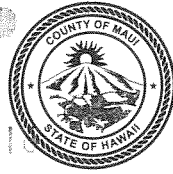


ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director

RECEIVED



2016 AUG 30 AM 10:10

OFFICE OF THE COUNTY OF MAUI

DEPARTMENT OF PLANNING

RECEIVED

2016 AUG 25 AM 10:00

OFFICE OF THE MAYOR

August 25, 2016

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

*Al Arakawa* 8/25/16  
\_\_\_\_\_  
Mayor Date

RECEIVED  
2016 AUG 30 AM 9:37  
OFFICE OF THE COUNTY OF MAUI

Dear Chair White:

**SUBJECT: RESOLUTION NO. 15-139 ENTITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS"**

This is in response to your letter dated November 13, 2015, transmitting Resolution No. 15-139 entitled "Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill Relating to Transient Vacation Rentals in Planned Developments".

The Department of Planning (Department) reviewed and transmitted the proposed bills to the Maui, Molokai, and Lanai Planning Commissions. The following is a summary of the Commissions' comments:

Commission	Public Hearing Date:	Comments and Recommendations:
Maui	April 12, 2016 & May 10, 2016	Voted to recommend approval of the Ordinance to the County Council as Recommended by the Department.
Molokai	April 14, 2016	Voted to recommend to the County Council that they don't pass this bill and that they consider passing a bill that cleans up all of the condominium projects in the county.
Lanai	April 20, 2016	Voted to provide no comments to the County Council.

5138 ~~88~~ 8515 K 82516

Honorable Mike White, Chair  
August 25, 2016  
Page 2


Attached for your review are the following documents:

1. The Department of Planning's Memo Report dated March 29, 2016;
2. Minutes of the Lanai Planning Commission meeting dated April 20, 2016;
3. Minutes of the Molokai Planning Commission meeting dated April 14, 2016;
4. Draft minutes of the Maui Planning Commission meeting dated May 10, 2016.

The Department will be transmitting the adopted minutes of the April 12, 2016 Maui Planning Commission meeting under a separate letter when they become available.

Should further clarification be necessary, please feel free to contact Joseph Alueta, Administrative Planning Officer, at [joseph.alueta@mauicounty.gov](mailto:joseph.alueta@mauicounty.gov) or Ext. 7743.

Sincerely,



WILLIAM SPENCE  
Planning Director

Attachment

xc: Clayton I. Yoshida, Planning Program Administrator  
Joseph W. Alueta, Administrative Planning Officer  
Maui Planning Commission  
Molokai Planning Commission  
Lanai Planning Commission

WRS:JWA:atw

Project File  
General File

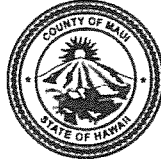
[PLANNING\ALL\APO\Reso 15-139\transmittal\council.doc](#)



ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 29, 2016

**MEMO REPORT**

TO: Maui Planning Commission  
Molokai Planning Commission  
Lanai Planning Commission

FROM: William Spence *ws*.  
Planning Director

SUBJECT: **RESOLUTION NO. 15-139 ENTITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS"**

The Department of Planning (Department) received the above noted resolution on November 13, 2015 from the Maui County Council for your review and comments on the proposed bill. Attached, for your use, is a copy of Resolution No. 15-139 (Exhibit 1). Committee report 15-160 is attached as Exhibit 2.

The purpose of this bill is to expand the allowance of transient vacation rentals to planned developments that consist of a combination of single-family dwelling units and duplexes or multi-family dwelling units. The Maui County Code currently allows transient vacation rentals in residentially zoned planned developments consisting solely of duplexes or multi-family dwelling units that had a transient vacation rental use on or before April 20, 1981. This provision was added to Title 19 by Ordinance 4063 (Exhibit 3) which was reviewed by the commissions under Resolution No. 12-99.

As with the prior Resolution No. 12-99, the Department has concerns over the practice of adopting laws and amendments for a specific property. The proposed resolution (Resolution 15-139) is crafted with the intent of allowing owners at Alaeloa Planned Development to conduct transient vacation rental operations. Proposed bills such as this can convolute existing laws. The drafting of such laws can have unforeseen consequences that the original drafters were unaware of. The practice of adopting such a specific bill sets a precedent for other property owners to request their own specific amendment.

The Department believes that the proposed amendment would affect only Alaeloa. This project was originally developed in the mid 1960's. According to information pulled from real-estate web sites, there are 28 single-family units, 12 duplex units, 2 townhouse units and a

manager's cottage on the 13.4-acre property. Although the project would not be considered affordable housing, the loss of any housing inventory to the short-term rental market will have a ripple effect on the long-term housing market.

### **Recommendation and Options**

The Department is recommending approval of the Mayor's proposed bill to the Maui County Council. The commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachment

xc: Michele McLean, Deputy Director  
Joseph Alueta; Administrative Planning Officer (via email)

WRS:JWA:atw

General File

[PLANNING\ALL\APO\Reso 15-139\MemoReport to Commission.doc](#)

# Resolution

No. 15-139

REFERRING TO THE LANAI, MAUI, AND  
MOLOKAI PLANNING COMMISSIONS A  
PROPOSED BILL RELATING TO TRANSIENT  
VACATION RENTALS IN PLANNED  
DEVELOPMENTS

WHEREAS, Section 19.32.040, Maui County Code, permits transient vacation rentals in residentially zoned planned developments consisting solely of duplexes or multi-family dwelling units that had a transient vacation rental in operation before April 20, 1981; and

WHEREAS, the Council is considering a proposed bill to amend Title 19, Maui County Code, to also allow transient vacation rentals when such planned developments consist of a combination of single-family dwelling units and duplexes or multi-family dwelling units and meet the other requirements of Section 19.32.040(I), Maui County Code; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission transmit their respective findings and recommendations to the Council as expeditiously as possible; and

EXHIBIT -1

**Resolution No. 15-139**

3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to read 'Michael J. Hopper', is written over a horizontal line.

**MICHAEL J. HOPPER**

Department of the Corporation Counsel  
County of Maui

pc:032areso01:gjg/jkm



ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE RELATING TO TRANSIENT VACATION RENTALS  
IN PLANNED DEVELOPMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The Maui County Code allows transient vacation rentals in residentially zoned planned developments consisting solely of duplexes or multi-family dwelling units that had a transient vacation rental use on or before April 20, 1981. The purpose of this ordinance is to also allow transient vacation rentals when such planned developments consist of a combination of single-family dwelling units and duplexes or multi-family dwelling units.

SECTION 2. Section 19.32.040, Maui County Code, is amended to read as follows:

**“19.32.040 Reduction of lot areas and mixed land uses.** A. Upon strict compliance with the standards of development, the commission may reduce the minimum lot area, allow greater building densities, and mixed land uses as [follows:] provided for in this section.

[A.]B. If the development is to be subdivided, the minimum lot size may be reduced by twenty percent from that required for a particular district; [provided,] except that the minimum lot width shall not be reduced.

[B.]C. In a residential planned development, including duplex districts with a minimum tract area of three acres, combining of no more than three dwelling units in a single structure shall be permitted. Only a single, interior-located common club facility shall be permitted. There shall be no increase in the overall dwelling unit density.

EXHIBIT “1”

[C.]D. In a residential planned development, including duplex districts with a minimum tract area of ten acres, combining of no more than five dwelling units in a single structure shall be permitted. Two interior-located common club facilities shall be permitted. Overall dwelling unit density may be increased ten percent.

[D.]E. In a residential planned development, including duplex districts with a minimum tract area of thirty acres, combining of no more than eight dwelling units in a single structure shall be permitted. Four interior-located club or community facilities shall be permitted. Overall dwelling unit density may be increased fifteen percent.

[E.]F. Apartment, hotel, business and industrial planned developments shall be permitted in their respective districts. For planned developments in those districts with a minimum tract area of ten acres, the overall permitted floor area may be increased ten percent; and for a minimum tract area of thirty acres, the overall permitted floor area may be increased fifteen percent.

[F.]G. Overall dwelling unit density shall be determined by dividing the total number of dwelling units by the net land area. Net land area shall be the total lot area minus the area of dedicated streets and other dedicated areas. Base dwelling unit densities, upon which any bonus shall be applied, shall be as follows:

- R-3 residential district- 4.36 dwelling units[/] per acre
- R-2 residential district- 5.81 dwelling units[/] per acre
- R-1 residential district- 7.26 dwelling units[/] per acre
- D-2 duplex district- 8.72 dwelling units[/] per acre
- D-1 duplex district- 11.62 dwelling units[/] per acre
- RR-1 rural residential district- 4.36 dwelling units[/] per acre
- RR-2 rural residential district- 2.00 dwelling units[/] per acre

Permitted dwelling unit densities for other zoning districts not specified in this subsection shall be based upon the allowable densities within the districts.

[G.]H. Planned developments proposed on lands including more than one zoning district may permit a mixture of uses, densities [and/or] and dwelling units; [provided,] except that the total density [and/or] and dwelling units of the planned development shall not exceed the combined allowable densities of each of the zones.

[H.]I. Transient vacation rentals shall be permitted in planned developments, except for developments that have been publicly [funded; provided that either:] funded, if:

1. The planned development received a planned development site plan approval that was lawfully issued by and valid on April 20, 1989, and the land is zoned A-1 or A-2 apartment district; or

2. The planned development meets all of the following:

a. The planned development received final approval as provided in this chapter, and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981;

b. The planned development is located on parcels with at least some residential district zoning; and

c. The planned development consists of only [duplexes];

i. Duplexes or multi-family dwelling units; or

ii. A combination of single-family dwelling units and duplexes or multi-family dwelling units.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

---

Department of the Corporation Counsel  
County of Maui

pc:misc:032abill01:gjg/jkm

**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 15-139** was adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of November, 2015, by the following vote:

MEMBERS	Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	No	Aye

  
COUNTY CLERK

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

November 6, 2015

**Committee**  
**Report No. 15-160**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning Committee, having met on September 24, 2015, makes reference to County Communication 15-220, from Councilmember Don Couch, transmitting a proposed resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS."

The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS."

The purpose of the proposed bill is to delete the provision within the Comprehensive Zoning Ordinance that limits transient vacation rental use in planned developments to planned developments consisting of only duplexes or multifamily dwelling units.

Your Committee notes, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, any proposed land use ordinance shall be referred to the appropriate planning commissions for review.

Your Committee further notes it previously reported on this matter through Committee Report 15-134, which recommended adoption of the proposed resolution. At its meeting of September 18, 2015, the Council did not adopt your Committee's recommendation.

Your Committee notes the intent of the proposed bill is to allow transient vacation rental use at the 13-acre Alaeloa planned development in Napili, Maui, Hawaii. Alaeloa meets the requirements in Section

EXHIBIT -2

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

Page 2

**Committee**  
**Report No. 15-160**

19.32.040(H)(2), Maui County Code, for transient vacation rental use in planned developments with residential zoning, except Alaeloa contains a combination of single-family and multifamily dwelling units, and the requirements do not allow the use in planned developments with single-family units.

Your Committee revised the proposed bill to clarify the intent is to allow transient vacation rental use in planned developments with residential zoning containing a combination of single-family and multifamily dwelling units, but not to allow the use in planned developments containing exclusively single-family dwelling units.

Your Committee voted 4-0 to recommend adoption of the revised proposed resolution. Committee Chair Couch, Vice-Chair Carroll, and members Guzman and White voted "aye." Committee members Baisa, Cochran, and Victorino were excused.

Your Committee is in receipt of a revised proposed resolution, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions to the proposed bill and nonsubstantive revisions.

Your Planning Committee RECOMMENDS that Resolution 15-139, as revised herein and attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS," be ADOPTED.

COUNCIL OF THE COUNTY OF MAUI  
**PLANNING COMMITTEE**

Page 3

**Committee**  
**Report No.** 15-160

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
DON COUCH, Chair

pc:cr:15032ab:gjg/jkm

**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

It is **HEREBY CERTIFIED** that the recommendations contained in **COMMITTEE REPORT NO. 15-160** were adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of November, 2015, by the following vote:

<b>MEMBERS</b>	<b>Michael B. WHITE Chair</b>	<b>Donald S. GUZMAN Vice-Chair</b>	<b>Gladys C. BAISA</b>	<b>Robert CARROLL</b>	<b>Eleanora COCHRAN</b>	<b>Donald G. COUCH, JR.</b>	<b>S. Stacy CRIVELLO</b>	<b>G. Riki HOKAMA</b>	<b>Michael P. VICTORINO</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>No</b>	<b>Aye</b>

  
\_\_\_\_\_  
COUNTY CLERK



ORDINANCE NO. 4063

BILL NO. 67 (2013)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.32.040, MAUI COUNTY CODE, RELATING TO PLANNED DEVELOPMENTS, AND SECTION 19.37.010, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 19.32.040, Maui County Code, is amended to read as follows:

**“19.32.040 Reduction of lot areas and mixed land uses.** Upon strict compliance with the standards of development, the commission may reduce the minimum lot area, allow greater building densities, and mixed land uses as follows:

A. If the development is to be subdivided, the minimum lot size may be reduced by twenty percent from that required for [that] a particular district; provided, that the minimum lot width shall not be reduced.

B. In residential planned development, including duplex [zone,] districts with a minimum tract area of three acres, combining of no more than three dwelling units in a single structure shall be permitted. Only a single, interior-located common club facility shall be permitted. There shall be no increase in the overall dwelling unit density.

C. In residential planned development, including duplex [zone,] districts with a minimum tract area of ten acres, combining of no more than five dwelling units in a single structure shall be permitted. Two interior-located common club facilities shall be permitted. Overall dwelling unit density may be increased ten percent.

D. In residential planned development, including duplex [zone,] districts with a minimum tract area of thirty acres, combining of no more than eight dwelling units in a single structure shall be permitted. Four interior-located club or community facilities shall be permitted. Overall dwelling unit density may be increased fifteen percent.

E. Apartment, hotel, business and industrial planned developments shall be permitted in their respective districts. For [such] planned developments in those districts with a minimum tract area of ten acres, the overall permitted floor area may be increased ten percent; and for a minimum tract area of thirty acres, the overall permitted floor area may be increased fifteen percent.

F. Overall dwelling unit density shall be determined by dividing the total number of dwelling units by the net land area. Net land area shall be the total lot area minus the area of dedicated streets and other dedicated areas. Base

EXHIBIT -3

dwelling unit densities, upon which any bonus shall be applied, shall be as follows:

- R-3 residential [district .....] district - 4.36 dwelling units/acre
- R-2 residential [district .....] district - 5.81 dwelling units/acre
- R-1 residential [district .....] district - 7.26 dwelling units/acre
- D-2 duplex [district .....] district - 8.72 dwelling units/acre
- D-1 duplex [district1 .....] district - [1.62] 11.62 dwelling units/acre
- RR-1 rural residential [district .....] district - 4.36 dwelling units/acre
- RR-2 rural residential [district .....] district - 2.00 dwelling units/acre

Permitted dwelling unit densities for other zoning districts not specified [above] in this subsection shall be based upon the allowable densities within the districts.

G. Planned developments proposed on lands including more than one zoning district may permit a mixture of uses, densities and/or dwelling units; provided, that the total density and/or dwelling units of the planned development shall not exceed the combined allowable densities of each of the zones.

H. Transient vacation rentals shall be permitted in planned developments, except for developments that have been publicly funded; provided, that all of the following shall apply to the planned development:

1. The planned development received final approval pursuant to this chapter, and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981;
2. The planned development must be located on parcels with at least some residential district zoning; and
3. The planned development consists of only duplexes or multi-family dwelling units.

SECTION 2. Section 19.37.010, Maui County Code, is amended by amending subsection A to read as follows:

**“19.37.010 Geographic restrictions.** A. Except as provided in this [section,] chapter, time share units and time share plans are prohibited. Transient vacation rentals are prohibited, excluding bed and breakfast homes permitted under chapter 19.64 of this title, short-term rental homes permitted under chapter 19.65 of this title, transient vacation rental units permitted by a conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under chapter 19.32 of this title, and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:



MICHAEL J. HOPPER

Deputy Corporation Counsel

S:\ALL\MJH\ORDS\Amend 19.32.040 planned developments 8-  
22-13.doc

WE HEREBY CERTIFY that the foregoing BILL NO. 67 (2013)

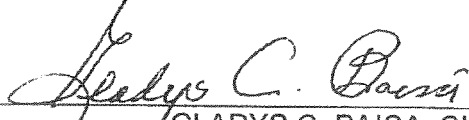
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of September, 2013, by the following vote:

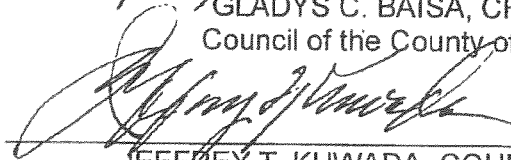
Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of September, 2013.


