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**MAUI PLANNING COMMISSION
REGULAR MINUTES
APRIL 25, 2017**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Sandra Duvauchelle at approximately 9:10 a.m., Tuesday, April 25, 2017, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Duvauchelle: Good morning. Maui County Planning Commission meeting of April 25, 2017 is now in session. I wanna welcome our new Commission Members and acknowledge everyone that's here and thank you so much for making me Chair when I wasn't here. But it is an honor and I appreciate it and pardon me this morning if I'm getting my feet wet. So I appreciate everyone being here.

We're gonna open the morning with public testimony. But I think prior to public testimony I'm going to ask our Corp. Counsel to make a clarification on our agenda items and the order in which they will be heard.

Mr. Giroux: Thank you Chair. In light of the fact that our agendas have multiple contested cases we're trying to keep clarity between the public hearing and the contested case proceedings. So one of the things that we are going to do procedurally is we are taking testimony before any of our items are put up for discussion. However we have a contested case that also has an intervention so we're gonna be grouping those together prior to the public testimony so we can hear public testimony but then later on as we get into the discussion we are gonna have to separate those two out and then we're gonna have to dispose of the issue of intervention prior to discussing the application for the SMA. So if there's no objections to that that's how we are planning to proceed.

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. **Testimony will be limited to a maximum of three (3) minutes.**

Chair Duvauchelle: Okay, then we will proceed with public testimony. Your testimony will be limited to three minutes. If you testify now you will not be able to testify again when the agenda item is heard. So you may either pass at this point or choose to testify at one time and three-minute limit. So on my sign up list I have Greg Walker. And if you please state what agenda item you are testifying on.

Mr. Greg Walker: Good morning Planning Commission. My name is Greg Walker and I'm testifying on Kamaole Grand, Item No. 1. Basically I just wanted to say a few things supporting this community. This community is going to compliment the surrounding neighborhoods as well as help to increase property values and add to your tax base which is vitally important to us. These planners behind you have taken time and have shown their concern for their neighbors

1 by making concessions and modifying their design to maximize views, adjusting traffic flow and
2 increasing drainage retention areas to address some of those concerns. I know by the time we
3 get...by the time they get to this stage there's been a lot of time and energy put into that design
4 to make sure those items have been addressed. As a business owner in Kihei and also a
5 landowner I would like to recommend approval for Kamaole Grand and hope today that we have
6 a common sense approach is used in today's process. Thanks it.

7
8 Chair Duvauchelle: Thank you. Any questions? Thank you Mr. Walker. Next testifier listed is
9 Nancy Dennison.

10
11 Ms. Nancy Dennison: Good morning and thank you for letting me speak. My name is Nancy
12 Dennison. I'm a homeowner at Moana Estates. I live only three houses from the corner of Liloa
13 Hema and Moana Avenue near this proposed project. This project would have a devastating
14 impact on the quality of life for me personally and all other homeowners living near this project.
15 I attended the February 9 meeting where the developer admitted they would use explosives for
16 their site preparation. I find this irresponsible since there was no geologic study performed.
17 And due to the close proximity to my home of this proposed project it would result in damage to
18 my home. I don't know what if there's been any kind of bond or funds set aside for claims for
19 homeowners where their homes are damaged during the construction or due to the construction
20 of this project, but that's something that should be considered.

21
22 My arguments against this project are number one, in adequate traffic study. The impact of
23 adding 217 units, 378 bedrooms and 458 parking stalls adding traffic to Liloa Hema and South
24 Kihei Road will be much higher than the figure stated in the marketing presentation. They do
25 not take into consideration the pedestrian lifestyle here on the island. They use a trip
26 generation handbook that was it was meant for some mainland city which is unknown to us.
27 And the fact that they say only like 10 percent of the cars are gonna use South Kihei Road is
28 absurd because every person that lives in my subdivision uses South Kihei Road and everyone
29 around there uses South Kihei Road because it's the only way to get up and down to the
30 various stores, shopping and beaches. So all 458 of those parking stalls will hold a vehicle that
31 will perhaps on a daily basis use South Kihei Road which is already so highly impacted and
32 congested that during our snowbird season that we can hardly even move up and down that
33 road unless we're walking.

34
35 Liloa Hema was built to be...is part of the north-south collector system and it was two lanes for
36 a purpose because it was only meant to be used as a backup if there was some kind of closure
37 for South Kihei Road. Also, there was an emphasis on keeping it pedestrian...for pedestrian
38 use and as well for bicycle use. So if you're adding this kind of traffic it's just not going to work.
39 And how are people even going to get in and out of our subdivision with 458 cars going by in a
40 daily basis. So I think the traffic study is very misleading. Also—

41
42 Chair Duvauchelle: Excuse me, three minutes is up.

43
44 Ms. Dennison: Oh, sorry.

45

1 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you Ms. Dennison. Next
2 testifier Bruce Travis?

3
4 Mr. Bruce Travis: Hi, my name is Bruce Travis. I've lived in the Kihei-Wailea area since 1979. I
5 first became involved with this project when Hafra of Canada owned it in 1988. I've been
6 involved with this project ever since and it should have been developed a long time ago. I'd like
7 to address the flow of traffic in and out. I'm not the developer but I've seen the north-south
8 collector road get developed. The majority of the traffic from this project will ingress and egress
9 from the north-south collector. There's a restriction going onto Kihei Road. You can only turn
10 right when leaving. You can only turn left when coming in. This project and this property is
11 properly zoned for the development. It's zoned hotel, but redesignated multi-family in the
12 community plan. So what is being proposed for this property is a long-term residential
13 condominium not a short-term rental. There is a different pattern between a short-term and a
14 long-term living situation. The area really needs to develop this property. Right now it's a
15 recipient of trash. It's a possible collection for homeless people and vagrants. The site was
16 previously graded so there...it's dangerous if you go on it right now because it's been sitting
17 vacant. So there's a liability there. The design is really beautiful. It will enhance the area. It
18 will help all the businesses in the surrounding area. It will add to the tax base and I highly
19 recommend that the council approve the project because it's long overdue. It's zoned. It's
20 gonna be a beautiful project. It's gonna enhance the community and increase the tax base.
21 Thank you very much.

22
23 Chair Duvauchelle: Thank you. Any questions? Thank you Mr. Travis. Next testifier Ethel
24 Belway?

25
26 Ms. Belway: I'll wait.

27
28 Chair Duvauchelle: Okay. Patricia Hoskin?

29
30 Ms. Hoskin: I'll wait.

31
32 Chair Duvauchelle: Lea and Sam—

33
34 Ms. Beaton: ...(inaudible)...

35
36 Chair Duvauchelle: Okay, Mike Moran?

37
38 Mr. Moran: ...(inaudible)...

39
40 Chair Duvauchelle: Thank you. Randy Draper?

41
42 Mr. Draper: ...(inaudible-speaking from audience)...

43
44 Chair Duvauchelle: Excuse me, would you like to testify at this time on any of the agenda items
45 if so—

46

1 Mr. Draper: ...(inaudible)...

2

3 Chair Duvauchelle: Okay, you'll have to come up to the podium sir, state your name and speak
4 into the microphone.

5

6 Mr. Randy Draper: Thank you for letting me have the opportunity Commission Members. My
7 name is Randy Draper. And I would like to testify about the Mahana, them taking public beach
8 and not having a right-of-way for beach access which I heard they were liable to for a County
9 fine of \$100,000 which in my opinion should be spent if that's what it is, it should be spent you
10 know addressing a beach parking lot and public access for the public to use. And there's not
11 enough beach accesses in the area from there north of Kaanapali and this would greatly help
12 out the community.

13

14 One other thing that I've done is talk to the Deputy Director of the Planning Department and I've
15 been trying for 40 years trying to get them to address the SMAs that nobody paid any attention
16 to and they built all the hotels. I was here when there's three hotels around the beach every day
17 for 30 years and watched this all happen. Some people only had 10 stalls, some people have to
18 have 30 stalls and it jumps around from hotel to hotel and I can't see why the Planning
19 Commission couldn't have been a little bit more level...have a level field for everybody to play
20 on at this point, at that point and now they seem to have thrown all the SMA permits in the trash
21 for the last 40 years and nobody in the County wanted to dig them out until recently and they did
22 find them. And now nobody wants to listen to what the rules were because they're so used to
23 doing what they wanted with their own hotel parking lots for the beach access which was not
24 done.

25

26 Chair Duvauchelle: Sir, sir, are you testifying—

27

28 Mr. Draper: Yes, I'm telling you about the beach parking situation and I'm saying this \$100,000
29 and any fines that the hotels or that the County could get from the hotels for not having proper
30 public beach parking which I found several violations and I've given several videos to the
31 Planning Department and they have done nothing about enforcement of the SMA Rules and I'm
32 just trying to get around to the point if they do get around to fining any of the hotels or anybody
33 who's violating public beach parking they should use these fines to be levied for enforcement to
34 where they could be patrolled every day and so on so forth. Otherwise nothings done, the
35 County is gonna get sued and so will the hotels. So I would suggest that the County gets on
36 this as soon as possible. Thank you very much.

37

38 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you. Autumn Ness?

39

40 Ms. Autumn Ness: Aloha Commission. My name is Autumn Ness. I'm testifying on the
41 Kamaole Grand Project. I apologize I haven't done much homework on this because we're in
42 the throes of budget session with Council so I'm a little bit undereducated but I just came to give
43 my two cents. I do work for the County Council but I'm here testifying on my own behalf. I am
44 admittedly an environmentalist and a slow growth advocate but I am also working my butt off
45 with the Council to find creative solutions for our dire housing crisis. So yes, a project of this
46 size brings some opposition from the community, but for me 200 units of housing right in the

1 middle of South Kihei is something that I can get behind as long as it's done right. Kihei needs
2 housing desperately. We all know that. We need it in quantity. It's a bad idea I think to develop
3 south of Wailea. It's bad idea to develop on the shoreline. There's a severe shortage of
4 suitable developable property on Maui which is why we find ourselves where we are. So I think
5 this project is in a great spot. Drainage and runoff issues are definitely huge and we cannot
6 compromise on this even for 200 units of housing we cannot allow more development without
7 adequate drainage and runoff management. Not only flooding is gonna become an issue which
8 Kihei cannot handle anymore of, but nearshore water quality and reef health is something that
9 we really have to protect. Look at the water and reef in North Kihei ... (inaudible)...management
10 has failed and you'll what I'm saying. This can happen in South Kihei too. I see that the SMA
11 application refers to best management practices to mitigate short-term effects on water quality
12 but respectfully I'd like to see better than best management practices. I dive the area a lot and I
13 know firsthand how even short-term construction projects using best management practices are
14 deadly to our reefs and aquatic life and they don't come back from that very easily. After the
15 last few summers of coral beaching and reef death our nearshore aquatic life cannot handle any
16 more stress. So I'd like to see better than best management practices. I also want to ask the
17 Planning Commission and the developers of this project to draw a hard line against any
18 possibility of any of these units ever becoming short-term rentals and I say that with conviction
19 on purpose. Whatever can be done please do it. If you can make strict prohibition of STRs in
20 these units a condition of approval, please do. If the property owners can back that up with
21 some kind of penalties for violators the community will thank you. With all due respect a simple
22 assurance that none of these will be short-term rentals is not enough. We all know how these
23 things work and I would like to see real assurances that these will be homes and not just homes
24 but homes that we can afford. That means going above and beyond what the County and what
25 HUD define as affordable. We've all been here before we've been promised housing that turns
26 into STRs after a few years at prices that we can't afford anyway. We're shown best practice
27 diagrams and then watch reef die in front of our eyes anyway. So the community gets really
28 defensive when it comes to projects like this and rightfully so. But I would hope that our
29 community can see that housing is an issue and we need housing in quantity so I think any
30 attempts by the developer and by this Commission to offer more affordable units at better prices
31 and do better than best management for our reefs will be accepted by the community. Thank
32 you.

33

34 Chair Duvauchelle: Thank you. Any questions? Thank you. Kai Nishiki?

35

36 Ms. Kai Nishiki: Good morning Commissioners. I'm just gonna pass out a map real quick. So
37 I'm gonna testify on a few items here.

38

39 Chair Duvauchelle: Please state your name.

40

41 Ms. Nishiki: My name is Kai Nishiki and I'm gonna testify on C-1. I do echo what Autumn said
42 about affordable housing and the need for housing in Kihei and I do believe that developments
43 within our...right in, within our towns is a really good idea, walking, biking. And I understand
44 there are concerns with traffic and drainage and I do believe that those situations can be
45 addressed but we are in a housing crisis and this is an important project that could bring
46 housing to Kihei as long as there are mitigation for the concerns.

1
2 C-2 and 3, those are exactly what we're talking about short-term rentals and I'm gonna testify in
3 opposition of all short-term rentals.

4
5 E-1, that's gonna be the map that I handed out. I wanted to just give a little history of this area
6 here. If you look at the top where it says, Mahinahina Beach Condos and you look a little further
7 up that is where S Turns is and that is public access, then if you look down to the bottom of the
8 page Honokowai Beach Park that's another point of access. In between those two areas there
9 are 21 properties. I'm sorry this copy is not in color and so you can't really see all of the little
10 seasonal beaches all along that area and there's also halfway in between that point there's also
11 a well-used surf spot called, kuleanas and there is no beach access, zero for over one mile.
12 Historically these were built in the 70's. They're built to close to the ocean. You can see they're
13 basically on the shoreline. A lot of these properties have seawalls in front of them and that has
14 now cut into lateral access as well. So you can't even traverse the shoreline from the two
15 access points. There's snorkeling, there's fishing, there's diving, there's also a number of spots
16 where turtles go and rest and people go and watch them and watch the sunset. So it's a really,
17 it's a great place for families for people who are fishermen to use this area.

18
19 Historically the carrot and stick approach have been our options for beach access and we can
20 either use condemnation in cases like this to secure beach access or there's also historically in
21 the Planning Department we've used whenever people have come in for permits we can always
22 secure beach access at that point. So I do think that here's precedence for the County using
23 various techniques in order to secure this access. We're talking about 40 years ago these were
24 built and there's no—

25
26 Ms. Takayama-Corden: Three minutes.

27
28 Ms. Nishiki: --that there's no access at all. There is precedence, Hololani—

29
30 Chair Duvauchelle: Excuse me, thank you the three minutes is up.

31
32 Ms. Nishiki: But I had—

33
34 Chair Duvauchelle: Please wrap up.

35
36 Ms. Nishiki: Okay. So I would like the fine of the \$100,000 to go to beach access in this area or
37 to have it go to the open space fund and there also to be shoreline access and shoreline
38 parking as part of the agreement with the County.

39
40 Chair Duvauchelle: Thank you.

41
42 Ms. Nishiki: Thank you.

43
44 Chair Duvauchelle: Any questions? Yes?

45
46 Ms. Gomes: I just wanna clarify for your testimony regarding C-1 you are for it? You're for it?

1
2 Ms. Nishiki: Yes, I support that.

3
4 Ms. Gomes: Support that. Thank you.

5
6 Ms. Nishiki: And also I wanna bring up that in this area Pulelehua is directly across the street
7 and that's gonna be a huge housing development and there's no beach access for one mile
8 across the street from Pulelehua and that will be huge for our residents to have access to the
9 beach in that area. Thank you.

10
11 Chair Duvauchelle: Thank you. Mark Joiner? David Christian? Okay, that's the last of who
12 have registered to testify. Would anybody else like to give public testimony at this time? All
13 right, seeing none public testimony is now closed. Director?

14
15 Mr. Spence: Okay Commissioners, we are on Item C-1, Mr. Mike Goshi of Design Partners,
16 Inc., requesting an SMA Permit for the Kamaole Grand. Our Staff Planner this morning is
17 Candace Thackerson.

18
19 Commissioners we do have a Petition to Intervene and I believe both sides are represented by
20 counsel here this morning. Why don't you go ahead?

21
22 Mr. Giroux: So we're gonna take public testimony on both those items and then we're gonna
23 have Gina come up, Candace, whoa. We're gonna have Candace give us a short synopsis of—

24
25 Ms. Thackerson: Do you want to do the public testimony first or would you like to just do the—

26
27 Mr. Giroux: Actually let's get the synopsis first.

28
29 Ms. Thackerson: Yeah, okay.

30
31 **C. PUBLIC HEARINGS** (action to be taken after each public hearing.)

32
33 **1. MR. MIKE GOSHI of DESIGN PARTNERS, INC. requesting a Special**
34 **Management Area Use Permit for the Kamaole Grand project consisting of**
35 **seven (7) residential buildings comprised of 217 condominium residences,**
36 **a recreation center, barbecue areas, swimming pool, and associated**
37 **improvements at 2455 South Kihei Road, TMK: 3-9-020: 007, Kihei, Island of**
38 **Maui. (SM1 2016/0007) (C. Thackerson)**

39
40 Ms. Candace Thackerson: So I'm going to just give a brief overview of the project so that we
41 keep the contested case and the public hearing clear and separate and we also on the record to
42 know what we're testifying for in place of...did you want to testify on this item? Okay, well we're
43 gonna do that in a second and then I'll let you...I'll just...you can raise your hand.

44
45 So normally we let the applicant give a project overview but we're gonna do that afterwards.
46 We're gonna just go ahead and just do a brief synopsis and we'll take your testimony at this

1 time. Okay, 'cause we got to get to the intervention prior to the applicant giving his presentation.
2 Right, we have to see that first.

3
4 The applicant is proposing to develop a seven, four-story buildings comprising 217
5 condominium residences on approximately 8.39 acres of undeveloped land. The primary
6 access to the project site will be from Liloa Drive with a secondary access from South Kihei
7 Road. The South Kihei Road driveway will be restricted to right-turns out with right and left turns
8 into the project. All buildings are four stories and oriented in the mauka-makai direction
9 primarily to mitigate impact of public views from Liloa Drive. Amenities will include a recreation
10 fitness center, swimming pool, common areas with barbeques. Associated improvements
11 include grading, paved parking areas, utility connections and landscape planting. And this will
12 be located at 2455 South Kihei Road.

13
14 That's just a brief overview of the project and I think we can then open the public testimony on
15 this item?

16
17 Chair Duvauchelle: All right, Candace thank you. So we're gonna take public testimony on Item
18 C-1 and...D-1 and C-1 together. So if you wish to testify on this agenda item prior to...excuse
19 me, just a moment, go ahead Commissioner Robinson?

20
21 Mr. Robinson: I thought usually the applicant goes and does his presentation and then we open
22 it up for public testimony so that the public can actually hear the application before they have to
23 testify?

24
25 Mr. Giroux: Yeah, what we don't want though is to confuse the applicant's presentation to be
26 their presentation. That's not...the contested case has to be separated out, otherwise the
27 applicant is not under the indication that they are actually in the middle of a contested case. So
28 what we need to do is we need to get the public testimony. We have the application in, we have
29 people understanding that they know why they're here to testify. It's on our agenda and we
30 need to take their input as far as what their position is on the application. There is a contested
31 case that needs to happen, but we can't get to even that point until we dispose of the
32 intervention. So if you're gonna sit here and hear a three-hour presentation and think that
33 you're in the middle of a contested case but you're not and then later on find out we have to do it
34 again and then do it again, that's how it's gonna play out. Otherwise we have to take care of the
35 law that says we need to take public testimony. We have to hear from the public about this
36 project and we also have to separate out time and space for the applicant to present their
37 contested case.

38
39 Chair Duvauchelle: Commissioner Robinson?

40
41 Mr. Robinson: So for clarification are we talking about just the contested case I mean as far as
42 the intervention goes or are we talking about the application as a whole because –

43
44 Mr. Giroux: The application by law is a contested case.

45
46 Mr. Robinson: Okay.

47

1 Mr. Giroux: So that's the problem. When you guys had that last hearing—

2

3 Mr. Robinson: Right.

4

5 Mr. Giroux: That was the problem. The applicant was over there thinking he was just
6 presenting his case and then he finds out he didn't get his project and then he tells you guys
7 why didn't I have a contested case. So that's the issue that we're trying to solve.

8

9 Mr. Robinson: So is going forward the community needs to have their testimony before they
10 hear, before they hear an applicant go ahead and do their presentation because we used to, we
11 used to ask them to wait till after the presentation so there isn't misinformation in testimony.

12

13 Mr. Giroux: Well, the law says that it has to be on the agenda.

14

15 Mr. Robinson: Okay.

16

17 Mr. Giroux: It's agendized, it's put out there. The application is a public application. The
18 Planning Department has all of the materials. They have it all in their possession. Everything is
19 exposed to what if you wanna go and look at every piece of paper that has been subjected to
20 the Planning Department it's open to inspection.

21

22 Mr. Robinson: Okay.

23

24 Chair Duvauchelle: Commissioner Carnicelli?

25

26 Mr. Carnicelli: So James along the same lines of what Commissioner Robinson's saying, is
27 what if we just said, okay we're dealing with D-1 right now, we're dealing with just the
28 intervention that's what we want to deal with is deal with the intervention. We then make a
29 decision on the intervention and then we move forward. So then we can hear from Mr. Pierce
30 on the intervention. We can take testimony based on just the intervention then we can move
31 onto—

32

33 Mr. Giroux: Okay, so I hear on that and you know, like I told the planners and I told the
34 Department there's more than one way to skin this cat and this issue is is that if you do it the
35 way that you just mentioned, the developer has gone through a lot of effort to put this on as...to
36 meet his requirements of a public hearing. So that means you know the newspaper, the
37 application, all of that. So there needs to be a public hearing today. Today is the day for a
38 public hearing. The issue is is that you as a commission cannot take action on the application
39 until the issue of intervention is disposed of. So the public hearing happens first because that
40 needs to be dealt with. That is why we are...it's on the agenda.

41

42 Secondly, that later afterwards there was an intervention filed, we have to dispose of that.
43 Then once that's disposed of there's a contested case that needs to be conducted. So that's
44 where we're going.

45

46 Mr. Carnicelli: Okay.

47

1 Chair Duvauchelle: So Counsel I have a question so if the concern is public testimony not being
2 allowed after the presentation can we take public testimony now and then allow it after the
3 developer's presentation again if they would like? I mean, not the same testifier but if somebody
4 wants to wait and testify?
5

6 Mr. Giroux: Right, it's up to the Chair if you want to do that way. It's just that what we're trying
7 to do is we're trying to get everything consolidated in a way that it's a lot easier to get a handle
8 on. Because what you're gonna...what you are going to be asked to do as the commission is
9 to weigh the facts as they're presented and to compare that to the law that you're gonna have to
10 make a decision on. So if you're getting information all over the place in hodge podge it's gonna
11 be very hard for us at the end of the day to create a document that says this is what you guys
12 took into consideration. And if we can't do that then we cannot justify your decision at the end of
13 the day. Okay?
14

15 **a) Public Hearing (Items C-1 and D-1)**
16

17 Chair Duvauchelle: Okay, so we will now hold public testimony for anyone wishes to testify on
18 Items C-1 and D-1. So we will go back to our list. So Ethel Belway? Please state your name,
19 you'll have three minutes.
20

21 Ms. Ethel Belway: Aloha, my name is Ethel Belway and I'm here today as the president of the
22 Kihei Kai Nani Homeowner's Association to register our concerns regarding the proposed
23 Kamaole Grand development. We have had a long history of developer's attempts at
24 construction on this site.
25

26 In 1991 a development called Royal Maui Kai was approved by the Planning Commission.
27 Major blasting took place for construction begin. Owners at the back of the...at Kihei Kai Nani
28 observed that they were building up high layers with fill at the back of the property where the
29 buildings were supposed to be located. Further investigating revealed the approval four-story
30 buildings had a non-approved two-story parking lot plan under the buildings making them six
31 stories but with additional fill more like eight stories. The objective being ocean views for the
32 buildings. Kihei Kai Nani owners retained Isaac Haze to investigate the changes in the permit.
33 You found construction plans for the project were substantially different from the plans approved
34 by the Commission. These changes were detrimental to the interest of the adjoining property
35 owners. The then Planning Director Christopher Hart had approved an amendment to the SMA
36 Permit upon the request of the applicant without review by the Planning Commission as required
37 by the Commission Rules. Fortunately, the developer abandoned the project but subsequent
38 owners inherited the greatly increased land elevation and altered drainage pattern. We want to
39 know if the developers of Kamaole Grand have a current grading permit allowing them to
40 construct buildings to be the existing elevations or to the original pre-1991 grade plot.
41

42 Kihei Kai Nani is now faced by Kamaole Grand, a development of 217 condominiums with
43 roadways and parking lots surrounding the perimeter of the buildings. We are located on the
44 south side of Kamaole Grand down grade of the development. We are very concerned about
45 flooding on our property once the surface is hardened exacerbated by the 1991 landfill which
46 decreased...increased the elevation and slope of the land substantially. We would like to
47 request a substantial wall that would direct the floodwaters back on...(inaudible)...towards the

1 retention basin they are planning not the planned the plastic fence with a space underneath it.
2 In time we could expect flooding on our property by erosion and the damage to the fence by
3 cars. We are a vacation rental resort of 180 owners with approximately 150 owners relying on
4 the income from their condos. This is the fourth time developers has changed their
5 configuration and we have to tolerate grubbing and blasting, experiencing damage to our
6 property and our peace of mind. We would like a timeline for the blasting to reduce the impact
7 on our owner's income. Hopefully the project will not be abandoned after grubbing leaving Kihei
8 Kai Nani again with a torn landscape, dusty fence and a wasteland to look at. And I have
9 submitted pictures of what it looked like 1991 and what it looks like today and also a letter from
10 Isaac Haze at the time of 1991 that he sent to my husband. Thank you.

11
12 Chair Duvauchelle: Thank you. Any questions?

13
14 Mr. Giroux: Is that Hall, is that Isaac Hall?

15
16 Chair Duvauchelle: Ms. Belway one moment. Commissioner Canto?

17
18 Ms. Canto: Ms. Belway I have a question for you. So it appears that you're willing to work with
19 the developer with conditions or—

20
21 Ms. Belway: Well, we had been, we had been looking at this wasteland for at least I've been
22 there for 35 years and through that time we've had four different developers, four different
23 people that have blasted and put in new sewer and drainage whatever and then they quit and
24 we have to wait until the grass grows over the land and it covers it so we don't get dust
25 anymore. The last developer left the dust fence up and we had to look at it for at least three
26 years. We asked him over and over to take it down, he never did until we finally did. But you as
27 you can see in the last picture on my thing the old fence is still laying there. Nobody ever took it
28 away.

29
30 Ms. Canto: Okay, so my question is are you willing to work with the developer with conditions
31 or—

32
33 Ms. Belway: Yes, we'd like to have certain conditions.

34
35 Chair Duvauchelle: Any other questions? Patricia Hoskin? Good morning, please state your
36 name.

37
38 Ms. Patricia Hoskin: Good morning, can you hear me, yeah? Okay, Director William Spence
39 and Members of the Planning Commission. My name is Patricia Hoskin. I'm currently on the
40 board of the Kihei Kai Nani Homeowners Association but I'm speaking for myself. I live full-time
41 on Maui. I live in Building 8 which is right next to the fence between us and Kamaole Grand
42 development.

43
44 I am very concerned about the sound and light pollution. My bedroom wall with a window is 14
45 feet from our fence which is on the property line. The developers of Kamaole Grand are
46 proposing not a solid wall but a wall of plastic. I personally think this will not keep the headlights
47 from completely through to my bedroom. There is a gap at the bottom of the plastic fences. I

1 have a picture of one if I could pass it around, just a typical fence can I do that? Also a solid
2 side of plastic would be a platform for graffiti. It will not last as long as solid wall. I know lava
3 rock walls are expensive but that would certainly be a benefit for keeping out the light and
4 sound. As you notice from the picture if you look carefully you'll see a shadow there but there is
5 a four-inch gap between the bottom of this style of wall and the soil. This is gonna be a gap for
6 not only insects and animals to run under but water when there is too much flooding, dirt and
7 sound and light. So I would personally like to have the developers put in a solid wall.
8

9 Okay, I'm also concerned about the future blasting for when they redo their fences, not fences
10 but water lines or whatever lines they're putting in. I was an owner in 2006 and the blasting was
11 felt by many of our owners. I was renting my unit at the time and I had carpeting so I didn't have
12 any tile damage. I do think people did. Now I have a brand new remodeled unit 'cause I did it
13 and it's all tile, every single bit of the floor is tile and I would like to have the developer take out
14 some sort of a bond so that if we have damage from the blasting that we can be
15 recompensated.
16

17 Now the grading was done by a previous owner. You've seen the pictures Ethel passed around.
18 This grading will make it more of a slope so when we do have water coming down in our and
19 since we're gonna have more solid surface the water will go faster, it will come right under that
20 fence right into our property. And so I am requesting that they provide in perpetuity an
21 insurance writer for flooding damage by water which will flow under the fence.
22

23 Now due to the direction of trade winds the winds flow directly from the land of Kamaole Grand
24 onto the property of Kihei Kai Nani. The dirt from this construction will be overwhelming. I
25 would like them to provide documentation as to the dust mitigation besides water trucks so that
26 some of the flying dirt will be reduced.
27

28 Chair Duvauchelle: Excuse me, your three minutes is up. Would you please wrap up?
29

30 Ms. Hoskin: Okay, thank you very much. I also just wanna make your attention that we'd like to
31 have a time period for when they would be blasting, working and I want to say I'm also
32 concerned about any sediment that comes down on the coast. Thank you.
33

34 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Lea and Sam Beaton?
35

36 Ms. Lea Beaton: Good morning folks. My name is Lea Beaton and my husband, Sam Beaton.
37 We are property owners of Kihei Kai Nani on the east boundary of the subject property, the
38 Kamaole Grand. We've gone through the 46 presentation and the reviewed it carefully and we
39 have three areas of concern.
40

41 The first area is I note in their Page 40 of their presentation, Point 5, early construction of
42 drainage. The KG property is significantly higher than the Kihei Kai Nani property which we live
43 at and that's along the entire boundary and that's from their grading. What this means is with
44 the hard surface roadway and parking that they propose that the water will be increased runoff
45 and it will obviously be flooding down on the Kihei Kai Nani properties.
46

1 Also, that the Kamaole Grand's proposed vinyl fence will not ameliorate that concern. The
2 concern as well is that with hard surfacing it's one of the worst type of surfaces that you can do
3 when you have water concerns. Permeable is far superior. The second concern we have is
4 that fence material and the height that Kamaole Grand is proposing, the vinyl material will break
5 down in the UV sunlight. It becomes brittle and it breaks and we all know this from vinyl siding
6 on homes and plastic furniture outside. I basically view a vinyl boundary as a temporary one
7 and it certainly will not ameliorate the vehicle noise, car lights and fume concerns coming from
8 the Kamaole Grand over to our units and lanais which border that area.

9
10 Third concern noted was the cross section diagram as proposed by Kamaole Grand it's on Page
11 18 and in their diagram it significantly under represents the much higher graded Kamaole Grand
12 property than the Kihei Kai Nani property. It also shows concrete footing under the perimeter of
13 the Kamaole Grand's property that runs the entire length. Noting that that there are also six fully
14 mature trees on the Kihei Kai Nani property on that eastern section of the subject property.
15 They are within the KKN's, Kihei Kai Nani's property, the trunk, therefore they are our trees.
16 However with concrete footing going in it will mean that they will be cutting half of the root
17 systems off of those tree which will kill them. In looking at that, I went and did a bit of research
18 on the encroachment of branches and root system in the legislation and as per Brooks v. Patel
19 which is a California Appeal Court Case of 1994 what they note is to have the legal right to
20 severe roots which in the case the Kamaole Grand would be doing putting down the concrete
21 footing. To do so the roots must be causing actual damage. So in looking at that case law what
22 that means is—

23
24 Ms. Takayama-Corden: Three minutes.

25
26 Ms. Beaton: Putting down the footings will kill the six mature trees all on that property line which
27 provides pollution control, habitat for little animals, shade and all those types of items and that
28 truly needs to be addressed with a professional before they go ahead with anything like that.

29
30 Chair Duvauchelle: Thank you.

