeing none, how about a recommendation then? Motion?

Mr. Robinson: I'd like to make a motion to deny.

Mr. Medeiros: Second.

Mr. Higashi: Second.

Chair Ball: Motion to deny from Commissioner Robinson and seconded by Commissioner Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: Because we're not the deciding agency on Conditional Permits this is a motion to recommend to the Council.

Mr. Robinson: Recommend.

Mr. Hedani: That we deny, that they deny.

Chair Ball: Thank you for housekeeping.

Mr. Robinson: I apologize, I knew that.

Chair Ball: Makers of the motion are okay with that clarification?

Mr. Robinson: Yes.

Chair Ball: Further discussion? Commissioner Hedani?

Mr. Hedani: Actually my question I think Kurt was a little unfair because the recommendation from the Department came out before I think all of these protest letters came in so really don't know what kind of a reaction you're gonna get. But that being said, I think you know, the map speaks for itself from my perspective. At one point I was accused for I think the Commission was accused of bias against transient vacation rentals. When I looked at the four corners of the document that you know we were provided with today, I try very hard to measure it just from the standpoint of what is legally provided and whether or not we are doing our job relative to approving or disapproving or recommending approval and disapproval. In this case, I was open minded up to the point where individual neighbors came forward and spoke about the problems that they have incurred. I think when we find a transient vacation rental that's out in the middle of nowhere that nobody can hear, nobody can see, nobody can get irritated about because of traffic from my perspective that's perfectly fine. But in this particular case, the map kinda speaks for itself.

Chair Ball: Commissioner Robinson?

Mr. Robinson: The comment I'd like to make is hopefully we'll assist the planners in letting their applicants in the future know that once they put an application and if they were doing something that did not have a permit that it will not be looked on lightly and this Commission will expect you to put your permit in that you will stop all activities until your permit is existing. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I would recommend to all the Phase 2 residents that they get actively involved in the development or amendment of the CC&R because we as a Commission definitely look at the CC&Rs of the various communities and we kinda highly believe that whatever's in your CC&R is what goes along and apparently you're already involved with Phase 1 which is a little different apparently.

Chair Ball: Further comments? Director?

Mr. Spence: Just Commission for...just wanna make a statement for the record on CC&Rs and some point we'll discuss this more. I know it's a conditional permit but specifically to short-term

rental home permits it says that we will not consider CC&Rs. It is for your information only. Whatever as to the character of the neighborhood et cetera, et cetera, CC&Rs are a private contract between property owners. It is not a contract with the County. It's not a zoning law. It just pertains to whatever those homeowners have adopted as the bylaws they will abide, not...they're not bearing on the County at all.

Chair Ball: Okay, further comments, questions? Commissioner Hedani?

Mr. Hedani: I guess this is in defense of the County's recommendation for approval. I think to some degree there is a belief that if you issue the permit and they're authorized to operate and they'll legal there are more controls on the operator and there is a bonafide method of registering complaints with the County once they're operating which would go onto the record and there's a process for dealing with it when it comes up for renewals. So although the idea of control may be a fiction in the real world, I think part of the reason for recommending approval may be that your establishing formal controls on the operator. But as I say, we may be just daydreaming when it comes to that.

Mr. Robinson: We have an example where that didn't happen on this application right here.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I, too, have a problem with them applying being told you know, to stop until they get permitted. That's like telling me, okay but I'm gonna break the rules anyway so you can give me some rules that I can break. Give me a break, okay. No.

Chair Ball: Okay. Motion? Sorry, we have a motion. All in favor for denial or recommend—

Mr. Spence: Recommending denial to the County Council.

Chair Ball: --recommending denial to the County Council raise your hand and say, "aye".

Commission Members: Aye.

Mr. Spence: That's seven ayes.

Chair Ball: Motion carries to deny. We are gonna take a five-minute recess.

**It was moved by Mr. Robinson, seconded by Mr. Medeiros, then**

**VOTED: To Recommend Denial of the Conditional Permit to the County Council.**  
**(Assenting - K. Robinson, J. Medeiros, L. Hudson, I. Lay, W. Hedani,**  
**S. Duvauchelle, R. Higashi)**  
**(Excused - M. Tsai)**

A recess was called 4:18 p.m., and the meeting was reconvened at 4:23 p.m.

