

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 24, 2017**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Max Tsai at approximately 9:06 a.m., Tuesday, January 24, 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 Tsai: Good morning everyone. Today is January 24, 2017, the Maui Planning Commission is called to order. I want to take a moment to acknowledge our commissioners on hand. We have Commissioner Hudson, Commissioner Robinson, Commissioner Higashi, Commissioner Castro, our Vice-Chair Commissioner Duvauchelle, and Commissioner Hedani. And my name is Max Tsai, I'm your Chair. Also, I'd like to ask everyone to please silence their cellphones as a courtesy to everyone here.

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

Chair Tsai: I'm going to open the floor for public testimony at this time. Anyone wish to testify on any agenda items may testify now or you may wait for the agenda item comes up and this gives the ability for people to actually testify now instead of having to wait for the agenda to come up. So you can either testify now or you can wait until the agenda item comes. You can do one or the other. You can't do both. So I have a sign up list. Let me know if you want to wait or you want to testify now. I have Stephen Hynson.

Mr. Hynson: I'm going to wait.

Chair Tsai: Okay. Ann Bassel.

Ms. Bassel: I'll wait.

Chair Tsai: Jake Rohrer.

Mr. Rohrer: I'll wait.

Chair Tsai: Reverend Benny Mariano.

Reverend Mariano: I'll wait.

Chair Tsai: Okay, Reverend Ed Gazmen.

1 Reverend Gazmen: Gazmen. I will wait.  
2  
3 Chair Tsai: Okay, Jayson Albino.  
4  
5 Mr. Albino: I'll wait.  
6  
7 Chair Tsai: Okay. I think it starts with a C and an R. Cris, sorry you wait or testify? Okay,  
8 Rodel Pante.  
9  
10 Mr. Pante: Wait.  
11  
12 Chair Tsai: Syrahlyn? Okay, Peter Rohrer?  
13  
14 Mr. Rohrer: Rohrer. I'll wait.  
15  
16 Chair Tsai: Danny Coltart.  
17  
18 Mr. Coltart: I'll wait.  
19  
20 Chair Tsai: Missy Prosser.  
21  
22 Ms. Prosser: I'll wait.  
23  
24 Chair Tsai: Hal Davis.  
25  
26 Mr. Davis: Now.  
27  
28 Chair Tsai: Okay. Please come forward you have three minutes. Identify yourself please.  
29  
30 The following individual testified at the beginning of the meeting:  
31  
32 Hal Davis – Item E-2, Adoption of Decision and Order  
33  
34 His testimony can be found under the item on which he testified on.  
35  
36 Chair Tsai: Thank you. Anyone else wish to testify at this point? Seeing none, public testimony  
37 is now closed. We're going onto our first agenda item. Director?  
38  
39 Mr. Spence: Okay, Commissioners we're on Item C-1. This is a request by Pastor Benedicto  
40 Mariano requesting comments on a Draft Environmental Assessment to demolish a 1,000  
41 square foot single-family structure in order to construct the new International Christian

1 Fellowship Church at 281 Prison Street in Lahaina. Our Staff Planner this morning is Mr. Paul  
2 Fasi.

3  
4 **C. NEW BUSINESS**

- 5  
6 1. **PASTOR BENEDICTO MARIANO requesting comments on the Draft**  
7 **Environmental Assessment (DEA) to demolish the 1,000-square foot**  
8 **single-family structure built in 1945 and construct the new International**  
9 **Christian Fellowship Church located at 281 Prison Street, TMK: 4-6-011:**  
10 **023, Lahaina, Island of Maui. EA 2011/0003 (CPA 2016/0001) (P. Fasi)**

11  
12 **The EA triggers are the Community Plan Amendment application and the**  
13 **project being located in the Lahaina National Historic Landmark District.**

14 **The public hearing on the community plan amendment, district boundary**  
15 **amendment, and change in zoning requests will be scheduled after the**  
16 **applicant has completed the Chapter 343, HRS process.**

17 **The Commission is being asked to be the approving agency for the final**  
18 **environmental document and to provide its comments.**

19  
20 Mr. Paul Fasi: Good morning Commissioners. Good morning members of the public. We are  
21 here to review the Draft EA on the International Christian Fellowship Church. The EA  
22 serves...the Department has reviewed the Draft EA that pursuant to OEQC the document meets  
23 the requirements of a Draft EA. The Commission is being asked today to be the approving  
24 agency for the EA, the Draft EA and to provide its comments on the Draft EA. The Department  
25 is also requesting concurrence from the Planning Commission that the anticipated FONSI  
26 determination be made so we can then file the FONSI with OEQC today. The public hearing on  
27 the Community Plan Amendment, the District Boundary Amendment and Change in Zoning  
28 request will be reviewed after the EA process is done. So we need to get through the EA  
29 process and then we're gonna come back to this board and then we will deliberate on the  
30 Change in Zoning, the DBA, and the Community Plan Amendment. So the EA serves as a...will  
31 be the supporting document for all three land use entitlement applications when it comes back  
32 to the Commission. So we have to focus today on the Draft EA and issue the FONSI, the  
33 anticipated FONSI and then we can move onto the next land use entitlement process.  
34 Raymond Cabebe is here from Chris Hart & Partners. I see Jordan Hart's here also. They have  
35 a small presentation to do. So I'm going to turn it over to them if you don't have any questions  
36 for the Department. Thank you.

37  
38 Mr. Jordan Hart: Thank you very much Chair and Members. My name is Jordan Hart of Chris  
39 Hart & Partners. I'm here with Raymond Cabebe who is the lead planner on this project as well  
40 as Pastor Benedicto Mariano, who is the Pastor of the International Christian Fellowship as well  
41 as some of his parishioners. We're here to present the Draft Environmental Assessment in  
42 order to collect your comments on that. After we do collect the Planning Commission's

1 comments we will make any necessary adjustments to the Draft EA along with any other  
2 agencies that have commented and then we will present that Final EA to you in a complete  
3 document for your determination on that finding of no significant impact. So without further ado  
4 I'd just like to go through a little bit of the process. Other project members, our landscape  
5 architect is David Sereda from Chris Hart & Partners. Stacy Otomo is our civil engineer and our  
6 traffic engineer is Phillip Rowell.

7  
8 Just a regional location map, the project is located in Central Lahaina, mauka of the highway.  
9 This is a tax map key. This is the Honoapiilani Highway here. North is up top, south is down  
10 below and then Prison Street is the mauka-makai street that passes the property. This is an  
11 aerial location map. Some notable landmarks you can see is Mokuula is down here. It's just for  
12 context of where it is but it's mauka of the existing town of Lahaina.

13  
14 The existing land use designation is Agricultural. We're requesting a State Land Use District  
15 Boundary Amendment to Urban. There is one sliver of Open Space that's a remnant from the  
16 planning of the highway and it's on the applicant's property and so we're proposing a  
17 Community Plan Amendment to Business/Commercial. The majority of the property is already  
18 Business/Commercial which is a designation that allows for churches and so we're doing a  
19 change in zoning to allow reflect that so that the entire property will be B-1 Business in the  
20 community plan Business District which is consistent with the overall existing designations of  
21 the property and it allows for the proposed use.

22  
23 This is a State Land Use Map you can see the Urban District is generally as it's currently  
24 existing makai of the highway. This is an Urban Growth Boundary so you can see what the  
25 County of Maui is planning in the context of urban development for the area of Lahaina and so  
26 the area surrounding the project site will ultimately become urban and so this is one of the  
27 earlier requests for District Boundary Amendments that's being proposed. So again, this is the  
28 Maui Island Plan.

29  
30 This is the Community Plan Map for West Maui. You can see there's the red portion here is the  
31 Business portion and then that lighter blue colored portion is that open space remnant that was  
32 a result of the community planning for the highway development. And so now the highway's  
33 developed and they needed that portion of the right of way it remains on the applicant's land  
34 area and so they'd like to basically clarify that community plan designation so they can proceed  
35 with their plans.

36  
37 This is the County Zoning Map it's currently Agricultural mauka of the highway and so we're  
38 proposing that change to commercial.

39  
40 This is Lahaina National Historic Landmark District Boundary Map. We're basically at the very  
41 mauka bounds of the area. You can see the boundary is up here and the project site is right  
42 here, but it's a very broad area. And so something that should be said is that the proposed

1 design for the church is consistent with the Architectural Stylebook for Lahaina which the intent  
2 of that document is to maintain the historic integrity of future developments in the Lahaina  
3 National Historic Landmark District in Lahaina Town Historic Districts 1 and 2 which are County  
4 designations which just to reiterate this project is outside of the County Historic Districts which  
5 are here and here.

6  
7 So the proposed action consists of basically demolishing the existing residence and  
8 construct...and that's approximately a 1,000 square foot structure and reconstructing a 3,000  
9 square foot church. And so the triggers for the environmental assessment are location within  
10 the Lahaina National Historic Landmark District and the proposed Community Plan Amendment  
11 to clean up that land use designation remnant from the highway. The parcel is 10,900 square  
12 feet in size.

13  
14 So these are some orientation photographs. Here you're looking north on Honoapiilani  
15 Highway, the property is here on the north side of this crosswalk that crosses the highway.  
16 These are photos of the project site, the structure, the property is located here on the north  
17 corner, mauka side of the highway. This is a photo of the property itself. This is on Prison  
18 Street looking makai so the property here on this corner. That's the highway out there. This is  
19 on the highway looking mauka on Prison Street so the property is here. And then this is Mill  
20 Street so that's the canehaul road parallel to the highway and you're looking south there just for  
21 character.

22  
23 This is the site plan that's proposed. One thing is landscape architect, David Sereda was able  
24 to basically prepare a plan based around existing mature trees and so that's nice to be able to  
25 preserve those. Those are these trees that are in the back end of the property and then there  
26 are some milo trees that are proposed to meet the County's parking ordinance for shade trees  
27 and then we're also proposing some native and drought tolerant plants for screening and  
28 beautification.

29  
30 This is the site plan of the church on the ground level. You can see the sanctuary with  
31 restrooms and there is a kitchen here. Access out to the parking lot here. And then on the  
32 upper floor is the pastor's residence that's proposed within the church.

33  
34 As discussed earlier, the project is proposed to be designed within...to comply with the  
35 Architectural Stylebook for Lahaina which is to preserve the integrity of the Lahaina National  
36 Historic Landmark District and so the finished character of this structure will be consistent with  
37 the Baldwin Estate or the Baldwin Home Museum that's on Front Street. And so if you can  
38 envision the material and the finish of the structure that's what the parish is shooting for. And  
39 you can see it's consistent with those design standards.

40  
41 So regarding access, access is on a county road, Prison Street. They're proposing 13 parking  
42 stalls consistent with parking ordinance, a New England country-style, residential scale

1 architectural design, cement plaster finish with front and rear porches and it's consistent with the  
2 Lahaina 19<sup>th</sup> century character of the National Historic Landmark District. Gable style roof with  
3 shingles, a bell steeple.

4  
5 There's an existing water meter serving the existing residence it's going to accommodate the  
6 proposed development, 425 gallons per day is the estimated demand and then there's existing  
7 connection to the county sewer system that will be maintained. All drainage will be maintained  
8 on site, not all drainage, I need to correct that statement. The increased and post development  
9 runoff will be retained on site consistent with the County of Maui's drainage standards and  
10 water...stormwater quality standards.

11  
12 Phillip Rowell is our traffic engineer. So basically the majority of the volume is occurring on the  
13 highway and that was measured in midday and morning hours. You can see the counts there  
14 1,230 vehicles passing in the morning, 1,445 vehicles passing in the afternoon. The project is  
15 gonna generate inbound and outbound trips. In the morning 23 inbound and 37 outbound. In  
16 the midday 23 and 37 in and out. And so that represents approximately 2.7 percent of the  
17 projected growth in the area. So this a level of service table to identify what the levels of service  
18 mean. And then the lower table represents the project traffic. It's basically the traffic studies  
19 horizon date with and without the project. There is one adjustment, as you can see the  
20 eastbound right and through does have an adjustment to the traffic level of service. All other  
21 levels of service either maintain their situation or they improve due to other regional  
22 improvements which are occurring.

23  
24 So agencies that have comments, State Department of Health, Transportation, Environmental  
25 Management, Fire, Public Works and Water. I believe you would have copies of all those  
26 comment letters. We feel that the comments in general are all relatively standard comments or  
27 being directly addressed by the applicant's proposal. And so in conclusion the project is  
28 establishing consistency with the majority of their parcel which is community planned for  
29 business/commercial development. The proposed use of a church is consistent with the  
30 business/commercial land use designation. The remnant open space portion that was a result  
31 of the development of the Honoapiilani Highway is no longer required by the County and State  
32 agencies which you know we've established through the comment process. And that the  
33 architectural design is consistent with the standards of the Lahaina National Historic Landmark  
34 District and then of course, the applicant is proposing appropriate mitigation measures for any of  
35 the comments that we have received. And for these reasons we feel that the Draft EA is  
36 relatively intact but we look forward to your comments and we anticipate that we will be able to  
37 present a Final EA that can secure a Finding of No Significant Impact from the Commission.  
38 Thank you very much

39  
40 Chair Tsai: Thank you Jordan.

41  
42 **a) Public Hearing**

1 Chair Tsai: At this time we're gonna open up the floor for public testimony. Anyone wish to  
2 testify on this agenda item please come forward, identify yourself, you have three minutes.

3  
4 Pastor Ed Gazman: Good morning, see what happens when you're short. You know it's good  
5 to be...nice to be a pastor because—  
6

7 Chair Tsai: I'm sorry, sir can you please identify yourself for the record?  
8

9 Pastor Gazmen: I'm sorry, I'm sorry. My name is Ed Gazmen, Reverend Ed Gazmen. I'm one  
10 of the pastors at Living Way Church at Happy Valley. I came here as a support to Pastor Benny  
11 and also to the project they want to see done. I have known Pastor Benny for over 30 years in  
12 the ministry. We've worked together alongside. I have gone to their place to minister. And  
13 through all the years I've noticed something that is interesting that as a church and as a pastor  
14 they have been very, very consistent in the way they have service or open up their ministry to  
15 west side. Obviously International Christian Fellowship Church most of their members are our  
16 Filipino group. Many of them come from...have come recently from the Philippines and one of  
17 the things that really impress me is the fact that they have a very strong tendency to minister to  
18 the Filipino youth that just came from the Philippines and many of them of course have  
19 problems with drug issues and especially in their inability to understand the identity that they  
20 have once they come here from the old country. Christian...International Christian Fellowship  
21 for a long, long time have been able to minister to the needs of the community but you know  
22 what folks obviously a place to call your home and be able to minister to 24/7 would be really,  
23 really good. All this time they would be dependent on whatever place are available for ministry.  
24 They have been at the Princess Nahienaena Elementary School for the last 20 years and  
25 obviously they can only use that place for a certain amount of time during the week and  
26 especially Sunday. So I really would love to tell you to please look at this in a very favorable  
27 manner. We are excited to be able to minister more to the people on the west side. Thank you  
28 very much.

29  
30 Chair Tsai: Thank you. Next please?  
31

32 Pastor Benny Mariano: I am the Reverend Benny Mariano, the Pastor of the International  
33 Christian Fellowship in Lahaina. The reason why we are here so that you do favor of our  
34 application for a church in Lahaina. Did you know that the fastest growing community in the  
35 island or the State of Hawaii are Filipinos? As I notice the census in the Island of Maui we have  
36 more than 27,000 Filipinos and they're getting bigger and bigger through immigrant and just  
37 because Filipinos is a young generation many, many more children was born in the family of  
38 Filipinos. We are part also of a program on the west side, the feeding program to the homeless.  
39 We do counseling for those who are in need. We visit people if they are sick not only to our  
40 organization but to all different, different religion, even Roman Catholic they invite us to minister  
41 to them. And I hope this time that we are here to testify we are here to ask your favor to  
42 consider our application as because we are waiting for more than 10 years already. And today,

1 I believe like what I said, if you consider our ministry on the west side I hope you will be...you  
2 are favor of our application. Thank you very much.

3  
4 Chair Tsai: Thank you. Next please?

5  
6 Mr. Jayson Albino: Good morning, my name is Jayson Albino. I'm the Youth Pastor of  
7 International Christian Fellowship and of course I'm here to support the congregation and under  
8 the leadership of Pastor Benny. But I've been there for 16 years serving the youth. I started,  
9 you know as part of the youth and then grew up to be a leader and then since then I've been  
10 just leading the youth, bible studies, worship ministries. So what we do there is as a leader, I a  
11 disciple you know with other groups with leaders we disciple instruments. We teach them about  
12 character, you know, special belief and the way that they should go as kids and as teenagers  
13 especially with the times that we are in right now. But I'm here to stand, I'm not gonna speak  
14 long but they said a lot of it already, but of course the favor and it's been a long awaited time  
15 and this is surreal that we're here, that it's actually really happening this part of the steps to go  
16 on. But yeah, we do have Sunday Schools. We house as many young people that we can and  
17 reach out to the needy, and as a Youth Pastor that's kind of like our focus. You know that's our  
18 field to help the youth grow in a way that they should be. And I think that's it, but I just want to  
19 thank you for the time and for listening.

20  
21 Chair Tsai: Thank you.

22  
23 Pastor Elzabar: I am Pastor Elzabar from the Philippines. I just arrived here in Maui almost two  
24 years and now I am in favor of my friends, my church in the Philippines. Both of us graduated in  
25 the Miracle Bible College in the Philippines until such time Reverend Benny Mariano married  
26 Pastor Diana and the lord give them the way to come here in the Philippines so they came here  
27 and because of his calling as a minister of God he continue to minister here in Lahaina. And as  
28 I know the ministry of Reverend Benny, Reverend Benny Mariano, very fast in growing in  
29 number that is why they really need the building church because at present they are renting the  
30 cafeteria. So I know that the Pastor Benny and his staff they agreed to have a building and God  
31 will give them a blessing that is why they are now here commissioner to ask your favor to to  
32 receive their petition and I believe that if there is a building church in Lahaina the Pastor  
33 Mariano there will be many people came to know Jesus, the young people, the adults and  
34 everything. So now I observe because I used to attend their service and Lahaina so I strongly  
35 believe that this fellowship the lord will be bless this fellowship. So thank you very much  
36 Commissioner. That is only what I testify regarding Reverend Benny Mariano. Thank you.

37  
38 Mr. Ferdel Pante: Good morning. My name is Ferdel Pante. I've been on the island for more  
39 than 20 years and that was the first church I been to and what I see is they need of the building  
40 for the church and even in the Princess Nahienaena Cafeteria for more than 20 years and I'm  
41 one of the music player. I'm one of the drummer and we've been doing it for more than 20  
42 years putting the instrument, all the P.A. system and some of the people are, you know, so



1 much old folks with us and you know they cannot really just carry those heavy stuff so for me  
2 that's the needed, you know to have a permanent church so that we're not doing it all the time  
3 and we have all those free time that we can do to worship God and also to minister with the  
4 people in the community and so that we are here for the people, for the church to be built. So  
5 we're asking for you guys to consider application so that for this younger generation that will  
6 come they will not doing what we are doing now so that we not being carrying all the time and  
7 we cannot be there all the time at the school cafeteria that we really need a permanent for us to  
8 worship. So that's all. Thank you.

9  
10 Ms. Syrahlyn: Good morning my name is Syrahlyn and I've been with the church for 11 years  
11 an ever since I came to Hawaii I was 14 back then and I consider this church as my second  
12 home. They've welcomed me when I was struggling in school and they've become my second  
13 family and I would like every youth also in this generation to feel the same way as what I felt, but  
14 it's kind of hard for us now to reach out and bring people to church because we don't have a  
15 place for them to come in anytime because we're only limited on during Sundays for our  
16 services and we have lot of activities like bible study, prayer meetings, discipleship, we also  
17 teach music instruments but we do it our own homes because we don't have a church to do it.  
18 So if...with this request that we have today we'd like for your favor to grant this request because  
19 it won't just...it won't just benefit our church but it will benefit also the community not only in  
20 Lahaina, but we also have meetings with other churches here in Kahului, Wailuku, Kihei and  
21 they would love to minister on that side of the island but we don't have a place to do it so we're  
22 like so limited with what we can do. So if we have this church, this building we can do more and  
23 hopefully youth, and not only youth but people who doesn't have any homes will feel welcome in  
24 our church. Yeah, that's all and thank you for listening.

25  
26 Chair Tsai: Anyone else? Seeing none, public testimony is closed. Questions from the  
27 Commission? Commissioner Hedani?

28  
29 Mr. Hedani: This is not a question. This is just a comment on the Environmental Assessment. I  
30 wanted to compliment the church on their architectural design of the facility in keeping with the  
31 guidelines of the Lahaina Historic District. I think it's very nice.

32  
33 Chair Tsai: Do I get a motion? Yeah, can we get the recommendation from the Department?

34  
35 Mr. Fasi: Thank you Chair. The Department's recommendation is to accept the Draft EA and  
36 issue the Findings of No Significant Impact to the OEQC.

37  
38 Chair Tsai: Thank you. Commissioner Hudson.

39  
40 Mr. Hudson: Move to accept.

41  
42 Commissioner Higashi: Second.

1 Chair Tsai: Okay, moved by Commissioner Hudson, second by Commissioner Higashi.  
2 Discussion regarding the motion? None. Okay, call for a vote. Director would you please  
3 repeat the motion?

4

5 Mr. Spence: To Approve the Finding of No Significant Impact.

6

7 Chair Tsai: Okay, all in favor?

8

9 Mr. Spence: That's six ayes.

10

11 Chair Tsai: No opposed. Motion carries. Congratulations.

12

13 Mr. Hart: Thank you very much.

14

15 Chair Tsai: Thank you.

16

17 **It was moved by Mr. Hudson, seconded by Mr. Higashi, then**

18 **VOTED: To Approve the Recommendation of the Department on the Filing of**  
19 **the Draft Environmental Assessment and Anticipated FONSI**  
20 **Determination with OEQC for Publication.**  
21 **(Assenting – L. Hudson, R. Higashi, K. Robinson, W. Hedani,**  
22 **S. Duvauchelle, S. Castro)**  
23 **(Excused – P. Canto, L. Carnicelli)**

24

25 Chair Tsai: Okay, next item.

26

27 Mr. Spence: Okay, Commissioners we're on Item D-1, Mr. Rory Frampton of Rory Frampton  
28 Consulting on behalf of Makila Ranches requesting deletion of Conditions 17 and 20 of a  
29 previously approved SMA Permit, and ...oh, Ann is here.