31
32 Ms. Beaton: Thank you.

33
34 Chair Duvauchelle: Questions? Commissioner Carnicelli?

35
36 Mr. Carnicelli: Could you please recite that court case that you're using as evidence?

37
38 Ms. Beaton: It's Brooks v. Patel, California Appeal Court, 1994.

39
40 Mr. Carnicelli: Can you also tell me where the California Appeal Court has jurisdiction over us?

41
42 Ms. Beaton: No, but it is still American and it goes against the idea that any roots or branches
43 that are over your property are yours.

44
45 Mr. Carnicelli: Okay, thank you.

46
47 Chair Duvauchelle: Thank you. Any other questions? Thank you very much.

1
2 Ms. Beaton: Thank you.

3
4 Chair Duvauchelle: Mike Moran?

5
6 Mr. Mike Moran: Good morning, Chair and Commissioners. Mike Moran for the Kihei
7 Community Association. First we would like to welcome the two new commissioners and
8 congratulations to the new Chair.

9
10 First, we'd like to commend the developers for their good communication. They worked with us,
11 with the association as well as held public meetings to at least try to communicate. Everybody
12 may not always agree, but at least we are all trying to talk to each other.

13
14 When we came this morning, we submitted written testimony which I'm sure everybody had
15 read thoroughly and comprehended, but we expected to come this morning and hear the
16 presentation to give us an update...our comments go back to January and we commend these
17 two commissioners for expressing the public's point of view but we also get Corp. Counsel's
18 dilemma and have to find some way to do it.

19
20 So I'll just zip through as much as we can. We had given 12 separate items of concern some
21 may be already have been address, but we weren't quite...we expected that we would know
22 that before we testified. So I'll just touch on those items and please excuse us if when you get
23 the presentation they have already been addressed. I won't go through all of them 'cause I
24 won't have time.

25
26 But No. 2 is where we're getting the most input from the community and that's the traffic issue
27 going onto South Kihei Road and our proposal is to make that an emergency only use. We all
28 see those, they put up bollards and something and instead of saying, well most people won't
29 use it we don't know if that's true. If we make it emergency only onto South Kihei Road and you
30 know pedestrian and bicycle access would be fine but not vehicles in and out. We think that
31 would be the best way and keep what the developers have told us the major egress is going to
32 be up on the north-south collector road. Also, try improvement pedestrian access through the
33 lower entrance down access road to South Kihei Road. We're not quite sure if that's an access
34 road. Some people tell us it's only a driveway.

35
36 We had asked about aligning Building 1 with Building 2, 4, and 6. I believe they have made
37 some adjustment but again, we're not quite sure what they were. But you can see what we
38 asked for aligning Building 1 with 2, 4, and 6 to give better view planes.

39
40 We also asked for best routes for bicycles through the site, simply changing the color and
41 texture of the paving to indicate the best route to ensure greater clarity and safety to all. We feel
42 this is a very small thing to do to let residents safely use bicycles instead of going right through
43 the middle of the parking lot where cars are backing in and out.

44
45 We also asked to provide rain gardens and swales to retain and filter water in all planting areas.
46 We had recommended a consultant who we believe the developers did speak to Amanda
47 Cording.

1
2 We asked that the consultant developers...(inaudible)...on KCA website for our
3 recommendations on best management practices during construction. We have suggested best
4 management beyond the County requirements and some developers have incorporated
5 those...(inaudible)...these are professional standards which can be achieved.
6
7 Keep stair towers open to allow air and wind air ventilation through the green screens.
8
9 Ms. Takayama-Corden: Three minutes.
10
11 Mr. Moran: I thought so. And lastly, a little better look on that fence that many people have
12 addressed. Thank you very much.
13
14 Chair Duvauchelle: Thank you Mike. Questions? One moment. Commissioner Carnicelli?
15
16 Mr. Carnicelli: So Mike I appreciate the 12 comments that you guys made. Typically KCA also
17 has stated something in regards to affordable housing you know, and you know, vacation
18 rentals and housing for local folks. Do you guys have comment in regards to that? I
19 just...because it's not part of the written testimony. Do you guys also have a stance on that?
20
21 Mr. Moran: Yeah, we certainly have a stance and of course, you can't go on forever, but yes,
22 that's our basically concept policy as some testifiers have mentioned. Nobody is against
23 housing. We all know we desperately need housing more than just housing we need affordable
24 housing and probably more than that we need affordable rental housing. We don't think we
25 need any more short-term rentals. Is that encapsulated? Thank you.
26
27 Chair Duvauchelle: Commissioner Robinson?
28
29 Mr. Robinson: Chair, I think we just heard from Mike where I think he's confused and I'm
30 confused too are we allowing testimony after the application or are we not allowing testimony
31 after the application?
32
33 Chair Duvauchelle: I'll allow testimony after the application also.
34
35 Mr. Moran: Well, I can't come back now.
36
37 Chair Duvauchelle: I'll allow you to come back. Sorry.
38
39 Mr. Moran: Thank you very much both of you.
40
41 Mr. Robinson: Thank you, Chair.
42
43 Chair Duvauchelle: Any other questions? Thank you.
44
45 Mr. Moran: Thank you.
46
47 Chair Duvauchelle: Mark Joiner?

1
2 Mr. Mark Joiner: Okay, aloha, good morning Commissioners. My name's Mark Joiner. I'm a
3 resident of Moana Estates which is just mauka of the property that we're talking about. I came
4 here prepared to address a number of different issues. I think the incredible impact on the
5 streets both of Liloa Hema which is the connector road and also the South Kihei Road has been
6 pretty well addressed.

7
8 I'd like to address a couple of the comments that were made earlier. I live right next to this or
9 right off of this proposed property. The County of Maui when they put in Liloa Hema, the
10 connector road built a substantial fence between the road and the property that's in question.
11 There is no garbage collecting there. There are no homeless there. So we need to be clear on
12 that.

13
14 Number two, the idea of providing only an emergency entrance to South Kihei Road I just find
15 abominable. I have children. I have a 10-year-old, an 11-year-old. I come from a community
16 that is filled with children. They play on Liloa Hema. We're talking about adding potentially 400
17 plus cars a day, could be more, I don't know for multiple trips if it goes through. And we have
18 two additional neighborhoods, we have the Kamaole Estates and we have the...we call it the
19 Halloween neighborhood. I'm sure you all know where that is that is just mauka of Liloa Hema.
20 It's filled with children.

21
22 And so I did come prepared to address issues. I am prepared to address the blasting that's
23 possible, but you know, I was wondering if you could just take off your commissioner hats and
24 put on the hats of parents and also perhaps family members. We have a ton of children in this
25 area. We don't need seven monster buildings of four stories. I understand the need for
26 affordable housing. I doubt this is going to be affordable, but certainly for housing in Kihei. I
27 would recommend strongly that at the very least that this project be brought down to two stories.
28 You're bringing it into what is essentially a suburban neighborhood filled with children. And I just
29 heard that the property on the south side has children in it. I know that the property on the north
30 side, the apartments there have plenty of children on it. We walk through that property all the
31 time. So I really hope that Commissioners will keep this clearly in mind. You can hear the
32 emotion in my voice as a parent.

33
34 I would just recommend very strongly that this project be modified to size. I reflect also the
35 other comments that said this should never ever be vacation rental. I'd say six months
36 minimum. And please keep in mind for those of you guys who are olelo, Kamaole means
37 without children. That's not what we want in this neighborhood.

38
39 Chair Duvauchelle: Thank you.

40
41 Mr. Joiner: Thank you so much.

42
43 Chair Duvauchelle: One moment. Commissioner Higashi?

44
45 Vice-Chair Higashi: Mark I have a question. You mentioned that you're a parent?

46
47 Mr. Joiner: I am.

1
2 Vice-Chair Higashi: My only question is do you allow children to play on the street versus in a
3 park or in your yard?

4
5 Mr. Joiner: No, what the Commission needs to know is that we all have yards but naturally the
6 kids go down on the bicycles, walking. I certainly don't allow my children to play in the street.
7 There are children that do play on the street and it's a natural egress into the park right off of
8 Liloa Hema and 400 plus additional vehicles a day. You'd have to come and spend time there it
9 would be intolerable.

10
11 Vice-Chair Higashi: Thank you.

12
13 Chair Duvauchelle: Thank you.

14
15 Mr. Joiner: You're welcome. Thank you, Commissioner.

16
17 Chair Duvauchelle: David Christian?

18
19 Mr. David Christian: Hi, thank you for letting me speak. I'm Dave Christian. I live in the
20 Halloween neighborhood, Keona Heights. I had a few things I wanted to address. One was I do
21 feel like the developers have the right to develop this property. My question to them would be
22 what percentage will be set aside for affordable housing. That is something that Kihei definitely
23 needs. I really feel like the process and notifying the public of this public hearing was little
24 vague. I realize it was in the newspaper. It seems like a project of this magnitude should have
25 some kind of development signs posted on both the ocean and mountain side to inform the
26 public in general that uses the area with some architectural renderings so we can see what the
27 development's gonna look like. I think more information would be beneficial to the developer.

28
29 I realize that you know to a certain extent this is gonna strain the infrastructure and prohibit the
30 emergency services from accessing the property and it's gonna create a lot more housing in the
31 area that's already congested with a lot of retail. I did read the traffic study. I found it kinda
32 laughable that they did it in August at 4 o'clock in the afternoon when we really don't have a
33 commute there. The real problems in that area occur at sunset mostly pedestrian related as
34 evidenced they have placed five electronic crosswalks in the area. I don't believe I've seen any,
35 anywhere else on the island. They were hastily installed. They don't work properly. There's no
36 time delays, there's no sequence between them. At sunset, you basically have a situation
37 where people push the button and venture into the street without looking. Before those people
38 cross, another group of people push the same button, it stops the traffic in the street. Then you
39 have people running behind the cars that are stopped to get over to watch the sunset. It occurs
40 every day at the same time. The visibility at time of day is probably the worst. There will be
41 victims both motorists and pedestrians with increased pedestrian traffic in the area. The only
42 thing I would say about the development is I think there needs to be some cohesiveness and
43 conformity. If you look at Kealii Ocean Villas they did a very good job as they came up the hill to
44 make sure that the conformity with the neighborhood across the street was met. The houses
45 look residential on both sides of the street there and my concern is with a four-story—

46
47 Ms. Takayama-Corden: Three minutes.

1
2 Mr. Christian: --block building with an elevator tower it's gonna look very commercial for the
3 residences on the mauka side. Thank you.

4
5 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you very much. That is
6 the last of the list of...

7
8 Ms. Thackerson: Oh, sorry, I was gonna say we had some people...

9
10 Chair Duvauchelle: Yes, that's the last people signed up. So is there anybody else wishing to
11 testify at this time please come forward? State your name you'll have three minutes.

12
13 Mr. Volker Weiss: Hello my name is Volker Weiss. My initials are VW. That may be easier.
14 Sorry English is not my first language. But I'm a legal resident for almost 30 years and I'm also
15 now a citizen. I live in Kihei. I have owned a house right behind Kamaole Grand on Omiko
16 Place which is really just a stone throw behind the development and during the time that I have
17 lived there I would have loved to see that north-south collector road built like what it is today. I
18 do think that road is really one of the best roads that we have with the sidewalks on both sides,
19 the fencing, and I don't agree from looking there in these, especially in that parcel 2 on both
20 sides behind where the new restaurant is up on the top in the shopping center you can still see
21 that there is being, you know, things trashed and that whole parcel does not look up to par how
22 it should be when it's all cleaned up. So I'm in favor of this development. It has the lowest
23 density from any of the neighborhoods that is around. I think that is important to know. If you
24 look how many units there are, sure 217 sounds a lot but it still is the lowest density from
25 everything that is built in that area.

26
27 Also to say I drive South Kihei Road pretty much every day. I love bicycling and do walk that
28 neighborhood of course since I live in the area. I have to say that when you are going out the
29 backside you definitely face less traffic than as if you go on South Kihei Road. I don't know why
30 someone that lives in that neighborhood and is busy going somewhere would go on South Kihei
31 Road. I mean, we all know it's dense there. That's like in Little Italy people going just up and
32 down for like a promenade kind of thing. Everybody will try to go out the back way as much as
33 they can. So sure I think it's a good thing to have this going out to the back. Plus, the Kihei
34 Regency next door will have an exit though this new development going out to the backside also
35 if you look at the plans which I think will help taking traffic off South Kihei Road. Okay, so I'm in
36 support of this and that's all I want to say.

37
38 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to
39 testify?

40
41 Mr. Eric Ong: Hi, good morning Commissioners. My name is Eric Ong. I represent Kamaole
42 Housing Company which is the partners with the developers in doing the affordable component,
43 Kamaole Point. Kamaole Point is right behind Rainbow Mall. You know, I believe there's just a
44 huge demand for any housing, anything short of a million dollars in this whole island. This
45 developer has shown that he's helping us to do the affordable component. I think this body here
46 has already approved that. So we're trying to get into the construction phase of it doing the
47 vertical. There's so much...development is very difficult. There's a lot of moving parts. A lot of

1 times the communities don't understand that without developers doing these type of projects the
2 affordable component doesn't happen because affordable housing doesn't make a lot of money.
3 You know, we represent investors or family members that invest in affordable housing and
4 without these people doing these type of projects it just doesn't work in the way that things are
5 set up with the County.

6
7 As far as affordable for these types of projects you know today's interest rates people...there's
8 different tiers of buyers. As if you look at the affordable projects that are already on line that are
9 on market, A & B they're having difficulty approving people under those guidelines and they're
10 just falling either...they're making too much money which is strange...you know they have too
11 much...or they have a home or they started off with something really small. You need different
12 levels of development and this is a really well-rounded project. I did the developers did a great
13 job with it. I fully support the project myself.

14
15 Chair Duvauchelle: Thank you. Any questions? Commissioner Canto?

16
17 Ms. Canto: So 217 units so what percentage of that would you consider to be affordable?

18
19 Mr. Ong: This is market rate units. I've been doing real estate since 1989. I worked Horita, I
20 worked for Kobayashi Group we did a bunch of affordable projects. You know if you allow the
21 market to just do what it's supposed to do it will take care of itself. Because if somebody can
22 afford this, they'll afford it. If the developer can build it for "x" amount he has to do feasibility
23 studies on this to see if there's even a market place for it. He's taking a huge gamble in
24 spending a lot of energy and money and time to develop this with investors behind him. And if a
25 project like this can't sell in the market why do it? Why do it? The interest rates, the markets,
26 you know I know there's a huge gap that's falling behind because they can't even get into the
27 housing market, but by stopping these guys you won't create the other ones. You have to, you
28 have to kinda keep that momentum kinda going. It's hard to just be blind, you know, just focus
29 on just the project itself because there's a bigger picture. Everything is tied together in some
30 manner or form and you do need units like this. I don't know anything right now on the market
31 that's brand new like this. You know these are the people that...the people that buys these they
32 don't come to community hearings like this. These are people maybe they're...they've already
33 bought an affordable house or they bought...they're in a separate time in their life where now
34 they're looking for second home or another home or it's the first time like a manager working at
35 the hotels that can't get into the affordable workforce housing program but can buy something
36 like this. They want something nice. Everybody wants something nice. I think this is a great
37 project.

38
39 Chair Duvauchelle: Commissioner Canto did that answer your question?

40
41 Ms. Canto: No.

42
43 Mr. Ong: I only got three minutes.

44
45 Ms. Canto: You know I'm looking for an off the wall count, headcount, how much?

46
47 Mr. Ong: Oh, how many is affordable?

1
2 Ms. Canto: Yeah, how many are affordable?

3
4 Mr. Ong: Well, I'm gonna let the developer that question on the price point but for our project
5 the affordable component the Kamaole Point development that's a hundred, I think it's a 129
6 units I forget, but those are averaging about 350 for a you know affordable units. And that's the
7 affordable component that supports this project.

8
9 Ms. Thackerson: That's what I was gonna clarify.

10
11 Chair Duvauchelle: Okay, Candace?

12
13 Ms. Thackerson: Yeah, I can just...so this is hand in hand with the Kamaole Point project that
14 you guys previously approved that was a 100 percent affordable, right.

15
16 Mr. Ong: And that's a feat in itself. Not many people will do a 100 percent.

17
18 Unidentified Speaker: That's the one right here?

19
20 Ms. Thackerson: Yes, yes, that one was the 100 percent on. So they got so many units and
21 credits that you can use towards other construction projects so the developers...

22
23 Mr. Ong: May I add something?

24
25 Ms. Thackerson: Sorry, sorry, we're all over the place.

26
27 Chair Duvauchelle: Yeah, no. If there are no other questions, thank you very much. Thank
28 you, Candace. Is there anybody else wishing to testify at this time? Please come forward, state
29 your name, you got three minutes.

30
31 Mr. John Fries: Good morning my name's John Fries. I live in the Halloween neighborhood,
32 Keonekai Heights. I would like to express my opposition to this development. I don't think that
33 the infrastructure specifically the traffic will support over 400 cars, 217 units. We heard the last
34 person to testify simply said that there would be zero affordable units in this particular
35 development. These will be market priced units which are not affordable housing which means
36 that they will probably end up being purchased by either investors, mainlanders and could end
37 up being short-term rentals which I'm vehemently opposed to.

38
39 In the alternative if you elect to permit this development to go ahead I would urge you to place
40 restrictions on it such that the height is only two stories, that you prohibit the use of explosives in
41 the construction, and that as we heard the first person to testify say that they would only be a
42 left...a right-hand turn into this project from South Kihei Road, but the synopsis said that there
43 would be a left and right into this development so I'm not sure which one is actually the correct
44 one. But a left-hand turn into this development from South Kihei Road would exacerbate the
45 problems on South Kihei Road and it's not feasible to create a turn lane 'cause that would just
46 take out additional parking that South Kihei Road is not wide enough at that point to allow a turn

1 lane without taking parking spaces. So I urge you to disapprove this plan or if it is approved
2 place restrictions on it which protect the neighborhood. Thank you.

3
4 Chair Duvauchelle: Thank you. Any questions? Anybody else wishing to testify at this time?
5 Okay, seeing none public testimony is now closed. We're going to take a 15-minute break.
6 We'll reconvene at 10:25.

7
8 A recess was called at approximately 10:11 a.m., and the meeting was reconvened at
9 10:33 a.m.

10
11 Chair Duvauchelle: Commission is back in session. Sorry for the delay. Director if you would
12 read our next agenda item.

13
14 Mr. Spence: Commissioners we are on Item D-1, Communications. This is for Mr. Tom Pierce
15 on behalf of the Association of Apartment Owners of the Royal Mauian submitting a Petition to
16 Intervene, and I believe Mr. Pierce has a Power Point he would like to show and then we'll
17 discuss procedure after that.

18
19 Mr. Giroux: And we're gonna hear from the---

20
21 Mr. Spence: Oh yeah, absolutely. After Mr. Pierce is done we will hear from the applicant's
22 counsel as well.

23
24 **D. COMMUNICATIONS**

- 25
26 1. **MR. TOM PIERCE on behalf of THE ASSOCIATION OF APARTMENT**
27 **OWNERS OF THE ROYAL MAUIAN submitting a Petition to Intervene dated**
28 **April 10, 2017 on the following application:**

29
30 **MR. MIKE GOSHI of DESIGN PARTNERS, INC. requesting a Special**
31 **Management Area Use Permit for the Kamaole Grand project consisting of**
32 **seven (7) residential buildings comprised of 217 condominium residences,**
33 **a recreation center, barbecue areas, swimming pool, and associated**
34 **improvements at 2455 South Kihei Road, TMK: 3-9-020: 007, Kihei, Island of**
35 **Maui. (SM1 2016/0007) (C. Thackerson)**

36
37 **Should the Commission grant the Petition to Intervene, then they may also**
38 **take action on the following:**

- 39
40 **a. Selection of the Hearings Body/Hearings Officer**
41 **b. Selection of the Mediator**

42
43 **Should the Commission act to deny the intervention request, then they**
44 **could act on the application requests.**

1 Mr. Tom Pierce: Good morning Mr. Chair and Commissioners. My name is Tom Pierce and I'm
2 here on behalf of the Royal Mauian and all of the members and owners of the Royal Mauian and
3 that's a condominium association that's across the street from the proposed project. In
4 preparation...so thank you for hearing our Petition to Intervene. And you did receive already our
5 actual formal document, Petition to Intervene and what I want to do is quickly summarize a few
6 of the points in there and hopefully and this will be viewable.

7
8 But what I wanted to point out as part of the process is just where quickly where we are, where
9 my clients are located with respect to the property. So you'll see right here it says the Royal
10 Mauian and it's this parcel that's right here on the makai side of South Kihei Road and you'll
11 also see just in case you were wondering there's a strip of land here that's owned by the State
12 that's also there right in front. And then...well, I'll come back to it later, but we have as you can
13 see a lot of different projects or other developments right in this area but this is the one that's
14 the proposed Kamaole Grand. And I'd like to point out right now one of the last testifiers talked
15 about the affordable housing component which was approved last year by the County Council
16 and that's on three parcels here called Kamaole Point and I've identified those three parcels as
17 well.

18
19 This is interesting how that's...I'm not sure exactly what's coming across there but any rate what
20 you'll see here is underneath this, all this is from the developer. This is the 500-foot radius and
21 what I wanted to point out is that the Royal Mauian falls within the 500-foot radius and I'll show a
22 couple of other reasons how my clients are impacted on this.

23
24 All right, see actually there's a comment up there, please change the lamp. I don't know if it's
25 possible to get that off. Someone's got more technical know-how than me on that.

26
27 Unidentified Speaker: Go ahead Jordan.

28
29 Mr. Spence: I wouldn't either.

30
31 Mr. Pierce: That looks a lot better. So just going back one because now it's much more visible
32 you can see the grayed out areas here where the 500-foot radius which was the requirement for
33 the publication of the notices and the actual mailing to particular people. So my clients fell
34 within that range. This is a picture that actually you won't find in your packet. This is from
35 actually the Naniloa condominium hotel project and some of you commissioners will recall that
36 that was here on behalf of Kai Nani about a year or two ago, but this actually just a very helpful
37 Google aerial. It shows how close the beach is with respect to this particular parcel and here is
38 Liloa Hema that's been talked about and then this is the proposed project area and there's a flag
39 lot so it goes all the way down to South Kihei Road. But this like quarter of a circle type of
40 structure right here is the Royal Mauian. So we're as you can see we're directly across the
41 street. We're directly on the downwind or the flood waters heads toward South Kihei Road and
42 potentially impact my clients as well as the traffic along there.

43
44 Now the reason that I'm here today is requesting to intervene in this case and it's not about the
45 issues. That would be subject to a separate hearing after we did discovery. So we're at the
46 initial stages and all I know is pretty much the same thing that any person of the public could
47 know. What we would be permitted to do if we became intervenors obviously is to be able to go

1 into a discovery process, find out more information about the project and then ultimately present
2 that information through the contested case hearing that Mr. Giroux was talking about earlier.
3 So the part of your rules that we're interested in here today are the intervenor rules and those
4 were briefed by me as well as by the opposing counsel, but what you have in this 12-201-41
5 part of the Maui Planning Commission Rules is the question of whether you're directly and
6 immediately affected and that's the purpose of my presentation is just to point that out that we
7 meet this requirement. And the other part of 12-201-41 states that, leave to intervene shall be
8 freely granted and that's the basic principle behind administrative law is that if you have shown
9 sufficient interest or sufficient potential damages resulting from what is being proposed as a
10 development that you should be permitted to have a right to come in and make a case, to do
11 discovery and make a case to present a thorough record so that when you all make your final
12 decision you have better information.

13
14 So one of the things I wanna point out from the developer's response was something that I saw
15 throughout the brief which was this petitioner has not provided any fact or any evidence
16 supporting this conclusion, this type of thing. This is not my obligation to present you with facts
17 and evidence right now. Of course, my clients and I did as much due diligence as we could at
18 this stage to understand whether we were gonna be impacted so that we're here in good faith
19 before and we're also doing this in a way so that...so that we can actually present our injuries,
20 but that's extent of it.

21
22 So here's actually what the real requirement is for you is that you must accept our allegations,
23 the claims that we're making in our petition as true and construe them in the light most favorable
24 to us. That's what the rules are throughout the United States with respect to standing is that you
25 have to assume for at this stage that our allegations are true. We're not here today because we
26 can't, we obviously haven't done all the discovery and had all the evidence before us so we
27 can't actually put all the facts evidence on. So what the developer in the response was saying
28 was not accurate in terms of what our requirements are today.

29
30 Another one of their...another thing we pointed out and I think this is accurate is that the very
31 fact that we fall within the 500-foot radius means that more likely than not when your
32 predecessors actually established the rules that govern how notice is done it was identified that
33 anyone in a 500-foot radius probably is going to have potentially some impact. It doesn't mean
34 that we don't have to prove it up further but it certainly means that there's more likelihood of
35 impact. So we do fall within that area and what the developer's response was that the only
36 reason for the 500-foot is so that they can participate in the public. Well that's certainly not
37 accurate. The notice that my client's received is this Notice of Public Hearing and it includes a
38 expressed section identifying how we can intervene, Petition to Intervene and what we have to
39 do. So the fact that we, the 500-foot notice has nothing to do with whether or not we just have
40 right to testify as a member of the public. It also includes the right to intervene.

41
42 Just real quickly what we have in this area which is important in terms of the accumulative
43 impacts is the fact that there's already extensive development in the area. I won't go through it
44 except you can see I've highlighted the yellow area just in dwellings within the 500-foot radius, I
45 calculate there's around 872 dwellings in that area. We also have a very dense area from a
46 commercial perspective. You have five major retail centers within that 500-foot radius. What
47 the additional impacts that will result in this as proposed by the developer right now is 217

1 condo units, 458 parking stalls, this is all information coming directly from their proposal, 3.828
2 acres of roofs and asphalt that means just doing the calculations over 45 percent of the land is
3 gonna be hardened and we're gonna see an increase based upon what we see already in that
4 area. Forty percent that does not...and that...on top of that what was not included in this 872
5 units back here was the Kamaole Point when the testifiers talked about the fact that they
6 needed to meet the affordable housing component and there's a 129 units that will be part of
7 that one which is also within the 500-foot radius. So what we see here is a very skimpy record
8 or proposal before you, an analysis, environmental and impact analysis for what they're actually
9 proposing and I just wanna briefly hit on I think three issues that we've identified of how we
10 would be injured and why we should be granted standing.

11
12 One is the increased traffic issue. I just wanna point out and the pictures really do tell the story.
13 Here is the proposed entrance and...the access point on the South Kihei Road. This is actually
14 part of their lot and there's another portion of that road that's actually owned by another owner.
15 And across the street is the Royal Mauian. And here you can see the Royal Mauian access. So
16 anything that's happening here in terms of congestion is clearly gonna impact my clients. This
17 is another view that's helpful to see because you can see part of the undeveloped property right
18 now. You can see how they will come down this road and how they would either be making a
19 right or left depending upon what is permitted. What I also want to point out here from this
20 picture is that there is this other access here which is where all the Kamaole Point traffic
21 apparently will also have a right of access to South Kihei Road.

22
23 I just want to point out that although that we have the traffic impact analysis the KCA does a
24 very good job of making sure that they have qualified people who are analyzing these. I know
25 that there is a least two architects were involved. They identified that based upon their
26 assessment a thousand trips a day. Obviously this is something that we would evaluate during
27 the contested case proceeding.

28
29 In light of what they came out with in terms of the traffic impact analysis they said no mitigation
30 is required and that to me is very concerning and is a red flag. This analysis was done by Phillip
31 Rowell and Associates. And I now I was here analyzing an Environmental Impact Assessment,
32 Environmental Assessment a couple years ago dealing with the Naniloa project and Phillip
33 Rowell and Associates in that one identified two other major developments as part of their traffic
34 impact analysis, Aloha Mansions and Kamaole Heights, and they were identifying 150 to 180
35 condo units with each one of those for a total of around 300-350 somewhere along in there.
36 And what they said in there is they said each one of these that the access via the roadway
37 would be along the north side of the shopping center. And what I think they're referring to here
38 is the Kamaole...they actually identified the Kamaole Shopping Center at one point which is
39 right here and they say, the north side. So this is that entrance and the egress. So this is the
40 same traffic consultant identifying the impacts from this project and it's really interesting what
41 they say. They say the westbound approach at South Kihei Road will operate at a level of
42 service of F during afternoon peak traffic. Now what they go on to say is that the poor level of
43 service is a result of the two multi-family residential developments which were proposed. They
44 then say that any mitigation required should be assessed against these other development
45 projects. They then go onto say that the conclusion is that the poor level of service can be
46 mitigated when these two projects move forward. This is something that us as intervenors can
47 help analyze make sure as to what this traffic consultant really means. Two years ago they

1 thought that the mitigation should actually be done by this project that's before you today. Now
2 they're saying no mitigation is required. Something is not quite right here. And one of the
3 problems is the fact that there's no environmental assessment.

4
5 Very quickly increased flooding. This was also from the Naniloa project which was 39 units
6 much smaller but yet there was an environmental assessment for that one and what's very
7 helpful is that Chris Hart and Partners provided this drainage analysis and it shows that this is
8 very difficult for you to see here but a portion of this major drainageway goes across the
9 Kamaole Grand property, another portion of it goes through Naniloa. So this is a big drainage
10 coming off of Haleakala Mountain that's impacting the flood waters. You can see this, this is
11 2007, South Kihei Road flooded. This is a same picture from 2007. This is Hale Pau Hana and
12 then further over to the north is the Royal Mauian. This is above the project site, Liloa Hema,
13 the north-south collector road and you can see here that the County could not manage through
14 a culvert all of the stream flow that's coming down off the mountain so they created this dip and
15 you can see that what happens is that you have this incredible amount of erosion and stuff that
16 comes out and blocks road and makes this road impassable. This is another issue that brings
17 into question how and when Liloa could...be actually a problem for access in which case all the
18 traffic would flow down to South Kihei once again pointing out the fact that my clients would be
19 impacted.

20
21 We go onto to talk about the degradation of how this impacts the coral and the coastal water
22 which obviously is one of the fundamental principles behind the SMA Rules and I just wanna
23 point out once again that this is very close. Here's the Royal Mauian. This coral area out here
24 and the beach is where my clients are most likely going to use it. You have three, you have
25 three of the most popular beaches in Kihei in close proximity to the project site.

26
27 Once again, this is just showing another picture, once again here's the project back here on the
28 other side and the stream flow comes down directly and would potentially impact this. There's
29 no analysis as to whether there would be impacts.

30
31 Chair Duvauchelle: Mr. Pierce, are you almost through.

32
33 Mr. Pierce: And I will wrap up here.

34
35 Chair Duvauchelle: Thank you.

36
37 Mr. Pierce: The SMA guidelines I think you all know them. You're supposed to as part of your
38 job I just wanna show you how the entries that we're talking about tie in to what is really the rule
39 book that you have to apply when you're doing this. It relates to the impacts on the water
40 resources, impact to public health and this includes also the Kihei Community Plan which has
41 traffic impact analysis and certain objectives that are part of the consistency requirements. And
42 that I will rest except to say...I would like to just say that there's a few things here we didn't talk
43 about which we don't have the information about so I will not talk about them except that the
44 other public testimony identified, the blasting issues and the fill and how that would impact
45 flooding and also how it might impact underlying drainage cause it would depend upon how
46 that fill was done. I know that's a major concern for my clients and that certainly would injure
47 them if in fact it was not done properly.

1
2 So what I would ask is that you grant our Petition to Intervene today. What that would me in
3 terms of...not only for us privately but on a public benefit is that we have an opportunity to get
4 additional information. One of the reasons that there's no EA here is that the developer is
5 saying that there's going to be no community plan amendment which would have been one of
6 the triggers and the other one is, any mitigation that they would do would require them to be
7 working a State or County right-of-way and they clearly from my perspective are choosing to
8 avoid mitigation and see if they can get through the process today without doing an
9 environmental analysis. But from my perspective this is the type of project that should have an
10 EA and when you look at how they're actually gonna tie into the County drainage the flood
11 drains they're basically saying we're gonna attach to a pipe that's on private land but which will
12 flow into the County right-of-way. That's in the drainage report and I identify that section in our
13 brief. I think that is a red herring and by that I just mean that I think that that's...they're
14 attempting to avoid the EA and that would be the type of thing that we can analyze as part of the
15 intervention process in the contested process. Thank you very much.