Chair Ball: Call this meeting back to order. We are on Item E-1. Director?

Mr. Spence: Mr. Tom Croly on behalf of Mr. and Mrs. Terry Epstein requesting a State Land Use Commission Special Use Permit and Short-Term Rental Home Permit to operate Shambala Short-Term Rental Home within a State Ag District and Danny Dias is our Planner.

**E. UNFINISHED BUSINESS**

1. **MR. TOM CROLY on behalf of MR. and MRS. TERRY EPSTEIN requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Shambala Short-Term Rental Home, a six (6)-bedroom short-term rental home in the State Agricultural District at 120 Kaimanu Place, TMK: 2-1-019: 100, Wailea, Kihei, Island of Maui. (SUP2 2012/0030) (STKM T2012/0012) (D. Dias)**

**The Short-Term Home Rental Home Permit application is being brought to the Maui Planning Commission because the neighbor protest threshold has been met.**

**The first public hearing was conducted on October 8, 2013.**

**The matter was remanded back to the Maui Planning Commission by the Second Circuit Court for further review.**

**The Second Public Hearing on the requests was conducted by the Commission at its October 27, 2015 meeting. The record was transmitted to the Commission for the October 27, 2015 Commission meeting. The Commission deferred action on the requests as they were unable to take action to approve or disapprove the requests. (Commissioners: Please bring those documents previously circulated to you to the meeting.)**

**The matter was taken up again by the Commission at its January 12, 2016 meeting. The Commission deferred action on the requests as they were unable to take action to approve or disapprove the requests. The record was transmitted to the Commission of that portion of the January 12, 2016 meeting dealing with these matters.**

Mr. Danny Dias: Thank you, Director Spence. Good afternoon, Chairman Ball and Members of the Maui Planning Commission. I overheard that some of you have to leave soon so I'll be as brief as possible and let the applicant do the bulk of the presentation. Essentially this item has been before you for the sixth time today. It came to you in 2013. It came to you again in 2015, October 27, 2015 to be exact. It was deferred at that meeting. It came to you again in January and it was deferred till today. The significance of October 27 of 2015 is that was 119 days ago,



and as you folks know according to your rules there is a 120-day period where the Commission has to make a decision and if not then it automatically gets approved. So having said that just as you watch the presentation just keep in mind if this gets deferred today it will get approved tomorrow by rule which essentially leaves you with either approval or denial. So with that I'm gonna hand it over to the applicant's representative, Tom Croly.

Mr. Tom Croly: Thank you, Danny. Thank you, Commission. Tom Croly your versed with me, I've been before you on this issue and many others. Again, we're back for the Shambala Short-Term Rental Home application. And I wanna review just a bit of the history of this application.

June 2012 was when the Short-Term Rental Ordinance was codified and the Mayor signed it into law. And immediately upon that happening, the Epsteins contacted me and said we would like to make an application for a short-term rental. I assisted them in putting together that application which I submitted to the Planning Department in October 2012.

Upon making application you send notice to everyone within 500 feet. And nine letters of support were received and four letters of protest. It was those four letters of protest that remanded the decision on this to this body. So on October 8, 2013 we had the public hearing before the Commission. The Department recommended approval of this application. We had bare quorum at that first meeting and a question came up at that meeting about whether or not the lot that provided access to the Kaimanu Estates Subdivision where the property is located came up and a deferral was taken at that time so that we could investigate that.

On November 12, 2013 roughly a month later we came back with the answer to that that in the lot was not part of Maui Meadows and Commission deliberated at that time and did vote in a split decision to deny the permit. The Decision and Order took eight and a half months before it came before the Commission. And this delayed the applicant's opportunity to appeal the decision of this body by that eight and a half months but they did appeal and on February 19, 2015, Judge Loo remanded the application back to this Planning Commission citing that the Planning Commission had violated HRS 91-11.

On October 27, 2015 we had the second public hearing before the Maui Planning Commission and at that particular public hearing we had seven commissioners who were in attendance however only six could participate because one of the commissioners had not reviewed all of the previous materials.

On January 12, 2016 just last month we came back again and we had bare quorum and again the item was deferred and we are now here three years, four months since the application was filed and two years and four months since the planning commission hearing.