30

31 Ms. Cua: Mr. Chair and Members, Rory needs a little bit of time to set up. Could we please  
32 take a short break and then Kurt is the planner on this project. I'm just here to sub for him for a  
33 little bit. He's on his way. So if you could just take a short break while Rory sets up?

34

35 Chair Tsai: How much time do you need?

36

37 Ms. Cua: Five minutes.

38

39 Chair Tsai: Okay, you get five minutes.

40

41 Ms. Cua: Thank you.

42

1 A recess was called at 9:42 a.m., and the meeting was reconvened at 9:47 a.m.

2  
3 Ms. Cua: I'm sorry Chair did you read the...

4  
5 Chair Tsai: Yes. Director, next agenda item?

6  
7 Mr. Spence: Okay, Commissioners we're on Communications, Item D-1, again, Mr. Rory  
8 Frampton of Rory Frampton Consulting on behalf of Makila Ranches requesting deletion of two  
9 conditions on a previously approved SMA Permit. Kurt Wollenhaupt is the Staff Planner but Ann  
10 Cua is standing at least for a little bit.

11  
12 **D. COMMUNICATIONS**

- 13  
14 **1. MR. RORY FRAMPTON of RORY FRAMPTON CONSULTING, INC. on behalf**  
15 **of MAKILA RANCHES, INC. requesting deletion of Condition Numbers 17**  
16 **and 20 of the previously approved Special Management Area Use Permit**  
17 **for the Makila Ranches Phase 2 Agricultural Subdivision creating eleven**  
18 **(11) agricultural lots, one (1) non-developable greenway lot, and two (2)**  
19 **roadway lots with associated improvements and infrastructure at TMK: 4-7-**  
20 **014: parcels 1-14 (formerly TMK: 4-7-001:026), Launiupoko, Lahaina, Island**  
21 **of Maui. (SM1 2009/0014) (K. Wollenhaupt)**

22  
23 **Condition Nos. 17 and 20 related to the County of Maui's anticipated**  
24 **acquisition of Lot 12, a non-developable greenway lot and public use of the**  
25 **subdivision roadway to access Lot 12.**

26  
27 **The SMA Use Permit was approved by the Commission on December 9,**  
28 **2014.**

29  
30 **The Commission may take action on this request.**

31  
32 Ms. Ann Cua: Yes, Chair. Thank you. Kurt is on his way. You have received the Department's  
33 memo dated January 24, 2017. The two conditions in question are Condition No. 17 which  
34 reads, that the applicant understand that the intent of the internal access road referred to as  
35 Roadway A in the staff report and as Waianukolei Place and Waianukolei Street in the  
36 preliminary subdivision map shall be open to the public providing access to Lots 12 connectively  
37 between Kai Hele Ku Street and Hokiokio Street. And Condition No. 20 reads, that the  
38 applicant understands and is aware of the relationship between this SMA approval for an ag  
39 subdivision and Resolution No. 13151 approval by the Maui County Council and that resolution  
40 is included in your packet. At this point in time I'd like to turn the presentation over to Rory to go  
41 through the request and then hopefully by then Kurt will be here and the Department can add  
42 additional information. Thank you.

1 Mr. Rory Frampton: Thank you Ann and thank you Commissioners. I'm Rory Frampton, land  
2 use planning consultant here representing the applicant in this case, and the applicant is Makila  
3 Ranches, Inc., and as Ann has mentioned we basically need to for lack of better words, unravel  
4 the previous representations to this body that they Council was gonna buy a parcel of land for  
5 the Pali to Puamana Park. And I'll go into some...I do some...present some orientation slides  
6 first. This is the Lahaina area with Lahaina Town, Puamana and Launiupoko Beach Park. You  
7 can see the planned Lahaina Bypass route coming through here that you guys considered I  
8 think it was last month the Phase 1B-2 is gonna be extending along the top portion of this  
9 project and then extending all the way down to the side of the former Olowalu Landfill.

10  
11 This shows the Makila Ranches II Subdivision and essentially 11 agricultural lots that were  
12 squeezed down to the minimum lot size of 15 acres. The 15-acre lot size was prescribed by the  
13 County's agricultural zoning ordinance and what's known as the sliding scale. The remaining  
14 land area was placed below the subdivision road between the subdivision road and the highway  
15 as a greenway/buffer. And a portion of that Lot 2 is occupied by the Lahaina watershed flood  
16 control channel. And then from the flood control channel to the Launiupoko Beach Park it's all  
17 vacant and the intent was to...for the County to buy that and in the future develop it as coastal  
18 park space. And that would be at a time when the bypass is fully built such that the...a  
19 meandering coastal road could be used to travel along the shoreline rather than the existing  
20 highway which in some places along here you have waves lapping up against it.

21  
22 This is just another map showing the subdivision and if we have any questions we can go back  
23 and refer to these maps. This is the figure that was used during the acquisition proceedings  
24 before Council and there were two properties that were being considered. Property A which is a  
25 148 acres was actually proposed at one time as a similar subdivision. It was gonna be eight lots  
26 again with a road along the makai side of those lots to provide for coastal access, but the  
27 Council and the Mayor actually felt that they wanted to buy this entire piece and not allow for the  
28 subdivision and subsequent development of homes towards Olowalu so that entire piece was  
29 purchased. And this is the piece, Property B, the 37-acre piece that's under question right now.

30  
31 And what I'll do is just briefly go through the time line of events that occurred and then go to our  
32 conditions. So for the timeline, of course prior to December of 2013, a year earlier actually in  
33 2012 that green area that I showed on the previous slide was put into the Maui Island Plan and  
34 designated as a future park or open space area in the Maui Island Plan based on our  
35 representations that we provided to the Council anticipating that that would be part of the  
36 purchase. And at the time in 2012, with the Maui Island Plan and I just wanted to mention that  
37 'cause I think the Department might be bringing up provisions of the Maui Island Plan later or at  
38 least the Pali to Puamana Plan, anyway so that occurred prior to 2013. In December of 2013  
39 after months of discussion mainly about the purchase price the Council unanimously approved  
40 the Resolution 13151 to acquire both Properties A and B.

41  
42 Property B which is Lot 12 was subject to...we had to get an SMA and then final subdivision

1 approval to create the lot. Once final subdivision division would take place then that transaction  
2 would close. So right after the resolution was passed, the ordinances which amended the  
3 budget were adopted in early '14. The purchase contracts are executed and again the terms  
4 were for Property B 45 days after final subdivision or 27 months from that budget amendment.  
5

6 Property A was transferred a month later. So in February 2014 was acquired by the County as  
7 is. It didn't need to have a subdivision or SMA. We came before this body in December of 2014  
8 and we had the SMA hearing and the approval and obviously all these agreements were in  
9 place and it looked like everything was moving forward to acquire Lot 12. Final subdivision was  
10 obtained in June of 2015. That was 18 months after the budget amendment still well within the  
11 27 months of the budget amendment. However...well, so we closed subdivision, the applicant  
12 went through preparing all the closing documents to close it within 45 days.  
13

14 The Administration notified the applicant in August just before it was to close that the funding  
15 had lapsed and the applicant wasn't aware of that. The Administration had not put these funds  
16 into escrow which had they done it it would have been a done deal. But because the funds  
17 were lapsed, they had to go back to the Council to get the funds reappropriated. So just within  
18 a week of finding out that the funds had lapsed, the Administration submitted a request to the  
19 Council to reappropriate funds in the budget, the effective budget at that time which was I  
20 believe the 2016 budget and that was in August of '15, the whole year passed and it was not  
21 scheduled by Budget and Finance Committee. So in March of 2016, the Mayor submitted his  
22 budget to Council and it included the acquisition funding via Open Space Funds. So it was part  
23 of the...the Mayor basically included it as part of his budget. The Budget and Finance  
24 Committee took those monies put it into bond funds with a note that said, withhold bond  
25 authorization, so they didn't really approve it. And then there was a motion on May 20<sup>th</sup> to  
26 amend and approve the acquisition as is to basically just fund the appropriation and that failed  
27 6-3. And the members of...specifically the Council Chair, the Budget and Finance Committee  
28 Chair and the West Maui Representative were firmly against reappropriating the money. And if  
29 you like, I have the minutes of the meeting and we can go into the rationale if you guys are  
30 interested. So the acquisition failed. It was clear to everyone that the Council or at least that  
31 Council was not intending to purchase the land. So on October of 2016, the applicant formally  
32 terminated the acquisition agreement.  
33

34 So our request is as Ann mentioned is to delete Condition 17 and 20 since they're basically  
35 moot and amend our representations to the Commission in accordance with Condition No. 4.  
36 You know we have to update our representations to make it accurate to today's circumstances.  
37 Ann read Condition 17, and I'll read it one more time that the applicant understands that the  
38 intent of the internal access road referred to as Roadway A in the staff report and as  
39 Waionukolei Place and Waionukolei Street in the preliminary subdivision map shall be open to  
40 the public providing access to Lot 12 and connectivity between Kai Hele Ku and Hokiokio. And  
41 Number 20 was that the applicant understands and is aware of the relationship between this  
42 SMA approval for an agricultural subdivision and Resolution No. 13151 approved by the Maui

1 County Council.

2

3 The reasons in support of this request is basically the Council's failure to fund acquisition,  
4 resulted in a breach of the acquisition agreement and the agreement has been terminated. So  
5 this disapproval requires an update of the representations to the Commission and amendment  
6 of conditions relating to the acquisition. So our representations are that no changes in the  
7 project plans or physical improvements are proposed. It's the exact same physical layout of the  
8 roadway and improvements. In fact I believe almost all of the improvements are done, if not it's  
9 at about 95 percent. The road's in. The road's been paved, striped. Utilities are in. There  
10 might be some additional landscaping I think that needs to take place. And Lot 12 will be  
11 privately owned and still considered a nondevelopable lot. I should say, the remainder of Lot 12  
12 that's not encompassed by the flood control so there's about 28 acres left that is not  
13 encompassed by the flood control and that would be...there would be no residential dwellings or  
14 farm dwellings but other non-residential uses would be allowed in accordance with land use and  
15 environmental laws. So what's...in terms of what's allowed by zoning, in this case it's  
16 agricultural zoning or SMA...or the SMA laws. So that concludes my presentation and I'm  
17 available to answer any questions.

18

19 Chair Tsai: Thank you, Rory. At this time, we'll open the floor for public testimony regarding  
20 this agenda item. Anyone wish testify please come forward? Seeing none, public testimony is  
21 now closed. Questions from the Commission? Commissioner Hudson?

22

23 Mr. Hudson: I guess it would be more directed towards the Planning Department. Isn't this a  
24 portion of the Pali to Puamana Plan and the Maui Island Plan?

25

26 Mr. Spence: Yes it is. And I'll just...I'm sorry if this comes at any surprise to Rory, I think some  
27 concerns have been raised for you so I haven't confirmed that. There is something of a concern  
28 that the road, the roadway down to this Lot 12 could become a private road...well, it already is a  
29 private road but it could be gated off limiting future access. You know there's still a desire to  
30 complete the Pali to Puamana Plan.

31

32 Mr. Hudson: Rory, this next question is what was the original agreement to begin  
33 with...(inaudible)...

34

35 Mr. Frampton: Well, the original agreement was that as proposed by the landowner, you know,  
36 let me...I'll just comment a little bit about the Pali Puamana Plan and then I'll get to your  
37 question. The Pali to Puamana Plan you know originally the...well, it originally started off with  
38 the landowners in this area and the Administration talking about this vision and they came up  
39 with this vision of a parkway extending all the way from the Pali to Puamana. In 2005, the  
40 County came up with a draft report and they suggested that the entire highway be relocated  
41 mauka and there would be no roadway along the shoreline and you would access the shoreline  
42 via finger access points. Well, when that plan...I came on board with Makila and started doing

1 community outreach in preparation for the Maui Island Plan and we took that Pali to Puamana  
2 Plan to people. They didn't like the idea of finger access points and they didn't like the idea of  
3 giving up the coastal road which right now you can drive unfettered along the entire stretch,  
4 right? So they said well if you're gonna be developing parks in this area you know we want the  
5 ability to access those parks. They didn't like the idea of coming down the finger access roads.  
6 So that's when we came up with this concept of using the subdivision road as basically the park  
7 access road and it provided a meaningful separation between the private lots on the mauka side  
8 and the public land on the makai side and so that was kind of the concept that carried through  
9 and most people could grab onto that concept of having the regional transportation corridor  
10 mauka, a local coastal access road on the bottom side and then everything below the coastal  
11 access road would be publicly owned land. That was the intent and that's what was spelled out  
12 in this agreement that the Council approved. Basically the Council approved the terms of the  
13 agreement in the resolution and so that...the understanding was the Council was gonna...the  
14 County was gonna buy this Lot 12 and it would be owned by the County and at some point in  
15 the future they could plan and design coastal park space in that area.

16  
17 Chair Tsai: Commissioner Hudson?

18  
19 Mr. Hudson: Could you go back to Condition 17 please? You said that this is moot? How is  
20 this condition moot?

21  
22 Mr. Frampton: So the big difference here is Lot 12 is no longer gonna be open for public use.  
23 It's gonna be privately owned land. So there's no need for the road, for Roadway A to access  
24 Lot 12 because there's no public...there's not gonna be public use of Lot 12. If the applicant  
25 decides that they wanna have some uses that are open to the public they could certainly...they  
26 would certainly keep the road open, but at this point they want the option of keeping that road  
27 private and potentially cutting off or block...putting gates up between Lots 4 and 11.

28  
29 I should probably add one more comment. So there's an existing easement in place that goes  
30 from Hokiokio up to Punakea for the families in the valley. That road has to stay open for the  
31 families in the valley. It will still be privately owned but they have an authorized use agreement  
32 in place to use it. The remaining portion from Lot 4 to Lot 11 is the area that would...it's just  
33 mauka of that lot but if it stays in private ownership the reason it's moot is there would be no  
34 need to provide access to that lot since it's privately owned and that wasn't the original intent.  
35 The original intent was that that would be publicly owned so this road would provide the access  
36 to the lots, but that deal apparently is off the table.

37  
38 Chair Tsai: Director?

39  
40 Mr. Spence: And Commissioners to be fair, I am rather disappointed in the Council that they  
41 didn't choose to follow through with the purchase of this lot because I think there's a definite  
42 public benefit in owning this with this kind of shoreline access. And as you know we've heard

1 over and over again from Staff and from so many places that Honoapiilani Highway in that area  
2 is, you know, at some point it's gonna be unusable because of erosion and whatnot. I would  
3 hate to however, I still share the concern with some members of Staff that if this roadway is  
4 gated off that it will forego, it will add complications of the County the Council would like to  
5 purchase then you're negotiating with a whole lot of landowners instead of the landowner and  
6 that to me, I mean you look at those lots, they're 15 acres. Those are gonna be luxury farm  
7 dwellings and you know I understand the enjoyment of privacy, et cetera but I would hate to  
8 really forego the County's options in the future should the next Council decide that, you know  
9 this would be in the public benefit. So I would just caution about being able to gate it off,  
10 et cetera.

11  
12 Chair Tsai: Commissioner Robinson?

13  
14 Mr. Robinson: Hi Rory.

15  
16 Mr. Frampton: Hi.

17  
18 Mr. Robinson: Can you go back to where you had 17 and 21 and then you had a resolution.  
19 There's also...so Resolution No. 13-151 can you explain what that is please?

20  
21 Mr. Frampton: That's the Council Resolution. It's in your packet and it's the resolution that  
22 authorized the County acquisition. So in order to buy land the County, it's gotta be approve by  
23 resolution so they approved the resolution and then they amended the budget. Those are the  
24 two legal steps that led to the Administration then being able to enter into an acquisition  
25 agreement. So the resolution is County Council Resolution No. 13-151 and that spelled out all  
26 the terms. It had drafts of the acquisition agreement and everything in place.

27  
28 Mr. Robinson: In your opinion, what happened?

29  
30 Mr. Frampton: I'm gonna just—

31  
32 Mr. Robinson: As in what was their reason for...was it price, was it a bad deal?

33  
34 Mr. Frampton: Yeah, I think it was mainly price, but if you will I'll just...I'm gonna use their  
35 words from the minutes of the meeting that they...when they voted to not reapprove the money  
36 and it will just take a second here, but mainly it was price, but there were a few other concerns.  
37 And the other concerns was that they felt that this land was good open space but it wasn't for  
38 public use. So there's a difference between public use and open space. So Councilmember  
39 Hokama said, I still think it was overpriced, overvalued for what potential uses and planned uses  
40 for that site would have been or is currently being proposed for. He goes on to say, the property  
41 will still be maintained in open space as the intended use under the County's purpose for  
42 purchasing. So we still achieve the general goal of the intended use of the property. And that's



1 what he said.

2

3 Chair White says, he really regrets the vote that he took. He felt we were put under intense  
4 pressure to move on a deal that was significantly overpriced. And then he goes on to say that  
5 the purpose of the purchase was to provide view planes from the new highway alignment, from  
6 the mauka alignment and that the only open space and view that we are protecting from this  
7 narrow strip are the eight agricultural lots. So he's saying that we're just protecting the view for  
8 the private lots.

9

10 And lastly, Councilmember Cochran said, she said that she knows the property very well, and  
11 she, said it's where dead trees are, it's a gulch, it's rocks, it's totally unusable anyways so it's  
12 going to be open space for them and like you just stated, create nice view planes for those lots.  
13 So this is way overpriced and I think this is a wise...and I don't think this is a wise use of our  
14 money whatsoever.

15

16 So with the West Maui Rep., the Budget and Finance Chair, and the Council Chair being that  
17 strongly against it, that's why we terminated the agreement 'cause it looked like the writing was  
18 on the wall. And just as my own commentary it was that vote and those statements were made  
19 two and a half years after the vote was taken. So they voted to approve it in December 13, two  
20 and a half years later they're remembering and you know making these comments on the floor  
21 and you know the Parcel A with the 148 acres, the intent there was really for open space  
22 protections. For Parcel B in my opinion and in working for this project, Parcel B was really  
23 intended for use by the public not just open space, but for it to become a public park. Their  
24 comments seem to suggest that they thought the whole thing was just gonna be for open space  
25 and in that case, they're right, it will still be just open space, but it won't be for public use if the  
26 public doesn't buy it.

27

28 Chair Tsai: Commissioner Higashi?

29

30 Commissioner Higashi: Rory, the parcel that we're talking about, two things. One, how large is  
31 this area that we're talking about and what was the final agreement on the cost to the County to  
32 acquire this piece of property we're talking about?

33

34 Mr. Frampton: So Lot 12 is 37 acres and the purchase price was just over \$3 million. Let me  
35 get it exactly for you.

36

37 Commissioner Higashi: So it's 12 acres for three million?

38

39 Mr. Frampton: It was 37 acres.

40

41 Commissioner Higashi: 37 acres.

42

1 Mr. Frampton: For \$3.1 million. And then they had easements over the flood control so nine  
2 point something acres of the property was where the Lahaina flood control is and it has been  
3 built. And they actually right after the budget was amended they paid the owner about \$800,000  
4 for the nine acres that had the flood control. So the remaining value per the contract agreement  
5 for 28 acres it would be \$2.2 million for 28 acres right there on that Lot 12.

6  
7 Commissioner Higashi: 28?

8  
9 Mr. Frampton: Yeah, 28 acres.

10  
11 Commissioner Higashi: So Rory, now that it's back to its original this particular piece of property  
12 you're talking about is private?

13  
14 Mr. Frampton: Yes.

15  
16 Commissioner Higashi: So now public access to get to the beach is there any open area or do  
17 they have to go to either end of this particular parcel?

18  
19 Mr. Frampton: Well, the public access is provided by the existing highway. So along this  
20 section of shoreline the highway is running makai of that 28 acres.

21  
22 Commissioner Higashi: ...(inaudible)...ocean.

23  
24 Mr. Frampton: So the public will always have—

25  
26 Commissioner Higashi: Have access.

27  
28 Mr. Frampton: Yeah. Government strip of land. Even if the road goes away the government  
29 strip will not go away and so the public will still own the strip along the shoreline.

30  
31 Commissioner Higashi: Oh okay.

32  
33 Chair Tsai: Director?

34  
35 Mr. Spence: And just a comment Commissioners that, I mean the representations made were  
36 that they're not going to use that lot for residential purposes. They're not gonna build a house.  
37 They're still left with all of the other uses provided by the zoning in the Ag zoning, in the Ag  
38 District. So you need to be aware of that. So because it's designated on the Maui Island Plan  
39 for Open Space for park I guess, and because...it doesn't mean that it's just going to sit there.  
40 The owner still has property rights in order to use. I mean, he's saying there's not going to be  
41 no house that's fine. I trust the representations made. But all the other uses are still available.  
42 You know for...I'm just hoping...I wasn't at the Council meeting myself, I'm hoping that the

1 Council isn't under the understanding that the owner can do nothing with this property. They  
2 are certainly entitled to do plenty with their property.

3  
4 Chair Tsai: Commissioner Robinson?

5  
6 Mr. Robinson: Rory, I wasn't here when the SMA was approved for this property so I'll probably  
7 defer later to my other Commissioners if they feel they want to chime in, but my question to you  
8 is did the owner have a counter offer to the Council or was that price firm?

9  
10 Mr. Frampton: That price was negotiated originally with the Administration. And then there  
11 were some appraisals done and then it was basically agreed upon. Eventually that price was  
12 voted and agreed upon by the Council, but it took them several meetings and they didn't feel as  
13 based on my quoted even at the time they felt like it was overpriced. So the landowner thought  
14 it was worth more, the Council thought it was worth less, that was the agreed upon price. And I  
15 just would comment on, you know, Will's point about making use of that land, you know one of  
16 the positions of the landowner was that if...for these lots especially Lots 4 through 11, if you're  
17 gonna be...when you're trying to sell those lots and you're saying that the land across the street  
18 is owned by the County and government owned there could be park space and people down  
19 there it's gonna create a certain price point based on that anticipation. If you...and that price  
20 point's gonna be lower than if you took...make representations to those people, hey look you  
21 got private land across the street that you can take care of yourself, people are not gonna be on  
22 there, you can landscape it, the price of that property goes up. And so if they sold it to the  
23 County the price of those properties in the back go down and that's kind of why the landowners  
24 felt they wanted to be compensated for that plan 'cause they were basically diminishing the  
25 value of their lots behind. Now that they're not going to be paid for that land they are gonna try  
26 to enhance the value of the mauka lots.