16
17 Chair Duvauchelle: Thank you. Questions ...(inaudible)... we'll do questions after both sides
18 have been heard. Mr. Nakamura you'll have equal time as Mr. Pierce.

19
20 Mr. Spence: About...just over 17 minutes.

21
22 Chair Duvauchelle: Just a little over 17 minutes.

23
24 Mr. Craig Nakamura: Hopefully I won't need that time. But good morning Madam Chair,
25 Members of the Commission, Director Spence and members of the staff. My name is Craig
26 Nakamura. Myself and Arsima Muller are attorneys on behalf of the developer on this, in this
27 matter and we appreciate having the time to speak today.

28
29 Just a little bit of background because I know there are a couple of new Commissioners and I
30 know, I see faces that we've seen before so I know most of you have gone through this process
31 before, but for the new people and just a little quick summary, you know we're here on a Special
32 Management Area application and the law has developed this Coastal Zone Management Act
33 which provides that areas along the coastline of course needs special protection. So you have
34 to go through this SMA process for certain types of projects along the coastline to protect the
35 coastline and shoreline areas. So that's the key to what we're doing today.

36
37 You've seen in detail a very comprehensive staff report and we thank the staff for that which I
38 thought was done very well, and as well as the application that was provided by the developer
39 which addresses I believe all of the issues that are being raised.

40
41 Very briefly, you know, people have talked about it. This is a 217-unit project on 8.4 acres
42 approximately and in the staff report it's noted that this is what is called an infill project. Okay,
43 there's been a lot of talk about how there's so much development in this area well that's by
44 choice. You know the County has designated these areas in Kihei by zoning, by community
45 plan and so forth as being areas that are fit for this type of development and this is called an
46 infill because it's an undeveloped portion of a property that's in the middle of all this other

1 development. So the fact that it is within this, of this area is by plan. You know it's done that
2 way.

3
4 If you look at the staff report you'll see that the staff has concluded that this project meets every
5 criteria for the granting an SMA Permit. Starting from Page 8, the project meets every standard
6 for each land use plan designation or district including the State Urban District, the Maui County
7 Countywide Policy Plan, the Maui Island Plan, the Kihei-Makena Community Plan and zoning.
8 In fact, you know heard earlier that some of this property is actually zoned for hotel use. But the
9 plan here is to design the property as Apartment zoning.

10
11 So very briefly what happens here is typically there's a public hearing on an application for an
12 SMA which is being held today. Individuals are allowed the opportunity to intervene which is
13 what the petitioner is trying to do today. And if there is an intervention then a special hearing is
14 held where it's done like a mini trial. We've been through these before. There's a hearings
15 officer appointed, you have a hearing, you call witnesses, the parties are allowed to cross
16 examine or examine and cross examine the witnesses. You know it's a prolonged process.
17 The hearings officer then makes a decision or a recommendation to the Planning Commission
18 and the Planning Commission rules based on that recommendation. This is a extensive, very
19 extensive process and takes a long time.

20
21 You heard the applicant describe the standard for a Petition for Intervention and one of the
22 things that he stressed is that the rule provides that person can intervene if they are so directly
23 and immediately affected, you know, that they're so directly and immediately affected that they
24 can participate. Okay, and what he excluded from that recitation was that the rules says that
25 their interest in the proceeding is clearly distinguishable from that of the general public. Okay,
26 it's got...in other words, they have to show some specific injury for this particular...for their
27 particular project, the Royal Mauian which as you saw is a six-story high rise right on the ocean,
28 you know runs parallel to the ocean, but it is almost across the street. So they have to show
29 that they have direct injury as a result of this project that's different from that of the general
30 public. And I think what you've heard is basically litany of different complaints. You've heard
31 about drainage, you've heard about traffic and you've heard this testimony from various different
32 people, from people that live in the, you know, the community on the mauka side, from
33 apartments on the north side, from the Kihei Community Association. You know what this all
34 tells you is that these are general concerns of the community and there's gonna be increased
35 traffic on South Kihei Road. There's gonna be, you know there might be some drainage coming
36 down. You see pictures of flooding on South Kihei Road. It doesn't show flooding into the
37 Royal Mauian project. You're showing flooding somewhere down South Kihei Road. Everyone
38 knows South Kihei Road floods in cases of extreme storm. Okay, that's a concern of the
39 general public. That's not a specific concern of the Royal Mauian.

40
41 Okay so we go through all of these things and I think we can conclude safely that none of these
42 issues are uniquely confined to the petitioners. Okay, none of these rise to the level of being
43 clearly distinguishable from the general public. Okay, and I think that in addition the petitioners
44 haven't shown anything that would make it clear that there is a specific injury. I mean, they
45 have had the opportunity to go out and get consultants of their own. And you know they can't, I
46 think they're saying they want to do this contested case hearing and be allowed intervention so
47 that they can do discovery. Okay, this is not, this is not a fishing expedition. They need to show

1 before they get to that stage that they've got a specific claim and they have nothing. They have
2 photos of somewhere down South Kihei Road. They've got things that they think are gonna
3 happen with the drainage. They've got concerns from the Kihei Community Association. And
4 should we be allowed to proceed with the public hearing portion of this matter, I mean, you're
5 gonna hear, not only have you seen in our report or application, all of the report from the various
6 different consultants but the petitioner is here today with the consultants to be able to present
7 what's going on with this project specifics relating to drainage, relating to traffic and some of the
8 other issues that the community has brought up and we have full confidence that the Staff has
9 reported on those things and we have full confidence that the Commission can rule on its own.
10 Cases have held that the Commission and the Staff speak for the general public. That's your
11 role. Okay, so we have full confidence that the Commission can do that and that the intervenors
12 have not shown any type of specific claim.

13
14 I believe that pretty much sums up my argument. We'd be happy to answer any questions and
15 again we have our full load of consultants here, all the consultants are here to answer any
16 questions you have regarding the project. Thank you.

17
18 Chair Duvauchelle: Thank you, Mark. So Commissioners, we will entertain questions now for
19 both sides if anybody would like to ask? Commissioner Canto?

20
21 Ms. Canto: So my question is for the attorney for the Petitioner. Okay, so bear with me. So as
22 representation for the petitioner do you believe that members are entitled to a contested case as
23 Native Hawaiians who exercise traditional rights on the project site?

24
25 Mr. Pierce: Not my clients, no. No, Ms. Canto. So if I understand correctly you may be
26 referring to the public access, the PASH case that I referred to and you have to understand I
27 saw how the developer tried to distinguish that case away but that case stands for a very basic
28 premise which is that administrative...and in that case it was a planning commission where a
29 planning commission fails to after someone has enunciated certain rights. In that case it
30 happened to be Native Hawaiians who were identifying that they had traditional and customary
31 rights. But there's other fundamental law that comes out of that and the PASH case stands very
32 strongly for the point that administrative agencies especially planning commission when they're
33 hearing things that are SMAs they need to identify those who have clearly shown injury and
34 permit them an opportunity to intervene. That's what that case actually stands for on a broader
35 principle and that your attorney can confirm. And I would point out on that point in terms of
36 Mr. Nakashima's point that we have to show that we're clearly distinguishable from the public.
37 One of the cases that we both cite is a case called, Akau which is an early standing case here in
38 Hawaii and that case makes it really clear that the threshold for, and this is at court level, okay,
39 the threshold for getting standing to identify that your interest is different is not a very high bar.
40 But the bar is even lower when you're before an administrative agency.

41
42 Ms. Canto: Thank you.

43
44 Chair Duvauchelle: One moment. Mr. Nakamura would you like an opportunity to respond to
45 that question also?

46

1 Mr. Pierce: And I apologize Craig for...in the heat of the moment saying your name wrong. I
2 apologize for that.

3
4 Mr. Giroux: There's something in the air with the name game.

5
6 Mr. Nakamura: David Nakashima is a very good friend of mine so I don't mind.

7
8 Chair Duvauchelle: If you would like?

9
10 Mr. Nakamura: Yeah, just very briefly. As Mr. Pierce explained that Native Hawaiian although
11 their interest is of course, very important it doesn't really come into play in this particular matter.
12 You know, I think again, from our perspective okay, I mean this is really a classic case where
13 the claims that are being made are claims of the general public, okay, you're not specifically
14 involving the Royal Mauian.

15
16 Chair Duvauchelle: Thank you.

17
18 Ms. Canto: Thank you.

19
20 Chair Duvauchelle: Any other questions? Commissioner Higashi?

21
22 Vice-Chair Higashi: This is for Mr. Pierce. You showed several photos of flooding in South
23 Kihei Road specifically are those photos in front of your hotel representatives or is it some place
24 further away, the photos that you showed?

25
26 Mr. Pierce: It's actually...thank you for the question. It's actually quite close and with the
27 Chair...Lady Chair's permission I could actually show the location of the flooding. But it is, if you
28 remember the slide, you basically had the Royal Mauian and then the Hale Pau Hana. So we're
29 very close to that flooding. It's right there essentially where everybody has to enter and exit
30 from that area, yes.

31
32 Vice-Chair Higashi: Well, what I specifically want to say was that particular flooding because
33 there's no development now there, but this one was done earlier this photo flooding. Will that
34 effect the development that's happening, that's gonna happen in that particular area where
35 you're talking about, the flooding on the street itself on South Kihei Road?

36
37 Mr. Pierce: We certainly believe so and that's because in reviewing their preliminary
38 engineering report which once again is minimal it basically says, yes, we're gonna hold some of
39 the water on...we're gonna hold our share of the water on our site according to the Maui County
40 Code. It does say that, but it also says that the overflow is going to go into a pipe which is going
41 to go into the drainage system on South Kihei Road. We already know that that drainage
42 system is not equipped to handle the existing conditions. That's what that photograph shows.
43 So that is something that clearly impacts my clients because they're so close to where that
44 flooding occurs? Does that help?

45
46 Vice-Chair Higashi: Yeah.

47

1 Chair Duvauchelle: Thank you.

2

3 Mr. Pierce: Thank you.

4

5 Chair Duvauchelle: Commissioner Carnicelli? No, I'm good.

6

7 Mr. Nakamura: I just wanna point out one thing.

8

9 Chair Duvauchelle: Oh, I'm sorry.

10

11 Mr. Nakamura: I'm sorry, I'm sorry, just one thing. Commissioner Higashi, you know if we get
12 into the presentation portion of this you will see that the, you know, of course there are major
13 drainage gulches right, I mean that run from Haleakala all the way down to the ocean. My
14 understanding is the major drainage gulch in this area at least where you saw the flooding is
15 through what is approximately what is called the Kihei Kai Nani area you know where there used
16 to be Kihei Prime Rib, that...so that's the location where the major gulch is coming down. There
17 isn't any gulch across this...major gulch across this particular property.

18

19 Vice-Chair Higashi: Thank you.

20

21 Mr. Nakamura: Thank you.

22

23 Chair Duvauchelle: Commissioner Gomes?

24

25 Ms. Gomes: I have a question for Mr. Pierce. And this is in regards to Commissioner,
26 Vice-Chair Higashi, just piggy backing on his question regarding the flooding. Noticeably the
27 photos that are provided in your document they're dated, you know, back 2007. They're rather
28 dated. I understand that we do have flooding issues in Kihei. But I'm wondering why they're so
29 dated?

30

31 Mr. Pierce: Well, I guess you have to remember that that what the preliminary engineering
32 report is based upon is a 50-year flood event. And we identify photographs from 2007 as well
33 as 2012 and it happens to be for one, the ones that I was able to get my hands on that's one of
34 the reasons because not everybody is out taking photographs at that time but they are...but
35 they also show what happens. And the point is, and I think this is what we would find out in the
36 contested case hearing is that a 50-year flood event is no longer a 50-year flood event. They're
37 happening in a much more rapid level and within that time frame of 50 years, actually 2007 will
38 be quite current. The one thing I would actually point out also is it's not just about whether or
39 not the flooding ends up doing property damage on my client. It goes actually to more core
40 issue with the SMA Rules which is what the impact will be to the nearshore waters. And we
41 have always we know that there's siltation issues, there's also whatever the drainage ends up
42 bringing with it off of the property whether it be oil residue or whatever those types of things
43 which are going in and impacting the beach. And essentially we know that we hear it where the
44 State or the County comes in and actually shuts down the beaches because they're unhealthy
45 to swim in. And those are issues that are not addressed anywhere in the reports. And certainly
46 those are impacts that my clients feel greater than others because they actually have properties
47 that are right next to those beaches and next to the corals.

1
2 Ms. Gomes: Second question, I apologize.

3
4 Chair Duvauchelle: Go ahead Commissioner Gomes.

5
6 Ms. Gomes: Mr. Pierce, I just want to understand this 'cause again we are new to
7 understanding this particular case. You're representing the Association of Apartment Owners of
8 the Royal Mauian. Are you against this particular development or is it conditional?

9
10 Mr. Pierce: Thank you for that question Commissioner Gomes and I actually had made a note
11 what I thought was very well said was we're not opposed to a project there as long as it done
12 right and that what the public testifier Amanda had said and I thought that was very well said.
13 That's what we want to make sure happens is we wanna know that the impacts have been
14 properly analyzed so that when we know those true impacts the Commissioners can actually
15 make sure that they're doing the right kinds of conditions. If we don't know what the impacts are
16 you don't know what conditions are necessary and that is one of the...you are the gatekeeper of
17 this particular project. There is no other gatekeeper for this project. So if we don't get the
18 conditions right this time, they'll never be right.

19
20 Ms. Gomes: Thank you. Thank you.

21
22 Chair Duvauchelle: Any other questions? No questions? Discussion? Commissioner
23 Carnicelli?

24
25 Mr. Carnicelli: Thank you, Chair. I'm coming from a place where I understand where the
26 petitioner is coming from. I agree with all of the points that he has. There's a lot of concerns
27 about this particular project. However, I don't feel that the petitioner has met the requirements
28 to intervene and so I would like to make a motion to deny the intervention.

29
30 Vice-Chair Higashi: Second.

31
32 Chair Duvauchelle: Moved by Commissioner Carnicelli to deny the intervention. Seconded by
33 Commissioner Higashi. Any discussion on the motion? Commissioner Robinson?

34
35 Mr. Robinson: I actually think that Mr. Pierce and the Royal Mauian do qualify. I think they
36 qualify for the simple fact that they're within the 500 feet that the traffic isn't. Having said that I
37 have confidence in the Planning Commission and in the data that we have in front of...that none
38 of this data is new to us. None of this data is singular to Royal Mauian, and I will be supporting
39 the motion.

40
41 Chair Duvauchelle: Any other discussion? Okay, we have a motion to deny intervention and a
42 second. Shall we take a vote? All those in favor? That's one, two, three, four, five ayes.
43 Opposed? Two opposed.

44
45 Mr. Spence: Two opposed.

46
47 Chair Duvauchelle: Motion carries. Petition to Intervene is denied. Thank you.

1
2 Mr. Pierce: Thank you for hearing us today Commission.

3
4 Mr. Nakamura: Thank you very much for your time.

5
6 **It was moved by Mr. Carnicelli, seconded by Mr. Higashi, then**

7
8 **VOTED: To Deny the Petition to Intervene.**
9 **(Assenting – L. Carnicelli, R. Higashi, K. Robinson, P. Canto,**
10 **S. Castro)**
11 **(Dissenting – T. Gomes, C. Tackett)**
12 **(Excused – L. Hudson)**
13

14 Chair Duvauchelle: Planning Commission is going to take a 10-minute break. We'll reconvene
15 at 11:20. Thank you.

16
17 A recess was called at 11:10, and the meeting was reconvened at 11:25 a.m.

18
19 Chair Duvauchelle: Okay, Maui Planning Commission is back in session. Director would you
20 please read our agenda item?

21
22 Mr. Spence: Okay, Commissioners we are on Item C-1. This is still Mr. Mike Goshi of Design
23 Partners, Inc., requesting an SMA Permit for Kamaole Grand and it appears...you've already
24 heard a brief overview by Staff and the applicant is ready to proceed with their presentation.

25
26 **C. PUBLIC HEARINGS** (action to be taken after each public hearing.)

- 27
28 **1. MR. MIKE GOSHI of DESIGN PARTNERS, INC. requesting a Special**
29 **Management Area Use Permit for the Kamaole Grand project consisting of**
30 **seven (7) residential buildings comprised of 217 condominium residences,**
31 **a recreation center, barbecue areas, swimming pool, and associated**
32 **improvements at 2455 South Kihei Road, TMK: 3-9-020: 007, Kihei, Island of**
33 **Maui. (SM1 2016/0007) (C. Thackerson)**
34

35 Mr. Jordan Hart: Thank you very much Chair and Members. JB has got me distracted there for
36 a second.

37
38 Ms. Gomes: Looking at the food.

39
40 Mr. Hart: Yeah. So it's been said many times we're here for a SMA Major Permit application.
41 There was a discussion of why we didn't do an EA. I might as well address that now. Other
42 projects in the vicinity, the one that was referenced that did do an EA that project is proposing
43 community plan amendment. This project is not proposing a community plan amendment. This
44 project is connecting to County infrastructure but it's incidental and the way the Planning
45 Department has determined that in similar projects in current times is that there's no EA
46 triggered and so we're exempt from compliance with HRS 343 or we do comply because our
47 actions are completely nonsubstantive and basically incidental.

1
2 So introducing the project team, Mike Goshi is lead architect for the project team from Design
3 Partners. He's here with Chris Clubb. No Ka Oi Development is the owner, and Dennis Blaine
4 is here today. Rick Papa Construction is the project manager, Rick Papa and Jay Nakamura
5 are here. Belt Collins is here, Mr. Michael Garis is our landscape architect and Allan Kato is our
6 traffic engineer, traffic engineering consultant. I do need to get out of the way that our original
7 traffic consultant has had some health issues in the past year, he hasn't been able to
8 participate, he's not able to fly and so we did have to retain an additional consultant to consult
9 with on the traffic issues. So he has done a full review of the traffic impact assessment report
10 and provided his own recommendations to us in that context. Chris Hart and Partners,
11 Raymond Cabebe is the lead planner. I'm Jordan Hart. Otomo Engineering, Mr. Mark Matsuda
12 is the civil engineer for the project.
13

14 The project is in Central Kihei. This is the tax map key for the project site. This is the north-
15 south collector road that's already developed here. One thing that was brought up several times
16 Mr. Pierce's presentation I think it's really important to orient everybody on the drainage way
17 that occurs. There was a water shed that was shown all the way up to Kula down to the ocean
18 side and there was big green spot. That green spot is here. This easement is where that water
19 surface flows onto South Kihei Road causing flooding consistent...actually it's supposed to go
20 here, it's supposed to go here, but it also does goes here is my understanding. It's supposed to
21 go take left there and go under Moose's on South Kihei Road. There's no drainageway flowing
22 through this project site.
23

24 It's an aerial photograph of Liloa Driveway, Kamaole 1, 2, and 3. We will talk about further the
25 amount of amenities available in this area. There's a lot of walkability, Maui Medical Group,
26 existing bus stops as well as proposed bus stops. Kamalii Elementary School, all within 5-
27 minute walk up here.
28

29 The project site so basically this is what is referred or has been referred to often as Kamaole
30 Super Block. This whole area was zoned Hotel in the early 90's or the 90's there was this
31 impression that there was too much hotel development on Maui or too much zoned land that
32 was developed and community planned hotel. So all the undeveloped land in this block was
33 redesignated as multi-family and so we are proposing a multi-family development which is for
34 long-term rental and the reason that we have to do that is because we're in the Special
35 Management Area there needs to be consistency of land use. Community plan is Multi-Family
36 that does not include short-term rental. That means that we need to do that as our proposed
37 development. Our SMA Major Permit is a development and a use and that's what we're asking
38 for. Multi-Family use is permitted in the Hotel zone and so that's how we are consistent. We're
39 also within the County's Urban Growth Boundary completely surrounded by development and so
40 on.
41

42 One thing I do want to mention at this time is the maximum building height in the Hotel, H-2 is
43 160 feet. Now the Kihei-Makena Community Plan allows for resort development, 45 feet near
44 the ocean, 75 up mauka. We're proposing 45 feet consistent with the Multi-Family designation
45 of the community plan. These existing developments surrounding us, some of these amenities I
46 that I was talking about, Dolphin Plaza, Kamaole Beach Center, Rainbow Mall, Kamaole
47 Shopping Center, and so on.

1
2 These are character photographs of the project site. It's very dry, undeveloped site in Kihei. It
3 was partially graded under a previous application. I do wanna say that that it is really
4 challenging to develop a project in Kihei and a parcel of this size. As was mentioned by one of
5 the testifiers there's been four failures on this site before and you know, we have a lot of
6 feedback that we're receiving here today so I think it's really challenging but the project is
7 designated for development and I think it's an appropriate location.

8
9 These are some character photographs of the project area. You can see the Royal Mauian. It's
10 six stories abutting the ocean parallel to the shoreline. One of the good photos that Tom Pierce
11 showed that I don't think I have a photo of is the stacking lane or queuing lane on South Kihei
12 Road that's for vehicles that are trying to take that left-turn into the project site. Earlier in the
13 project proposal we were proposing to restrict the turning on South Kihei Road. I'll go back to
14 the TMK map to try and further explain that. On further investigation the way this roadway is
15 configured is it's split. So this is a flag lot but it's only one-half of the right-of-way. The applicant
16 has use of the other half of the right-of-way but he doesn't have control of it. So that would be
17 where signage would be placed and then that roadway is also used by the existing Kihei
18 Regency and then this proposed 100 percent affordable project that was not a 201-H project, it
19 was approved by the Maui Planning Commission not the Council.

20
21 This applicant would be challenged to basically get those two other landowners or land users to
22 agree to restrict their access or use on that roadway or there would be some sort of sign that
23 says Kamaole Grand residents can only turn right onto the South Kihei Road and I don't think
24 that either of those are feasible. We did meet with Public Works two separate times to discuss
25 the issue of traffic. They did confirm that that wasn't a feasible option for us to proceed with.

26
27 So in the context of the project overview it's 217 units, seven four-story buildings, 62 one-
28 bedrooms, 147 two-bedrooms, 7 three-bedrooms, all units include lanai. There was a question
29 about what the obligation for workforce housing for this project is. The County's Workforce
30 Housing Ordinance is that 25 percent of the units need to be...you need to comply with the
31 Ordinance for the equivalent of 25 percent of those units. It was mentioned that this
32 project...the developer of this project is also the co-developer of another 100 percent affordable
33 project and that is how this project is proposed to be satisfied. These are some of the amenities
34 that are proposed to be included in the project. There was a discussion of density. So this is
35 density, units per square acre...units per acre of the developments in the area. So this is the
36 lowest of all of our neighbors in the context of size and units per acre. The Royal Mauian is 48
37 units per acre, we're 25, and then there's a mix of the other ones. In the context of lot coverage
38 and floor area ratio, the project is under its limitations by zoning.

39
40 In the context of design, I'd like to bring Chris Clubb from Design Partners up to discuss the
41 architecture of the project.

42
43 Mr. Chris Clubb: Yes, I'll be going over the architectural design of the project.

44
45 Chair Duvauchelle: Can you identify yourself please?
46

1 Mr. Clubb: Sorry, I'm Chris Clubb from Design Partners. As was mentioned before the site is
2 basically a buffer adjoining the single loaded parking lot and oriented mauka makai. I'll show
3 you the site. So we're talking here is our site has the single load parking loop that's going
4 around the site which helps us buffer between the neighbor and our own buildings. It creates a
5 better separation. It also creates a sort of a view avenue down and as well as the central
6 portion which is the central open space. In the middle of this we put all of our pedestrian
7 amenities as well as a pedestrian loop. The idea behind this is we're keeping the vehicular
8 traffic on the outside and separated from our pedestrian traffic within the site.

9
10 As you see with this site plan we have South Kihei Road on the left. We have Liloa Drive on the
11 right. Our main entry is through here. So this portion of the driveway is public. I mean this is
12 where all the guest stalls, yeah. So people will be coming in at the end of the day through this
13 gate and then coming into get their mail which is right here. And then utilize the parking look to
14 get to their various buildings.

15
16 This is the initial site plan. So this was this first site plan we proposed. And then after meeting
17 with the King K and the community we came up with this plan. And the changes we did was
18 essentially addressing a comment from KCA which was that this building was formally centered
19 in front of this open space and it was for...opportunities refused so we designed well, sacrifice
20 those views and make it inline so that now from Liloa Drive you have a clear view through the
21 middle of our project.

22
23 The other aspect we're trying to address is the fact that Kihei Regency currently can't get on to
24 the north-south feed roader. So we have an agreement to create this in this public portion of the
25 guest stalls. There's a driveway and an access so that Kihei Regency can get out. And now
26 they don't, they don't have to primarily come out of this contested vase road area here and it's
27 another option for them to get out, their property.

28
29 This is the typical floor plan for buildings. We have three different building types but they're
30 primarily the same configuration. They're 31 units. We have four units on the ground floor.
31 We've accommodated tandem parking under the building to help limit the permeable surfaces
32 that these parking stalls would have to require if we had to site them outside. Four units on the
33 first floor with their own patios and then the second through third floor is nine units and we've
34 angled our lanais so that the residents have a view towards the beach without blocking anyone
35 behind them.

36
37 This is a site section. This first site section is through that main access way. So you would
38 come into the property here. This is that public portion that has the guest stalls. You would get
39 past the gate and then this is one side of the loop and the other side. And as you can see it's
40 flat along the buildings and then there's a transitional slope between them to achieve the grade
41 difference between the west and east side of the property. The second section is just to
42 showcase that for the center corridor which is this portion is open space it is just one slope or
43 it's not broken up as is for the parking loop.

44
45 This is a cross section between the site and the two neighboring communities. Kihei Regency
46 Apartments which is above us and Kihei Kai Nani which is slightly below us. And it depends

1 we've cut it right in the middle but depending on where you are because we have the grade
2 changes it can be higher or lower depending.

3
4 As was discussed earlier too, we are keeping under the 45-foot height limit and in so doing
5 we've created these mansard roofs which are like a hip...partial hip roof, kind of give it more of a
6 residential look to it instead of just a harsh parapet roof.

7
8 So these are the renderings. This is a site rendering from the street side. If you look down here
9 there's a little legend. We're basically on the south side of the Kamaole Shopping Center
10 looking towards the property and as you can tell the two-story building covers over project. This
11 is on the other side, the north side, and this is that access road leading into Kihei Regency. As
12 you can see we slightly peaked over the roof so you can barely see the project from this point of
13 view. This is moving up into the entry portion. So this is the entry from the South Kihei and it's
14 essentially gated with pedestrian connection to South Kihei. As you can see with the building
15 design the mansard roof isn't so much shown on here but we tried to break up the massing
16 either by material changes, stone veneer or green wall. We tried to create different ways to
17 blend the building into the landscaping. This is moving further up the driveway so you're looking
18 up towards that main entry from Liloa Drive. And as you can see we have the angled lanais
19 which help create articulation in the building to create interest in it. This is from the bottom of
20 that open amenity corridor. As you can see it's very open. You can see the rec center. We
21 have a one-story rec center in the back and a pool in the middle. The next slide I believe shows
22 it up close. So we have all our amenities within this area. This is just showing the pedestrian
23 loop on one side and how the building looks as far as passing.

24
25 This is the Liloa Drive entrance. So this is that public entrance we were mentioning. Kihei
26 Regency is here and their access would come out through here to get to Liloa Drive. This is
27 through the center. So this is looking through that open space. So as you can see we've
28 shifted the building over so you can actually see down. This is the view from Moana Estates
29 across the street looking down and really all this is is to show you as far as height difference
30 between all the communities how our project will affect the view which is minimal. And this is an
31 aerial model looking at the site from the ocean. This last slide is the lighting plan for the site.
32 The big note here is that it's gonna be...it will be dark sky compliant so that everything is
33 shielded within the site so that we don't worry about ...(inaudible)... I'll ask ...(inaudible)...for
34 landscape.

35
36 Mr. Michael Garris: Good morning I'm Michael Garris with Belt Collins Hawaii. I'm a landscape
37 architect. I'm also a planner. So what I'll do is walk you through the landscape plan real quick
38 and that we...(inaudible)... As we all know the entrance is here and we've been walked through
39 the loop. So the way that we see the landscape treatment for the plan, at the very entrance, the
40 entrance is gonna have a little bit more high touch, high concept kind of feel to it. It'll will have
41 more flowering plants, more diversity, a little bit more emphasis on the arrival experience in that
42 entryway. And then of course as you traverse through the circle or the loop here, that is
43 essentially a parking lot with a driveway aisle. So we'll be meeting all the conditions in the Maui
44 County Planting Plan not only for shade but also for all the other elements in the project. So
45 what I was saying as you circle through here and loop through whether you're coming in from
46 north or east or west along the perimeter there is a what he Maui County Planting Plan refer to
47 as a continuous planter and we not only want to provide unique experience for that core planting

1 area which I'll talk about in a moment, it's kinda a recreate core but also our neighbors. We
2 want to be good neighbors so there's about roughly a six-foot landscape buffer outside of the
3 end of the parking stall to the property line where there would be a fence and/or whatever
4 devices needed to take the grade up. So the best way to screen the properties from one and
5 other vehicular and the pedestrians is to use hedge material coming straight from the planting
6 plan, the Maui County Planting Plan and also the ground covers, small trees, small to medium
7 size canopy trees and also interspersed with appropriate palm species. So we see that around
8 the perimeter of the project especially on the sides.

9
10 So as we move into these areas it was mentioned there were three detention basins. We're
11 calling this one, two, and three. The last one has an entry treatment similar to the front. A little
12 bit more emphasis on the textures, the colors and the impact of that arrival experience. So as
13 you come in you'll have a view from either top cross loop road or the lower portion through this
14 recreation or amenity core and Chris mentioned that there are two basins in there but you won't
15 perceive them as basins. They're essentially open spaces that are going to be landscaped.
16 There is a walkway that encircles that whole area for folks of all ages to stroll safely up and
17 down that, three and a half, four percent slope. It all ties back to the unit elevators, the building
18 elevators and connecting to the pool area. The pool right now we're looking at, you know
19 having a lap lane, a hot tub, some of the things you might expect in this type of development to
20 really create a special amenity core for the guests and the residents.

21
22 There are some slopes as was mentioned the slope, the site is sloped. So there would be
23 where we need to address any slope erosion control measures we would do so using best
24 management practices, industry practices. And so when you're looking at this detail, this planter
25 detail, the legend is down here on the left, there's roughly almost three and a half acres of
26 planting area. That's about 40 percent, almost 40 percent of the project footprint. So please
27 look at that and that's a lot of green space. We plan on using the highest and best technologies
28 for irrigating these areas and also using, you know native species to the greatest extent possible
29 and using the lowest water requirement plants which are generally natives and also using
30 irrigation technology that is low-flow, low-water, whatever would do the best job to sustain
31 optimal growth for the plants and again, the planting list is coming straight out of the Maui
32 County Planting Plan, the third edition. And so that's the landscape plan.

33
34 The next page, if I can go forward here, you can look at this plant list. This is just the beginning
35 of the plant list. As we get deeper into the project we'll find that there are a variety of things that
36 go on in a design process, the availability of plants. There can be pest problems and so on that
37 would start to shape our final plant list. This is an early plant list. This came straight out of the
38 Maui County Planting Plan. It does show the height and spread here on this column and then
39 shrubs and ground covers again. This is a starting point. And also there are a few notes here
40 that clarify a few assumptions on irrigation, slopes and so on. And that concludes a brief
41 overview of the planting plan at this point and this will evolve. I'll turn it back over to Jordan.

42
43 Mr. Hart: I believe, I'm gonna ask Mark Matsuda from Otomo Engineering to come up and talk
44 about drainage and infrastructure.