DATED AT WAILUKU, MAUI, HAWAII, this 20th day of September, 2013.

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2013 SEP 20 PM 2: 51  
OFFICE OF THE MAYOR

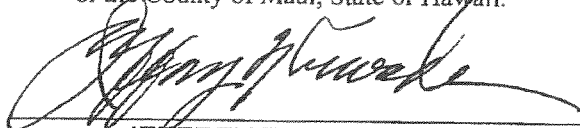
  
 \_\_\_\_\_  
 GLADYS C. BAISA, CHAIR  
 Council of the County of Maui

  
 \_\_\_\_\_  
 JEFFREY T. KUWADA, COUNTY CLERK  
 County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 27 DAY OF September, 2013.

  
 \_\_\_\_\_  
 ALAN M. ARAKAWA, MAYOR  
 County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4063 of the County of Maui, State of Hawaii.

  
 \_\_\_\_\_  
 JEFFREY T. KUWADA, COUNTY CLERK  
 County of Maui

Passed First Reading on September 6, 2013.  
Effective date of Ordinance September 27, 2013

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4063, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

RECEIVED  
2013 SEP 30 AM 9: 34  
OFFICE OF THE  
COUNTY CLERK

**APPROVED 07-20-2016**

right now is to approve the Special Land Use Permit for Manele and to recommend approval for the Conditional Permit to County Council with the conditions that no night flights operate between 7:00 p.m. to 7:00 a.m., and that Pulama Lanai is obligated to provide in their monthly park ranger report to the Hulopoe Beach Park Council how many flights have come in and out and if there were any complaints made by the beachgoers to the company whether it's through the hotline or to the park rangers. So that is the motion. And, and -- I'm sorry, you're right -- and the staff report/recommendations for conditions.

Ms. McCrory: Report issues to the helicopters, not just any issues, in the written report.

Ms. Gima: Yeah, yeah, report issues with the helicopters, yes.

Ms. McCrory: Thank you.

Ms. Gima: So again, let's take a vote. All in favor -- and I'm not repeating this again. I can't remember it. All in favor of this motion raise their hand. It's unanimous.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Bradford Oshiro, then unanimously**

**VOTED: to approve the State Land Use Commission Special Permit, and recommend approval of the Conditional Permit to County Council as recommended/submitted in the Department's staff and recommendation reports, and with the added conditions as discussed by the Commission, for the proposed private helistop at Manele.**

**(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)**

**(Excused: M. Baltero, S. Marlowe)**

**(Absent: J. Barfield)**

Ms. Gima: Okay, we're done.

Ms. McCrory: Thank you.

Ms. Gima: Thank you for the information and providing clarification to us, Lynn.

3. **MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 15-139 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill relating to transient vacation rentals in planned developments. (J. Alueta)**

Ms. Zigmond: Madame Chair? Can I make a suggestion?

Ms. Gima: Go right ahead.

Ms. Zigmond: Since we've been here for three and a half hours. There's no way we're going to get through all this. There's one thing that has a May 13<sup>th</sup> deadline on it, if maybe we could do that.

Ms. Gima: Which one is that Bev?

Ms. Zigmond: That would be Resolution No. 16-01 entitled referring to our commissions about composting.

Ms. Gima: Okay.

Mr. Alueta: . . . (inaudible) . . .

Ms. Gima: So Item No. 3, Resolution 15-139, we're already passed due so we need to discuss that, and then also No. 4, Resolution 16-01 that's coming up. Is there any objections to deferring Item No. 5 which is the Resolution regulating agriculture tourism activities in the agricultural district to our May meeting? Or the workshop. I see Clayton raising his hand.

Mr. Yoshida: I guess...because of the public hearing notice, if we do not have the public hearing, then we have to re-notice, and we have re-notice at least 30-days prior to the meeting which is the next meeting, May 18<sup>th</sup>, is less than 30-days. So probably we would schedule that for June, unless you know they have a public hearing, close the public hearing, and then defer.

Ms. Gima: So you're suggesting that for Item No. 5 because of the time constraints with public notice that we would defer that one to the June meeting?

Mr. Yoshida: Well, I guess it's up to the commission. I mean we -- if you want to --. People could've testify at 5 o'clock on that item, but if you want to open the public hearing, close the public hearing and defer to the next meeting, then we can bring Joe back and we can discuss it in depth.

Ms. Gima: Does that go for the orientation workshop too? No, this is just for that? Okay. But we have to discuss Item 3 and 4 because of the time constraints, correct Joe? Okay. So let's move along. I guess, you know, I'm going to make a motion that we defer Item No. 5, which is the Council Resolution No. 16 –

Ms. Thomson: Just for clarification. What Clayton is suggesting so that we don't have the problem of having to re-notice the public hearing is that you open public testimony on all three items, take public testimony, and then you can defer after that.

Ms. Gima: Alright, if there's no objections from the commissioners, I'm going to open up public

testimony. Is there anyone in the audience that would like to testify on either items, No. 3, 4, 5, which were the three various Council Resolutions? John? Okay. I don't see anyone jumping up. Alright, without any objections, I'm going to close public testimony and now make a motion to defer Item No. 5, Council Resolution 16-09 until our June 2016 meeting, or May. I'm sorry, the May, as well as deferring all the other items that are left. That's my motion.

Ms. Zigmond: Second.

Ms. Gima: All in favor raise your hands. One, two, three, four, five, six. Unanimous. Okay, so Joe, come up and we'll do the two Council Resolutions.

Mr. Joseph Alueta: No night differential for you Clayton. Good evening. My name is Joe Alueta, I'm your Administrative Planning Officer. I also work within the Zoning Administration and Enforcement Division. There are two methodologies in which you can amend Title 19. One is by myself, or the Department, or the Administration drafting an amendment to Title 19, and we bring it before you. Title 19 is the Zoning Code. That's what we administer and that's primarily all the permits that you review here today. The other methodology in which you can zone or amend Title 19, the Zoning Code, and that is by Council Resolution. By Charter, by requirement, the County Council must submit all resolutions to the three planning commissions to review it and comments. And you need to get their comments back by a certain time period. It doesn't mean that they will automatically will take up the action on the item. It just means that they can take it up so it prevents you from deferring or delaying sending your comments up. Most of the Council will wait if they know that there is comments coming from the three planning commissions.

So the first item that we have today is Resolution 15-139 referring to the Lanai, Maui, and Molokai Planning Commissions. This is regards to transient vacation rentals in Planned Developments. The Reader Digest version of this, this does not impact Lanai at all, okay. This is, if you recall, a couple of years ago, I came before you, there was a similar bill that amended, that we did the original amendment to Planned Developments and it was called the Puamana Bill because when you narrow down the scope of all the different Planned Developments that would be allowed based on the narrow criterias that is established in 19.32 that they've carefully crafted, only Puamana was impacted. During that meeting, at Council, they attempted to amend, add similar language that you see today to include Alaeloa which is another older planned development. They could not get a consensus from either the homeowners or whatever, but that didn't pass. Apparently now Council is willing, is sending now another amendment that would include Alaeloa. Do we like specific resolutions that help or benefit or hurt anyone individual or property? No, it's bad; bad policy and bad drafting. I like in Title 19 through Pandora's Box. Every time you amend it, you don't know what you're going to get, and you can have other consequences. Based on our research this amendment again only will have the ability or will grant Alaeloa the ability to do short-term rentals. They currently advertise it as short-term of rentals. We've had notices of warnings against them also for their short-term rentals. But again, from that aspect, it doesn't impact Lanai at all. It impacts one planned development on Maui.

Ms. Gima: Why is it in front of us? This is just protocol.

Mr. Alueta: It is because it is an amendment to Title 19.

Ms. Gima: Okay.

Mr. Alueta: Other, other points about this project or particular with regards to this, any time you convert housing to short-term rentals or transient vacation rentals, it impacts the housing market. We've -- regardless of people, their position on it, that's an economic fact. We're noticing that, specifically on Maui, you guys talk about your shortage of housing. It's occurring everywhere. This project does not necessarily impact affordable housing if you want. This is very -- this is a gated community, 13 acres, very low density, a planned development project, and the price range and rental rates are -- would not qualify within the affordable housing criteria of either 50% to 80%, 80% to 100%. I'm not even sure it would qualify in the 200 percentile bracket. But again we're just pointing that it does have an impact on housing in some fashion because there are --. If somebody can't rent a house or can't buy a house at a higher level, they're going to go down to the next level, and they're going to pushing that market. We recognize that. But, again, as indicated in my staff report, we don't think it has any direct impact on affordable rentals per se.

And that's pretty much, that's the Readers Digest version. Do you have any questions for me?

Ms. Thomson: Yes. For clarification. If these properties wanted to do short-term rentals, now, how would they go about it? I want to prevent -- they're not prevented from doing it if they just follow the current procedure, right?

Mr. Alueta: Some of them would be, would qualify...if they were single family. Because they are duplex structures it would be difficult for them to seek a short-term rental permit or a bed and breakfast because the restrictions in both of those title restrict it to a single-family dwelling. So that's where it comes down because some of these are duplexes. That's why the language is added. It contains some duplexes.

The other methodology in which this project or property as a whole could get short-term, transient vacation rental is to seek a Community Plan Amendment to Hotel, and the H-word is not normally a popular word on Maui or any island; and then seek a Change in Zoning to an appropriate hotel district.

Ms. Zigmond: Joe? I know you're not going to like this question, but what did Molokai do?

Mr. Alueta: They just --. Actually they voted no comment after they --. They had no comment. Yes?

Ms. Koanui Nefalar: I noticed Riki voted no. Like did he -- what was his --? I see some of these and he's the only one that said no.



Mr. Alueta: It's...I can never tell what it means.

Ms. Koanui Nefalar: It's on this paper.

Mr. Alueta: Also, they...the vote is also to --. Some of the vote doesn't necessarily mean that you're in favor of the actual bill because the vote is for a resolution to transfer to the commissions to discuss the items. So even though a council member may be fore or against the specific language of an ordinance or a proposed bill, it's the resolution that's to just transfer, transmit it to the commissions.

Ms. Gima: What are we having to do? Just provide comments?

Mr. Alueta: Correct. Your options are --

Ms. Gima: Please read us our options.

Mr. Alueta: On page 2 of the memo report, your options are recommend approval of the proposed bill to the Maui County Council; recommend approval of the proposed bill with amendments to the Maui County Council; recommend denial of the proposed bill to the Maui County Council; vote to defer action on the proposed bill in order to gather specific additional information. And Molokai just voted that they had no comment.

Ms. Koanui Nefalar: So the change is to -- the wording they're, they're putting in is except Alaeloa?

Mr. Alueta: No. If you look at the actual on exhibit...

Ms. Gima: Can we just vote to give no comments?

Mr. Alueta: Yeah. It's actually an amendment to 19.32 which is the Planned Development standards for the project. Planned Developments are a development method, and it's very rarely used. Basically it allows for a little greater density for projects if they dedicate like 20% as open space within their complex. So you can have --. And it allows for also some type of mixed zoning. In this case this is an apartment zoning, and they have a 13 acre parcel, and they were basically allowed to do some duplexes, and maybe a couple of additional units out of it, but they dedicated over 20% of their area as being open space. Not in zoning, but just maintained in open space. Puamana's the same way...and as well as all planned developments that follows this cap. Planned Developments are approved by each commission.

Right. There are no Planned Developments on Lanai anyway, so again -- and there's none that would meet this criteria.

Ms. Zigmond: Madame Chair, I make a motion that we have no comment.

Mr. Oshiro: . . . (inaudible) . . .

Ms. Gima: It's been moved by Bev, and second by Brad that we provide no comments on this resolution. All in favor raise your hand. It's unanimous; six votes. Okay, next one.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Bradford Oshiro, then unanimously**

**VOTED: to provide no comments to County Council.**

**(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)**

**(Excused: M. Baltero, S. Marlowe)**

**(Absent: J. Barfield)**

**4. MR. WILLIAM SPENCE transmitting Council Resolution No. 16-1 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill amending Title 19, Maui County Code relating to composting in the County Agriculture District. (J. Alueta)**

Mr. Alueta: Thank you. Okay, the next item is...Resolution 16 -- I'm sorry -- 16-01 with regards to allowing for composting within the agricultural district. If you go to page 3...just to help you along with, with how this works; the cheat sheet. Okay, under the current standards, right, composting is allowed. It's a normal activity within a farming operation, okay. So if you wanted to compost and use onsite, and use onsite material, we consider it an allowed practice within both the County and State Agricultural District. If you compost onsite material and sell to others, right. You have thousands of acres of brush and other compostable materials that's sitting there and you mowed it all up and you composted it and you wanted to sell it to another farmer at another location, you could. That would be considered a normal agricultural practice and we consider it -- that's an allowed use within both the State and County Agriculture.

If you wanted to compost offsite material, right. So you're importing green waste from the local tree trimmers for your farm, and you have like a five acre farm or whatever, but you need a lot of compost for vegetable gardens, and you compost that material and use it on your vegetable gardens, that's also allowed. That's -- it's just like you're importing any other raw material for your production of your farm.

Ms. Zigmond: Does that site mean off island?

Mr. Alueta: Off property so off of the parcel lot.

Ms. Zigmond: But it would have to be on island, on the same island.

Mr. Alueta: No.

Ms. Zigmond: No?

Mr. Alueta: If it was off island it would be another parcel that it was coming from, right, yeah. And then the other way is like if you wanted to do -- but if you wanted to compost offsite material or off island material, and then sell it to somebody else, right, on another parcel, that would be not be allowed and you would need to get, for us, a special, a permit.

What's going on with the proposal which is...is that they, they're, County Council is proposing a definition for composting in their bill, and they're making it an allowed use. Meaning that it's not considered to be...it's not an accessory use of a farm, but it's just a permitted use in the agricultural district. So what this means is you can have an agricultural lot and bring material off site, compost it, and use it onsite or sell, okay. But, there may or may not be a farm. So -- and like I said so it would be the commercial operation on the property is not a farm, but is a composting operation. That's how the definition, that's how they have it written right now. The Department has concerns on that, and we kind of enumerated those concerns that we share with the Office of Economic Development.

One is we talked about noise. If you have a two acre ag lot and you bring a chipper shredder or, or drum...drum grinder -- thank you -- and you're doing stumps, right, it's going to make a lot of noise. Especially if you live next to an urban area or if you are in a quasi urban, two acre ag lot subdivision, it's going to make a lot noise. Especially if it's going eight to 10 hours a day.

Contaminants...the issue with like any material, you're grinding it up into like a humus like material, it can get dried out, it can get wind blown if you don't have appropriate containment.

Fire, you have -- these -- part of the composting process is heat. If you pile up the material it generates a lot of heat. If you don't -- if you pile it too high, you can get fires. You see that -- when you hear about landfill dumps, that's pretty much what's going on is that you've created a compost pile and its got packed down and it generates enough heat that it self combusts. And so we've had fires not only at landfill, you have fires at the composting facilities on Maui which is at the local dump, at the local landfill.

Invasive species movement. You're going to allow people to bring compost in from off, off property. There may or may not be the transportation of some invasive species. We had a case where in Haiku they discovered some fire ants. The guy got all of the compost, and he took it Hana landfill. Hana landfill said we can't take that, you've got to take it to Central Maui. So you basically have a little fire ants hitching a ride on a truck that went all along Hana Highway. That could spread and be disastrous had it gotten loose and other colonies established out there, so that's part of the concern.

The County supports composting. We think...and a lot of the testifiers previously had, on Maui and, I mean, on Molokai, it's the life blood of any farm, whether it's a traditional farm or an organic farm composting. Compost material is desperately needed. However from the Department's standpoint we don't feel that this bill is adoptable in its current form. We think, currently, we restrict -- we consider composting to be a permitted use as part of a farming operation or as a farm, a commercial farm operation. It's the only where you bringing off site material where we would consider you to get a Special Use Permit, okay. Even though they've

made it, and as I explained -- I know you all read my memo report -- and so that if you...look at it, even though the County makes it a permitted use in their County Agricultural District, the Planning Department does not believe it's an allowed use in the State District. So we would require a Special Permit under 205-6. So if this bill is attempting to get around the Special Permit process of the State, we don't -- it doesn't do that. Just because you make it a permitted use in the County Ag, it doesn't mean that you've somehow made it an allowed use in the State Ag. And we've pointed out that even at the State Leg they attempted several bills, or there was a bill to define composting and establish limits. So already people are thinking about composting and they're saying, hey, we need to create some standards for it.