27  
28 Mr. Robinson: I kinda look at it differently Rory, no disrespect. I see these gentleman estates,  
29 we're just gonna call it what it is. I see these as the owner getting, you know a pretty fair  
30 amount of money back for agricultural land which is agriculture, which is agriculture, which is  
31 agriculture. It's not gentlemen estates, it's agriculture. So summarize that he wanted to get  
32 some money back because he's giving some money in the County and then when I look at  
33 where it's at, it's...again, I wasn't here, my concerns are where is all this water flow, where is all  
34 this possible impact to the environment, impact to the beaches because the County was going  
35 to be responsible because it was gonna be the catchment, it was gonna catch all that and now  
36 it's gonna be all private. And I'm wondering if the SMA that we looked at the first time a few  
37 years ago we looked at it that way or we looked at and said you know what the County is gonna  
38 get this land, we don't have to look at it as much and we maybe we dive too well enough as if  
39 this was a private development as we are doing with other projects nowadays. BMPs have  
40 changed, we had meetings last month were we can get water and better. You know I would  
41 think it was a...I think it was kind of a win-win situation when the County was gonna purchase  
42 this land and they were gonna take this burden away from the landowner. That's just how I look

1 at it. Again, you know everybody has different, you know shades of glasses. So my concern  
2 coming right now is when I read the conditions it was, it was in association with this purchase  
3 that this SMA was approved and the County and the developer was working together and now  
4 that the County pulled out regardless if we agree or disagree if the price was right or if they  
5 should have or not that's our elected government. The concern comes back now is to the SMA  
6 Permit that we approved we now have a different use of this property because like you said it's  
7 gonna be private and the SMA is my concern now and what mitigations are the owner now  
8 gonna take when the mitigation was gonna be County's kuleana?  
9

10 Mr. Frampton: Good question and I appreciate your comments, your earlier comments, your  
11 question regarding the impacts from runoff. The project was developed with detention basins  
12 within the lots not within the County lot. So all of the mitigation measures were done outside of  
13 the County's parcel. And very little if any improvements were done in the County's parcel. So  
14 the runoff mitigations and the BMPs and all that have actually already been implemented during  
15 construction and the basins were constructed and they were done...the storm rules had just  
16 been adopted by the County I think it was in November and we were in front of you guys in  
17 December. So the higher standards are for the storm water quality rules so that you treat the  
18 water quality coming off your property, those measures were incorporated. They actually led to  
19 some amendments. We had to change the way that the drainage basins were designed but we  
20 did incorporate the latest storm water quality rules. So my response is the...all the lots and the  
21 roadways were developed with BMPs in place to protect for runoff and Lot 12 was basically, you  
22 know we didn't know when that was gonna be developed so there was no, there were no  
23 measures or there was no assumptions that there would be mitigation measures in Lot 12  
24 because we didn't know what the County was gonna do with it and that would be on their own  
25 so we just chopped it off and it was...it's basically as is. There's been some limited grading in  
26 the area because of some storms that happened and stuff they had to...anyways, but very little  
27 work was done in Lot 12.  
28

29 Chair Tsai: Commissioner Hedani? Oh, sorry Kurt.  
30

31 Mr. Hedani: Rory, what would happen if this Commission doesn't remove Condition 17 and 20?  
32

33 Mr. Frampton: That be a good question because essentially you would be...those conditions  
34 imply public use of that land, but the County hasn't bought it, so it would, I would think and I  
35 would defer to Council but it looks to me like that would be a regulatory takings or inverse  
36 condemnation, and...'cause you're basically saying that the land's gonna be used by the public  
37 but you're not compensating the landowner for it and I imagine if there couldn't be some  
38 agreement for the County to buy it and if the use...if the applicant is not allowed to use the  
39 property for private purposes then it gets to a sticky situation. Then I...I don't know if Corp.  
40 Counsel or the Director wants to comment on that.  
41

42 Mr. Hedani: Thank you.

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Chair Tsai: Kurt?

Mr. Wollenhaupt: Oh, no, no just in...hello I was a little late, but Mr. Robinson I did, if you wish to take a recess I did print out the minutes from the meeting in which the SMA was approved and highlighted some of the issues regarding the Pali to Puamana Parkway Plan and the lot under question of the 37.7 acre greenway so it might give you some context if you wanted to look at those that was just a background that's ....(inaudible)...

Chair Tsai: Commissioner Hedani?

Mr. Hedani: One other question Rory. When the County decided to purchase a 148 acres from Makila what was the purchase price for the 148 acres?

Mr. Frampton: It was around \$9 million.

Mr. Hedani: \$9 million?

Mr. Frampton: Yeah. Nine, I think it was nine and change. The total, the total...yeah, I'll just 9 million approximately.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Actually I have never understood the Pali to Puamana Parkway. I understand a concept in general but what the public wanted was a very nice landscaped open space between the Pali and Puamana which it has right now with the existing highway. We have about nine miles of unbroken beach access from one point to the other. A very beautiful scenic highway. The concern about moving it mauka was that you're gonna lose access for that nine-mile stretch of land and moving it mauka also opens up the opportunity for houses to be built makai of the highway which essentially blocks the public from getting to the ocean. So something is lost in that process if you do it, you know by moving the entire road mauka. I disagree with Maui Tomorrow that says move the road mauka. It's not that simple. As you've demonstrated, when you move the road mauka if you don't acquire the road then it becomes open for development essentially. I can see the Council's perspective in terms of the price is too high because what they're buying in essence, part of it is a drainage channel that doesn't have a public use attached to it for that portion from Hokiokio up to the place where the drainage channel dumps into the ocean. So I think that entered into their consideration to some degree. No? Did it enter into their consideration?

Mr. Frampton: Possibly, but you know that's....that was land that they're in condemnation proceedings because there were multiple parcels that when that structure was built it was built on multiple parcels. So they went to condemnation proceedings. And it is a public purpose to

1 provide drainage improvements to serve, you know the people of Lahaina. And so you can't  
2 just come and put a drainage facility on someone's land without compensating them. The result  
3 of this acquisition agreement was that the landowner did get paid about \$800,000 for nine acres  
4 of the flood control project and it did settle that lawsuit. So once they approved the acquisition  
5 agreement, Makila basically didn't...were pulled out or the issue of price was no longer a part of  
6 the lawsuit that was filed for not just Makila's land but all the parcels that were affected by the  
7 thing. So it may have had...I didn't hear them say we're paying too much for the flood control  
8 channel. What they said was the whole thing they thought was just too much. They didn't  
9 agree with the...like I quoted earlier they just felt the thing was overvalued.

10  
11 Mr. Hedani: I see.

12  
13 Chair Tsai: Seeing no other questions from the Commission...Commissioner Robinson?

14  
15 Mr. Robinson: Kurt do you have the conditions for the SMA Permit by chance?

16  
17 Mr. Wollenhaupt: The original conditions are...they were in the staff report. Let's see those  
18 should have been Exhibit 2 is the letter that was sent to Makila Land Company with all of the  
19 conditions that they're bounded by the current time.

20  
21 Mr. Robinson: I apologize in carrying the six-foot stack of our next item. I left the Makila one  
22 somewhere else.

23  
24 Mr. Spence: Commissioner?

25  
26 Mr. Robinson: Thank you so much. Could I go again? So Rory?

27  
28 Mr. Frampton: Yes.

29  
30 Mr. Robinson: And this is you know, I'm not a lawyer but let's look at 20. And 20, states that  
31 the applicant understand and is aware of the relationship between this SMA approval and for an  
32 agricultural subdivision and Resolution 13-151 approval by Maui County Council. So if the  
33 resolution didn't...if we didn't purchase the parcel and this is, applicant understands the  
34 relationship between it, this is...so if you can help me with this please?

35  
36 Mr. Frampton: Yeah well, that's exactly why we're here today. I mean, we were aware at the  
37 time, the Commission was aware, we represented 'cause we had an agreement in place with  
38 the County that the County was gonna buy this parcel. So the applicant was very much aware  
39 of it and I think that was put in there to just make sure that the applicant's aware that the  
40 Council's intending to buy Lot 12. Well, Council didn't follow through or the County did not  
41 follow through with the purchase of Lot 12. So we're here today to basically unravel this and  
42 that's the...that condition and Condition No. 17 are the ones that are problematical.

1  
2 Mr. Robinson: Thank you Rory. Is how I read it is that the SMA approval was because the  
3 County was gonna buy the project. And again, I'm not saying I'm a lawyer, and I wanna make  
4 sure so I'm just reading this, I'm using my interpretation of it. So No. 13-151 was not completed  
5 and I see this SMA approval being void because of it and I guess that's why we're here but you  
6 know, hopefully some discussion...I just, you know, again, I apologize I wasn't on this  
7 commission before, I didn't go through all this and vetted it carefully. I would hope that the  
8 landlord and the County would have worked something out because it seems like it could have  
9 been a win-win, you know. Taking over the property is not a good thing, getting a piece of land  
10 that the taxpayer's paid for is also not a good thing so, I'm stuck guys.

11  
12 Chair Tsai: Director?

13  
14 Mr. Spence: A comment on No. 20, I think personally I think that's the and I again I don't have  
15 them in front of me, 20 is the one about the relationship...I mean, this one to me is rather benign  
16 one way or another because all it says is the applicant understands and is aware, and any kind  
17 of compliance report they could say yeah we understand it, it's no longer...but we understand. I  
18 mean they could just ride around it. There's no action required as a result of this. To remove it,  
19 to me that's totally fine. And it does...it does not, and I'm saying this partially for the record, it  
20 would not forego the County at some point in the future wanting to purchase this property given  
21 the change in Council membership or desire to do so. It does not forego our options.

22  
23 The one that's a little bit more concerning to me and to staff is No. 17 and it really has more to  
24 do with the public access.

25  
26 Chair Tsai: Commissioner Hudson?

27  
28 Mr. Hudson: Thank you. In reviewing No. 17, it says that the applicant understands that the  
29 intent of the internal access road referred to as Roadway A in the staff report and as  
30 Waiaonukoli Place and Waiaonukoli Street in the preliminary subdivision map shall be open to  
31 the public providing access to Lot 12 and connectivity between Kai Hele Ku Street and Hokiokio  
32 Road. I'm told that this was negotiated in the attempted purchase process. But in looking at  
33 just the verbiage of 17 as a standalone verbiage, I don't think it's moot. I think it's a condition of  
34 the SMA.

35  
36 Chair Tsai: Director?

37  
38 Mr. Spence: And that is part of the concern. The applicant wishes to have this condition  
39 removed and we have some...I mean, maybe some alternative language or something. We're  
40 just at some point I think there should be some public access. So that's, but that's the decision  
41 of the commission.

42

1 Chair Tsai: Commissioner Hedani?  
2

3 Mr. Hedani: It a toughie. I see where you're coming from in terms of if we don't remove  
4 Condition 17 and 20 it's akin to inverse condemnation, a public taking of the land without  
5 compensation to the landowner. I have a slightly different view of that because in point of fact  
6 you were paid \$9 million instead of \$3 million in a negotiations with the Council and the  
7 purchased additional property, much more additional property that you originally contemplated  
8 but you were in fact paid \$9 million for the additional property. So there was compensation to  
9 the owner in terms of the negotiation itself. From my perspective if you're negotiations and got  
10 \$9 million worth of compensation for land that is essentially unimproved without having to  
11 improve it and put in all the infrastructure and everything, that's a vast improvement over the  
12 \$1,500 per acre acquisition cost of the land when the land was originally acquired. So there is  
13 enrichment that has been given to Makila in this case in the acquisition of the larger parcel.  
14 From a negotiation standpoint I would have thought they would have said, well if we're gonna  
15 pay you \$9 million for these additional parcel and you had no use for this property that's makai  
16 of the access road why don't you throw the other 28 acres in as part of the deal? But that didn't  
17 happen in this particular case.  
18

19 The concern I have is Makila in terms of developing Makila itself, all of the subdivisions has  
20 created a bottleneck on Honoapiilani Highway that essentially congests all of West Maui. I  
21 mean the traffic backs up all the way to the Pali and the traffic now backs up all the way to  
22 Kaanapali in either direction from the one signal light at Launiupoko Park. I mean, if I could  
23 blow the light up with explosives I would do it because it just makes transportation in West Maui  
24 dysfunctional. That's beside the point, but in this particular case if the roadway between  
25 Hokiokio and Kai Hele Ku is opened to the public that would just compound the traffic problem  
26 by causing people coming off the bypass instead of waiting for the light at Honoapiilani Highway  
27 they would take a right on that access road go all the way to Kai Hele Ku and have only one  
28 traffic light to deal with rather than two and that would make the signal Kai Hele Ku totally  
29 impossible for Honoapiilani to function at any level. It would be...it would not be F, it would be Z  
30 as a level of service because there would be zero cars moving on Honoapiilani Highway at that  
31 point.  
32

33 So what I'm getting at is that when Makila was developed there were impacts that were created  
34 to the public and part of that I think is my doing too because I think I insisted on additional  
35 parking for the park as part of the development which was accommodated across the street and  
36 that parking has in turn developed pedestrian access problems that causes the signal to trigger  
37 very time somebody presses the button. And I think that's gonna be solved when the bypass is  
38 created but in the meantime if the roadway is open to the public I think it makes things worse  
39 not better. I'm torn.  
40

41 Mr. Frampton: Could I comment Mr. Chair? Thank you. Your first point about the  
42 compensation you know that's a value judgment but the properties were treated separately.



1 There were two separate acquisition agreements and as I mentioned this Lot 12 you know  
2 whether it's publicly owned or privately owned it does have an impact on the value of the  
3 property behind it and I know it's...I'm not a real estate agent, I'm not...when you mentioned I  
4 got \$9 million. I didn't get \$9 million, I'm just the land planning consultant. So I'm not an owner,  
5 just for the record I'm not an owner in the project.  
6

7 The traffic light I think you answered the point or you brought up a point I was gonna make that  
8 traffic light was put in because of the pedestrian traffic. There was not a signal demand warrant  
9 based on the cars coming out of Launiupoko and Makila didn't develop all of Launiupoko there  
10 were various entities that did, but it was because of the pedestrian safety and that parking lot  
11 that was put across the street they had to provide safe pedestrian access across the highway,  
12 that's the...that was the signal warrant. It was the safety concerns for pedestrians. So,...but I  
13 do believe as you guys looked at it in detail this bypass that's coming in is gonna dramatically  
14 improve that situation. The traffic on Honoapiilani Highway is gonna be dramatically reduced  
15 and as you noted at the last meeting all the traffic's gonna be directed onto the bypass first.  
16 You know that's gonna be completed within a year.  
17

18 I'm not sure of your comment about the how that opening that road to the public would make  
19 things worse but it's gonna be a short-term kind of a thing anyways. I think we could agree to  
20 that and these homes aren't gonna be built or lived in anytime soon.  
21

22 Chair Tsai: Commissioner Duvauchelle?  
23

24 Vice-Chair Duvauchelle: I think when we say the original SMA there wasn't any question with  
25 the resolution in place, that the County was gonna go ahead with the purchase. I mean, it was  
26 signed, sealed, if I remember correctly we thought it was a done deal. And I think that now that  
27 that hasn't happened is not any fault of the landowner. So my question is is since I feel that  
28 these two conditions no longer apply to the SMA. Will you brought up, Director, the Planning's  
29 feels about has anybody got any amended language to offer for an amendment to the SMA if  
30 we removed the two items?  
31

32 Mr. Wollenhaupt: Oh, hello. Hello, I'm back here. Well we thought about differing items. If the  
33 issue regarding public access road in order to ensure access to Lot 12 which is the 37-acre  
34 greenway question there could be something that would be constructed that should it said time  
35 in the future the County of Maui purchase Lot 12, public access shall be guaranteed at no cost  
36 to the County. That would then allow in the future that the road between Kai Hele Ku and  
37 Hokiokio then is going to be available. There has been some concern if you take a very  
38 pessimistic attitude would the landowners essentially subdivide, reconsolidate this Roadway A  
39 and put it into their own lot which then precludes and makes it much more difficult to ever get a  
40 new road in. Now the new road could go in Lot 12 which takes away from the acreage of Lot  
41 12. But if there was some condition that indicated that public access would be guaranteed at  
42 some future date should the County of Maui purchase Lot 12 that the lot currently known as

1 Roadway A would be open to the public at no cost to the County. So you get into a challenge  
2 and maybe Corporation Counsel would weigh in when we get to adding conditions where in this  
3 process is the public hearing then part of it? But anyway that's a condition that we were thinking  
4 about.

5

6 Chair Tsai: Commissioner Duvauchelle?

7

8 Vice-Chair Duvauchelle: Rory would you like to comment on additional condition?

9

10 Mr. Frampton: If the County ever did come in and acquire that land I mean that's why the road  
11 was built to provide public access so I don't think there would be a—I don't think there would be  
12 a problem as long as it's conditioned on the County acquiring the parcel.

13

14 Vice-Chair Duvauchelle: Okay, thank you.

15

16 Chair Tsai: Commissioner Robinson?

17

18 Mr. Robinson: Thank you for background. And I agree it's not the landlord's fault that the  
19 County decided against the deal. But I don't see where the landlord's being harmed. I don't  
20 see where the landlord has a problem except trying to move this conditions. You know Councils  
21 change every two years. You know we got the approval with one, we got the denial with  
22 another, you know in another two years they could switch and they could purchase again. And  
23 owners you know, and developers, they change their minds too on purchase price and sales.  
24 They don't always stick to one price one year and you know another year they might lower it.  
25 It's unfortunate that the Council and the landlord couldn't come together for the betterment of  
26 everybody to have an agreeable price.

27

28 That being said, the SMA approval, this is not a sale approval, the SMA approval, and the word  
29 that I saw was relationship, the relationship with the SMA, you know was with the approval. It  
30 wasn't you know, wasn't benign in my eyes. And I again, I just wish you know the County and  
31 you guys could work things out 'cause I think you guys can you know be beneficial to both of  
32 you and all of us. Thank you Rory.

33

34 Chair Tsai: Rory?

35

36 Mr. Frampton: Thank you for those comments. I mean we did finally reach an agreeable price  
37 and we were given 27 months to complete a final subdivision and we did it in 18 months and  
38 just, I think it was through oversight on the Administration's part the funds lapsed. So there was  
39 agreement, there was substantial amount of money spent implementing the subdivision based  
40 on that agreement. And so it is a difficult position and I appreciate your comments.

41

42 Chair Tsai: Commissioner Duvauchelle?

1  
2 Vice-Chair Duvauchelle: And I would like to hear from Corp. Counsel. Since...so can we make  
3 an amendment at this point if we do remove the other two conditions? And the fact that they  
4 really don't apply now to the original SMA?

5  
6 Mr. Giroux: Let me try to cut this all into little pieces so it's easier to swallow. I've been told I  
7 pontificate too much so I gotta—

8  
9 Chair Tsai: What?

10  
11 Mr. Giroux: I go on and on. So well first of all, this is an SMA it's governed by 205A, so that's  
12 one body of law that we've gotta understand and we need to understand the policies and  
13 objectives of 205A. So let's just put that into one pile.

14  
15 The next pile is that under Hawaii law, an SMA hearing by law is a contested case. So we're  
16 following our contested case rules. We're following Chapter 91. Let's just put that into one pile.

17  
18 Then we're going to also be following our Planning Commission rules that governs contested  
19 cases. So let's just put that into another pile.

20  
21 Having those piles our rules state that a contested case a motion can be made at any time  
22 before, during or after a contested case. I would see this as being a motion that is requiring or  
23 requesting a change in the condition. Our rules specifically have comment on that. So you are  
24 within your powers. There's case law that says that you have inherent powers to review your  
25 own decisions and that's the Morgan case coming out of Kauai which was specifically an SMA  
26 case. It says you can review your own decisions. And as long as that you are exercising the  
27 rightful powers under 205A and using the rightful procedures under Chapter 91. So the answer  
28 is yes, yes, yes, yes. And again, the caution is is that if you change any of these conditions they  
29 have to be related to the policies and objectives of 205A. Is there any request for me to venture  
30 into world of takings and inverse condemnation? Please say no. If your conditions go too far  
31 they may raise those issues. However, if you're diminishing your requirements I would say that  
32 you're going away from that field of law. I'm not saying that it will never be raised, but I think  
33 that you are in safe ground since the conditions were made already and you're just slightly  
34 modifying those.

35  
36 Vice-Chair Duvauchelle: Thank you.

37  
38 Chair Tsai: Commissioner Robinson?

39  
40 Mr. Robinson: Rory, I apologize this is redundant, please explain to me why we...why you guys  
41 cannot proceed without these two things as they are?

42

1 Mr. Frampton: One, we wanted to clear the record because we made representations to the  
2 Commission that this transaction was gonna occur. It's not gonna occur so we had to update  
3 our representations to the Commission and we, the landowner intends on using that parcel for  
4 private purposes, for private use. He's gonna keep it in open space or they are gonna keep it in  
5 open space but there's a variety of potential uses that may occur through a variety of  
6 configurations which may not...so No. 17 in particular that talks about Lot 12 providing public  
7 access, I mean the roadway providing public access to Lot 12, Lot 12 is gonna be privately  
8 owned and if you're saying that you have to allow public access to this privately owned lot that's  
9 when you're running into the inverse condemnation. You're taking away someone's private  
10 property rights and putting public use on it without compensating them. So that's the concern.  
11 If we...Kurt's suggestion, you know so for No. 17 if we run into Kurt's suggestion which was  
12 should the County purchase Lot 12 then public access would be provided on that road. I think  
13 that's fine. And so we would...you would modify the condition not to say that it's gonna happen  
14 but you're gonna say should they buy it then you provide access. This condition was written to  
15 say that hey, County's gonna buy it, you gotta make sure there's public access.

16  
17 Mr. Robinson: So Rory, wouldn't you be in charge if the County is even offered to buy the  
18 property? I mean, the County can't just come four years later say by the way we want to buy it  
19 now, you have to agree to it, isn't that correct?

20  
21 Mr. Frampton: There's two ways the County could do it. The County could come and negotiate  
22 with the landowner, whoever the landowner is at that time or the County could just say, hey we  
23 deem this to be a public use, we wanna buy it, they could enter eminent domain proceedings  
24 and then a judge determines what the price is. So the landowner doesn't have to agree but  
25 there's two ways to buy it, eminent domain, you say hey it's a public purpose, the judge goes  
26 figures out what the cost is gonna be or you negotiate and reach an amicable agreement and  
27 then the transaction occurs.

28  
29 Mr. Robinson: So it would just remain open until the County would possibly decide to do that  
30 course, but the County would still have that option.