I wanna make a point that in that period the applicants have not operated. The applicants have not advertised. The applicants haven't brought anyone in. They said we're gonna do this right. We're gonna follow the law and get our permit even though I want to express there is no way anyone could ever know what's going on on their property. You can't see what's going on on their property. You can't hear what's going on on their property unless you're on that property.

But the applicants have not operated during that period.

There's some things that had been said multiple times and I just feel the need to correct the record. Kaimanu Estates is not and has never been part of Maui Meadows. Kaimanu Estates was at one time part of Kaonoulu Ranch land and it was turned into a subdivision, an agricultural subdivision with nine lots. One of the lots within Maui Meadows was used for access to that and was removed from Maui Meadows at that time.

The Supreme Court of Hawaii affirmed the use of that lot for providing access to the Kaimanu Estates Subdivision. The roads that serve Maui Meadows are in no way, shape or form part of Maui Meadows. They are Maui County public roads and the use of them is not at all restricted in any way, shape or form to the residents of Maui Meadows just as the roads outside here are not restricted in any way to anyone who just lives in the area.

The Maui Meadows Neighborhood Association did not lobby the Council to limit the number of short-term rentals in Maui Meadows. I was on the board of the association at the time and individuals who also were on the board lobbied as individuals but the Maui Meadows Neighborhood Association never took a position with respect to short-term rentals in Maui Meadows that all being irrespective of this issue because this property is not in Maui Meadows.

On the bottom is the route of the cars going to this property as they would come to Maui Meadows. The four folks who did initially show objections, the cars do not go past their house on their route into this property.

There also was discussion about the fence/wall that are between the properties and somehow it got represented that this was a 13-foot wall/fence. It has never been, never was a 13-foot wall. It is between seven and eight feet tall as these pictures show. It was represented this cut off all views and all airflow. It is in conformance with Maui County Code. A building permit was issued in 2001 and it passed final inspection in July 3, 2001. And as you can see air freely flows through the louvers in the wall.

Another thing was put out there that the Epstein's home took away the views of the neighboring properties. This is one of the neighboring properties, one of the folks who this is their second home, their investment home that is for sale and it points out that the epic ocean views are available from this Maui Meadows home. So in no way, shape or form was there...were the neighbors being impacted or their views being taken away by the Epsteins property.

The applicants Terry and Kay Epstein are full time residents here and I can tell you that they are generous sponsors in Maui. They employ many people to keep up the home and you had oral testimony and testimony in support of this application for more than 25 Maui residents. They did open their home to all the folks who had any interest, the neighbors within 500 feet to come view the home, come in, express your concerns. They did this twice before they made application they sent a letter to their neighbors saying hey, we're available if there's any questions that you have and they did this after there were some issues expressed by some of the neighbors.

They also have taken steps to insure that the audio system on their property can never impact the neighbors in any way, shape or form. The volumes are set in such a way that someone renting the property cannot turn the volume up to a level that it could ever be heard at any time by their neighbors.

They've also since the last hearing implemented a proposed additional rule in their house rules and this is on your table that states, guests may not bring personal amplified sound music devices to the property and they cannot be used outside Shambala. The in-house sound system has been custom designed to provide sound and music to the guests in accordance to special volume restrictions related to the terms and conditions for the property short-term rental home permit as specified by the County Administration no exceptions allowed.

These conditions are signed by every potential guest. They have to sign these before they're able to take possession of the property. So you know that that's gonna happen again for the sixth time standing here we ask you to give these folks the chance. They have met every one of the conditions of the Short Term Rental Ordinance. They have met and demonstrated their agricultural uses for the State Special Use Permit and they really deserve the opportunity to show that there really is no impact that their use would recreate. Thank you, Chair.

Chair Ball: Okay, let's open it up for public testimony. Anyone that would like to testify at this time may do so. Please come forward and identify yourself.

Ms. Irene Aroner: Hello. Aloha. My name is Irene Aroner. I'm the owner and principle broker of Tropical Villa Vacations. If the Epsteins are kindly granted a one-year initial permit I would serve as the rental manager for the property. I just wanna make a couple really quick comments. We've been in business 20 years. We employ more than 40 people. Our offices are in Kihei. Myself and all of our staff live very close to this home. We have a lot of long-term employees who are very experienced in this business not only do we have hotel industry experience but also again more than 20 years experience managing apartments in resorts and private homes. In fact, we're board approved as rental agents at Andaz Wailea, Wailea Beach Villas, Montage Kapalua Resort, et cetera. We can only be board approved in these resorts if we operate in a really exemplary and very responsible and very serious manner. I also wanna mention that we manage a couple of homes that are permitted as STRs. There's been no complaints about them and some of them have already been renewed successfully.