So, that's pretty -- I mean, that summarized most of our concerns. We do recommend even though we're not in support of this particular bill, we do recommend that there should be an amendment to 19.04 which is the definition sections of the Maui County Code to define both composting, which has a more generic term, generic...definition, and more broader, as well as commercial composting. So, that would help us in our enforcement as far as that goes. Do you have any questions before I read our recommendations?

Ms. Zigmond: So you're recommending denial of this?

Mr. Alueta: We -- yes, and we also recommend -- we think that the current restrictions and the use of the special permit is the appropriate manner in which to regulate composting facilities and take them on a case by case basis. And we do -- and we also are recommending that you incorporate the two definitions that we wrote in there...our recommendations.

Mr. Oshiro: Okay on Lanai, so wherever they bring that green waste from, it's all of Lanai so it doesn't --. You know where you say it comes from some place else...if it comes from Lanai, it's Lanai compost, right?

Mr. Alueta: If it's on the same parcel, coming from the same parcel.

Mr. Oshiro: But then most of the parcels are owned by Pulama, yeah, over here, so --

Mr. Alueta: Right. I think that's -- I mean, I think that if they wanted to say here's our farm, and our farm is consisting all of these parcel, and we probably wouldn't -- we wouldn't -- we would say that's probably permitted use. It's when they want to bring in like, like I say, it's more, again, it's more --. Lanai's kind of unique, so this bill really impacts on Maui and Molokai where people would want to bring in off site materials and do it as a commercial operation and it may not be on the correct, what we feel, may not get the correct analysis and conditions to limit.

Ms. Gima: I think what I just saw is that there's bio solid, sewage sludge, that could be allowed in a compost?

Mr. Alueta: That is, that is correct.

Ms. Gima: Wow.

Mr. Alueta: And that currently is what goes -- at Eco Compost is the only facility on Maui that takes bio solids.

Ms. Gima: Stacie?

Ms. Koanui Nefalar: I don't have a comment, but I, I was in favor of Joe's recommendation, what he said was the Planning Department wanted.

Ms. Gima: Are you making a motion?

Ms. Koanui Nefalar: If there's no other comments, then --

Ms. Gima: No other comments?

Ms. Koanui Nefalar: If there's no other comments, then yeah.

Ms. Gima: You're making a motion to what? Deny?

Ms. Koanui Nefalar: No.

Ms. Gima: What is --? I'm sorry, what's the Planning Department's recommendation?

Mr. Alueta: The Department is not in support of the bill, but we do recommend that the composting and -- composting and commercial composting be defined. Molokai...if you're interested, recommended denial, and that they take into accounts the definitions that the Department presented. And also they wanted to have defined organics. Definition of organics. Maui Planning Commission also recommended against the proposal, and voted to -- and that it go back to Committee for further work and that they include the amendments of the Department discussed.

Ms. Gima: So Stacie, you have a motion?

Ms. Koanui Nefalar: I motion to deny and for the definitions for composting and organic be...what's my words?

Ms. Gima: Commercial composting?

Ms. Koanui Nefalar: Yes, be more, I guess, defined, as recommended by Planning Department.

Ms. Gima: Okay, so the motion is to deny...sorry, I'm tired -- this Resolution and taking, and to taking -- the Council take into consideration the Planning Departments definitions of composting and commercial composting. So that's the motion do I hear a second? And organic, I'm sorry. Brad seconds. Any further discussion before we vote? No? All in favor raise your hand. That's six, that's unanimous, it passes. Thank you Joe.

APPROVED 07-20-2016

It was moved by Commissioner Stacie Koanui Nefalar, seconded by Commissioner Bradford Oshiro, then unanimously

**VOTED:** to recommend, to County Council, denial of the proposed bill, and that Council considers the Planning Department's definitions of composting, commercial composting and organic.

*(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)*

*(Excused: M. Baltero, S. Marlowe)*

*(Absent: J. Barfield)*

- \_\_\_\_\_ 5. **MR. WILLIAM SPENCE**, Planning Director transmitting Council Resolution No. 16-9 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Regulate Agricultural Tourism Activities in the Agricultural District. (J. Alueta)

Mr. Alueta: Thank you. You sure you don't want to try for one more?

Ms. Gima: It, it's been a long day.

**H. ORIENTATION WORKSHOP NO. 1** (Conducted by the Department of the Corporation Counsel representative)

1. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)
2. Ethics
3. Contested Cases
4. Property Rights
5. Rational Nexus and Rough Proportionality

**I. DIRECTOR'S REPORT**

1. Open Lana'i Applications Report as distributed by the Planning Department with the April 20, 2016 agenda
2. Agenda Items for the May 18, 2016 Lana'i Planning Commission meeting

It was moved by Commissioner Kelli Gima, seconded by Commissioner Beverly Zigmond, then unanimously

APPROVED 07-20-2016

**VOTED:** to defer Agenda Items G5, H, and I to the next scheduled meeting.

*(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)*

*(Excused: M. Baltero, S. Marlowe)*

*(Absent: J. Barfield)*

J. NEXT REGULAR MEETING DATE: MAY 18, 2016

K. ADJOURNMENT

Ms. Gima: So we are deferring -- where did my agenda go? So we deferred the rest of everything to our May meeting, which is the next meeting will be on May 18<sup>th</sup>. It is now exactly 9:00 p.m. With no objections, I'm going to adjourn this meeting.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:00 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**PRESENT:**

Medigale Badillo  
Marlene Baltero (from 5:00 p.m. to 6:10 p.m.)  
Stephen Ferguson  
Kelli Gima, Chair  
Stacie Lee Koanui Nefalar, Vice-Chair  
Bradford Oshiro  
Beverly Zigmond

**EXCUSED:**

Stuart Marlowe

**ABSENT:**

Jarrold Barfield

**APPROVED 07-20-2016**

**OTHERS:**

Clayton Yoshida, Planning Program Administrator, Current Planning Division  
Joseph Alueta, Administrative Planning Office, ZAED Division  
Kurt Wollenhaupt, Staff Planner, Current Planning Division  
Richelle Thomson, Deputy Corporation Counsel



**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
APRIL 14, 2016**

*\*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. \*\**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Michael Jennings, at approximately 11:00 a.m., Thursday, April 14, 2016, at the Department of Hawaiian Home Lands Conference Room, Kulana Oihi, 600 Kamehameha V Highway, Kalamaula, Molokai.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Michael Jennings: It's 11:00, and we're gonna start the meeting, and before we do, I just wanna say, when it comes to C, if there's anyone here that would not be able to be around for what they wanna speak at, they can talk at that time. So without further ado, as someone would say, I think, we're going to call it to order, and we're going to -- Clayton, would you introduce the new members?

**B. INTRODUCTION OF NEW MEMBERS - MICHAEL DREW and ROBERT STEPHENSON**

Mr. Clayton Yoshida: Thank you, Mr. Chair, Members of the Commission. Clayton Yoshida, with the Planning Department. We welcome this morning the two new Planning Commission Members, Michael Drew and Robert Stephenson.

Mr. Jennings: Welcome. Welcome.

Mr. Yoshida: So this is the beginning of their five-year term on the Molokai Planning Commission.

Mr. Jennings: Okay, so, officially, gentlemen, welcome. It's nice to have you. I know of you, not quite as well as I should sometimes, but welcome to the board.

**C. 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 unless new or additional information will be offered.

**D. ELECTION OF OFFICERS FOR 2016-2017 COMMISSION YEAR - CHAIR and VICE-CHAIR**

Mr. Jennings: Okay, again, we're going to do public testimony for anyone that will not be present for the section that they want to talk about, and we're going to -- I'm going to limit that three minutes. So, at this time, is there anyone that would like to give public testimony? If so, please, I think the microphone is right next to Sybil or right next to Rob. Okay, seeing none, we'll go on to D, and the election of officers for 2016-2017 for the chair and vice-char. So at this time, I will take recommendations for the office of chair. You want to do them both, you guys? One at a time, okay. For the chairman, is there any nominations?

Mr. Marshall Racine: In light of the fact that it's Mike's last year, and things have been moving pretty smoothly and just for the sake of continuity, I nominate Michael Jennings as chair.

Mr. Jennings: Oh, is there any other nominations? I'm very sorry. Okay, seeing none. Nominations close. And, yes, I will accept it. Zhantell yelled at me last year for not doing it so, okay, so, oh, would you please vote.

There being no further nominations, a vote was taken.

***It has been nominated by Commissioner Racine, seconded by Commissioner Swenson, then unanimously***

***VOTED: that Commissioner Jennings serve as Chairperson for the 2016-2017 commission year.***

Chair Jennings: Motion carried. Oh my God. Okay, now nominations for vice-chair.

Mr. Racine: In lieu of his stellar performance during the CPAC -- I mean the -- the community plan review, I nominate Douglas Rogers as vice-chair.

Mr. Lawrence Lasua: I'll second that.

Chair Jennings: There is a motion and a second. Any discussion? Any other nominees? Nominations closed.

There being no further nominations, a vote was taken.

***It has been nominated by Commissioner Racine, seconded by Commission Lasua, then unanimously***

**VOTED:** *that Commissioner Rogers serve as Vice-Chairperson for the 2016-2017 commission year.*

Chair Jennings: Motion carried. Okay, you guys. Oh, Douglas, you have to -- would you -- okay, Doug -- okay, so we got that -- a little louder, please, Mr. Rogers -- Okay, so now we have the approval of the minutes from the November 12, 2015, and January 14, 2016, and February 11, 2016.

**E. APPROVAL OF MINUTES OF THE NOVEMBER 12, 2015, JANUARY 14, 2016, and FEBRUARY 11, 2016 MEETINGS**

Mr. Lasua: Mr. Chair, I'd like to make a motion to approve November 12, January 14, and February 11 minutes as circulated.

Chair Jennings: Is there a second to that? Diane. There's been a motion and a second. Any discussion?

There being no discussion, the motion was put to a vote.

***It has been moved by Commissioner Lasua, seconded by Commissioner Swenson, then unanimously***

**VOTED:** *to approve the minutes of November 12, 2015, January 14, 2016, and February 11, 2016 meetings as circulated.*

Chair Jennings: Motion carried. Okay.

Mr. Yoshida: Thank you, Mr. Chair. Clayton Yoshida, again, with the Planning Department. With me here, from the County of Maui, is your Deputy Corporation Counsel, Richelle Thomson; your -- our Administrative Planning Officer, Joseph Alueta; your Molokai Planner, Sybil Lopez; and the -- your Secretary to Boards and Commissions, Suzie Esmeralda.

We have four public hearings this morning.

*Mr. Yoshida read the following agenda item into the record:*

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

- 1. MR. WILLIAM SPENCE, Planning Director requesting the following land use changes for portions of the Molokai High School property (CPA 2015/0004) (CIZ 2015/0005) (S. Lopez):**

- a. **Athletic Fields (11.802 acres)**  
**A Community Plan Amendment from Single Family to Public/Quasi-Public and a Change in Zoning from Interim District to P-1 Public Quasi-Public District at TMK: 5-2-007: 001, Hoolehua, Island of Molokai.**
  
- b. **Park Piece (1.355 acres)**  
**A Community Plan Amendment from Park to Public/ Quasi-Public and a Change in Zoning from Interim District to P-1 Public/ Quasi-Public District for property consisting of approximately 1.355 acres at TMK: 5-2-015:001 (por.), Hoolehua, Island of Molokai.**

Mr. Yoshida: The staff planner is Sybil Lopez and she'll be providing the department's report.

Ms. Sybil Lopez: Aloha and good morning, Chair, the new Chair, Michael, Vice-Chair Rogers and the Molokai Planning Commission. If it's okay for you, I'll -- you want me to stand? Sit. Okay, thank you. Thank you.

And so this matter arises from amendments proposed by the Director of the County of Maui Planning Department on July 17, 2015. If you remember, back in June of 2014 where the Department of Education came in to submit an application for a change in zoning, a community plan amendment, and a district boundary amendment with Kimura International as their consultant/applicant, and this came before you in regards of the science building that they wanted to develop, and the reason for that science building was for the Molokai High School, that they were in need of it, so if you're familiar with that CPA, CIZ, and DBA, that -- this is why we are here today is we pushed that forward in the sense of time and management and budget constraint, so the Department of Education had a certain period of time to allocate these monies for the science building to be up, and so by approval from the Molokai Planning Commission, recommendation to the council, the County Council, transmitted to the County Council in regards of changing the community plan, changing the -- change in zoning, and the district boundary amendment; in lieu of that, we did not include these two parcels, and so when the department went in front of the council, the department recommended that we'll come back to property change the zoning for these two particular parcels. So the parcels that we're actually looking at is, if you look in your Exhibit 2, so these are the two parcels, so you have the one mauka of Farrington Avenue, and you have the one on makai, and so what -- during the June 2014 process where you seen it on November 2014 was just a portion of that makai of -- mauka of the Farrington Avenue where the proposed science building was. And so if you look at Exhibit 3, today we're coming to you with these two particular parcels - the one more north of that whole piece on the mauka side of the Farrington, which is currently community plan as park, so that is

where the old parking lot exist for the old Lanikea Center, so that's that parcel where we're looking at. So that's the request for the CPA on that one, and the athletic field is still designated as single-family, that is where you have the football field, the softball field, and the parking lot, so because that both are still designated, we did go in front of the Long Range Division, I know you guys heard it through your community plan review about land use designation and the community plan, and they felt, internally, that it would be a much expedited process if we go through Molokai Planning Commission, do this community plan amendment through you guys with the recommendation going to -- transmitting to the council, so that is why we're here. So we're just looking at these two pieces of parcel to make sure that it'll be consistent with what the use is currently today. So the community plan, that's the map, and then if you go to Exhibit 6 is how the county zoning is. So, currently, it still sits as interim for both, the mauka parcel as well as the makai parcel. And that is all I have for you if you have any questions.

Chair Jennings: Is there anyone that would like to say anything at this time?

Ms. Lopez: So just -- sorry. Chair, can I?

Chair Jennings: No, go ahead. Go ahead.

Ms. Lopez: Just to go a little more in depth of the community plan process, the Long Range Division felt that it would be more expedited because where the community plan sits right now is now that it left the Molokai Planning Commission, it goes to council for the next 12 months, so versus if we go through you guys, we cut that in half, so then, you know, everything can be consistent by then, so you're looking at this process maybe the next three to six months that we can actually get this, the council can pass it, versus waiting through the whole community plan update with the 12-month process through council. So that's why we're here today.

Chair Jennings: Okay, is there any public testimony? Please, would you --

Ms. Zhantell Lindo: Hi. My name is Zhantell Lindo. Thank you. I just have actually a question and a comment. Being that we went through the community plan process, and I understand Long Range's reasoning behind maybe this recommendation, but I want to make sure, 'cause I can't quite remember this particular subject, but make sure that whatever this Commission decides is consistent with the community plan designations that we've already went through in this strenuous process and not just act on it because it seems to make sense right now, so even if it takes a deferral to go back and look at what we've already done in these particular areas and stay consistent to the community plan, I think that would be the most fair thing to do for our community. Thank you.

Chair Jennings: Is there any other public testimony? Thank you, Zhantell. Okay, so your

recommendation to -- yes, and then I'll get everybody else involved. So if you would, please.

Ms. Lopez: So the Maui County Planning Department recommends that the Molokai Planning Commission recommend to the Maui County Council approval of a community plan amendment to amend approximately 1.36 acres of the property at TMK 5-2-015:001 from park to public/quasi-public, and approximately 11.8 acres all of 5-2-007:001 from single-family to public/quasi-public. Also, the department recommends approval for a change in zoning to rezone approximately 13.16 acres of the two parcels from interim district to P-1 public/quasi-public.

In consideration of the foregoing, the Maui Planning Department recommends that the Molokai Planning Commission adopts the Maui Planning Department report and recommendation memorandums prepared for the April 14, 2016 meeting as its findings of facts and conclusions of law, and further to authorize the Planning Director to transmit said recommendations to the Maui County Council.

Chair Jennings: Thank you. Thank you, Sybil. Is there any discussion? Diane.

Ms. Diane Swenson: No. I'll move to approve the Planning Department's recommendation.

Chair Jennings: Okay, is there -- okay, there's a motion and second by Lawrence. Any discussion? Seeing none.

There being no discussion, the motion was put to a vote.