31  
32 Mr. Frampton: The County would have the option but it's not necessarily gonna stay open. The  
33 landowner or landowners, future landowners, you know one scenario...well there's a bunch of  
34 different scenarios but there's...but they're gonna make use of that property per the uses that  
35 are allowed under the Ag Zoning Ordinance and following SMA law. So they will be coming up  
36 with some type of uses that they...if it's a major use, they'll be back before the Commission to  
37 propose something that if it triggers a SMA Major Permit. It might be a minor permit or it might  
38 be exempt actions. But the landowner really they just know they're gonna keep it in private use  
39 and they wanna keep their options open for enhancing that property.

40  
41 Mr. Robinson: I understand.

42

1 Chair Tsai: Director?  
2

3 Mr. Spence: Rory, can I just...since we're trying to put all kinds of stuff on the record, is there  
4 any, are there any plans to say subdivide Lot 12 and sell them to the mauka lot owners or to  
5 say, I mean, because the roadway is private because Lot 12 remains private, I mean, potentially  
6 these could be consolidated and resubdivided into those mauka lots?  
7

8 Mr. Frampton: That would be an option. The other option, I mean Lot 12 itself cannot be  
9 subdivided but I've seen instances where in situations like this they give exclusive easements to  
10 the say for Lot 10 would have an exclusive easement for the area immediately fronting Lot 10.  
11 So it's not quite a subdivision but they get a piece of that. Each owner would get their front yard  
12 basically and they could control that front yard however they see fit and it wouldn't have to be  
13 through subdivision they could be done via easement.  
14

15 Mr. Spence: Understood. So I just wanted that on the record so the Commissioners are aware  
16 of the landowner's options with his own property.  
17

18 Mr. Frampton: And the requirement would be you can't put dwellings on it—  
19

20 Mr. Spence: Right.  
21

22 Mr. Frampton: --and you have to follow the County Ag Law.  
23

24 Mr. Spence: And SMA if they were to build something.  
25

26 Mr. Frampton: And SMA.  
27

28 Mr. Spence: Yes.  
29

30 Chair Tsai: Kurt.  
31

32 Mr. Wollenhaupt: Oh, just so for Mr. Robinson perhaps. The uses in Ag can be somewhat  
33 benign but then they can also include okay, perhaps they would want to put a coffee farm there  
34 then does a coffee farm lead to farm buildings, then do farm buildings lead to something else.  
35 So if your idea is this is going to be as Mr. Frampton has indicated it's most likely not just going  
36 to be scrub, trees, and rocks. So they would have to go through a process, a County Special  
37 Use Permit for some activities in ag, associated activities in ag.  
38

39 Mr. Robinson: So Kurt is the current SMA Open Space or is the current SMA Ag?  
40

41 Mr. Wollenhaupt: Well, that's interesting, but the question is it's Ag.  
42

1 Mr. Robinson: For the SMA in this, in Lot 12?  
2

3 Mr. Wollenhaupt: Yes. It's community planned Ag, but then that brings up an interesting  
4 question up because the West Maui Community Plan is going to be updated within the next  
5 couple years. If you move into the Maui Island Plan and there are certain notations that indicate  
6 that this area which in the Maui Island Plan is noted as which I've handed out to you on this  
7 large handout, it's noted as Park and the appropriate community plan designation for this  
8 protected type area is Park or Open Space ...(inaudible)...community plan update. So we most  
9 likely the Long Range Division in their discussions with West Maui this issue will come up at  
10 some time. So just it could be a moving target ...(inaudible)...but right now it's Ag with all the  
11 abilities and responsibilities that the applicant could do in the ag area.  
12

13 Chair Tsai: Okay, thank you Kurt. Can I get a motion from the Commission? Commissioner  
14 Duvauchelle?  
15

16 Vice-Chair Duvauchelle: I'm gonna make the motion to remove 20 on the current SMA and to  
17 amend 17 to the language that Kurt shared with us earlier regarding public access.  
18

19 Chair Tsai: Thank you. Do I hear a second?  
20

21 Mr. Castro: Second.  
22

23 Chair Tsai: Okay, motion by Commissioner Duvauchelle, second by Commissioner Castro.  
24 Discussion regarding the motion? Commissioner Hudson?  
25

26 Mr. Hudson: I don't see how 17 moot. I still don't see it. There's no mention about the  
27 ...(inaudible)...funding of purchase in this condition. I still see the condition as active. With all  
28 due respect to Corp. Counsel, inverse condemnation may only force the issue and that's  
29 something I'm not really opposed to. We have courts to make our society better and when we  
30 can't decide something we rely upon those courts to do it and I'm not opposed to inverse  
31 condemnation, no disrespect to Rory. It's Open Space now but it's designated Park in the  
32 future. I should like to keep it Open Space. I should like to stay with 17 as is. As for Condition  
33 20 it's clearly tied to the Resolution 151 and I would not mind that being removed. Thank you.  
34

35 Chair Tsai: Okay. Any other...Commissioner Duvauchelle?  
36

37 Vice-Chair Duvauchelle: I made the motion because really truly what I think we're doing here is  
38 housekeeping. I firmly believe that the landowner has a right to develop their property based on  
39 certain procedures and everything that are in place. I feel like they've done that to this point and  
40 I feel like that they're coming here and cleaning up because the sale did not go through and not  
41 by any fault of theirs. I feel like that we're being good housekeepers and that's what we're doing  
42 at this point.

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Chair Tsai: Any other comments? Commissioner Robinson?

Mr. Robinson: I would feel comfortable with an agreement with the landowner that it would stay in green space for you know a certain amount of years. If I was the landlord, as soon if I got everything that I wanted today, I would think that each lot owner would then extend their properties all the way down to the highway. And that there would be no chance for the County to come back and purchase and fulfill their agreement which they promised to the landlord. Again, Commissioner Duvauchelle, you know I'm in agreement that it's not the landowner's fault that the Council changed their mind, but they did change their mind, and you know it was 6 to 3, they did have a reason. This landowner is not new to Maui, it's not new the area, this land owner has done a lot of things. I've been on this board and they've had their people in front of us trying to get permits to not do agriculture so this isn't like I'm so worried about this landowner. He's entitled to all the laws like everybody else, but this landowner has massaged the agricultural aspect of this whole area. He's...I'm sorry, they have done a great business. They've done very well for themselves and that's the American way. But we're talking, we're talking possible coastline with the highway changing, we're talking that the lots will go from the bypass all the way to the ocean once those roads are done and the roads change and the water. This is not just housekeeping, this SMA, this is what we're here for, and I think the Council when they realized that the landowner's you know fed up and says, you know what we're gonna move on, we're gonna do it because you guys took so long. You know sometimes you need to get nudged a little bit harder to do the right thing and I would be open to them leaving it, you know, open acreage for a certain amount of time to help this move along to where the landlord can you know can hopefully do his thing and not be penalized but yet the County still have a chance to you know, in the next Council in the future to come and fulfill the prior Council's commitments. Thank you.

Chair Tsai: Commissioner Higashi?

Commissioner Higashi: I personally don't feel comfortable with the decision that the Commission has to make based upon the fact that this particular issue was generated by the Council and I think it is their responsibility to get this thing rectified and not have us make the decision as to whether we should go for or against it. So my personal opinion is that we should defer this back to the Council where it originally started with the acquisition of the property agreement and now it's been turned back.

Chair Tsai: Director?

Mr. Spence: Thank you. I would agree that I think the Council should revisit. That said, what the landowner is asking for is the removal of two conditions on their SMA Permit. County Council has nothing to do with SMA Permits. This is entirely within the purview of the Maui Planning Commission and nobody else. So the Council's not going to make a decision on these

1 two conditions. It's the people sitting here, seated here.

2

3 Chair Tsai: Thank you, Director. Commissioner Hedani?

4

5 Mr. Hedani: I have a question for Rory if that's okay?

6

7 Chair Tsai: Yeah.

8

9 Mr. Hedani: What you're asking us to do is remove 17 and 20. That allows you to increase  
10 value of the lots that you have within the subdivision. What does the public get in exchange?

11

12 Mr. Frampton: There's nothing being offered right now other than you know keeping that land in  
13 open space. What the Council is saying is that they don't need to pay the landowner and the  
14 property is going to stay in open space and that there's some value to the public in keeping it in  
15 open space even if it's just privately owned and that's what would occur. The public use of the  
16 property would not be...that's what the decision's effect is is that there's no more public use of  
17 the property for park space, but there would be the benefits of the no development beneath that  
18 road.

19

20 Mr. Hedani: Thank you.

21

22 Chair Tsai: No more discussion? Oh, Commissioner Hedani?

23

24 Mr. Hedani: Have you folks revisited the issue with the new Council members that have come  
25 on board?

26

27 Mr. Frampton: No.

28

29 Mr. Hedani: No? So don't intend to?

30

31 Mr. Frampton: No.

32

33 Chair Tsai: Commissioner Robinson?

34

35 Mr. Robinson: Last question Rory. If we deny your request is your damages only gonna be not  
36 being able to sell or develop Lot 12? I mean will you still be able to develop all the other lots  
37 and say maybe come back to us in two years after you know we've had some other things and  
38 then look to remove it to when you guys are actually ready to develop that lot? I mean, I don't  
39 see this slowing you down except until you want to develop it. Am I not reading it correctly?

40

41 Mr. Frampton: Well, it's complicated because it leaves the landowner in limbo in terms of what  
42 they represent to the buyers of those lots. They would like to market those lots eventually and



1 sell them and if there's this cloud you know what are they gonna represent regarding the future  
2 use of Lot 12 and that becomes problematical and that would potentially hold them up from  
3 making long-term decisions that would...you know they want to market the properties at the  
4 highest and best use and it's a totally different story whether or not that land is publicly owned  
5 versus privately owned. So there could be some impact. The landowners could feel that there's  
6 some significant impacts if these conditions are on there and the cloud continues to hang over  
7 that property then I think you get close to basically you're kinda prohibiting the use of the  
8 property with...I mean again, you're kind of straying towards this whole inverse condemnation  
9 issue and it does become problematical. If the County Council has a change of heart and the  
10 Administration wants to approach the landowner to discuss terms of acquisition I mean, that  
11 certainly would occur and we would hope that that takes place sooner rather than later, but the  
12 longer...yeah, it's difficult if this conditions stay as they are 'cause it's just not based in reality.  
13 It's not what was done. I mean, that's...the County's not...right now they're not buying it. The  
14 acquisition agreements expired or were terminated.

15

16 Chair Tsai: Okay, all right. Director you want to repeat the motion please?

17

18 Mr. Spence: Okay, the motion is to remove Condition 20 and to modify Condition No. 17, Kurt I  
19 don't know if you can repeat what you said. It was—

20

21 Mr. Wollenhaupt: It would be, that should the County of Maui at some future date purchase the  
22 Lot 12 known as the non-developable greenway lot that public access shall be guaranteed  
23 along the lot known as Roadway A at no cost to the County.

24

25 Chair Tsai: Okay, all in favor of the motion?

26

27 Mr. Spence: Two ayes.

28

29 Chair Tsai: Opposed?

30

31 Mr. Spence: That's two opposed. Okay, non-voting are considered ayes.

32

33 Mr. Robinson: I'll go opposed.

34

35 Mr. Spence: Okay, so that's three ayes, three opposed.

36

37 Chair Tsai: So motion fails.

38

39 **It was moved by Ms. Duvauchelle, seconded by Mr. Castro, and**

40

41 **The motion to Delete Condition 20 and Amend Condition 17 FAILED.**  
42 **(Assenting – S. Duvauchelle, S. Castro, W. Hedani)**

1                   **(Dissenting – L. Hudson, K. Robinson, R. Higashi)**  
2                   **(Excused – P. Canto, L. Carnicelli)**

3  
4 Chair Tsai: Okay, can I get another motion?

5  
6 Mr. Wollenhaupt: I'm not doing a motion, but I have a question. Perhaps I think some of the  
7 concern and I talked to our Long Range Planning Implementation Division and that's why I  
8 handed out the Pali to Puamana Parkway Plan. And part of that Division's concern is the  
9 amount of effort over years and years that have gone into developing a parkway plan. And that  
10 depending on what would be developed in these 37 acres if that would preclude really making  
11 this a robust plan should all kinds of activities occur within the 37 acres that we say or the  
12 applicant is representing and it's quoted, other non-residential uses may be allowed in  
13 accordance with State and County land use environmental regulations. It's those other non-  
14 dwellings that are the wild card and that should this area become, this non-developable area  
15 become...(inaudible)...along the agricultural guidelines that at some point what does it preclude  
16 the County from really effectively buying that lot that there are now so many activities going, so  
17 many things going on that it makes...it clouds over that potential and that was a concern of our  
18 Plan Implementation Division. And I'm not sure we have a clear understanding of what could be  
19 done in that lot. We say no dwellings, well that's obvious but there's a lot of other things that  
20 might be done in that lot.

21  
22 Chair Tsai: Director?

23  
24 Mr. Spence: And just, and I do understand the concerns and I've voiced a number of them  
25 through this meeting. My...the private property owner still has private property rights and if the  
26 Council chooses not to purchase, I mean, they wish they had gone ahead and done it and then  
27 we wouldn't have had to have this discussion here today, but they do have...you know the  
28 private property owner has rights to use their property within the constraints of zoning and  
29 environmental laws. I think that the...at least the way that the--that one condition was formed I  
30 didn't see that it would forego the County's options in the future to purchase. It may end up  
31 being more expensive because of the improvement that these various landowners would  
32 like...could possibly do, but that's, you know that's the decision of the Council.

33  
34 Chair Tsai: Commissioner Hedani?

35  
36 Mr. Hedani: If these conditions were not removed, if Lot 12 was not made available to the  
37 public, what is the situation with the Pali to Puamana Parkway Plan at that point? Is it out the  
38 window or...

39  
40 Mr. Spence: No, the Pali to Puamana Parkway Plan goes somewhat unfulfilled as a complete  
41 plan. There are other sections that have not been acquired or fulfilled as well. I mean ideally,  
42 yes we would preserve this beautiful coastal with these scenic views for the public and our

1 residents and visitors, you know, in perpetuity. It's seems to be such a popular word these  
2 days, in perpetuity. Sometimes that just, it...that just may not be possible.

3  
4 Mr. Hedani: Does the lower highway become a County highway at that point and the State  
5 does the bypass and the County has to assume the lower highway?

6  
7 Mr. Spence: That's my understanding is that the State would...I know Rory is intimately  
8 involved in the whole moving of the highway. My understanding is the State would like to turn it  
9 over to the County.

10  
11 Mr. Frampton: Eventually they would. While it's still just two lanes they still need the lower  
12 highway for capacity. So at some point when they build the four lanes then that road really  
13 becomes a local road then they would turn it over to the County.

14  
15 Mr. Hedani: Thank you.

16  
17 Chair Tsai: Okay, guys ...(inaudible)...that or take a recess. You guys figure it out what you  
18 want to do. Want me to call a recess? Okay, I guess due to a lack of something, we're going to  
19 call a recess.

20  
21 A recess was called at 11:12 a.m., and the meeting was reconvened at 11:26 a.m.

22  
23 Chair Tsai: The Commission is called back to order. Back on agenda item, which one that is...

24  
25 Mr. Spence: D-1.

26  
27 Chair Tsai: D-1. So do I get a motion from the Commission? Commissioner Hudson?

28  
29 Mr. Hudson: Move to deny.

30  
31 Chair Tsai: Motion by Commissioner Hudson to deny. Do I hear a second?

32  
33 Commissioner Higashi: Second.

34  
35 Chair Tsai: Second, Commissioner Higashi? Any comments regarding the motion? No  
36 comments. Okay, Director, do you want to repeat the motion?

37  
38 Mr. Spence: The motion is to deny the request to modify or to remove these conditions.

39  
40 Chair Tsai: Call for a vote. All in favor.

41  
42 Mr. Spence: One, two, that's three ayes.

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Chair Tsai: Opposed?

Mr. Spence: That's two opposed. So—

Mr. Hedani: One abstain.

Mr. Spence: Okay, so that...but you would count as a...that would be four ayes, two noes so the motion fails. Oh, Chair could vote, sorry.

Chair Tsai: Motion to deny, put me on the spot here. Commissioner Hedani?

Mr. Hedani: Move to go into executive session so we can discuss with our attorneys our liabilities and duties.

Chair Tsai: Can we do that in the middle of a motion?

Mr. Giroux: Any time.

Chair Tsai: Okay, all right do I hear a second on going into executive session?

Vice-Chair Duvauchelle: Second.

Chair Tsai: Okay, all in favor of going into executive session?

Mr. Spence: That's five ayes.

Chair Tsai: Five ayes. Opposed? One. The motion carries we're going into executive session.

Mr. Fasi: Just a quick question is the zipline still be on the agenda today?

Mr. Spence: Yes.

Chair Tsai: Yes, but most likely after lunch. We're going into executive session, so we need to clear the room please. Thank you.

**It was moved by Mr. Hedani, seconded by Ms. Duvauchelle, then**

**VOTED: To Go Into Executive Session.**  
**(Assenting – W. Hedani, S. Duvauchelle, K. Robinson, S. Castro,**  
**R. Higashi)**  
**(Dissenting – L. Hudson)**

1 **(Excused – P. Canto, L. Carnicelli)**  
2

3 The commission went into Executive Session from approximately 11:30 a.m. to 11:53 a.m., and  
4 the meeting was called back to order at 11:54 a.m.  
5

6 Chair Tsai: The Maui Planning Commission is called back to order. Before the executive  
7 session we have a motion and we called for a vote, and we stopped where I'm supposed to vote  
8 and my vote on this is a nay against the motion. I don't feel that by denying the request in  
9 entirety is correct.  
10

11 **It was then moved by Mr. Hudson, seconded by Mr. Higashi, and**

12 **The Motion to Deny the Request to Delete Conditions 17 and 20 FAILED.**  
13 **(Assenting – L. Hudson, R. Higashi, K. Robinson, W. Hedani)**  
14 **(Dissenting – S. Duvauchelle, S. Castro, M. Tsai)**  
15 **(Excused – P. Canto, L. Carnicelli)**  
16

17 Chair Tsai: So I'm putting it back on the Commission to have another motion and I would go  
18 support Commissioner Duvauchelle's previous motion of modifying No. 17.  
19

20 Unidentified Speaker: Are you making the motion?  
21

22 Chair Tsai: No, I can't make a motion.  
23

24 Mr. Robinson: Make a motion to defer.  
25

26 Mr. Hudson: Second.  
27

28 Chair Tsai: Second by Commissioner Hudson. Discussion regarding the motion to defer?  
29 Commissioner Hudson?  
30

31 Mr. Hudson: For myself, a motion to defer would be good. I'd be able to be brought up to date  
32 on some of the...(inaudible)...regarding this. I wasn't here when it was originally voted on.  
33 Also, it would be nice to have a few more members here so it wouldn't be so tight.  
34

35 Chair Tsai: Commissioner Robinson?  
36

37 Mr. Robinson: I think the deferral will help me go back in the archives and pick up the SMA that  
38 was approved and look over the minutes a little bit better and be a little bit more comfortable  
39 with all the improvements and the drainage that they said they've made before for the project.  
40 Thank you.  
41

42 Chair Tsai: Okay, no more discussion. Let's call for a vote. All in favor...oh, Director would you

1 please repeat the motion?

2

3 Mr. Spence: The motion is to defer.

4

5 Chair Tsai: Okay, all in favor of the motion.

6

7 Mr. Spence: Okay, that's five ayes.

8

9 Chair Tsai: Opposed?

10

11 Mr. Spence: One opposed.

12

13 **It was then moved by Mr. Robinson, seconded by Mr. Hudson, then**

14

15 **VOTED: To Defer the Matter.**

16 **(Assenting – K. Robinson, L. Hudson, W. Hedani, S. Castro,**

17 **R. Higashi)**

18 **(Dissenting – S. Duvauchelle)**

19 **(Excused – P. Canto, S. Carnicelli)**

20

21 Chair Tsai: Motion carries. We're deferring.

22

23 Mr. Frampton: Commissioners, I'd just like to thank you very much. I know this was a difficult  
24 one, so thank you.

25

26 Chair Tsai: Thank you, Rory. Well, what do you guys want to do? You guys wanna go to  
27 lunch, you wanna go? So we're now—

28

29 Mr. Spence: Power through? What are we doing?

30

31 Chair Tsai: You want to start it? Well, alright. You guys all right with continuing. Okay, so  
32 Director?

33

34 Mr. Spence: Okay, Commissioners we are on Agenda Item E, Number 1. This having voted on  
35 the D&S Ventures County Special Use Permit application by Mr. Derek Hoyte for the Camp  
36 Maui Project. We have prepared a draft Decision and Order and this is here for your  
37 consideration. I note that on number F-1, also for D&S Ventures the applicant has filed a  
38 Motion to Reopen the Hearing and we should probably I don't know which you want to take up  
39 first?

40

41 Chair Tsai: Corp. Counsel?

42

43 Mr. Giroux: You know what you can do is call them all up on the agenda and then we can

1 decide in what order because if you do the cart backwards it's gonna affect...if the D&O, if you  
2 wanna defer the D&O until you clear up those two other motion that's your choice.

3

4 Chair Tsai: But what about the public hearing or testimony?

5

6 Mr. Giroux: Yeah, we need to get that on the record.

7

8 Chair Tsai: Bu we gotta do that after we figure out which order we're gonna do it at, right?

9

10 Mr. Giroux: Yeah.

11

12 Mr. Spence: Carolyn can you hear this? Gentlemen you must speak into the microphone.

13

14 Chair Tsai: Sorry, we're trying to figure out logistic how we're gonna proceed here, since we  
15 have multiple items.

16

17 Mr. Giroux: Yeah and again it's gonna be the matter of sense that you know, how these  
18 motions are gonna affect each other and then in what sequence that the board wants to take  
19 them up. So the Chair...if you wanna make a call and just say you know which of these you  
20 wanna pick up first as far as efficiency and if the board has an issue with your decision they  
21 can...we can discuss that. But again, it's just a matter of putting the cart before the horse or we  
22 can call all of these up on the agenda, take public testimony and then figure out what motion  
23 you wanna start debating or hearing from first.

24

25 Chair Tsai: Let's go with that. So let's take up all the items and then we're gonna open the floor  
26 for public testimony regarding this. So—

27

28 Mr. Giroux: Got to read it all into the record.

29

30 Chair Tsai: Yeah.

31

32 Mr. Giroux: The motions.

33

34 Chair Tsai: So Director?

35

36 Mr. Spence: There's a motion to take it all up?

37

38 Mr. Giroux: No, no, no just to make sure that we have all of the items on the agenda.

39

40 Mr. Spence: Okay, so Commissioners we're taking up E-1, the Draft Decision and Order  
41 regarding the County Special Use Permit regarding Mr. Derek Hoyte of D&S Ventures LLC, for  
42 Camp Maui. We're also taking up Communications Item F-1 and F-2. F-1 is the applicant, D&S

1 Ventures LLC, Motion to Reopen the Hearing on its request for a County Special Use Permit for  
2 existing unpermitted outdoor recreational activities. And then Number 2 is also applicant, D&S  
3 Ventures, Motion to Amend Its Application for a County Special Use Permit for existing  
4 unpermitted recreational activities.