45
46 Mr. Mark Matsuda: Good morning, my name is Mark Matsuda from Otomo Engineering. We're
47 the civil engineers on the project. As was mentioned this is an infill project so basically the

1 surrounding area has existing County services as far as utilities which are a bullet point on the
2 slide there and I'm quickly going through that.

3
4 As far as water the Liloa Drive has an existing County main which services the area and the
5 area also has a main along South Kihei Road as well as a 12-inch line that extends up the
6 private driveway and that existing line includes three, three existing meters for this property
7 already existing and that will be used for the development.

8
9 Regarding sewer, the County system does exist along South Kihei Road and again, there is an
10 existing lateral on the south end of the shopping center below the project which we will connect
11 the sewer lateral to, to bring into the project. And as far as the driveway connections the main
12 entrance along Liloa Drive provides the main access as well as the secondary access on the
13 private driveway to South Kihei Road. So that...all of these existing infrastructure will basically
14 means minimal improvements would be required to actually provide service for the project.

15
16 Regarding drainage, the grading and the drainage plan we developed basically was to follow the
17 existing grades of the site from mauka to makai, minimize the grading required as well as
18 changing of any drainage patterns. As I stated we calculated the existing service runoff at
19 approximately 6.36 cubic feet per second. Based on the developed site, we calculated an
20 increase of approximately 23.22 cubic feet per second and this would be accommodated by the
21 three retention basins on site. So basically as runoff comes across the site will be incepted by
22 catch basins throughout the parking area and the remaining of the site. We are proposing
23 filtration inserts in all of the catch basins that will help protect the downstream waters. And all of
24 this runoff would go into these three retention basins throughout the site and which does
25 ultimately would overflow into the South Kihei Road drainage system. There is an existing drain
26 line into the site which will act as the overflow for the drainage system.

27
28 And the last point there as was mentioned and it was recommended by the KCA, the owners are
29 in discussions with a consultant for additional BMPs and permanent BMPs to be done, along
30 with the project to help with the water quality issues. This is just a slide showing the location of
31 the basin throughout the site. So basically runoff will be captured within these basins and you
32 know, at such time overflow, but it's not basically a large basin at the bottom of the site, it's
33 captured throughout which gives it time for runoff to infiltrate as well as sediment to settle in the
34 basin. And this is basically a slide showing that the site is not in a flood hazard area and as well
35 as the point that was made that there basically is no offsite runoff from the mauka side.
36 Anything that...any runoff that comes along Liloa Drive would be captured by that drainage
37 system and it does head south and outlet through that drainageway in the property south to that
38 that Kihei Kai Nani property. So this project is not part of that drainage way as far as direct
39 runoff coming through the site. And next you have the traffic.

40
41 Mr. Alan Kato: Hi, good morning. My name is Alan Kato, I'm with Belt Collins Hawaii. I'm not
42 Phillip Rowell. So I'm just here representing the project and interpret his report. Okay, the
43 report did go to Department of Public Works and State DOT and DPW does support the project
44 and we are currently working with the DOT to address their comments.

1 For the traffic study, traffic counts were taken at these three intersections in April of 2016, and
2 contrary to some of the testimony this morning traffic counts were taken both in the morning and
3 the afternoon.

4
5 Okay, for the Traffic Impact Analysis Report or the TIAR project trips were determined using the
6 ITE Trip Generation Handbook. Ninety-six trips are projected in the morning peak hour from the
7 project and 113 trips are projected in the afternoon peak hour. The distribution of trips is
8 approximately 90 percent to Liloa Drive and 10 percent to Kihei Road. Just to clarify if you're
9 not knowledgeable what a trip is it's when you leave that's one trip, when you come back that's
10 another trip. So each time you go to and from work that's two trips that's not one trip.

11
12 Okay, for South Kihei Road and the Kamaole Center, Shopping Center driveway they use the
13 existing morning and afternoon peak numbers of vehicles, 837 in the morning and 1,162 in the
14 afternoon and then below that is the projected 2021 numbers. These projections include traffic
15 from The Cove Beach Villas project, Kalama Heights, Alahele Subdivision and Kamaole Point.
16 It also includes a 1.6 percent background traffic growth which was based on the Maui Long
17 Range Transportation Plan. Note that in here the project only adds 10 vehicles in the morning
18 and 12 vehicles in the afternoon. And then I'll show you later on how that 12 vehicles in the
19 afternoon gets distributed to the project.

20
21 These are the numbers for Liloa Drive and Alanui Kealii. For the future 2021, the project adds
22 86 vehicles in the morning and 101 vehicles in the afternoon. This is just a graphical
23 representation of the projected 2021 peak hour traffic without the project. The number of cars in
24 the morning peak hour for each movement are shown in green and the number of cars in the
25 afternoon peak hour for each movement are shown in red. In this figure I'd like to note the
26 intersection of South Kihei Road and the Kamaole Shopping Center on the bottom left, down
27 here, in the afternoon there's one vehicle making a left turn onto South Kihei Road out of the
28 private driveway of Kamaole Nalu which is a vacation rental hotel. So I don't know if you can
29 actually see it down there. There's one down there in the afternoon red, in red.

30
31 Okay, this is a graphical representation of the number of vehicles from the project at the
32 morning and afternoon peak hours. The South Kihei Road and Kamaole Shopping Center
33 driveway I noted earlier that there were 12 project vehicles in the afternoon. The numbers in red
34 on the bottom left bubble. Down here show the distribution. Two vehicles turn right from the
35 project site to South Kihei Road, two vehicles turn left from the project site to South Kihei Road,
36 four vehicles turn left into the project site and four vehicles turn right into the project site. That's
37 where you get the 12 total vehicles. These are the 2021 peak hour traffic numbers with the
38 project. So this slide just adds the two previous slides traffic counts.

39
40 Okay the operation of a intersection or level of service is graded from A through F similar to how
41 you got graded in school A through F but there's also E in there. With A being the best
42 condition and F being the worst condition. It's based on the average delay that's experience by
43 a driver. Unsignalized and signalized delays are different as noted in the table there's slightly
44 different times on the table because longer delays are anticipated by drivers when they're at a
45 signalized intersection versus when they're at a stop sign intersection. Basically acceptable
46 levels of service are D or better.

1 Okay so a level of service analysis was conducted for the intersections. This slide shows the
2 level of service during the 2021 morning peak hour conditions. The letters shown in the boxes
3 are the intersection levels of service. The green levels are the level of service without the
4 project and the red levels are the levels of service...red letters are the level of service with the
5 project. All the intersections operate at level of service B or better and there's no change in the
6 level of service for any of the moments with or without the project. It's basically the same.
7

8 This slide shows the level of service during the 2021 peak hour condition, afternoon conditions.
9 Note that all intersections operate at level of service B or better and there's no change to the
10 intersections again without or with the project. There is a drop in the level of service for the
11 movements at Liloa Drive and Alanui Ke Alii up here, and that one it drops to a level of service C
12 which is still good. And then in the bottom left side, on the bottom left side, bubble here you'll
13 see that in the afternoon that the traffic coming out of the Kamaole Nalu Vacation Rental Hotel is
14 level of service E. But I want to know again that that was one car coming out and that car had
15 to wait 45 seconds. So it's not like a big traffic jam that's waiting to get out. It's only registering
16 one car and because that one car has to wait 45 seconds to get out that's why it's level of
17 service E.
18

19 Okay, as a side exercise that wasn't included in the traffic impact analysis report we looked at
20 the historical traffic data from the State DOT. DOT has traffic data along Keonekai Road and
21 Alanui Ke Alii makai of Liloa Drive in the area. They don't have...they don't have traffic data
22 along South Kihei Road and the State DOT doesn't have traffic data along Piilani Highway. So
23 these are the closest traffic stations I could get from the DOT. So this is the one for Keonekai
24 Road. As you can see in the numbers there traffic peaked in 2013 and has gone, actually the
25 traffic has gone down in the area. Same thing if you look at the morning peak and afternoon
26 peak hours. The traffic has actually gone down since 2013. But general the traffic in the area
27 since 2007 has been kinda trending upward.
28

29 This is the historical data for Alanui Ke Alii, and I also included the projections from the traffic
30 study in 2016 as well as the projections after 2021. Note that in the 2007 the traffic numbers
31 were almost double of what the 2015 numbers are. So in ten years the traffic along this road
32 has actually gone down significantly. If the 24 traffic volumes are reviewed for the two roads
33 together, the traffic has actually declined from 11,000 vehicles per day to 9,000 vehicles per
34 day.
35

36 Based on the decline in traffic in the area the TIAR may actually be estimating background
37 traffic growth in the 21 conditions to be actually worse than it actually is, but without a more
38 detailed study of this data I can't definitely confirm that. 'Cause I only got brought in just
39 recently on the project. But in general the TIAR reflects conditions that will probably be a worse
40 case and yet all the intersections operate at better than acceptable levels of service of B or
41 better.
42

43 Since the completion of the TIAR Liloa Drive was constructed all the way from Alanui Ke Alii to
44 Keonekai Road, and Keonekai Road will provide additional entrance and exit routes to the
45 project which will further improve the level of service at the area intersections as traffic is further
46 disbursed on the roadway system. The project has also negotiated with Kihei Regency to
47 provide vehicular access to Liloa Drive. Access from Kihei Regency to Liloa Drive will reduce

1 traffic to and from South Kihei Road. And from a traffic perspective, this project is located within
2 a half mile of a number of services such as restaurants, convenience grocery, school, parks and
3 the beach. And due to the cross proximity of the services people living in the project will have a
4 opportunity to walk to these services reducing the number of vehicles on the road. The close
5 proximity to other services is also not reflected in the trip generation calculations so it doesn't
6 really compensate for this project being more walkable than maybe another project that's where
7 we have to, everybody has to drive to get to places. Overall the project will not significantly
8 impact the area traffic. Thank you.

9
10 Mr. Hart: Thank you very much.

11
12 Chair Duvauchelle: Okay, Mr. Hart I think we're going to break for lunch now.

13
14 Mr. Hart: If it's possible I'm at the very end. I could wrap it up.

15
16 Chair Duvauchelle: Oh okay. I thought maybe you had more presenters.

17
18 Mr. Hart: We wanted to revisit traffic actually...no, no I'm just joking. Because of the petition it's
19 really necessary to you know exhaustively go through it and so thank you for your patience on
20 that, but we just really wanted to make sure that there was a clear and thorough explanation of
21 the traffic situation. You know it was mentioned previously that there's no mitigation proposed
22 and basically what happens is when you do the counts there are standards that trip
23 infrastructure improvements. And so if nothing is tripped that's the initial position is that nothing
24 is proposed and so in going through the agency review process we hear from the agencies, we
25 meet with the community, and we find out you know more specifically from people in the direct
26 vicinity what they're interested in, and Public Works didn't recommend any improvements as a
27 result of the Traffic Impact Assessment Report, but we did meet with the community and we
28 came up with the providing access for the Kihei Regency through the north-south collector road.

29
30 And another thing I wanted to bring up is that we propose to prohibit parking on the south side of
31 the access roadway in order to allow vehicles to pass more easily. And with that, we're
32 basically trying to adjust to the community, you know, even though we don't trips standards for
33 infrastructure we were looking for creative ways to do improvements not in the County right-of-
34 way but they would have a positive impact on South Kihei Road.

35
36 In the context of construction mitigation, the project is gonna propose to do all the standard
37 BMPs that any project would need to do in order to get a grading permit and a construction
38 building permit. Prevent leaching of materials, promote proper disposal of loose soils.
39 Retention of ground cover until the last possible moment. Stabilization of denuded areas. Early
40 construction of drainage features, minimization of construction times, dust control, water graded
41 areas, erect dust fences, limit construction to normal daylight hours. One of the other things
42 that's not listed there that was a concern of the community is access for construction. All
43 construction access is gonna be off of the north-south collector road. There's not going to be
44 any construction access from South Kihei Road or via the private driveway.

45
46 Chapter 2.96 is the Residential Workforce Housing Ordinance. I mentioned earlier the criteria is
47 25 percent. Even though this project is co-developed with a 100 percent affordable project that

1 was not a 201-H project. It should also be mentioned that those affordable credits that would be
2 compensating this project only exist after the units are developed and occupiable. So there's no
3 promise to develop future housing. It's...the units are developed, credits exist, the intent is to
4 attribute them to this project.

5
6 Water conservation measures are being adopted. I believe that Michael really thoroughly
7 discussed this in the context of landscape architecture. The project is going to be developed to
8 be R1 ready so that basically when Environmental Management has the R1 line in the project
9 vicinity they can connect. It's already gonna have the purple R1 lines built in. There's a series
10 of energy conservation measures that are built into the project. To reiterate what Alan just
11 talked about as far as walkability. So this circle is a half-mile. That's a five-minute walk. So
12 basically a five-minute walk is generally understood to be the distance that a person's gonna feel
13 comfortable not getting in their car. When you start to get past five minutes, ten minutes, they're
14 like well maybe I'll just drive. So these are all the amenities that are in that area. The green bus
15 stops are existing county bus stops, the gray bus stops are proposed county bus stops. So
16 there's expansion because this is a dense area. You have parks, all the Kamaole Beach Parks.
17 You have shopping, medical center, Ke Alii Alanui, just a series of reasons that people would
18 actually walk, Café O Lei I mentioned earlier.

19
20 In the context of outreach we did have a series of public meetings and we did really try to reach
21 out with people, understand what they were concerned about and adjust the project. Chris Club
22 talked about how the Building No. 1 was moved to be alignment with the line of buildings on the
23 north side and in order to do that you had to sacrifice seven head-on ocean views. Those are
24 obviously premium units but the project was hearing what the community said about private or
25 public views from the roadway. I want to bring that up too, HRS 205A requires that you
26 preserve public view to the shoreline and to the mountain and so this project really has tried to
27 provide views through the project site from Liloa Drive as well as from South Kihei Road by
28 basically moving the buildings from the property boundaries and then also providing a view
29 corridor through the middle of the boundaries. You did hear from several single family owners
30 mauka of the site that they wanted the buildings to just be generally lower. We heard at the
31 meeting at St. Theresa's from several single family homeowners in the Keonekai Estates area
32 and in the Moana Estates that our project was gonna impact their private views. Private views
33 aren't protected by the Special Management Area when you're doing your due diligence on
34 purchasing your home you look at a large piece of property that's zoned for hotel and multi-
35 family development, it's undeveloped at the time you purchase you should anticipate that the
36 owner at some point will want to use their land that they're paying real property taxes on.

37
38 We met with the Urban Design Review Board January 3, 2017. January 19, 2017 we met with
39 the KCA Design Review Committee, as noted we incorporated a series of changes into the
40 project as a result of those feedback that we received from them. February 9, 2017 we met with
41 the community. That was basically all neighbors within 500 feet received a mailed notice that
42 was 880 invitations that we mailed out. So if you think about 880 invitations and the volume of
43 people that you're seeing here today I think the vast majority of people that received notice are
44 not overly concerned with what we're proposing. There were 43 attendees at that site or that
45 meeting. There was also an additional certified notice of public hearing. So that's
46 certified/return receipt that would have been approximately 880 letters that go directly to the
47 property owner, they have to sign to register they received that. That was mailed out within 30

1 days of this public hearing. And so the reason I'm talking about this is that we did, we did try to
2 meet with people. In the context of the petitioner we didn't receive a specific letter of concern
3 identifying issues that we could address to mitigate. We did offer a meeting. We weren't taken
4 up on a meeting. The next correspondence we received was the petition so I do think that we
5 did try and identify what could be done to resolve this before we're here today and I don't think
6 that there was really an adequate opportunity to do that from our perspective. The project is
7 seven buildings, four stories, consistent with zoning and community plan. It's infill development.
8 It close to amenities. It's close to existing commercial services. It's close to schools.
9 Regarding why we continue to want to have access on north-south collector and South Kihei
10 Road, north-south collector road is operating under capacity at this time. At some point it will be
11 operating closer to capacity and maybe even overburdened at some point before the mauka
12 collector is built. And so having an option of going to South Kihei Road or the north-south
13 collector road is better in our opinion in the situation where there could be an accident, the
14 north-south collector road is not accessible. But also, one of the testifiers came up here today,
15 he lives in the vicinity knows at sunset South Kihei Road is gridlocked. These people who live
16 here in the future are gonna be residents. They're gonna know their own neighborhood.
17 Nobody is gonna go out on South Kihei Road when they know it's gridlock unless they're doing
18 it to cruise South Kihei Road which anybody can do they could just...if there was no South Kihei
19 Road access they would just pull up on Liloa Drive, pull down on Keonekai and then get on
20 South Kihei Road and cruise up and down the street like everybody else does in that time
21 frame. So I think the options will provide better traffic overall in the long term for the project and
22 that's why we continue to push for that even though we're hearing, you know, feedback that the
23 community doesn't want it. We think it's better planning over the long term. But in that context I
24 think that we covered all the issues that we wanted to bring up with this presentation. So thank
25 you very much for indulging the length of it.

26
27 Chair Duvauchelle: Thank you. Thank you Jordan. Okay, at this point we will break for lunch.
28 We'll reconvene at 1:10.

29
30 A recess was called at 12:12 p.m., and the meeting was reconvened at 1:15 p.m.

31
32 Chair Duvauchelle: Thank you all for your patience. Maui Planning Commission is back in
33 session. We are currently on Agenda Item C-1. We've heard the applicant's presentation. At
34 this point, I'm also gonna ask Mr. Nakamura, but we're gonna open the floor back up for public
35 testimony. If you didn't testify before, you may do so now and if you did testify before you can
36 again, but hopefully on subject matter that you didn't cover the first time. Oh, one moment, one
37 moment. Mr. Nakamura, oh there you are. That's all right. I just asked that you were okay,
38 we're gonna open the floor back up for public testimony.

39
40 Mr. Craig Nakamura: That's fine and Corp. Counsel asked me about possibly cross-examining
41 these individuals who were testifying. We don't need to cross-examine them. But we do
42 have...if any questions arise from any of the commission members we do have all the
43 consultants here, be happy to answer any questions that come up.

44
45 Chair Duvauchelle: Okay, thank you very much.

46
47 Mr. Nakamura: Thank you.

1
2 Chair Duvauchelle: Go ahead. Please state your name you'll have three minutes.

3
4 Mr. Michael Pasco: Aloha my name is Michael Pasco a South Maui resident. Good afternoon
5 Commissioners and Chairperson Duvauchelle. I had a chance to look at some of the
6 documents that they published online and there's a couple areas of concern that I wanted to talk
7 about. One is the affordability component. I know that they have spoken about having that
8 satisfied once again by an offsite development and I'm concerned that these kinds of projects
9 where the affordability component is satisfied by a separate development project that it kind of
10 pulls at the cultural fabric of our communities by creating these like segregated neighborhoods.
11 So that's just a concern that I wanted to voice.

12
13 The other thing that concern is that they've only really spoken about the long-term rental
14 component which sounds good, but I'm hoping that there will be real protections because my
15 understanding is that they haven't ruled out a possibility of short-term vacation rental. So I'm
16 hoping that there can be some real protections with teeth to try to make sure that this property
17 stay focused on long-term rentals and doesn't turn into another short-term vacation rental in the
18 area.

19
20 The other concern that I have is really about the water quality aspect. And I know they
21 mentioned as kind of an afterthought on one of the slides about the possibility of working with
22 EcoSolutions which I've seen some of their stuff before and that seems like that would be a
23 good option and it will be nice if that could be maybe a condition or something that you folks can
24 discuss that option because despite people talking about best management practices for many
25 years, groups like Maui Nui Marine Resource Council continue to give our shorelines failing
26 grades when it comes to the quality of the coral reef and fishes and water quality itself. So I'm
27 just hoping that while some of those things are not specifically their fault. I'm hoping that this
28 body, you know, as a community in general from citizens like myself Commissioners, like
29 yourself, and then as developers that we can really focus on some of these areas to make sure
30 like these retention basins are functioning retention basins that actually fulfill the purpose of the
31 retention basin and not just satisfy a requirement on paper. And so those are the only concerns
32 that I wanted to voice and I want to thank you for giving me time to testify again today.

33
34 Chair Duvauchelle: Any questions for Michael? Thank you very much. Is there anybody else
35 that wishes to testify at this time? Okay, seeing none, we will close public testimony and we'll
36 open it up for questions from the Commissioners. Commissioner Carnicelli?

37
38 Mr. Carnicelli: I'll start with you Jordan. So I'm gonna start with 2.96 and the affordability
39 component of this. Is the affordable component the one that's...that we just approved that's two
40 doors up is that the one it's in partnership with the same owner?

41
42 Mr. Hart: There's ownership overlap, but it's not, yeah that project is partnered with the same
43 older that is also developing this project.

44
45 Mr. Carnicelli: Okay so that's where you're satisfying your requirements under 2.96?
46

1 Mr. Hart: Let me say this that is the intent and earlier when I was giving my presentation I
2 explained that the credits become available due to...or when the units are occupiable.

3
4 Mr. Carnicelli: Right.

5
6 Mr. Hart: So provided everything continues according to plan as it is now, that project is slightly
7 ahead of this project and those units will be occupiable and those credits will be in existence
8 and then at that point they'll apply to this project. If there were a situation where those units
9 were not occupiable they would have to comply in any other way that's permissible under the
10 ordinance. And so, that's the intent. That's why they set out that separate project, got it
11 approved and so on is the intent there.

12
13 Mr. Carnicelli: Okay, right. So obviously that's gotta be completed first?

14
15 Mr. Hart: In order to make use of those credits with these units, yes. And if you were not able
16 to do that, he would have to comply in some other way in order to get his building permit issued
17 to start construction on the market rate units.

18
19 Mr. Carnicelli: Okay, so then if I could continue Chair?

20
21 Chair Duvauchelle: Go ahead.

22
23 Mr. Carnicelli: How is that you guys are addressing that the Kihei-Makena Community Plan
24 says that affordability needs to be onsite?

25
26 Mr. Hart: I feel like this is not a significant deviation. But basically the ordinance allows you to
27 comply in these various ways. This project is proposing to comply in this way. The Department
28 recommended approval of that project, is recommending approval of this project. I think that
29 there's a recommendation of Kihei-Makena Community Plan but I don't think that what we're
30 proposing to do significantly deviates from the overall goals of providing affordable housing in
31 South Maui. These units are being developed in South Maui. They are actually approximately
32 200 yards away in this scenario. And so I think in general terms we're complying.

33
34 Mr. Carnicelli: Chair if I could one last part of it?

35
36 Chair Duvauchelle: Go ahead.

37
38 Mr. Carnicelli: So then the other piece to this is when I went through the whole thing and in your
39 presentation you did talk about long-term. You talked about okay, you know, this is zoned multi-
40 family and long-term. However I think that many people in the community and rightly so are
41 worried that okay, we're starting down that, but if there's not any assurances put out there that
42 this could eventually go from you know, long-term to short-term. So what assurances do you
43 have proposed which I couldn't find any, you know, I couldn't find any in the presentation or the
44 submission that this in fact is for long-term and not short-term.

45
46 Mr. Hart: So there's a few things that happen when you have a project approved. So first of all
47 this project that we're proposing, we're proposing it to the Maui Planning Commission, in our

1 representations, documentation, and our presentation and in the minutes we're saying it's a
2 long-term rental and so that's the way the use and the development have to occur in the context
3 of developing a project in substantial compliance with the representations made to the
4 Commission. Now let's say that this developer finished this project and was ready to pull their
5 Certificate of Occupancy and they said, we would like you to now issue a Certificate of
6 Occupancy for a hotel so that we can do short-term rental. Planning Department, Zoning
7 Enforcement Administration Division would say we're not gonna sign that C.O. because your
8 SMA Major Permit is for a multi-family development which doesn't include short-term rental. So
9 that's basically how the process works on the project wide scale.

10
11 Now in the context of assurances that any individual units would never try to be Short-Term
12 Rental Home Permits if an individual unit wanted to try and do that, what they would do is file a
13 Conditional Use Permit application. They would come to this Maui Planning Commission. They
14 would receive a recommendation for approval of denial and then after that recommendation they
15 would go up to the Maui County Council and get a decision from the County Council on whether
16 or not an ordinance was going to be adopted for a Conditional Use Permit. And so basically it
17 would be a project...it would be a unit by unit exercise. So if the question is do we want to
18 voluntarily recommend a condition that no units should be permitted to file a Conditional Use
19 Permit I don't think that that's necessarily considering how difficult it is to complete a Conditional
20 Use Permit and then in addition to that would be on a unit by unit basis. This is 217 units and so
21 if in the future a few of those people were to go forward and successfully complete that process
22 that might happen, but as a planner and a person who processes current planning permits, do I
23 think it's probable that a lot or the majority of them would complete it, I don't think that's
24 possible. The other configuration would be after this condominium project is created, all the
25 units are sold, the association gets together and they decide as a body that they wanna do a
26 community plan amendment. They could also vote and agree to file that document, present that
27 to the Maui Planning Commission, all the way up to the Council level for decision on that. And
28 so I think that in all of those scenarios, the Maui Planning Commission and the Maui County
29 Council has a decision making authority and I don't think that there's any need to preclude that
30 now because it's not an easy process and it's completely regulated.

31
32 Mr. Carnicelli: One last?

33
34 Chair Duvauchelle: You're not gonna give anyone else a chance?

35
36 Mr. Carnicelli: Okay go ahead, go, go, go...

37
38 Chair Duvauchelle: Commissioner Canto?

39
40 Ms. Canto: Thank you, Chair. Okay, so I need to understand there's a lot of emphasis on intent
41 on the other project. So is this project contingent on what happens to that other project?

42
43 Mr. Hart: I would say no. I think that if, and the developer can answer this directly, but my
44 impression would be based on, you know the discussions that we've had about the project and
45 how these two projects that which we're both...we're working on both, how they're unfolding, I
46 think that if this project was ready to go and something were to happen on the other project they
47 would look for another way to satisfy however that might be with the ordinance. Like I don't

1 think that they would cancel this project if that project was behind schedule on the occupiability
2 of those units in order to create credits to contribute to this project. I think that they would either
3 do the options that are permitted in the ordinance which would be look to other developers who
4 had already developed units to get...by those credits to consider developing onsite or on other
5 locations. Whatever...all the other options that already exist in the legislation.

6
7 Now he has already expended significant resources in getting an approval for that other project
8 and I don't believe that we went through that SMA Major Permit as a show. Like that's the intent
9 is to do this. Like there was significant effort that went into getting that project package
10 presented and approved and so that's the intent. But...the development process is very
11 complex as you're seeing here today and there's no guarantees up until the say those units are
12 occupied and those credits are issued. So that's the reality of it.

13
14 Ms. Canto: Okay, I have one more question.

15
16 Chair Duvauchelle: Commissioner Canto.

17
18 Ms. Canto: Mark Matsuda?

19
20 Mr. Hart: Matsuda yeah, Otomo Engineering.

21
22 Ms. Canto: Hi Mark. Okay, so we received written testimony where a testifier shared that there
23 is a strong evidence of lava tubes so geological studies were those done? We have a written
24 testimony from someone that is a civil engineer.

25
26 Mr. Matsuda: I am not aware of any. All I can say is that the site has been graded, has been
27 worked on. There has been utilities installed by previous developments and so as far as my
28 knowledge I mean they haven't come across any. And we have not...I have not done a
29 investigation on that.

30
31 Ms. Canto: Okay, Chair I'm sorry, so written testimony from a civil engineer indicates that there
32 is strong evidence of lava tubes. I'm only reading verbatim so I'm sorry. So my question to you
33 was can you comment on geological considerations or studies that she's asking?

34
35 Mr. Matsuda: Well, I haven't seen that so I'm not sure what specifically is in there. I mean, all I
36 can say is that like I say, I'm not aware of any...during construction there would be a
37 geotechnical engineer onsite typically that does testing when excavation is done. So if
38 something was come across it would be dealt with at that time.

39
40 Ms. Canto: All right.

41
42 Mr. Hart: I might...this is Jordan Hart. I might be able to reply to that more directly. That
43 property owner lives in Moana Estates, you know they provided a photo of the sunset view from
44 their balcony which is gonna be significantly obstructed by this project as they say. But the
45 citation of lava tubes isn't in reference to any study that was completed. It's just an assertion.
46 It's just outright assertion and so what our civil engineer is saying is that they're not aware of
47 that. There was site work done previously on the site that was not discovered. There will be a

1 geotech onsite when ground disturbing activities are occurring to monitor for those things prior
2 to action. And so I don't think that that's based on any technical study or data. It's just a
3 statement in a comment letter is my opinion of that.

4
5 Ms. Canto: All right. Thank you. Thank you, Chair.

6
7 Chair Duvauchelle: Commissioner Gomes?

8
9 Ms. Gomes: Thank you, Chair. I have a question for Jordan, I'm sorry. Previously you stated,
10 and forgive me I hope I have this correct. You stated that there four failures in the past
11 pertaining to this site?

12
13 Mr. Hart: I believe that that was what one of the...the current president of the Kihei Kai Nani
14 Association said that she witnessed as far as different parties attempting to have projects
15 approved. And I was basically reiterating that comment in the context of how difficult this
16 location has been in the context of community feedback and interest in the process.

17
18 Ms. Gomes: I see. So—

19
20 Mr. Hart: So I'm aware of one single one which is the Aloha Villages where the utilities are
21 currently installed. The site has been graded, the utilities were installed and the project wasn't
22 completed.

23
24 Ms. Gomes: I see. So this particular project considering the four failures which that was told to
25 you there's no concerns that you guys foresee considering there were four failed attempts to
26 build in the past?

27
28 Mr. Hart: No, based on the project as it's configured you know the density, the number of units
29 that are being created and the known infrastructure costs that we're anticipating at this time, the
30 project team believes it was a viable project.

31
32 Ms. Gomes: Thank you.

33
34 Chair Duvauchelle: Commissioner Higashi?

35
36 Vice-Chair Higashi: Hi Jordan, our Commission is always concerned about traffic especially in
37 Kihei, noise, and accessibility and I notice that your particular project is a gated community and
38 it's located adjacent to Kamaole Center, Shopping Center which I think it makes it convenient for
39 the public if they need parking spaces especially in Kihei to have access to some of these
40 parking that you have because according to your testimony you have 458 parking stalls with 217
41 apartments some of which is tandem parking which means that you made maximum use of the
42 space. Would it be any possible for this particular development to have that gate that's right
43 adjacent to that shopping center being open during certain hours of the day during the day
44 especially so that the public possibly could get 10 parking spaces?

45
46 Mr. Hart: I understand the potential intent and the comment. So one of the reasons that we
47 wanted to have the gate open is because in locating the buildings in order to enhance views or

1 preserve views the buildings are setback from the north property line and so that makes this
2 straight shot from the north-south collector road right down to the access drive. And so one of
3 the concerns was speeds and things like that that might evolve and then just generally people
4 treating project as if it were a county roadway and you know, not going to the county roads and
5 just cutting right through. And so the gates are proposed in order to not put those kinds of side
6 effects onto the developer...I don't mean to the developer but the future residents who are
7 gonna be living there with the vehicles that are driving around and through. One other thing I do
8 wanna say is that the County requirement is two units per...two stalls per unit and so that's
9 something like two-hundred twenty...thirty-four already and so we have a decent amount for
10 guests but we don't think that it's too excessive in the context of number of required stalls
11 versus proposed stalls. So I guess the direct answer to your reply is we would prefer to
12 continue with our proposed configuration which is keeping those gates as they are for the
13 reasons that I just mentioned.

14

15 Vice-Chair Higashi: So you're saying that you don't think there'd be available public parking?

16

17 Mr. Hart: No, I don't think that, I don't think that this project, this multi-family project should
18 contribute commercial parking to the abutting commercial uses. I mean, the Commission is
19 decision maker on this application, but if I think that that's appropriate and it's developer's
20 decision in response to your comment but you know my opinion is that I think it's appropriate
21 that we proceed as we're requesting now.