***It has been moved by Commissioner Swenson, seconded by Commission Lasua, then unanimously***

***VOTED: to approve the Planning Department's recommendation.***

Chair Jennings: Motion carried. Thank you.

Ms. Lopez: Thank you, Commissioners.

Mr. Yoshida: Moving on to Public Hearing no. 2. Again, sorry, we only have three operative mikes right now so if you can kinda share them so that we can have the minutes transcribed.

*Mr. Yoshida read the following agenda item into the record:*

**2. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 15-139 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill relating to transient vacation rentals in planned developments. (J. Alueta)**

Mr. Joseph Alueta: Good morning, Commissioners. Again, my name is Joe Alueta. I'm the Administrative Planning Officer for the Planning Department. My primary role is for a liaison between bills either draft by the department or by the County Council and to bring them to you. Title 19 can be amended in two different ways, as I indicated. It could be done by the administration or bills drafted by the Planning Department in which we'd bring it before the planning commissions for review prior to going to the County Council. The second way is by -- initiated by the County Council through a resolution, and so -- and there's a requirement in that that each of the three planning commissions review all changes to Title 19 prior to it being heard by the County Council, they do set a time limit; for the first one, we did not make it, and I'll go over that later, but we did not meet the time limit, so it means that the council could act on it without your comments, however, that's very rare that they would do it. But again, this is the three following bills that we're going to go over today are bills that are not initiated by the department, but were initiated by the County Council for one reason or another.

So the first bill is dealing with amendments to 19.32, which is the planned development, also sometimes called "planned unit development." It's a developmental method in which projects can come in as a planned development and they can get increased densities for their housing areas, and they often would involve mixed zoning, and one of the requirements to get the increased densities is that they allow clustering as well as allowing for open space dedication within that project area. There are very few and the ones that do come in tend to be older. I have -- the last one I did, personally, was back in the mid-90s out in Kihei and that was an all residential. But we have a few old ones that were done, and two or three years ago, we had another bill, as I referenced in the memo report, Will is commenting to what is referred to as the Puamana Bill because the language and structuring of that bill narrowly focused the change to Puamana and to that planned development, which was developed in the late '60s and early '70s. At that time, they were doing some transient vacation rental, there was a change in the law which prohibited it, and -- later on, and so these units were either existing nonconforming or illegal. We had a lot of enforcement issues with that complex. Eventually, there was -- a bill was drafted by the County Council, basically, again couple years ago, that amended the planned development provision in 19.32 to allow for transient vacation rentals under certain provisions. That's why, when you look at this, it looks kinda weird and convoluted, and we, again, we don't like that because it makes it very difficult to enforce.

So if you look on page 3, those are the amendments that we're dealing with, page 3 of the resolution that was attached, and you only have a portion of 19.32, and that's only dealing

with the amendments, primarily, right now, planned developments receive final approval, as provided by this chapter, and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981, so again, dealing with some old units. The planned development is located in a parcel that has at least some residential district zoning, and the planned development consist, at the time, was only duplexes. That's the existing language. You can see the bracketed where they're taking that out. That was done and that, basically, qualified Puamana, the way that language is structured. Council is now tweaking 19.32 again to say, as indicated, they're taking duplexes out but then they're going -- putting in your small "i" and your small "ii" and it says, "duplexes or multi-family dwelling units or a combination of single-family dwelling units and duplexes or multi-family dwelling units." Yes, as indicated in the staff report, this is, basically, writing an ordinance to allow transient vacation rentals in, basically, two planned developments on Maui, one, again Puamana will continue, but this is for Ailaloa, that's based on our records and what we can determine that's what they're doing. From a ordinance drafting and from a basic policy, the Planning Department would never write an ordinance that affects only one project or is geared toward -- we don't feel that's a good planning process. However, there is a -- the political reality of the County Council and how they operate. They've taken the path. There is no direction. As you can see from the report that was submitted by the County Council, they didn't provide any direction, in their committee report, as to why they want to do this, but, clearly, this bill is geared toward one project. Cutting to the chase and the *Reader's Digest* version, it's high-end units, it's a gated community, all housing -- any loss of any long-term rental in it has an impact on the rental market and the housing market in the county. From an affordability standpoint, this project is not an affordable project, okay. It's on leased land. The leases, per month, would be more than most people's mortgages for each unit. And when I researched it, again, this bill is very specifically toward this project. So the bottom line is it's not really going to affect affordable housing, per se, especially not on Molokai 'cause this is not on Molokai. This bill does not impact anything on Molokai, just to cut to the chase, so the adoption and amendment of this bill will not, in our view, will not impact affordable housing on a significant basis, nor does it impact anything on Molokai.

So the department -- the commissions have three -- or four options, I should say, with regards to this bill. You can either approve the bill as -- or make a recommendation that it be approved back to the Maui County Council, or recommend approval of the bill with amendments to the Maui County Council, recommend denial of the proposed bill to the Maui County Council, or for a vote to defer action on the proposed bill in order to gather more specific information, and those are your four options at this time. And that pretty much concludes my report.

Chair Jennings: Okay. Thank you. Is there any public testimony at this time? Okay, seeing none, motion? Anybody want to -- Diane, yeah, go ahead.



Ms. Swenson: Yeah, I'm -- like I'm the only one talking today, but there's actually three condominium projects in Molokai that need a bill like this to cleanup this situation, and this bill does not do that, so I would recommend that we don't approve to. I'll make a motion that we recommend to the County Council that they don't pass this and that they consider passing a bill that cleans up all of condominium projects in the county.

Chair Jennings: Okay, there's a motion. Is there a second to Ms. Swenson's motion? Willy. Okay, there's a motion on the floor and a second by Wiliama. Any discussion? Let's have discussion. Rob.

Mr. Rob Stephenson: Thank you, Chair. Rob Stephenson here. And thank you, first of all, I want to say thank you to Mayor Arakawa and his Administration for their -- his appointment to me to the Planning Commission, and also thank you to our Council Member Crivello for her support as well. I have a question specifically about this ordinance. Is it true that this ordinance would allow the operation -- I'm sorry, Joe, I'll ask you -- it would allow short-term or transient vacation rentals without the need to obtain a short-term rental house permit. Is that correct?

Mr. Alueta: That is correct.

Mr. Stephenson: Okay. Thank you. I guess a followup question. Diane, you bring up a really good point about the condominium complexes. So if the condominium complexes here on Molokai are located within a zoning community plan land use designation boundary, the state land use designation boundary that allows for hotel operations, would a measure like this be required to allow those properties to be able to permit temporary vacation rentals?

Mr. Alueta: If they're in the hotel -- if they're zoned hotel, they would be allowed to conduct short-term rentals without any permits. That's what a hotel is, right? That's the definition for transient vacation rental is, basically, a hotel.

Mr. Stephenson: Even if you were a non-hotel operation within the hotel district, right?

Mr. Alueta: Correct. That is correct. I, actually, I own a condo that's long-term rental but it's actually zoned hotel but I don't rent it on a short-term basis and the whole complex -- and so you have, again, this bill impacts only planned developments and, in particular, these are areas that were zoned residential and maybe have some apartment in them, okay, in fact, they may even have ag, in the case of Puamana, they have agricultural district in it, and what it is is that they basically consolidated or they come in as, basically, a planned development and said we're doing all of these units, and we're allowed so many units per acre, based on ag or based on residential and based on apartment, and what we want to do is cluster them, the units together, regardless of the zoning line or the zoning

designation, and then have a minimum of 20% open space on the project, and that's -- and as part of that, they get more unit, they'll get maybe a 10% or 15% bonus in the units counts, and so that allowed them to build, basically, either a condo, like a two-story duplex or a single-family residence grouped together regardless -- and then regardless of what the underlining zoning was, and that's what Puamana and that's what Ailaloa did; in fact, Ailaloa is very low density, there's only I wanna say 35 units on 13 acres, it's pretty low density. So that's the -- that's what a planned development is. Condominiums or apartments in the apartment districts, that's like you're A-1, A-2 districts, okay, and then you have your hotel, which is H-1, H-2, H-M, so in the hotel district, again, transient vacation rentals are allowed outright. You can convert; go back and forth. There was a bill a couple years ago now that actually amended the apartment districts, or amended -- codified what we call the "Minatoya Bill," and, basically, if were a condo complex, right, apartment district structure built prior to 1989, and there's some dates in there, or got an SMA permit, you can do short-term rentals at anytime. That had a major -- that has a major impact on Maui and everybody, and that passed. And, basically, that bill allowed for existing apartments and condos that met that qualification in the A-1 and A-2 zoning category to switch back and forth, or to convert to a short-term rental, okay, with no permits, and they don't count toward the cap, they don't count anything. They basically could run as a hotel. And the reason they had that law is because the definition between short and long-term rental wasn't defined, wasn't established until the late '80s and so in the apartment district -- it was kind of when they switched over and there obviously was a big concern over the building of hotels as well as motels. In fact, short-term rental was allowed in the B-2 district or B-3. I think the Haagai Institute on Maui was the last hotel ever built in the business district, which is very strange, but that was the last one. So I'm not sure when the building permits were issued or the SMA permits were issued for the apartments, if they are apartment zoned. If they're hotel zoned, then there's not an issue. So that's the short of it.

Mr. Stephenson: So would that -- just the one quick -- one quick followup question.

Ms. Lopez: Wait, before you -- can I add to that, Chair?

Chair Jennings: Yes.

Ms. Lopez: So when -- what he's talking about, the Minatoya decisions, I wanna put into perspective on Molokai, so you're looking at Paniolo Hale, you're looking at Ke Nani Kai, you're looking at Wavecrest, and you're looking at Molokai Shores. So they're all ...(inaudible)... through the Minatoya decision. If they were already designated as apartment through that decision, that they're allowed to do those transient vacation. So, hopefully, that help you for Molokai.

Mr. Douglas Rogers: And they were grandfathered?

Ms. Lopez: Yeah.

Mr. Stephenson: And so I guess a followup to Diane, given that information, do you still want to hold the motion because --

Ms. Swenson: And I guess the only left that's got a problem over here is the Beach Cottages.

Mr. Stephenson: At Kaluakoi Villas?

Ms. Swenson: No. The Beach Cottages.

Mr. Stephenson: Oh.

Ms. Lopez: So, you're correct, so that has not been grandfathered in, it's actually considered as a multi-family, and it's in interim, and so the Molokai Beach Cottage, what they, right now, the council's going through amendments with the short-term rental, and I believe, but Joe can correct me if I'm wrong, it was Council Don Couch that offered that with apartments that they can condominiumize so it can be CPR where they can come back in and do a short-term rental individually. So Molokai Beach Cottages does not -- is not affected by the Minatoya decision so, therefore, by Council Don Couch putting forward to CPR that parcel, that they can come in through this body or administrative ruling to do a short-term rental permit because of their zoning.

Mr. Alueta: No. I have nothing to add. That's probably -- I understand that there's a bill making its way with Don Couch with regards to that amendment. I have not seen it or, yeah. So again, this bill -- the reso before you deals with planned developments, I'm not familiar with any on Molokai personally so I can't really speak, but I do know that just, again, the way this bill is structured and tailored is dealing -- we, based on our research, have indicated that it only deals with one planned development that will be now added to the previous one that was Puamana to it.

Chair Jennings: Okay. There's been a motion and a second. Diane, would you like to cancel your motion?

Ms. Swenson: I don't care. I can withdraw it.

Chair Jennings: Withdraw it I mean. Okay.

Ms. Swenson: I mean, but what are we doing?

Mr. Alueta: Currently, you have a motion, and a second.

Chair Jennings: Yes.

Mr. Alueta: Unless she withdraws, and then if she withdraws, the person who made -- seconded it would have to also withdraw.

Chair Jennings: Okay. So how do you --

Ms. Swenson: I'd, you know, I'd --

Chair Jennings: Oh, okay, so we'll vote on the motion and the second.

There being no further discussion, the motion was put to a vote.

***It has been moved by Commissioner Swenson, seconded by Commissioner Akutagawa, then***

**VOTED:** to recommend to the County Council that they don't pass this bill and that they consider passing a bill that cleans up all of condominium projects in the county.

*(Assenting: NONE)*

*(Dissenting: W. Akutagawa; M. Drew; L. Lasua; M. Racine; D. Rogers; R. Stephenson; D. Swenson)*

*(Excused: B. Buchanan)*

### **MOTION FAILS**

Chair Jennings: So, okay, we'll open it up for a new motion.

Mr. Marshall Racine: It, apparently, has no effect on Molokai, and since we don't have the option just to pass it by --

Ms. Richelle Thomson: You would just say you have no comments.

Mr. Racine: I would then make a motion that, as a body, we transmit to the council that we don't care to act on this.

Chair Jennings: There's a motion, seconded by Doug. Any discussion on the motion? Seeing no discussion.

There being no discussion, the motion was put to a vote.

*It has been moved by Commissioner Racine, seconded by Commissioner Rogers, then unanimously*

**VOTED:** *to transmit to the Maui County Council that the Molokai Planning Commissioner chooses not to act on this resolution.*

Chair Jennings: Motion carried.

Mr. Alueta: Thank you.

Chair Jennings: Next.

*Mr. Yoshida read the following agenda item into the record:*

3. **MR. WILLIAM SPENCE transmitting Council Resolution No. 16-1 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill amending Title 19, Maui County Code relating to composting in the County Agriculture District. (J. Alueta)**

Mr. Alueta: Again, good morning, Commissioners. Proposed resolution 16-01, again coming from the County Council, would, basically, allow for composting within the agricultural district or 19.30A to be allowed as a outright permitted use, okay. If you turn to page 3 of the memo report that I submitted, if you look at the very bottom, I have a table. That's pretty easy to start with, okay. Basically, from our aspect, composting is allowed within the agricultural district as part of a farming operation, so if you wanted to compost and you -- you grew material on your property, you had trees and shrubbery, whatever is part of your farming operation, you grew it and you composted the material, and you used it onsite, we consider that to be an allowed use. Okay. No problem.

You want to compost onsite material and sell to others, so if you grow, you have a big, you know, thousand-acre farm or whatever, and you were generating a lot of compost material and you're producing the compost, all grown and processed onsite, you can sell that material commercially to other people. We consider that an outright permitted use that's part of a normal farming operation.

If you wanted to compost offsite material, and maybe your own onsite material, right, and then use it all onsite so that people came to you and brought you green waste, right, your neighbors or you had a farm and you said, hey man, I need a lot of compost material, if he brought it to you and you were using it onsite, and you're not selling it to anyone, you're just composting it, it's an allowed use in both the state and county agricultural district. That's what basically I'm trying to show in the table here.

However, if you wanted to compost offsite material, somebody brings it to you, and then you were just composting it and then selling that material, we don't consider that a permitted use. We consider that to be that you would need to get a special use permit from the state, a state special use permit.

So -- and as indicated in my memo report, which I'm sure you all read, right? So the -- as I indicated in the memo report, we -- our position or our view on this is very similar to the state. The state does not view composting as or composting of offsite material to be a permitted use, okay. They see it as needing a special use permit; in fact, they wanted to establish, at one point, the state leg., I should say, tried to pass a bill that would limit where you could do it, on what lands, and how big it could be, and as a -- as being an outright permitted use.

Okay, now, when I say it's, for us, it's a permitted use, as long as you're processing your own material, okay, and what this bill would do is, basically, say you don't need to have a farming activity. They're moving it from being an accessory use or as a process of a farming activity to, basically, being as a stand alone allowed use in the agricultural district. So if you had a two-acre lot, or five-acre lot, and you weren't growing anything, okay, you could have somebody bring and be a collection facility of green waste material, all you did was process it, and then sell it. That's what this bill is proposing. The department, one, doesn't see that, even if it is allowed in the county agricultural district, right, we don't view it as being allowed in the state agricultural district, therefore, we would still require a state special use permit, okay, 'cause we don't interpret 205 that way. We don't see it as just a stand alone permitted use, okay, of commercial or offsite composting. So that's one problem.

The second problem is that composting facilities can come in a variety of sizes, okay, and they kinda need to be analyzed on a case-by-case basis because you could have a tub grinder. I mean we have received comments from the Office of Economic Development, as I pointed out, one is transportation of invasive species, meaning when you bring, and case was fire ants, and the story or the scenario is a real story or a real -- it really happened, there were fire ants in Haiku, they took the green waste to Hana Landfill, Hana doesn't process it, they then transported it all the way back to Central Maui, okay, so that's not a good methodology. So there's some concerns on that. There's tub grinding. There's a lot of mobile tub grinders, if you've ever seen them. Depending on the size of the lot, again, the minimum lot size for the county is two acres, if you had a tub grinder and somebody was bringing, on a two-acre lot, eight to ten hours a day, and you live next door to that, I'm not sure if you've ever heard a tub grinder, but if they're running, they're not very quiet, okay. Erosion control. The material does blow once you get a finished product. And so, again, there's this issue of that. And again, the way this bill is structured, it basically is allowing compost as a principle use in the agricultural district, that means you don't have to be farming it. It just means that somebody has a lot and they can start collecting.