5  
6 **E. ADOPTION OF WRITTEN DECISION AND ORDERS**

- 7 1. **Having voted on July 12, 2016 to deny the County Special Use Permit**  
8 **application by MR. DEREK HOYTE of D&S VENTURES, LLC for the Camp**  
9 **Maui Project in order to retain, rehabilitate, and improve a historic site with**  
10 **accessory guided tours including a challenge course, museum, zipline, and**  
11 **onsite parking on 17.519 acres in the County Agricultural District at 2065**  
12 **Kauhikoa Road, TMK: 2-7-012: 086 (por.), Haiku, Island of Maui.**  
13 **(CUP 2015/0002) (P. Fasi)**

14  
15 **The draft Decision and Order was prepared by Planning Department staff**  
16 **and reviewed by the Department of the Corporation Counsel.**

- 17  
18 a. **Applicant D AND S VENTURES, LLC's Objections to Draft Findings**  
19 **of Fact, Conclusions of Law and Decision and Order Denying**  
20 **Request for a County Special Use Permit; Exhibit A (Applicant D and**  
21 **S Ventures, LLC's Exhibit List with the Exhibits attached thereto);**  
22 **Exhibit B (Applicant D and S Ventures LLC's [concurrently filed]**  
23 **Motion to Reopen Hearing on its request for a County Special Use**  
24 **Permit for existing unpermitted outdoor recreational activities at**  
25 **Camp Maui, Haiku, Maui, Hawaii); Exhibit C (Applicant D and S**  
26 **Ventures, LLC's [concurrently filed] Motion to Amend its Application**  
27 **for a County Special Use Permit for existing unpermitted outdoor**  
28 **recreational activities at Camp Maui, Haiku, Maui, Hawaii); Certificate**  
29 **of Service received on January 17, 2017. (P. Fasi)**

30  
31 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO**  
32 **CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO**  
33 **THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND**  
34 **LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.**

35 **The Commission may take action to adopt, adopt with modifications, or**  
36 **take some other action regarding the proposed Findings of Fact,**  
37 **Conclusions of Law, and Decision and Order.**

38 **F. COMMUNICATIONS**

- 39 1. **Applicant D and S VENTURES, LLC's Motion to Reopen Hearing on its**  
40 **request for a County Special Use Permit for Existing Unpermitted Outdoor**  
41 **Recreational Activities at Camp Maui, Haiku, Maui, Hawaii received on**  
42 **January 17, 2017.**



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

5           **The Commission may take action on the request.**

- 6           **2. Applicant D and S VENTURES, LLC's Motion to Amend its Application for a**  
7           **County Special Use Permit for existing unpermitted outdoor recreational**  
8           **activities at Camp Maui, Haiku, Maui, Hawaii. Received on January 17, 2017.**

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

13           **The Commission may take action on the request.**

14  
15       Mr. Giroux: We can take public testimony on any of those items.

16  
17       Chair Tsai: Okay. So Paul has to—

18  
19       Mr. Giroux: ...(inaudible)...

20  
21       Chair Tsai: Okay, all right so where's my list here. So I have a list here from people who  
22       wanted to wait to testify so you may come—

23  
24       Mr. Cal Chipchase: Chair if I might before the Commission takes public testimony introduce  
25       myself and raise an objection to that. My name is Cal Chipchase. I represent the applicant.  
26       This is Christopher Goodin, he's also counsel for the applicant. This is a Chapter 91 proceeding  
27       in that it is a hearing required by law that effects an applicant, effects a person's rights,  
28       privileges or duties under the law. It's governed by Chapter 91 as a consequence of that and  
29       under Chapter 91 public testimony is typically not accepted as part of the contested case  
30       hearing. Your agenda notes that.

31  
32       At the prior hearing the public testimony I understood was not going to be considered as part of  
33       the contested case, the hearing on the application, but is informational only. Reviewing the  
34       Commission's draft decision it's clear that it based its decision on public testimony and so rather  
35       than exacerbate that problem here I would object to the taking of further public testimony as part  
36       of this Chapter 91 proceeding.

37  
38       Mr. Giroux: Your objection's noted, and it's just that we are, we are under a dual issue here.  
39       We have Chapter 92 concerns and we have Chapter 91 and I heard your concern. The board  
40       can you know assert its adjudicatory function exception to Chapter 92. My advice at this point is

1 that because of the issue that we did have people come to testify at the public hearing and that  
2 are multiple issues being raised that you may want to hear from the public as far as what their  
3 positions are. You had a petition to intervene that was withdrawn so that raises more issues as  
4 far as you know what is the public participation in our land use and planning process?  
5

6 Chair Tsai: So we're gonna continue with public testimony. Commissioner Hudson?  
7

8 Mr. Hudson: Thank you, Chair. I believe there was at least one or two people here that wanted  
9 to testify, but we told them that it would be after lunch and they might have left.  
10

11 Chair Tsai: I have...well, let me see the list here. I have about one, two, three...we have five  
12 people here. Is Stephen Hynson...are you here? Ann Bassel? Okay, Jake Rohrer. Okay, so  
13 we're missing two. Then we have also Peter Rorher and then Danny Coltart? He's not here.  
14 So you wanna—  
15

16 Mr. Robinson: Lunch break.  
17

18 Chair Tsai: Yeah, okay.  
19

20 Unidentified Speaker: ...(inaudible-not speaking into microphone)...  
21

22 Chair Tsai: You guys also want to testify also?  
23

24 Unidentified Speaker: ...(inaudible)...  
25

26 Chair Tsai: Right, okay. You know what, with that then we're just going to break for lunch at  
27 this point and come back that way everybody gets to come back and testify. I think that's the  
28 best solution. Okay, thank you.  
29

30 Mr. Spence: What time?  
31

32 Chair Tsai: Be back 1:05.  
33

34 A recess was called at 12:05 p.m., and the meeting was reconvened at 1:13 p.m.  
35

36 Chair Tsai: Okay, Maui Planning Commission is called back to order. We're on the—  
37

38 Mr. Spence: E-1.  
39

40 Chair Tsai: So public testimony. I have a list from this morning. Individuals who want to testify.  
41 Please come forward, you have three minutes. Identify yourself please. Stephen Hynson?  
42

1 Mr. Stephen Hynson: Good afternoon Commissioners. My name is Stephen Hynson. I live at  
2 88 Nohea Place.

3  
4 Chair Tsai: Please speak to the mic.

5  
6 Mr. Hynson: Stephen Hynson, 88 Nohea Place, just a few lots mauka of where the zipline is  
7 located. And I wanna thank you for the opportunity to give my testimony this afternoon. I  
8 understand there was a move to not allow testimony. Today, I want to support and urge the  
9 Commission to accept the written finding. Material facts of this, that was stated in the written  
10 finding have effectively not changed. In fact, things have gotten worse. There's been continued  
11 grading. This grading has negatively impacted the drainage during this last major rain storm a  
12 few weeks ago. There's a small lake that had been created on the property. If in fact it is a  
13 historical site there is continued destruction of historical artifacts. You just don't bring in a  
14 bulldozer and start bulldozing. They've added a new large tent structure. I'd estimate it's  
15 somewhere 30, 40 feet in diameter in the front of the property. They've added a bungee jump to  
16 the tower. So as you can you know there is continued activity, expanded activity and this  
17 doesn't hold well for the future.

18  
19 Under the standards for reviewing a special use permit again as stated in the written statement  
20 none of those criteria have been met. So there are definitely grounds for acceptance of this  
21 written document. I understand that we're gonna be challenged or you're gonna be challenged  
22 on procedural issues. I would suggest that this is nothing more than a delaying tactic that I  
23 hope the Commission sees it is well within their rights to make a decision on this.

24  
25 If you do decide to go forward, and hear additional testimony from the lawyers representing the  
26 defendant, a concern we have is that if in fact the permit was accepted and approved, we don't  
27 want the activities there enlarged, but they're just showing signs of this is what they're trying to  
28 do. In this case they're running ...(inaudible)...the neighbors. That's all I would like to say at  
29 this point and also request if there might be the possibility to respond later in this hearing to  
30 whatever is presented by the lawyers for the applicant. Thank you very much and any  
31 questions?

32  
33 Chair Tsai: Thank you.

34  
35 Mr. Hynson: Thank you.

36  
37 Chair Tsai: Ann Bassel?

38  
39 Ms. Ann Bassel: Good afternoon, I'm Ann Bassel and I'm Stephen Hynson's wife. I also live at  
40 88 Nohea Place. We're about three very long narrow lots up from the zipline. So all the noise,  
41 visible tower of 35, 40 feet, of course there's the talk of the 80-foot tower and I just want to  
42 reiterate what Stephen said that having read your decision and having been here for the July 12

1 hearing. I wasn't here in August, for the 12. I completely agree with your decision and hope  
2 that you go ahead and make the order. And one of the things that I fail to understand in July, I  
3 still don't understand if the property is owned Tenants in Common, three different people,  
4 groups, there's an LLC, these were the original family owners, and then the applicant how can  
5 the application be granted to someone who owns 50 percent of the property? And even though  
6 I understand that there is a subdivision being worked on, there's been an application for a  
7 subdivision those are very, very difficult to get. There's one 5/8-inch water meter. I don't...I've  
8 never heard that there's any love for the other owners of the property so I don't...I think to wait  
9 for a subdivision that could take years and in the meantime this continues, bungee jumping is  
10 added, anyway I thank you. And it's a commercial operation. This has nothing to do with  
11 agriculture. We raise tilapia, and aquaponics. We have a greenhouse. I have goats, a sheep.  
12 We lease land for horses, and we raise...we've grown fruit trees and koa trees. This is  
13 agricultural and it's very upsetting to hear the screaming and the entertainment going, partying  
14 down below. Thank you.

15

16 Chair Tsai: Thank you. Jake Rohrer?

17

18 Mr. Jake Rohrer: Hello, I'm Jake Rohrer. I live on Kaupakalua in Haiku, and I appeared before  
19 this committee, commission last summer together with perhaps a dozen nearby neighbors  
20 where all of us voiced our objections to the noise and the intrusion from the operation of the  
21 Northshore Zipline. We further expressed outrage at the aggressive and uncaring manner in  
22 which the applicant established and continues to run his business. And we're thankful that the  
23 committee, commission heard us and voted accordingly to deny the special use permit  
24 application. You made a finding at that time that the applicant demonstrated a willful disregard  
25 for the consideration of neighbors and continues to operate contrary to an order to cease and  
26 desist which I am told recently that that may or may not exist. I just don't know. And concluding  
27 with the applicant should not be rewarded with an approval. And in the earlier hearing there  
28 was a comment about a \$9 million sale and profits made and that's the American way and I  
29 agree and I do not begrudge the applicant and his profits, but it's also the American way to play  
30 by the rules and not trample your neighbors underfoot. *The Maui News* headlines sums it up  
31 like this, operating without a permit is a way of life for Haiku zipline business. The location  
32 changes but Derek Hoyte's story remains the same. He finds a picturesque piece of land,  
33 strings up a few ziplines and operates nonpermitted tours until the counties come knocking.  
34 Maui County hasn't knocked loud enough. The ones in Washington did. *The Maui News*  
35 headline is an accurate description of the applicant's past practices. Unpermitted businesses  
36 without zoning approval or community input. No community input ever and trespasses on  
37 adjoining properties are hallmarks.

38

39 The Planning Commission's decision to deny a permit was unanimous. As Commissioner  
40 Robinson I believe concluded, when you're disingenuous and this is what happens, a lot of  
41 people gets special use permits but they do it in a different way. And since the July hearing the  
42 only change I'm aware of, although we've just heard of several others is the addition of a new

1 attraction called the Leap of Faith where you walk a plank and jump 40-foot of the tower and I  
2 can only imagine the additional noise as shrieking thrill seekers jump into the void and join in  
3 concert with screaming zipliners. I find it disingenuous indeed to add this attraction in the face  
4 of the complaints by the neighbors. So on behalf of local residents, all of us, we ask that you  
5 deny the applicant's motion to reopen the hearing and bring this matter to its conclusion. That's  
6 all. Thank you.

7

8 Chair Tsai: Thank you. Peter Rorher?

9

10 Mr. Peter Rorher: I believe I shouldn't talk right now I'm too upset. I will—

11

12 Chair Tsai: Okay. Danny Coltart, you want to come forward and testify. Please identify  
13 yourself you have three minutes.

14

15 Mr. Daniel James Coltart: Yeah, Daniel James Coltart. I live right next door to the zipline. If I  
16 could take a moment to pass my phone around. I went to Kinkos to try to get the picture blown  
17 up but for whatever reason I couldn't get the photograph that I have of the view from my...I feel  
18 like a picture's worth a thousand words. So if I could pass my phone around to you  
19 commissioners and let you take a look at the photograph?

20

21 Mr. Giroux: Hold on.

22

23 Chair Tsai: I don't have a problem with it but, Deputy?

24

25 Mr. Giroux: Because we have no way to preserve this into the record we're not going to accept  
26 it at this point.

27

28 Mr. Coltart: Okay. I'm about 250 feet away with a clear shot to the tower which is 40 feet tall.  
29 They zip to the right, they zip to the left and they jump off that bungee that we just talked about.  
30 My wife and I can hear the talking. Forget about the screaming, we can just hear them talking  
31 because there's a clear shot from...there's nothing between us that's why I wanted to show you  
32 the picture. It's like a 40-foot tower, it looks like a military tower with a machinegun turret or  
33 something sitting right in my view which used to be my skyline view. And so it's depreciating the  
34 value of my property, the quality of my life. I play acoustic guitar, have 30, 40 original songs  
35 that I'm recording, my wife is a massage therapist. She does work on just friends and family but  
36 it's totally disruptive. We have to keep the door shut when they're operating and which I don't  
37 have air-conditioning in my house. I can't just leave the screens open. It's just totally disturbing.  
38 Let alone the noise, the visual impact of that in front of us is so horrendous that Derek came  
39 over the other day to you know, to offer me some money to come up and stand before him and  
40 put in a good word for him. I turned him down because the amount of money that he's talking  
41 about isn't even remotely close to what I'm losing. As Ann and Steve said, I have a diversified  
42 fruit orchard, I get 85 cents a pound for my fruit. I have horses also boarding on my property

1 and I dry...dehydrate bananas, macadamia nuts. We make 85 cents a pound while he's making  
2 \$15,000 a day looking onto my property. The only view that he has is our properties that he's  
3 zipping along side of.

4  
5 Ms. Takayama-Corden: Three minutes.

6  
7 Mr. Coltart: It's a 1,500 long...1,500-foot long piece of property and I'm 1,500 feet long, five  
8 acres right alongside of him parallel. And basically he's trying to hush me up and I'm not about  
9 to be hushed up. The last time I was here and presented my case when I came home, the next  
10 morning there was a wine bottle smashed on the front of my driveway. Took me a half hour to  
11 pick up all the shards. Now I don't know who did that, but in 38 years I never had a bottle of  
12 wine shattered on the front of my driveway. The following week Derek came to my house and  
13 stormed up my driveway and slammed down a bunch of paperwork saying you know, that there  
14 was a sound check done and they're within their decibel level. And I say to that, not true. It's  
15 totally disruptive. Totally loud. And sometimes when they scream—

16  
17 Chair Tsai: Please conclude, your three minutes are up.

18  
19 Mr. Coltart: --well, they scream from one tree to the other which is hundreds of feet away to  
20 each other. Thank you for hearing me.

21  
22 Chair Tsai: Thank you.

23  
24 Mr. Coltart: And I hope you do the right thing and you know protect us innocent people. Thank  
25 you.

26  
27 Chair Tsai: Danny, hold on a second. I have a question for you.

28  
29 Mr. Coltart: Sure.

30  
31 Chair Tsai: You mentioned, you said a bungee cord jump?

32  
33 Mr. Coltart: Yeah.

34  
35 Chair Tsai: Is that a new addition since we?

36  
37 Mr. Coltart: Well, they've been bungeeing off of different things all along. But from what I...I  
38 can see them jump off so there is a bungee there, yes. I can see it and I never noticed that  
39 before but I can witness it. They jump right off the tower I guess off of a little plank. And there's  
40 no way to stop screaming. I don't care if they put up a sign because it's uncontrollable. A friend  
41 of mine went on a bungee jump one time, his wife told him he screamed all the way down. He  
42 didn't even know he was screaming all the way down. It's uncontrollable. That's a picture of it

1 there. But that's my view from my, right from my bedroom, my living room. I have to actually  
2 put up tapestries over my porch.

3  
4 Chair Tsai: Yeah, we can admit that piece as... thank you.

5  
6 Mr. Coltart: You're welcome.

7  
8 Chair Tsai: I have a Missy Prosser?

9  
10 Ms. Mary Ann Prosser: Hi, my name is Mary Ann. I'm Danny's wife and thanks for being here.  
11 I'm unhappy I'm here. I resent the heck out of the fact that not only do I have to suffer through  
12 this thing for 10 years, but I've gotta take my time to come out here, to stand against somebody.  
13 It's just not even in my nature. I don't want any of it. The part that concerns me, after the last  
14 meeting not only was the sound of it uncontrollable which that's my point is it doesn't  
15 matter...the zipline has said that they would address these issues of screaming with their  
16 clients. But my point is I know for sure it's uncontrollable based on what a lot of other people  
17 have said. It's an uncontrollable scream. It doesn't matter how hard the zipline guides try and  
18 make the people not scream. When you're jumping off a cliff you're gonna scream and you  
19 don't even know you're gonna scream so whatever it is they're gonna try and do to make this  
20 okay it's not gonna be okay. Our house happens to run along perpendicular, parallel to the  
21 zipline. And there's not a room in our house that we can get away from it. There's no getting  
22 away from it and granted there are times of the day when oh, an hour will go by and it is quite,  
23 but it's nothing we can count on. I cannot have a client or friend or family over for healing  
24 bodywork without knowing for sure that we're gonna get disrupted one way or another with  
25 screaming. We have a long-term rental on our property that is sitting empty now because we  
26 can no longer say things like it's quiet, private, sanctuary. I know that's a special interest not in  
27 my backyard kind of thing but these are the kind of things that we used to attract renters for a  
28 place. And we can no longer use any of those words to describe our sanctuary because it's not  
29 a sanctuary any more. It's an amusement park. It's a carnival and it never ends and it hasn't  
30 ended and it hasn't changed and we've been asked to come here and say it has changed and it  
31 hasn't changed. And my point is is I'm not saying anything against the quality of these people,  
32 but they don't have ability to change an uncontrollable factor. And that's what I'm here to talk  
33 about that there isn't any way they're going to be able to make it okay with us. We've lived with  
34 it for 10 years and I'm just frazzled at this point. Every day I wake up and all I wanna do is just  
35 get out, get away from our property. We've been working really hard toward our retirement,  
36 selling produce for 85 cents a pound, working our way to our agricultural, you know in our  
37 agricultural zone and getting our farming plan together. We've had to work really hard to live in  
38 a agricultural zone which we don't feel like we live in an ag zone any more. We don't have the  
39 privilege of what we paid for and we have tangible losses in our privacy, in our quality of life.

40  
41 Ms. Takayama-Corden: Three minutes.

42

1 Ms. Prosser: And they don't have a permit to do it and I would encourage you to just say no,  
2 keep saying no. We'd like them to go someplace else and do it where they're not going to  
3 disrupting. ...(Inaudible)... running a zipline in an inappropriate zone which is agriculture. And  
4 as far as I know they don't have any ag. So that's all I have to say.

5  
6 Chair Tsai: Thank you.

7  
8 Ms. Prosser: Any questions?

9  
10 Chair Tsai: Okay, anyone else wish to testify at this point? Please come forward, identify  
11 yourself and you have three minutes.

12  
13 Mr. Lance Gilliland: Aloha. Aloha, my name's Lance Gilliland. I live at 1835 Kauhikoa Road.  
14 I'd like to also reserve my right to come back and ...(inaudible)...on the other points that they  
15 may bring up during this meeting. I'm going to go through two scenarios and one is going to be  
16 my statement and the other one is going to be addressing some of their responses to the last  
17 July meeting.

18  
19 To the planning commission, the property description is inaccurate. It is 36 acres, not 17.5. It's  
20 not subdivided. It has never been subdivided since he started this in 2009. Three owners own  
21 it. It's a tenants in common. Prior to 2009 when Derek purchased ownership in this property,  
22 Skamania Clark County had already educated him on the proper process to build and run a  
23 zipline. His education included the permitting process, codes, et cetera that required  
24 addressing before proceeding. He had also learned that just because you're the landowner in  
25 this case one of three does not give you the right to do whatever you want and asking for  
26 forgiveness rather than permission will send you to jail and force you to pay large fines. Not to  
27 mention being disliked in the community of which he probably never showed his face and he  
28 never shows his face at any of these hearing either. Even with the hearings with my aunty  
29 them, he never shows his face.

30  
31 Derek has chosen to throw out all the...all that he has learned and played the same game here  
32 on Maui. The prudent business man would not spend an enormous amount of money unless he  
33 has enough money to put it back to the original status. Derek must have that money.

34  
35 I will bullet point the game he's play with Maui County community, us, the commissions, both  
36 the Planning as well as the Variance and Appeals Commission. Three owners, acres again 36  
37 acres, 36 acres not 17.5. Three owners, tenants in common. Don't let him fool you that he is  
38 trying to subdivide. He has decided to renege on his original subdivision of a recent move and  
39 recently moved his...his entire operation from one area to an upper parcel. Originally that was  
40 for one of the other owners. One of the first things Derek did once he acquired the property in  
41 2008-09, was trying to take property out of ag status for what reason I don't know, actually was  
42 to try to run my uncle them out broke because they're retired. At the same time he began



1 clearing property and outlining his ziplines. He kicked the cattle out that had grazed there for  
2 over 80 years telling the other two owners that they were hindering his ability to make money,  
3 though it made money for them, not much, we just sell our cow, we get beef, we don't have to  
4 buy meat. Asked the other two owners to sign permit for the zipline, they denied. Had always  
5 denied it from day one. He was well aware of that. Tried to use a special use permit...tried  
6 special use permit using his historical value as a means to get around all the owners signatures.  
7 He has outright disobeyed the orders of both the Planning Commission and the Appeals  
8 Commission. The Appeals Commission informed him that not to build that 80-foot tower. What  
9 he did is build a bungee cord. So that's a new activity and he's marketing it as well.

