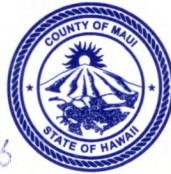


ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director

RECEIVED



2016 AUG 30 AM 10:16

OFFICE OF THE
COUNTY CLERK
COUNTY OF MAUI
DEPARTMENT OF PLANNING

August 25, 2016

RECEIVED

2016 AUG 25 AM 10:00

OFFICE OF THE MAYOR

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

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

APPROVED FOR TRANSMITTAL

Mayor Date 8/29/16

Dear Chair White:

SUBJECT: RESOLUTION NO. 16-09 ENTITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO REGULATE AGRICULTURAL TOURISM ACTIVITIES IN THE AGRICULTURAL DISTRICT."

This is in response to your letter dated February 9, 2016, transmitting Resolution No. 16-09 entitled "Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Regulate Agricultural Tourism Activities in the Agricultural District".

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	Voted to recommend against the proposal and for the Council to note the Department of Planning's and other agencies concerns.
Molokai	April 14, 2016	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.
Lanai	May 18, 2016	Voted to recommend, to County Council, denial of the proposed bill to the Maui County Council.

ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

Honorable Mike White, Chair
August 25, 2016
Page 2

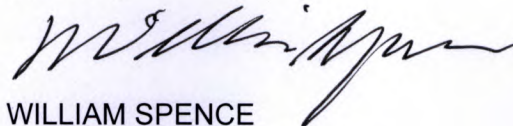
Attached for your review are the following documents:

1. The Department of Planning's Memo Report with Agency comments dated April 4, 2016;
2. Office of Planning's letter dated April 7, 2016;
3. Minutes of the Molokai Planning Commission meeting dated April 14, 2016;
4. Minutes of the Lanai Planning Commission meeting dated May 18, 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 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

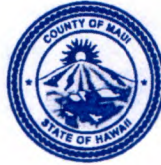
Project File
General File

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ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

April 4, 2016

MEMO REPORT

To: Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission

From: William Spence
Planning Director

SUBJECT: **RESOLUTION NO. 16-09 ENTITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO REGULATE AGRICULTURAL TOURISM ACTIVITIES IN THE AGRICULTURAL DISTRICT."**

The Department of Planning (Department) received the above noted resolution on February 9, 2016 from the Maui County Council. Pursuant to Sec. 19.510.020(B)(2) of the Maui County Code (MCC), the deadline for the Planning Commissions to transmit comments back to the Council is June 8, 2016. Attached, for your use, is a copy of Resolution No. 16-09 (Exhibit 1). No committee report was remitted.

The proposed bill would amend MCC Chapter 19.30A to add definitions and standards for agricultural tourism activities and Chapter 19.36A to add parking standard for the new uses.

The Resolution was transmitted to agencies on February 9, 2016. Below is a summary of the comments:

Agency	Date	Summary	Exhibit
Fire and Public Safety	3/20/16	Concern over the use of unpermitted structures. Need for provision that buildings used for this activity show approved paper work.	2
Department of Water Supply		No comments received at this time.	3
Department of Public Works		DSA requests that any overnight accommodations be approved with a B&B permit or STRH permit.	
Police Department		No comments received at this time.	
Office of Economic Development		No comments received at this time.	

Office of Planning (OP)		No comments received at this time.	
Department of Business Economic Development and Tourism (DBEDT)		No comments received at this time.	
Department of Health, Maui	3/10/16	Any activity that involves making and/or selling of foods must comply with HAR Title 11, Chapter 50, Food Safety code.	4
Department of Health, Honolulu		No comments received at this time.	
Land Use Commission		No comments received at this time.	
Office of Hawaiian Affairs	3/24/16	Supports the protection of agricultural lands for agricultural uses and initiative to support local food production. The proposed ordinance does not appear to establish enforceable standards to ensure that agricultural tourism and agricultural tourism activities are conducted consistent with uses permitted in HRS 205-2(11) and (12). Ordinance may exacerbate problems relating to the lack of affordable housing by contributing to the rental housing shortage and rising property values. Expansion of uses should be narrowly tailored and include strong and practical enforcement. OHA makes strong recommendations on amendments to the proposed ordinance that would make it consistent with State law.	5
Kula Community Association		No comments received at this time.	
Makawao Community Association	3/24/16	No comments	6
Kihei Community Association	2/28/16	Support resolution and policies that will make agriculture viable in Maui	7
Paia Town Association		No comments received at this time.	
Maui Chamber of Commerce		No comments received at this time.	

The Department's primary concern with the proposal is that it is not consistent with HRS 205-2(11):

Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this

paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; or

HRS 205-2(12): Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2.

Further, the Department does not believe the proposal is consistent with HRS 165-2 which defines Farming operation as follows:

"Farming operation" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; 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 but shall not be limited to:

- (1) Agricultural-based commercial operations as described in section [205-2(d)(15)];*
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;*
- (3) Operation of machinery and irrigation pumps;*
- (4) Ground and aerial seeding and spraying;*
- (5) he application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and*
- (6) The employment and use of labor.*

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

These concerns are highlighted by the Office of Hawaiian Affairs comment letter (Exhibit 5).

Other Department concerns are as follows:

Proposed Section 19.30A.077(C)(8)(b) states *"If the agricultural tourism activity will be accessed by a private easement, the planning director shall have the discretion to require additional information documenting the easement and improvements as necessary to support the agricultural tourism activity use."* However, the bill does not provide any criteria for the director use to impose such improvements

Propose Section 19.30A.077(D) is titled Enforcement Report. The section indicates that it is a violation if the operation does not register and that the Department is to maintain a list of registered agricultural tourism activities. It further states that a report by the Director shall be given to the planning commissions. However, it does not provide a purpose for the registration or the report.

Proposed Section 19.30A.077(E) is entitled Parking. This section requires that parking be provided pursuant to Chapter 19.36A then indicates that if parking is violated on three separate occasions in a year, the agricultural tourism activity will result in a suspension until a Special Use permit is obtained. The Department finds this language to be inappropriate and confusing.

Recommendation and Options

The Department is not in support of the proposed bill. The language of the bill is inconsistent with State law. Although the proposal is for operators to only register with the Department, it puts the Department in the awkward position of having to confirm the accuracy of the information. At best the bill would create confusion with the general public and land owners, as the Department would require a State Special Permit to conduct much of the activities proposed.

For the bill to be consistent State law, the agricultural tourism activity would need to be accessory and secondary to a principal agricultural use. Further, the use needs to be accessory to a **commercial** farming operation as defined by HRS 165-2.

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 16-9\MemoReport to Commission.doc

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

WHEREAS, agricultural tourism activities are permitted uses within the State Agricultural District pursuant to Sections 205-2 and 205-5, Hawaii Revised Statutes ("HRS"); and

WHEREAS, Section 205-2(d)(11), HRS, includes agricultural tourism within the State Agricultural District as an accessory use to a working farm, provided a county adopts ordinances regulating agricultural tourism activities pursuant to section 205-5, HRS; and

WHEREAS, Section 205-2(d)(12), HRS, allows agricultural tourism activities, including overnight accommodations of 21 days or less for any one stay within a county, within the State Agricultural District, as accessory uses to a farming operation, provided a county adopts ordinances regulating the activities pursuant to section 205-5, HRS; and

WHEREAS, the Council is considering a proposed bill to amend Title 19, Maui County Code, to implement Sections 205-2(d)(11) and (12), HRS, to allow agricultural tourism activities in the Agricultural District; and

WHEREAS, the implementation of Sections 205-2(d)(11) and (12), HRS, will promote agricultural development in the County, while ensuring the preservation and protection of agricultural resources; and

WHEREAS, allowing agricultural tourism activities will support the agricultural character of the County's economy and lifestyle; now, therefore,

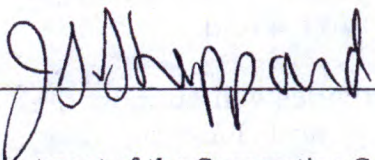
EXHIBIT - 1

Resolution No. 16-9

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 AMENDING TITLE 19, MAUI COUNTY CODE, TO REGULATE AGRICULTURAL TOURISM ACTIVITIES IN THE AGRICULTURAL DISTRICT," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, 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, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
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 "J. Shippard", is written over a horizontal line.

Department of the Corporation Counsel
County of Maui

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
TO REGULATE AGRICULTURAL TOURISM ACTIVITIES IN THE
AGRICULTURAL DISTRICT

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

SECTION 1. Purpose. The purpose of this ordinance is to implement Sections 205-2(d)(11) and (12), Hawaii Revised Statutes, to regulate agricultural tourism activities as accessory uses to an active agriculture operation within the County agricultural district, subject to appropriate restrictions and standards.

SECTION 2. Section 19.30A.015, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Agricultural tourism” means a commercial activity conducted on the site of an active agriculture operation for the enjoyment, education, or involvement of visitors.

“Agricultural tourism activity” means agricultural tourism that promotes, and does not interfere with, surrounding agriculture operations. Agricultural tourism activities include a ranch or farm stay involving overnight accommodations of twenty-one days or less for any one stay within the county; horseback riding; hunting; fishing; vineyards; distilleries; U-Pick farms or gardens; farm or ranch tours; arboretums and botanical gardens; hiking; mountain biking; fitness or health activities; petting zoos; animal rescue facilities; labyrinths or mazes; la‘au lapa‘au or heritage activities; lei making, flower arranging, basketry, or other agriculture-related education or craft classes; agriculture industry education; archery; adventure and challenge courses; and cultural or living history activities.”

SECTION 3. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

"19.30A.077 Agricultural Tourism Activities. A.

Ownership. An agricultural tourism activity within the agricultural district must be owned and operated by a producer or the producer's designated agent.

B. Registration. The producer or producer's agent must register the agricultural tourism activity with the planning department prior to the beginning of the activity's operation. A registration is non-transferable and shall expire three years from the date of issuance. After an agricultural tourism activity is registered for a particular tax map key number, all subsequent agricultural tourism activities on that tax map key number shall require a separate registration.

C. Form. An agricultural tourism activity registration form shall include the following information:

1. The name, address, email, and telephone number of the producer and the producer's designated agent, if any;

2. Document verifying the producer is the owner, lessee, or licensee of the lot on which the agricultural tourism activity will be located;

3. The name, physical address, mailing address, email, and telephone number of the active agriculture operation associated with the agricultural tourism activity;

4. Copies of the general excise tax license and transient accommodations tax license, if applicable, for the agricultural tourism activity;

5. A description of the agricultural tourism activity;

6. A description of any services, activities, or amenities provided at the location of the agricultural tourism activity that are not agricultural tourism activities;

7. A map containing the tax map key number and a clear depiction of the real property where each agricultural tourism activity is located;

8. A description of public access to the location of the agricultural tourism activity, including an indication of whether the access will be by a public road or a private easement and, as applicable:

a. If the agricultural tourism activity will be accessed by a private easement, the map required by this section shall also contain the following information:

i. The access road for the agricultural tourism activity;

ii. The access road surface material;
and

iii. Houses and their proximity to the access road;

b. If the agricultural tourism activity will be accessed by a private easement, the planning director shall have the discretion to require additional information documenting the easement and improvements as necessary to support the agricultural tourism activity use;

9. Evidence of farm plan approval by the planning department;

10. A copy of a processed zoning and flood confirmation form;

11. Proof of commercial general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and automobile liability insurance with a combined single limit of not less than \$1,000,000, listing the County of Maui, its departments, agencies, officers, directors, employees and agents as additional insureds; and Workers Compensation insurance as required by law, that covers the agricultural tourism activity. The producer shall provide a certificate of insurance within 30 days of registration approval, and must notify the planning department of any cancellation or material change of the insurance, such as a reduction in coverage, within 30 days of the date of such cancellation or material change. The planning director may require additional insurance coverage as may be reasonably necessary considering the risk of the particular agricultural tourism activity;

12. The signature of the producer, certifying acknowledgment of and intent to comply with the requirements of this chapter and all other applicable laws and regulations, including those of the state department of health and the department of public works;

13. A copy of all applicable regulatory licenses, permits, and certifications required by county, state, and federal regulations;

14. A statement of the days and hours of operation of the agricultural tourism activity;

15. An acknowledgment signed by the producer that the agricultural tourism activity use shall automatically terminate upon the cessation of the principal active agriculture operation; and

16. Any additional information required by the planning director in the applicable rules.

D. Enforcement; Report. Failure of a producer to register an agricultural tourism activity as required by this chapter may be enforced pursuant to chapter 19.530 of this title. The planning department shall maintain a list of all agricultural tourism activities registered pursuant to this chapter. On an annual basis, the planning director shall notify the appropriate planning commissions of the agricultural tourism activities registered with the planning department pursuant to this chapter. The report shall be acknowledged by the planning commissions and include the name of the producer, the location and type of agricultural tourism activity, verification that the operation is in compliance with the requirements of this chapter, and a summary of complaints and their disposition received relating to the operation of agricultural tourism activities, if any.

E. Parking. An agricultural tourism activity shall provide parking as required by section 19.36A.010 of this title. In addition to any other penalties or remedies under this code, a violation of the provisions of section 19.36A.010 related to the agricultural tourism activity, on three separate occasions within a one year period, shall result in a suspension of the agricultural tourism activity until a special use permit is obtained pursuant to section 19.30A.060.

F. Additional requirements. Certain agricultural tourism activities shall be subject to additional requirements as follows:

1. Overnight stays. For ranch or farm stays involving overnight accommodations of twenty-one days or less for any one stay within the County, the producer must submit a short-term rental home permit approved pursuant to the provisions of chapter 19.65 of this code. In the event that the planning director determines the short-term rental home does not coexist with an active agriculture operation, the producer shall obtain a State special permit as required by section 19.30A.060(13) of this chapter.