From an enforcement standpoint, it's kind of tricky. I mean composting is pretty much an exact science, but the Planning Department is not that agency, I don't think. DOH has some regulations on it. And as you look at the definition of the bill, they reference that, you know, the definition and put State of Hawaii, Department of Health. If you look at the agency comments, Department of Health doesn't even want their name in as part of that definition. That's their comments, no, remove the term department as defined by Department of Health 'cause they don't want to be involved, apparently. So there's something in there that we're missing.

And so the department as well as the other commissions, the Maui Planning Commission, who reviewed it was they're supportive of composting, all of the testifiers on Tuesday at the Maui Planning Commission were all supportive of some type of centralized composting facility, but I think there needs to be more work in the bill, and that was -- and that's the department's conclusion is that we recommend that you at least add a couple definitions to help clarify, and that composting or commercial composting be sort of done on a special use permit. This bill doesn't do anything because the way it's structured is that we would still require a state special use permit. So the only place, if this bill passed as is currently written, right, the only place that it would be allowed as an outright permitted use, without any special use permits, state special use permits, would be in the county urban district where it's zoned county ag, so if it's zoned state urban and county ag, you would be allowed. There's only one place on Lower Main Street in Maui that I know of that has that same designation and where there's an urban designation but it was zoned county ag. So it'd kind of a weird situation.

So again, that kind of summarizes the memo report. Again, another issue we had was fire with regards to large piles, I mean again as far enforcement side. When you do pile up a lot of green waste and you have a back stock, it can generate heat. We've had a few fires, not only at the eco-compost site at Central Maui, but you also see it sometimes at some construction landfills if they take a lot of green waste and they don't spread it out, then it gets compacted, it can catch on fire. That is another concern. Let's see, the department again -- the department is not in support of this proposed bill because of the currently -- we think it's a currently allowed use under certain restrictions. The proposed amendments is an attempt to try to circumvent the state special use permit process. The department does recommend that you amend 19.04, which is the definition section, to define composting, and we've provided a more simpler definition of composting. We've also established a means of commercial composting, which delineate between the two. The Commission does have the options of recommending approval of the proposed bill to the Maui County Council, they can recommend approval of the bill with amendments to the Maui County Council, or they can recommend denial of the proposed bill to the Maui County Council, or vote to defer action on the proposed bill in order to gather more specific information. That concludes my portion. If you have any questions, I'm happy to --

Chair Jennings: Is there any questions for Joe? Any discussion? Okay, seeing -- oh, Marshall. Hold on.

Mr. Racine: You said there's only two specific zonings where this could happen under current regulation, even with this bill passing, what is to stop someone from redefining or rezoning an area so that this area could take effect on their property?

Mr. Alueta: Well, first of all, what I'm saying is, under the current provision, right?

Mr. Racine: Yeah.

Mr. Alueta: If you have a state urban designation, right, which is the state side, and then you had a county zoning of ag, if you met those two criteria, this bill would allow you to be an outright permitted use, and again, there's only one area in Wailuku that I know of that has that match up. Having urban and ag is kind of a weird designation and there's one area in Wailuku that does still have that. Composting is allowed in the -- at the Maui County Landfill as a commercial operation, you have that eco-compost that was done through a special use permit, and if you've never been there, it's a pretty big operation, it takes up several acres. You could do this in any of the industrial areas because probably I think I would say probably M-2 and M-3 would allow for it, and there is M-2 and M-3 lands that would allow for commercial compost -- what I'm calling "commercial composting," which is the taking in of a materials from an offsite location, composting it, and then reselling it. But as far as, as I indicated in the table, composting is allowed in the agricultural district an outright permitted use provided it's either you're growing and processing your own material, you are intaking offsite material, right, but you're only using it onsite, you're composting onsite and using the finished product as part of your farming activity, right, and so those are pretty much -- I mean so if you're farmer and you need to compost, you can, I mean that's clear, but this bill takes it a step further. It basically says composting, regardless of if you have any ag operation, would be allowed.

Chair Jennings: Is there any public or any discussion on this? Any public testimony?

Ms. Lindo: Hi. Zhantell Lindo. Yeah, I would just like to voice my concerns with this resolution and cite several different things. The county has worked really hard, and Molokai in particular, on a fire hazard mitigation plan, and in this fire mitigation plan, it notates that the island of Molokai is covered by agricultural areas that does not have sufficient water for the type of fuel load we already have. When you allow such an activity as composting to go on in this place, in already hazardous large fuel-load areas without adequate fire suppression type opportunities, we look at even more danger to our community and to our residential areas as well as adversely affecting our environmental conditions. Also, the Department of Hawaiian Home Lands, because we're exempt or because the lessees are exempt from a lot of -- and have a lot of non-permitted structures already in existence on



DHHL lands, which is where most of our agricultural areas are, one of the problems is that people start up businesses, unpermitted businesses or unpermitted things, and then when that fails, they kinda just leave everything there. Okay, my concern with composting is I've seen real big composting type machinery and equipment. Should that business fail and they not use it anymore, what happens? And without having to go through the issue of getting a permit and being very strictly guided by the guidelines that protect us and our environment, I think it's just as irresponsible for us to look at something like this and say that it doesn't matter, and I would urge the Commission to, if you cannot agree with it right now, which I hope you won't, but don't go on record as not having anything to say. Make a comment. Acknowledge that this is an important area of concern for you. But whatever you do, don't let it be without a comment from the Commission and express your concerns about, you know, what these problems that might exist from allowing such use on agricultural lands. Thank you.

Chair Jennings: Thank you, Zhantell. Is there any other comments or discussion by anyone? Okay, excuse me. I'm sorry, Suzie. Should I use that or? We'll just -- oh, I'm sorry.

Mr. Stephenson: Chair, if I may? I have some comments and questions and recommendations, actually. So based upon what Joe is saying that this would, basically, do nothing other than allow it in some very specific circumstances, which are unlikely to exist anyway, and if this bill were passed, then you would still need to get a state land use special use permit because the county doesn't recognize this activity as permissible under the state land use designation of agriculture, I would be -- I would be hesitant to recommend approval or recommend to the council to pass this. On the other hand, looking at the voting record of the committees of all ayes, it looks like it is likely to pass regardless of our recommendation or is that an incorrect assumption?

Mr. Alueta: Thank you for your points on the thing that the all ayes is, basically, is the committee's supporting transmitting it to the commissions. They have no record as far as -- as far as I can tell, from the record of actually voicing any support for the bill itself, and there was no discussion on the bill itself, and that's where -- I wouldn't jump to a conclusion one way or another. Yeah.

Chair Jennings: ...(inaudible)... Richelle.

Ms. Thomson: Thanks. I wanted to also just draw your attention to the proposed bill, the definition of "composting." "Composting" is a really broad term, and the definition of "composting" that is being proposed includes also bio-solids, so that includes sewage sledge, and that comes with its own set of problems when you're composting sewage sledge and green waste, such as at eco-compost at Central Maui Landfill, so that, to me, is a problem from a kind of a regulatory standpoint. The department has proposed a

couple of different definitions of "compost" and then "commercial composting," and that probably would help clarify some of the issues. The other things with having, you know, as far as practically, yeah, the people would still have to get a state special use permit, but when you have a county ordinance that says this is an outright allowed use, people will do it because they will think that they can do and they may not understand the subtlety of, oh, you have to go get a special use permit, they just open the county ordinance and they'll go look I can do it, you know, and then it gets into a regulatory problem.

Chair Jennings: Rob, go ahead, please.

Mr. Stephenson: Thanks, Joe, for your clarification. I appreciate that. It makes it -- it makes it easier to understand in my mind. And thank you for that as well. I look at the recommendations from the Planning Department just adding "not in support of the proposed bill" and instead adding the definition of "composting" and "commercial composting into Chapter 19.04, which would help to take care of defining some of those things, I would like to discuss, you know, the possibility that, as a Commission, proposed adding another -- an additional definition and I think it would be important in that 19.04 to add a definition of "solid organic materials."

Chair Jennings: Okay.

Mr. Stephenson: The reason why I say that is because it is -- it's not defined, I just looked it up online, it's not defined in there, and since it is in the agricultural district, this is being proposed in the agricultural district or it would pertain to agricultural districts, there's a conventional term that says "organic materials" and I think we need to draw a distinction between the technical biological term of solid organic materials and the agricultural industry standard of organic materials, meaning a certified organic farming practice. So I think we need to draw a distinction between those terms or else it could be problematic.

Chair Jennings: So, Rob, you would make a motion with --

Mr. Stephenson: I recommend making two motions.

Chair Jennings: Okay.

Mr. Stephenson: The first motion I recommend that we not approve the bill.

Chair Jennings: Okay.

Mr. Stephenson: And the second motion would be to add a definition of "solid organic materials" into 19.04 drawing a distinction between technically biologically organic materials and the agriculturally accepted definition of "organic" as certified organic.

Chair Jennings: Okay. Let's start with the first motion, Rob's first motion was to deny and it -- go ahead. Is there a second to the first motion?

Mr. Stephenson: Agree with the department in not supporting the proposed bill.

Chair Jennings: Okay. Is there a second to that? Was it Marshall? Okay. Any further discussion on that? Lawrence.

Mr. Lasua: Yeah, just for the record too, based on this, the enforcement would be done by the Planning Department, and that's a consideration that I think we ought to think of. Besides that, it also says in here Department of Health wants their definition wiped out as far as the process of composting are the methods approved by the State Department of Health is the recycling activity, I think they wanted the last two part of it struck out of this, so I think that's a -- tells us, you know, something's wrong here.

Chair Jennings: Okay, there's a motion, and a second by Lawrence, any further discussion?

There being no further discussion, the motion was put to a vote.

***It has been moved by Commissioner Stephenson, seconded by Commissioner Racine, then unanimously***

***VOTED: to not support the proposed bill.***

Chair Jennings: Motion carried. Okay, on the second motion, Rob.

Mr. Stephenson: The second motion I'd like to make a motion that Title 19.04 be amended to add the definition of "solid organic materials" and that definition to be determined by Corporation Counsel and the Planning Department to accurately reflect the intent of the definition of "solid organic materials" and not make it confusing with the agricultural practice of organic farming.

Chair Jennings: Okay. Is there a second to Rob's motion? Seconded by Lawrence. Any discussion? Diane.

Ms. Swenson: Why are we doing this if we're recommending denial and now we want to modify it? I'm not getting it.

Mr. Stephenson: It's not modifying the bill, it's modifying the existing county code with definitions.

Ms. Swenson: Do we have the authority to do that?

Ms. Thomson: You do have the authority to recommend changes to the title. In essence, they're going to be dealing with this bill. At some point, what you're suggesting is that what they drafted so far isn't working and needs some work and here's a couple of ways that you need to change it if they're still going to consider it.

Mr. Stephenson: And the reason I feel it's important is because since the Planning Department is recommending Planning definitions, those definitions themselves -- since the Planning Department is recommending adding definitions to 19.04, those definitions aren't adequately defined in their terms within those definitions that need to be further defined, in my opinion.

Chair Jennings: Okay. So there's a motion by Rob with the definitions, and is there a -- is there a second to this? Okay, second by Lawrence. Any discussion? Joe.

Mr. Alueta: Thank you. Thank you, Chair. I just wanted to thank the Commission for bringing that up. Again, we did point out that there is a confusion on the organic -- whether or not it's going to be organic. There is -- the department will be happy to work with Corporation Counsel to come up with some organics. There is a -- there is a solid waste management glossary that I was able to find online, when I was researching this, and so, again, they have a term for "organic waste" and that is, technically, waste containing carbon, including paper, plastics, wood, food waste, and yard waste, but in practice, under waste management, the term for organic waste is often used in a more restrictive sense to mean materials that is more directly derived from plant or animal resources in which can be generally be decomposed by microorganisms. Okay, so that's what currently is in the organic -- for under organic waste, and I note that in my staff report also that that's the general term.

Mr. Stephenson: But it's not in the current code?

Mr. Alueta: That is correct. So the -- and so, if I understand, you want to make sure that there is a definition between organic growing as opposed to organic waste in our -- okay. I think we know -- and then did you, I'm not sure, did your motion include incorporating the two definitions by the department?

Chair Jennings: Rob?

Mr. Stephenson: Pardon me. I'd like to amend my motion to include the two recommendations of the department -- by the department.

Chair Jennings: Okay. There's second -- motion second by Lawrence. Any further

discussion?

There being no further discussion, the motion was put to a vote.

*It has been moved by Commissioner Stephenson, seconded by Commissioner Lasua, then unanimously*

**VOTED:** *that Title 19.04 be amended to add the definition of “solid organic materials” and that definition to be determined by Corporation Counsel and the Planning Department to accurately reflect the intent of the definition of “solid organic materials” and not make it confusing with the agricultural practice of organic farming. And also to incorporate the definitions recommended by the Planning Department.*

Chair Jennings: Motion carried.

*Mr. Yoshida read the following agenda item into the record:*

4. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 16-9 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Regulate Agricultural Tourism Activities in the Agricultural District. (J. Alueta)**

Mr. Alueta: Good afternoon, Commissioners. The third and final bill that we have today deals with resolution 16-09, regulating agricultural tourism activity within the agricultural district. The bill is an attempt with regards to comply with Hawaii Revised Statutes recent amendment in 205, which would allow for agricultural tourism within the agricultural district for counties that consist of three islands and who have adopted a agricultural tourism bill, and so this is an attempt to meet that requirement by the -- that was established within HRS to allow for agricultural tourism. And again, this would amend 19.30A to add definitions and standards for the agricultural tourism bill. Going over some of the agency's comments, you have Fire Department has concerns over the use of unpermitted structures and so they feel there needs to be a provision to allow for these -- if they're going to use any of these structures for ag tourism, that they be permitted. DSA, in talking with DSA, they currently have a method in which they -- if the overnight accommodations meets the definition or meets the standards for STRH and B&B, they will consider that structure to be residential in nature and not treat it as a commercial structure, so they would like to see some type of provision in which either they get a STRH permit or a B&B, and I believe that is in the code that they do have to comply with 19.67 for overnight accommodations. Department of Health, basically, they're standards for food if there's any food being prepared as part of an agricultural tourism operation, they comply with Department of

Health standards. The big concerns and comments, I guess, came from Office of Hawaiian Affairs. They provided some excellent comments that the department basically echoed. I'm not sure if they were -- Suzie, did they get passed, the Office of Planning comments letter? You have enough? Okay. Sorry to give this to you late. They did not get their comments in in time, while I was drafting the staff report, but we did get it. They have some similar to, if you read -- which I'm sure you've all read the staff report, and if you read Office of Hawaiian Affairs comments, they had some excellent comments. I did talk to them. And they have very similar concerns that Office of Planning also has is that the way the county is defining agricultural tourism and their limitations, it does not comport with what state law has, and that's the bottom line. It doesn't meet state law.

The crux of the matter is that for you to qualify under the state, when the law was drafted and amended into 205, they wanted to make agricultural tourism operations available to bona fide farmers, and they defined it by, bona fide farmers, not only is that they had to be commercial farmers as defined under HRS 165, which basically is you have to be a commercial farmer of some type, okay, so -- but the provisions that the County Council has drafted doesn't have that key component of being a commercial operator or bona fide farm. Basically, all you would have to do is have met the qualifications for a farm plan under the county. As you know the county uses farm plans in relationship to granting you a farm dwelling, and the threshold for that is basically if you want your first dwelling, you just have to give us a plan that shows 50% of your property being used for an agricultural activity. That agricultural activity could also be conservation, okay, which is you're not really farmer, you basically have a nice landscaping or you have a plan to have nice landscape. To get a second farm dwelling in the agricultural district, you have to actually have implemented that farm plan, so whether that's planting of trees, or planting of shrubbery, or planting of a real agricultural crop that you're going to harvest, or you're going to have ag conservation meaning you're going to plant some type of soil retaining crop or grass or lawn. So that's not, from our aspect, from the stateside, that is not bona fide agriculture. That is not -- their definition, as I indicated in the thing, means -- a "farming operation" means a commercial agricultural, silvicultural, aquacultural facility, or pursuit conducted in whole or in part, including for the care, production of livestock, livestock products, poultry products, apiary products, and plant and animal production for nonfood use, the planting, cultivating, harvesting, and processing of crops, and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes, and it goes on. But the keyword there is "commercial agriculture." I think -- and that's based on what the county has -- the County Council has drafted, we don't believe that it would -- we feel that it doesn't meet the criteria of which the state law intended, and we would probably recommend -- we would still require a state special use permit for that use if you didn't meet the definition of the commercial side. You'd still have to meet the state definition of a bona fide agricultural operation. So I think this adds confusion to the whole matter that someone will see this, and they say, wow, this is all I need to do to start renting out part of my ag dwelling. We think we would still require a special use permit, and

we feel that it would weaken the agricultural -- the intent of the state law because it would -- under that provision.