10  
11 All said, Derek must be directed to return the property to its original status when he purchased it  
12 in 2008 and 09, subdivide the property and then apply for permits for a zipline activity to include  
13 the community involvement. That's the proper way to do it. It took me 11 years to get my water  
14 meter and my home because I followed the rules. He should be no different. No different.

15  
16 I have two more minutes. Derek...(inaudible)...for community fraud. The public...he is  
17 promoting the zipline it's not legitimate, it's not permitted, it's unregistered. And last jail for  
18 stealing from Maui County because I don't know where you put any money you collect from he's  
19 not recognized. From everything I could see, I'm not a lawyer, but I don't recognize his  
20 business. I don't know where he's giving our taxes money. Where is he reporting his revenues,  
21 I don't know. I don't think we collected anything from him. But again, thank you and I'll come  
22 back, some other points when they come up.

23  
24 Chair Tsai: Thank you Lance. Oh, Commissioner Robinson?

25  
26 Mr. Robinson: Is there any other information that you wanna give to us now?

27  
28 Mr. Gilliland: I would if I may? I do have some things that I'd to address that they've submitted.

29  
30 Mr. Robinson: Do you have any information from what, from the last commission hearing  
31 compared today and the environment that's going on now?

32  
33 Mr. Gilliland: Absolutely. Nothing has changed. I live a quarter mile from this activity down  
34 makai. I can still hear everything clear as day. You know I think it's a violation of having my  
35 kids being subject to F bombs. You know I don't teach my kids that in my home, but you can  
36 hear it from my house a quarter mile away. You're welcome to come see my house and hear it.  
37 You know nothing has stopped. You know, the traffic is still the same. I'm constantly telling  
38 people okay you gotta go further up the road, further up the road. I can tell them go down a  
39 road and a...you know? You know they're visitors and go up the road. But nothing has  
40 changed. In fact, every time you tell him not to do something, he does more. Because he has  
41 not yet cease and desist. He doesn't care what you guys say. He's outright disrespectful on  
42 everything you guys have to say period and that's a fact and I'd be happy to stand up there and

1 go...(inaudible)...here.

2

3 Chair Tsai: Thank you. I also have a Fred Borsum?

4

5 Mr. Fred Borsum: Yeah, you're gonna have to kinda excuse me. I'm not real good at this kinda  
6 stuff, but good afternoon. My name's Fred Borsum. I live at 2060 Kauhikoa Road. And I  
7 represent myself and my family here. I've never met Mr. Hoyte, but he's represented by one of  
8 the biggest law firms in the state I do know that and we are not. But we're relying on this  
9 commission to do the right thing.

10

11 First off, I wanted to set the record straight from the last hearing. The attorney accused the  
12 neighbor, one of the neighbors who I don't know, of I think corralling the other people to come to  
13 the meeting. I don't know if corralling is the proper word but it was referred to that. That is not  
14 true. We all got letters in the mail, registered letters and that's why we came.

15

16 I noticed the attorneys at one time kept referring to the operation as improving a historical site.  
17 What does a zipline have to do with a historical site? Is the property registered as a historical  
18 site? I don't know.

19

20 We have seen Mr. Hoyte's ziplines have been less than upfront in the past. How do we know  
21 the same will not happen here? We don't need a Disneyland in this area. I don't know how an  
22 80-foot tower would fit into this whole scenario. What are the other plans?

23

24 In closing, Mr. Hoyte has turned his nose up to the neighbors and the County. He has been a  
25 bully and we don't need a bully in this neighborhood. Thank you very much.

26

27 Chair Tsai: Thank you. Robert Freidlander?

28

29 Mr. Robert Freidlander: Hello, thank you for letting me speak. I don't even live in his  
30 neighborhood where this people. I live at...my name is Robert Freidlander. I live at 280 West  
31 Waipio Road and there's a zipline 40 feet away from my house. I've been a resident of Maui for  
32 40 years. I work my...I worked the whole time to afford a piece of property that's ag land that is  
33 ag land in order to have a retirement peaceful home. I started building a home that took me 15  
34 years to get started because I had to go through three different permit and subdivisions to get to  
35 the point. I've done everything legal and now I have a zipline 40 feet from my house. I have the  
36 same problem these people have and I am here to address you guys to say there's gotta be  
37 regulations. There's gotta be ways that people can have a say in what goes on right next. In  
38 the same way that you know there's neighbors that wanted to have a bed and breakfast and  
39 they had to go through all this stuff to get a bed and breakfast and have community input. We  
40 were never given community input and nothing's ever happen. And I'm just here to say that the  
41 County and the Planning Commission has to come up with some plan to stop this from  
42 happening in small neighborhoods where the noise level and the activity level is so great that it

1 makes your life miserable. And you know, and again, the person in our valley is a bully as well  
2 and it's the same thing and the County has to do something to stop it from happening to every  
3 neighborhood. There has to be regulations that say there should be so many feet and I mean a  
4 lot of feet before a zipline could be in a neighborhood. I mean, the original ziplines that came to  
5 Maui were on gigantic pieces of property that bothered nobody and that's why they were  
6 allowed. And I assume they had permits. The one next to me doesn't have a permit either.  
7 And I hope you guys do something about it. Thank you.

8  
9 Chair Tsai: Thank you. Okay, anyone else wish to testify at this moment? Please identify  
10 yourself. You have three minutes.

11  
12 Ms. Zandra Amaral Crouse: My name is Zandra Amaral Crouse, a native to Maui. And I'm not  
13 here on this issue but what I hear and as I look at you commissioners, you know, you guys most  
14 of you are all local guy so you understand 'cause you've seen it happen here on Maui. And I  
15 had the opportunity to speak to both of you and I like you guys from what you say, but basically  
16 cut it short. When it comes to disrupting a neighborhood especially one where babies live, it's  
17 not pono, it's not right. It's not. I live at the end of Ohukai, mauka side, Haleakala Ranch and  
18 way up, and way up my cousin Brandon is rounding up cattle and it's way, way, way up past the  
19 water tank, past...you can hear it simple because of where I am located. And my children live  
20 in Haiku. My in-laws the Souzas used to live in Haiku. They've both passed since. So we  
21 spend a lot of time up in that area. And I'm sorry, but yes it does, noise is a factor. It really is. I  
22 mean, I think ziplines are fun, I'd never go on them on my age. But I'd like to try one day. But  
23 it's not the people guys, it's not the people and no one should be given an exemption at the cost  
24 of our people, no one. It's just not right. People spend hundreds of thousands of dollars  
25 following the rules and I humbly ask for you Chair and of these young men do what is right, get  
26 the appropriate permits, but until such time that it passes the neighbors and the landowners. I  
27 think this body should not approve. But thank you for your time. It's just my mana'o. Mahalo.

28  
29 Chair Tsai: Thank you. Anyone else wish to testify? Please come forward. Identify yourself  
30 you have three minutes.

31  
32 Mr. Peter Rohrer: My name's Peter Rohrer. I live at 2108 Kaupakalua Road. I've endured this  
33 zipline since its conception in 2010. I've called it to the Police, and County, and Planning and  
34 your attention how wrong this is. And nothing's been done.

35  
36 This man is the opposite of pono. He doesn't do anything right. If you look at his track record  
37 he has several other problems with counties and states running ziplines. So he's been fined a  
38 considerable amount of money. And you guys make the rules but you don't enforce them.  
39 Mr. Hoyte's been fined near three-quarter of a million dollars in fines which is running daily,  
40 another \$1,000 every day he operates illegally.

41  
42 He was told not to do anything else on this property and like you've seen, he has. I...last time I

1 spoke to you I got in some trouble for speaking up and I thought this was America you know,  
2 you could speak up especially with this. I was intervening his variance which is just a ploy to get  
3 around the law of needing a special use permit which he's never had and never will have. So  
4 the other rule, the only other rule to have a zipline is you cannot be a nuisance to the  
5 neighborhood. Obviously he is a nuisance to the neighborhood. I've had a petition I've  
6 circulated to the closest 50 neighbors, every one of them signed it. They can't stand the zipline.

7  
8 To let this go on and on is a travesty. I mean the man makes over \$15,000 a day when he  
9 operates even if he is being fined a \$1,000 a day he is gonna continue forever. I really can't say  
10 anything else. I'm very upset by this. It's cost me tens of thousands of hours of sleep, half a  
11 million dollars of value to my property. I've been to psychologists and psychiatrists over a  
12 hundred times. I'm...the life I used to have I don't have any more. Anywhere on my property on  
13 the west side there it is, as soon as I ...I don't even have to walk out of my house to see him. I  
14 can roll over in bed and see him and they can see me in my living room, any one of my decks.

15  
16 The situation is that you're allowing it to continue and you need to step up to the bat and employ  
17 your power here otherwise how do we handle this?

18  
19 Chair Tsai: Thank you, Peter. Anybody wish to testify? Seeing none, public testimony is now  
20 closed. You already did.

21  
22 Unidentified Speaker: I did, but there was one important thing I did—

23  
24 Chair Tsai: I'm sorry, you only get one chance, yeah. Okay, so...

25  
26 Mr. Spence: So Commissioners, I'm sorry we should be a little bit louder in what we're  
27 discussing. We're just discussing whether...there's three agenda items related to this. One is a  
28 motion is to reopen the hearing, another is to amend the application, and then another is to take  
29 up the draft Decision and Order. So I think it...what we were saying is it's a little premature to  
30 take up the draft Decision and Order when we haven't heard or the Commission hasn't made a  
31 decision whether to reopen or to allow the amendment of the application. So my thought would,  
32 it would...I don't know what you want to take up first, the reopening or the...well, you would  
33 have to reopen in order to receive the amendment to the application. So that's the one we  
34 would take up first and I would submit that Mr. Chipchase and Mr. Goodin would present their  
35 case at this time

36  
37 Mr. Cal Chipchase: Thank you, Director. Chair if I may and if I'm...my volume's too low I'll  
38 speak up but if I could for the sake of everyone in the audience and really for this body's sake  
39 as well if I could just speak to them all at once because I think they're interrelated and I don't  
40 mean to take up any more of the afternoon than we have to in this proceedings If there are  
41 specific questions or you have to take the motions in order I completely understand that but for  
42 purposes of you know my intention, my presentation I'll talk about them together if that's all

1 right.

2

3 Mr. Spence: Okay.

4

5 Mr. Chipchase: Okay, thank you. You know I understand that you guys all have to do and I  
6 respect that and I get it and I hope you understand that I have a job to do too and part of my  
7 job...

8

9 Mr. Higashi: Can you identify yourself?

10

11 Mr. Chipchase: Oh I'm sorry, I did earlier.

12

13 Chair Tsai: Hold on a second. Commissioner Hedani?

14

15 Mr. Hedani: Can we have the testifier speak into the microphone because it's being broadcast  
16 through Akaku?

17

18 Chair Tsai: Yes. Can you please make sure?

19

20 Mr. Chipchase: Is that better?

21

22 Chair Tsai: That's better.

23

24 Mr. Chipchase: Yeah, okay. I introduced myself earlier, glad to do it again. My name is Cal  
25 Chipchase. I'm counsel for the applicant. With me at the table is my partner, Chris Goodin who  
26 is also counsel for the applicant. I appeared before you for the July hearing as well with PBR as  
27 our planner. And you know what I wanted to convey and just I suppose since I may not have  
28 been heard I'm gonna speak on all the matters at the same time, the three agenda items for the  
29 sake of efficiency because they're all related. And then however, the Commission decides to  
30 take them up in terms of decision making you know we understand and don't object to.

31

32 The point I was making is that everyone's got a job to do and I hope you understand that part of  
33 my job is to preserve a record, the record that we're creating here in this proceeding including  
34 the record that we created back in July. And so I do have to object again to the further public  
35 testimony not only for the reasons that I stated earlier because I was off agenda topic. The  
36 testifiers do not speak to the specific agenda items which are to adopt the findings, to reopen or  
37 to amend the application. So that testimony for all the reasons that I said earlier and for that  
38 additional reason shouldn't be considered. I also object to the receipt of additional evidence.  
39 The Commission has not reopened proceedings and so additional evidence cannot be received.  
40 If it were I would have an opportunity to submit rebuttal evidence at a further hearing.

41

42 But you know, the proceedings matter, procedure matters and when we don't follow proper

1 procedure the decisions however right they may seem can be infracted or can be reached for  
2 the wrong reasons. And so the point I wanted to speak to first is a comment that was...that I  
3 made at the last hearing and that is that the applicant had reached an agreement with the  
4 County in a meeting with the Director and with the County's attorney and with other members of  
5 the Planning Staff that the County would accept D&S's application even though it was only  
6 going to be signed by D&S and not the other co-owners and that the BVA proceedings, the  
7 Board of Variance and Appeals proceedings any NOV would be stayed as long as D&S pursued  
8 an application and that the County would process that application to this point to decision even  
9 though D&S continued to operate.

10  
11 Now at the last hearing the Commission doubted my representations and I can understand that,  
12 but to make sure there is no doubt we've submitted a sworn declaration from the attorney for the  
13 County, the Planning Department's attorney saying exactly that and that's Exhibit 1.1 to our  
14 filings. And so I use that as an example of what happens when a proceeding doesn't follow the  
15 right procedures. When decisions are made on something other than evidence. There  
16 references to those facts that he continued to operate and subject to a cease and desist order in  
17 the draft Findings and Conclusions. But those aren't the facts. The facts are as I represented  
18 them then and as the County attorney has sworn in this declaration at 1.1 today.

19  
20 The problem with accepting public testimony and treating it as evidence in a 90, Chapter 91  
21 proceeding is exactly that. It isn't evidence. It's no made under oath, it's not subject to cross-  
22 examination and there's no opportunity for rebuttal. Those are fundamental procedural  
23 guarantees and in Chapter 91 proceeding. They didn't happen at the last proceeding. Instead  
24 what should have happened is that the public testimony should have been given. The public  
25 testimony closes and then the 91 proceeding begins and any decision is made on the evidence  
26 introduced in the Chapter 91 proceeding. That's not how we went forward. And as a  
27 consequence of that the draft Decision is based on public testimony not the evidence that is  
28 actually before the body.

29  
30 That leaves us with a question where do we go from here? We can press forward, you can  
31 adopt the written findings and decision and we can take it up on appeal. Those are your rights.  
32 Those are our rights. Totally respect if that's what you choose to do. But we've suggested in  
33 the two motions that we filed is that we do it again. That we reopen the proceedings and do  
34 them right according to Chapter 91 and the law of due process. As part of that reopening the  
35 applicant has proposed to amend its application to delete the 80-foot zipline tower and any  
36 additional challenge course elements that would require Planning Commission approval.  
37 Essentially to approve the operation as it stood on the day of the application. That is what we  
38 propose to do reopen the proceedings, allow us to amend the application and let's have a full  
39 and correct hearing that results in a decision up or down that is actually based on the evidence  
40 not unsworn testimony that is not subject to cross-examination and is not open to rebuttal. That  
41 is my request to the Commission today. Thank you.

1 Chair Tsai: Okay, I'm gonna open the floor for the Commissioner's questioning or jump to a  
2 motion. Commissioner Higashi?

3  
4 Mr. Higashi: Are we now open for questions?

5  
6 Chair Tsai: Yes.

7  
8 Mr. Higashi: Okay, I'd like to ask the attorney you stated that your applicant met with the  
9 Planning Department and you were informed that as long as they had put in their application  
10 that they could continue with their business?

11  
12 Mr. Chipchase: Let me be absolutely precise and if I wasn't absolutely precise let me be that  
13 way.

14  
15 Mr. Higashi: Sure.

16  
17 Mr. Chipchase: I think I was but to the extent that it was misunderstood. As long as we put in  
18 the application the Department would process it even though we continued to operate.

19  
20 Mr. Higashi: You got permission for that?

21  
22 Mr. Chipchase: No, no, no, no. I'm not representing and Will can correct me if I do that the  
23 Department approved the operation. All the Department did was process, agree to process the  
24 application even though we continued to operate. That is what I represented, that is what is in  
25 Mr. Kolby's declaration.

26  
27 Chair Tsai: Go ahead.

28  
29 Mr. Higashi: Your applicant was aware that the County issued an order to cease and desist  
30 operations, correct?

31  
32 Mr. Chipchase: Yes, Commissioner.

33  
34 Mr. Higashi: So consequently why is it that your applicant continued to operate when the  
35 County had issued you a cease and desist order?

36  
37 Mr. Chipchase: The applicant exercised his rights under County Code and the Administrative  
38 Procedures to appeal that cease and desist to the BVA because he does not believe that the  
39 cease and desist was properly issued. The matter is pending before the BVA. Those  
40 proceedings as well as the NOV were stayed while we processed this application.

41  
42 Mr. Higashi: Okay, I'd like to just further this particular discussion. Did your applicant start this

1 operation, this zipline operation in 2009 or 2010 according to the records?  
2

3 Mr. Chipchase: I'm not going to comment beyond the record. Whatever is in the record that  
4 was submitted as part of the application is what we stand on. I'm not here to introduce new  
5 evidence as part of that unless the matter is reopened. And if it's reopened then we'll have a  
6 further hearing and that would be an entirely appropriate question for witnesses to address.  
7

8 Mr. Higashi: So you're saying that you will not answer based upon the documents that you  
9 presented to us?  
10

11 Mr. Chipchase: I'm saying that I will not comment on or introduce new evidence. Whatever the  
12 documents say, whatever the application says is the record on which we've stood and which  
13 we're standing for purposes of this proceeding unless the matter is reopened.  
14

15 Chair Tsai: I'm gonna expand on that with another question. With that do you actually show  
16 proof, can you show proof that the applicant has any type of permit to operate?  
17

18 Mr. Chipchase: This body's job is not an enforcement body whether a permit is required is  
19 not—  
20

21 Chair Tsai: I'm not asking that question. I'm asking if you can show proof because obviously  
22 have a understanding think that the cease and desist order is not with reason. So I...so if you  
23 have a permit to operate and we tell you not to operate then that is a reason for challenge. I'm  
24 asking a very simple question do you have a permit to operate in initially? So if you don't have  
25 a permit then you have no right to operate.  
26

27 Mr. Chipchase: If you're asking whether we have a special use permit, so let's be specific the  
28 answer the is no which is why we're before this body. If you're asking whether we believe but  
29 not withstanding a special use permit the operation is lawful, the answer is yes and that's the  
30 reason for the appeal to the BVA. In agreement with the County we agreed to not pursue that  
31 appeal if this application is granted. Instead of challenging the County's right or power I should  
32 say to require a permit we believe that it would be more appropriate for everyone to go through  
33 the process. As part of that process we submitted the application for the special use permit.  
34

35 Chair Tsai: Director?  
36

37 Mr. Spence: Thank you. Yeah when...okay, boy it's been a long time since I've looked back at  
38 whatever agreement so...  
39

40 Mr. Chipchase: Yeah, I think it was Augusts 2015 Director so it's been a while.  
41

42 Mr. Spence: Yeah. It's been quite a while, but you get into an enforcement issue like this



1 it's...we said okay, let's give the guy an opportunity to become legal and obtain a permit. And  
2 so they filed their application for a special use permit and come before this body, have a public  
3 hearing, et cetera. If this body grants a permit then you know everything's pretty pau, I mean  
4 well then we can, we can talk about whatever fines had accumulated and what do they owe the  
5 County and all that. If this Commission denies the permit I'm not gonna suggest anything to the  
6 applicant on how they should proceed from there but certainly is a, there's a pending BVA  
7 appeal and there's other avenues of other sorts. I would say for the record we did...I don't think  
8 it could ever be characterized by the County that we said yes, it's absolutely fine for you to go  
9 ahead and operate. We knew they were operating, we didn't say, fine please go ahead and do  
10 this. That would, I think that would be a mischaracterization. It's like okay, how do we resolve  
11 this? One way is to come get a special use permit. Let's go down that avenue pending these  
12 other appeals. So that's the way we did that. That sound all right?

13

14 Mr. Chipchase: Sounds exactly right Director.

15

16 Mr. Spence: I would hate to misstate it.

17

18 Chair Tsai: Commissioner Robinson?

19

20 Mr. Robinson: Are you allowed to tell us when you were hired?

21

22 Mr. Chipchase: I believe I can. I mean, I don't think there's any problem with that except for my  
23 recollection and that is fuzzy but it's been several years.

24

25 Mr. Robinson: So...

26

27 Mr. Chipchase: More than two years chair or Commissioner or that's...I'm not trying to be coy, I  
28 just don't remember the exact date.

29

30 Mr. Robinson: Before the August 24, 2015 meeting with?

31

32 Mr. Chipchase: Oh yes, well before that.

33

34 Mr. Robinson: How much before that?

35

36 Mr. Chipchase: At least a year before that.

37

38 Mr. Robinson: Year before that? Okay, thank you.

39

40 Chair Tsai: Commissioner Hudson?

41

42 Mr. Hudson: Thank you, Chair. I'm looking at the Findings of Facts, Conclusion of Law, and

1 Decision and Order Denying Request for the County Special Use Permit of Existing Non-  
2 Permitted Outdoor Recreational Activities at Camp Maui, Haiku, Maui, Hawaii. I don't find  
3 anything wrong with this document. I think this is a fair and accurate representation of what  
4 occurred. The applicant, the one that's saying that we should reopen the case I, I really don't  
5 see why. I think the applicant...we went from proper channels, proper procedure when  
6 everybody was notified that we're having a hearing on a certain, certain date. If had information  
7 to bring such as all of this he should have done his due diligence and brought them at that time  
8 instead of coming with this voluminous thing now after-the-fact in my opinion.

9

10 Chair Tsai: Commissioner Hedani?

11

12 Mr. Hedani: Since we're covering three different things are we gonna hear from them on the  
13 reasons for their request for opening it up again or their reasons for amending their application?

14

15 Chair Tsai: I think that's what they already presented as to the reasons unless...

16

17 Mr. Hedani: I didn't hear any reasons for...I mean, I didn't hear any explanation of an  
18 amendment to the application or...did you present that?

19

20 Mr. Chipchase: I'd be happy to Commissioner. So the reasons for amending the application  
21 were in response to concerns that the operation would be expanded, in particular an 80-foot  
22 tower which was part of the Planning Department's proposed or their report and  
23 recommendation, recall that the Planning Department recommended approval of the permit  
24 including the additional tower. There were concerns raised by neighbors specifically related to  
25 that tower and expanding operations. The applicant has decided that rather than pursue that  
26 expansion it would amend its application assuming that reopening is approved to delete that  
27 additional element and any other expansion.