2. Hunting. All persons hunting on private land as a part of agricultural tourism activity must possess a valid hunting license.

3. Accessory facilities. A commercial agricultural structure that is part of an agricultural tourism activity shall meet the requirements of section 19.30A.072 of this chapter."

SECTION 4. Section 19.30A.015, Maui County Code, is amended by amending the definition of "Active agriculture operation" to read as follows:

“Active agriculture operation” means a commercial or subsistence agricultural, silvicultural, or aquacultural facility, activity, or pursuit, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; 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.”

SECTION 5. Section 19.30A.050, Maui County Code, is amended to read as follows:

“19.30A.050 Permitted uses. The following uses and structures shall be permitted in the agricultural district provided they also comply with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.
4. Animal and livestock raising, including animal feed lots and sales yards.
5. Private agricultural parks as defined herein.
6. Minor utility facilities as defined in section 19.04.040 of this title.
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.
8. Solar energy facilities, as defined in section 19.04.040 of this title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area.
2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings.

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of section 19.36A.010.

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes

on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter. All other open [Open] land recreation uses or structures [not specifically] are prohibited unless they are permitted by [this] subsection [or by subsection] 19.30A.050(B)(14), [19.30A.060(H) 19.30A.060(A)(7), or 19.30A.060(A)(14). [shall be prohibited; certain] Certain open land recreation uses or structures may also be required to obtain a State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 of this title that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$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 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

12. Parks for public use, not including golf courses and not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds.

13. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

14. Agricultural tourism activities, subject to the applicable restrictions in section 19.30A.077.

15. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter."

SECTION 6. Section 19.30A.060, Maui County Code, is amended to read

as follows:

"19.30A.060 Special uses. A. Permit required. The following uses and structures shall be permitted in the agricultural district if a special use permit, [pursuant to] as provided in section 19.510.070 of this title has been obtained; except that if a use described in this section also requires a State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the [state] State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040 of this title.
6. Telecommunications and broadcasting antenna.
7. Open land recreation uses, structures or facilities [which] that do not meet the criteria of subsection [19.30A.050(B)(11)] 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. Mining and resource extraction.
11. Landfills.
12. Solar energy facilities that are greater than fifteen acres.
13. Short-term rental homes, subject to the provisions of chapter 19.65 of this title, that do not qualify as accessory uses under section 19.30A.050(B)(14); provided that[,] the applicant need not obtain a County special use

permit [pursuant to] as provided in section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special [use] permit, [pursuant to] as provided in section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.

14. Agricultural tourism activities that do not meet the standards or restrictions of section 19.30A.050(B)(14).

B. State permit required. Home businesses shall be permitted in the agricultural district if a State special permit as provided in chapter 205, Hawaii Revised Statutes, is obtained; provided that, the home business shall comply with the provisions of chapter 19.67 of this title, and shall also obtain a County special use permit, if required by chapter 19.67 of this title."

SECTION 7. Section 19.36A.010, Maui County Code, is amended

to read as follows:

"19.36A.010 Designated number of spaces. Unless otherwise provided in this chapter, the following minimum numbers of accessible off-street facilities for the parking of self-propelled motor vehicles shall be provided on private property in connection with the use of any land, or the erection or remodeling of any building or structure. The number of off-street parking spaces required shall not be less than the sum total of spaces of the number of required parking spaces for each component use of land, building, or structure hereinafter specified:

USE	MINIMUM PARKING RATIO
Accessory dwelling	One parking space for each dwelling unit.
<u>Agricultural tourism activities as defined in section 19.30A.077 of this title</u>	<u>One parking space for each 10,000 square feet of gross floor area used principally for the agricultural tourism activity, but not fewer than three spaces dedicated for agricultural tourism use in addition to any other parking required for the property under this chapter. Separate bus parking may be required at the discretion of the planning director pursuant to an approved farm plan.</u>

Apartment house, apartment, apartment-motel with kitchen facility in room	Two parking spaces for each unit; provided that, two parking spaces assigned to a dwelling unit, or allocated for employee parking, may be situated in tandem thereby allowing two vehicles to park end to end.
Auditorium, theater, stadium, bleachers	One parking space for every six seats.
Banks and medical and dental clinics	One parking space for every [three hundred] <u>300</u> square feet of building; provided that, the minimum shall be three parking spaces.
Bed and breakfast home	One parking space for each bedroom used for bed and breakfast home use, in addition to any other parking space(s) required by this section for dwellings not used for short-term rental. Stalls may be situated in tandem.
Bowling alley	Five parking spaces for each alley.
Business building	One parking space for every [five hundred] <u>500</u> square feet of floor area of building; provided that, the minimum shall be three parking spaces.
Church, place of worship	One parking space for every [one hundred] <u>100</u> square feet of floor area of building.
Clubhouse, private club	One parking space for every [two hundred] <u>200</u> square feet of floor area of building.
Commercial agricultural structures as defined in section 19.30A.072 of this title	One parking space for every [two hundred] <u>200</u> square feet of floor area of building or, for farmer's markets, one parking space for every [two hundred] <u>200</u> square feet of retail floor space; provided that, the minimum shall be two parking spaces; further provided that, for agricultural food establishments, the parking requirements for restaurant, bar,

	nightclub, and amusement facilities shall apply.
Convertible apartment, hotel and apartment/hotel units, i.e., single units capable of being utilized as two or more units	An additional one parking space for every three convertible units shall be provided.
Day care facility	One parking space for each classroom.
Domestic type business in home	One parking space for each business.
Golf course	Three parking spaces for each hole in the course.
Golf driving range	Four parking spaces for each acre.
Hospitals	One parking space for every three beds.
Hotel	One parking space for every two guest rooms.
Industrial or storage uses in M-1 and M-2 industrial zones	One parking space for every [six hundred] <u>600</u> square feet of floor area of building or [twenty-five] <u>25</u> percent of the lot area, whichever is the greater.
Library, museum, art gallery	One parking space for every [three hundred] <u>300</u> square feet of floor area of building.
Live/work mixed use	One parking space for every [seven hundred fifty] <u>750</u> square feet of area used for live/work business; commercial uses and residential uses with a live/work configuration may share parking spaces. The spaces required for the residential unit on a live/work building lot may be applied toward the number of spaces required for a business use.
Lodging house	One parking space for every two lodging rooms.
Mortuary	One parking space for every [forty] <u>40</u> square feet of floor area of building.

Motel	One and one-half parking spaces for each unit.
Public utility substation	One parking space.
Restaurant, bar, nightclub, amusement centers	One parking space for every [one hundred] <u>100</u> square feet of serving and dining areas; provided that, there shall be a minimum of three parking spaces for patrons and a minimum of three additional spaces for employee parking for each such establishment.
Sanitarium, welfare institution, nursing home	One parking space for every eight beds.
SBR mixed-use establishment	Two parking spaces per dwelling unit plus one space for every [three hundred] <u>300</u> square feet of non-residential gross floor area.
SBR service establishment	One parking space for every [three hundred] <u>300</u> square feet of gross floor area.
School with students under fifteen years of age and with students fifteen years of age or older	Eight parking spaces for each classroom.
School with students under fifteen years of age	One parking space for each classroom.
School with students under fifteen years of age or older	Eight parking spaces for each classroom.
Self-storage	One parking space for every [three thousand] <u>3,000</u> square feet of storage.
Service station, repair shop, garage	One parking space for every [two hundred] <u>200</u> square feet of floor area of building or [forty] <u>40</u> percent of the lot area, whichever is the greater. The storing and keeping of damaged vehicles or parts thereof shall be within an enclosure bounded completely by a wall six feet in height

Shopping centers	One parking space for every [two hundred] <u>200</u> square feet of floor area of all buildings, except for restaurant, bar, nightclub, and amusement facilities, for which parking requirements under this section shall apply.
Short-term rental home	One parking space if there are more than four bedrooms used for short-term rental home use, in addition to any other parking requirements under this chapter. Parking stalls may be situated in tandem and on grasscrete.
Single-family dwelling, farm dwelling, duplex	Two parking spaces for each dwelling unit.
Swimming pool, gymnasium	One parking space for every [six hundred] <u>600</u> square feet of gross floor area of pool or building.
Taxi stand and bus stand	One parking space for each vehicle operating from that stand. The space shall be sufficient in size to accommodate the bus or vehicle, and shall be marked "Taxi Only" or "Bus Only."
Tennis courts	Six parking spaces for each court.
Transient vacation rental in the SBR service business residential district	One parking space for every [five hundred] <u>500</u> square feet of floor area, with a minimum of one parking space for each unit.
U-drive stand and storage	One parking space for each vehicle operating from that stand or storage. Where the U-drive business is within a hotel district, the storage area for the U-drive vehicles shall be physically separated from the hotel parking area, and shall be physically bounded and marked [for] "U-Drive Vehicles Only."

»

SECTION 8. 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 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

ear:misc:041abill02:scb

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 16-9 was adopted by the Council of the County of Maui, State of Hawaii, on the 5th day of February, 2016, 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	Excused	Aye	Aye	Aye	Aye	Aye	Excused


COUNTY CLERK

Joseph Alueta - Resolution 16-9 : Amending 19.30A & 19.35: Agricultural Tourism Activities

From: Paul Haake
To: Joseph Alueta
Date: 03/20/2016 4:20 PM
Subject: Resolution 16-9 : Amending 19.30A & 19.35: Agricultural Tourism Activities

Howzit Joe,

Below are comments from our department in regards to the referenced subject.

Let me know if further assistance is needed.

Thanks,

Paul

March 18, 2016

**Department of Planning
Attn: Joseph W. Alueta
2200 Main Street, Suite 315
Wailuku, HI 96793**

**Re: Resolution 16-9
Amending 19.30A & 19.35: Agricultural Tourism Activities**

Dear Joe:

Thank you for the opportunity to provide comment on this subject. At this time, our office provides the following comments:

- A possible concern for our department may be un-permitted buildings on parcels that will qualify for this use. To address this concern, should there be a provision to require proof that all buildings required to have a building permit (or buildings that will be used for this activity) have been properly permitted or have other approved paperwork that is acceptable to the AHJ? If the bill has wording to address this, then please disregard this comment.
- Otherwise, no issues with the resolution.

If there are any questions or comments, please feel free to contact me. Thank you for your attention to fire prevention and public safety.

Sincerely,

EXHIBIT -2

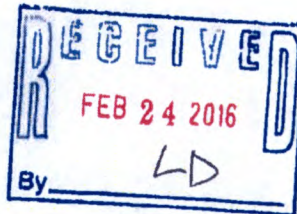
Paul Haake
Captain - Fire Prevention Bureau
Dept. of Fire & Public Safety
County of Maui

313 Manea Place Wailuku, HI 96793
876-4690 office
876-4693 direct line
244-1363 fax

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

TRANSMITTAL

February 22, 2016

AGENCIES	
X	DBEDT
X	Dept of Health, Honolulu
X	Dept of Health, Maui (2)
X	Kihei Community Association
X	Land Use Commission (Hard Copy)
X	Office of Hawaiian Affairs
X	Office of Planning
X	Kula Community Association
X	Makawao Community Association
X	Paia Town Association

AGENCIES	
X	Dept of Public Works (3 Hard Copies)
X	Dept of Water Supply
X	Fire & Public Safety
X	Police Department
X	Maui Chamber of Commerce
X	Office of Economic Development

PROJECT NAME: RESOLUTION 16-9
APPLICANT: County Clerk
DESCRIPTION: Draft Bill amending title 19.30A and 19.35 relating to Agricultural tourism activities.

TRANSMITTED TO YOU ARE THE FOLLOWING:

☒ Draft Bills, Resolutions, and Committee Reports

THESE ARE TRANSMITTED AS CHECKED BELOW:

☒ For your Comment and Recommendation

TRANSMITTED TO YOU ARE THE FOLLOWING:

☒ Resolution with Draft Ordinance and Committee Report

THESE ARE TRANSMITTED AS CHECKED BELOW:

☒ For your Comment and Recommendation

Please submit your comments/recommendations by **March 25, 2016**

Remarks: If additional clarification is required, please contact me at 270-7743. If you have no comments please check and sign below, and return this transmittal form.

Sincerely,

JOSEPH W. ALUETA,
For: William Spence, Planning Director

xc: Joseph W. Alueta, Administrative Planning Officer
General File

PLANNING\ALL\APO\Reso 16-9\transmittal to agencies.doc

We have no comments to offer ☒ Signed
Comments Attached _____

MAR 30 2016

16/1170

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
MAUI DISTRICT HEALTH OFFICE
54 HIGH STREET
WAILUKU, HAWAII 96793-3378

RECEIVED

LORRIN W. PANG, M.D., M.P.H.
DISTRICT HEALTH OFFICER

2016 MAR 10 P 4:10

COUNTY OF MAUI
DEPT. OF PLANNING
2016 MAR 10 10:00 AM

March 10, 2016

Mr. William R. Spence
Director
Department of Planning
One Main Plaza Building
2200 Main Street, Suite 315
Wailuku, Hawai'i 96793

Attn: Joseph W. Alueta

Dear Mr. Spence:

Subject: Resolution 16-9
Applicant: County Clerk
Project Description: Draft Bill amending title 19.30A and 19.35 relating to
Agricultural tourism activities

Thank you for the opportunity to review this project. We have the following comments to offer:

Any Agricultural tourism activity that involves making and/or selling of foods must comply with Hawaii Administrative Rules, Title 11, Chapter 50, Food Safety Code. Please call our office at 808 984-8230 for more information.