Other concerns with just the drafting of the bill, one of the provisions under 19.30A.077(C)(8)(b), and this on page 4 of the memo report, has a provision in there in which the private easement would be assessed and upgrades to that easement or access driveway would be done by the director. The Planning Director does not have the expertise to determine whether or not that ten-foot gravel road is appropriate for your agricultural tourism operation, and so we're unsure why -- I mean we don't want to be stuck with that responsibility. That's something that is either Public Works or Department of Transportation's responsibility.

The enforcement includes the violations if they don't register. And again, this is not a permit, this is called a "registration" the way this is setup in 19.30A, so a person would just have to come in and say here's my registration, I'm registered in an ag tourism operation, and that's it. So there's no real -- there's not a review, per se, by the Planning Department. We're not even -- I mean it's unclear as to whether we're being asked to check for the accuracy of the operation, we were told no, but we feel that if you're registering, we would have to have some type of responsibility check - Are you really the landowner? Are you really -- I mean what provisions do you want us to check for. And so we're kinda uncomfortable with that. And they also want us to do a report to the commissions. So we would report of all the ones that are registered. We're not sure what the purpose of that report is. Is there -- we're going to generate this paperwork that says we received 20 registrations for ag tourism operations, is the commission going to reject that report? Is the commission going to accept that report in some fashion? We're not sure. Again, it's just a registration.

On section (E) of their proposal, they have this whole thing about requiring the parking be provided pursuant to 19.36A, and then indicate that if the parking is in violation on three separate occasions in a year, the agricultural tourism activity will result in the suspension until a special use permit is obtained and the department finds -- we're unsure why would you put this type of enforcement issue in a parking area. We're not sure what the purpose and intent is. I mean we see that they want us to -- parking is a big deal, but under what standards? Is it like if somebody has a special wedding and they crowd down the street and we catch them three times year, we would suspend it? I don't -- it's just, for us, it's just poorly written all together.

If you look at the letter from Office of Hawaiian Affairs, which outlines how it does -- they have concerns all the way around with the bill, especially with regards again of how it complies with state law. If you look at the Office of Planning letter that we just passed out, they actually have -- Office of Planning was really good and they had some really good -- they had specific recommendations, but they also, again, on page 2, on the bottom, you

see paragraph -- the second section where they say, "Section 2," definition of ag tourism, they requested amendments that specifically commercial activity is accessory to an agricultural operation. Again, that's key to the issue is that this was supposed to have been for bona fide farms that are already conducting agricultural operations to enhance their revenue stream, to have tours and stuff like that, but I think they're intention was, or at least the way it's structured right now, is that you could do a nice -- have nice landscaping on your agricultural lot from ag farm plan, and register it, and you can conduct tours, weddings, have concerts or whatever, and that would be the -- that's basically how the county ordinance is written, but that's not what the state law intended for or is currently written.

They also recommend in that same -- on top of page 3, you know, about there is no nexus between agriculture of farming operations and could become -- could become the dominant use on agricultural lands. A variety of list of activities included in the definition "agricultural tourism activity" underscores this possibility. We also recommend replacing "commercial activity" with "commercial use." And you can see they have some similar amendments and recommendations, "agricultural tourism" means commercial use, so that's where they would change it.

And if you go through this OP letter, it's pretty detailed as far as, you know, their concerns over this. They're also recommending that they require proof of agricultural income, similar to the current requirement for bed and breakfast homes, and for additional farm dwellings. OP recommends that insertions of the following language, and they say, "Evidence of operation in conjunction with a bona fide agricultural activity that proceed \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by state general excise tax forms and federal form 1040. . ." So they are -- I mean they're directly linking the commercial activity and so that's what OP is saying. They're saying there needs to be some kind of economic or income threshold that people should show to show that you're doing a real commercial farm. There was a couple of testimony yesterday on that act, with regards to that, they felt that the number was too high from some of the testifiers who -- so -- but I think the discussion is there that there should be some type of income level that should be shown for your farm before you could come in and register for such a agricultural tourism activity.

Other recommendations by the OP was that acknowledgment of signature of somebody who's doing it. That overnight stays be limited to a farm or farm labor dwelling. I think that would also accommodate or reflect the comments that you had from fire as well as the comments that you had from Public Works. They also recommend that, strongly recommend the term "subsistence" in the definition of an active agricultural operation not be allowed in the context of the fill to ensure conformance with county code with state statutes.



Again, I touched on ag conservation. OP is definitely opposed to the use of ag conservation as being justification for a agricultural farm tourism registration, and they also recommend that permits for agricultural tourism activity exclude agricultural land conservation as a primary agricultural use; two, delete all references to agricultural land conservation. In the department's farm plan application, when it is used as a basis for permitted high value non-agricultural uses as is contemplated under this bill.

So, again, before we even got this letter from OP, just based on our own analysis from inside of the department as well as reading Office of Hawaiian Affairs, the department felt that we could not recommend to the commissions approval of this proposed bill. We felt that the language in this bill is inconsistent with state law; although it is for operators only to register with the department, it puts the department in an awkward position of having to confirm the accuracy of the information. At best, the bill would create confusion with the general public and landowners as the department would require a state special use permit to conduct such activities. For the bill to be consistent with state law, the agricultural tourism activity would need to be accessory and secondary to the principal agricultural use. Further, the use needs to be accessory to a commercial farming operation as defined under HRS 165-2.

The Commission can have the following recommendation: They can recommend approval of the bill to the Maui County Council; recommend approval of the bill with amendments to the Maui County Council; recommend denial of the proposed bill to the Maui County Council; or vote to defer action on the proposed bill in order to gather more specific information. That concludes my --

Chair Jennings: Thank you, Joe. Is there any discussion or questions? Oh, excuse me. I keep forgetting the public guys.

Ms. Lindo: ...(inaudible)...

Chair Jennings: Yeah, that's right. Well, yeah, but I -- is there any public testimony? I'm sorry. Zhanell.

Ms. Lindo: Hi. Zhanell Lindo. I just wanted to stand up in support of the department's recommendation not to support the recommended resolution as it is currently written. Aside from the fact that the State Office of Planning and OHA's letter were excellent and have excellent ideas and recommendations. I also would like to talk about the strenuous and very in-depth community plan process that went on by CPAC and by this Commission. I think that the resolution needs to reflect the integrity by which a community's future is going to carry forward, and when land uses are designated as agricultural, that should be the primary reason money-making income and use of that particular land use designated area. I think that also when we look at agricultural tourism, that sort of was created in order

to find more uses for agricultural lands that were not being used primarily as agricultural source type endeavors, and so I just want to go on also to say that without clarifying and being consistent with the state's definitions of agricultural principal use and also agreeing with taking out subsistence in any type of language that we use in agricultural, and you talking to somebody who is very committed to the Hawaiian culture, but I think we need to take that subsistence language out and not allow that to be a part of it either because we don't want to get into the confusion of what is native Hawaiian rights and subsistence and confuse it with any type of endeavor that might not be consistent with the integrity of our cultural practices. And then, just in closing, I would also like to just reiterate that I think that principal economic revenue or profit should -- on agricultural lands should always be from agricultural endeavors or agricultural commercial use or stemming from that source rather than an accessory or secondary type use on designated specific land use designation. So that's it for that.

Before I get off, I also would just like to thank the Commission for allowing the community to testify on each item. I think that's a wonderful thing to have incorporated into your meetings and your plans.

But before Joe closes, and this subject closes out for the Commission, I know it's not part of your agenda so you cannot vote on it today, but there is a resolution that the council should look at that came up in our community plan process and should be enforced by the -- this Commission on looking at a cap for transient vacation rentals on our island. I'm not sure we're at the stage where we have a template or a standard by which you can cap a certain community, I know it's already been done in certain areas of Maui, but I want to encourage that our community and our Commission start really looking into putting a cap on the transient vacation rentals for Molokai. Thank you.

Chair Jennings: Thank you, Zhantell. I appreciate it. Is there any further public discussion or public input? Seeing none, Commissioners, is there any ...(inaudible)... or any discussion you'd like at this time? Okay.

Mr. Wiliama Akutagawa: Oh, wait.

Chair Jennings: Oh, go ahead. Sorry.

Mr. Akutagawa: No, I'll make a motion. I agree with them, yeah, to deny.

Ms. Swenson: I'll second.

Chair Jennings: There's a motion by Willy to deny. There's a second by Diane. Is there any discussion by the Commissioners?

Mr. Stephenson: I just have a couple of thoughts on this. I think the intent is good, and perhaps rather than to outright deny or recommend denial of this bill, perhaps we could also add in there to revisit this bill to make it consistent, bring it into consonance with the state land use or, I'm sorry, the State of Office Planning's recommendations and bring it into -- so it's consistent with HRS 205 because I think there is some merit to this but it needs to have consistency statewide.

Chair Jennings: Okay, Rob, is that -- I'm sorry, Joe?

Mr. Alueta: Sorry, just to throw in some two cents. I know Molokai doesn't like toward Maui as to what they comment on but sometimes their recommendations was also to deny but for the County Council to note the department and agency comments, and so that was their -- that was their recommendation on Tuesday because they also had similar concerns. Thank you.

Chair Jennings: So with the motion, Rob, would you like to amend that motion to --

Mr. Stephenson: I can't amend the motion, not that motion.

Chair Jennings: Oh, excuse me. Willy, would you like to amend your motion? Okay, the motion is amended to --

Ms. Thomson: Well, if you want to, Rob, what you could do is make a motion to amend to add in that you recommend council look at OP and OHA's comments, and the comments made by the department, and then your specific former comment was that you want any proposals to be in line with state law.

Mr. Stephenson: Yes, yes, and yes.

Ms. Thomson: And then you'd need a second.

Mr. Racine: Second.

Ms. Thomson: Okay, thank you. So there's -- what you would vote on is, first you vote on the amendment, and then you go back to the main motion.

Chair Jennings: And it's, excuse me, it's been amended and seconded by Marshall. Any further discussion? Seeing none.

There being no further discussion, the motion was put to a vote.

***It has been moved by Commissioner Stephenson, seconded by Commissioner Racine, then***

**VOTED:**     ***to amend the motion to include that the Maui County Council review the comments and recommendations of the Office of Planning and Office of Hawaiian Affairs, and the Planning Department, and recommend that the proposal be consistent with state law.***

**(Assenting:    M. Drew; L. Lasua; M. Racine; D. Robers; R. Stephenson)**  
**(Dissenting:   W. Akutagawa; D. Swenson)**  
**(Excused:      B. Buchanan)**

Chair Jennings: So, okay, the motion passes. And now back to the main motion as a amended that Willy made, and seconded by Diane, any discussion on that? Okay. Yes?

Ms. Swenson: I guess I don't understand it. We're recommending denial but then we're also recommending that it be modified? I don't -- I'm not getting it.

Ms. Thomson: Similar to that -- the previous bill on composting, you know, although you're saying that the bill, as presented by council, is flawed in certain ways and Office of Planning and OHA and the department have, you know, given you some very concrete concerns so that if council is still considering changes to this title in this way, that you want them to take a look at those concerns and, basically, come back with a better bill is really the way that I would -- I would take that comment. But as drafted, you don't -- you're not in favor of it as drafted.

Ms. Lindo: ...(inaudible)...

Chair Jennings: Yes, Zhantell, I will. Yes.

Ms. Lindo: So I just wanted to say, and just for support for Willy too, he already made the -- he already went on the record to say that we wanted to amend his motion to include the council taking a look at the two recommendations. I think that's pretty much the same thing that you guys just denied. So I don't think there's -- or you approved, so my question then would be: Why would you take a look at his if you already approved that?

Ms. Thomson: What, procedurally, what happened is so there was a motion by William to recommend that the council not pass the bill as proposed, and that was seconded by Diane. That was amended to add -- that was amended by saying, you know, we still recommend it to be denied but we want to add in these comments: look at OHA's letter, Office of Planning, and the department's. These are our main concerns that we have with

the bill. And so now, where we are procedurally is, the Commission would recommend denial of the ordinance as proposed and also express its concerns and tell council to take a look at the comments from the agencies. That's where we are right now. So we're voting on the main motion as amended.

Chair Jennings: So I guess from what Richelle -- we're voting on the main motion as amended. Now is there any discussion on that? Seeing none. Is there a second? We've already got it.

There being no further discussion, the motion, as amended, was put to a vote.

***It has been moved by Commissioner Akutagawa, seconded by Commissioner Swenson, then unanimously***

***VOTED: to recommend denial of the proposed bill to the Maui County Council, and also recommend that the Maui County Council review the comments and recommendations of the Office of Planning, Office of Hawaiian Affairs, and the Department of Planning.***

Chair Jennings: Motion carried.

Mr. Alueta: Thank you.

Mr. Stephenson: Excuse me, Chair?

Chair Jennings: Yes?

Mr. Stephenson: If I just may make a comment, and this comment is for -- is for staff and also to the Commission, is it possible, in the future, that when we have public hearings along with items from applicants to be decided, that we either, A., the department puts those items from -- those items to be decided from applicants at the beginning of the agenda, or if we see that on the agenda, that we can, at the beginning of the meeting, amend the agenda in order to hear those items first because if we see here -- we've been here since 11, and it's now an hour and 40 minutes, and the applicants who have been here who have a very simple application before us have had to spend their very valuable time here. Thank you.

*Mr. Yoshida read the following agenda item into the record:*

## **G. COMMUNICATIONS**

1. **MS. MOANI MELCHER requesting a Special Management Area Minor Permit for the construction of a 1,400 square foot single-family dwelling and related improvements at TMK: 5-7-008: 037, Kamehameha V Highway, Mapulehu, Island of Molokai. (SMX 2016/0117) (Valuation: \$160,000) (S. Lopez)**

*The Commission may take action on this request.*

Ms. Sybil Lopez: Good afternoon, Chair and Molokai Planning Commission. So this matter arises from a previous SMA assessment application that you've seen back in 2012, which you approved in 2013, we're talking about Ms. Moani Melcher. Just for your reference and knowledge, we do have the two consultants here, Luigi Manera and, on behalf of the Molokai Habitat for Humanity, Zhantell Lindo, if you have any questions.

The reason why we are here today for Ms. Melcher is that her SMA application was expired under one of the conditions that they had, if you look at your Exhibit - hold on - Exhibit 11, this was the approval letter that the Molokai Planning Commission approved on February 12 granting the SMA application for Ms. Moani Melcher under the current standard conditions, and one of the standard conditions, no. 5, has not been fulfilled wherefore it had been expired after the February 28, 2015, and the date of completion or the project initiation was not completed within that year, which makes February 28, 2016, and so what the department recommended to the applicant was to submit another SMA application and which, today, there has been no -- it's still the same, nothing has been changed, it's exactly what the application came in before you. The only change that we see that had happened from then to now is the condition regarding the State Historic Preservation in which they requested that they -- number -- of the no. 4 -- sorry, go back to the Exhibit 11, under the standard conditions, that no. 4, that the applicant shall comply with all DLNR SHPD requirements as indicated in the letter dated November 21, 2013. So I would like to present that they did have the agency commented with Exhibit 13, 14 -- 13 through 16 to explain where they're at in regards of that letter. So there is a fire pit site that the State Historic Preservation didn't have under their registry, and so part of that letter, which is Exhibit 9 and 10, stated that they come in to register that -- that artifact, that cultural site, and so 13 and 16 fulfills that, which they did put in the request, and so they are going through that process as we speak. So that is the only change that occurred from them to now.

Chair Jennings: Okay, thank you. Is there any further public testimony on this? Zhantell.