I just wanna mention that over the years I've been contacted by many, many homeowners on this island about renting their properties and I have turned down dozens and dozens and dozens of calls and inquiries from homeowners because I believe their properties are not appropriate for this type of use. And in fact, I've heard from people including celebrities who recently even have applied and have been permitted so I find it kind funny that I'm the one who's saying no and being more restrictive and some of these homes are actually being permitted. So I just mention that because it shows that I take this very seriously and I try to be very responsible and only do good business.

I do believe that there's a need for homes like Shambala for very limited sporadic use and it is for people who need privacy and security and they can't stay in hotels. But as it's been said before celebrities are good for Maui so they need to have some place private, confidential and secure there they can come and have a quiet little bit of R&R, enjoy being on Maui, but basically not being in a public place. And I think Shambala serves that purpose for nice families or for celebrities, people who need some privacy.

And I just happen to think that Shambala is really an exceptional property for this purpose. It's quiet. It's bordered by ranch land on one site. It's walled in. It's not a 13-foot wall. The fact that it's a 13-foot wall was mentioned as Tom's...I don't think Tom mentioned that it was brought up in public testimony in front of the County Council recently and it was Akaku T.V. and that was a little surprising 'cause at any rate it's not a 13-foot wall. And the property is managed impeccably by the owners. They really, really care about providing a beautiful home. And in all my years, 20 plus years of doing business on this island I've never met kinder, nicer people. So I really hope that you will consider giving them an opportunity. I pledge to do a responsible professional job and to make sure that you never hear about this property again, that there's no problems and that we only offer it to very responsible and considerate guests. And I wanna thank you for your time today.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you.

Ms. Aroner: Thank you.

Chair Ball: Anyone else like to testify at this time? No, you're heard later Ms. Epstein. You'll have your time. Would anybody else from the public like to ...(inaudible)...Seeing none, public testimony is now closed. Let's see, recommendation.

Mr. Dias: Thank you, Mr. Chair. The Department's recommendation is consistent with what we presented to you back in 2012 and basically we recommend approval of the State Land Use Commission Special Use Permit subject to six conditions and recommend approval of the Short-Term Rental Permit subject to 23 conditions. Thank you.

Chair Ball: Thank you. Mrs. Epstein?

Mrs. Kay Epstein: Thank you. Aloha, Commissioners. I know you've stayed really late.

Mr. Higashi: Can you speak into the mic?

Mrs. Epstein: I said aloha, Commissioner I know it's been a very long day for all of you and appreciate you having the time. I just wanted to say a few things. We'd like to thank you for time. We are grateful for this opportunity. We are very grateful for the time you volunteer on this planning commission. I know it takes a lot of your daily life reading through all the material and attending these meetings as we've been part of several of them so I'm aware and we appreciate it.

We started this process applying for the Short-Term Rental Permit more than three years ago as you're aware. In that time my husband's gone from his 60's to his 70's I've gone from my 50's to my 60's, a few more white hairs thank goodness for hair color. I'm very grateful for that also. While not always an easy process we have learned and grown because of it. Terry and I have laughed and cried during our journey. We have made many friends and our ohana has grown much bigger so we thank...we're grateful for that also. We've been deeply touched by the people, by the people who asked to speak for us. People that we've known since we've in Maui insisted on coming to testify even though it meant taking time off work and losing pay. I could not believe, it brought tears to my eyes to see them and hear. Kinda like being at your own funeral but it was very touching and meant so much to us. It's amazing. It's amazing their bravery because I know how hard it is to stand here and talk to you guys. I know how difficult it is.

This experience has been very humbling and heartwarming too. We've witnessed the best in humans and the worst. Thank goodness it's been more of the good and the best side of the humans. We have hope and we hope you have come to believe we have earned and deserve the chance to operate an STR and prove to you that we will be good operators. You have our word. We will be diligent about making sure our STR is positive addition to the community and causes no problems. Mahalo for your time.

Chair Ball: Thank you. Okay, we'll open it up for questions from the Commission. Commissioner Higashi?