22

23 Chair Duvauchelle: Commissioner Tackett?

24

25 Mr. Tackett: When I look at your project the benefits that I see are maybe not necessarily for
26 working families renting, doesn't seem like it's that kind of property. Doesn't necessarily look
27 like it's affordable. Looks like the jobs that would be created from the project that you're talking
28 about would be generally just the construction jobs. Are there any thoughts as to how you
29 would or is there any benefit that you see for the community on providing high paying jobs for
30 that short window that people will be working on that project basically to make sure
31 that...basically wondering if our contractor is gonna come from out of state, build it and leave or
32 you know, are those gonna be people from our community getting those jobs because there's
33 not gonna be a lot of other jobs created and there's not gonna be a lot of people that grew up
34 over here or went to school over here purchasing probably those properties?

35

36 Mr. Hart: I think I clearly understand what you're saying. Let me just speak to the landowner for
37 a moment and make sure...this would be a decision for him to reply to. So yes, yes I think that
38 the applicant is saying that they would intend to be providing high paying jobs to local
39 contractors and then subs.

40

41 Mr. Tackett: How would they be doing that?

42

43 Mr. Hart: I think that there would be the intent to use union labor for that.

44

45 Chair Duvauchelle: Director?

46

1 Mr. Spence: Hey Jordan. I normally don't get into this, but just a question for clarification. This
2 project what I understand is entirely market but it's enabling the affordable housing project just a
3 couple hundred yards away. Is this enabling all of those units or is it 50 percent of them or...I
4 mean how are the credits gonna...

5
6 Mr. Hart: I believe that roughly half of the units that would be generated...slightly less than half
7 of the total units that would be generated by the affordable housing project would need to be
8 contributed to this project in order to meet the 25 percent criteria for this 217 unit development.

9
10 Mr. Spence: So how many?

11
12 Mr. Hart: About 54 obligation in a 129 development offsite. So there's roughly I don't know,
13 something like 70 plus extra units that are being developed above and beyond their criteria for
14 this project.

15
16 Mr. Spence: Okay so 70 plus units are gonna be constructed as a result of this project?

17
18 Mr. Hart: No, I would say...well, okay so this is like a really chicken and the egg question. Does
19 the affordable and the creation of credits enable the market rate or is the market rate the reason
20 for creating the affordable? My impression of working on both projects is that both are viable
21 projects but that because there's ownership overlap on both there's a convenient location to
22 park some of the credits that are developed by the market rate...or the affordable project. And
23 that's why I made really clear that the units have to be constructed and occupied in order to do
24 that transfer. Like he's not trying to bind these two projects at the hip. Both are viable projects
25 and both are intended to completely proceed as discussed but there's a critical timing piece that
26 must be in place in order for Department of Housing and Human Concerns to sign the
27 Residential Workforce Housing Agreement in order to get your permit. And so if we're talking
28 about SMA Permit discussion and whether or not we're gonna say 100 percent guarantee that
29 those units will be occupied before we can pull our building permit for this project I think that's a
30 really tall order and it's not really what we can say here today. But the intent is that the 54-unit
31 obligation is coming from that 129-unit project.

32
33 Chair Duvauchelle: Commissioner Castro?

34
35 Mr. Castro: Hi Jordan, earlier you mentioned that you had over 800 sole mail outs and only 43
36 people showed up for the meeting. Of those 43 were they receptive to the project?

37
38 Mr. Hart: I would say there was...I also wanna add that what we do when we have those
39 community meeting is the KCA also notices it on their website. So it's actually public meeting
40 hosted by the KCA but the members...the residents in 500 feet get a direct mail. So I would say
41 that it was probably a vocal 10 to 7, negative vocal 10 to 7 and then you know half of the
42 people...not half...maybe yeah like half the people asking general questions. They have
43 interest in what's gonna happen and you know the other 10 just observing.

44
45 Mr. Castro: Thank you.

46
47 Chair Duvauchelle: Commissioner Robinson?

1
2 Mr. Robinson: Aloha Jordan. For myself it was little bit different no having a EA because a lot
3 of the questions that we ask to you folks is supplied for an EA especially when it comes to
4 drainage. There's basically nothing when it has to do with drainage except it's going to be on
5 site. As far as the breakdown there is no trenching to show what the actual depth is when we
6 have questions about lava tubes and some other things. And so I hope you guys understand
7 that here's gonna be a lot of questions that we're not going to be comfortable with because of
8 this process. Not that you had to do it's just you know, with the Commission and we're always
9 receiving information a certain way there's a lot more things that we have to find out ourselves
10 and look through it because it's not afforded because this isn't a EA. Just wanna kinda preface
11 that so it's not an attack, it's not you know we ask you this questions because we don't...'cause
12 of how we normally see things it's not in there. I understand with the SMA, you know we have
13 our, you know our regulations A through L, you know and we go through that. And most of
14 those things I think you guys, you know you guys cover pretty well, but is when it comes down to
15 the standards of involves substantial secondary impacts such as population changes, increased
16 effects on public facilities, streets, drainage, sewers, and water systems. That's the one that I'm
17 worried about on this project. You're involved in the Nani Loa Project I believe. You're involved
18 in the project with the affordable housing and you're involved in this one so you know all three
19 and those other two had EAs if I'm not...Nani Loa had a EA which was the smallest project
20 because of the water and on the different things, and you were changing the amendment for the
21 zoning, but that wealth of information and then these two larger projects I think when it came
22 with Mr. Yap's property we're all for you know for housing, for rental, and so that's why a lot of
23 people are trying to grasp the affordable housing aspect.

24
25 Now I'm of the thinking that like my fellow commissioner said that affordable housing you know
26 we'd want it kept in the area because that's what's in the plan. But I know for Makena we
27 grabbed it from Hawaiian Homelands which I'm a proponent for anybody grabbing credits from
28 Hawaiian Homelands because that means they're building Hawaiian homes and it's a double
29 factor here. But if you guys don't, if you guys somehow have construction issues because of a
30 different, different things happen on top of that affordable area are you saying, are you guys
31 looking at changing some of your units to affordable or you're gonna look to purchase credits
32 from another developer somewhere else?

33
34 Mr. Hart: Well, what I was saying is that...let me say a few things, I think that you said quite a
35 few...made quite few comments and so I'll try, I'll try and get them all. In the context of
36 affordability what I was saying is that you know everybody knows that this landowner is party to
37 both of those projects and that's his intent but at the time that we're at now we haven't even
38 received an SMA Major Permit much less filed out building permits, much less obtained our
39 buildings permits to commit to you that those units, those credits will come directly from that yet
40 to be developed project into this project I think it's unreasonable to bind those projects so
41 closely that there's no flexibility. What I said was that the applicant or the owner should have
42 the flexibility that any other person would have to comply with the obligations for residential
43 workforce housing consistent with the ordinance. You know our intent, but based on the
44 uncertainty that does exist in this process it's really infeasible to bind these two projects together
45 that directly.

46

1 In the context of credits and credits being good for the development of Hawaiian Homelands I
2 agree with you in that context and I also extend that to the broader context that I do think that
3 the creation of market for credits stimulates the development of affordable units which is just
4 what I was saying to the Director about the chicken or the egg of which project happens first is it
5 the market rate project or does the affordable rate project? Now that you can sell credits
6 affordable projects can go on their own because they know that they're gonna develop a project
7 they can still sell them at affordable rates so if they can make their project pencil out on the
8 affordable rates then they can also count on later selling credits at some unknown time when
9 the market rate development is happening. So I think that credits stimulate the development of
10 affordable housing in all contexts.

11
12 With regard to the difference between an EA and SMA Major I would say that in my opinion as a
13 person who processes both the critical difference on an EA and SMA Major is the preparation of
14 the Cultural Impact Assessment Report and then also in this context the Planning Commission
15 would be the accepting the authority. So you would publish the EA on the OEQC website where
16 it can be you know freely downloaded by anybody but the Planning Department does get our
17 reports in digital format and they can share that the same way if anybody asks them for a copy.
18 The Planning Commission reviews the Draft EA, provides comments, a Final EA is prepared,
19 and they provide final comments on that and then that's published and then you have the
20 hearing on the SMA Major Permit so I would say there's basically two other Planning
21 Commission hearings and there's a Cultural Impact Assessment Report. But in general, I do
22 think that the impacts that they're assessed are very similar and I do think that there has been
23 significant work that's taken place on this site already including already being graded and
24 utilities already being put in so that I don't think that there are any outstanding cultural groups
25 that have the position that they been continuing practices on the site that they are concerned
26 that this project is interfering with and that's really what a Cultural Impact Assessment Report
27 gets to the bottom of. And so I do feel confident that even though we didn't do a Cultural Impact
28 Assessment Report the location of this project and the proximity of existing development and
29 the work that's already happened on it and the public hearings that happened at that time would
30 have brought out people who were concerned about those issues for this site.

31
32 In the context of the engineering, I did pull out the soils section and it does say that it's two types
33 of sand, jacus sand (JAC) and puone sand (PZUE) and so they are sand—

34
35 Mr. Robinson: Jordan, allow me to interrupt you here.

36
37 Mr. Hart: Sure.

38
39 Mr. Robinson: You're going off a little. And we can get to the specifics but I guess the question
40 that I, which is, I thought the only one that I asked you, I was more making statements. I don't
41 want to go back and forth with you and I making statements because we only have until certain
42 amount of time, but it's the plans. It's the plans...if the credits aren't available because we're
43 gonna put a contingency on this, you know the Commission is gonna do something with it, so is
44 it your guys intention to use credits on your property or to find something else in the Kihei-
45 Makena in case there's a holdup with the other Yap property?

46

1 Mr. Hart: I guess what I would say from my position is that I would advocate that the developer
2 be given the flexibility to comply as the ordinance is written. However if the Commission feels
3 extremely strong about this position that's a question for the developer.

4
5 Mr. Robinson: Okay, thank you.

6
7 Chair Duvauchelle: Commissioner Carnicelli?

8
9 Mr. Carnicelli: So Jordan where I wanna go next is grading and Ethel from the property next
10 door when she was testifying she was saying how you know there's already been grading on
11 site and so my question is around the height because that's what she brought up, right? We're
12 saying like okay, well we went and moved dirt around and I don't know if brought in or not or
13 whatever is in the past. So we have what was there. We now have what is there and we're
14 going 45 feet from what is there. So where it is that we can see what was there before this
15 grading?

16
17 Mr. Matsuda: I'm Mark Matsuda. So what do have is the existing grade prior to this...the
18 current version. Obviously we have the existing grade now as done. We do have the existing
19 grades that was prior to that grading that was done when those utilities were put in. And that is
20 the extent that we're working off of and I believe the intent was to have the discussions with the
21 Planning Department as far as the building height requirements. Is that where your question
22 was going?

23
24 Mr. Carnicelli: Essentially yes. Is okay, let's just us hypothetical. It was there, we bring in 75
25 truckloads of dirt, it's now...so it was something and now it's something else. That's not
26 represented in the presentation. I wanna know what it was. That's my question.

27
28 Mr. Matsuda: Okay, so we do have the original grades. There was a survey done previously
29 from the previous owner and that could be incorporated into the plan. I don't have it at this
30 moment.

31
32 Mr. Hart: I think that I could reply to that. So basically the interpretation of heights is existing or
33 graded whichever is most restrictive for the developer and so what was being said is that there
34 is a survey prior to the past grade and then there's our proposed project. So our project would
35 comply with the County of Maui Department of Planning's interpretation of height limitations and
36 would stay under that 45 feet. So if you...we would have to get that prior topo survey from the
37 original grading permit and show it to you here today which we don't have a part of our
38 presentation material but suffice to say the Planning Department, Zoning Enforcement Division
39 would be reviewing our building permit plans and verify existing or finished grade whichever is
40 least favorable to the development's height and interpret the 45 feet on top of that. And so
41 we're proposing to comply with that limitation.

42
43 Mr. Carnicelli: Okay. Call somebody else up.

44
45 Chair Duvauchelle: Okay, I have a question. Kind of a point of disclosure and some questions.
46 I actually worked for the developer when this project was purchased previously when it was
47 Aloha Villages. I firmly, I'm gonna put my opinion out I don't believe it was

1 an...(inaudible)...project for fill material, but they'll...I mean they can answer that question. My
2 question is are you able to utilize some of the existing infrastructure that was put in?

3
4 Mr. Hart: It does have value and we're trying to use as much of it as possible. I think that there
5 needs to be some excavation and analysis before there's a final decision. Based on prior
6 meetings that I've sat in with the civil engineering team. There needs to be some additional
7 investigation and the layout that we proposed tried to make use of the existing material which
8 was good and the civil engineering team worked on both projects and so our intent is to get
9 value out of what exists as much as possible and not...it was good work. It's good infrastructure
10 and so trying to make it align with our current project and preserve it is the intent.

11
12 Chair Duvauchelle: Which is also less disturbance during construction which is also good. The
13 other question I had is one of the testifiers, maybe a couple were bringing up the proposed wall
14 or fencing that is between the units, have you completed that design? I mean, I kind of have to
15 agree about the plastic fencing.

16
17 Mr. Hart: It's basically a cost issue. You know, basically the people are saying we would like
18 you to aesthetically improve this facet but significantly increasing your project cost and switching
19 materials and so the project team is continuing to propose what they're proposing now and I
20 think that it similar to a response I just made if the Commission very strongly about it I think that
21 we get the developer up here and give him the final...he give you the final answer, but just in the
22 context of letting you know where the project was prior to this meeting that's where we had that.

23
24 Chair Duvauchelle: And then for Commissioner Gome's question requesting the previous...I
25 know for a fact that this project didn't move forward as Aloha Villages simply because it was
26 2008 and the market crashed. Okay, thank you.

27
28 Ms. Gomes: Thank you. It definitely crashed.

29
30 Chair Duvauchelle: It just didn't pencil any more. Any other questions from the
31 Commissioners? Commissioner Carnicelli?

32
33 Mr. Carnicelli: So one other thing, you know I mean guess you keep deferring back to this might
34 be something for the developer, one is in the best management practices there's you know a lot
35 of people are concerned about you know runoff and things like that during the project. We saw,
36 we heard the Makena project a month or so ago and I kinda felt like when it comes to best
37 management practices they sorta set a bar that it's something we should consider. So in that
38 EA they said that they were going to be using an electronic monitoring system to monitor, you
39 know, erosion and runoff or whatever it is rather than just having, you know, we throw up a
40 couple of posts up with some silt fences and think okay we've now taken care of it when you
41 know, there's only one reef. So I guess my question is how do you feel about including this
42 electronic monitoring system in there?

43
44 Mr. Hart: I think I'd have to call up the construction management team to address that.

45
46 Mr. Rick Papa: Hello, my name is Rick Papa. We after discussing the project with the KCA
47 Architectural Committee we met with Amanda Cording who was the consultant that worked on

1 the Makena plan. In our discussions with the developer it is our intent to engage that consultant
2 in the next stage of design to work with us on the project. Based on that we would do our best
3 to implement that best practices within reason. Makena obviously borders the ocean, the
4 project itself and we would take our recommendations based on our conditions at our site to
5 best address our issues during construction. Not only we would engage a qualified union
6 contractor in the State of Hawaii who's familiar with doing work in Hawaii specifically to Maui
7 and is used to the city and county standards with which when they construct projects.

8
9 Chair Duvauchelle: Commissioner Robinson?

10
11 Mr. Robinson: Sir, please stay. You made a comment that it's...that the Makena project is
12 different. Actually it's across the street from the ocean. I believe you're across the street from
13 the ocean. I believe we saw pictures of water coming from the mountains going to the ocean. It
14 can't go up the mountain. So the question is are you saying that there was no water runoff and
15 there currently is no water runoff on this property?

16
17 Mr. Papa: Well, right now the project is not developed. The project is not developed so it's
18 existing runoff off. So there's no mechanisms in the place, but during the construction of this
19 project there are methods, the three retention basins that will deal with the water generated by
20 the construction of this project.

21
22 Mr. Robinson: Okay.

23
24 Mr. Papa: And when I say it's not Makena I mean it is a different project in and of itself and it
25 would need to be considered based on the size of this project and conditions that are generated
26 by the construction of this specific project.

27
28 Mr. Robinson: I totally agree. I just wanted to make sure that it's not different from Makena in
29 my view for the footage wise. My question is I've looked through this three times and I can't find
30 any type of map or size of the retention basin is. I don't see the depth of it. I don't see the cfs
31 of...that it's going to hold. I don't see...I see calculations of the 23 of what, of what the estimated
32 is for one-hour storm every 50 years, but we had a project here last year where all the figures
33 that we got were all wrong and we had proof of it 'cause when we dug down in the hole we
34 realized that the starting, the starting level of the water was 18-inches higher than they thought
35 the ...(inaudible)...gonna be. So this is not the same project, but those are the kinda things that
36 we'd like to double check with.

37
38 Mr. Papa: Okay, our civil consultant can address those questions.

39
40 Mr. Robinson: Thank you.

41
42 Mr. Mark Matsuda: Yeah, though the volume calculations for the basins are not within the report
43 those are, those are typically things we come up with during the actual design because of the
44 factors involved regarding the specifics of the grading, the building, the finished floor elevations,
45 the actual final requirements of the volume that we need to retain. What we do know is we did
46 the preliminary...I'm sorry, the predevelopment versus the post development calculation to know
47 the general volume and flow that we're looking at and that would be required to meet the county

1 requirements. And based on the surface area we're looking at we're comfortable that we will be
2 able to provide the volume required when those final calculations are done.

3
4 Chair Duvauchelle: Go ahead Commissioner Robinson? Commissioner Canto had a question.

5
6 Mr. Robinson: I got one more for Mark please. Mark do you have anything that shows us what
7 the retention basins are gonna look like. Any indication of where you're catching the water
8 besides just information saying we're gonna catch it? That's what I'm looking for. So I'm
9 actually...I mean, I said I've seen a few projects and usually everyone it shows us, you know, so
10 like you said, you have the two open grass areas and then you have the basin, but maybe a
11 kind of walk us through it in calculations and sort of you know walk us through your assumptions
12 please?
13

14 Mr. Matsuda: Okay, so basically when we get to the design what we would be looking at a
15 majority of the catch basins as you can tell would be in the drive lanes and as well as in
16 downspouts from the buildings. Based on the amount of water each catch basin can capture
17 that would determine the amount of catch basins we'd have going down the driveway. So
18 they're not overtopping each catch basin. That's a calculation we would do. And then it would
19 be piped towards these retention basins in the middle of the site. We'd look at how much water
20 is going into there and then we'd determine the volume that's required. At that point, I mean,
21 then we do the final design on the basin as far as the size and the depth. As was discussed at
22 least the middle two basins are part of the landscaping area so we are looking at a fairly, a
23 shallower broader basin, I would imagine a 3 to 1, a 4 to 1 slide slope, two to three feet deep.
24 And then the one on the bottom would be a larger, I guess what you would consider a little more
25 conventional but we definitely wanted to try and keep it not one huge basin. And like I said
26 based on those areas when we look at a three, four-foot deep basin we get an approximate
27 volume. Of course it's gonna change depending on the actual shape because it does you know,
28 gonna be molded to fit the landscaping and then we'd get an accurate volume.
29

30 Mr. Robinson: Mark is there any indication on the plans of where the overflow is...if the water is
31 so strong where it would go back to the natural flowing. You guys aren't required to catch, to
32 catch it all if it rains for a certain amount because of what the specs are but when does or if it
33 does happen where would that overflow occur?
34

35 Mr. Matsuda: Okay, so there's...well actually one point of clarification on that regarding
36 catching all of the retention. Based on the storm water quality standards we will be capturing
37 everything on site. So it would go through the system to filter the rainwater so anything leaving
38 would basically been filtered settled through the basin and whatnot. As far as the overflow
39 there's the main overflow, as we mentioned there's an existing drain line that comes through the
40 south of the shopping center property here and into our property here and connects to this basin
41 in this location in this end. If and when the system does completely overflow on a larger storm
42 there would be a spillway and we would direct it generally in the driveway location so it doesn't
43 directly impact the building below. But that would be over and beyond any type of retention
44 requirements.
45

46 Mr. Robinson: I mean it's the same question so....but you're talking the bottom driveway
47 adjacent to the catchment basin is that where it's gonna be your secondary holding area is that

1 what you're saying? I mean, you're saying the parking lot and I'm not sure because we have a
2 three to five percent slope so the water can't go back up the mountain so when it comes down
3 and it's gonna be full. I'm trying to see where it's gonna sit or where it's gonna spill over to
4 South Kihei Road or to the building in front of it. I'm trying to look at secondary impacts to other
5 people.

6
7 Mr. Matsuda: Yeah so basically the...it would be broken...the drainage system would be broken
8 up in sections where this area would go to this basin first, any overflow you know would be
9 piped to subsequent basins downstream. This as the last basin on the downstream end has an
10 overflow pipe that heads south and then it goes through the parking lot of the shopping center
11 and connects to South Kihei here, the drainage system on South Kihei Road piped
12 underground. There's no surface, now sheetflow runoff overflowing from that area.

13
14 Chair Duvauchelle: Commissioner Canto?

15
16 Ms. Canto: Oh no, that was my question. Thank you.

17
18 Chair Duvauchelle: All right, any other questions? Yes, Commissioner Higashi?

19
20 Vice-Chair Higashi: I have one Jordan. I notice in your application you have all kinds of energy
21 saving techniques that you're using such as low energy appliance and air conditioning, et
22 cetera, but what I couldn't find was photo voltaic on the roof of your buildings which Kihei I think
23 is a appropriate place to have energy saving way of doing something like that. Did I miss
24 something in the...

25
26 Mr. Hart: So it was discussed and I think the issue is whether or not the project is capable of
27 committing right now or not with no existing project and no existing, you know, agreement with
28 MECO. And so I think that it was discussed. I think that they would like to do it but I don't know
29 enough about the mechanics of whether or not the project can tell you they will for certain do PV
30 generation for a system that's gonna connect to the grid right now.

31
32 Vice-Chair Higashi: So that's not in it?

33
34 Mr. Hart: Gonna bring up the construction manager to reply.

35
36 Vice-Chair Higashi: Oh, okay.

37
38 Mr. Rick Papa: Hello, Rick Papa again. At this stage of the design process it's still a little early.
39 We would need to have discussions with MECO and find out if there was the ability to do it.
40 Right now the design has the mechanical systems on the roof that are shielded so we have very
41 low visibility of rooftop equipment. We will meet with MECO and determine if it was a possibility
42 for common area augmentation of power. Typically with condominium projects you don't have
43 individual units receiving their own solar power you'd use it for common area, maintenance, pool
44 equipment, things like that. We do plan potential of utilizing gas for some of the appliances,
45 heating the pool, et cetera. So as we get a little farther down the design process we would
46 explore PV and coordinate with MECO for availability.

1
2 Vice-Chair Higashi: So you've explored it?

3
4 Mr. Papa: We haven't explored it at this time, we're still early in the design process. When we
5 go to the next set of design documents with our consultant team we would start exploring it.

6
7 Vice-Chair Higashi: Thank you.

8
9 Mr. Papa: You're welcome.

10
11 Chair Duvauchelle: Commissioner Carnicelli?

12
13 Mr. Carnicelli: Hi Jordan. You're getting your exercise today, up down, up down, up down.
14 This is the stressful part of your job right? So I want to talk about ingress, egress off of South
15 Kihei Road 'cause that's also I think something that the public is really concerned about. I get
16 what you're saying you know as far as traffic flow, you know there were no gates and I agree
17 that that property would end up being just a bypass for people and that's not something that I
18 think that we want. However, I don't know if it was a testifier or if something that you guys had
19 said about potentially making that an emergency...going to South Kihei Road that
20 ingress/egress making it emergency, you know, entrance or exit only and that way no one from
21 the project can really exit that way as just normal course of doing business. 'Cause the traffic
22 study was done in August when there was nobody in school. So...

23
24 Mr. Hart: No, excuse me, they must be in school in order for it to be a legitimate traffic—

25
26 Mr. Carnicelli: Oh okay, so then well, either way, you know we had a lot of slides about traffic
27 and South Kihei Road is the one that's everybody kinda concerned about. That's where we're
28 gonna have more jam up than the north/south collector. So what do you think about making that
29 solely just emergency, you know, entrance/exit rather than you know where people are just
30 gonna come and go even though I agree most people probably will go up because it's just
31 gonna be more convenient and easy.

32
33 Mr. Hart: So the original source of that comment to us was the KCA and I had this conversation
34 that I'm gonna repeat to you with Mike Moran during the break. We believe that it's better
35 planning for the project to have that option. Basically these residents will decide which way is
36 the best for them to go after living these units for several months and years they're gonna know
37 when traffic is bad or there may be a specific event on the north/south collector road. So for
38 those reasons we think that that option of splitting that traffic is better for Kihei and for this
39 region. Obviously if the Planning Commission has an extremely strong position on it and it's
40 gonna be some sort of do or die decision for the developer, you know, I don't think that...we're
41 advocating this for future residents who are gonna live in this place to have this option because
42 we think it's better, a better function. If the Planning Commission with recommendation from the
43 KCA wants to say shut it then you know it doesn't change our project except for the function of
44 the people who live there. And so I think that it's better to have the option but I don't think that
45 it's gonna be a battleground point that...

46
47 Chair Duvauchelle: Commissioner?

1
2 Mr. Carnicelli: And I understand that that's a shared driveway.

3
4 Mr. Hart: Right.

5
6 Mr. Carnicelli: You know, like that's like even the project the affordable project that's their
7 sole...anyways their ingress, egress as well. So I guess, I'm going to actually ask a question as
8 an expert not as the representative of the petitioner is I think that we should do right-hand turn in
9 and right-hand turn only. But being the fact that that's also shared is that something...maybe
10 that's something I need to direct towards the Department. But is that something that we can do
11 on that driveway so you know what it's right-hand turn in only and right-hand turn out only?

12
13 Mr. Hart: Let me say a few things in response to that. I think that is, it is not appropriate for the
14 commission to put an obligation on a developer that they get a different landowner to agree to
15 something. I think that that's a really tough challenge to put on somebody. But the other thing
16 that I think is that there's a significant stacking lane for left turns into the project site which was
17 shown clearly on Tom Pierce's aerial that which we don't have a good...he had the best photo
18 of it, but it showed a significant stacking lane for that left turn. My personal opinion is the people
19 who are gonna suffer the most from the level of service of that private drive are the private drive
20 users. And the north/south collector road...I'm sorry the South Kihei Road traffic that goes back
21 and forth in front of the site, they don't affected by it. A person if they want to take a left across
22 traffic they have to wait a period of time for an opening or if they want to take a left in front of
23 traffic to enter the project site from South Kihei Road they're gonna have to wait in the stacking
24 lane for a turn to open up. But the average person who is driving past the project site on South
25 Kihei Road shouldn't have any impact on from that action and the traffic counts did show that
26 and it was discussed by Mr. Kato in the review of the traffic counts that were completed along
27 with background projections increasing traffic for the future.

28
29 Chair Duvauchelle: Commissioner Robinson?

30
31 Mr. Robinson: I don't know if you can help me Jordan, but I noticed when you gave your
32 presentation you had slides of vehicle amounts on different streets. I don't remember seeing
33 South Kihei. Did I miss that slide or did you guys left out the slide?

34
35 Mr. Hart: It's there. There was counts on South Kihei. There was a discussion of...yeah,
36 anyway it's there.

37
38 Mr. Robinson: Well, that was peak hour but how about the one you guys had the totals?

39
40 Mr. Hart: Totals, I'm not...oh, do you mean all day long the number of trips all day long? We
41 don't have that slide but it's in our TIAR. No, we don't have the totals for all day on South Kihei.
42 Oh, okay because he got the data from the State of Hawaii. Why don't you go to that table?
43 This, this is a State sourced data so you have Ke Alii Alanui at Piilani Highway and Keonekai at
44 Piilani Highway and what he was trying to show with this is basically the regional trends for
45 traffic volumes based on counts that the State has consistently done over time so you could
46 show how the community was changing. So as far as we understand Public Works doesn't run
47 their own versions of these continuous counts that we could get access to.

1
2 Mr. Robinson: So are you saying there wasn't a...there wasn't this information or you guys just
3 didn't pull up that information for South Kihei Road.

4
5 Mr. Hart: No, my understanding is that Public Works doesn't...I guess the Deputy Director could
6 completely reply to this question.

7
8 Ms. Dagdag-Andaya: For the record, Rowena Dagdag with Department of Public Works. I just
9 texted my staff and I asked for that number. On South Kihei Road the daily number of trips, I
10 mean its range I think between ten maybe fifteen thousand which is why we need the Liloa or
11 north/south collector road as an alternative access. It's not...the north/south collector road
12 wasn't meant to be an emergency access but to take traffic from South Kihei Road and you
13 know, disburse it onto the north/south collector. And right now it's underutilized. So with this
14 project we have the main access going off of north/south collector road which leads to Keonekai
15 and has access going up to Piilani and back down to South Kihei Road. We also can access Ke
16 Alii Alanui and go up to Piilani as well. So you have...I mean there's...it creates, you know all
17 different choices for motorists. And another good thing about this project too is that you...you
18 know the traffic impact report doesn't...doesn't always analyze accessibility to different modes
19 of transportation so in this area you have pedestrian accessibility, bike accessibility. There's
20 also a bus stop going north and south on South Kihei Road which could potentially take a lot of
21 that vehicular traffic off of either Liloa Drive or the South Kihei Road so in this area if there are
22 different transportation choices that might reduce the number of vehicles trips associated with
23 this project. So I'm not sure if I answered that question correctly but I do have staff taking a look
24 at the numbers but initially they estimate about ten to about fifteen thousand trips this is
25 cumulative now with all the traffic going on South Kihei Road.

26
27 Chair Duvauchelle: Director?

28
29 Mr. Spence: Just kind of going along with what Rowena was saying. When you do a traffic
30 study like this you have to kind of anticipate sitting in front of the commission, going to Public
31 Works so when you do a traffic study you look at the peak hours, you look at when the traffic is
32 the worse. It has to be during school when school is in session. You have to look at those
33 hours when school gets out, you have to look at when everybody gets out of work and you take
34 all day long traffic counts typically and then you look for that particular location where they're at
35 peak. That said, you look at what's the impact during the worst time, but you also as a part of
36 the discussion as planners you have to look at the area, I mean, there's shopping nearby,
37 there's beach nearby, there's all these other things. It's...not that, not that Kihei is a new
38 urbanist kind of dream but this particular location is a lot better than other parts of Kihei as far as
39 distributing traffic, as part as modal alternatives, all those kinds of things. I would bet you know,
40 that traffic study is very conservative showing you know like worst case, but I bet in operation it's
41 gonna be a lot better than what it, you know, better than the assumptions that have to be made.

42
43 Mr. Robinson: I do business on South Kihei Road and I have vehicles that travel that different
44 parts of the day and I don't have that same experience and I'm just saying it's, you know, it's
45 everything affects everything, checkout time, weather, time of the month, people crossing the
46 street. You know we had a statement earlier where a car waited 45 seconds, 45 seconds in a
47 car is a lot of time and that's just one driveway. And you multiple that going down and I think

1 you know when we look at traffic we look at traffic as what is this one turn in gonna do on a right
2 turn or a left turn? Well, every time you slow down traffic to from 15 miles an hour to 10 miles
3 an hour then that means more cars have more access to come in and then the people that are
4 the farthest away they take longer to get to the area because now everybody is using those
5 feeder lanes you know. If you go to a concert you always now that it's just...the slower you are
6 more cars can turn in and we're building these feeders and I get your point, but we have a
7 development left of it that's in the process, we have a development on the right of it and the one
8 with the affordable housing we're bringing those cars to the intersection which is you know 30
9 feet away from the other intersection that we also, we just approved last year. And our concern
10 is what is the volume of cars we're gonna have and is there a better way to move these cars so
11 everybody can you know co-exist. And like I said it's naturally like Jordan said is people are
12 gonna find the easiest access. But the easiest access for this property is necessarily not gonna
13 affect the people next to it because since they're gonna turn right then they're gonna have to
14 change their habits because now they're gonna be going slower because the road that they've
15 gone to all the is affecting them. And so that's where these lines of questioning. It's not...you
16 know, there's only so many cars can be on the road and it all affects each other.