It is strongly recommended that the Standard Comments found at the Department's website: <http://health.hawaii.gov/epo/home/landuse-planning-review-program/> be reviewed and any comments specifically applicable to this project should be adhered to.

Should you have any questions, please contact me at 808 984-8230.

Sincerely,

Patti Kitkowski

Patti Kitkowski
District Environmental Health Program Chief

c EPO

EXHIBIT - 4

PHONE (808) 594-1888

FAX (808) 594-1938



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817**

March 24, 2016

William Spence, Planning Director
Maui County Department of Planning
2200 Main Street
One Main Plaza Building, Suite 315
Wailuku, Hawai'i 96793

Re: Comments on Draft Bill amending Maui County Code title 19.30A and 19.35 relating to
Agricultural tourism activities

Aloha e Director Spence,

The Office of Hawaiian Affairs (OHA) is in receipt of the transmittal from the Maui County Department of Planning requesting comments and recommendations on a draft bill amending the Maui County Code, title 19.30A and 19.35 relating to Agricultural tourism activities.

As the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians, OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries. Accordingly, OHA is required to serve as the principal public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians; and is tasked with assessing policies and practices of other agencies impacting Native Hawaiians and conducting advocacy efforts for Native Hawaiians.¹ OHA's comments and recommendations below have been prepared with this kuleana in mind.

Resolution 16-9 seeks to establish an agricultural tourism activities ordinance to pursuant to HRS §§ 205-2 and 205-5. OHA supports the protection of agricultural land for agricultural uses, as well as initiatives to support local food production, small-scale farms, traditional Hawaiian farming systems, and the production of traditional Hawaiian crops. As discussed below, OHA has concerns that the proposed ordinance does not appear to establish enforceable standards to ensure that agricultural tourism and agricultural tourism activities are conducted consistent with the uses permitted in HRS 205-2(11) and -2(12), respectively. Further, the

EXHIBIT -5

proposed ordinance may exacerbate problems related to the lack of affordable housing by contributing to the rental housing shortage and to rising property values.

Due to the impacts that this proposed ordinance may have by expanding non-agriculture related permitted uses, including overnight accommodations, in the agricultural district, OHA recommends that any expansion of uses be narrowly tailored, include strong and practical enforcement provisions, and be accompanied by robust and meaningful enforcement of state and county land use regulations, including the enforcement of regulations related to short term rentals.

Agricultural Tourism pursuant to HRS § 205-2(11)

State law permits agricultural tourism in the agricultural district when “conducted on a working farm, or a farming operation . . . provided that the agricultural tourism activity is *accessory and secondary to the principal agricultural use . . .*” HRS §§ 205-5(11), 205-4.5(13) (emphasis added). In order to ensure that agricultural tourism occurs consistent with state law, and that the County’s ordinance is enforceable, OHA makes the follow recommendations.

First, the definition of “agricultural tourism” in the proposed ordinance does not include language from HRS § 205-2(11) that requires the permitted use be *accessory and secondary to the principal agricultural use*. For clarity, consistency, and to ensure that prospective agricultural tourism operators are aware of this requirement, OHA recommends that this language be inserted into the definition of “agricultural tourism” in the proposed ordinance.

Second, OHA recommends that operational or income requirements be established for a working farm or farming operation’s “principal agricultural use.” While “farming operation” is defined in HRS § 165-2, albeit rather broadly, it does not include minimum gross sales or revenue requirements, and there does not appear to be any definition of “principal agricultural use” in either state law or county ordinances. Without requirements for “principal agricultural use” or an alternative method to determine whether the agricultural use (rather than the agricultural *tourism* use) is indeed the principal use, it is unclear how the county can evaluate whether or not agricultural tourism is in fact a permitted use pursuant to HRS § 205-2(11). It is similarly unclear how farm operators can determine to what extent they can pursue agricultural tourism.

In light of the absence of criteria or standards “principal agricultural use,” and in order to ensure that the ordinance is both enforceable and in compliance with state law, OHA recommends that the proposed ordinance be amended to include minimum gross sales of agricultural products and/or profit minimums for the principal agriculture use. For example, the county could require that the principal (non-tourism) agricultural uses constitute at least fifty-one percent of the revenue generated by the working farm or farming operation. OHA notes that a bill introduced during the 2016 legislative session includes reasonable minimum criteria and standards for a bona fide farming operation that could be applied to this case.²

Agricultural Tourism Activities including overnight accommodations pursuant to HRS § 205-2(12)

Agricultural tourism activities, including overnight accommodations of twenty-one days or less, is a permitted use in the agricultural district on Maui, provided "that the agricultural tourism activities *coexist with a bona fide agricultural activity*." HRS § 205-2(12) (emphasis added). "'Bona fide agricultural activity' means a farming operation as defined in HRS § 165-2." Consistent to the first recommendation above, OHA recommends that the definition of "agricultural tourism activity" in the proposed ordinance be amended to include the requirement in HRS §205-5(12) that agricultural tourism activities *coexist with a bona fide agricultural activity*.

OHA is concerned that this ordinance will significantly expand the types of uses permitted within the agricultural district, and may lead to non-agricultural related tourist activities becoming the primary activities in certain areas, thereby significantly changing the character of the agricultural district. Such a change in the uses within the agricultural district will reduce agricultural production and activity, will make it harder for bona fide farmers to continue farming activity, and will contribute to increases in property values. In order to prevent an explosion of non-agricultural uses within the agricultural district, OHA recommends that the Department of Planning and Maui County Council consider limiting the types of activities that qualify as agricultural tourism activities to uses that are closely aligned with, related to, or dependent on agricultural production. Additionally, to ensure that agricultural tourism activities actually do coexist with bona fide agricultural activity, OHA recommends that minimum criteria or standards for bona fide agricultural activity be inserted into the proposed ordinance, as discussed above. Such an amendment is especially important for overnight accommodations.

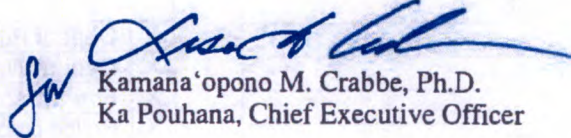
Short term vacation rentals remove much-needed units from the residential rental market, contributing to increased property and housing costs. A 2014 study by the Department of Business, Economic Development & Tourism (DBEDT) indicates that the increase in demand for vacation rentals has contributed to an increase in demand for housing units.³ Accordingly, the increase in vacation rental activity has correlated with major drops in available residential rental listings, including those for increasingly rare single family units.⁴ Constrained supply and increased demand have been linked to higher housing prices.⁵

The impacts of the expansion of short term vacation rentals may particularly affect Native Hawaiians. Native Hawaiians, whose homeownership rate is lower than the state average, rely substantially on the rental housing market.⁶ More than half of Native Hawaiian renters live in homes they are struggling to afford.⁷ Furthermore, despite the fact that Native Hawaiians participate in the labor force at higher rates than the state average,⁸ Native Hawaiians earn significantly less per capita than the average per capita income.⁹ Accordingly, Native Hawaiians are particularly disadvantaged by land uses that contribute to rental housing shortages and increases in housing costs.

William Spence, Planning Director
March 24, 2016
Page 4

Mahalo for the opportunity to provide comments on this measure. Please have your staff contact Jessica Freedman at 594-1779 or via email at jessicaf@oha.org with any questions.

'O au iho nō me ka 'oia'i'o,


Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KC:jf

¹ HRS § 10-3.

² http://www.capitol.hawaii.gov/session2016/bills/HB2091_HDI_.PDF

³ DBEDT, MEASURING HOUSING DEMAND IN HAWAII, 2015-2025, April 2015, page 9, available at <http://files.hawaii.gov/dbedt/economic/reports/2015-05-housing-demand.pdf>.

⁴ See HAWAII HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY UPDATE, 2014, available at <http://dbedt.hawaii.gov/hhfdc/resources/reports/>, showing decreases in single family listings for all counties. For example, Maui has experience a dramatic decrease in available rental housing for all income levels, with residential rental listings dropping by 80% in some areas. See RICK CASSIDAY, MAUI RENTAL MARKET AFFORDABLE RENTAL HOUSING STUDY UPDATE, 2014, available at <http://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-COUNTY-OF-MAUI.pdf>.

⁵ See MEASURING HOUSING DEMAND IN HAWAII, page 12, available at <http://files.hawaii.gov/dbedt/economic/reports/2015-05-housing-demand.pdf>.

⁶ Out of 71,006 Native Hawaiian households, 37,562 households are owner-occupied. This figure is commonly used to represent the homeownership rate. Therefore, the homeownership rate for Native Hawaiians is 52.9%, compared to the statewide average of 56.7%. See OFFICE OF HAWAIIAN AFFAIRS, OHA DATA BOOK HOUSING TENURE BY RACE-ETHNICITY IN HAWAII 2014, available at <http://www.ohadatabook.com/T02-131-15u.pdf>. The 71,006 figure includes 8,329 DHHL residential lease "owner-occupied" property units. DHHL ANNUAL REPORT 2014, page 47, available at <http://dhhl.hawaii.gov/wp-content/uploads/2014/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is much lower at 41.2%, 15.5 percentage points below the statewide rate.

⁷ See OFFICE OF HAWAIIAN AFFAIRS, 2010-2018 STRATEGIC RESULTS: RENTERS INDICATOR SHEET 2015, available at <http://www.oha.org/wp-content/uploads/Hookahua-Waiwai-Indicator-Sheet-Renter-2015.pdf>

⁸ American Community Survey, 2013, Civilian Labor Force Datapoint, U.S. Census Bureau.

⁹ In 2013, the per capita income for Native Hawaiians was \$9,105 less than the statewide per capita income. See OFFICE OF HAWAIIAN AFFAIRS, INCOME INEQUALITY AND NATIVE HAWAIIAN COMMUNITIES IN THE WAKE OF THE GREAT RECESSION: 2005 TO 2013 (2014) <http://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

16/1448

ALAN M. ARAKAWA
MayorWILLIAM R. SPENCE
DirectorMICHELE CHOUTEAU McLEAN
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PLANNING

TRANSMITTAL

February 22, 2016

AGENCIES	
X	DBEDT
X	Dept of Health, Honolulu
X	Dept of Health, Maui (2)
X	Kihei Community Association
X	Land Use Commission (Hard Copy)
X	Office of Hawaiian Affairs
X	Office of Planning
X	Kula Community Association
X	Makawao Community Association
X	Paia Town Association

AGENCIES	
X	Dept of Public Works (3 Hard Copies)
X	Dept of Water Supply
X	Fire & Public Safety
X	Police Department
X	Maui Chamber of Commerce
X	Office of Economic Development

PROJECT NAME: RESOLUTION 16-9
APPLICANT: County Clerk
DESCRIPTION: Draft Bill amending title 19.30A and 19.35 relating to Agricultural tourism activities.

TRANSMITTED TO YOU ARE THE FOLLOWING:

<input checked="" type="checkbox"/>	Draft Bills, Resolutions, and Committee Reports
-------------------------------------	---

THESE ARE TRANSMITTED AS CHECKED BELOW:

<input checked="" type="checkbox"/>	For your Comment and Recommendation
-------------------------------------	-------------------------------------

TRANSMITTED TO YOU ARE THE FOLLOWING:

☒ Resolution with Draft Ordinance and Committee Report

THESE ARE TRANSMITTED AS CHECKED BELOW:

☒ For your Comment and Recommendation

Please submit your comments/recommendations by **March 25, 2016**

Remarks: If additional clarification is required, please contact me at 270-7743. If you have no comments please check and sign below, and return this transmittal form.

Sincerely,

Joseph W. Alueta
 JOSEPH W. ALUETA,
 For: William Spence, Planning Director

xc: Joseph W. Alueta, Administrative Planning Officer
 General File

PLANNING\ALL\APO\Reso 16-9\transmittal to agencies.doc

We have no comments to offer ☒ Signed _____
 Comments Attached _____

James J. Annan, President

EXHIBIT -6

ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

RECEIVED
 2016 MAR 24 A 9:00
 COUNTY OF MAUI
 DEPT. OF PLANNING



Kihei Community Association

"e malama pono"...dedicated to protecting,
sustaining and enhancing our 'āina, kai and 'ohana

February 28, 2016

William Spence
Director Planning Department
2200 Main St.
One Main Plaza Bldg
Wailuku, HI 96753

RE: Planning Department requested comment of Resolution 16-9, Agricultural Tourism in
Agricultural Districts

Dear Mr. Spence

The Maui Planning Department has requested (KCA) Kihei Community Association Input for
Resolution 16-9. The resolution is for agricultural tourism in the agricultural districts.

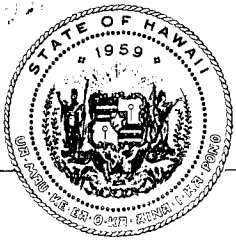
KCA is very supportive of maintaining our agricultural areas. With the elimination of sugar cane
agriculture, we believe it is very important to promote policies that will continue to make
agriculture viable in Maui. Therefore, we support the concept of agricultural tourism as a way to
make these lands viable for agriculture and prevent urban sprawl.

In summary, we support the concept.