Mr. Higashi: This is for the Epsteins. Looking at your application it's I think everything is okay from my standpoint except the part that it keeps coming up about sound. For some reason you insist on having sound system outside when you rent the facilities and I recall in your earlier application that sound level is something that travels so it's hard to control. And I think that's one of the things that you had agreed upon that you would...if you're home and you're listening to the music at ...(inaudible)...that's not problem. But when guests come then there is a major problem for me to have sound system outside because sound travels. You can't control that.

Mrs. Epstein: May I answer? I understand your concern. Until we received the letters of complaint from the four neighbors we were unaware that there was any sound issue on our property. When we read those letters we hired a specialist to come in and look at the speakers we had around our pool and they advised us that there was new technology we could install. It was very expensive to install these speakers. We had to remove the old ones and put new ones in, but we've had two separate companies come and measure the decibels and we are able with our sound system to control. They cannot turn up. It's programmed. It's in computer programming so a guest cannot turn up the volume any louder than it plays at the pool. Right now I have a friend visiting from the mainland and I put it, the house in guest mode so that she could experience it and give me her comments on what it was like. And she said, you know I really can't hear the music in the pool unless I'm right in front of the speaker. And I said, but that's as loud as we're allowed. So we do not want the sound to travel past our property. If they were put up the picture of the properties I could show you where our house is and our pool and our house sits between, between the property that complained and the pool. I mean it's a lot of



house between there and then the property that thought they could hear us or they complained about being able to hear us.

Mr. Terry Epstein: And if I might just comment? The other thing on October –

Chair Ball: Identify yourself Mr. Epstein.

Mr. Epstein: Terry Epstein. On October 27 of this year when we did our presentation we had somebody here that showed that he was at our house and that as you got to our wall the decibel level of anything was below 65 and that's less than a speaking level if I was standing here...(inaudible)...right now I'm talking. That's the level you would find at the wall if somebody is having a conversation.

Chair Ball: Come forward to the mic. We have problems when you walk away from the mic for our...

Mr. Epstein: I realize that, but that's what happens as you go close to the wall.

Mr. Lay: Great demonstration.

Mr. Robinson: Very effective.

Mr. Higashi: Well, I just wanted to find out from you why you're so insistent on having that sound system there for the guests. If it's for you and you're at home listening outside, it's not a problem.

Mrs. Epstein: Right.

Mr. Higashi: But when you're gone and somebody else is in there as a guest—

Mrs. Epstein: Right.

Mr. Higashi: I think that's a major problem.

Mrs. Epstein: They cannot change the programming and we're trying to avoid someone bringing in their own amplifiers or what do they call that the guitars, yeah amplifiers or any type of a boom box. I don't know what the kids use these days, but they're not gonna be allowed to do that. Then they could amplify music louder than...if there was nothing there someone would go out and buy something.

Mr. Higashi: So my question to you is can you turn off the sound system when you're renting it to guests that's my question?

Mr. Epstein: Can I ask a question of the Commission?

Chair Ball: No. Just answer the question of the Commissioner.

Mrs. Epstein: We could.

Mr. Epstein: We could turn it off completely and not have outdoor sound, but we've chosen to make it so the sound—

Mrs. Epstein: No, just... We could.

Mr. Epstein: Oh, okay.

Mr. Higashi: Thank you. That's all I wanted to know whether you can or cannot.

Mrs. Epstein: We could. It's possible.

Chair Ball: Further questions for the Epsteins?

Mr. Lay: Motion for approval.

Mr. Hudson: Second.

Chair Ball: Motion to approve by Commissioner Lay, seconded by Commissioner Hudson. Discussion? Commissioner Robinson?

Mr. Robinson: I wasn't here the whole time of this odyssey, and you know, there's a fine line between diligence and stubbornness. I'm hoping that you guys are the diligent part. I apologize but I do not have...I've had it all day with all this paper, but I didn't have the last whatever recommendations, but I notice that we have this sheet where guests are prohibited to do this, you know bring amplified sound. Are we allowed to put this on the conditions instead of just having this as part of Tropical Villas? Are you guys—

Mrs. Epstein: Yes, we're fine with that.

Mr. Robinson: --...(inaudible)...do that?

Mr. Epstein: Yes. Absolutely.

Mrs. Epstein: We would love to be able to tell them.