17
18 Mr. Spence: Correct. Absolutely. And my comments weren't intended to say that South Kihei
19 Road you know is just peachy keen to get around. It was move trying to explain what you do
20 when you do a traffic study and perhaps you know like, like the Commission wants to see
21 workshops on what goes into a drainage report and what those numbers mean and the
22 calculations and everything. Perhaps one of the things we could do sometime is have a
23 workshop so on traffic studies so the Commission can understand you know how they taken into
24 the cumulative impacts from the projects around and what's been approved and the
25 improvements that are planned and all those things.

26
27 Chair Duvauchelle: Jordan?

28
29 Mr. Hart: I would like to say a couple things that I think that are useful to this portion of
30 conversation. The first thing I do want to reiterate is that the affordable project to the north of
31 the existing Kihei Regency that you can see abutting our project to the north that project will
32 have access to the north-south collector road so it will have these options that we're talking
33 about for this project today.

34
35 And the other thing I really want to reiterate is that there is an agreement to provide access for
36 the existing 100-unit Kihei Regency which currently only has access to South Kihei Road. This
37 project lets that project drive through its property and get access to the north/south collector
38 road. The positive about that is that Public Works is trying to limit driveway access to the
39 north/south collector road because that is supposed to be the regional collector, the faster
40 moving roadway so there you have two projects accessing one single property but this property
41 gives up their access and takes all that traffic on and then you have an additional 100 units and
42 all the trips that they generate which now can come off of South Kihei Road whereas today they
43 only go on South Kihei Road. So it's not a improvement that we're doing the County right of
44 way, but we do believe that it is an improvement that will affect South Kihei Road positively.

45
46 Chair Duvauchelle: Commissioner Robinson?

47

1 Mr. Robinson: Perfect segue to my next question. So there's a 100 units at the Regency which
2 we're helping to alleviate by giving them access to go up north and hit Piilani and don't have to
3 go South Kihei. Are those one-bedroom units, two-bedroom units, three-bedroom units?
4

5 Mr. Hart: Oh, I don't know the answer to that. I'm sorry.
6

7 Mr. Robinson: So you have 217 units?
8

9 Mr. Hart: Yes.
10

11 Mr. Robinson: So how many bedrooms is that?
12

13 Mr. Hart: We have a breakdown of the...we have a mix one, twos and threes and we can
14 multiple that out really quickly. I got 378.
15

16 Mr. Robinson: I got 438.
17

18 Mr. Hart: Let's agree, to disagree, no, no...I did $147 \times 2 + 7 \times 3 + 63$ is I came out 378. Yeah,
19 so anyway.
20

21 Mr. Robinson: I see what you're saying, 78.
22

23 Mr. Hart: So if I could add some background though. I understand that there's like a
24 discrepancy that a developer has to do and what people feel is appropriate like currently we're
25 having a conversation about the number of bedrooms. Testifiers said that tourist high season is
26 the time that counts need to be done or sunset is truly peak hour. The challenge that you have
27 is you have all these parties that are looking at goals to develop and you have to establish
28 standards about how you go through the process in order to assess somebody's requirements
29 in order to get through. This project did that. You know it prepared a Traffic Impact Assessment
30 Report by the current standards are adopted. It was reviewed by Public Works. It was
31 accepted by Public Works. We received comment from State DOT and we offered to comply
32 with State DOT's requests. Units are generated or trips are generated by units and not
33 bedrooms. So I understand what you're saying is that basically you know potentially there could
34 be more people living in a unit, more vehicles. The units have two stalls per unit so that you
35 know their ability to park vehicles on site would be limited to those two vehicles. Any other
36 vehicles that they might have they would need to locate an appropriate parking off site. But the
37 counts are generated by the unit count and that's the way the Traffic Impact Assessment Report
38 was done in order to measure our impact so that Public Works can require any infrastructure
39 improvements that are necessary. And I do want to reiterate that we did meet with Public Works
40 on two separate occasions because we heard comment from the community and we explored
41 whether or not additional improvements could be done, you know signalization of the north-
42 south collector or signalization at South Kihei Road and those are not options and so that's how
43 we ended up coming up with this internal connection to a neighboring property. This is just one
44 private landowner approaching a different private landowner and saying you know if we offer
45 you this, this provides a benefit to South Kihei Road and it potentially is an asset to us to present
46 to you. But in the context of what Public Works is supportive of there aren't any of the tech...like
47 the standard put a signal on the north/south collector road or put a signal at your private

1 driveway on South Kihei. Those aren't things that they would support. I don't think that they're
2 necessary or viable but they're also not supported by the Department>

3
4 Chair Duvauchelle: Commissioner Carnicelli?

5
6 Mr. Carnicelli: I appreciate you saying that Jordan 'cause I think that you're right and it's our job
7 to also be really diligent. You know, we get one bite at the apple. This is an SMA Permit it
8 affects generations. And we just wanna make sure we're being thorough though as well. So I
9 think that that's also important to acknowledge you know, Planning Commission meetings from
10 what I hear used to take a few hours now they take all day and you know, you probably you
11 know lose weight from us you know, up down, up down, up down, whatever it is but we also
12 want to just make sure that we're being thorough. With that being said I got a question for you,
13 the department. When it comes to bonding a project okay, somebody's gonna come in and
14 they're gonna build something and so okay, you gotta put in a road, you know, curbs, gutters,
15 sidewalks, light poles, what have you, there's a certain element of bonding that happens is that
16 correct?

17
18 Ms. Dagdag-Andaya: Yes, I'm not too familiar with the process though.

19
20 Mr. Carnicelli: Okay, well I'm gonna go big picture here right now because the thing that I'm
21 looking at is we've got a site here that from what we hear has been four things. You know, it's
22 tried failed, tried failed, tried fail certain things have gone in not...we're in year eight of a real
23 estate cycle. It's very possible that everything tanks tomorrow and you know, we've I don't
24 know dug a bunch of stuff, we've started and then suddenly it's not economically feasible and
25 the developer has to pull out and that's reality, that can happen. SMA stuff never been...it's
26 never been bonded, we've never asked to bond as far as I understand.

27
28 Ms. Dagdag-Andaya: I'm not sure.

29
30 Mr. Carnicelli: Is what is the process as far as what I'm going to as far as whatever our stuff that
31 we put in is it appropriate or not to bond that stuff?

32
33 Ms. Dagdag-Andaya: I gotta defer to Director...SMA conditions.

34
35 Mr. Spence: First off...Madam Chair?

36
37 Chair Duvauchelle: Director?

38
39 Mr. Spence: First off, it would have to be some specific improvement to be bonded and that
40 would have to be something of a condition on the permit not just the general approval of a
41 project. I've never heard of that taking place. When the Commission approves an SMA Permit I
42 mean, and I'm imagining what you're reaching for is compliance with the conditions, you will do
43 these things as you build this project. We have a process in place already that when a permit is
44 granted first they issue a preliminary compliance report where the developer goes down the line
45 and says how they're going to comply with all of these conditions and that's before we will sign
46 off on a building permit. Okay, then before they can occupy the building, before they get a C.O.
47 in this case for multi-family they have to show us how they complied with all the conditions. So

1 otherwise we're not gonna sign off and people can't move into their new units. So...but we will
2 go down that list of conditions whatever is put on here and assure that they are constructing to
3 this. In addition, some of these conditions are far beyond, I can't say far beyond, some of them
4 are not related to construction of the project but they're like...they're gonna, they're gonna live
5 well past construction. I'm just gonna suggest vacation rentals that's something that if the
6 Commission decided to put a condition saying no vacation rentals that would live beyond just
7 the construction of this process...project. So I've heard of bonding. Bonding normally comes in
8 place when you're doing certain improvements for public infrastructure or you know those kinds
9 of those things. It's not related to the SMA Permit.

10
11 Mr. Carnicelli: Yeah, my brain thinks way outside that normal I guess, so...

12
13 Mr. Hart: I think if you could, briefly I think I have one thing to add to that? Let's say there's a
14 scenario where a developer abandoned a site, they started site work, something hit them, they
15 didn't want to proceed with their project, they would still need to button up the site and close
16 everything up. They couldn't just leave it and then like have a big storm event happen. They
17 would still be subject to an SMA Permit violation, a Grading Permit violation. There's
18 requirements for significant insurance policies that are a result of the SMA Major Permit
19 process. So I don't think that it's a bond exactly but you still are obligated to perform diligently
20 and responsibly in the context of exposing all of the soil and not exercising your BMPs. So even
21 if hypothetical situation there was, you know, some reason that somebody couldn't perform.
22 They still need to close the site properly or they're subject to all the other violations that would
23 be.

24
25 Chair Duvauchelle: And I'll make a quick comment and that is bonded with their grading permit.
26 When a grading permit is issued they do have to put up a bond and they won't be able to close
27 that out and the bond...get the bond or the money back if it's a cash bond until the site is signed
28 off, buttoned up and good to go. So that portion is bonded.

29
30 Mr. Carnicelli: Right, and I guess I also think about we also have a really ugly concrete building
31 you know in Makena right next to the Prince that's been there for however long now. So
32 anyways it's just a question in by brain, just trying to figure everything out in my head. Sorry to
33 bring you into my head.

34
35 Chair Duvauchelle: How are we doing with our question session? Are we about wrapped up or
36 do we have any other questions?

37
38 Mr. Robinson: I have one last one.

39
40 Chair Duvauchelle: Commissioner Robinson?

41
42 Mr. Robinson: Jordan we have a letter from DOT saying that your TIAR was inadequate.
43 Please convince me why we shouldn't defer and wait for the answer for these two questions?

44
45 Mr. Hart: So basically two things have gone on. We have provided a reply to DOT and what we
46 committed to doing with DOT was complying with their requirements. Separate from that Mr.
47 Kato has had significant conversations with Ken Tatsuguchi at DOT. We believe that we can

1 comply with their requests and so what we would propose is that the basically satisfaction of the
2 DOTs requirements for this project be a condition of approval.

3
4 Chair Duvauchelle: Any other questions?

5
6 Mr. Robinson: Can you say that one more time please, the last part?

7
8 Mr. Hart: That a condition of approval for this SMA Permit be that the project satisfy DOT's
9 conditions for this project.

10
11 Ms. Dagdag-Andaya: Chair?

12
13 Chair Duvauchelle: Yes?

14
15 Ms. Dagdag-Andaya: Can I also suggest with that condition that Public Works also be included
16 as part of that...(inaudible)...

17
18 Chair Duvauchelle: Yes, absolutely. Okay, any other questions? All right, can we have a
19 recommendation from Staff?

20
21 **b) Action**

22
23 Ms. Thackerson: Yes we can. And I would also like to clarify on Condition No. 9, with the
24 Residents Workforce Housing Agreement will be entered into and accepted by the Department
25 of Housing and Human Concerns and evidence of such agreement will be provided and we're
26 going to "x" in the preliminary compliance report. It's prior to issuance of a building permit. And
27 evidence of such submitted in the final compliance report. It's not, it's not—

28
29 Mr. Carnicelli: So that additional language will be added to the end of that sentence.

30
31 Ms. Thackerson: No, "in the preliminary compliance report" will be removed. And in place of it,
32 it's prior to issuance of a building permit and evidence of such submitted in the final compliance
33 report. That's just a timing thing of when those actions occur. So that was my bad to put that it
34 comes before the preliminary compliance report, it's before issuance of a building permit.
35 They're not gonna you know sign off on the...let this get occupied and all the things until that's
36 satisfied. So it's not before the prelim. Okay, so on that clarification, then the Department in
37 consideration of the foregoing the Planning Department recommends that the Maui Planning
38 Commission adopt the Planning Department's report and recommendation prepared for the April
39 25, 2017 meeting as its findings of fact, conclusions of law, decision and order and authority the
40 Director of Planning to transmit said decision and order on behalf of the Planning Commission.

41
42 Chair Duvauchelle: Deputy Director?

43
44 Ms. Dagdag-Andaya: Sorry, I had one more condition to offer and just listening to the
45 discussion this morning regarding drainage. One of the conditions that we came up with states
46 as follows, "that the applicant shall comply with State and County drainage design and
47 construction standards to mitigate onsite flooding impacts and offsite storm water runoff impacts

1 to downstream properties. Engineering design of the drainage system including low impact
2 development concepts shall be reviewed and approved by DPW prior to the issuance of a
3 building permit".
4

5 Chair Duvauchelle: Okay.
6

7 Ms. Thackerson: And can I? I mean if you guys would like to add that then also we'd also like
8 add to that, "just and evidence of such submitted in the final compliance report". We always
9 need to know when they're gonna do it and then providing evidence and such. It makes it
10 easier for the Department for conditions. We like a who, what, where, when and evidence later.
11 So I'll write that down should you guys want to add that to my recommendation.
12

13 Chair Duvauchelle: Yes. Okay, discussion? Do we have a motion?
14

15 Ms. Canto: I have a question.
16

17 Chair Duvauchelle: Commissioner Canto?
18

19 Ms. Canto: So Rowena that would be part of the specific conditions?
20

21 Chair Duvauchelle: Yes.
22

23 Ms. Thackerson: Yes.
24

25 Mr. Spence: Yeah you would have to add that. If there was a motion to approve that could be
26 added.
27

28 Mr. Carnicelli: Okay so for the sake of discussion I'll go ahead and move to approve as
29 recommended by Staff and then...that's what I'll just...that will be my motion just for the sake
30 is...is I'll move to be recommended as Staff including the additional condition by Public Works.
31

32 Ms. Canto: I'll second it.
33

34 Chair Duvauchelle: Okay, moved by Commissioner Carnicelli, seconded by Commissioner
35 Canto. Discussion on the motion and addition of conditions if any? Commissioner Robinson?
36

37 Mr. Robinson: I like the fact that civil service stepped in with the drainage issue. This is a tough
38 area for drainage. We've seen so many problems in this area. I haven't seen anything in this
39 packet that makes me comfortable. I think most of the things that the developer worked on not
40 totally against. I would have like to see photo voltaic incorporated sooner you know with the flat
41 roofs. I wish we had an answer on where the starting grading point is of that infill and where the
42 actual 45 feet is. You know this information is something that we usually have and we know
43 what it's going to look like, we know the sight lines. You know we have these responsibilities of
44 the SMA as a Commission we're supposed to meet and I think we got maybe you know 85
45 percent of them and 15 we just don't have information and we're hoping that they're gonna get it
46 to do a certain thing. I don't know how you have retention basin with a slope that strong that's
47 gonna hold as much water as if it was to fall flat especially when you're going to do

1 improvements which you know, which takes compacting. I don't know do you compact and then
2 you got to aerate to make it back...you know, it's not a easy fix and with the projects that have
3 been with us before, we've actually seen the plans of their retainment basins. We've seen the
4 makeup of the leach fields and the size and the volume that it carries and that things that makes
5 us, make me comfortable that it's not gonna make that flooding on South Kihei worse. It's not
6 going to fix it, nothing's going to fix that flooding you know.
7

8 I did have one concern. I remember when we were with the Kai Nani project...the Nani Loa
9 project with the Kai Nani that we asked I believe this owner if they could work with them on
10 trying to get a utility line and I do remember that that was a non-issue, that it was a no go and
11 there was no stuff around it. You know not that he has to, but you know those kinds of things
12 would be nice. And when I ask these questions Jordan is when I see things like, it is the least
13 dense project in so many square footage but yet we're not supposed to count rooms. That's
14 you know, it's like we have to read between lines, we have to do the math when statements are
15 made that this is the least dense amount. Well, it goes by rooms, it goes by people per square
16 foot and the density, you know a TIAR study shouldn't be a barometer of what density means.
17 You know, density is how many people and square footage, so that's why I was going to try and
18 find out how many rooms so we can really see the impact. I notice the parking underneath
19 raised the level of the project four stories and we had double parking underneath to have excess
20 parking to make it going. You know, if it's not it could be three stories and a parking...I mean, it
21 comes down and there's less units and then the parking can be surrounded. You know it's not
22 that a project is a no because we don't want a project to work in the area, it's just trying to take
23 in all the factors is 217 the right amount or is it 140 the right amount? At this point right now I'm
24 not against this project, I'm just...there's a couple things with the drainage that I'm just not
25 comfortable with giving my blessing at this time. Thank you.
26

27 Chair Duvauchelle: Commissioner Canto?

28
29 Ms. Canto: I'd be in support of the project. Jordan I want to thank you and your team for
30 answering some difficult questions. I believe I have questions that I can't think of right now but
31 for the most part I am in support of the project. Thank you.
32

33 Chair Duvauchelle: Any other discussion? Commissioner Gomes?

34
35 Ms. Gomes: Pardon, I do also want to say Jordan and the rest of your team very, very good
36 information. I do agree with Commissioner Robinson regarding drainage. I understand it is
37 always an issue. Thank you Mark for civil engineering for providing that type of information
38 regarding you know as much as you can in regards to the drainage to this project. I can
39 understand the concerns regarding it as you know talking about, but commending the fact of the
40 information that was provided today for us. Thank you.
41

42 Chair Duvauchelle: Any other discussion? Commissioner Carnicelli?

43
44 Mr. Carnicelli: I'll guess I'll start like everybody else and say thanks, Jordan. You worked your
45 tail off today and prior to this. You know even though it's my motion I actually couldn't support it
46 just as is. I think that there's a couple of other things that I would need to have in there to be
47 completely comfortable. You know, and I think also you know is like I said earlier we have bite

1 at the apple. So you know a couple of things to me that I think that just as far as assurances for
2 the community. I think at the very least we've gotta have a condition in there that says that
3 there will be no short-term rentals allowed. I think that that just greatly affects our community
4 and the economy. So I think that that would be absolutely something that would have to be in
5 there. As far as BMPs, because we have so many questions about the drainage I think that
6 that's also something that I would want to put in the electronic monitoring like we have in
7 Makena because I agree with Commissioner Robinson. Okay, there's just one road you know
8 between the Makena thing and Makena Bay however, as far as I understand it what runs
9 downhill and if something you know, it's still across the street and still gonna go into the reef, it's
10 still gonna go into the ocean so that's something that I would still want to to have as well.

11
12 Chair Duvauchelle: Okay, Commissioner so as a point of clarification was that for during
13 construction or –

14
15 Mr. Carnicelli: Yeah during construction.

16
17 Chair Duvauchelle: During construction, okay.

18
19 Mr. Carnicelli: And again, I mean, I'm just in the part of discussion right now. I'm not making a
20 motion to amend. I'm just saying a couple of things. I think that you know I understand that the
21 applicant has gone over and above as far as like you know, access from the regency you know
22 so we can take some stuff off of South Kihei Road and go to north-south collector. I really
23 appreciate that's something they didn't have to do and they're giving, you know they're giving us
24 that. And yet, at the same time we're putting up a white plastic fence between them and us.
25 You know, and I just...that's something that I actually remember my very, very first meeting here
26 it was that 5A rent-a-space in Kihei that you know, we talked about and we had them put up you
27 know, a brick wall for their...and they were just facing the back of a you know a storage place
28 and we had them put up a wall rather than just a plastic fence. So I think that that's just
29 something that you know this is infill and we need to treat it as though it is infill. In I guess
30 channeling former Commissioner Wayne Higashi, I wanna have downlighting.

31
32 Chair Duvauchelle: Wayne Hedani.

33
34 Mr. Carnicelli: I'm sorry, Wayne Hedani. Sorry, it's a name day. It's a name day. Wayne, you
35 know we gotta make sure that we have downward lighting 'cause I know that's one of his things
36 that he'd wanna have in there. And I guess those are, those are the conditions that I would like
37 to you know, if we weren't gonna defer and get the additional information you know that
38 Commissioner Robinson and Gomes has asked for then I would at least want to have those
39 additional conditions.

40
41 Chair Duvauchelle: Jordan, would you like to comment?

42
43 Mr. Hart: Yeah, I hope they can alleviate some fears I consulted with the landowner. He's open
44 to a condition on prohibiting short-term rentals for this SMA Permit. I spoke with the
45 construction manager they're open to electronic monitoring of BMPs. And regarding the fencing
46 material, unfortunately the nature of this process is it forces you to try and do you know back of
47 the napkin cost calculations while you're sitting here in this decision making process and in the

1 context of that they're willing to look at other composite type materials, ...(inaudible)...and
2 things like that. Not able to commit to wood or stone right now but they are able to explore
3 those other synthetic materials further. And then the other thing that it is necessary to say is
4 there was concerns about breakdown and things like that. There's gonna be a full association.
5 This is a market rate project. The association is responsible for maintaining all the common
6 area elements. So this presumption that this brand new, full occupied development is gonna
7 have this derelict fence you know, I don't think that that's really appropriate. I think that they
8 should be expected to maintain their property just like any other complex in the vicinity will do.
9 They would keep that fencing up. And if at the time that they occupy they're prepared to
10 upgrade those things I think they could do that. But you know, that's where we are today.

11
12 Chair Duvauchelle: Deputy Director?

13
14 Ms. Dagdag-Andaya: Sorry Chair, I just had a question for clarification of Commissioner
15 Carnicelli? When you talk about electronic monitoring, you're monitoring...what are you
16 monitoring or what's the applicant monitoring?

17
18 Mr. Carnicelli: I believe it's the—

19
20 Ms. Dagdag-Andaya: Turbidity or?

21
22 Mr. Carnicelli: The runoff and the soil. You know it's along the silt fences as I understand it. I
23 mean, I'm just going back to it because again, I'm trying to put you inside my head and I
24 apologize for that. But it's just like in Makena it was a marine biologist actually that came and
25 testified before us and he talked about that that there's this electronic monitoring that they now
26 have. You know rather than just having these two-foot tall silt fences and say like we got it. It's
27 no, there's actual monitoring to make sure that you know we do got it.

28
29 Ms. Dagdag-Andaya: Okay, yeah 'cause sometimes if you limit it to just monitoring it might not
30 be...you know, it might not always be the best option so maybe just using the word monitoring in
31 general or—

32
33 Chair Duvauchelle: So we say water quality?

34
35 Ms. Dagdag-Andaya: --device for monitoring.

36
37 Mr. Carnicelli: Okay, I mean I didn't actually make the motion for the amendment. I was just
38 giving you okay these are sort of...this is kind of my wish list as far as like you know if we're
39 gonna move forward and not defer is to say, okay these are just some items that
40 are...(inaudible)...for me as additional conditions for this particular site.

41
42 Chair Duvauchelle: Candace?

43
44 Ms. Thackerson: And then to relieve any concerns for the down shielded lighting it's in your
45 staff report on Page 4 that exterior lighting will be provided for...exterior lighting will be provided
46 for security and will be fully shielded in compliance with Chapter 20.35 Outdoor Lighting, Maui

1 County Code. So it's in there already so we don't make it a condition to not be repetitive 'cause
2 it's already in the staff report and proposed as part of the project. But just it's on Page 4.

3
4 Mr. Carnicelli: I just thought of Wayne and I thought I had to say that.

5
6 Ms. Thackerson: Okay.

7
8 Mr. Carnicelli: He was there for the last 10 years. You know to just let him just sort of go away
9 without any mention.

10
11 Chair Duvauchelle: So are we making—Commissioner Robinson?

12
13 Mr. Robinson: You know, I think the good news is I didn't hear anybody against this, you know.
14 I really didn't. I think everybody is just concerned. I think everybody wants to get the project
15 done right. You know I forgot to brought up and I apologize 'cause I'm sitting here in
16 Mr. Hudson's chair, you know, he's always about water and sewer volume of what we have in
17 capacity and what's left, and that's something that I also didn't see. I saw the volumes that
18 we're gonna use but what percentage of that is gonna be left to what we still have left and that's
19 something that I also didn't see. I saw the volumes that we're gonna use but what percentage
20 of that is gonna be left to what we still have left for other developments in the future and that
21 goes with the size of the project and what categorize we're doing certain things. And I know we
22 looked at it last time and I notice we didn't have that there so. I think it's, I think there's just a
23 few things that we just don't have the information for and I'm probably gonna support a
24 deferment. Thank you.

25
26 Chair Duvauchelle: Jordan would you like to comment?

27
28 Mr. Hart: Sure. So we do have our sewer requirements and existing capacity. I did the
29 calculation last night and it's approximately five percent of the existing capacity. And then with
30 regard to the meters those meters are already issued and allocated so it's not drawing on new
31 meters. As far as what that percentage of the total existing excess demand I couldn't tell you
32 that. I can tell you that as I said they're committed and there are existing meters and I can also
33 tell you that the Department of Water Supply is expanding its surface water treatment system for
34 Central Maui that supposed to be completed in October 2018 and it's supposed to I believe
35 roughly double the capacity for this system. And so in the context of the construction of this
36 project and the completion of that infrastructure improvement process I think that they're going
37 to coincide very closely even though these are allocated meters that we're discussing.

38
39 Chair Duvauchelle: Candace?

40
41 Ms. Thackerson: Well, Exhibit 16 of your staff report is the agency transmittal letter back from
42 waste water facilities so you know I mean all these calculation are considered and we send it to
43 the agencies to review and so they give us back their comments and it is said, I mean, their first
44 comment is they say that while it's currently available as the date of this letter the developer
45 should be informed that waste water system capacity cannot be ensured until issuance of a
46 building permit. So they do take each project as they come in at issuance of a building permit.
47 So there is somebody watching the capacity is what I mean.

1
2 Chair Duvauchelle: Okay, so from what I'm hearing we're looking at conditions. We have a
3 motion on the table to approve the SMA with the standard conditions and the addition of the
4 ones, the one of Deputy Director. What we have is we have a potential recommendation of
5 conditions that would be no short-term rentals, prohibiting short-term rentals, electronic
6 monitoring of water quality for storm runoff is that what we're talking about, no? Let's clarify that
7 what we're exactly asking for?
8
9 Ms. Dagdag-Andaya: But it was more for erosion control is that what you were...
10
11 Mr. Carnicelli: Yeah, you know what why don't we go ahead and get the...
12
13 Chair Duvauchelle: The civil? Oh, Mr. Papa? Mr. Rich Papa?
14
15 Mr. Carnicelli: Do you know what I'm talking about?
16
17 Mr. Papa: I know what you're referring to. I have not seen the details of the specific
18 mechanisms that they put in place. But as I said we did engage, Amanda Cording who did
19 come up with that system specific for that project. We have her provide a proposal for this
20 project to work with us in the next phase of design. So we intend to include her into our team at
21 the appropriate time and work with her recommendations.
22
23 Chair Duvauchelle: Commissioner Carnicelli?
24
25 Mr. Carnicelli: So this will be the gist of it is I want electronic monitoring of the BMPs during
26 construction.
27
28 Chair Duvauchelle: Is there such a thing?
29
30 Mr. Carnicelli: Well, there's something similar to that because we did it in Makena and I'm just
31 trying to, I'm just trying to go off of what we did in Makena and if we need to defer this entire
32 thing to go find out what we did in Makena which I don't want to do.
33
34 Mr. Papa: I think we could agree to implement a similar type of system that's utilized at Makena
35 as base on the direction of Amanda Cording after she reviews our project.
36
37 Chair Duvauchelle: Okay, so could somebody give me some verbiage of what we're actually
38 monitoring that was maybe in your proposal Rick or...
39
40 Mr. Papa: We did not address that for our project. We gave her documentation for a project
41 and she came up with mostly concrete surfaces to changing to permeable products for surface
42 drainage so it would eliminate asphalt. I mean that is, that is the reason why half the parking is
43 addressed underneath the building. So when you have twice as much parking out in the open
44 you have twice as much asphalt which allows for more water of impenetrable surfaces. So by
45 putting half the parking underneath the building we basically reduce the amount of impervious
46 cover that was on the project. And then in working with Amanda Cording at EcoSolutions we

1 looked to reduce the impervious cover initially with the use of pavers and other mechanisms
2 throughout the project.

3
4 Chair Duvauchelle: So someone—

5
6 Ms. Dagdag-Andaya: So going back to that electronic monitoring. So she was suggesting, she
7 was suggesting electronic monitoring for soil erosion. Is that what she was?

8
9 Mr. Carnicelli: Yes.

10
11 Chair Duvauchelle: Yeah.

12
13 Ms. Dagdag-Andaya: Okay, so I guess the condition can read just like monitoring for soil
14 erosion.

15
16 Unidentified Speaker: During construction.

17
18 Ms. Dagdag-Andaya: Yeah, during construction.

19
20 Chair Duvauchelle: So Jordan, verbiage okay?

21
22 Mr. Hart: I think that's satisfactory. This is Jordan Hart. I think that's satisfactory. The concern
23 I had was just naming specific consultants in conditions for SMA Permits. But I think that
24 everybody here, you know, we're making representations to you, Akaku is recording us,
25 Director, Deputy Director of Public Works is here I think we all understand what we're talking
26 about and we're basically going to...the construction manager has agreed to basically using a
27 BMP system comparable to what was recently proposed and approved at Makena. I think that's
28 understood. And so some level of generalized language where the project will propose BMPs
29 and it will be to the satisfaction of Public Works I think would suffice based on what we have on
30 the record at this point.

31
32 Chair Duvauchelle: Director?

33
34 Mr. Spence: So Commissioners what you've just heard is representations made by the
35 applicant and there's always a standard condition that the project will be constructed in
36 substantial compliance with the representations made. So assuming the vote is yes, when
37 those compliance reports come in we will be double checking for you know, the electronic
38 monitoring and other things that you know, we've seen at Makena, those kinds of things so...

39
40 Chair Duvauchelle: All right. Commissioner Tackett?

41
42 Mr. Hart: If I could, the way I would envision this unfolding is we would outline what we're
43 proposing to do in our preliminary compliance report which would be reviewed and approved by
44 Planning Department before we got our building permit. And then at final compliance we would
45 be showing how we did those that we outlined in our preliminary compliance report.

46
47 Mr. Spence: Yes, that would exactly.

1
2 Chair Duvauchelle: Commissioner Tackett?

3
4 Mr. Tackett: As I understand it if it is approved you guys have committed to using union labor
5 on this project?

6
7 Mr. Hart: That's correct.

8
9 Ms. Thackerson: To make my life a lot easier later when these compliance reports comes
10 through my desk 'cause you guys make the conditions but then it's up to the staff later to double
11 check and to make sure and if it's me great, if it's a different planner, you know five years from
12 now it's a little bit, it's a little more tough, right? So representations made that's great, that's
13 really important and I think under your monitoring one we might have that covered under the
14 condition that Public Works proposed before because they will be now in this condition it's giving
15 them the authority also to approve it. So if it's understood here that that's covered then that
16 one's okay. The union labor we can make that a condition if you'd like to be a little bit stronger
17 or we can have that as representations in it. But also with the STRH too, I don't know how you
18 want us to come back and do that as conditions or representations made. I mean, when
19 someone's coming back later and checking for this?

20
21 Mr. Hart: The applicant's comfortable with the condition. We don't need to...they're not
22 debating it at all. It can be a condition.

23
24 Chair Duvauchelle: Commissioner Carnicelli?

25
26 Mr. Carnicelli: Is...Commissioner Tackett as I...I mean I don't wanna speak for Corp. Counsel
27 but I believe that that's actually not necessarily a condition that we can put on an SMA Permit as
28 far as making them, making them use union labor. I don't think that that's something that we
29 can actually condition. But I don't wanna again speak for, even though he's...he said that he's
30 going to, but as far as conditioning it.

31
32 Mr. Tackett: Yeah, I didn't mean it as a condition.

33
34 Mr. Carnicelli: But as far as conditioning it, yeah. Oh, okay.

35
36 Mr. Tackett: I was just saying if that's what was put out and that's what I was...

37
38 Chair Duvauchelle: We're all talking the same time. One moment here. Corp. Counsel?

39
40 Mr. Giroux: Our position is that you know when I say you guys are getting to edge and then you
41 step over it, you know, I can see that they're agreeing to it, so they agreed to it. But if that's
42 training to think that future applicants are gonna be as agreeable or if it does get into a situation
43 where we have to deal with this in court, I'm telling you now that I already warned you we're on
44 the edge, you're gonna step over it. Because this is a SMA Permit. Okay, you can have that
45 discussion, you can have agreement, but in the future if you think that that's an okay condition
46 because it ended up on one of your permits, that's not gonna be the discussion with our
47 Corporation Counsel.