28

29 Chair Tsai: Commissioners, so we're here to either deny if I'm understanding this correctly  
30 Corp. Counsel?

31

32 Mr. Giroux: Review three items on the agenda.

33

34 Chair Tsai: Right.

35

36 Mr. Robinson: ...(inaudible-not speaking into a mic)...

37

38 Chair Tsai: Corp. Counsel?

39

40 Mr. Giroux: Okay, as far as procedurally I think it's about what do guys want to focus on? So it  
41 was suggested that we probably got to take care of the issue of does this body want to entertain  
42 the issue of allowing the applicant at this juncture to amend the application? And they've

1 submitted their pleadings, they've submitted their reasons, they've submitted whatever affidavits  
2 I believe along with those...that request. So you might want to...again, I'm going to go to my  
3 box theory of create one box 'cause it gets confusing, right? So let's take that one box and look  
4 at the issue of do you as a body want to allow the applicant at this juncture to amend their  
5 application?  
6

7 And that raises issues, procedural issues, legal issues, emotional issues about how are you  
8 processing this permit? How are you processing the fact that you're balancing the public  
9 hearing concerns along with the private Chapter 91 procedural concerns because those are  
10 also being thrown into the mix as far as why they want to reopen the hearing and why they're  
11 objecting to some findings of fact. So I think we need some discussion as to what is the feeling  
12 of the body regarding the issue of amending a permit application at this juncture after you have  
13 heard public testimony, after you've had a contested case hearing and the order of Findings of  
14 Facts and Conclusions of Law are now in draft form?  
15

16 If you come to a decision at that juncture then you can go to the next issue of if the body is  
17 amicable to an amendment then how do you process the reopening of this procedure because  
18 that's a whole nother can of worms that it's gonna...we're gonna have...create another box and  
19 we're gonna start making space for that discussion.  
20

21 Chair Tsai: Commissioner Higashi?  
22

23 Mr. Higashi: I have a clarification from Corporation Counsel. This particular application as it is  
24 being presented doesn't seem like it completely went through the permit process as we normally  
25 do with permits except the fact that the applicant requested a meeting with the Planning  
26 Department to appeal the cease and desist order which according to what I understand the  
27 Director says is that they said that as long as they're processing the permit that they can  
28 continue doing what they're doing?  
29

30 Mr. Giroux: I don't think that's entirely accurate, but let me just try to, try to kind of or you know  
31 get this into where we can get into a discussion. I think one issue that's causing some  
32 confusion is is that there's a separate process going on which is the enforcement process which  
33 is also administrated by the same department and it just so happens to have the same director.  
34 Not pointing fingers but just so there's clarity that in administrative law it gets confusing because  
35 sometimes the sheriff, the judge, the executioner is the same guy who's also your administrative  
36 staff.  
37

38 Mr. Spence: I didn't know I had so much authority.  
39

40 Mr. Giroux: Well, that's why they so...(inaudible)...things about you, you got all this power. But  
41 he's sitting over there as your staff, but he's also the administrative arm of an enforcement  
42 agency. So during those talks there was issues that were raised that brought to light that there

1 is a separate process that your commission, this planning commission processes permits. So  
2 as part of their negotiations it was decided that this process should be used. Depending on the  
3 outcome it could make the enforcement process moot or it could make it worse. So you know,  
4 you know what I'm saying snake eyes, right? You're gonna go all the way, it's either a homerun  
5 or you strike out. But the sheriff over there got an enforcement issue, you have a permitting  
6 issue. That's why it's so important that we're understanding Chapter 92, the public process, a  
7 public hearing, and Chapter 91, the private rights of a contested case and that's where, you  
8 know, that's where we're trying to focus because there's a procedural process that it's very  
9 important that we understand. We are at the crux of reviewing the findings of facts, conclusion  
10 of law, we had a hearing and the request on the table is can we change our request and can we  
11 have another hearing? The power and discretion of this body is that you have every right to  
12 have that discussion and make a decision based on your discretion. That's the discussion we  
13 want on the record right now.

14

15 Chair Tsai: Commissioner Castro, then Commissioner Duvauchelle?

16

17 Mr. Castro: The options, there was three options. One was to reopen, amend, what was the  
18 third option?

19

20 Mr. Giroux: To basically clarify or adopt the Findings of Fact, Conclusions of Law. Those are  
21 the three big options. With each option you have three lesser options, right. If you don't allow  
22 the motion to amend then it's not amended. If it's not amended, you don't open to have another  
23 hearing. If you don't open to have another hearing you decide on whether you want to adopt  
24 your findings of fact, conclusions of law.

25

26 Mr. Castro: Thank you.

27

28 Chair Tsai: Commissioner Duvauchelle?

29

30 Ms. Duvauchelle: I have a question for counsel?

31

32 Mr. Chipchase: Yes, Commissioner?

33

34 Ms. Duvauchelle: You can see we need to keep it simple so I have a couple of questions. So  
35 your basis for amending is that you're not building an 80-foot tower and your basis for asking to  
36 reopen is that we didn't have adequate information in front of us at the prior commission  
37 hearing?

38

39 Mr. Chipchase: Close and close I will say.

40

41 Ms. Duvauchelle: Okay.

42

1 Mr. Chipchase: On the amendment, it's not only to eliminate the 80-foot tower but any  
2 additional challenge course elements. So the operation as it stood when we filed the application  
3 that's what we're...we would seek approval for if the application were amended. So strike out  
4 any part of the director's report and recommendation that talks about new elements including  
5 the 80-foot tower. That's, that's the amend.

6  
7 On the reopening, it's not exactly that you didn't have the benefit of that evidence. That's part of  
8 it, but if I can and I'll try to be non-lawyerly I guess...

9  
10 Ms. Duvauchelle: Please.

11  
12 Mr. Chipchase: Since we spend years learning to be lawyerly, it's a hard skill to unlearn. The  
13 contested case is like a small trial like an administrative trial and there's certain protections and  
14 procedures that go along with that, we call it due process, right? And as part of those  
15 protections and procedures, one thing is all witnesses have to be sworn. All right, anybody  
16 who's gonna offer testimony that you're gonna base your decision on has to be sworn. Another  
17 is that anyone you're gonna base your decision on who testifies has to be subject to cross-  
18 examination. The decision as presented to us in the draft findings is based on public testimony  
19 that was neither sworn nor subject to cross-examination. So that's an evidentiary and  
20 procedural error. So that's one basis for reopening.

21  
22 The second or the third I should say part of those guarantees is the right to submit rebuttal  
23 evidence. So if evidence is properly admitted before this Commission say it's a sworn witness,  
24 they're subject to cross-examination, the applicant has a right to submit rebuttal evidence to say  
25 no, no that's actually inaccurate or it's mitigated by these factors or whatever and that is a  
26 component of what you have before you. We did not previously have an opportunity to submit  
27 rebuttal evidence to testimony that shouldn't have been accepted as evidence. And so we  
28 would like to reopen the proceedings so that we have a correct Chapter 91 proceeding where if  
29 there are multiple parties, multiple parties have the opportunity for counsel, have the opportunity  
30 to name witnesses and do those things that you would normally see in a Chapter 91  
31 proceeding. If you have a proceeding like we do there's one applicant, the only intervenor  
32 withdrew its application, the public testimony is part of the 92 portion that your counsel was  
33 speaking to. It's not part of the 91. You have to base your decision on the 91. And as  
34 presented to us in those findings it was not and that's why we suggest reopening is the right  
35 course here. It basically allows us an opportunity, allows the Commission an opportunity to do it  
36 again and to do it right.

37  
38 Ms. Duvauchelle: Okay, we need to move things along so it's kind of like a Hail Mary, but to be  
39 honest with you nothing to me has changed. I mean, I stand by what we decided at our last  
40 meeting, but thank you.

41  
42 Chair Tsai: Thank you. Commissioner Robinson?

1  
2 Mr. Robinson: Question. I just want to clarify, I think with the Notice of Violation and the  
3 Department non-position is a client usually knows that they're in violation, you know, tell them  
4 that they can't operate, but it would behoove them to have some good will when they show up in  
5 front of the planning commission that they actually understood the County's position and they  
6 would probably want to cease and desist on their own instead of rolling the dice and making  
7 more money and hopefully get a favorable, a favorable view in the commission's eyes like we  
8 did with the applicants of the SUPs up in the Makawao where they're doing their weddings and  
9 all these other applicants that come in front of us, they all are in the same situation. They all  
10 have, they're not able to operate, they can choose to, they can choose to do it even without a  
11 permit and then they come in front of us and then of course and we say, well how come you  
12 kept on doing it, and said, well it's my right, I can do it. But you know, it's up to them, right? But  
13 it usually doesn't work out too well for them because it shows that you know, they're not  
14 listening to the community and to the County which they're asking a permit for. So I think that's  
15 why we're kinda confused like how come these guys can keep on doing it? Well, they can  
16 because technically, legally, loopholey they can keep on doing it but that doesn't mean they're  
17 freed of the burden of the violation if we don't agree to it.

18  
19 Counsel, I guess the question I have for you is, I heard you state that in our findings of fact that  
20 you felt that there wasn't a chance for you folks to rebuttal on some of the findings of facts. Can  
21 you share to me what numbers, what numbers in that findings of fact that you had a  
22 disagreement with?

23  
24 Mr. Chipchase: Happy to, and we presented that in detail in our objections so every finding and  
25 every conclusion to which we object both our general and our specific objections are set forth in  
26 writing and I know you don't mean for me to read that to you, but it is available.

27  
28 Mr. Robinson: Numbers?

29  
30 Mr. Chipchase: If you'd like me to go through and identify them all I'm happy to. So  
31 Commissioner we have general objections based on due process which we've talked about at  
32 length now. We've got a general objection based on what is appears to me to be a  
33 misapplication of the Maui County Code. We have specific objections to findings of fact 3, 5, 6,  
34 7, 8, 9, 10, 11, 12, and conclusions of law 2, 4, 5, 6, 7, 8, I believe that's the last one 8. And our  
35 reasons for that are detailed in the writings.

36  
37 Mr. Robinson: So I just wanna verify, 1, 2, and 4 there was no objections?

38  
39 Mr. Chipchase: If you'll give me a moment I'll do my best to confirm that. That's correct.

40  
41 Mr. Robinson: Okay, thank you.

42

1 Mr. Chipchase: You're welcome.

2

3 Chair Tsai: Commissioners, correct me if I'm wrong Corp. Counsel, what I'm understanding is  
4 that the counsel for the applicant...(inaudible)...simplifying a motion and if they have any  
5 specific objections to the process which we conduct our meetings so forth, if we, of course deny  
6 the motion they still have the opportunity to appeal and that's the route they can choose to go  
7 down. Correct?

8

9 Mr. Giroux: Right. Under Chapter 91, they have a...you know, after you've approved the  
10 findings of fact, conclusions of law, then they have 30 days to appeal to the Circuit Court as to  
11 issues of procedure and process.

12

13 Mr. Chipchase: As well as fact and law.

14

15 Mr. Giroux: Yes, and that's why they're objecting to the conclusions of fact and the conclusions  
16 of law at this point to preserve their record as to what they're objecting to and that would then be  
17 argued at the Circuit Court as to what, what their position is.

18

19 But can I ask some questions of Mr. Chipchase?

20

21 Mr. Chipchase: I've never had a Corp. Counsel ask me any questions in a hearing before so I  
22 think I welcome it.

23

24 Mr. Giroux: You know, I want to welcome you to the chaos of administrative law. But you know  
25 intellectually this is a really interesting issue for I think for all attorneys who are faced with this  
26 dichotomy between Chapter 92 and Chapter 91. So I just wanna, you know these questions,  
27 please don't take them personal but as, you know, as an attorney and as somebody who has to  
28 work with...in the arena of this field I just wanna try to make some things clear so that we could  
29 have some clarity and this might help the commission to understand their role in the process.  
30 But I just wanna make sure you were present at the public hearing and you were present at the  
31 contested case hearing?

32

33 Mr. Chipchase: They were conducted it appears simultaneously with considerable overlap  
34 accepting some public testimony before we presented and public testimony after we presented  
35 and there...so that, that occurred. So I don't know that I can draw a dichotomy between the two  
36 hearings for you they seem to have operated in tandem. It was not apparent that the  
37 commission would base its decision on the public testimony, the 92 portion of it until the draft  
38 findings and conclusions were issued.

39

40 Mr. Giroux: Okay. And just to clarify the Chair usually asks at the beginning of any meeting that  
41 if there's anybody in the public that if they have anything on any agenda item that they can step  
42 up and they can testify to. So Chapter 92 requires us to do that in light of the fact that some

1 people might not be able to stay or they might not be able to hear the whole hearing. So I can  
2 see that there's gonna be people at the beginning of any public meeting who are gonna stand  
3 up and Chapter 92 says that by law at that point we have to accept their testimony orally, in  
4 writing or any data and information that they have at that time. Chapter 92 requires it by law.  
5 So I think that's...one of the issues that you're raising is is that how does the commission  
6 separate that process from their contested case proceeding, am I?  
7

8 Mr. Chipchase: I would say in part that's true. The most fundamental thing of course is how do  
9 they use the public testimony? If the public testimony is used as evidence in the 91 proceeding  
10 then there's been a procedural violation and that's what occurred here.  
11

12 Mr. Giroux: Okay. And so let me under the...under Chapter 91 it says that they're not  
13 supposed to take any, use any evidence that's outside of the contested case. But within the  
14 County Code it requires them to have a public hearing. So how do you suggest that they  
15 overcome that dual role of being harbingers of public process and the adjudicators of a private  
16 right?  
17

18 Mr. Chipchase: I actually really appreciate this almost theoretical discussion at this point, but  
19 it's, it's I don't know if it's interesting to anyone else in the room. It's interesting to me and  
20 counsel.  
21

22 Mr. Robinson: And I'll remind you that we aren't getting paid, but you guys are, so please...  
23

24 Mr. Chipchase: So I mean, I should talk a lot. Anyway, I can comment on how I've seen it done  
25 in a number of bodies, a number of administrative bodies that I've appeared before on a whole  
26 range of clients and whole range of issues. Honolulu Planning Commission for example will  
27 take public testimony, close public testimony and then begin the contested case so that there's  
28 a clear demarcation of the process from public to private. And the public portion of it while it's  
29 part of the transcribed record is not part of the basis on which the commission makes its  
30 decision. I've appeared many, many times before the LUC. The LUC is kind of a funny animal  
31 because it has a 92...it has some obligation to take public testimony even in contested case  
32 hearings. And so what it will do is swear every witness in. Every witness takes an oath, they're  
33 still limited in their time, but then they're open to all counsel for cross-examination before the  
34 witness sits down and then he can be recalled by counsel.  
35

36 Mr. Giroux: Did you ask for that process in this situation?  
37

38 Mr. Chipchase: I had no idea that process was happening. I had no idea that we were having a  
39 92 proceeding and using that evidence in the 91 contested case until I got the draft findings of  
40 fact, conclusions of law, decision and order. I thought that up and to that point the decision  
41 would be based on the record actually submitted into evidence in the 91 proceeding to protect  
42 the commission's decision. It wasn't. 'Cause we could go through the findings that I've rattled



1 off. It's quite clear that it's based on public testimony which is in fact in many, many instances  
2 directly contrary to the evidence that was submitted before this body in the 91 proceeding.

3  
4 Mr. Giroux: Did at any time you ask for any type of subpoenas?  
5

6 Mr. Chipchase: No, I had no need to subpoena witnesses. My witnesses appeared voluntarily.  
7

8 Mr. Giroux: Okay, but what about witnesses that you had objections to as far as what you  
9 believed they were saying that was not true or true or not true?  
10

11 Mr. Chipchase: We had no notice that any witnesses would appear as public testifiers or  
12 certainly as witnesses in 91 proceeding. No documents were submitted to us before the  
13 hearing, no exhibit lists were submitted to us before the hearing, no witnesses was submitted to  
14 us before the hearing. Absolutely no notice that anyone was gonna show up and be treated as  
15 a testifier in a 91 proceeding.  
16

17 Chair Tsai: Counsel, I'm no attorney and never claimed to be one, but I can say in all fairness  
18 when we have public testimony and I've been in this commission for a number of years it's fair  
19 for both sides to be presented so I think that in your particular case your applicant can easily  
20 represent himself but he didn't and he could have other people on his side to represent him as  
21 well and he didn't so that's a fair opportunity we give to everybody and you cannot challenge  
22 something that's what we believe is fair in all aspects.  
23

24 Mr. Chipchase: If I could just correct one thing. Mr. Goodin informed me and reminded me  
25 really that two days, was it was it two days, two days before the hearing Mr. Rohrer submitted  
26 written testimony. It was not identified as an exhibit to be introduced in the contested case  
27 proceeding. Indeed he's not a party. He withdrew his application to intervene. So two days  
28 before the hearing we did have notice of written testimony and that's the extent of the  
29 prehearing notice that we received.  
30

31 Chair Tsai: Commissioner Higashi?  
32

33 Mr. Higashi: Yes, I have a concern about this particular process we're doing right now because  
34 the argument that is made by the applicant or the attorney is that the process that we've been  
35 using which was public testimony without giving oath has been past practice including the  
36 County Council. When people come and give public testimony they're not sworn in before they  
37 give testimony and it sounds like that's something that they're trying to do to modify what we've  
38 been done in the past which means that if if this is gonna be now the practice we're gonna have  
39 a major problem with everyone coming to testify to be sworn in before and on top of that, on top  
40 of that, the rebuttal for the applicant to come and question the person who's testifying makes the  
41 process unmanageable.  
42

1 Chair Tsai: Right. Okay, all so can I get a decision, motion from the Commission?  
2 Commissioner Robinson?

3  
4 Mr. Robinson: I make a motion to go to Executive Session.

5  
6 Mr. Hedani: Second.

7  
8 Chair Tsai: Okay, motion to go to Executive Session, second by Commissioner Hedani. All in  
9 favor?

10  
11 Mr. Spence: Six ayes.

12  
13 Chair Tsai: We're going to Executive Session.

14  
15 **It was moved by Mr. Robinson, seconded by Mr. Hedani, then**

16  
17 **VOTED: To Go Into Executive Session.**  
18 **(Assenting – K. Robinson, W. Hedani, L. Hudson, S. Duvauchelle,**  
19 **S. Castro, R. Higashi)**  
20 **(Excused – P. Canto, L. Carnicelli)**

21  
22 The Commission then went into Executive Session from approximately 2:32 p.m. to 2:50 p.m.  
23 The regular meeting was then reconvened at 2:53 p.m.

24  
25 Chair Tsai: Maui Planning Commission is called back to order. Do I get a motion?

26  
27 Mr. Robinson: I guess I'll go first. We have...which one are we attempting first?

28  
29 Mr. Spence: We should probably, probably deal with all three items, the three agenda items. I  
30 don't know if you want to do them...probably get a motion on just one so the record's clear.

31  
32 Mr. Giroux: Yeah, do you want to separate the question?

33  
34 Mr. Robinson: I wanted to make an amendment that wasn't inclusive of all three.

35  
36 Mr. Spence: Okay.

37  
38 Mr. Robinson: I mean, not amendment, motion. My motion is to deny opening, reopening this  
39 application or reopening the hearing on its request.

40  
41 Mr. Hudson: Second.

42

1 Chair Tsai: Okay, we have a motion to deny reopening of this application. Second by  
2 Commissioner Hudson. Discussion?

3  
4 Okay, let's call for a vote. Director, can you repeat the motion please?

5  
6 Mr. Spence: The motion is deny reopening the hearing.

7  
8 Mr. Hedani: Put something on the record.

9  
10 Chair Tsai: Okay, Commissioner Hedani?

11  
12 Mr. Hedani: Nothing that I've heard today changes my mind about the decision that we  
13 reached. And on that basis I don't hear anything that would necessitate a reopening of this.

14  
15 Chair Tsai: Commissioner Duvauchelle?

16  
17 Ms. Duvauchelle: I concur with Commissioner Hedani. I don't...there may be some technical, I  
18 don't see any issues that have changed that would want me to change our Commission  
19 decision.

20  
21 Chair Tsai: Okay, Commissioner Robinson?

22  
23 Mr. Robinson: I'd like to apologize, I would like to make that motion to deny reopening and  
24 amending. Thank you.

25  
26 Chair Tsai: Okay, are you okay with that second?

27  
28 Mr. Hudson: Yes, I'll stay with that second.

29  
30 Chair Tsai: Okay, Commissioner Hedani?

31  
32 Mr. Hedani: Based on that amendment, I didn't hear anything today that would change my  
33 opinion relative to amending the application. If all of the towers were reduced from 40 feet to  
34 two feet I might change my mind because nobody would be screaming, but to eliminate the 80-  
35 foot tower and to retain the existing operation does not remove any of the problems that we  
36 encountered in the first application.

37  
38 Chair Tsai: Any other discussion? Okay, call for a vote. All in favor?

39  
40 Mr. Spence: That's six ayes. None opposed. Motion carries.

41  
42 **ACTION ON ITEMS F-1 AND F-2:**

1 **It was moved by Mr. Robinson, seconded by Mr. Hudson, then**

2  
3 **VOTED: To Deny the Motion to Reopen Hearing and Motion to Amend**  
4 **Application.**  
5 **(Assenting – K. Robinson, L. Hudson, W. Hedani, S. Duvauchelle,**  
6 **S. Castro, R. Higashi)**  
7 **(Excused – P. Canto, S. Carnicelli)**  
8

9 Mr. Spence: So then Commissioners then we go back to Item E-1 regarding the draft Decision  
10 and Order.

11  
12 Chair Tsai: Commissioner Hedani?

13  
14 Mr. Hedani: Move to accept the Findings of Fact, Conclusions of Law, Decision and Order, the  
15 draft that has been presented to the Commission today.

16  
17 Mr. Hudson: Second.

18  
19 Chair Tsai: Okay, moved by Commissioner Hedani, second by Commissioner Hudson.  
20 Discussion? None. Director would you please repeat the motion?

21  
22 Mr. Spence: The motion is to accept the draft Decision and Order as your decision and order.

23  
24 Chair Tsai: Call for a vote. All in favor? Oh, Commissioner Hedani?

25  
26 Mr. Hedani: Since my name's attached to it now.

27  
28 Chair Tsai: My name and I'm signing it.

29  
30 Mr. Hedani: For the record, I think the applicant was represented by counsel in the meeting that  
31 we had. Most of the documents that I saw today represent a challenge to the procedure that we  
32 took as opposed to the findings that we ended up with. And from my perspective if Counsel was  
33 present and objected to the manner in which our meeting was held then he should have  
34 expressed it at that time.