Mr. Epstein: That's why we had them put that in their rules.

Mr. Robinson: Would that help you? I didn't say fix, I said help.

Chair Ball: If the Epsteins are okay with that and the Department's okay with that.

Mr. Spence: We're fine.

Chair Ball: We can add that to the recommendation.

Mrs. Epstein: We would welcome that.

Chair Ball: Further questions? Seeing none, all in favor—

Mr. Murai: I'm sorry Mr. Chair, if I may? I'm sorry to interrupt.

Chair Ball: Corporation Counsel?

Mr. Murai: Because there have been so many continuances and so I would like for the Commissioners to affirmatively state that they are able to vote because they have...if they have missed any meeting that they've apprised themselves of what happened at the meeting they missed by reviewing the minutes of any meetings that they've missed.

Mr. Hudson: I'm up to date on it. I can vote.

Chair Ball: I will take the rest of the silence as affirmative that we are all up to speed on the record. All in favor of the motion raise your hand and say, "aye".

Commission Members: Aye.

Chair Ball: One, two,...All opposed? One, two.

Mr. Spence: Two opposed.

Chair Ball: And abstention? One abstention.

Mr. Spence: Two abstention.

Chair Ball: Is there another motion? The abstention...sorry, the abstention are in the positive. That was two abstentions and two yes votes and the Chair votes in favor. The motion carries.

**It was moved by Mr. Lay, seconded by Mr. Hudson, then**

**VOTED: To Approve the Land Use Commission Special Use Permit and Short-Term Home Rental Permit as Recommended by the Department.**  
**(Assenting - I. Lay, W. Hudson, K. Ball, J. Medeiros-Abstained,**  
**K. Robinson-Abstained)**  
**(Dissenting - W. Hedani, R. Higashi)**  
**(Excused - M. Tsai, S. Duvauchelle)**

Mr. Lay: Can you believe it? Do you guys believe it?

Chair Ball: All right, we're still in session. We're still in session. We have a couple more agenda items that we're gonna try and finish up here in the next ten minutes. Going with that—

Mr. Spence: F-1.

Chair Ball: F-1 can you get that done in time or do you wanna defer that? Okay, go ahead Gina Flammer. Oh, sorry, Director?

Mr. Spence: Adoption of the Written...this is for the Adoption of Written Decision and Order on the Commission's denial of the application by Amanda and Cathleen Wilson and Mike and Roxanne Whitehurst and Gina will explain.

#### **F. ADOPTION OF WRITTEN DECISION AND ORDER**

1. **Having voted on May 26, 2015 to deny the requests by AMANDA and CATHLEEN WILSON and MIKE and ROXANNE WHITEHURST requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate a six (6) bedroom short-term rental home operation in two dwellings located in the State Agricultural District at 562 Kai Hele Ku Street, TMK: 4-7-009: 044, Lahaina, Island of Maui. (SUP2 2015/0001) (STWM T2015/0001) (G. Flammer)**

**AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.**

Mr. Gina Flammer: Okay, so just very briefly. I know you've seen these before. What you're doing today is you're adopting what's in the document is what really happened that day. This is your opportunity if you wanted to add any facts to it, you could go ahead but you're not reaffirming your decision. You're just affirming whether what's in here is accurate and correct.

Chair Ball: Corporation Counsel?

Mr. Murai: What Ms. Flammer said is correct. What basically what you are doing by approving, you're saying yes that the Findings of Fact, Conclusion of Law and Order accurately reflect what the Commission decided on that day. So in other words we can't change what happen, the main thing is that what we're doing is we are...you're saying that yes it is accurate not that you disagree with it, agree with it.

Chair Ball: Thank you. Okay, is there...do we need a motion for that?

Mr. Murai: Move to accept or move to adopt. I don't know what the...Will?

Mr. Spence: I don't know...I know we want to go away with everybody's signatures.

Mr. Robinson: Just Keone's.

Ms. Flammer: Just the Chair.

Mr. Spence: Oh, just the Chair.

Mr. Robinson: Move to accept the Findings of Fact.

Mr. Hudson: Second.

Chair Ball: Moved by Commissioner Robinson, second by Commissioner Hudson. Any discussion? All in favor? We don't need public testimony for this item? Is there anyone in the gallery that would like to testify at this time? Just Keith. Keith says no. Public testimony is now closed. All in favor of the motion, please raise your hand and say, "aye".