Ms. Lindo: Yeah, I just wanted to say, in case the Commission was wondering, the problem with not being able to initiate the project is two, actually, challenges. One is that, under our program, there are very specific guidelines for funding, which she was unable to make and so we could get the initial funding through the sources that were originally

deemed possible for her to start. The second thing was, and I want to make this -- put this on record so that the Commission and the department are aware, adjacent -- oh, sorry. Zhantell Lindo, I'm the Executive Director of Molokai Habitat for Humanity, who is in charge and managing this project. The land which Ms. Melcher's property is adjacent to has eight actual parcels that are connected to one another. All of which are in very critical and highly noted agriculture -- sorry, archaeological and environmentally sensitive areas, so the cost and the challenges that we had to go through to get the permitting from State Historic Preservation to go through this was really educational and really necessary,

I want to put on record that there are numerous digs and buildings on the adjacent properties of that area that are not in compliance with State Historic Preservation or our County Codes, and that I -- I know that the department investigates those based -- and enforces based on complaints, so I'm not going to complain because I don't know the specific, but I will say that it would pretty much benefit the department and the Commission to take a look at those areas and be aware of the things that are going on in those areas. Ms. Melcher's project, we moved really slow and spent a lot of money coming into compliance, and I think it's very unfair to the applicant and to our project to have to expedite all that sorts of money and come into compliance when there are visual and obvious things going on there and other properties surrounding there that are not in compliance. So thank you.

Chair Jennings: Is there any further public discussion? Luigi.

Mr. Luigi Manera: Hello. Hi. Luigi Manera: I want to concur with Zhantell about those -- the neighbors of Moani. There's so many illegal structures around there it's incredible. They're visible from the road, everywhere, and nobody say nothing. And her, she has to spend, I don't know, so much money, investigation, I don't know what. I spent two or three year just to get over here. I think the department should enforce at least the most obvious, the one visible everywhere. Thank you.

Ms. Lindo: Zhantell Lindo. Just one more thing. State Historic Preservation, when you look at condition no. 4, they asked us to do a number for a fire pit, okay, just kind of visualize in your mind that the whole are surrounded by a historic fish pond. Portions of that area that are further towards the fishpond or water area than Moani's is was originally part of the fishpond. So that's how incredibly important it is for this Commission and for the Planning Department to take action on the illegal activities that are going on there.

Chair Jennings: Thank you. Is there any further discussion, public discussion? Okay, seeing none, public discussion is closed. Yeah, Ms. Lopez, would you give me your recommendation, please?

Ms. Lopez: So pursuant to the aforementioned, the department recommends approval of the SMA minor permit subject to the same standard conditions from 1 through 6, allowing 5 would be: "That the project shall be initiated by April 30, 2018, and shall be completed within one year said of the initiation." We kept the standard 4 in because they did -- they're in that process of requesting so -- and, okay, hold on.

Chair Jennings: Okay. Now, you scared me because I didn't know you were done. Okay, thank you. Is there a motion? Motion by Lawrence to accept. Is there a second? Doug. Any further discussion? Rob.

Mr. Stephenson: Chair, I would like to recommend the amending one of the conditions, I'm sorry, one of the recommendation conditions rather, no. 5, it says, "The project shall be initiated by April 30, 2018 and shall --

Ms. Lopez: ...(inaudible - not speaking into the microphone)...

Mr. Stephenson: Right. To start. So I would like to recommend that we change that condition to say that it shall be completed within two years of the initiation. The reason for that is because knowing many of the restrictions that are imposed by Habitat for Humanity and their funding requirements, also given the current economic state of our island and the availability of financing, finances, and work, I think it would be beneficial to the applicant to give a little bit more time so we don't find ourselves in this same position in a couple of years.

Chair Jennings: Thank you. Yeah, Lawrence?

Mr. Lasua: I'd like to restate my motion.

Chair Jennings: Well, it's decline the first one, I think, or amend it, okay. So as amended. Okay. As amended. And Doug's okay with that? Okay, so any further discussion on this? Rob.

Mr. Stephenson: I'd like to recuse myself from voting on this project.

Chair Jennings: Okay, sir.

Mr. Stephenson: Based on the relationship with both the consultants.

Chair Jennings: Yes. Okay. So stated.

There being no further discussion, the motion was put to a vote.



*It has been moved by Commissioner Lasua, seconded by Commissioner Rogers, then*

**VOTED:** *to approve the Planning Department's recommendation as amended.*

*(Assenting: W. Akutagawa; M. Drew; L. Lasua; M. Racine; D. Robers; D. Swenson)*

*(Recused: R. Stephenson)*

*(Excused: B. Buchanan)*

Ms. Lopez: Thank you, Commission.

*Mr. Yoshida read the following agenda item into the record:*

#### **H. DIRECTOR'S REPORT**

- 1. MR. WILLIAM SPENCE, Planning Director notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed action located within the special management area is not a "development" and therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules:**

**MS. SUSAN BADALUCCO submitting a Special Management Area (SMA) Assessment in order to construct interior renovations at Unit 14 Paniolo Hale, TMK: 5-1-003: 011-0030, Kaluakoi, Island of Molokai. (SMX 2016/0038) (Valuation: \$35,000) (S. Lopez)**

*The Commission may act to waive or not waive its review.*

Ms. Lopez: Good afternoon, Chair, thank you, and Molokai Planning Commission. So this is my last item for the day, and so this is located in Paniolo Hale. They are just doing interior renovations. There is no exterior or structural work that is proposed being outside of that, so everything would be internal, kitchen cabinets, basic bathroom and flooring, but I do have the consultant here today, Mr. Luigi Manera, if you do have any questions. Thank you.

Chair Jennings: Luigi, would you like to make -- okay. Any public? Seeing none, do I have a motion?

Mr. Lasua: Motion --

Chair Jennings: Motion to?

Mr. Lasua: Waive.

Chair Jennings: Waive it. Is there a second? Michael Drew. Any further discussion?

There being no discussion, the motion was put to a vote.

***It has been moved by Commissioner Lasua, seconded by Commissioner Drew, then unanimously***

***VOTED: to waive its review of the application.***

Chair Jennings: Motion carried.

Ms. Lopez: Thank you very much.

Chair Jennings: Okay. Thanks. Clayton?

**2. Agenda items for the future regular meetings**

- a. April 28, 2016 meeting**
- b. May 12, 2016 meeting**
- c. May 26, 2016 meeting**

Thank you, Mr. Chair. Moving to item 2, agenda items for future regular meetings, your next meeting is scheduled for April 28. We really don't have any items for that meeting so, in all probability, April 28 will be canceled but we will send you a confirmation that it is canceled. On May 12, we plan to have a meeting to provide a annual orientation workshop to the members, largely on the planning framework, your roles and responsibilities, you know, various legal requirements, the Sunshine Law, and ethics, rough proportionality, and rational nexus, you know, all those good things, and also about bed and breakfast home permits, short-term rental home permits, and state special use permits, which you may see frequently or may see from time-to-time, as well as some of the SMA assessments that ave been submitted. On May 26, we do have a public hearing item, which is on page 3 of 3 of your open Planning Department projects by TMK is the Lanikai, it's halfway down, it's the Lanikai short-term rental home permit application at, by Theresa Thomas, at -- on the east side, so we have a public hearing on that, and we also have training on coastal zone management. So those are the upcoming meetings.

I guess with respect to Commissioner Stephenson's comment on the order, sometimes it's hard to gauge, you know, given the agenda item, like, you know, Joe would -- I mean at the

Maui Planning Commission meeting on Tuesday, there were quite a few people who testified on Council Resolution 16-9, regarding agricultural tourism, so if you do have an applicant here but you have like 15 people that want to testify, you know, it's hard to prioritize. Now, the Commission can change the order of the agenda, amend the order of the agenda, you know, if they feel that there's not a whole lot of people that's going to testify on the public hearing items but, you know, there's Mr. Jones here who's going to wait for a while, until we get to his item, and the Commission can dispose of the item pretty quickly, they could amend the agenda. Questions on that?

- 3. Pending Molokai Applications Report generated by the Planning Department (Appendix A)**
- 4. Closed Molokai Applications Report generated by the Planning Department (Appendix B)**

Mr. Yoshida: Moving to item 3 and item 4. Attached to the agenda is a list of open Planning Department projects by TMK report and also a completed projects by TMK report. This has kinda been a standard report that we give to the Commission because Commissioners want to know like, oh, what's coming up or what's happening on the item, and some of them may be processed administratively, like FDP, flood development permits, you know, our zoning division is going to process administratively, but the Commission just wants to know what kind of permitting activity is occurring on the island so they kinda have a early warning as to what potentially may be coming up in the near or further than near future. So any questions on the existing report that was circulated with this agenda?

Mr. Stephenson: Yes, Clayton. Chair, may I?

Chair Jennings: Yes, you may.

Mr. Stephenson: Clayton, just one question. You said that the upcoming agenda item for the short-term rental home property called "Lanikai," you said that's scheduled for a public hearing. Is the reason that's scheduled for a public hearing that there were comments in objection received when the applicant sent out their application?

Mr. Yoshida: Sybil can answer that question.

Ms. Lopez: Thank you, Commissioner Stephenson. The reason why that it'll be a public hearing on May 26 for the short-term rental, there are more than one short-term rental home permitted within that 500-foot radius. It's located up on the east side where you have all of those multiple short-term rental homes right next to each other, so that's one of them that's in the midst of all of those, those cluster, so that is why you'll be having that public hearing before you.

Chair Jennings: Thank you, Rob. Thank you, Sybil.

**5. Meeting Day of the Week for the Molokai Planning Commission meetings**

Mr. Yoshida: If there aren't any other questions on either the open or closed Molokai applications report, I guess currently the Planning Commission meets on the second fourth Thursday of the month. Traditionally, since the Commission empaneled in 1989 from the 1988 charter amendment, they met on the second and fourth Wednesday of month, but because of the change, the limitation on transportation options on Wednesday, 'cause the boat doesn't operate on Wednesday, and, you know, due to the Lanai plane crash, and, you know, some people don't like to fly on small nine-passenger planes, it got moved to Thursdays, but the seniors have Mitchell Pauole on Thursday, so we meet here. If we have availability of additional transportation to the island either larger planes flying from Maui to Molokai, or the boat operates on Wednesday, then we may move the meetings back to Wednesday at Mitchell Pauole, but we'll give you at least about 45-day notice because that's our notification for public hearings, but that's kinda why the change occurred. When the Molokai Princess changed their schedule in September that they weren't going to -- they weren't operating on Wednesday, then we had to move the meeting day.

Chair Jennings: Thank you, Clayton. I have a question. Would you -- do you like meeting at 11:00, or is there another time, or later after lunch, or -- 'cause I've been, you know, it's just wanted -- I've been thinking about that and, as a Commissioner, I would just brought it up as a question what you thought about, you know, the 11:00? Any pros? Any no's? Or anything at all? Any discussion on that? Michael?

Mr. Drew: 11:00 is perfect.

Chair Jennings: Okay.

Mr. Racine: Is that also based on transportation to get the staff here in the morning and back again same day?

Chair Jennings: Richelle, she's ...(inaudible)... her head then yeah, I guess that's a yes to that question. I guess the only other question I have too, after we talked about the public on May 26, is it going -- is this facility going to be big enough to have that public testimony, and should we look at maybe getting a different facility, like might be up a Kualapuu or something? That's just a question that I have, and I'll leave it at that, and maybe, Clayton, you can look into that? Again, yeah, it's just a question. Sybil? Clayton? It's just a question I have.

Ms. Lopez: Well, as for public hearing, it's hard to gauge until we come into the public hearing, like for Maui Planning Commission, when the planning commission conference room is too small, they have easy access of going to the chambers, so for us, if we find that it's a standing room only, then we'd probably -- if it's Kalaniana'ole Hall would be bigger, then that would probably be our second, but if -- the question would be its availability. So it's hard to gauge and we wouldn't know until everybody shows up that day.

Chair Jennings: Yeah. Okay. Okay. Like I say, it was just a question I had, so was the question about the time, so okay.

Ms. Lopez: Thank you, Chair.

Chair Jennings: Thank you.

Ms. Thomson: Thanks. Well, I'll be here on -- it looks like we won't have a meeting April 28<sup>th</sup>, but I'll see you on May 12. The last meeting in May and the first meeting in June, I'll actually going to be on vacation, so the most likely, the person covering for me, will be available by phone, so probably what would work best, if you have questions on this or anything, you can feel free to contact me at anytime, you know, so if you're reading through your packets and you just don't understand something or you want to talk about it, give me a call or send me an email. So I wanted to be sure that you knew I wasn't going to be here just in case you needed something answered in advance.

Chair Jennings: Okay, is there further discussion on anything? Mr. Stephenson?

Mr. Stephenson: I would like to bring up just some food for thought to address a comment that was made from the public earlier about placing a capacity on the number of short-term vacation rentals. I know that that issue came up before the Molokai Community Advisory Committee, and I know the issue also came up before the Molokai Planning Commission during the community plan amendment process. I'd just like to point out that although that may be something that seems favorable to some, there's also the very stark reality that here, on Molokai, we don't have the same opportunities as Maui or Lanai have for visitor accommodations to accommodate overflow, so if we ever get to the point where we recommend and actually pass placing a capacity on the number of short-term rental houses here on Molokai, then that will most certainly set a finite limit on the number of visitors we could ever accommodate from that point into the future. So I just wanted to place that comment out there. Thank you.

Chair Jennings: Rob, thank you for your comment. Any other discussion or anything from anybody? I'd just like to say welcome to the both of you, and I've known you before, and you'll be a big asset to this Commission. And Sybil raised her hand and --

Ms. Lopez: I just wanted to add food for thought kinda on what Commissioner Rob was talking about in regards to the transient vacation rental and because Commissioner Diane brought up the Molokai Beach Cottage so that would probably be something to think about because you will be having, in the future, Molokai Beach Cottages that will be coming into this -- in front of this Commission, and I will try to touch more upon that when I do the orientation on May 12 regarding B&B and short-term rental, maybe we can discuss it there. Would that be okay?

**I. NEXT SCHEDULED REGULAR MEETING DATE: April 28, 2016**

**J. ADJOURNMENT**

Chair Jennings: Sybil, thank you. Thank you very much. Okay, if there's nothing else, I want to thank everybody, and again, thank our two new Commissioners, and meeting adjourned.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards & Commissions

**RECORD OF ATTENDANCE**

**Present**

Michael Jennings, Chairperson  
Douglas Rogers, Vice-Chairperson  
Wiliama Akutagawa  
Michael Drew  
Lawrence Lasua  
Marshall Racine  
Robert Stephenson  
Diane Swenson

**Excused**

Billy Buchanan

**Others**

Joseph Alueta, Administrative Planning Officer  
Clayton Yoshida, Planning Program Administrator  
Sybil Lopez, Staff Planner, Molokai  
Richelle Thomson, Deputy Corporation Counsel

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM D-1  
MAY 10, 2016**

**DRAFT**

**D. UNFINISHED BUSINESS**

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 15-139 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill relating to transient vacation rentals in planned developments. (J. Alueta) (Public Hearing conducted on April 12, 2016) (Commissioners: Please bring your Department Report with you to the meeting.)**

Mr. Joe Alueta: Good afternoon, Commissioners. Again, my name is Joe Alueta. I'm the Administrative Planning Officer. As I indicated before, the last time the two ways in which you can amend Title 19, one is by an amendment done by the Administration or by the Director which I will come...draft an ordinance and bring it before you. The other methodology is a Council initiated through a resolution and that's what you have before you today. At the last, I guess last month we brought three bills before you, we were able to get through two. You deferred action on this item dealing with planned developments which older planned developments that were approved prior to a certain date and consisting of certain zoning as well as construction of certain dwelling types would be allowed to operate short-term rentals or TVRs or would be grandfathered into allowing for transient vacation rentals. Again, this ordinance doesn't specifically name any planned development. About a couple years ago we had one that we called unofficially it was called the Puamana Bill because basically based on all of the set criteria that was outlined it applied only to Puamana. This time with some tweaking of the language right now we believe that the only planned development that would be impacted or will be allowed to do it that met the criteria that the Council has narrowly crafted in the language would be Alaeloa which is the thing. I believe it was Commissioner Robinson who wanted to know where it was because that's the kind of information when you deal with, primarily when you're dealing with STRs or B&Bs and surrounding properties and whatnot. Again, this is not per se that type of permit. This is a bill to amend Title 19 but I have provided you with some aerials as well as some maps for that I've provided you.

So this is a community plan map so you can see that it's zoned...community planned for single family. The project's Alaeloa. Again, the bill doesn't specifically list any project but this is the only one that we think would be impacted deals with these two properties that's actually one project. It's probably better to see it on the aerial photo. Provided you with two different aerials. You can see that it is a shoreline property. It's pretty well spaced out. You can see lots of open space as a requirement of the planned developments, 20 percent open space. You can see that they do have...there's two, two parcels that connect to it and they have like a little pool...I'm not sure if that's a single...somebody's house or but they have ocean front property pretty well set back on a rocky shoreline with one small rocky/sandy bay there.