1
2 Chair Duvauchelle: Commissioner Tackett?

3
4 Mr. Tackett: So for clarification I don't mean it as a condition. I just wanted to understand that
5 that's how it was presented. That you were okay with it going forward that way and that's how I
6 understood it not that the condition came from me but that it came from you.

7
8 Mr. Hart: So the way I interpret it is you have a socio economic concern for the impacts of this
9 project to the community—

10
11 Mr. Tackett: Correct.

12
13 Mr. Hart: --and to the economy and that this applicant is conscious of that and is looking to
14 cooperate with the community for that purpose.

15
16 Chair Duvauchelle: Okay.

17
18 Mr. Robinson: Chair before you vote—

19
20 Chair Duvauchelle: I wasn't going to, I was going to talk. I was actually going to try to pull this
21 back together so we can get some conditions agreed upon. Commissioner Robinson, do you
22 have a question along those lines?

23
24 Mr. Robinson: I'd like to withdraw my comment about asking for a deferment. I think with the
25 concessions that Jordan and this developer has made in this last part including being concerned
26 about the workforce in Hawaii and bringing it, I'm now in support of this project. Thank you.

27
28 Chair Duvauchelle: Thank you. Okay, so we'll go back to the conditions that are proposed so
29 we can vote on those. Candace, you or Commissioner Gomes do you have a...no?

30
31 Ms. Gomes: No.

32
33 Ms. Thackerson: Right now on the table we just have as far as conditions that are going to get
34 amended. The amendment that I made to Condition 9, and then the addition of the condition
35 from Public Works and then everything else as far as right now is just representations made.

36
37 Chair Duvauchelle: So our special conditions if I'm hearing correctly will be that we will prohibit
38 short-term vacation rentals as a condition. That we will require monitoring for soil erosion during
39 construction as proposed in the compliance report. And that we will be using composite or rock
40 or wood material for fencing and not vinyl.

41
42 Mr. Hart: I don't think that they're able to commit to the change of material at this point. I think
43 what they said is they would, they would explore just a simple vinyl alternates and composite
44 alternates, but I think that they were not prepared to commit wood or rock at this point.

45
46 Chair Duvauchelle: All right, so we have the two special conditions. All right, do I hear a
47 motion?

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Mr. Carnicelli: So move to add those two conditions to the original motion.

Ms. Canto: Second.

Chair Duvauchelle: Okay, moved by Commissioner Carnicelli. Seconded by Commissioner Canto. If we can have a vote on the two special –

Ms. Gomes: I'm so sorry, Chair, I apologize.

Chair Duvauchelle: Commissioner Gomes?

Ms. Gomes: And I don't know if I missed this but applicant to comply with engineering drainage system will be reviewed by Public Works?

Chair Duvauchelle: Right.

Ms. Gomes: As well as staff planner?

Chair Duvauchelle: Correct.

Ms. Gomes: Okay.

Chair Duvauchelle: Yeah, those were in there.

Ms. Gomes: Thank you.

Chair Duvauchelle: So all those in...don't we vote...we vote on the amendments, okay. So all those in favor of the two special conditions? Please raise your hands. That's, four, five, six, seven.

Mr. Spence: Ayes.

It was moved by Mr. Carnicelli, seconded by Ms. Canto, then

**VOTED: To Include the Two Proposed Conditions as Discussed.
(Assenting – L. Carnicelli, P. Canto, K. Robinson, T. Gomes,
C. Tackett, S. Castro, R. Higashi)
(Excused – L. Hudson)**

Chair Duvauchelle: Okay, the special conditions pass. Did I miss you? You're supposed to read those? Okay, so the two special conditions. Now we have the original motion on the floor to approve the SMA with standard conditions with the alterations made that Candace talked about. Director, you want to repeat the motion. I missed you last time.

Mr. Spence: Really the motion, we're back to the main motion?

1 Chair Duvauchelle: Right.

2
3 Mr. Spence: Is to approve as recommended by Staff and as amended and that includes, Public
4 Works proposed condition.

5
6 Chair Duvauchelle: Okay, Commissioner Robinson?

7
8 Mr. Robinson: Please let's not forget the condition he also agreed to that it would be on the
9 condition of Department of Transportation I think you asked you to decide twice. You got that?

10
11 Ms. Thackerson: ...(inaudible)...

12
13 Mr. Robinson: Okay.

14
15 Ms. Thackerson: The verbiage for that please?

16
17 Mr. Hart: The project will satisfy the requirements of the State Department of Transportation.

18
19 Ms. Thackerson: I'll get that from you later Jordan.

20
21 Mr. Hart: Oh, as well as...as well as Public Works with regards to traffic.

22
23 Ms. Thackerson: Thank you.

24
25 Chair Duvauchelle: Okay, so all those in favor of the motion with the amendments please raise
26 your hands?

27
28 Mr. Spence: That's seven ayes.

29
30 Chair Duvauchelle: That's seven ayes. Motion carries. Congratulations.

31
32 Mr. Hart: Thank you.

33
34 **It was moved by Mr. Carnicelli, seconded by Ms. Canto, then**

35
36 **VOTED: To Approve the Special Management Area Use Permit as**
37 **Recommended by the Department, as amended.**
38 **(Assenting – L. Carnicelli, P. Canto, K. Robinson, T. Gomes,**
39 **C. Tackett, S. Castro, R. Higashi)**
40 **(Excused – L. Hudson)**

41
42 Chair Duvauchelle: We will take a 10-minute break. We'll be back at 3:15.

43
44 A recess was called at 3:05 p.m., and the meeting was reconvened at 3:15 p.m.

45
46 Chair Duvauchelle: ...C-2. Director would you like to?

47

1 Mr. Spence: This is your second public hearing item for the day, commissioners. Mr. Kelly
2 O’Kief is requesting a Short-Term Rental Home Permit to operate Hale Kuau, a three-bedroom
3 short-term rental home on a condominiumized property in Paia, and Tara Furukawa is our
4 planner.

5
6 **C. PUBLIC HEARINGS**

7
8 **2. MR. KELLY O’KIEF requesting a Short-Term Rental Home Permit in order to**
9 **operate Hale Kuau, a three (3)-bedroom short-term rental home located in**
10 **the R-1 Residential District at 749 Hana Highway, TMK: 2-6-012: 012-0001,**
11 **Paia, Island of Maui. (STPH T2016/0008) (T. Furukawa)**

12 **The subject application is being brought to the Maui Planning Commission**
13 **for review because there are at least 2 permitted short-term rental home**
14 **operations located within 500 ft. of the subject property.**

15
16 Ms. Tara Furukawa: Good afternoon Commissioners. This item is under our review because
17 the applicant is requesting a Short-Term Rental Home Permit. He wishes to operate a three-
18 bedroom short-term rental home in one dwelling that sits on 3,558 square feet of land in Paia.
19 The lot is part of a condominium property regime that resulted in the creation of four lots with
20 separate ownership of each lot. The application is before you today because there are at least
21 two other STRHs within 500 feet of the proposed STRH. In this case, there are actually three
22 permitted STRHs. At this time, I’ll introduce you to the applicant Kelly O’Kief who will present
23 you with the scope and details of the project and after the presentation I’ll provide you with the
24 Department’s recommendation.

25
26 Mr. Kelly O’Kief: Good afternoon Planning Commission. So yeah, my name is Kelly O’Kief and
27 this is my property in Paia. So I’m located at 749 Hana Highway which is right just about half
28 way between Kuau Mart and Mama’s Fish House right on Hana Highway. So here is like Tara
29 said this is a...so my property is...(stepped away from the mic)...

30
31 Chair Duvauchelle: You have to talk into the microphone Kelly.

32
33 Mr. O’Kief: Feel like I’m getting ready for karaoke. So my property is unit one right here which
34 is immediately adjacent to Hana Highway and then this is our whole CPR. There’s four units.
35 It’s on about a half-acre. We’re completely enclosed by either a rock wall or a like a six-foot
36 fence with landscape.

37
38 Pretty simple site plan. Here’s me again, unit one adjacent to Hana Highway with the three
39 parking stalls which are actually shown on the next slide as well or maybe not. Okay, yeah
40 here’s here, so we got Hana Highway, this is the entrance gate here, three parking stalls.
41 Here’s my little unit, 3,500 square feet on the lot. It’s a 720-foot small little three bedroom, one-
42 bath cottage. Pretty simple small, little layout but 720 feet it’s pretty small but it kinda works for
43 three bedrooms.

44
45 So here is a picture from Hana Highway. So this is the perimeter rock wall like I mentioned and
46 then the entrance gate. So our property’s pretty isolated kinda to the out, you know until you get

1 inside that gate you know really whether it's long-term, short-term, owners, renters, so it's pretty
2 protected from the outside. Here's just a pic of the entrance. Front entrance. Here's a pic of, a
3 picture of the back entrance. Kinda hard to see those didn't come through all that well, but living
4 room kinda connected to the kitchen. It's pretty nice open layout. One bedroom, bedroom two
5 which is acting as a small little office right now. Bedroom three and a small little bathroom.

6
7 Views from all directions of the property. Heavily landscaped. I planted all this landscape,
8 landscaping all these plants about five years ago and they've like come through. It looks really
9 good. Totally secluded. Anyway, the landscape is a nice kind of protective border.

10
11 Okay, so as far as being a good neighbor, the idea is if granted this permit and if I'm able to
12 start advertising as a short-term rental we'll screen potential clients to ensure any high risk
13 groups would not be able to book a reservation. House rules, quiet hours, and parking would be
14 explained in detail during the reservation process as well as at check-in. Be reminded at check-
15 in of the rules. Neighbors will all be notified to call me if an issue arises. If for some reason I
16 don't answer, then they'll have the direction to call my manager who lives right in Paia just about
17 a mile down the way. And I'll periodically check-in with all my neighbors. Just kinda check-in
18 and make sure everything's cool and if they've got concerns about the operation I'll address
19 immediately.

20
21 So once again, my name is Kelly O'Kief. I've lived on Maui since '03. I've owned this Kuau
22 property since 2012. I'm currently working for a general contractor who services the West
23 Coast as well as Hawaii and here for the future. My near future I'll be working on projects both
24 here at home and then as well on the West Coast.

25
26 So why STRH for me and my situation. I'm really hopeful to have the flexibility to rent my
27 property on a short-term basis while I'm working on projects kind of across the West Coast. I'm
28 actually currently working, building a Costco in Hollywood right now. And then I'd like to be able
29 to live at my own house when I'm back home working on projects on Maui or in the rest of the
30 state.

31
32 Another positive for me in this situation makes trips to Maui affordable for my family. My folks
33 love to come down. I've got a sister on the west side with a little one and another on the way so
34 that's a real positive for my family situation. You know it generates tax revenue for the State
35 and County. Paia's getting to be a really popular place. There's more and more visitors coming
36 up to the North Shore and I think it could be a pretty busy, pretty busy unit. And then it provides
37 jobs for a manager, for a house cleaner, a landscaper and then periodically for maintenance
38 person.

39
40 Here's a pic of the 500-foot radius and the existing permitted short-term rentals inside of that
41 500-foot radius. As far as the public notice, notices so all neighbors within 500 feet of me and
42 there was approximately 100 were notified when I first submitted for...submitted this permit and
43 then second 30 days before today's meeting. So certified notices went out to around 100 folks
44 two different times and we didn't receive any opposition. Not one letter of opposition. And then
45 Tara and Department placed an ad in The Maui News about today's hearing.

1 I've got some letters of support. I'm not sure if you folks had a chance to read those but not
2 only did not receive any opposition from all the neighbors and everybody within the 500 radius,
3 I've actually all three of my immediate neighbors inside our CPR'd property wrote me letters of
4 support. And then some co-workers, you know, I've been working on Maui for 15 years so
5 some co-workers and some friends also wrote some letters, pretty endearing nice letters. I'm
6 not sure if you guys had a chance to take a look at those. And that's pretty much it.

7
8 Ms. Furukawa: So as previously mentioned there are three other STRHs within 500 feet. There
9 are 45 permitted STRHs in the Paia-Haiku Community Plan region and the cap is 88. There are
10 also 40 permitted B&Bs and the cap is 88. There are no letters of protest from neighbors
11 submitted after notice was provided. As Kelly stated neighbor notice was provided twice, once
12 for the STRH application and more recently for the public hearing and then you received the
13 numerous letters of support. The application complies with applicable standards for a short-
14 term rental home permit and the Department is recommending approval of the permit. The
15 STRH Permit has 22 standard conditions and the Department is recommending that the Maui
16 Planning Commission adopt the Planning Department's report and recommendation prepared
17 for today's meeting as its findings of fact, conclusion of law, and decision and order and to
18 authorize the Director of Planning to transmit the decision and order on behalf of the Planning
19 Commission.

20
21 Chair Duvauchelle: Thank you. I didn't do it prior. I'm gonna open the floor to public testimony
22 for this agenda item. If anybody would like to testify you can please do so now? Seeing none,
23 we'll close public testimony. Director?

24
25 Mr. Spence: Thank you Madam Chair. Commissioners I want to draw your attention to one
26 provision of the Paia-Haiku Community Plan. In the staff report you know we put a lot of things
27 in there about the Countywide Policy Plan, the Maui Island Plan and the general, you know, the
28 different things supporting economic growth and in particular the Paia Haiku Community Plan. I
29 apologize I neglected to look but I think you should be aware there's also the policy in the Paia-
30 Haiku Community Plan that says, limit visitor accommodations to owner-occupied bed and
31 breakfast establishments that are residential in both scale and character. Any proposed bed
32 and breakfast should not be situated near the shoreline so as to avoid proliferation of this use
33 and subsequent changes to the character of the region's coast. So I bring that up because you
34 have the specific provision and you know it's up to you. You know it's come up in a recent case
35 as well and I neglected to look forward within the staff report. It's up to the Commission to go,
36 okay there's all these provisions to support local businesses and local economy. Those kinds of
37 things and you know as the applicant said, you know we hired landscapers and probably
38 bookkeepers as well, you know, cleaning services, those kinds of things so it provides
39 employment locally and provides an opportunity for him to keep his house while he's you know
40 off on the mainland, those kinds of things. But there is this specific provision. So it's up to you,
41 up to the Commission to weigh, to weigh the provisions, you know, pro and con of all the things
42 that our general plans say. But I didn't want this to pass by without making sure you were
43 aware of it.

44
45 Chair Duvauchelle: Thank you, Director. Commissioner Carnicelli?

1
2 Mr. Carnicelli: But what you read Director is in regards to B&Bs?
3
4 Mr. Spence: No, it says...
5
6 Mr. Carnicelli: Now that I have the context, could you please reread that?
7
8 Mr. Spence: It says, limit visitor accommodations to owner-occupied bed and breakfast
9 establishments that are residential in both scale and character. Any proposed bed and
10 breakfast should not be situated near the shoreline so as to avoid the proliferation of this use
11 and subsequent changes to the character of the region's coast.
12
13 Chair Duvauchelle: All right, thank you. Any questions from the Commissioners?
14 Commissioner Castro?
15
16 Mr. Castro: I'm looking at the...this is the RFS information, Unit 1 you're adding smoke
17 detectors. So what about the other units? As far as I see the other units are only for relocation
18 of dryer, water heater and additional outlets. What about smoke detectors for the other units?
19
20 Mr. O'Kief: That I'm not sure, I mean—
21
22 Chair Duvauchelle: Please state your name.
23
24 Mr. O'Kief: Oh, Kelly O'Kief. So all four units on the CPR property are owned individually. So I
25 just own Unit 1. So all I can speak for is Unit 1 and it's totally permitted, totally up to Code, has
26 a fire extinguisher installed, but I'm not sure about the others.
27
28 Mr. Castro: Thank you.
29
30 Chair Duvauchelle: Any other questions? Commissioner Carnicelli?
31
32 Mr. Carnicelli: So Kelly in the report we also have an RFS for that you were operating illegally
33 prior to this, correct?
34
35 Mr. O'Kief: Correct.
36
37 Mr. Carnicelli: Do you have any evidence that shows that you paid your G.E. and T.A.T. for
38 when you were operating without a permit?
39
40 Mr. O'Kief: Yes.
41
42 Mr. Carnicelli: Can you please provide that to us?
43
44 Mr. O'Kief: Yeah.
45
46 Mr. Carnicelli: Okay, cool.

1
2 Ms. Furukawa: He has a State Tax Clearance, A-6 stamped and he also has the County Real
3 Property Tax Clearance.
4
5 Chair Duvauchelle: Okay, any other questions?
6
7 Ms. Canto: I don't have a question.
8
9 Chair Duvauchelle: Commissioner Canto?
10
11 Ms. Canto: I don't have a question. I have a comment. I'm looking at this application and it
12 looks very clean. It looks very detailed and I like your unit, Unit 1 ...(inaudible)... I happen to
13 like the looks of your unit and no other comments than that. I don't have any other comments.
14
15 Chair Duvauchelle: Thank you. Commissioner Tackett?
16
17 Mr. Tackett: You said you had letters from and that there were no letters that were against, are
18 these the letters that were—
19
20 Mr. O'Kief: Looks like it, yeah.
21
22 Mr. Tackett: Were in approval of?
23
24 Mr. O'Kief: Yeah, Carolyn...
25
26 Mr. Tackett: Should there be one, two, three, four, five, six, seven, eight of them about?
27
28 Mr. O'Kief: Yeah.
29
30 Mr. Tackett: I think these were in our packet.
31
32 Chair Duvauchelle: Okay, thank you. All right, any other questions or are we gonna entertain a
33 motion?
34
35 Mr. Carnicelli: I just have one more.
36
37 Chair Duvauchelle: Commissioner Carnicelli?
38
39 Mr. Carnicelli: Okay so maybe this is more for staff. So I mean, I just received the tax stuff,
40 right and I look at it and I don't exactly know where it is, but my question was whether or not the
41 applicant had paid his G.E. and T.A.T. for when he was operating without a permit. If I look at
42 those things that I was given they're dated in 2017 that doesn't. This RFS goes all the way back
43 to 2015 was when you know the RFS says that he was operating without a permit. So my
44 question is I how do I know that he went and came clean or can we know?
45
46 Ms. Furukawa: There's a receipt.

1
2 Mr. Carnicelli: Okay, but I don't...I'm not an expert in that so I guess you know, maybe you
3 could help me out. It says, he paid for what that receipt?

4
5 Ms. Furukawa: For the period of operation.

6
7 Mr. Carnicelli: Okay, from when to when then I guess is what is it say?

8
9 Ms. Furukawa: Yeah, it was 2015. It was a few months in 2015.

10
11 Mr. Carnicelli: Okay, thank you.

12
13 Chair Duvauchelle: Any further questions, comments, motions?

14
15 Ms. Canto: Move to approve.

16
17 Chair Duvauchelle: I have a motion to approve from Commissioner Canto.

18
19 Ms. Gomes: Second.

20
21 Chair Duvauchelle: Second by Commissioner Gomes. Director, do you want to reread the
22 motion?

23
24 Mr. Spence: The motion is to approve as recommended by Staff.

25
26 Chair Duvauchelle: All those in favor please raise your hand? Oh, discussion on the motion?
27 Sorry, it's almost 4 o'clock. I'm just teasing you. Go right ahead.

28
29 Mr. Robinson: I'm in opposition of this motion. Three reasons. First reason is the provision that
30 the Director explained about the General Plan and the people that were part of making this plan
31 in the community stating that what's happening in Paia. Number two, just I don't know six
32 weeks ago we had a lot of Paia people talking about another STRH and a bed and breakfast
33 over there and the proliferation of this area and the transformation of it being a local area to
34 more and more short-term vacation rentals and the congestion of it. And number three, is the
35 reason why we're here today is because there's three in this small area of 500 square feet and it
36 has nothing to do with the applicant per se but for the congestion and the location of it and the
37 changing of the General Plan and this community of not being a commercial or visitor area but
38 to try to preserve it for local people to stay for like when you wanna come and stay with your
39 family after you do your work in the mainland. This is the primary purpose. As we've seen
40 again and again people start off with short-term rentals and they rent it once in a while and then
41 it's hard to give up that money and that flow because it is a commodity in Maui. Not everybody
42 can it, and you know I've heard people getting STRHs and then moving to second homes
43 because they make too much money off this STRH. So every time these people start with good
44 intentions but doesn't end that. Again, I'm against this STRH. Mahalo.

45

1 Chair Duvauchelle: Thank you. Okay, any more discussion on the motion? Commissioner
2 Carnicelli?

3
4 Mr. Carnicelli: So I'll just state on the record that I, too, am not gonna support the motion. I think
5 what the Director read you know is...it seems to be in conflict with that. And as much as I really
6 appreciate people coming forward and want to do this legal because I think that we have a
7 proliferation on Maui of illegal rentals and that really needs to be addressed. So I appreciate the
8 applicant coming forward and wanting to do it the right way and wanting to come forward, but I
9 just can't get around that provision that the Director read. So to me that's going to be the basis
10 for my decision in not supporting the motion.

11
12 Chair Duvauchelle: Commissioner Gomes?

13
14 Ms. Gomes: And I just want to piggyback a little bit on Commissioner Carnicelli, when you had
15 this provision Director, I took it into the context as we're looking at bed and breakfast. Is an
16 STRH, is that in the same context as a B&B? Is that what you had read or interpreted to us?

17
18 Mr. Spence: Okay, the bed and breakfast is different than a short-term rental home.

19
20 Ms. Gomes: Correct.

21
22 Mr. Spence: In the sense that the owner is not present but in a bed and breakfast they are
23 present.

24
25 Ms. Gomes: Correct.

26
27 Mr. Spence: And they invite people into their home or into their cottage whichever the case may
28 be. I'll just say that this particular provision in this community plan is going to become more of
29 an issue for us. We're already thinking about legislative fixes so it's clear. Right now it's not as
30 clear as we would like it.

31
32 Ms. Gomes: I see. And with all due respect to my colleagues and Commissioner Robinson and
33 Carnicelli I do see what they're saying. I would hate, I stand by second with motioning
34 Commissioner Canto but I'd hate to penalize Mister...was it O'Kief? O'Kief the other three,
35 there's four, four if I'm not mistaken short-term rental homes?

36
37 Mr. O'Kief: No, I'm just applying for Unit 1.

38
39 Ms. Gomes: Right, but the others are short-term?

40
41 Mr. O'Kief: No.

42
43 Ms. Gomes: No. Oh, you are the only one?

44
45 Mr. O'Kief: Correct.

1
2 Mr. Spence: Right. There are four homes on this property. They're condominiumized. So each
3 one of those homes has a different owner.

4
5 Ms. Gomes: Okay, my apologies, okay. Okay.

6
7 Ms. Canto: Can I also comment?

8
9 Chair Duvauchelle: Commissioner Canto?

10
11 Ms. Canto: I just wanted just to say this for the sake of saying it. These applications from my
12 part I will base my decision on each of them separately. So the fact that I stand with a decision
13 of the past you know, it doesn't necessarily mean that I'm going to retain that position. So I
14 stand in firm support of my motion and I will support the application. Thank you.

15
16 Chair Duvauchelle: Commissioner Tackett?

17
18 Mr. Tackett: My stance on the issue has a lot to do with what was presented here. It's odd not
19 to have people come out against this kind of thing. It's even odder to have so many people
20 come in and sign in agreement with this sort of thing so because of the fact that your immediate
21 neighbors didn't complain and the fact that you're immediate neighbors have made so many
22 statements as to the integrity that you have brought to this neighborhood, I'm going to have to
23 go with Pua in support of Pua's stance on this one.

24
25 Chair Duvauchelle: Okay, any further discussion? If not, will you repeat the motion again?

26
27 Mr. Spence: The motion is approve as recommended by Staff.

28
29 Chair Duvauchelle: All those in favor, please raise your hand.

30
31 Mr. Spence: That's four ayes.

32
33 Chair Duvauchelle: All opposed?

34
35 Mr. Spence: That's three opposed.

36
37 Chair Duvauchelle: That means I have to vote doesn't it? I mirror the concern that we're taking
38 potential long-term rentals off of the market, but I am supportive in getting the applications
39 complete, legal, Mr. O'Kief's usage so he can come back home to Maui whenever...I work the
40 projects, I know some of them last six months, some of them a month, sometimes you're back
41 home more often than that. So in this case, I'm gonna support Commissioner Canto and
42 Gomes and vote yes. Thank you. Motion carries.

43
44 Ms. Furukawa: Thank you.

45
46

1 **It was moved by Ms. Canto, seconded by Ms. Gomes, then**
2

3 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
4 **by the Department.**
5 **(Assenting – P. Canto, T. Gomes, C. Tackett, S. Castro,**
6 **S. Duvauchelle)**
7 **(Dissenting – K. Robinson, L. Carnicelli, R. Higashi)**
8 **(Excused – L. Hudson)**
9

10 Mr. Spence: Commissioners we're on Item C-3. Might as well get through the public hearing
11 items. Madam Chair, can we dismiss Staff for the training?
12

13 Chair Duvauchelle: Yes.
14

15 Mr. Spence: We're not gonna get to training today.
16

17 Chair Duvauchelle: I'm sorry. We'll schedule the training at a later date.
18

19 Mr. Spence: Okay, your third public hearing, Mr. Christopher John Maune, Sean, Sergio
20 Sanchez, Lilian Sanchez, Francisco Berruetta and I'm sorry if I'm messing up your names here
21 and Shanelle, requesting a Short-Term Rental Home Permit in Kihei this time, and our Staff
22 Planner is Evelyn Aako.
23

24 **3. CHRISTOPHER JOHN MAUNE and SEAN MAUNE, SERGIO SANCHEZ and**
25 **LILIAN SANCHEZ, FRANCISCO BERRUETTA and**
26 **SHANELLE G. BERRUETTA requesting a Short-Term Rental Home Permit**
27 **in order to operate the Hoaloha Hale, a two (2)-dwelling short-term rental**
28 **property located in the R-3 Residential District at 2505 Halama Street, TMK:**
29 **3-9-010: 080, Kihei, Island of Maui. (STKM T2016/0007) (E Aako)**
30

31 **The subject application is being brought to the Maui Planning Commission**
32 **for review because there are at least two (2) permitted short-term rental**
33 **home operations located within 500 ft. of the subject property.**
34

35 Ms. Evelyn Aako: Good afternoon Chair, good afternoon Commissioners. So this item is
36 actually kind of similar to the last STRH you just saw. It's under review because the applicants
37 are requesting a STRH permit to operate the proposed Hoaloha STRH located 1505 Halama
38 Street in Kihei. The proposed STRH would take place in two dwellings. A primary dwelling with
39 five bedrooms and accessory dwelling with one bedroom so there would be a total of six
40 proposed STRH rooms.
41

42 Pursuant to Maui County Code, Chapter 19.65 the Commission is the approving authority for
43 this STRH because there are two or more permitted STRHs within 500 feet. So if you look at
44 Exhibit 5 of your staff report you'll see the map of the 400-foot boundary and see the existing
45 four STRHs within 500 feet.
46

1 There are six co-owners of the subject property and therefore six co-applicants for the STRH
2 Permit. Some of the applicants are present to answer questions but they have a consultant,
3 Tom Croly so he will do a presentation and lead you through the scope of the proposed STRH.

4
5 Mr. Tom Croly: Thank you Evelyn. Tom Croly on behalf of the applicants. As Evelyn just
6 described this is for a Short-Term Rental Home Permit at 1505 Halama Street. Hopefully
7 everyone's familiar with Halama Street in Kihei for a five-bedroom main house and a studio
8 cottage.

9
10 You just heard that there were six co-applicants and it's really a blended family is what it is. We
11 have three different families who for many years have been close friends and have vacationed
12 together for many years and they come to Maui on many occasions and they looked for a place
13 where they would be able to gather on a regular basis and that's what prompted their purchase
14 of this home.

15
16 The property details. It's a five-bedroom house as a I already said with a studio cottage. The
17 home is arranged to be managed by Bello Realty. Bello Realty has offices just about a quarter
18 mile from the location of this home on Lipoa Street in Kihei. The rentals would be limited to
19 groups of fewer than 10 people for the main house, the five-bedroom main house with a
20 maximum of two occupants per bedroom and two people in the cottage. In most cases
21 probably the house and cottage will be rented together as, you know, to one group. In general,
22 with these larger groups you don't want to mix multiple people on this in the same rental. But
23 there's gonna be times when the cottage alone might be rented and times when the house
24 alone might be rented.

25
26 This particular property is flanked by vacant lots on three sides it's kind of a unique situation
27 here. And I would say it's the perfect location for a short-term rental for a number of reasons.
28 Number one, Kihei that kind of is the short-term rental and vacation rental uses are pretty
29 standard in Kihei and we don't have any conditions like you heard in Paia that would forbid them
30 in this area. And the unique location of this particular house being flanked by vacant lots gives
31 it a certain level of an island privacy if you will. A few pictures of the interior and exterior of the
32 house here. These are in your staff report as well. And some regulatory concerns, this is also
33 in your staff report, of course there's smoke detectors in all the bedrooms. There are fire
34 extinguishers on both levels of the main house and also in the cottage. And the house has
35 plenty of parking for the main house and the cottage. There's room to park at least six or seven
36 cars on site. The requirement is two for the house, actually three for the house 'cause it's a
37 five-bedroom house and one for the cottage. So there's a four-car requirement. They actually
38 have more parking available than that.

39
40 The history of this application. The applicants purchased the home in April of 2014 and they
41 purchased it for their own, their own enjoyment and their own use. They looked into the idea of
42 getting a Short-term Rental Permit and engaged me to help guide them along the way shortly
43 after they purchased the home. The application took some time to put together because there
44 were some deferred maintenance with the house when they bought it that they had to address
45 before we'd be ready to make application. So we made application in July of 2016. In October
46 of 2016, notice of the application was sent by Certified Mail to 143 property owners within 500

1 feet. And at that time of course, no protests were received from the notice. The Planner then
2 did a site inspection and everything went fine, and then we scheduled the public hearing and in
3 February notice of this public hearing was sent out to the same 143 property owners and again
4 we received no notices of protests back. And today we're here for their Planning Commission
5 hearing.

6
7 Talking about the neighborhood that this is in. Most people are familiar with Halama Street
8 running along the ocean front and most of the homes that are along the ocean front in Halama
9 are owned by people who don't live here. It's just a fact. On this particular end of the block
10 where they are the 10 homes that front the ocean, nine of them are owned by people who don't
11 live here. Three of them have been granted short-term rental permits. One has been granted a
12 bed and breakfast permit. And then there are several homes that are used as second homes
13 by their owners. They're not used for short-term rentals but they sit empty when their owners
14 are not using them. And as I already described surrounding this property is vacant lots some of
15 which are the wetlands area and you guys may remember an application that came before you
16 for a medical clinic maybe about six months ago and one of the issues about that particular
17 location which is on South Kihei Road kind of behind these guys was the sensitive wetland
18 habitat that it sits on. Well, that land kind of extends around this particular property so I'm not
19 sure if the lots directly behind this one and directly to the south of this one will ever necessarily
20 be developed because of those issues. They do...they often are wet. They sit empty right now
21 and I don't know if they're necessarily going to be developed.

22
23 Again, we got no objections after two mailings and postage of...posting the application sign on
24 site and you were given today this packet of letters of support from the immediate nearby
25 neighbors and that speaks for itself.

26
27 Here's a picture, an aerial view of the neighborhood and you can see along the oceanfront
28 those marked in green are where the letters of support that I just made reference came from.
29 Each of those owner gave you a letter of support and then at the bottom where it shows in red
30 STRH those are the permitted short-term rentals that are within 500 feet. There's the three that
31 are on the oceanfront and then it's kind of hard to see but in the upper right there's one that's on
32 the street behind and those are the ones that are within 500 feet of this property. The part-time
33 homes are also shown and the bed and breakfast is shown which is right in the middle of those
34 part-time homes.