Sincerely,

Mike Moran, President
Kihei Community Association

7-7



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Ref. No. P-15100

April 7, 2016

Mr. William Spence, Director
Department of Planning
County of Maui
2200 Main Street, Suite 315
Wailuku, Hawaii 96793

Dear Mr. Spence:

Subject: Resolution 16-9, Draft Bill amending Titles 19.30A and 19.35 relating to
Agricultural Tourism Activities

The Office of Planning (OP) has reviewed and wishes to provide comments on the subject draft bill. The purpose of the draft bill is to implement Hawaii Revised Statutes (HRS) §§ 205-2(d)(11) and (12) and 205-4.5(a)(13) and (14) related to the adoption of county ordinances for the regulation of agricultural tourism activities in the State Agricultural District.

We support and commend the County's efforts to comply with HRS Chapter 205 and enact appropriate policies and standards to effectively promote bona fide agricultural tourism uses and manage agricultural tourism activity in the State Agricultural District.

Intent and purpose of HRS §§ 205-2(d)(11) and (12), 205-4.5(a)(13) and (14), and 205-5(b). HRS Chapter 205 specifically limits the permissible uses in the Agricultural District to discourage the use of agricultural land by higher-value, non-agricultural land uses in support of State agricultural policy pursuant to Article XI, Section 3 of the Hawaii Constitution and HRS Chapter 226, the Hawaii State Plan. Higher-value, non-agricultural land uses in the Agricultural District increase the value of agricultural land, making agricultural land less affordable for farming, which adversely impacts the viability of diversified agriculture in Hawaii as well as food and energy security for Hawaii's people.

The provisions for allowing agricultural tourism as a permissible use in the Agricultural District in HRS §§ 205-2(d)(11), 205-4.5(a)(13), and 205-5(b) were enacted in 2006 (Act 250, Session Laws of Hawaii (SLH), Regular Session of 2006). The intent of the measure was to allow bona fide farmers to conduct on-farm activities that market and enhance sales of the farm's products and generate value-added agricultural income. Overnight accommodations were prohibited and agricultural tourism was prohibited in the absence of a bona fide farming operation to address concerns about the potential proliferation of commercial non-agricultural use of lands in the Agricultural District.

The provision allowing agricultural tourism activities, including overnight accommodations for stays of 21 days or less (HRS §§ 205-2(d)(12) and 205-4.5(a)(14)), was enacted in 2012 (Act 329, SLH 2012). The prohibition of overnight accommodations in the 2006 amendment was originally intended to safeguard against widespread permitting of non-agricultural transient vacation rentals in the Agricultural District. The 2012 amendment was intended to make it easier for bona fide farming operations to provide overnight accommodations to supplement their farm revenues and/or labor needs through working farm stays—and to provide preferential status to bona-fide farmers since non-farm applicants are able to establish transient vacation rentals in the Agricultural District by obtaining a special permit pursuant to HRS § 205-6.

The 2006 and 2012 amendments provide that the agricultural tourism activity must either be conducted on a farming operation as defined in HRS § 165-2, or coexist with a “bona fide agricultural activity” defined as a farming operation per HRS § 165-2, respectively. HRS § 165-2 is copied in part below:

“‘Farming operation’ means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; 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.”

Comments and recommendations. OP offers the following comments and recommendations regarding specific provisions in the draft bill, based on our analysis of the statutory history and intent of the agricultural tourism amendments to HRS Chapter 205.

1. Proposed Section 19.30A.077. In general, the proposed new section would establish a viable mechanism for the registration and management of permitted agricultural tourism activities by the County. However, we are concerned about definitional weaknesses in the proposed bill that could undermine its effectiveness in ensuring lands in the Agricultural District are protected from encroachment by commercial non-agricultural uses. These should be addressed as discussed below.
2. Section 2, Page 1, Definition of “Agricultural Tourism.” OP recommends, at a minimum, that the definition be revised to make explicit that the commercial activity is accessory to the agriculture operation. Section 1 states that agricultural tourism activities are accessory uses to an active agricultural operation, but this language is absent in the definition. Thus, by definition, a commercial activity

with no nexus to agriculture or a farming operation could become the dominant use on agricultural land—and the varied list of activities included in the definition of “agricultural tourism activity” underscores this possibility. We also recommend replacing “commercial activity” with “commercial use.” Our recommended revision is as follows:

“‘Agricultural tourism’ means a commercial activity use conducted on the site as an accessory use to an active agriculture operation for the enjoyment, education, or involvement of visitors.”

3. Section 2, Page 1, Definition of “Agricultural Tourism Activity.” We note that vineyards and distilleries are uses that do not by definition have a tourism component. Reference to wine tasting, wine tours, etc. may be more appropriate in this definition.
4. Section 3, Pages 2 - 4, Provisions for agricultural tourism activities. OP has several concerns regarding these provisions.
 - a. Applicant eligibility. Our primary concern is the basis on which the agricultural tourism activity would be registered and approved. As currently drafted, an applicant for an agricultural tourism activity would need to submit a farm plan approved by the Planning Department. The Department’s farm plan application requires a description of existing and proposed agricultural land conservation and agricultural uses on the parcel, to include a map showing areas and acres to be planted or maintained, and a written description of the types of plants and/or animals to be propagated and the area as a percentage of the parcel for each.

In our experience reviewing special permit applications referred to our office for comment, there is a wide range in the quality and content of farm plans and the extent of agricultural activities occurring on the sites. OP recommends that the agricultural tourism activity require proof of agricultural income similar to that currently required in County code for bed and breakfast homes (§19.30A.050(B)(12)(a)) and additional farm labor dwellings (§19.30A.050(B)(2)).

OP recommends the insertion of the following language on Page 3 after Item 10:

“Evidence of operation in conjunction with a bona fide agricultural activity that produced \$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 schedule F filings.”

In addition, OP recommends that for the purposes of permitting higher-value non-agricultural activities, the content requirements for farm plans in the farm plan application be strengthened. This could be accomplished by requiring additional documents that evidence bona fide agricultural activity as a significant, if not primary, source of occupational income, such as farm business plans, agricultural tax dedication, payment of County agricultural water rates, and Soil and Water Conservation District conservation plans.

- b. Page 3, Paragraphs (12) and (15), Acknowledgements and signatures required. OP recommends that the signature of the designated agent, if any, also be required, so that the agent responsible for the agricultural tourism activity is put on notice and is accountable for their responsibility to comply with the requirements of County code and State law.
- c. Page 4, Paragraph D, Enforcement. OP notes that this provision will provide a registry of agricultural tourism activities. It does not provide for monitoring and enforcement of bona fide agricultural activity as a basis for continuing agricultural tourism activities. We urge the County to consider mechanisms to ensure compliance with the requirement for agricultural operations on the property.
- d. Page 4, Paragraph (F)(1), Additional requirements for overnight stays. OP recommends that overnight stays be limited to farm and/or farm labor dwellings as permitted and approved by the County. If this is the intent, then it would help to amend the paragraph to make this limitation explicit. OP recommends insertion of language to the following effect:

“1. Overnight stays. Overnight stays shall be limited to farm and/or farm labor dwellings as permitted and approved by the County.”

- 5. Section 4, Pages 4 - 5, Definition of “Active Agriculture Operation” for the purposes of this bill. OP strongly recommends that the term “subsistence” in the definition of “active agriculture operation” not be allowed in the context of this bill to ensure conformance of County code with State statute. The agricultural tourism provisions in HRS Chapter 205 specifically define the threshold for primary agricultural activity as those conducted by a farming operation as defined in HRS § 165-2. HRS § 165-2 defines a farming operation as a commercial

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facility or pursuit; it does not include subsistence activities. The agricultural tourism amendments to HRS Chapter 205 were clearly intended to benefit farmers for whom farming is their livelihood and whose agricultural activities are integral to maintaining Hawaii's agricultural industry or economy. The inclusion of "subsistence" as a farming operation would enable applicants with little bona fide agricultural activity and a landscape plan to qualify for agricultural tourism activities.

6. Section 5, Page 5, Permitted uses. OP recommends that "agricultural land conservation" be deleted as a permissible principal use in the agricultural district. As defined in County code, the term means "the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality and habitat restoration." It allows an applicant to submit what is largely a landscaping plan as a farm plan. This provides a loophole for applicants who would not otherwise meet definitional criteria for bona fide agricultural activity and complicates efforts to regulate and manage agricultural tourism activities in the State Agricultural District.

In the alternative, OP strongly recommends: (1) permits for agricultural tourism activities exclude "agricultural land conservation" as the primary agricultural use; and (2) deletion of all references to "agricultural land conservation" in the Department's farm plan application when it is used as a basis for permitting higher-value non-agricultural uses, as is contemplated under this bill.

Thank you for the opportunity to review the draft bill. If you have any questions regarding these comments, please contact Ruby Edwards of our Land Use Division at (808) 587-2817.

Sincerely,



Leo R. Asuncion
Director

c: State Department of Agriculture
State Land Use Commission

**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 Willama. 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 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 Landfil, 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 brining, 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 structure, 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, Zhanell. 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 Heath, 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 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 have 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 28th, 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

**LANA'I PLANNING COMMISSION
REGULAR MEETING
MAY 18, 2016**

APPROVED 07-20-2016

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima at approximately 5:10 p.m., Wednesday, May 18, 2016, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Ms. Kelli Gima: Good everyone. We're gonna go ahead and get started. It's now 5:10 p.m. I'm going to call the May 18th, 2016 Lanai Planning Commission meeting to order. We do have five members present so we do have quorum. No minutes to approve at this time, so we're gonna go right into our public testimony.

Before we start off with the public testimony, I just want to lay out a couple of ground rules down please. When any of you are testifying please direct it to the commissioners, not to anyone out in the audience. Do not try and single out anyone. And during the time of your testimony, you know, please, again, stay focused on the commission. If anyone in the audience has anything to say, you wait your turn for public testimony. We want this to move nice and smoothly.

So right now I'm gonna open up public testimony. After the first presentation I'll open it up again after the presentation is done. So I'm gonna go down the list and you guys can let me know if you're gonna testify now or after the applicant's presentation. So Ron McOmber.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Mr. Ron McOmber: My name is Ron McOmber, resident of Lanai. I'm requesting that this commission...defer on this tonight. The reason is we just now getting the packet of all the information. This information has not been available to us. We haven't seen it until tonight. I need to see -- my hunting group needs to see it, the hunters on the island, the people that use the shooting clays, and this is not fair to them. This is not fair at all. But whatever you decide I'd like you to have it defer it until the next meeting, and then by that time the Hunting Association get with the hunters and the packet can be sent out. Because reading the packet I see that the same thing is going to happen at the golf course down at Manele. Four Seasons is going to have preference over everybody else, and this is -- you know, this is the same thing going on every where. So thank you very much, and I'm just requesting that you defer on this tonight. Thank you.

Ms. Gima: Thank you. Kathy and Mike Carroll.

Mr. Tom Hayne: My name is Tom Hayne. I'm going to read a letter, testimony for on behalf of

Kathy and Mike. They couldn't be here.

Dear Chairperson Gima and members of the Lanai Planning Commission. We have lived on Lanai for 15 years, and have owned and operated the Mike Carroll Gallery since 2002. We support the Special Use Permit necessary to ensure the re-opening of the Lanai Sporting Clays facility and the addition of the two containerized pistol ranges. The facility will provide a terrific array activities for Lanai's community and visitors alike. Because our island depends heavily upon tourism to help fuel our economy and provide jobs, we support the sporting clays as an added incentive to entice visitors to this beautiful island. Mahalo, Kathy and Mike Carroll.

Ms. Gima: Thank you. Next, Barbara McIntyre.

Ms. Lesley Kaneshiro: Hi, my name is Lesley Kaneshiro, and I'm reading a letter from Barbara McIntyre, President of the Koele Homeowners Board of Directors.

Dear Chairperson Gima and Lanai Planning Commission members. This written testimony in support of the Special Use Permit for the Lanai Sporting Clays Facility which in my absence will be read at the Lanai Planning Commission meeting today, May 18th. The members of the Board of Directors of the Koele Homeowners Association are in unanimous support of this proposal. We are in favor of this amenity which includes the 14 station course, skeet shooting, five stand shooting, archery range, and the addition of the two containerized pistol ranges. The sporting clays facility is world renowned with a five star rating from Trip Advisor. The re-opening of the facility with the addition of the above amenities will attract more tourists to the island of Lanai which depends on those resources. In addition the facility is very popular with local residents. It is an additional recreational facility which compliments other recreational opportunities here, provides jobs, and will attract more visitors to the island and the hotels, thus improving our economy. Sincerely, Barbara McIntyre, President, Koele Homeowners Board of Directors.

Ms. Gima: Thank you. The next person is, it's kind of hard to read. I think it's Max Kincaid. Did you sign up to testify? Okay, so not wanting to testify. Okay. Next Dennis Rapp.

Mr. Dennis Rapp: I'd like to thank you for the opportunity to address the commission. I wanna bring just a little bit of a personal side to this. After being at the sporting clay range as a manager for most of the years its been open in operation, I'd just like to say that it's provided a lot of local jobs and a lot of economy, and over the years have watched a lot of families grow. And a lot of people come back and enjoy the facility, and bringing back their families and friends, so it's been a great asset to the community. And so on those words I would hope that the commission would take a look at that and say, let's continue this tradition for many more years to come for lots of families. Thank you.

Ms. Gima: Thank you. Alberta de Jetley.

Ms. Alberta de Jetley: Good evening commissioners. I had the privilege of --. Well, my name is Alberta de Jetley and I am testifying for myself as an individual. I had the privilege of working at Lanai Pine Sporting Clays when I first returned to Lanai back in 1996. It was a wonderful facility. I worked in the retail shop there. I was working at school and needed a part-time job to supplement my part-time school job, so I went up to Sporting Clays and I worked retail and then became a certified level one instructor. This is an established family sport. The facility was world class, very, very well run, very safe. We taught hundreds and hundreds of children, young adults, men and women to shoot safely.