Other questions with regard to...that were brought up. Is why the reso? Again, I do not know the purpose. Again, there was no committee report which explained that. So that would require a little more ESP skill sets than I have so I don't know what the rational was.





Other questions with regards to notice, whether or not there was any notice of violations or notice of warning? Yes, we still have one notice of short-term rental enforcement. A case that is open that was opened in May of 2015. That case is still open. No work has been really been done on it because there is again a current resolution that potentially would resolve...does not necessarily resolve the violations. The comments from KIVA which is our tracking system which are enforcement agencies, enforcement arm uses to track and record their information basically all it says is that this RFS is encompassing all of Alaeloa, two RFS already exists for the units for in the complex they will be added to this for extra information. So they added the certain...from RFSs from 2014 'cause they have a 14 number. In doing the research on these other RFSs I found that there are multiple short-term rentals in Alaeloa complex. AOA has been sent notice of warning based on this evidence. So the association has been sent the warnings.

The other information you requested with regards to beach access that's why I was trying to bring up some type of Google street view. Based on our research the only access that we found right now is off of Hui Road E which is to the south, just south of this property. It might also be indicated on your map. So there is a beach access on that side. I did, again, street view, I was not...I did not have time to drive out to the west side.

A shoreline access study that was done as part of our General Plan and Community Plan process, the research firm that conducted the study indicates that there is a shoreline access at this Alaeloa complex. Google...when I used Google Street View I do show gates but all of them are...all of the access points to this project is a gated community. That doesn't mean that there's No shoreline access there appears to be a pedestrian gate so there could be that there is a...but there is no per se, I did not indicate any sign that says shoreline access. There wasn't a County of Maui shoreline access one. Again, on the one just to the south of this in the area there, there is a shoreline access sign as well as you can see there's a gate there but there's a sign there that shows that you would be able to pedestrian. The public would be able to access the shoreline. But again, it's south of this project, just south of that project. That's the nearest shoreline access I can confirm based on the signage, but again, the study does indicate that there is one. I would again, this bill is just a generic bill. It is not property specific. So it would be nearly impossible or it would not be recommended to try to attach any type of condition regarding shoreline access to this type of building at this point in time. That's just my own, again, from a planner aspect I think that would be...it's gonna be a little cumbersome to do so. The other three commissions that did review it just passed it on with no comments. That's what Lanai and Molokai basically did because again, it does not impact them at all.

So again, the Resolution primarily we just bring it to you for your comments and recommend to you. I think we've previously went over this extensively at the last meeting as a refresher course. We don't like to target project specific resolutions. However, from the aspect of does it have an impact on purely affordable housing not really. Does impact housing units? Probably how it trickles down from an economic standpoint it probably has a minor trickle-down effect on as far as rentals goes, but again, this is just dealing with grandfathering in or allowing for short-term rentals at planned developments and that's how the Council has chosen to draft this bill at this time. Do you have any comments or questions at this time?

Vice Chair Medeiros: We will now open this for testimony if anybody would like to speak on this? Seeing none, recommendation?

Mr. Carnicelli: I have a question.



Vice Chair Medeiros: After the recommendation.

Mr. Carnicelli: Sorry, sorry.

Mr. Alueta: The Department is recommending approval of the proposal to the County Council. The Commission has the following options again is to approve the bill to the Maui County Council, recommend approval of the proposed bill with amendments to the Maui County Council, recommend denial of the proposal to the Maui County Council or vote to defer action on the proposal in order to gather more specific additional information.

Vice Chair Medeiros: Okay, Chair will entertain a motion before the discussion. Oh, question?

Mr. Carnicelli: So just for clarification this even though it's a broad resolution it's really only affecting the Alaeloa?

Mr. Alueta: Based on our research that's yes, yes.

Mr. Carnicelli: Okay, I mean I'm ...okay.

Mr. Alueta: It doesn't open it up to any new planned developments. It doesn't allow someone to change their designation. It basically have to meet the criteria and one of them is like it has to be built prior to 19 like 80 something and—

Mr. Carnicelli: Right. Does it matter if it's leasehold?

Mr. Alueta: If it is leasehold, yes there is no language like that...(inaudible)...

Mr. Robinson: Can you repeat the recommendation on what we're going to approve?

Mr. Alueta: We did recommend approval of it.

Mr. Robinson: No, but what are we recommending approval? I know it's accepting—

Mr. Alueta: The bill.

Mr. Robinson: ...(inaudible)...but what is the ...(inaudible)...

Mr. Alueta: The approval of the resolution as the Council has presented. Basically as on the Exhibit 1, if you look on Exhibit 1 of the memo report.

Mr. Robinson: I don't have my paper from the last meeting.

Mr. Alueta: Oh okay. Basically there's a minor...this is amending 19.32 of the Maui County Code which is the Planned Development section. It does some minor language changes but the main crux of the amendment is to add the language of...include duplexes to Criteria C and to...a combination of single family dwelling and duplexes or multi-family dwelling units. And so basically Section 2 of 19.32 (i)(2) and it says, planned development shall meet all of the following criteria. Planned development received a final approval or as provided in this chapter and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981. The planned development is located on a parcel with a least some



residential district zoning. The planned development consists only of (i) duplexes or multi-family dwelling units or (2) combination of single-family dwelling units and duplexes or multi-family dwelling units. And so based on this language that's been added, the only two complexes that meet that criteria right now would be Puamana and now Alaeloa.

Mr. Robinson: And Alaeloa right now has been operating as a TVR but we told them to just stop until this is passed or previously it was let's say like Puamana ... (inaudible)...

Mr. Alueta: Yeah, it was not an allowed use and there was always a argument of whether or not and so therefore, there was some RFSs back in... RFSs in 2014 notices of warnings went to the condominium complexes. As you indicated it was a leasehold property therefore it went to the property owner which technically the property owner is the condominium association has the long term lease. They were sent the notices of warning or violations. And then no action has gone forward because I guess this resolution came down as to whether they have stopped I don't know. I don't think so. I think if you go online you will find that they continue to operate as a TVR or some of the units operate.

Mr. Robinson: Just to verify there's no applicant. It is the Council itself decided to just to make a resolution without these people asking for it?

Mr. Alueta: I'm not touching that one.

Mr. Robinson: There's no applicant.

Mr. Spence: These people did ask, talk to their council members and that's why this reso is here.

Mr. Robinson: Instead of applying they just went to the Council?

Mr. Spence: Yeah, and the argument is is they're arguing that they've always...they were grandfathered in. They've always been renting since the day it was built. And things changed, that the law changed on them they should be allowed to continue it and so that's why...that's what happened with Puamana. So Puamana was...it really was short-term rentals at one point with some residences there, residents living full time there and Council passed an ordinance, actually looked back into some things and essentially they're recognized grandfathered in and that's what this reso is saying for Puamana and now it's being extended to any other planned unit developments that meet this criteria.

Mr. Carnicelli: If I could just opinion, they should have been at the table when we did the Puamana thing and they kinda just blew it off? And so now it's kinda like oops, we should be included as well it's essentially the same as Puamana, it's been residential, it's always been TVRs. It's, you know, I mean it's kinda like they just sorta missed and now it's kinda coming back full circle and that's my opinion.

Mr. Spence: Yes.

Mr. Alueta: I think and I was there at Puamana and primarily what happened was it was bantered around to have it included. At the time, not every single resident at Alaeloa was in favor of it, but as time goes on people, ownership changes and I think that's where those who were opposed to it are no longer there and so that's where now they're able to get some kind of



consensus to get this cleared up for them because I mean, there was an amendment on the floor two, three years ago and then they pulled it back and so and it only allowed for Puamana. So this will basically clarify that they are allowed to do it.

Vice Chair Medeiros: Chair recognized Hedani.

Mr. Hedani: Joe does this affect Wailea? Wailea is a planned development.

Mr. Alueta: Correct, the date doesn't, the time frame doesn't grant Wailea in. The dates does not allow for...grant Wailea to be in 'cause this is for prior to 81. I think Wailea started like 88 is the first developments.

Mr. Hedani: The request for service that came in, those came in from residents of Alaeloa?

Mr. Alueta: I don't know. I don't know who filed the complaint. It was in 2014 is when it came in.

Vice Chair Medeiros: Chair recognizes Robinson.

Mr. Robinson: Director it's not that I have...I don't have a problem with this development. I'm just trying to get what's happening here. So does a normal...say person who moved to the mainland 10 years ago came back and go gee, I didn't know you guys changed the laws about TVRs, can he go talk to a Council person and get a resolution to try to figure out his or is the path supposed to be through the Maui Planning Commission? I mean is this a, is this a left-turn instead of going straight?

Mr. Spence: First off, I think they're going...they went and spoke to their Council members as a group, not certainly not just one I don't think the Council would support that. If...they're arguing that they've always done this so why change it? And that's not answering your question I know.

Mr. Robinson: ...(inaudible)...

Mr. Spence: Well, the thing...when the Council, they're proposing to change law to put these specific dates in which part, which ordinance ...(inaudible)...

Mr. Alueta: 19.32 the planned developments.

Mr. Spence: Okay, so they're planning to put...to change that section of Title 19 to include language that planned unit developments built within this certain time period they can continue to do vacation rentals. So the way the Charter reads all land use ordinances, proposed...all land use ordinances are supposed to go to the Planning Commission for review and comment. Okay, and then you make a recommendation to the County Council on that. So when they pass a reso saying we wanna change this law, they send it down for your review and Lanai and Molokai and you make a recommendation and we send it back up.

Mr. Robinson: But we know that this is specifically for a certain group of people?

Mr. Spence: Well we know for...





Mr. Robinson: Because it's post-dating anybody that could be included in this. So people in the future can't follow this law because it says, it's retroactive law.

Mr. Spence: Yeah. Yeah, it's very narrow. It is general. There's a possibility there's another planned unit development that we don't know of that that's the reasoning behind the wording of the reso. And I see Mr. Hopper—

Mr. Hopper: So the whole purpose behind this is that one point this was allowed and then it became not allowed. I think 1981 is the date that's picked 'cause that's when it became no longer allowed. The issue with these, it was with Puamana at least is that they're already established, you're entitled to operate as a nonconforming use. Each unit has to establish that they didn't...did not cease that use for 12 consecutive months. So you basically have to show that every year since 1981 you operated continuously as a short-term rental home and that burden became difficult for people at Puamana so I think as a legislative solution they proposed to have the area say if you operated prior to 1981...rather than saying every single unit is gonna have to prove that they continuously operated, that they're gonna say the whole area can operate as a TVR. It's a legislative issue that you can, you know, consider. It would allow this area to be used as TVRs in perpetuity going forward as an outright permitted use. The justification for it would presumably be that the law changed. They were using it as TVRs and the law changed and now it's very burdensome for them to prove that they continuously operated during that entire time. It's a legislative option for the Commission to consider. Or they could eventually come in and get a change in zoning to Hotel or they could come in and get permits on a per unit basis. So there's a variety of options, but I think this is something that the Council and I'm not gonna advocate on their behalf because I don't know exactly what their justification was but that's I think what was behind the Puamana bill and kinda the reasoning behind doing this, doing this legislatively.

Vice Chair Medeiros: Any more questions? Chair will entertain a motion. Chair recognizes Hedani.

Mr. Hedani: Joe, do you have a recommendation?

Mr. Alueta: Yes, we did recommend approval of it.

Mr. Hedani: Move that we recommend approval to the Council.

Mr. Carnicelli: Second.

Vice Chair Medeiros: Moved and seconded. Discussion? Chair recognizes Robinson.

Mr. Robinson: I'm not for or against this development or the resolution. I just think it's special interest legislation. I think it's people finding a way around it instead of doing like every other person would and they've pull a application and they come to Council, and to our Commission and we say yea or nay. I think this is...like I said I think this, you know, special legislation for people who have a special connection or a group or with a legislator and I don't like that type of legislation. Thank you.

Vice Chair Medeiros: Chair recognizes...oh, anybody else? It's been my experience you know, I sorta agree with Robinson even though I'm gonna vote for the resolution. You know, and my experience is sometimes the shortest distance between two points is the other way around.



You know, and this is what is happening. But the bottom line you gotta get from Point A to Point B. That's why if it comes down to my vote I will support the motion. Okay, any other discussion? Chair recognizes Hudson.

Mr. Hudson: I will probably support the motion too but I agree with Mr. Robinson that I don't think this is the right way to do something. I think this is a roundabout way to do it. But the way I look at it is that if back in 1981 I bought a green car and green cars were okay to drive around then they changed the law and green cars are no longer cool to drive around but I'm gonna keep my green car 'cause it's a green car and I like the color green and then they say well now we're gonna enforce the color green and you're gonna have to do something, then yes, I would go see my legislators to try and change it because this is what I had to begin with and this is what it should be. I don't necessarily agree with the way that we got here, but I do believe we gotta get to Point B from here.

Vice Chair Medeiros: Yes. Any....Chair recognizes Hedani.

Mr. Hedani: Basically I think in this particular case if it's only a couple of people that are within the project that have been doing it all along it may be unreasonable to try to force them into a reapplication of the entire thing. And the fact that they got it through a Council resolution to come us basically tells me if the entire people in the PUD were against it they would have filled this room and let us know about it.

Vice Chair Medeiros: Chair recognizes Director.

Mr. Spence: And I apologize that we're in the middle of a motion. It is kind of, kind of a too bad nobody is here from the association to support this. They would have provided some answers and really shown and just a little bit on grandfathering so you have a lot of owners here and you've had a lot of changed owners since 1981 and it becomes...you know I do believe that most of these were probably short-term rented over the last 30 plus years and when you get a complaint or you get you know something else comes in it becomes more and more difficult as time goes on to prove that you're grandfathered in. You know you have several owners. You can go back to that original owner, you know, two owners ago maybe they're passed on or those tax records that would prove that they have been renting nonstop from...you know, that's the nature of being grandfathered you have to show a continuous use with no more than a one-year break in that use. So if you started in 1981 started renting and all of sudden in 2003 somebody got sick, you know had to sell, something like that, the short-term rental was stopped for a year and one day or you had you know your cousin's garage burned down and all your tax records were in there it becomes very hard to prove that the short-term rental or whatever grandfathered use has been continued. So I would guess that there's a quite a few homeowners in this situation in this particular development or other planned unit developments that fall under this category. So it is, it is helping them out for a use that pretty, I would imagine pretty prevalent in this area.

Mr. Hedani: The other way to look at it is if everybody else in all of the other neighborhoods have to suffer with TVRs then the planned developments should suffer too.

Vice Chair Medeiros: Cold blooded I like that. Any other comments?

Mr. Robinson: You know this is kinda what we have with Pineapple Hill and this planned development like you said and you know a certain circumstance and again, it's not that I



wouldn't have allowed these people to be TVRs if they came...(inaudible)...process. I just think that when we're dealing with TVRs we have to be cognizant that every time we approve one we're turning somebody into an instant millionaire. You know it's not a meter for old time resident and you know, we're trying to make sure they don't lose their house. This is, this is them being able to buy two, three houses ...(inaudible)...Napili Point and you know, I think they have their rights and ...(inaudible)...but that doesn't mean that I'm gonna feel sorry for them. It's just you know, that's the way...but you made a good point with they've got through the Council you know so this is, you know, this is it went the opposite way but it still got, you know it would have ended up through them anyway so it did it, I just wish they might have just done it, you know, like every...I like to treat everybody the same that's all. Thank you.

Vice Chair Medeiros: Any other comments? Call for the vote. Director would you repeat?

Mr. Spence: The recommendation is to or the motion is to recommend approval of the ordinance to the County Council.

Vice Chair Medeiros: Okay, all those in favor raise their hand?

Mr. Spence: So that's five ayes.

Vice Chair Medeiros: Motion passes.

Mr. Spence: Well, we should ask opposed.

Vice Chair Medeiros: Opposed?

Mr. Spence: That's two opposed.

Vice Chair Medeiros: Motion passes.

Mr. Alueta: Thank you, Commission.

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

**VOTED: To Recommend Approval of the Ordinance to the County Council as  
Recommended by the Department.  
(Assenting – W. Hedani, L. Carnicelli, L. Hudson, S. Duvauchelle,  
S. Castro)  
(Dissenting – K. Robinson, R. Higashi)  
(Excused – M. Tsai)**