35
36 Again, what you can see from this aerial view, the applicant's property right in the center kind of
37 sits on a land island if you will. They have the vacant lot to the south. They have the vacant lot
38 to the north. They have the vacant lot directly behind them. I can't see where anything that
39 would happen on this property would be negatively impacting any of the neighbors 'cause the
40 neighbors are mostly birds that are using that wetlands.

41
42 Oops, well the final slide just was saying we hope that you take the recommendation of the
43 Department and grant this permit for three years. I moved through pretty quickly. If you have
44 any questions, I'm here to answer questions and each of the applicants would like to step and
45 just give you a little bit of insight as to what their own plans for this are if that's okay, Chair?

1 Chair Duvauchelle: That's fine. We need to take public testimony. So I'd like to open the floor
2 first?

3
4 Mr. Croly: They can do that...(inaudible)...

5
6 **a) Public Hearing**

7
8 Chair Duvauchelle: Okay. I'd like to open the floor first for public testimony. Anybody wishing
9 to testify please come forward, state your name and you'll have three minutes.

10

11 Mr. Pachi Berruetta: Hello, my name is Pachi Berruetta. I'm one of the three owners at 1505
12 Halama. The other two are behind me. We are three families that come together as kind of one
13 on this particular situation. Kind of wanna give you a little bit of background on each of our
14 families. My wife and I have been coming here for the last 20 years and we first came here 20
15 years ago when we were just boyfriend and girlfriend and really fell in love with the place and
16 have been coming back every year since. Eleven years ago we got married. Our original
17 intention was to get married here. Unfortunately, my father become ill and passed away at that
18 time so we had to accommodate for that. However that being said, we did get married after that
19 and then eight years ago my daughter was born, four years ago my son Pachi was born and so
20 that kinda makes up our little family if you will.

21

22 As I mentioned before when my father gave me an opportunity to spend a lot of time with my
23 sister and my mother who are the only family that I have on the mainland as I'm a first
24 generation American. My family comes from Spain. My wife is an only child. Her mother is a
25 widow as well. So we're...we've had some bad luck but at the same time we've had some good
26 luck in a sense that all of us get along really well together. So my mom and her Mom and
27 everybody gets along which I understand is actually rarity in a lot of families. So we're very
28 fortunate in that regard.

29

30 I've known Chris one of the applicants here for 26 years. We went to high school together, went
31 to college together, lived together in the same house for eight years. He was my best man, god
32 father to my daughter Amaya so you could say we're really good friends.

33

34 Sergio is my other best friend and I've known him for 20 years. Got to know him playing soccer
35 and have played soccer with him for a couple decades up until my latest injury which put an end
36 to that. But his wife is a god mother to my son and I've had the privilege of being around his
37 son and his daughter watching them grow up Giovanni and Cynthia and I'm proud to have a
38 hand in helping him in that.

39

40 For the last ten years we've been working together as well. So we've actually spent more than
41 five days a week for the last 10 years together and we still want to vacation and spend the
42 weekends with each other which yeah, I think it's kind of amazing in itself as well. We really
43 love this house. It's big enough to accommodate all three of our families together which is really
44 exciting for us and we're really excited about having the ohana as well 'cause we wanna
45 continue to bring my mother and my sister, Chris's parents, Sergio's family as well at the same

1 time since we like to all come out here together. That's about it and want to say thank you for
2 your time and hope guys approve the permit.

3
4 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you very much. Anyone
5 else wishing to testify, please come forward? State your name, you have three minutes.

6
7 Mr. Sergio Sanchez: Hello, my name is Sergio Sanchez, one of the other owners. As Pachi
8 said, you know we bought this house in mind to have our families come together and use it. I'm
9 gonna read, I'm not really good at public speaking so...

10
11 Chair Duvauchelle: That's okay.

12
13 Mr. Sanchez: I've been married for 23 years with my beautiful wife, Lilianna. We have a
14 daughter 21-year-old, she's about to graduate college in about a year. We don't get to see her
15 as much because she plays soccer for the school, a really good soccer player but they train
16 year round so what little time that we have we like to cherish it. And vacation is one of the best
17 times that we have. You know she's a beautiful daughter, amazing big sister. We also have
18 Giovanni which you know lives and breathes baseball, really good pitcher. Whenever he's
19 around his big sister his mood changes, he's happy and as his parents we love to see our kids
20 bonding and to be around siblings and because I only have two kids. Like Pachi said you know
21 my wife is little Pachi's god mother and as a Catholic you know we see that as for life you know.
22 We're gonna be there for him to help him out thick and thin and help and educate him and
23 whatever it takes.

24
25 You know with Chris and Sean they're basically uncles to my kids. We've been coming here
26 since my son was five-years-old and they've been jumping onto waves and having a good time
27 and ever since then my kids have just adapted to him and Sean and they've help him to get to
28 know the true meaning of friendship and obviously help out with ...(inaudible)...for the kids
29 themselves.

30
31 I've been fortunate enough to work with these guys like Pachi said for the last ten years and
32 we've been able to come out here a couple times a year now to Maui. And in order for this to
33 happen I think obviously we're asking for you guys to approve a short-term permit for our home
34 because this would allow us to come over more often and actually become part of this
35 community because we can see ourselves here retiring hopefully in 15 years or so.

36
37 I personally would love to bring my parents, my mom, my in-laws that's why it's important for us
38 to have the ohana because they're getting up there in age and the house has several flights of
39 stairs which would make it difficult for them because I really want them, you know to come over
40 and spend time with their kids and also the grandkids. You know, when you're on vacation you
41 relax and there's no fighting, there's no arguing going on.

42
43 We've stayed in condos before with the three families and it's kind of tough because you live in
44 different situations and believe...(inaudible)...like Pachi said we all get along, we take turns
45 cooking, barbequing and whatnot and the experience of being together is...can only be had in
46 this home that we purchased.

1
2 In closing, you know, obviously the home needs a lot of work and we plan to do that, but in
3 order to do that we have to spend more time in it and in order for that to happen we would like
4 to get the opportunity if you guys, you know, give us the opportunity to get the short-term permit.
5 So thank you.

6
7 Chair Duvauchelle: Thank you. Sorry, for the interruption, but I'm going to pass the gavel to the
8 Vice-Chair to continue public testimony. Thank you guys very much. All yours Mr. Higashi.

9
10 Mr. Higashi replaced Ms. Duvauchelle turn run the meeting.

11
12 Vice-Chair Higashi: Good afternoon, would you state your name?

13
14 Mr. Chris Maune: Yeah, good afternoon everyone. My name is Chris Maune. Again, I'm one of
15 the applicants for the short-term vacation rental. Really appreciate you guys taking the time to
16 take a look at our application.

17
18 I wanna talk about a couple of things. Mainly, you know, the importance of this home to me and
19 as, you know, the larger family that's represented by me as well as you know, what this short-
20 term rental property...(inaudible)...for the community that we're asking for it to be in. For me
21 this property is a culmination of 10 years of you know, coming to Maui with these guys behind
22 me and their families. I'm an only child. I just have my mom and my dad back home and I think
23 that this property or excuse me coming to Maui over the last 10 years with these guys has really
24 kind of extended my family as Pachi and Sergio both mentioned, I'm god father to Maya. I'm
25 more of an uncle to the rest of the kids. It's really special for me. You know my partner and I
26 aren't gonna have kids and the ability to have these guys as my brothers and their kids look up
27 to me is pretty awesome. Sorry. But that's not going to happen if you don't have that kind of,
28 you know family vacation, that time with children to really grow and they get to trust you, you
29 know they treat you as part of their family. So for me that's awesome. 'Cause I'm...you know,
30 like I said, I can't...we're not gonna be having kids. My husband and I it's just...it's not in my
31 cards for us. I mean it's great that they let me spend so much time with their kids and come on
32 these vacations with them and be a part of their family. So I just figure you know my family
33 exponentially because of this. So that's why this home is important to me because it's gonna
34 continue to foster that. It's gonna continue to foster the relationship with you know with Pachi's
35 kids are 4 and 8, Sergio's kids are a little bit older but I can continue to have that relationship
36 with these kids and continue to grow.

37
38 The second thing is this is I think a good use, as Tom pointed out in his presentation we are
39 kind of on a little island within the community. In that regard you know we're surrounded by
40 wetlands as Tom mentioned but with that comes some problems so one of the reasons we want
41 to have or filing a Short-Term Rental Permit is the house has been broken into since we
42 purchased it. People...we were out here two months ago. There's an abandoned car in the
43 wetland. So we are kind of the stewards of that little area so to speak, we can be, and I think
44 our residents, the people that are neighbors to us see that as a positive that we are coming to
45 the property more often that we have a short-term rental permit. It's being managed. It's being
46 looked at on a regular basis. People are visiting it. We're making improvements to the

1 property. Those things don't necessarily if we don't have that. So I think that's why we've
2 gotten all letters of support from everybody that we've submitted to and no letters of complaint.

3
4 You know, and the final thing I'll just mention here is the last thing I'll say regarding this short-
5 term rental permit is you know, I have parents and these guys have parents and the ability to be
6 able to bring a family, a large family out to this type of home is very special and you know, my
7 mom's getting...she's rheumatoid arthritis for the last 40 years to be able to bring her out to a
8 place like Maui to spend time in our home, be able to put her up in an ohana that we could set
9 up you know with disability access very easily would benefit my mom tremendously. She'd be
10 able to have vacation with the family again when we come out here, not have to worry about—

11
12 Ms. Takayama-Corden: Three minutes.

13
14 Mr. Maune: --you know, idiosyncrasies about where she's staying. She could be familiar with
15 the property and I think that's valuable for other people who want to stay here, who maybe have
16 parents who are disabled, who need wheelchair access into an ohana. That's something that
17 we will provide if we get our permit. And I think you know, it's really important mom gets the
18 ability to come out here and continue to spend time. She's come out with these guys before
19 and she loves it and I want that to continue to happen and I want other families who come out
20 here to be able to have that same experience that I have. So I hope you guys consider us and
21 thank you for your time.

22
23 Vice-Chair Higashi: Thank you. Are there any questions Commissioners? No? Are there any
24 other person who would like to testify? Seeing none, public testimony is closed. I'll go to staff
25 recommendation.

26
27 **b) Action**

28
29 Ms. Aako: So as the application does comply with the applicable standards for a short-term
30 rental home permit and as such the Department recommends approval subject to the standard
31 22 conditions for an STRH Permit. The Department recommends that the Maui Planning
32 Commission adopt the Planning Department's report and recommendation prepared for the
33 April 25, 2017 meeting as its findings of fact, conclusion of law, and decision and order and
34 authorize the Director of Planning to transmit said written decision and order on behalf of the
35 Planning Commission.

36
37 Vice-Chair Higashi: Are there any discussion from the Commission? Commissioner Robinson?

38
39 Mr. Robinson: Director this is for you. I got a question, the presenter today does he work for
40 the County or does he not work for the County Planning Department?

41
42 Mr. Spence: Tom Croly?

43
44 Mr. Robinson: Yes.

45
46 Mr. Spence: No, he's a consultant.

1
2 Mr. Robinson: Just a consultant?
3
4 Mr. Spence: Yes.
5
6 Mr. Robinson: Okay, I saw him, I thought I saw him present so many times that I just figured
7 he...I just wanted to make sure.
8
9 Mr. Spence: Yes, I'm sure he works for free.
10
11 Mr. Robinson: Second question Director is I thought that when we did a STRH ownership was
12 supposed to be at a certain level and I know it's not supposed to be LLC or certain level, so I've
13 never seen this before where there's multiple people on top a ownership before.
14
15 Mr. Spence: I don't...there, and Evelyn might want to comment but the biggest concern with the
16 Council when passing this law was that there be natural people who are responsible for the
17 operation. And they were likewise concerned that corporations don't come onto Maui purchase
18 all the properties and then it's kind of a nameless, faceless operation. So to me this...you have
19 quite a group of people, individuals, real people that are gonna be responsible for this operation.
20
21 Mr. Robinson: And what happens if one drops out, does it have to become a new permit 'cause
22 it's...I mean, that's why they usually you know you don't want to change the permit name and
23 the name will stay on it. So is the County's rules now where people can kinda come and go on
24 the permit or how is this gonna work if one decides they wanna sell their share?
25
26 Mr. Spence: I can't say what would happen if somebody wanted to sell their share of their
27 home to another person and get out of this, but I know we wouldn't allow another, a new party
28 to become...to come onto the permit without some additional procedure.
29
30 Ms. Aako: I was just gonna...in response to that I was just gonna ...(inaudible)... from the
31 STRH Ordinance, so what it states is that the permit holder shall, number one, hold a minimum
32 of 50 percent interest in the legal title to the lot. So there's nothing in the ordinance about
33 capping the number of folks who own the property but that they must own a minimum 50
34 percent and obviously all six collectively own 100 percent of the lot, so...
35
36 Mr. Robinson: Thank you.
37
38 Vice-Chair Higashi: Any other questions from the Commission? None? If not, is there...would
39 the Director restate the recommendation?
40
41 Mr. Spence: The recommendation is to approve as recommended by staff, standard conditions.
42
43 Vice-Chair Higashi: Are there any motion to the recommendation by the commission?
44
45 Ms. Gomes: Motion to approve.

1
2 Vice-Chair Higashi: Commission Gomes move to approve.

3
4 Mr. Castro: Second.

5
6 Vice-Chair Higashi: Any second?

7
8 Mr. Castro: Second.

9
10 Vice-Chair Higashi: Commissioner Castro moved to second. Are there any discussion?
11 Commissioner Robinson?

12
13 Mr. Robinson: I'm opposed to this application, surprise. And the reason, you know when you
14 look at the map and they the Halama Street and they have all the other STRHs there you know
15 the concern was that we wouldn't have a lot in a cluster and then the philosophy is okay, well is
16 a cluster better than having it all spread out? You know Halama Street we're gonna have all
17 these homes that somebody can't rent, it's too expensive. We're gonna get a B&B, we're gonna
18 get a STRH and these things that are sort of out of the financial wherewithal of our local
19 resident we want those to be their STRHs but we don't want the ones across the street. And
20 now we're starting to come across the street and then from across the street it's gonna be then
21 to the next block. And my concern is...I love what this family did where they did a hui together
22 and they split up time and coming to Hawaii 'cause I think that's the way it should be. But now
23 it's turning into a commercial property and these people that used to come to Hawaii they'll
24 probably say well we can come and fly and spend \$2,000 on airfare or we can stay home and
25 we can make \$4,000. They're not gonna come to enjoy Hawaii. They're gonna decide between
26 the financial benefit or not. And they may not even...when they purchased it not even thought
27 about it being an STRH until they see the three people across the street, you know, just cashing
28 checks and that's what this STRH is people are just cashing checks again, and again. We just
29 did one against the provisions in Paia where the community doesn't want to do it, it's clustered
30 and we still approve it and that guy is gonna go cash checks and he's gonna work in mainland.
31 He's gonna cash checks, and cash checks. And it's just, my concern is not this house, my
32 concern is when is it gonna stop, when are we gonna start finding some homes that we actually
33 think people could live in or people that wanna buy a hui and share and get a house. You know
34 now that this house is gone they're gonna look for another house to go and do it at. And that's
35 just my concern. Thank you.

36
37 Vice-Chair Higashi: Any other comments from the Commissioners? If not, all those in favor of
38 the motion please signify by raising your hand?

39
40 Mr. Spence: That's five ayes.

41
42 Vice-Chair Higashi: Opposed same sign?

43
44 Mr. Spence: One opposed. Motion carries.

45
46 Vice-Chair Higashi: Motion carried. Congratulations. Next on the agenda, Director?

1
2 **It was moved by Ms. Gomes, seconded by Mr. Castro, then**

3
4 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
5 **by the Department.**
6 **(Assenting – T. Gomes, S. Castro, L. Carnicelli, P. Canto, C. Tackett)**
7 **(Dissenting – K. Robinson)**
8 **(Excused – L. Hudson, S. Duvauchelle)**
9

10 Mr. Spence: Commissioners we're on Item E, one that a number of people have been waiting
11 all day for. It's review of a proposed settlement agreement for alleged SMA Area and Shoreline
12 Area Violations. This is with...the proposed Settlement Agreement is between County of Maui
13 and the Association of Apartment Owners of Mahinahina Beach and we have Mr. Jim Geiger
14 here representing Mahinahina Beach.
15

16 **E. REVIEW OF PROPOSED SETTLEMENT AGREEMENT FOR ALLEGED SPECIAL**
17 **MANAGEMENT AREA AND SHORELINE AREA VIOLATIONS**
18

19 **1. Proposed Settlement Agreement between the COUNTY OF MAUI and the**
20 **ASSOCIATION OF APARTMENT OWNERS OF MAHINAHINA BEACH for the**
21 **construction of barbecue grills, a stairway, a trellis,, electrical lights,**
22 **switches and wiring, an eating area, and a seawall within the Special**
23 **Management Area (SMA) and Shoreline Setback Area (SSA) without first**
24 **receiving permit for such improvements on property situated at 4007 Lower**
25 **Honoapiilani Road, TMK: 4-3-008: 001, Mahinahina, Lahaina, Island of Maui.**
26

27 **a. SMA Notices of Violations issued as follows: NOV 20150063**
28 **(Electrical), NOV 20150065 (Stairway), NOV 20150068 (Trellis), NOV**
29 **20150070 (Barbecue grills), NOV 20150071 (Seawalls), and NOV**
30 **20150073 (Eating Area)**

31 **b. SSA Notices of Violation issued as follows: NOV 20150064**
32 **(Electrical), NOV 20150066 (Stairway), NOV 20150068 (Trellis), NOV**
33 **20150070 (Barbecue grills), NOV 20150072 (seawalls)**
34

35 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH THEIR**
36 **ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES,**
37 **PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS**
38

39 **The Commission may take final action on the proposed Settlement Agreement**
40 **pursuant to the provisions of Section 12-202-23(d)(3) of the Maui Planning**
41 **Commission's Special Management Area Rules.**
42

43 Mr. Jim Geiger: Thank you for sticking in, I know this is very long and I'm gonna keep my
44 remarks really short. Effectively my clients had violations of the SMA, the Special Management
45 Area and the Shoreline Setback. We are remediating those. We have a plan. We're ready to
46 go and what we're here on today is effectively an up or down vote to approve the Settlement

1 Agreement. That's all that the Commission is entitled to do. This is not something like permit
2 where you come in and you put additional conditions or things like that on. This is something
3 separate where it's really just an up or down vote. We have reached an understanding with the
4 Department as to all the remediation things. We've been ready to go forward and do that for
5 over a year. We're just waiting to get this settlement approved or the remediation agreement
6 approved by this body and then we're ready to get everything done. And so that's what we have
7 and I'll be happy to answer questions of the body if they wish.

8
9 Vice-Chair Higashi: Director?

10
11 Mr. Spence: I have nothing to add. This has been...I just trust the Commissioners have
12 reviewed this. You can see the photographs of what has taken place. You've also heard
13 testimony this morning in particular on the you know this agenda item requesting additional
14 shoreline access, stuff like that...I don't, this is basically about structures and uses within the
15 shoreline area that were not permitted. There's no...you can't require additional shoreline
16 access as a part of this agreement. That said, you could once we receive the \$100,000 we
17 could on the behalf of the Commission transmit a letter to the County Council saying please use
18 this money for shoreline access. That is entirely within your, you know, power to recommend
19 things to the Council. The Council is in charge of the budget. Receiving this money you can't
20 dictate, you can request how it's spent, you can't dictate how it's spent.

21
22 Vice-Chair Higashi: So what's the desire of the commission?

23
24 Ms. Canto: I'm sorry, I have a question for the Director? So we can suggest it, but we can't?

25
26 Mr. Spence: Right. You cannot require how fines are spent. We receive the fines. If you
27 approve this agreement, we will receive the funds, it gets deposited into the General Fund. The
28 County Council could go hey there's another \$100,000 let's put this in the Open Space Fund or
29 let's set it aside for beach access or something like that. They can...Council has control over
30 the budget. They will dictate how the money is used.

31
32 Ms. Canto: Is there another fund that we could delegate it to or?

33
34 Mr. Spence: No. It's entirely up to the Council once that check is deposited.

35
36 Ms. Gomes: It's going to the Pcards.

37
38 Vice-Chair Higashi: Commissioner Robinson?

39
40 Mr. Robinson: Director what if we vote to reject the settlement?

41
42 Mr. Spence: If you want to vote to reject the settlement you should probably put your reasons
43 on the record and I might suggest we go into executive session to discuss your rights and
44 privileges and all that good stuff with your Corporation Counsel.

45
46 Vice-Chair Higashi: Commissioner Carnicelli?

47

1 Mr. Carnicelli: I know it's a really long day and everybody needs to go home, but I would like to
2 make a motion to go into executive session to discuss our attorney our options other than just a
3 yes or a no in this particular thing.

4
5 Vice-Chair Higashi: Is there a second to that?

6
7 Ms. Canto: Second.

8
9 Ms. Gomes: Second.

10
11 Vice-Chair Higashi: Commissioner Gomes second the motion to go into executive session. All
12 those in favor raise your hand?

13
14 Mr. Spence: Five ayes.

15
16 Vice-Chair Higashi: Opposed?

17
18 Mr. Spence: No, noes. He didn't vote so that's an affirmative.

19
20 Vice-Chair Higashi: Okay, we're going to go into executive session must leave the room now.

21
22 **It was moved by Mr. Carnicelli, seconded by Ms. Gomes, then**

23
24 **VOTED: To Go Into Executive Session.**
25 **(Assenting – L. Carnicelli, T. Gomes, K. Robinson-Abstained,**
26 **P. Canto, C. Tackett, S. Castro)**
27 **(Excused – L. Hudson, S. Duvauchelle)**

28
29 The Commission went into executive session at 4:20 p.m. to approximately 4:36 p.m., and the
30 regular meeting was reconvened at 4:37 p.m.

31
32 Vice-Chair Higashi: Commissioner Carnicelli?

33
34 Mr. Carnicelli: Thank you Chair, I would like to make a motion to defer decision making on this
35 resolution agreement to get more information from the Department on the violations, all of the
36 violations, the length of the violations, the dollar amount of accrued fines and anything else that
37 the Department might feel is helpful in us making a decision based on the entire big picture of
38 where we came to with this settlement agreement.

39
40 Mr. Robinson: I second that.

41
42 Vice-Chair Higashi: Okay, it has been moved and seconded by Commissioner Robinson.

43
44 Ms. Gomes: I think we wanted to add knowing the contractor as well in regards—

45
46 Mr. Carnicelli: If we can get it.

47

1 Mr. Spence: I don't know if we know that.

2

3 Vice-Chair Higashi: All right, any discussion to the motion? None, Director would you like to
4 restate the motion?

5

6 Mr. Spence: You may want to ask counsel?

7

8 Vice-Chair Higashi: Counsel you have the floor before we vote.

9

10 Mr. Geiger: Thank you very much. I appreciate it. The contractor who has been ready to go for
11 over a year is Scott Brothers and they've done similar work on the west side as being has to be
12 done here. So as I said before, we're ready to go, we ready to correct these violations. We just
13 need the settlement approved so we can proceed because we can't get...we can't proceed
14 without getting the settlement approved.

15

16 Mr. Giroux: Jim that's not the original contractor is it who put in this project?

17

18 Mr. Geiger: Oh, no, no. Absolutely not.

19

20 Mr. Giroux: Yeah, that's what...(inaudible)...

21

22 Mr. Geiger: We can't even tell you. These things were added over time at different times and I
23 don't think we could even tell you who did the work. We can just tell you we have a contractor
24 lined up to do the work ready to go and has been ready.

25

26 Mr. Spence: Okay. Okay, so the motion is to defer until we can get the Commission additional
27 information including copies of the original Notices of Violation, amounts of accrued fines. Other
28 stuff I can look back into what Mr. Carnicelli was requesting. Basically you want more
29 information, get a full information about what took place and then come back and make a
30 decision then.

31

32 Vice-Chair Higashi: Okay, discussion? Commissioner Robinson?

33

34 Mr. Robinson: I think there's gonna...there's gonna have to be a trail on who did the
35 construction. You know somebody had to...the association had to pay for it somehow. If it's an
36 employee of the association or if it's a contractor or the length of time. I think it's something that
37 might take them some time to look up but I think that's some information that shouldn't be too
38 hard to find out who you paid to put in the patio and the stairs.

39

40 Vice-Chair Higashi: Any other discussion?

41

42 Ms. Gomes: I just wanna state that I agree with Commissioner Robinson that there is a trail and
43 particularly it may not have been a licensed contractor, I'm assuming, that's just in my opinion
44 since this seems to be piecemealed as it was built. But there seems to be some kind of trail
45 'cause there's some monies that was paid out.

46

1 Vice-Chair Higashi: All right, all those in favor of the motion please signify by raising your right
2 hand?

3
4 Mr. Spence: That's six ayes.

5
6 Vice-Chair Higashi: Opposed? Nobody's opposed. The motion carried.

7
8 **It was moved by Mr. Carnicelli, seconded by Mr. Robinson, then**

9
10 **VOTED: To Defer Action on the Settlement Agreement in Order to Receive**
11 **Further Information Regarding Original NOVs, Accumulated Fines,**
12 **Photos of the Original Violations, Explanation on Negotiation.**
13 **Applicant is asked to Provide Information Regarding Contractors,**
14 **What and When was Built.**
15 **(Assenting – L. Carnicelli, K. Robinson, P. Canto, T. Gomes,**
16 **C. Tackett, S. Castro)**
17 **(Excused – L. Hudson, S. Duvauchelle)**

18
19 Mr. Spence: Okay, we'll defer and let you know.

20
21 Vice-Chair Higashi: Next on the agenda?

22
23 **F. ORIENTATION WORKSHOP NO. 2**

- 24
25 **1. Special Management Area Rules and Shoreline Setback Rules**
26 **2. Flood Hazards**
27 **3. County's Policy Against Discrimination**
28 **4. Update of the General Plan – Long Range Division and Plan Implementation**
29 **5. Property Rights**
30 **6. Rational Nexus and Rough Proportionality**

31
32 Mr. Spence: Okay, Commissioners, we dismissed your workshop. We think we should
33 probably, I think this Item G, we wanted some discussion on the maximum time period to make
34 decisions.

35
36 **G. COMMUNICATIONS**

- 37
38 **1. Commission Discussion on amending Section 12-201-34 of the**
39 **Commission's Rules of Practice and Procedure regarding Maximum Time**
40 **Period for Decision,**

41
42 **The Commission may take action on this matter.**

43
44 Mr. Spence: As you know in State law there is a 120 days and from the time of I think it's the
45 application is deemed complete or the public hearing I forget which but that's not a part of your

1 rules. So we wanna make sure that if something does get approved by default there may be
2 some conditions or something. So the discussion was to amend your rules.

3
4 Item H is the acceptance of the Action Minutes of April 11, 2017 and the Regular Minutes of
5 July 26, 2016.

6
7 **H. ACCEPTANCE OF THE ACTION MINUTES OF THE APRIL 11, 2017 MEETING AND**
8 **REGULAR MINUTES OF THE JULY 26, 2016 MEETING**

9
10 Mr. Robinson: Are we going to talk about G or we just talked about talking about it?

11
12 Mr. Carnicelli: So moved.

13
14 Mr. Spence: Well, if you want to take the time to talk about it now that's fine.

15
16 Mr. Robinson: No, I mean are we deferring it to another date or?

17
18 Mr. Spence: Yes.

19
20 Mr. Robinson: Okay, sorry. That's fine. Second.

21
22 **It was moved by Mr. Carnicelli, seconded by Mr. Robinson, then**

23
24 **VOTED: To Accept the Action Minutes of the April 11, 2017 Meeting and the**
25 **Regular Minutes of the July 26, 2016 Meeting.**
26 **(Assenting – L. Carnicelli, K. Robinson, P. Canto, T. Gomes,**
27 **C. Tackett, S. Castro)**
28 **(Excused – L. Hudson, S. Duvauchelle)**

29
30 **I. DIRECTOR'S REPORT**

31
32 **1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning**
33 **Commission pursuant to Commission's SMA Rules of the following Special**
34 **Management Area (SMA) Emergency Permit:**

35
36 **a. Approval letter dated April 4, 2017 to ANTHONY GERARD**
37 **FREDERICO of PENINSULA DEVELOPMENT HAWAII TRUST and**
38 **BRANDON MURR of CDF ENGINEERING LLC requesting a SMA**
39 **Emergency Permit to implement temporary repair work to mitigate**
40 **the impacts of three (3) sinkholes located mauka of the existing**
41 **seawall at the Maui Sands II property at 3559 Lower Honoapiilani**
42 **Road, TMK: 4-4-001: 071, Lahaina, Island of Maui. (SM3 2917/0005)**
43 **(K. Scott)**

44
45 **This is for notification and review purposes.**
46

1 Mr. Spence: Director's Report. The first item is an approval letter for an SMA Emergency
2 Permit. That is for your notification and review purposed. They will have to come back to us
3 with like a permanent fix on this.

4
5 **2. SMA Minor Permit Report**

6
7 **3. SMA Exemptions Report**

8
9 Mr. Spence: You also have your SMA Minor Permit and SMA Exemptions Report if there are
10 any questions or you just may want to acknowledge receipt.

11
12 Mr. Robinson: So move.

13
14 Mr. Carnicelli: Second.

15
16 Mr. Spence: That was approved.

17
18 **4. Discussion of Future Maui Planning Commission Agendas**

19
20 **a. May 9, 2017 agenda items**

21
22 Mr. Spence: Okay discussion on future Planning Commission agendas. So your next
23 Commission meeting is May 9th. You're going to have three public hearings. One is Ms.
24 Maryann Wheeler, requesting a Special Use Permit for a B&B. Mr. Chris Smith requesting a
25 Short-Term Rental Home in Lahaina. Mr. Steven Gatchell, also in Lahaina requesting a Short-
26 Term Rental Home. Those are being brought to you because there's two other...there's more
27 short-term rental homes within 500 feet of each other. Then there's two Communication items.
28 One is Ms. Lorraine Grace of Sunrise Center Inc., requesting an extension of their Land Use
29 Commission Special Use Permit and Mr. David Dantes and they're in Haiku, excuse me, Huelo
30 And then number two is Mr. David Dantes requesting a five-year time extension for his Special
31 Use Permit to operate a B&B also in Haiku and he is not on the shoreline.

32
33 Mr. Carnicelli: Why does he need to come back to us then?

34
35 Mr. Spence: Special Use Permit.

36
37 Mr. Carnicelli: Oh Special Use Permit, got it.

38
39 Mr. Spence: Both those, those last two are time extensions.

40
41 Mr. Carnicelli: Got it.

42
43 Ms. Gomes: I'm sorry Director but we deferred an item, the International Colony Club is that
44 gonna go?

45
46 Mr. Spence: Yeah, I'm not sure when that's gonna go back on.

1
2 Ms. Gomes: Okay, just wanted to—
3
4 Mr. Spence: That's a good catch.
5
6 Unidentified Speakers:(inaudible)...120 days is what they got.
7
8 Mr. Spence: Oh yeah we deferred that till the meeting before 120 days runs out.
9
10 Vice-Chair Higashi: So the next meeting is May the 9th. No other discussion? Meeting
11 adjourned.
12

13 **J. NEXT REGULAR MEETING DATE: MAY 9, 2017**

14
15 **K. ADJOURNMENT**

16
17 The meeting was adjourned at 4:46 p.m.
18

19 Submitted by,

20
21 Carolyn Takayama-Corden
22 Secretary to Boards & Commissions II
23

24 **RECORD OF ATTENDANCE**

25
26 **Present**

27 Pua Canto
28 Lawrence Carnicelli
29 Stephen Castro
30 Sandy Duvauchelle, Chairperson (excused at 4:00 p.m.)
31 Tina Gomes
32 Richard Higashi, Vice Chairperson
33 Keaka Robinson
34 Christian Tackett
35

36 **Excused**

37 Larry Hudson
38

39 **Others**

40 Will Spence, Director, Planning Department
41 James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
42 Rowena Dagdag-Andaya, Deputy Director, Department of Public Works