My family, I come from a long family of shot gun enthusiasts. My father was a skeet shooter. My brothers, we also shot trap. So this facility combined the best of all shooting worlds, and it was truly a world class facility. I strongly suggest and hopefully recommend that you re-open as quickly as possible.

We also had an archery range. The range is open. The archery range is open to the Lanai Youth Center, to students at school, and they came up in . . . (inaudible) . . . and we taught them how, how to use the archery equipment safely. We also had a rifle, an air rifle range, and that, that was also very, very popular. So this is a family sport that can be enjoyed by people of all ages, and I hopefully hope that you will re-open it again as quickly as possible.

Ms. Gima: Thank you. Gerald Rabaino.

Mr. Gerald Rabaino: Okay, Gerald Rabaino, Lanai resident. I will support this with some reservations, okay. Pulama should have stayed in control of the sporting clays, for number one. For Four Seasons, I would encourage you to set conditions. When employing Lanai residents, make sure they have the proper training, and Lanai residents is priority as number one. Number two, outsiders coming in, if they have certification, then that's fine. But those are the conditions that I want you to set because this community is going through some kind of transition where Pulama is giving everything to Four Seasons on a silver platter. Because when we first open up under the hotels before it was renamed Pulama, majority of all the outlets on Lanai was ran by Castle & Cooke, now it's now Pulama. Majority of those employees was once employed, running the stables and other areas before Four Seasons came in and took over. So those why I have the reservations of Four Seasons. So those conditions is make sure Lanai residents is still hired and training is provided, and any outsiders has to take a certification. I whole heartedly support this, but make sure those conditions are tied in because we are still in this transition Mr. Ellison and his team. Thank you.

Ms. Gima: Thank you. Winnie Basques.

Ms. Winifred Basques: Good evening. My name is Winifred Basques. I've been on this island 53 years. Any of you folks on the planning go hunting? Anybody? Nobody goes hunting? Well I tell you. I been going hunting on this island 45 years. Imagine 45 years. And then you folks talk about the sporting clay. What are we going get out of it? What's the cost? And who is

available to use that area? Okay, to me, it's my opposition. I'm sorry to say. That goes way back. That used to be Dr. Palama's bird hunt. He used to bring all these people come in, with the dogs. They use to use that area, but now . . . (inaudible) . . . has changed a lot. To me, I don't think it's right. If it would be possible to leave it like that, but no. Hunters is very, very... upset when they cannot go hunting in that area. There's suppose to be a boundary over 500 feet from the road to inside the area, the hunting area. When you folks do this kind stuff, you betta make sure because the lot on liability. Because when the hunters go in and hunt, bullet and arrow, and somebody using that area, somebody going get hit. Think about that. The liability is going to very, very crucial, and who is going to take the blame for it. I hate to say this, but it's true. Think about. I know you folks don't carry rifle. I do. I got two rifles that is in the Lanai Police Department. I got my license there and the thing is that I'm very . . . (inaudible) . . . when go out hunting because why, I bring home food . . . (inaudible) . . . house, to a family, and I share. It's not the kine that you give me, give me, and I ain't going give back. No. But I hate to say this, please think about it really good because it is very, very important. Thank you very much.

Ms. Gima: Thank you. Next we have Melanie Bandalan. Oh, okay. Elton Atacador.

Mr. Elton Atacador: Elton Atacador. I'd just like to say I support this sporting clay project. I think it would be good for everybody, both sides. The facility was already open. All we doing is making it a bit more nicer and better for everybody. Thank you.

Ms. Gima: Thank you. Next, Jason Fujie.

Mr. Jason Fujie: Testing. My name is Jason Fujie. Long time -- well, life resident of Lanai, and I wish that the committee...well, commission, expedite the approval of the permit. This...the range was suppose to have open, what we heard earlier, February of this year, so for me it's late. And I am a little -- well, I enjoy sporting clays shot gun shooting, trap, skeet immensely. And I do travel to the mainland for trap and sporting clays. And I'm a member of the, both, trap and sporting clays national organization. I'm not very competitive, but I still enjoy it. And...this...the range has been opened since 90, you know, 97, 96, so, you know, it's there. It's just a matter of, you know, renovating and getting it going. And a lot of times when I am shooting -- I was shooting up there -- we got a lot of good comments from guests that, you know, they kind of ran out of things to do so they decided to try it, and a lot of times they really enjoy it. And also when there's corporate...people come over, corporate, at the hotel, they would schedule, like, classes and you know, we, and I help at the range instructing. I am a certified level one instructor. And that's another part of the sport that I really enjoy is that seeing the light come on with someone when they, they, they hit a moving target. You know, it's hard to explain. You guys need to maybe try and experience that. But it's something that, that, you know -- I don't know, it just turns me on that, you know, you've got something flying in air, you point the gun at it and shoot and it breaks, you know. So thank you for the opportunity and I do wish you expedite the permit. Thank you.

C. PUBLIC HEARING (Action to be taken after public hearing.)

1. **MR. KURT MATSUMOTO, Chief Operating Office of LANAI RESORTS, LLC, a Hawaii limited liability company doing business as PULAMA LANAI requesting a State Land Use Commission Special Permit in order to operate the Lanai Sporting Clays project, an archery and sporting clays facility on approximately 14.75 acres of land located in the State Agricultural District at Keomuku Highway, TMK: 4-9-002: portion of 001, Lanai City, Island of Lanai. (SUP2 2016/0002) (K. Wollenhaupt)**

Ms. Gima: Thank you. Lastly we have Sherry Menze. Okay. Anyone who...anyone who hasn't that wishes to testify at time? Again, we'll re-open public testimony after the presentation. Okay. At this time I'm going to close public testimony, and we're going to move on to the next item, and that's number one. *(Chair Kelli Gima read the above project description into the record.)* So I'll turn it over to Kurt.

Mr. Kurt Wollenhaupt: Good evening members of the Lanai Planning Commission. My name is Kurt, and I'm based in Maui, and I work in the Current Planning Division with Clayton Yoshida who is up at the desk there. As the chairwoman said tonight's matter arises from an application for a State Land Use Commission Special Permit filed by Lanai Resorts doing business as Pulama Lanai. And as I think most everyone in this audience knows this is to undertake renovations and limited facility improvements saying they're rehabilitating a previous archery and shotgun activity area on Lanai to meet the needs of both guests coming here and people who resides here.

The facility was previously in operation as the Lanai Pine Sporting Clays being in 1997. And they did in fact did get a permit as tonight's debate will look at for a State Special Use Permit. So for the members of the commission who this is one of their first meetings, again, it's always helpful, why are we here at all? And that's because this land is State Ag land. All lands in Hawaii are divided on a State bases into rural, urban, conservation or ag, and this piece of property is an ag piece of land. Hawaii Revised Statutes indicates that when there is a portion of a parcel less than 15 acres, the Planning Commission, the Lanai Planning Commission will act as the reviewing body for certain activities in the ag district. And as this goes it would be that Section 205-4.5 states that "*public and private open area types of recreational uses can be permitted in the State Ag district,*" and in looking at the history of sporting clays, the department along with the applicant took the highest level of caution and decided that this really should have the State Special Permit which will be explained in greater depth by Mike Munekiyo, as well as the entire project. But that's why we're here tonight to see if this merits a State Special Permit. And this body is the final authority on this permit. So should it approved, then the applicant would move forward.

Mike Munekiyo is going to do a power point presentation and that will cover exactly what the improvements will be and enhancements in the project. Thank you.

Mr. Mike Munekiyo: Good afternoon commissioners. My name is Mike Munekiyo and I'll be going over the project overview, and talk a little about what Kurt had mentioned with respect to the permitting requirements.

As Kurt mentioned we are here to seek your favorable consideration for a State Land Use Commission Special Permit for the re-initiation of the Lanai Sporting Clays Facility. This is just a listing of our project team. Noteworthy is the land owner and applicant is Pulama Lanai, and the operator will be Four Seasons Resorts Lanai.

This is just a regional location map showing the -- showing the location of sporting clays facility relative to other major landmarks on the island. Lanai City here. Zooming in a bit, this is...the 14.75 acre site. It's access off of a private driveway, off of Keomoku Highway. And just from a locational standpoint, the site is about two miles north of The Lodge at Koele. With respect to the request itself it is to provide renovation, repair activities, to rehabilitate what was previously known as the Lanai Pine Sporting Clays, and that was, as previously noted, started in 1997. And so the improvements and reopening of the clay, sporting clays facility will provide further diversification of recreational opportunities for the island's guests and residents.

With respect to permitting, as Kurt mentioned, we are seeking a State Land Use Commission Special Permit. Previously, it was obtained, but it was not renewed and so at this time the applicant is seeking a new permit to operate the -- or continue the operations of the sporting clays facility.

Briefly the project site is 14.7 acres. It's part of a larger tax map, 2-4-9-002-001. Again, located off Keomoku Highway. On site you'll see later that there are parking spaces for vehicles and shuttles.

Existing land use designations, the State Land Use District, as Kurt mentioned, is State Agricultural. The Lanai Community Plan designate the area as -- designates the area as OS as Open Space. And Maui County Zoning classifies the property as Interim.

Just a little bit about the State Agricultural District. What this Hawaii Revised Statutes, Section 205 refers to is the section of the State law that provides for public and private open area types of recreational uses. And it does lists a sample of uses that would be permitted, but sporting clays and shooting ranges aren't specifically listed, so we are seeking a Special -- seeking a permission to resume the operation through the special permit process.

The Lanai Community Plan, again, is Open Space. And this -- I'll read briefly, it is "intended to limit development on certain urban and non-urban designated lands which may be inappropriate for intensive development." And they have a listing of uses which includes "grazing, farming, equestrian activities, hunting, or other recreational or outdoor activities including related structures," so the proposed action does fall within the land use purview of the Lanai Community Plan.

And finally with respect to Maui County Zoning as I mentioned it is interim zoned which provides for "existing parks, playgrounds, community centers or public/quasi-public facilities owned or operated by private or governmental agencies." And again the proposed facility does fall within the provisions of this section of the Maui County Code.

Just briefly, I think many of the testifiers mentioned some of the components of the sporting clays facility, and these are components which previously existed at the Lanai Pine's operation. There's a sporting clays course. The 14 station course is navigated by a golf cart. There's a skeet shooting area, a five-stand shooting area. An archery range was mentioned. And all of these, again, were previously in place from the previous operation. The existing registration building will continue to be used. It will be used for management purposes. And in fact, this is where guests arrive and will receive their safety instruction training and equipment. A portion of that building will also be used for ancillary sales where sales of products which typically are considered to incidental or subordinate to the permitted uses. These will be smaller items.

Storage/maintenance facility, this is where the ammunition and equipment will be stored. And a new feature, I think, was mentioned in the testimony would be the containerized pistol range. This would be two pre-manufactured containerized ranges, and by containerized it's similar to a shipping container, 8-feet wide, by 40-feet long. There will be two shooting lanes in each container, so each one will be equipped for shooting purposes.

These are a couple of photos to give you an idea of what some of the facilities look like right now. In Photo #1 is the existing maintenance and storage shed. You may notice some deferred maintenance on this photo, and in fact, this would be removed and replaced. The archery shed here would be refurbished...get them refurbished. This is the five stand shooting structure here; again, to be refreshed. This is a photo of the skeet shooting area. This is part of the sporting clays course. The photo on the left is what is -- one of the original shooting structures and it would be refurbished or rebuilt to look something like this. And finally, this photo shows a typical clay throwing machine. Again, you notice some degree of deferred maintenance and so some of these will be replaced as needed.

This is the site plan, and I know it's difficult to see, but let me just go through at a very high level what we're looking at. The outer boundary is the 14.75 acre limits. This line here is a driveway to Keomoku Highway. As visitors arrive, they park in the parking area or be shuttled, dropped off here. The registration building is here where they receive their training and equipment. This is the 14-course sporting clays facility. The containerized pistol ranges would be located here. This is the new feature. The existing five stand shooting station will remain as is, as would the skeet shooting area. The archery facility is here and there is onsite a restroom which will be improved as well.

So just a little bit about the kinds of improvements that we anticipate to implement; with respect to the registration building, the restroom facility, the five stand structure, and the archery equipment building, these will be primary be refreshed activities. Replacing of old doors, painting, repairing decks and wood sidings, so forth. The clay throwing machines and enclosures, you saw in the last photo, some degree of deferred maintenance. And so to the extent that they can't be repaired, they would be replaced. And the cart path/driveways, these refer to the sporting clays cart path. They are some cracks and potholes, and some places where's ponding involved so there needs to be some filling and repairing of the cracks and maybe just some slight modifications of the driveway as well, cart path as well. No realignment however.

The maintenance and storage building which is shown in the photo. This will be removed and replaced by new containers or a container with a prefabricated roof structure. Again the maintenance storage building is quite important as it will secure equipment ammunition, so forth.

The course shoot structures, these are the structures that I showed in the photo, one being the old one, and the one on the right being the newer one, if you recall. So those would be upgraded. Clays throwing machines power modifications, this just refers to power upgrades to the clays throwing machines. And the cart path driveway, the last item here, this refers to the area near the registration building where some ponding does occur, and so some adjustments would need to be made to that cart path driveway.

There are going to be a couple of new items; generator enclosure, a security system. This would provide the 24/7 monitoring. And to the extent, at a future point in time that is being warranted, a roof top photo voltaic and internet connectivity could be provided. These are just listed as options to explore.