Mr. Spence: Six ayes.

Chair Ball: The motion carries unanimous.

**It was moved by Mr. Robinson, seconded by Mr. Hudson, then**

**VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.**  
**(Assenting - K. Robinson, L. Hudson, J. Medeiros, I. Lay, W. Hedani, R. Higashi)**  
**(Excused - M. Tsai, S. Duvauchelle)**

Chair Ball: Director's Report...sorry, Acceptance of the Action Meeting Minutes of February 9, 2016?

**G. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 9, 2016 MEETING.**

Mr. Lay: So move.

Mr. Higashi: Second.

Chair Ball: Moved by Commissioner Lay, second by Commissioner Higashi. All in favor...sorry any discussion? All in favor say, "aye"?

Commission Members: Aye.



Chair Ball: Any opposed? Motion carried unanimously.

**It was moved by Mr. Lay, seconded by Mr. Higashi, then**

**VOTED: To Accept the Action Minutes of the February 9, 2016 Meeting.**  
**(Assenting - I. Lay, R. Higashi, J. Medeiros, L. Hudson, W. Hedani,**  
**K. Robinson)**  
**(Excused - M. Tsai, S. Duvauchelle)**

Chair Ball: Director's Report?

#### **H. DIRECTOR'S REPORT**

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

**January 29, 2016 SMA Emergency Permit Approval Letter to Mr. Chris Conger of Sea Engineering, Inc., for emergency erosion protection of approximately 200 ft. of shoreline adjacent to the Hyatt Regency Maui located at 200 Nohea Kai Drive, TMK: 4-4-013:008, Kaanapali, Island of Maui. (SM3 2016/0001) (SSA 2016/0007) (K. Scott)**

Mr. Spence: Number 1 on the Director's Report is we're notifying you we issued an SMA Emergency Permit on January 29, 2016. If you have any questions...this is just for your notification. If you have any questions, Keith is here, Mr. Keith Scott to fill in the blanks.

Mr. Keith Scott: I passed out a briefing with some pictures so if you have any questions let me know.

Mr. Robinson: I have a question for SMA Minor but not on this one.

Chair Ball: Okay, if there's no questions, go ahead Commissioner Lay?

Mr. Lay: Temporary?

Mr. Scott: Yes.

Mr. Lay: Okay.

Chair Ball: If there is nothing else this is for information purposes so we'll move onto Item 2.

#### **2. Commission Quorum for the March 22, 2016 meeting**

Chair Ball: Oh, this is to see how many people are gonna be in town. It is spring break and wanted to make sure we had a meeting or we had a quorum for that meeting.

Mr. Lay: When is it?

Chair Ball: March 22<sup>nd</sup>.

Mr. Robinson: I will not be here.

Chair Ball: Who's here? I'm here. I think only Keaka.

Mr. Medeiros: The last meeting Sandy said she's coming.

Chair Ball: Okay. Item 3?

### **3. Discussion of Commission Member Attendance**

Chair Ball: Discussion of Commission Member attendance.

Mr. Spence: I know the last time Commissioner Hedani asked to see attendance or did we have a report? Okay, we can defer this to the next time.

Chair Ball: Okay, the purpose of that was to make sure people attended meetings because there is a rule if you miss three meetings that's unexcused not just three meetings then you will be asked by the Chair resign from this Commission. Anyway, that's what that's about.

### **4. SMA Minor Permit Report**

### **5. SMA Exemptions Report**

Chair Ball: Item 4 and 5, SMA Minor and Exemptions. There is a question.

Mr. Robinson: I had one question on the temporary building at the Four Season's beach. There's a little hale, tent?

Mr. Spence: I only see one.

Mr. Robinson: It was on the bigger packet not on these two. Manele Bay tent Four Seasons Resort.

Mr. Spence: Yeah, that would be Lanai.

Chair Ball: Doing a special event or something like that.

Mr. Spence: And that was in front of the Lanai Planning Commission. This is all SMA Minors.

Mr. Robinson: I saw just the name over there. Thought it was name of their thing. Got you.

Okay.

Chair Ball: Any other questions on that? Seeing none, Future Agenda Items.

Mr. Spence: Okay, Commissioners on March 8 we're gonna have...

Mr. Robinson: Excuse me, this says improvements Wailea and Four Seasons Maui?