35  
36 Chair Tsai: Commissioner Higashi?

37  
38 Mr. Higashi: I'd like to say that on the positive side for Mr. Hoyte's application I think if they  
39 stuck strictly with the idea of doing the historical thing with the 4<sup>th</sup> Division Marines, I think they  
40 would have had no problem. The problem comes in when you have illegal construction going  
41 on with ziplines, et cetera with no proper permit becomes a major problem with what's  
42 happening with this particular project application consequently I would go along and deny the...  
43

1 Chair Tsai: We've already denied it. Commissioner Hedani?

2

3 Mr. Hedani: I must say that I was impressed with the wealth of information that you provided us  
4 today. This was impressive.

5

6 Mr. Chipchase: I appreciate that. Thank you, Commissioner.

7

8 Chair Tsai: And no trees were harmed during this process.

9

10 Mr. Chipchase: Many trees were harmed Commissioner, Chair, many trees.

11

12 Chair Tsai: Okay, any other discussion? Okay, Director?

13

14 Mr. Spence: The motion is to accept the Decision and Order as your Decision and Order.

15

16 Chair Tsai: All in favor?

17

18 Mr. Spence: That's six ayes.

19

20 Chair Tsai: No opposition. Motion carries.

21

22 **ACTION ON ITEM E-1:**

23 **It was moved by Mr. Hedani, seconded by Mr. Hudson, then**

24

25 **VOTED: To Approve the Proposed Findings of Fact, Conclusions of Law, and**  
26 **Decision and Order.**

27 **(Assenting – W. Hedani, L. Hudson, K. Robinson, S. Duvauchelle,**  
28 **S. Castro, R. Higashi)**

29 **(Excused – P. Canto, S. Carnicelli)**

30

31 Chair Tsai: Next agenda item?

32

33 Mr. Chipchase: Commissioners, I know you do have a hard job and I know you guys aren't paid  
34 and appreciate the attention you put to this. We put I think, Commissioner Robinson you said  
35 six feet of paper before you. That might be a slight exaggeration.

36

37 Mr. Robinson: Six inches.

38

39 Mr. Chipchase: Six inches, more than that Commissioner, way more than that and I appreciate  
40 your time working on it. Thank you.

41

42 Mr. Spence: Commissioners, we decisions and orders to do. We're on Item E-2 regarding the

1 Decision and Order having...I'll read, just read part of it. Having voted on October 25, 2016 to  
2 deny the Petition to Intervene filed on July 25, 2016 by Mr. Harold Davis relating to the request  
3 by Ms., Mrs. Leona Rocha Wilson, manager of Lona Ridge, LLC to obtain a Land Use...State  
4 Land Use Commission Special Permit and a Conditional Permit, basically what we have before  
5 you is another draft Decision and Order. This was prepared by Ms. Wilson's attorney,  
6 Deborah Wright, and the Commission make take action to adopt, adopt with modifications or  
7 take some other action regarding the proposed findings of fact, conclusions of law, and decision  
8 and order. I want to for the record, you know heard testimony this morning from Mr. Harold  
9 Davis saying that he never got a copy of the draft. The service...he wasn't sworn...I won't  
10 belabor that point, but his...he was represented by counsel at the last meeting, and his attorney  
11 was served. So if his attorney did not provide him with a copy of the draft D&O, then that's an  
12 issue between Mr. Davis and his counsel. And thank you Gina for confirming that so quickly via  
13 email. And of course, our Staff Planner this afternoon is Ms. Gina Flammer.  
14

15 **E. ADOPTION OF WRITTEN DECISION AND ORDERS**

16 **2. Having voted on October 25, 2016 to deny the Petition to Intervene filed on**  
17 **July 25, 2016 by MR. HAROLD DAVIS relating to requests by MRS. LEONA**  
18 **ROCHA WILSON, Manager of LONA RIDGE, LLC to obtain a State Land Use**  
19 **Commission Special Permit and a Conditional Permit in order to conduct**  
20 **special events, including weddings, corporate and non-profit reception,**  
21 **workshops, art shows, photography sessions, filming, and similar events**  
22 **as well as Hawaiian cultural practices in the State and County Agricultural**  
23 **Districts on approximately 5.75 acres of land located at 588 Kulaiwi Drive,**  
24 **TMK: 3-5-002: 010, Wailuku, Island of Maui. (SUP2 2015/0007) (CP**  
25 **2015/0003) (G. Flammer)**  
26

27 **The draft Decision and Order was prepared by DEBORAH WRIGHT of**  
28 **WRIGHT & KIRSCHBRAUN, attorneys for the applicant LONA RIDGE, LLC.**  
29

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

34 **The Commission may take action to adopt, adopt with modifications, or**  
35 **take some other action regarding the proposed Findings of Fact,**  
36 **Conclusions of Law, and Decision and Order.**  
37

38 Ms. Gina Flammer: Okay, thank you. I did also email Mr. Davis to let him know that it would be  
39 on the agenda which is probably why he showed up. So he could have very easily just asked  
40 me for a copy. I would have been more than happy to provide it and plus it was on the website  
41 attached to the agenda now. We've gotten good at putting our information up for the public.  
42

43 Mr. Spence: So Harold, excuse me, Hal was very aware of this meeting today?

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42

Ms. Flammer: Yes.

Mr. Spence: Okay.

Ms. Flammer: I just wanted to make sure to reach out to him because in the past he's asked for that.

Mr. Spence: Okay.

Ms. Flammer: So normally when I bring a D&O to you folks I give you a little primer on it, but I think at this point you could probably do some education sessions yourself. So the only thing you're doing right now today is you've gotten a copy of it in your packet. You're taking a look to make sure it's accurate, to make sure that everything's included. If there's anything you'd like to add or modify, this is the point that you do it. If you're okay with it, you take the official action to then adopt it.

Chair Tsai: At this point I'm going to open the floor for public testimony. Anyone wish to testify on this agenda item please come forward?

The following testimony was received at the beginning of the meeting:

Mr. Hal Davis: Hal Davis. This is a...I would like to have received a copy of the draft prepared by Debra Wright for this hearing but I did not receive one. I'd just like to say this to the Commission that you're gonna give her an opportunity to disrupt the neighborhood with these pretty much...(inaudible)...conclusion. But the problem that you need to reconsider and I hope it says here with to adopt and modify is the enforcement of what you're going to allow the Wilson property to become. I believe there's 15 events that are gonna be allowed, but how are you gonna control that? How are you gonna make sure that there are only 15? If she reaches 15 and wants to have another one who's gonna stop her? How are you gonna stop her? Is she gonna have to let you know each time there is an event? Those are the problems that I see forthcoming. I've been involved in this for a number of years. I've put in a number of complaints and they're well-received by the Department, the problem is is they're always after-the-fact and once the genie is out of bottle, hard to get him back in or her. So I think you need to consider how enforcement is going to be done. With that being said, you took away my civil and my constitutional rights away from me when you denied my Petition for Intervention. This should have gone to the court system via that path, but you took that away from me. So I hope you don't take the ability for the residents of Wailuku Heights and the County of Maui to be able to control what goes on in that neighborhood. Thank you very much.

This concludes the testimony received at the beginning of the meeting.

1  
2 Chair Tsai: Seeing none, public testimony is now closed. Questions, comments from...you  
3 want to recuse yourself, Richard?

4  
5 Mr. Higashi: Mr. Chairman, I will excuse myself from the discussion and decision making of this  
6 particular.

7  
8 Chair Tsai: Thank you. Duly noted. Okay, any other comments? Commissioner Hedani?

9  
10 Mr. Hedani: Move to approve.

11  
12 Chair Tsai: Moved by Commissioner Hedani?

13  
14 Mr. Hudson: Second.

15  
16 Chair Tsai: Second by Commissioner Hudson? Discussion regarding the motion? None.  
17 Director would you please repeat the motion?

18  
19 Mr. Spence: The motion is to accept the draft D&O as your own D&O for the Lona Ridge,  
20 Special Use Permit...well it's actually for the denial of the Petition to Intervene for this particular  
21 project.

22  
23 Chair Tsai: Okay, call for a vote. All in favor?

24  
25 Mr. Spence: That's five ayes.

26  
27 Chair Tsai: Motion carries. Congratulations.

28  
29 **It was moved by Mr. Hedani, seconded by Mr. Hudson, then**

30  
31 **VOTED: To Approve Proposed Findings of Fact, Conclusions of Law, and**  
32 **Decision and Order**  
33 **(Assenting – W. Hedani, L. Hudson, K. Robinson, S. Duvauchelle,**  
34 **S. Castro)**  
35 **(Recused – R. Higashi)**  
36 **(Excused – P. Canto, S. Carnicelli)**

37  
38 Chair Tsai: All right, moving one. We're almost to the end. Director?

39  
40 Mr. Spence: Okay, Commissioners, we on Item G, acceptance of the action minutes of  
41 January 10, 2017 and regular minutes of August 9, 2016.

42  
43 **G. ACCEPTANCE OF THE ACTION MINUTES OF JANUARY 10, 2017 AND REGULAR**



1                   **MINUTES OF THE AUGUST 9, 2016 MEETING**

2  
3 Mr. Hedani: Move to approve.

4  
5 Chair Tsai: Moved by Commissioner Hedani.

6  
7 Mr. Castro: Second.

8  
9 Chair Tsai: Second by Commissioner Castro. All in favor?

10  
11 Mr. Spence: That's six ayes.

12  
13 **It was moved by Mr. Hedani, seconded by Mr. Castro, then**

14  
15                   **VOTED:           To Accept the Action Minutes of the January 10, 2017 Meeting and**  
16                                   **the Regular Minutes of the August 9, 2016.**  
17                                   **(Assenting – W. Hedani, S. Castro, K. Robinson, S. Duvauchelle,**  
18   **L. Hudson, R. Higashi)**  
19                                   **(Excused – P. Canto, L. Carnicelli)**  
20

21 Mr. Spence: Okay, Item H-1, this is we are notifying you of intent to process a time extension  
22 for an SMA Permit for the Wailea Hotel and Beach Resort, LLC and Candace Thackerson is the  
23 Staff Planner for this.

24  
25 **H.       DIRECTOR'S REPORT**

26  
27                   **1.       MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning**  
28                                   **Commission pursuant to Section 12-202-17(e) of the Maui Planning**  
29                                   **Commission's SMA Rules of his intent to process the following time**  
30                                   **extension requests administratively:**

31  
32                   a.       **WAILEA HOTEL & BEACH RESORT, LLC requesting a two (2)-year**  
33                                   **time extension on the period to complete construction of the Andaz**  
34                                   **Maui at Wailea Resort and related improvements at 3550 Wailea**  
35                                   **Alanui Drive, TMK: 2-1-008: 067, Wailea, Island of Maui.**  
36                                   **(SM1 2005/0035) (PD1 2005/0006) (PD2 2005/0007) (SSV 2005/0004)**  
37                                   **(C. Thackerson)**

38  
39                                   **The Commission shall acknowledge receipt of the request. The**  
40                                   **Commission may decide whether to waive its review or review the**  
41                                   **time extension request at a future meeting.**

42  
43 Ms. Candace Thackerson: Good afternoon Commissioners. Glad you're not too tired yet or  
44 maybe this is the way to get you guys when you're a little worn down. So anyways before you,

1 we have a waiver of review to go ahead and grant us to process the time extension request  
2 administratively. It will be a two-year time extension request for the Andaz Maui at Wailea  
3 Resort. As most of you it's already open and functional and operating. However, in their initial  
4 approved plans they did have the choice to build another condo unit villa and they would just  
5 like to reserve that right instead of you know, the extension running out and then having to come  
6 back and do a new SM1. The two-year time extension request would then let them complete  
7 construction by March 16, 2019 should they choose to proceed with that. The applicant is here  
8 if you have any questions for them.

9  
10 Vice-Chair Duvauchelle: I have one.

11  
12 Chair Tsai: Commissioner Duvauchelle?

13  
14 Vice-Chair Duvauchelle: I have a quick question. So my understanding is and I could be  
15 wrong, so clarification. That some of the buyers of the Andaz have gone in and done  
16 renovations, yet the unit complete and then they would go in and renovate. Are their  
17 renovations and their building permits falling under the same SMA or are they having to go get  
18 an SMA?

19  
20 Ms. Thackerson: So that's kind of interesting. We have a memo from our Director I believe  
21 dated in 2015 about interior renovations for existing commercial structures including hotels not  
22 requiring an SMA Permit because it should be included under the scope of the original SM1 if  
23 there's one preexisting. If it's taking place in a shoreline setback area they still do need to come  
24 in for an SSA as well as other things like a Flood Development Permit and things like that. So  
25 there are other permits that they will need, but something like renovating inside of an apartment  
26 or a tenant improvement to an existing commercial structure is really no change to the original  
27 SM1 Permit that the Commission approved.

28  
29 Mr. Spence: The idea Commissioners is that once this Commission approves a commercial  
30 structure, the way the analysis is conducted when an applicant comes before they present to  
31 you a project and do all the analysis as to traffic and runoff and occupancy and everything as if  
32 it's fully built out and fully occupied 100 percent. They're representing the maximum impact that  
33 this project will have. So you have a commercial structure and you want to change a couple  
34 interior walls, it's still occupied, it's still the same. There's no change to the, there's no change  
35 to the runoff, there's no change to traffic, there's none of these kinds of things. So instead of  
36 sending countless applicants through the SMA Assessment process for something that has  
37 already been assessed that doesn't make much sense. It's still the same project. It's just the  
38 interior portions are just a little bit different.

39  
40 Vice-Chair Duvauchelle: So along that line, the exterior like extending a lanai or enclosing a  
41 lanai would trigger?

42

1 Mr. Spence: Or if you were doing excavation inside of the building.

2

3 Vice-Chair Duvauchelle: Okay.

4

5 Mr. Spence: That would trigger something else.

6

7 Ms. Thackerson: Yeah, exterior ground altering, intensification of use, things like that, that  
8 would definitely trigger review.

9

10 Chair Tsai: Hello Candace.

11

12 Ms. Thackerson: Hello.

13

14 Chair Tsai: I have a question so please entertain me for a second. I thought Andaz is complete  
15 already. Maybe you can help answer what kind of additional construction they're looking to  
16 extend?

17

18 Ms. Thackerson: Sure and the applicant might want to expand upon it. But on it says on Page  
19 4, as you can see it says that they have...everything's been constructed except for Condo  
20 Building A. Condo Building A was previously approved to contain 19 units. So on their plans  
21 there is room for another building with 19 units.

22

23 Chair Tsai: Commissioner Hedani?

24

25 Mr. Hedani: Move to waive review.

26

27 Chair Tsai: Moved by Commissioner Hedani?

28

29 Mr. Castro: Second.

30

31 Mr. Robinson: I have a question for Candace please?

32

33 Chair Tsai: Commissioner Robinson?

34

35 Mr. Robinson: Hi Candace.

36

37 Ms. Thackerson: Hi.

38

39 Mr. Robinson: Why only two years? You can't get anything done in two years?

40

41 Ms. Thackerson: Should the Commission like to grant longer that is up to you I believe. But in  
42 order for to waive review, this body had voted before we actually didn't even have a process for

1 time extensions. They would kinda have to go through it again. We have to do mini staff report.  
2 This body granted permission for us to do it, but at the time they said just two years. That's  
3 what the body felt comfortable doing. So that's what applicants come in for. If they want  
4 anything more than that it's almost like a little staff report. We kind of reopen the project to get  
5 more than two years. But should this body like to grant them more than two years. You can  
6 motion for that and offer more. Would you like to confer with the applicants to see if they want  
7 more time?

8  
9 Mr. Robinson: If you like. Can't hurt 'em huh?

10  
11 Ms. Thackerson: Would you like longer than two years? Oh, do I hear a...is this like a bidding  
12

13 Mr. Robinson: If they are open to it?

14  
15 Ms. Thackerson: They are open to it should the Commission like to grant that.

16  
17 Mr. Robinson: Is I would like to see if we can give them, you know, I mean they haven't built it  
18 yet so they still have to sell their units from what I understand and two years is we're just gonna  
19 see them in two years or waive again. But I think you know if we extend it you know to three to  
20 five years, you know, I think kind of saves this process of having to do it again.

21  
22 Ms. Thackerson: Do five years? Would the Commission like to do that?

23  
24 Chair Tsai: Well, administratively we have a motion so...review. Is the maker of the motion be  
25 willing to add an amendment to whatever length?

26  
27 Mr. Hedani: I don't have a problem with it. I think that the longer you take in a case like this  
28 when you have a built condominium and you take a long time the people that are existing there  
29 will have a tendency of being very comfortable with their surroundings and object to anything  
30 that's gonna be built next to them, in front of them, around them or downwind of them, and so  
31 the faster you do it from my perspective it makes sense but I have no problems with extending  
32 it.

33  
34 Chair Tsai: Okay. Second, I think Commissioner Castro.

35  
36 Mr. Castro: What would the applicant be comfortable with?

37  
38 Ms. Thackerson: Would five years, a possible five years, then you would see it again if they  
39 have not completed construction in five years.

40  
41 Chair Tsai: Commissioner Hedani?

42

1 Mr. Hedani: Why don't we leave it to the Director's discretion at this point since we're waiving  
2 review essentially and allowing the Director to take action.

3  
4 Chair Tsai: All right.

5  
6 Mr. Robinson: So when we waive review and yours say two, but you can actually...are flexible  
7 to make it longer is that how it works Director?

8  
9 Mr. Spence: I'm not sure but if you authorize me to grant up to five year.

10  
11 Mr. Robinson: Is it waive review with grants up to five is that what?

12  
13 Chair Tsai: Is that the motion? Because I think the motion is waive review so we can add either  
14 a caveat to say that the Director has discretion up to five years.

15  
16 Mr. Spence: Or you could waive review for five years.

17  
18 Mr. Robinson: There you go. That's the—

19  
20 Mr. Hedani: I so move.

21  
22 Chair Tsai: Okay, so you amend the motion to say that it...

23  
24 Mr. Hedani: I'll restate the motion to read that I move to waive review for a period of five years.

25  
26 Mr. Castro: Second.

27  
28 Chair Tsai: Second by Commissioner Castro. Any more discussion regarding this motion?  
29 Okay, Director would you please repeat the motion?

30  
31 Mr. Spence: The motion is to for the Commission to waive their review of this time extension for  
32 at least five years.

33  
34 Chair Tsai: Call for a vote. All in favor?

35  
36 Mr. Spence: That's six ayes.

37  
38 Chair Tsai: Motion carries. Congratulations.

39  
40 Ms. Thackerson: Thank you.

41  
42 **It was moved by Mr. Hedani, seconded by Mr. Castro, then**

1  
2           **VOTED:       To Acknowledge Receipt and Waive Its Review of the Time**  
3                           **Extension for at least five years.**  
4                           **(Assenting – W. Hedani, S. Castro, L. Hudson, K. Robinson,**  
5   **S. Duvauchelle, R. Higashi)**  
6                           **(Excused – P. Canto, S. Carnicelli)**  
7

8 Mr. Spence: So Commissioners H-2 and 3 are the SMA Minor Permit and SMA Exemption  
9 Reports.

10  
11           **2.       SMA Minor Permit Report**

12  
13           **3.       SMA Exemptions Report**  
14

15 Mr. Hedani: Move to accept.

16  
17 Mr. Robinson: Second.

18  
19 Chair Tsai: All in favor?

20  
21 Mr. Spence: Six ayes, thank you.  
22

23 **It was moved by Mr. Hedani, seconded by Mr. Robinson, then**

24  
25           **VOTED:       To Accept the SMA Minor and SMA Exemption Reports**  
26                           **(Assenting – W. Hedani, K. Robinson, L. Hudson, S. Duvauchelle,**  
27   **S. Castro, R. Higashi)**  
28                           **(Excused – P. Canto, S. Carnicelli)**  
29

30           **4.       Discussion of Future Maui Planning Commission Agendas**

31  
32           **a.       February 14, 2017 agenda items**  
33

34 Mr. Spence: Your next Planning Commission agenda you have two public hearing items that  
35 will be on February 14, 2017. The first public hearing item is...

36  
37 Vice-Chair Duvauchelle: It's Valentine's Day.

38  
39 Mr. Robinson: Don't get me started. I tried.  
40

41 Mr. Spence: The first one is Ms. Jacqueline Cummings requesting a Land Use Commission  
42 Special Use Permit and Bed and Breakfast Home Permit to operate a three-bedroom bed and  
43 breakfast in Haiku. The second one will be Mr. Michael Spalding of Kaohu LLC requesting a  
44 Conditional Permit to have a real estate office in a R-2 Residential District home.  
45

46 **I.       NEXT REGULAR MEETING DATE: February 14, 2017**

1 Mr. Spence: Item J on your agenda is adjournment.

2  
3 Chair Tsai: Yeah, I'm gonna email our Director just plant a seed in you guys head I'm looking  
4 especially with this particular, today's massive amount of paperwork. I'm looking for discussion  
5 to be added next agenda especially for discussion a rule making as it relates to filing and digital  
6 copies. Trying to go, if we somehow can go on a paperless route to avoid having all this thing  
7 and maybe we would—

8  
9 Mr. Spence: This one?

10  
11 Chair Tsai: That's just one of them, yeah. Add it to our agenda next meeting.

12  
13 Mr. Spence: Okay.

14  
15 Chair Tsai: Thank you very much. With that...oh Commissioner Hedani?

16  
17 Mr. Hedani: On the last item that we had ...(inaudible)...staying the fines doesn't mean the  
18 fines be waived, right?

19  
20 Mr. Spence: I would have to look back in the record if fines are continuing or if they have been  
21 stayed.

22  
23 Mr. Hedani: ...(Inaudible)...

24  
25 Mr. Spence: Their NOV has not been cured yet that's for sure.

26  
27 Chair Tsai: Okay, with that thank you all. Meeting's adjourned.

28  
29 **J. ADJOURNMENT**

30  
31 The meeting was adjourned at 3:18 p.m.

32  
33 Submitted by,

34  
35  
36  
37 Carolyn Takayama-Corden  
38 Secretary to Boards & Commissions II  
39  
40  
41

1    **RECORD OF ATTENDANCE**

2

3    **Present**

4    Stephen Castro

5    Sandy Duvauchelle, Vice-Chairperson

6    Wayne Hedani

7    Richard Higashi

8    Larry Hudson

9    Keaka Robinson

10   Max Tsai, Chairperson

11

12   **Excused**

13   Pua Canto

14   Lawrence Carnicelli

15

16   **Others**

17   Will Spence, Director, Planning Department

18   James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

19   Rowena Dagdag-Andaya, Deputy Director, Department of Public Works