Operationally, the sporting clays facility would open from 8:00 a.m. to 4:00 p.m. It would employ three full time and two part time individuals. Average guests on a daily basis will be 15. And when there is a high occupancy period at the resort, it would go up to 30. But for the most part, it will be in this range of 15 to 30. Of course, parking is onsite, and most of our guests would be shuttled to the sporting clays facility.

Just a little bit about environmental impacts that we looked at; topography, agricultural lands, archaeology noise. Those are items which no adverse impacts are anticipated. I did want to note that an environmental site assessment report was done because there was some evidence of battery stains, acid stains on the ground. As a follow up to that...result, though, a site assessment report -- this is a more detailed analysis where they actually take the soil and do laboratory analysis. And what that lab analysis found was there was no soil contamination. It was just a surface staining incident. And so, of course, from this point forward, under the new operations, all batteries or petroleum products, whether it be fuel or what have you, would be stored with secondary containment measures as a mitigation item.

With respect to water, potable water will be trucked in and stored in an onsite tank. Non potable water would be provided for restroom use and irrigation, as needed. Waste water, a new septic tank would be installed to replace the existing with an, with a new absorption bed or leech field. No drainage improvements are anticipated. There will be no additional grading involved, and no adverse traffic impacts are anticipated.

Socio-Economic impacts -- the economic impacts, of course, would yield some positive returns from a short-term basis just based on construction. And from a long-term basis, I think one of the testifiers did mentioned that it provides for a new avenue for guests spending and job creation. Solid waste, police, fire and medical facilities, no adverse impacts. Recreational resources, we just listed this is a separate item as it does provide for some diversity in terms of recreational opportunities for guests and residents.

Finally commissioners, in making your decision today, there are five criteria which the State Land Use Commission has defined for the granting of a special permit. And so if I could just briefly go through each of the criteria for decision making. Number 1, the use will not be contrary to objectives sought to be accomplished by Chapter 205 and 205A, Hawaii Revised Statutes, and the rules of the commission. Chapter 205 is a State Land use law, and Chapter 205A is a coastal zone management law. And so what they're saying is as long as the use does not impede or contravene those laws, this is a basis for approval. And indeed, this was, this site was a previous sporting clays facility. It is consistent with the objectives of Chapter 205 and 205A.

Number 2, the desired use, use would not adversely affect the surrounding property. The proposed use would not affect the surrounding property which is currently vacant and undeveloped. And again, there is a somewhat of separation from the urbanized areas of Lanai City.

Number 3, the use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection. And as we noted previously, these types of public facilities and public infrastructure systems would not be affected by the proposed actions.

A couple more. Number 4, unusual conditions, trends and needs have arisen since the district boundaries were established. Basically, the district boundaries are established in the 70s, I believe, and so, at that point, of course, Lanai was agriculture, was an agriculture based economy, now shifted to visitor based economy. So that shift really has created this need for activities which are aligned with a visitor based economy.

And finally, the land upon which the proposed use is sought is unsuited for the use permitted in the district. Basically they're saying let's look at the lands, is it going to be detrimental to agriculture productivity. The lands underlying the sporting clays facilities are classified by the Land Study Bureau as D and E lands. And what that means is that these are lands of lowest agricultural productivity. And so with that in mind, we believe that this criteria has been met.

And finally, a number of agencies, Federal, State, and County, have reviewed the application and no substantive comments have been received.

And just to summarize commissioners, we are, again, requesting your favorable consideration for a State Land Use Commission Special Permit for reinitiating the Lanai Sporting Clays Facility.

Ms. Gima: Thank you for that presentation. Like I said earlier, I'm going to open up public testimony again to see if there's anyone in the audience that would like to provide any additional comments or ask any additional questions. Is there anyone at this time wishing to provide testimony? Come on up.

Mr. David Green: My name is Dave Green. I'm a Lanai resident. I'm strongly in favor of

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granting the Special Use Permit. As we've seen this use to be in operation. It was a great facility. I've been there. My wife's been there. Our two children have been there. We've gone there numerous times, unfortunately, until it was shut down, or until people discovered that the permit had not been re -- reapplied for. So to me this is pretty much a no brainer. I would suggest that you don't defer approval of this. It's good for the economy, it's good for the tourism industry, it's good for the island, and it's good for everybody here, so I would urge you to approve it. And my wife seconds what I'm saying. She had a little dermatology surgery and she's a little shy about coming up in front of everyone.

Ms. Gima: Thank you. Thank you. Anyone else wishing to provide testimony? Come on up.

Ms. Wendy Kaupoiki: Aloha. My name is Wendy Kaupoiki. I'm a resident of Lanai, and I'll be one of the management team running the operation. And just on behalf of us, we always make sure this project is safe and will respect the community so I ask you to support the project and get our guys back to work. Thank you.

Ms. Gima: Yes, go ahead. Please state your name.

Mr. Jay Ballesteros: Hi. My name is Jay Ballesteros, and I'm a long lived resident of Lanai. We all know a part of . . . (inaudible) . . . culture is outdoors, you know, whether it's hunting or fishing. You know, we all that sporting clays were actually started as a means of conservation or even off season practicing for the hunters over here. It's creates a opportunity. Yeah, we talk about hotel guests, but that's what we're looking forward and, you know, providing for the community as well, you know, for the kids, you know, malama the kids, and giving them that opportunity to learn, you know, from the year of experience that this island has to offer for these keiki. Okay, mahalo.

Ms. Gima: Thank you. Last call for public testimony. Come on up. You next Max. Let him go first.

Mr. Martin . . . (inaudible) . . . : Hi, my name is Martin . . . (inaudible) . . . I was born and raised on Lanai. Yeah, we started the sporting clays. We're one of the construction guys that did most of the job up at the stable so I hope everything goes through and give these guys back their jobs. And get one new supervisor. We going miss you Ed. Right? I hope you come back. Thank you.

Ms. Gima: Thank you. Go ahead Max.

Mr. Max Kincaid: My name is Max Kincaid. Retired...police officer. I'm a little concerned about the hand gun thing. How long are these...containers going to be? It ranges about 50 feet, right? Are you going to be regulating the type of weapons, you know what I mean. I've got my cannons. I'd love to blow off a few holes in there. But however, you know, I just hope that you pick up on the Lanai guys when you open this place up, get them back working, in jobs they like instead of yard men. And other than that, don't waste any time, get to it. That's it.

Ms. Gima: Does the applicant want to address specifically what he asked about weapons being regulated? Lynn?

Ms. Lynn McCrory: Lynn McCrory, Pulama Lanai. Yes, the guns will be regulated as to what can be used within that facility, so I can tell you yes. But which ones, I can't give you the details. I don't know the guns, but that's --. I don't have the information on what specific pistols will be used in that facility. I don't have that for you, Max. But I will get it for you. Does that work?

Mr. Kincaid: . . . (inaudible) . . .

Ms. McCrory: Okay. Thank you.

Ms. Gima: Thanks Lynn. Anyone else? Winnie?

Ms. Basques: Hi, it's me again. Okay, you talking about pistol...does the pistol goes with the police department? Do you folks have to have a license to operate the pistol while they're there in that facility? Do they have license, and are they accompanied by an adult if a student goes up there? Do you folks have that in mind? Like a student, like about 16, 17 year old, they have to be accompanied by a adult, with license, like hunting license, registration license. And what is the cost of it when you going apply or go to that facility to use that pistol, rifle, archery; what is the cost? Thank you.

Ms. Gima: I'm just want to remind everyone to please either turn off your phone or silence your phone at this time. Lynn, do you want to reply?

Ms. McCrory: Lynn McCrory, Pulama Lanai. In terms who can fire weapons, it will follow the laws as to what can be done. Obviously you don't want a 12 year old or a 14 year old up there by themselves. That, that makes absolutely no sense. I think part of what I understand sporting clays was about was the families coming up, the tournaments that were held for different age ranges of people, for adults, for children. I mean, it's a way for your children to learn how to hunt. Well, maybe not necessarily hunt, but at least aim at a target. It's that -- how did you describe it, it's an incredible feel when that clay pigeon goes through the air and you actually see it break.

Mr. Fujie: . . . (inaudible) . . .

Ms. McCrory: Yeah. I mean, that is something that is really special, you accomplished something. And that's, that's what this is about. It's about the families. It's about everyone having one additional thing. I understand tournaments came in here from other parts of the state at various points. Pardon? World tournaments, so you know, let's have that occur again.

In terms of prices, Winnie, I don't know that they are set at this point only because they still have work to do on the buildings. That all has to be factored in, and they'll come up with it. When we did the community meeting on sporting clays, that was one of things that I asked

people who had been using the facility in the past to suggest, you know, what's important, what did you think the amount was, let's hear testimony on it tonight. It doesn't have to end tonight. I mean, we're more than willing to, you know, give me a call. I think everybody has my e-mail by now, or my phone number or something, but I'd be happy to hear about what you think is important. And, and if there's a special event or something that you thought was important, let us know that.

Ms. Gima: Lynn, while you're up here, I have a question. You mentioned community meetings, how many community meetings did you hold specifically on this topic? And the reason I asked is there was a testifier that said no knowledge of this, no information, but if you could kind of just briefly share that with us.

Ms. McCrory: We did one community meeting on this. I have an e-mail list of about 300 people that we send this notification out to. And I'm trying to remember how many people attended but I think it was somewhere around 30 to 40 which is kind of the normal attendance that we have. I did make sure that I contacted everyone of the Hunter's Advisory Group to tell them we were having this meeting. We wanted them to come talk to us so you could understand what was going on. So they were all very aware of what we were doing. No one gave me a call back or attended the meeting as a matter of course, so I think it's probably as simple as everyone knows what sporting clays is, and we're looking to just open it up with one new thing.

Ms. Gima: Thank you for providing clarification on that. Okay, so I'm going to close public testimony at this time, and turn it over to commissioners. Okay. You're going to be the last testifier.

Mr. Sid . . . (inaudible) . . . : My name is Sid . . . (inaudible) . . . I've been here since 2001. I'm not -- I wasn't born and raised here, but I do have a son that was born on this island and, you know, he's 13 years old now. My two kids -- been at the clays since 2001, since I moved here, one of my first jobs. My kids grew up doing this. They've been up to the range. They have done summer programs. We do a lot of community events up there where kids come up and help, and I think, this facility if we reopen it, it's a big part of the community. This whole island, if the community's not behind us, it's not going to work. I mean, that's just how it is. So this sporting clays facility it brought my family up, I've seen other families come up to it. I've learned from people in this crowd who was my instructor prior to where I'm at, and this facility here, it's really important to me, my family and I'm sure a lot of people here. This island, we all know, a lot of us do a lot of hunting. The younger kids just coming up. The sporting clays facility, with the archery, we can teach them the right way of doing things, and not just they grabbing a bow and going for it. And, you know, I think that's important, for us to teach them the right way and get it done correctly. And we have everything there and we just need your approval. Thank you.

Ms. Gima: Thank you. Okay, public testimony is now closed. Commissioners, now is the time, any questions that you may have for the applicant. Any discussion?

Mr. Bradford Oshiro: Construction, your pistol container, what's the material being used to

prevent projectiles from leaving that container?

Mr. Yogi Higuchi: How's it. I'm Yogi Higuchi, project manager with Pulama Lanai. So the pistol range, it's actually a pre-fabricated. It's based on a shipping container, and it gets basically armored on the inside with plate steel about an inch thick, so it's not going to, the bullet is not going to leave the structure. There's trap, bullet traps at the end that are engineered to dissipate the force of the bullet and it stops and collects it, and it exhaust out whatever gasses happen when the bullet hits the plate. At the manufacturing facility which I visited, they actually shot a 50 cali into the plate steel, and there was just an indent. So other facilities have used this container system. Also for -- what do you call it, like bomb shelters because the thing is super strong. So, I mean, it, it's got every safety . . . (inaudible) . . . so hopefully it answers your question.

Mr. Oshiro: I know you talked about secondary containment on spills, on gas and diesel, whatever you plan to use up there. I just want to make sure that it doesn't leak because there's no contamination up there before they put the range up there, even though it's surface spill. So I just want to make sure because I read something in there that they were going to put a secondary containment so whatever leaks out will not even enter the soil. That's right, right?

Ms. McCrory:.. (nods)...

Mr. Oshiro: Okay. Thank you. Lynn, you said they still gonna open up the shoots for like State shooting competition, residence competition, the people of Lanai still -- I mean, you know, when I see the golf course and they say, residence have, you know, you can use the course, but you only can use the course after 12 o'clock. You know what I'm saying is, you know, there's a set time that you can go use the course as a residence, so you can get the resident's rate. Is that going to apply just like this to the sporting clay?

Ms. McCrory: Lynn McCrory, Pulama Lanai. The answer is no. It will depend, I think, more than anything on what's going at any particular time. What we have is the range opens at 7:00 or 8:00 in the morning, closes at 4:00 pm, and it's important to have the residents there. I mean, that's a big part of what's going to make this successful.

Ms. Gima: Will preference be given to Four Seasons guests?

Ms. McCrory: I think it will be on whoever shows up when.

Ms. Gima: So based on reservations?

Ms. McCrory: Yes.

Ms. Gima: Okay.

Ms. McCrory: They are taking reservations. So if you make the reservation, then you're set.

Ms. Gima: Okay. I just wanted to clarify that, and I'm glad that you brought that up as well, Brad is I think, through testimony tonight, we heard how it's been an intricate part of the community and for families and youth, and making sure that just because it's now being operated and run by Four Seasons that guests don't get all the privileges and, and preferences, and you know, hoping that there's still the tournaments and the activities for the youth, and collaboration with the youth center and the school.