Chair Ball: Then it's at that one. Are you asking what it is or?

Mr. Robinson: What it is and what's the setback?

Mr. Spence: I don't know.

Chair Ball: Typically those have been like you know, the white tents. They gotta get permits those, special events. They put 'em up, they take 'em down.

Mr. Robinson: I mean, we don't know? Well, the time of year that's why the beach comes and goes right?

Mr. Spence: When we review an SMA Exemption, any kind of application like that for a Minor or an Exemption we make sure they're not gonna put the tent in harm's way. It's setback and out from the beach. We don't let them put it in the setback area. I can't tell you exactly where this is.

Mr. Robinson: That's where my concern was the setback 'cause I saw one time before and depending on the time of year, you know and ebb and flow of the sand and one was...it was pretty close. That's all.

Chair Ball: Okay, did you get to the future agenda items?

Mr. Spence: No we didn't.

## **6. Discussion of Future Maui Planning Commission Agendas**

### **a. March 8, 2016 meeting agenda items**

Mr. Spence: Three public hearing items next time. Mr. James Argyropoulos. I'm so proud of myself that I can pronounce his name. SMA Permit and Shoreline Setback Variance for debris removal over in Kuau. Ms. Sylvia Hamilton Kerr requesting SMA Permit or excuse me, Special Use Permit to do special events in the State Ag District in out in Haiku. And then Mr. Betham and Ms. Olga Munoz ...(inaudible)...requesting a Bed and Breakfast Home Permit also in Haiku. And then there's some Unfinished Business of Walgreens. And then we're going...in the Director's Report we'll bring to you for your approval or waiver a two-year time extension for an SMA Permit at the Westin Maui and then we'll also for notification purposes we issued

another SMA Emergency Permit.

Chair Ball: Okay, any questions on that. Seeing none, thank you all for coming. Meeting adjourned.

**I. NEXT REGULAR MEETING DATE: MARCH 8, 2016**

**J. ADJOURNMENT**

The meeting was adjourned at 5:00 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

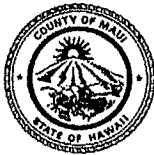
**Present**

Keone Ball, Chair  
Sandy Duvauchelle (excused at 4:36 p.m.)  
Wayne Hedani  
Richard Higashi  
Larry Hudson  
Ivan Lay  
Jason Medeiros  
Keaka Robinson  
Max Tsai, Vice-Chair (excused at 2:42 p.m.)

**Others**

Will Spence, Director, Planning Department  
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works (excused at 2:12 p.m.)

15/4353



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COUNTY OF MAUI  
DEPT. OF PLANNING - CURRENT

AUG 20 2015

**RECEIVED**APPLICATION TYPE: CONDITIONAL PERMITCp 2015/0006DATE: 08/06/2015PROJECT NAME: Steiner Residence VALUATION: \$ not applicablePROPOSED DEVELOPMENT: Transient Vacation RentalTAX MAP KEY NO.: 420070090000 CPR/HPR NO.: n/a LOT SIZE: 24,390 sfPROPERTY ADDRESS: 100 Pulelehua StreetOWNER: Steiner Family Trust 2010 PHONE: (B) (604) 688-8103 (H) \_\_\_\_\_ADDRESS: 822 - 470 Granville StreetCITY: Vancouver STATE: BC Canada ZIP CODE: \_\_\_\_\_

OWNER SIGNATURE: \_\_\_\_\_

APPLICANT: Julie Steiner (Trustee)ADDRESS: 4418 Ross CrescentCITY: West Vancouver STATE: BC Canada ZIP CODE: \_\_\_\_\_PHONE (B): (604) 290-1448 (H): (604) 926-1426 FAX: (604) 688-8301APPLICANT SIGNATURE: Julie SteinerAGENT NAME: not applicable

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE (B): \_\_\_\_\_ (H): \_\_\_\_\_ FAX: \_\_\_\_\_

EXISTING USE OF PROPERTY: Single Family ResidenceCURRENT STATE LAND USE DISTRICT BOUNDARY DESIGNATION: UrbanCOMMUNITY PLAN DESIGNATION: Project District ZONING DESIGNATION: PDI (Kapalua)OTHER SPECIAL DESIGNATIONS: Zoning - PDI (kapalua) Multi Family