Ms. McCrory: Yes. That is correct. That is the whole point of this because just having guests come, there won't be enough. There aren't enough guests to do this. This is a hunting community. This is where people learn how to hunt, learn how to shoot, learn how to a whole range of things, and this brings other people in. So, no, it is, it is about the community first.

Ms. Gima: Since I have you up here -- so the employees will be Four Seasons employees?

Ms. McCrory: My understanding is yes, they will be.

Ms. Gima: Okay. And...using previous -- the previous employees that have been here before and have operate, helped to operate this facility and knows all the ins and outs?

Ms. McCrory: I believe that's correct. That's Sid back there...and a few others that are in the room.

Ms. Gima: Okay.

Ms. McCrory: Only because they already know what they're doing.

Ms. Gima: Right. Right.

Mr. Oshiro: Wendy, you'll be managing the sporting clays? You're certified to operate the shooting --

Ms. Gima: Wendy, I'll ask you to come up because I need you to be on the mic for the record please.

Ms. Kaupoiki: Hi. I'm not a certified instructor, but I'm a manager and that's what my position is. That's why we have all the other guys who are experts.

Mr. Oshiro: Okay, according to my experience from, you know, wherever I've been working for, the manager usually can do the job. So I would advise you to at least kind of learn it.

Ms. Kaupoiki: Yeah, absolutely. I would love to.

Mr. Oshiro: Thank you. The last question. Since I've been --. I haven't been home long for the last two months. Anyway, I went down on that side of the island and I noticed that the fence that usually...doesn't let anybody enter that property, a lot of it is knocked down. Is it going be

put back up?

Ms. McCrory: Lynn McCrory, Pulama Lanai. Yes, the entire property will be fenced, and that is for safety purposes so that other hunters don't cross over into it. Because do you remember the site map, the edges of that archery walking range, that 14 station range go very close to the edge. So, yes, it will be completely fenced.

Ms. Gima: Thanks Lynn. Anybody else, commissioners, questions? Do you guys have any questions? No? Stu? Okay, no further discussions. Kurt, you'd like to share your recommendations?

Mr. Wollenhaupt: Good evening members of the Lanai Planning Commission. In light of the review, in light of that this operation is essentially a renovation enhancement of the past operation, the Maui County Planning Department does recommend approval of the State Land Use Commission Special Permit and that the time frame would be until May 31, 2026, and subject to eight conditions which also involves things like archaeology, best management practices, and insurance. So that's the recommendation of the Planning Department for approval.

Ms. Gima: Would anybody like to make a motion at this time?

Mr. Stuart Marlowe: I'd like to make a motion that the permit request be granted as stated, and we do so tonight, and let's move forward.

Ms. Medigale Badillo: And I second it.

Ms. Gima: So the motion has been made to approve this Special Use Permit. It's been second. Any further discussion before voting? Okay, all --. Go ahead.

Mr. Oshiro: Okay, I haven't been up there since I came here in the first --. I've been here for 14 years. I haven't been up there for the last 13 years, but what I noticed on the slides and in the packet we received, you guys gotta look at your safety up there because you have cylinders that are leaning against the building. That should be strapped down because if they ever go ballistic somebody's going to get hurt. Just my advice to you, okay, you need to look around. Even if the facility is not being used, if one of those necks snap off the cylinder, it's going ballistic, so my advice to you.

Ms. Gima: Thank you. Any further discussion? Okay, all in favor of the motion raise your hand. One, two, three, four, five. That's unanimous, so it passes.

It was moved by Commissioner Stuart Marlowe, seconded by Commissioner Medigale Badillo, then unanimously

**VOTED: to approve the permit as presented.
(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Marlowe, B. Oshiro)**

(Excused: M. Baltero, J. Barfield, S. Koanui Nefalar, B. Zigmond)

Ms. Gima: We're --. Let's go ahead and take a quick 10 minute break and then we'll resume with our unfinished business.

(The Lanai Planning Commission recessed at 6:15 p.m. and reconvened at 6:35 p.m.)

D. UNFINISHED BUSINESS

- _____ 1. **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) (deferred from the April 20, 2016 meeting.)**

The Commission may provide its recommendation to the County Council.

Ms. Gima: Up next on our agenda is our unfinished business, and that's item number 1 (*Chair Kelli Gima read the above project description into the record.*) And it's saying that the commission may provide its recommendation to the County Council...so I'm gonna turn it over to you.

Mr. Joseph Alueta: Good evening commissioners. Again, my name is Joe Alueta. I'm the Administrative Planning Officer for the Planning Department. Again, as I explained last month I primarily do –

Ms. Gima: Okay, hold on a second. Everyone outside, if you're not here for the meeting, can you please take your conversations elsewhere because it's a little distracting. Thank you. Go ahead.

Mr. Alueta: Primarily my role is to bring, as the Administrative Planning Officer, is to bring you bills amending Title 19 or Title 16 as it deals with signage or anything like that. There's two ways in which you can amend the Maui County Code, Title 19, which is the Zoning Code, and that is either through a Resolution by the County Council. They are proposing a change. Or, it's done by us which just comes to you guys as a regular bill.

The Charter requires that if there is an amendment to Title 19 that those changes go to the three commissions if it affects -- depending if affects that island specific then it doesn't go to those commissioners. But this one would affect all three islands in the County of Maui. And this one is, again, is a Resolution by the Maui County Council. Again, we did not draft it; the Planning Department.

The bill is -- I'm sorry -- the Resolution 16-09 again is entitled referring to the three commissions, a bill regulating agricultural tourism activities in the Agricultural District. State

HRS, or administrative -- HRS, Hawaii Revised Statutes, the amended -- they did amend HRS to allow counties that consisted of three islands in the State of Hawaii, to allow for tourism activities on bonafide farms if they adopted an ag tourism bill. This was...a response to that, to try allow for agricultural tourism activities. Primarily basically what it would do is it would avoid getting a special permit. And I'm kind of glad today you had the State Special Permit process today, which you saw there are some criteria for that. Currently, so if you want to do certain activities within the state agricultural district, if it's not accessory to an agricultural operation, if it's not permitted principal agricultural operation, then your options are primarily is to get a special permit from the commissions and if need be, a conditional permit, from the Maui County Council if it's in also in the agricultural, County's agricultural district. So, again, this bill is an attempt comply with State law, which would allow for a County that consists of three islands to adopt the agricultural tourism bill.

The Department has reviewed this. We did send it out for agency comments. I did pass out another comments that we dated from Office of Planning. They -- originally, they did not get their comments in time by the time I drafted it, so I'll go over that, first, but. Again, the Department has reviewed this. The primary thing is it has to be, for agricultural tourism, to meet the qualifications under State law, it has to be a bonafide farm, and it has to be accessory to that. That's the intent of the State law. The way the County has written their definition for an ag tourism operation, right, in their ordinance, doesn't comply with State -- it doesn't match up State law. And, essentially, you don't even need to have much of an agricultural operation to become -- doing ag tourism operation in the ag district. So we feel that's contrary to State law, and in contrary to the intent of the agricultural district. And that's the --.

Our position, or I guess, our interpretation of the law is also echoed by the Office of Hawaiian Affairs. You'll see that in the staff report...as Exhibit 5. And then Office of State -- Office of Planning also echoed the same concerns that the Department has raised. They offer some specific --. Actually, they're pretty brutal...a little more brutal than I was, but they...they basically said, yeah, this thing does not meet the criteria under the State law. But...again for a commercial --. I'm reading on page 2. I'm trying to highlight some of the areas what they talked about. You know, when they say the definition of ag tourism, on the bottom, number 2, OP makes some recommendations...that at a minimum, the definition be revised to make it explicit that a commercial activity is accessory to an agricultural operation.

The County, the Reso as presented doesn't even do that. You can basically have an ag plan or an conservation plan, and not be a real, and not have an actual farm, and conduct ag tourism. And one of the -- again, one of the things that the County Reso would allow for is overnight accommodations for farm space. Okay. So again that's --. So if you look at the uses, if you look at the actual Reso itself, and this is on Exhibit 1 of the memo report, not really any --. The way they define ag tourism means tourism that promotes but does not interfere with agriculture. So their standard for agriculture is, for what can be an ag tourism operation is pretty low. And they allow for fitness and health activities, petting zoos, lei making, flower arrangements, basketry. I guess that's underwater basket weaving. Other agricultural related education craft classes, agricultural industry education, archery, adventure or challenge courses. So, normally a lot of this stuff, like, lei making or flower arrangement, if you had a

flower farm, and you were operating that, we would consider that to be an accessory use to your agricultural operation. So that's not a problem. But if you don't have flower farm, or if you have a small flower farm, and you're having 300 people show up to do flower making, then we would have a problem. It would no longer be accessory to that agricultural operation.

But again if you look on page 2 of the Council's Reso amending 19.30A, they go through this whole process and basically it would just be a registration of it...for that issued. So, again, we don't see the connection between some type of agricultural operation and the ability of what the County Council has indicated would allow for ag tourism.

Other things that OP talks about and makes recommendations...is...they, their recommendation on page 3, if you see, they require proof of agriculture income similar to, that is currently required under County Code for bed and breakfast. So they feel that there needs to be at least some type of minimum income standard, and they're throwing out the numbers. So that's, that's pretty strict. That would be, that would definitely be a methodology in which you could say, hey, are operating a bonafide agricultural operation if you can show that you have some type of agricultural income.

Other recommendations by OP...they don't think that subsistence farming as well as conservation farming should qualify under this. That's why they feel, again, there should be an income requirement before you can get this.

Other concerns, and those are just coming from other State agencies. And again, Department reco...echos those same concerns. Other --. And again, the bottom gist, it doesn't meet the criteria under 205. It doesn't meet definition of a farming operation under HRS 165-2 which is specifically listed in the Chapter by, under 205, by the...by the State Legislature.

There's also...recently there was bill that was -- that gone through. It made it all the way to committee; it didn't make it at the very end where the State was trying to amend their own law with regards to ag tourism. And in that bill that had attempted to insert ag tourism activities in which there's no structures. It would have to have at least of an income of \$10,000. Show an income of \$10,000. And if you had structures that were going to be used as part of the ag tourism operation, there would be a minimum of \$35,000 of ag income. So again, even at the State level, they recognized that there needs to be an income level somewhere along the way...at least to start off to determine whether somebody's actually doing -- has a bonafide farm.

Other concerns, again, this is...this would just be a registration process, not a permit. So someone would not get a permit to do --. So they wouldn't get a Special Use Permit, they wouldn't get a County's, they would just come in and say I'm doing an ag tourism operation. And as long as they met the criteria outlined in -- that is outlined in this Resolution, they would just send us a -- basically give us their name, their number, and all the information that's in the ordinance and basically register. The Department is uncomfortable with that because we are now tasked with either verifying the information or do we not verify. Because if it's the registration, they would just give it to us and we'd say, okay, fine, your property has been

registered. But we don't know --. Are we then suppose to go out and verify that this isn't the actual owner. Are we then suppose to go and verify the other information that is being required by, by the ordinance that the Council has proposed and there's no fee.

Ms. Gima: Can I ask a question? So just by registering and not having a permit, then there's the issues of who's monitoring, I guess, or enforcing. Obviously there is those conditions that are put upon.

Mr. Alueta: Just the conditions of what's in the Code. And that's fine, but then it would be on us to do the enforcement.

Ms. Gima: Right.

Mr. Alueta: We would just rely on, it would be on complaint driven. So to prove that someone's operating. However the way...the way --. One of the things that's confusing about this is that because we don't feel that this meets State law, the Department's position is that we would still require a State Special Permit. That you don't meet the criteria under the HRS, you still need a Special Permit. Thus, this could create confusion with the general public because, all I gotta do is register my bar because I'm selling beer, but I have a lime and I have a really nice garden and a farm plan that's been approved. Therefore, my bar should be okay because that's an ag tourism operation.

Ms. Gima: Why do you think this Resolution is -- I mean, it's kind of loose. You know, there doesn't seem to have a lot of restrictions or things in place. What's the intent behind this? I mean, is Council just wanting to increase, you know, economic -- I mean, increase the economy and does it have to do with the sugarcane closing down and, you know, wanting --? It just sounds so loose is the word I'm using.

Mr. Alueta: There is why --. There's not much in the report...by the Committee Report. Everything that we were given is in the staff report that was given to us by the County Council and -- when they passed it out. Okay. We had some concerns. We were not able to work with the County Council at the meeting prior to it being passed out. So we had concerns from the get go.

You have seen, as seen previous bills, you had your commercial ag structure ordinance that came through that allowed for 2,000 square foot buildings to be built in the agricultural district as long as they were -- and called commercial ag structures with no special use permit. So, and then you recently saw the attempt at composting; also within the agricultural district as an outright permitted use, not as an accessory to a farm or not necessarily tied to an agricultural activity. And so there is a move towards, I guess, liberalizing the agricultural district. From a land use planner side, we're concerned with that.

We recognize in...Planning 101, you know, the State divvied up, as Mike said, back in the late 60s. I want to say 67 is when the first State Land Use maps came out. The first thing they did was, you know, where's the forestry. So they divvied up the State lands between urban,

conservation, rural and urban lands, okay. So urban is easy. You know where you want to have urban lands for the most part. Okay. Conservation, DLNR, they use basically the forestry line that was already on there. Rural was kind of a weird one where they, they threw most of the stuff. Very little. Maui County has the most rural lands. Of the entire, like 85% of all rural designated lands in the State resides in the County of Maui. It's a very, very limited district that's used. Ag as -- I wasn't born when this thing was made, but I've been told by my bosses in the past -- is that basically all of the, you know, obviously all the big plantations were designated as ag. But they couldn't decide whether they should go into conservation or ag. A lot of lands were thrown into the agricultural district. Okay. And as you see, Maui and Lanai has lots of ag lands. What do you do with that ag land? Now the right and proper way and good planning is you designate where you want to have your urban growth, where you want to have your rural growth boundaries, and you designate those ag lands and you convert them through a State District Boundary Amendment, Community Plan, whatever you -- the proper way. The back alley way is by liberalizing the agricultural district by adding urban type uses without actually going through the planning process, without going through, you know, your community plan process, without going through your district boundary amendment process, without going through the change in zoning process. And I mean, to me, that's been the -- what's been coming down through the County Council. The Planning Department whenever we get these Resos and whenever you try to amend Title 19, it's like opening Pandora's box. You don't know what you're going to get, and you don't know the consequences. So we've been very leery. We want to be, we want to be very meticulous when we do this. So a lot of times when they come down from Council we're doing damage control. And so this is what we're doing. And all I can say is that our recommendation, when we get through this, we're not in support of this bill obviously. There's a lot of State agencies that are not in support of this bill also. And none of the -- Molokai and Maui did not -- was not in support of the bill either, so having said that, that pretty much summarizes the staff report.

Again, on the last page, 4. I'll jump back to page 4 just to highlight some of the issues. Just the structure of the bill is just -- we have some concerns with the enforcement section, how they got that. Again, for registration. They also require, like, a report, and we're like, you want to report to the commissions on what? For what purpose? So you want to collect all this data, report back that so many people registered, but what is the commission going to do with it? There's no provision for that.

Under parking, they have this weird thing about if you violate the parking under three separate occasions then we're going to suspend -- then a special permit is required. It's just the structure, it's just confusing as I'll get out. And we're not opposed to, again, having some things be done if it's really accessory to and supports an agricultural operation. I think a lot of people farm . . . (inaudible) . . . They call them woofers that come world wide farming associating where they show up on the farm. There's also --. I mean, botanical gardens. There's also --. I mean, there's a lot of things that real farmers could do to enhance their income, but we want to make it that this gonna have real farmers that have an agricultural operation that is worthy of bringing somebody out to take a look at it as opposed to what we call a very nice landscape property and there's no real agricultural operation going on.

Ms. Gima: Is accessory use defined? Because, I mean, you gave that example, like if you had a small little flower farm, but then you have 300 people there for lei making. Obviously that's not -- because it's fortunate. So is there -- is it defined what an actual accessory use means?

Mr. Alueta: In the agricultural district there is accessory uses that's allowed. But there's also like based on the scale, like -- you have to look what the scale of the operation is relative to what's going on. Maui Land and Pine, you know, the pineapple company, when they were in operation on Maui they had a 20 room dormitory in the agricultural district. It was just considered -- because they were for the farmers. They were for the laborers that they brought in to help -- the seasonal workers that came in. So clearly that's a normal function of any large plantation style . . . (inaudible) . . . All of -- look at a lot of Maui, and I'm sure on Lanai too is that you had big plantation towns, okay. They were built. They were in the ag. They was no urban land. They were just built out in the very convenient agricultural area, centralized to the field of that, that group of people who were working. So -- and as, you know, as we develop more urbanized and transportation became easier you saw a lot of those small towns disappear and now are under, actually, sugarcane is on them or will, was...for a little longer there will still be sugarcane on them.

Mr. Oshiro: Joe, like the lavender farm, okay, they've got a -- I haven't been up there -- but they've got a restaurant, so how's that's, how's it --? You know, it's a farm, but did they go in for a special permit to --

Mr. Alueta: Yes. They were told and they -- we -- to come in for a special use permit. And I'll tell you the story all later. But that's the, that is definitely -- it's pushing. And that's why we said, no, you're no longer, it's not --. You know, doing lavender tours, you know, people coming up, hey no problem, you're making -- they make wreath out of -- they do classes like that, sure, no problem. But once you start saying, oh, I'm going to be -- I'm selling products that are not from the --. Once you start selling products that are not from the site itself, or not from an agricultural site within the State of Hawaii, then you need to get a Special Use Permit, okay.

Mr. Oshiro: So that's, that's the way it works for, like, Kona side, Holoaloa, the coffee farms they've got -- some places they've got farms, they've got coffee grindings, and they also serve coffee and they serve a little bit of food, but that's what you're talking about?

Mr. Alueta: Right, right, right. But if you start having margaritas and, you know --. Because -- margaritas because you grow limes, then I've got a little more --. We start to come in -- we call in to question is this truly accessory to a farming operation or not.

Mr. Stephen Ferguson: I had a question. How would that...looking at Lanai, say Pulama own all the land, most of it ag land, and they running one UTV guided tour. How does that -- how you define that? Like would that fall under?

Mr. Alueta: As we saw in some of the examples that -- Mike, sorry, I using you a lot tonight -- he talked about, like, in his Special Permit, you know, like, there's open land recreation that was allowed and listed as permitted uses. So it all depends, as long as there's no, again, structures

on some of these, in open land rec. And again, if it's 2,000 or 20,000 acres that's one thing. You've got five acres and you've got a motorcycle ATV course...no. But if you were Haleakala Ranch and you use ATVs as part of your ranching operation because you've got 15,000 acres, then, yeah, that's an accessory.

Mr. Ferguson: . . . (inaudible) . . .

Mr. Alueta: Yeah, and then also, like certain activities we made it clear. Zip lines are not an accessory . . . (inaudible) . . . That's -- you need to get a Special Use Permit for that...Special Permit for that; you need to get. So people have come in, and again the envelope is going to be pushed, interpretations gotta made that there is a gray area in the law, but this -- we feel this one kind of pushes the envelope a little too far and especially when the State had some pretty clear criteria of what they intended this law to be.

Mr. Marlowe: You've got a couple of problems. The first of which is that there's more ambiguity in everything that you said as well as what's printed here. The probability of future law suits...is going to drive you guys crazy and the taxpayers broke. Until you clean up the language and be specific and stop with all the ambiguity somebody that wants a restaurant on a, on another lavender farm and is not granted the Special Use Permit is gonna sue in a heartbeat because somebody else already had one. So until you clean that up and get all the ambiguity out of it so words like "shall", "must", etc, exists in that. There's no -- there's really nothing --. They tied their owns hands in trying to accomplish what they wanted by having it written the way that it is. You've painted -- they've painted themselves into a corner, and until they clean it up, there's no way out.

Mr. Alueta: Again, I didn't write it and we were not, we were not involved in the drafting of it. So, again, we -- we think there's room for improvement in the bill. We think the --. There's some improvements and to narrow it down I think the echoing by the State as well as -- by State agencies with regards to income requirements. As well as the State Leg is also pushing for this. I mean, they're looking at trying to reel this in also. As you can see again the way the State crafted it, it only applies with counties with three islands.

Mr. Marlowe: Okay, so --

Mr. Alueta: Okay, so you could tell that other State legislatures who represent other counties didn't want it. Okay. And so there was a few legislatures that pushed, allowed for it, and they were gonna give it a try, and so, see what they come up with. So we'll -- again, we think this first past is a no go from a Planning Department's stand point. We'd like to have some work on it. Again, our recommendation is not to recommend approval of this bill.

Mr. Marlowe: Well, not to be repetitive, but let's take a situation where an income amount is required. So now you put the chicken to the egg, right? So if you grant me my Special Use Permit to build the restaurant or to build whatever the other things are, then I'll have the income to meet the criteria. That's why this thing can't go forward.

Mr. Alueta: No, no, no. The income is farm income.

Mr. Marlowe: I understand.

Mr. Alueta: Not, not --. So you should be --. I mean --.

Mr. Marlowe: But the ambiguity in it would make the premise that I'm discussing right now viable if it came to court. You didn't let me add something that would bring revenue. The thing has to be redone.

Mr. Oshiro: So anything that's not ag, right? So if you're coming in with anything else besides farming, right, you have to come in for the Special Permit to, like, to put a building to manufacture clothes, and the farming's got nothing to do with it. So, so –

Mr. Alueta: That is correct.

Mr. Oshiro: Like over here, we've got a whole bunch of lands, so if they come in with something that has nothing to do with agriculture, they gotta come for a Special Permit?

Mr. Alueta: Correct. Or, or a Change in Zoning, or you know, I mean –

Mr. Oshiro: Thanks for making it more clear.

Mr. Alueta: Public hearing or is there any more questions before you do public hearing?

Ms. Gima: Anyone in the audience that wish to give testimony? Alright. So your recommendation is for denial, correct, Joe? I'm looking at the options here.

Mr. Alueta: Yeah.

Ms. Gima: Recommend denial of the proposed bill to the Maui County Council. That's what the Planning Department is –

Mr. Alueta: Yes, we are not in support of the bill. And then you have three ways. You can either 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. You've done number four so far.

Mr. Oshiro: So let me, let me say something. Let me propose that we deny this bill because it's useless. I mean, I don't see it; I just don't see it at all.

Ms. Gima: Is that your, is that your motion?

Mr. Marlowe: Door number three.

Mr. Oshiro: Yes that's my motion.

Ms. Gima: So Brad made a motion to deny the proposed bill. Do I hear a second?

Mr. Ferguson: . . . (inaudible) . . .

Ms. Gima: Okay, Fergie has second. All in favor of the motion to -- for deny -- recommend denial of the proposed bill to the Maui County Council raise your hand. One, two, three, four, five. That's unanimous.

It was moved by Commissioner Bradford Oshiro, seconded by Commissioner Stephen Ferguson, then unanimously

VOTED: to recommend denial of the proposed Bill to the Maui County Council.

(Assenting: M. Badillo, S. Ferguson, K. Gima, S. Marlowe, B. Oshiro)

(Excused: M. Baltero, J. Barfield, S. Koanui Nefalar, B. Zigmond)

Mr. Alueta: Thank you.

E. ORIENTATION WORKSHOP NO. 1

- 1. Opening Remarks**
- 2. County Policy Against Discrimination**
- 3. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
- 4. Ethics**
- 5. Contested Cases**
- 6. Property Rights**
- 7. Rational Nexus and Rough Proportionality**

Ms. Gima: Two hands don't count. Thanks Joe. Alright, we're gonna go to Item E, which is the Orientation Workshop No. 1.

Mr. Clayton Yoshida: Thank you Madame Chair, members of the commission. We didn't discover until yesterday morning that we would have a bare quorum at today's meeting, and we appreciate that we did have a quorum so you could conduct business. However, we felt that Commissioner Baltero was unable to attend today's meeting, and possibly if we could defer this until the next meeting. And then we'll have also besides the items listed some training on coastal zone management, and then Kathleen Aoki can provide an update, a status report regarding the SMA boundary review. I think her last report was at your February meeting. So we would request a deferral on the orientation workshop.

Ms. Gima: Any objections, commissioners? No? Alright. Next would be the Director's Report; and starting off with the open Lanai applications report as distributed by the Planning

Department with the April 20th, 2016 agenda.

Without any objections by the commission, Item E, Orientation Workshop No. 1 was deferred to the next scheduled meeting.

F. DIRECTOR'S REPORT

- 1. Open Lana'i Applications Report as distributed by the Planning Department with the April 20, 2016 agenda**
- 2. Open Lanai Applications Report as distributed by the Planning Department with the May 18, 2016 agenda**

Mr. Yoshida: I guess we had distributed this at your last meeting, April 20th. We were unable to get to the item due to the lateness of the hour which is pretty much replicated in the open applications report for today's agenda. And by and large the commission has already dealt with many of these items such as the Lanai Helistop pad; this evening, the Lanai Sporting Clays; the three houses; and the Special Events at the Manele Golf Course. So if there are any questions on the other items, we can answer those. But by and large, you know, move to another forum for the three of them, the helistop pads, the three houses, and the special events at the Manele Golf Course to the Maui County Council who has the final decision making authority. So are there any questions?

Mr. Oshiro: This one, the last one, the Waterous residence. Waterous residence, what, what is that? You've got any idea?

Mr. Yoshida: I believe he wants to make some additional improvements to the residence. Maybe Kurt can explain.

Mr. Wollenhaupt: Apparently there's a two story building in the front of the house, and so they're actually going to add the floor inside the existing building. Manele. Yeah.

3. Agenda Items for the June 15, 2016 Lana'i Planning Commission meeting

Ms. Gima: Alright then lastly was the agenda items for the June 15th, 2016 meeting. So as you said, Clayton, we'll do the Orientation Workshop, SMA Boundary update, Coastal Zone -- was it Coastal Zone Management. Anything else that you guys know that's going to be on the agenda?

Mr. Yoshida: I believe we would have -- the commission would have to look at potentially canceling or rescheduling your September meeting. This year the Kauai Planning Department is hosting this year's conference. It is scheduled for September 21st to the 23rd. Your regular meeting date in September is September 21st, so we either cancel the meeting or we try to

reschedule the meeting.

G. NEXT REGULAR MEETING DATE: JUNE 15, 2016

H. ADJOURNMENT

Ms. Gima: Okay. Alright. Anything else? Anything else Clayton? Okay, we'll have an early evening. So it's now 6:59 p.m., and with no objections, the meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 6:59 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Medigale Badillo
Stephen Ferguson
Kelli Gima, Chair
Stuart Marlowe
Bradford Oshiro

EXCUSED:

Marlene Baltero
Jarrod Barfield
Stacie Lee Koanui Nefalar, Vice-Chair
Beverly Zigmond

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, Department of Corporation Counsel - On Call