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**MAUI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 26, 2017**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Sandra Duvauchelle at approximately 9:05 a.m., Tuesday, September 26, 2017, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Duvauchelle: Good morning. Thank you all for being here. Good morning Commissioners. Maui County Planning Commission, September 26, 2017 is now in session.

B. PUBLIC TESTIMONY - Public testimony will be taken when each agenda item is discussed. **Testimony will be limited to a maximum of three (3) minutes.**

Chair Duvauchelle: I want to note that public testimony will be taken when the agenda item is called and when you do come up to testify You'll have three minutes. And Director would you like to read our first agenda time?

Mr. Spence: Okay, Commissioners the first agenda item is a bill proposed, actually two bills proposed by the Planning Director to resolve a conflict between the community plan and the Short-Term Rental Home Ordinance. I would like to show the Commission...and David Raatz, our Administrative Planning Officer could not be here this morning so I will do the presentation instead. So I'd like to show a quick power point. We've seen this before but we'd like to update the Commissioners on the issue before us.

C. UNFINISHED BUSINESS

1. MR. WILLIAM SPENCE, Planning Director, transmitting alternative proposed bills relating to Short-Term Rental Homes in the Pa`ia-Ha`iku Community Plan Area, respectively described as follows: (Public Hearing conducted on July 25, 2017.)

a) **A proposed bill titled "A BILL FOR AN ORDINANCE AMENDING THE PA`IA-HA`IKU COMMUNITY PLAN RELATING TO VISITOR ACCOMMODATIONS." The purpose of the proposed bill to amend the Pa`ia-Ha`iku Community Plan, adopted by Ordinance 2415 (1995), to confirm Short-Term Rental Homes are allowed in Pa`ia-Ha`iku Community Plan Area, consistent with Ordinance 3941 (2012).**

b) **A proposed bill titled "A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES IN THE PAIA-HAIKU COMMUNITY PLAN AREA." The purpose of the proposed bill to amend Chapter 19.65, Maui County Code, to prohibit new Short-Term Rental Homes in the Pa`ia-Ha`iku Community Plan Area.**

The Commission may take action on this item.

1
2
3
4 Mr. Spence: Okay, good morning Commissioners. This is the original power point that you saw
5 but it does good job of outlining what the issue is and I'll discuss how we proposed to resolve it.
6 We have an issue with the...okay, first background of transient vacation rentals in Maui County.
7 As you know we consider long-term rentals, anything over 180-days, anything less that is short-
8 term. For short-term you need one of a number of different...you can get a number of permits.
9 If you're...okay, TVRs they're permitted as of right in the Hotel District. They might also in some
10 cases want to get a Conditional Permit. The Haiku House is a good example of that. The Old
11 Baldwin Estate in Haiku. And then there's two other kinds of permits you can get. One is a Bed
12 and Breakfast Home, the other is Short-Term Rental Home. The operational difference between
13 the two, the Bed and Breakfast the owner lives on the property, and with a Short-Term Rental
14 Home the owner does not live on the property. That's the primary difference. There's a number
15 of differences and how the permits are processed, et cetera, but that's the primary difference.

16
17 So then the Paia-Haiku Community Plan was adopted in 1995, the Short-Term Rental Home
18 Code 19.65 of the Maui County Code was adopted in 2012. When we went through the Short-
19 Term Rental Code with the County Council there was quite a bit of discussion on the community
20 plans. There was not however, a very specific discussion on this particular policy within the
21 Paia-Haiku Community Plan. So Paia-Haiku Community Plan says limit visitor accommodations
22 to owner-occupied bed and breakfast establishments that are residential in both scale and
23 character. Any proposed bed and breakfast should not be situated near the shoreline so as to
24 avoid the proliferation of this use and subsequent changes to the character of the region's coast.

25
26 Then we come up to...so in '95 that was adopted as a part of the community plan. In 2012
27 before Council they went ahead and set a cap of 88 Short-Term Rental Home permits for the
28 Paia-Haiku area, and you know, we're issuing permits in accordance with that...this new law
29 and we're going wait this isn't right, let's go back and let's look and see in the minutes was this
30 ever specifically discussed? Was this particular passage in the Paia-Haiku Community Plan
31 specifically discussed and did the Council make a specific decision on...you know with this in
32 mind? We couldn't find anywhere in the minutes where this was discussed. So we're going,
33 okay we have a conflict here and we need to resolve it. So we came up with two bills and with
34 the idea that either we're going to change the community plan to allow some short-term rental
35 homes or we're going to change the cap within the short-term rental home bill to zero or at least
36 for the, you know, whatever 47...so the operators who lawfully went through the process and
37 obtained their Short-Term Rental Home Permits those could continue operation. So it kind of an
38 either or situation. Because the Short-Term Rental Home Ordinance was adopted in 2012, we
39 consider that to be a more current policy and we would recommend changing the community
40 plan to allow at some short-term rental homes.

41
42 Your options today, and you have a revised report in front of you and we have, you know like I
43 said, we had originally proposed either or. Either eliminating the cap and that would be in
44 accordance with the Paia-Haiku Community Plan or change that, you know change the cap,
45 excuse me, change the community plan itself to allow.

1 We have a revised report in front of you today. The last time we met on this was July 25th and
2 the Commission said okay, Planning Department why don't you go out to the community and
3 gather some input. So we went out to two meetings. We went to the Paia Town Association on
4 August 23, 2017, and a couple dozen people showed up at that meeting. We also went out to
5 the Paia-Haiku Community Association meeting on August 24th, and at that meeting about 100
6 people showed up. It was...the discussion was lively at both. There was a lot of discussion but
7 you know many of things you've already heard, short-term rental homes are not good. Short-
8 term rental homes provide jobs. They change the character of the neighborhood. They, you
9 know contribute to the area's economy, those kinds of things.

10
11 A couple of things that we did hear a lot was the protection of the shoreline, to not...I mean that
12 one part in the community plan that says to avoid the changes to the character of the shoreline
13 that was very important to people. So we revised our recommendation to you accordingly that
14 first, we recommend keeping the cap of the 88 short-term rental homes that were adopted in the
15 Short-Term Rental Home Bill, except adding part of it that except that permits may not be issued
16 for shoreline properties that may affect the character of the nearby shoreline. So that would go
17 along with the cap of 88. So what that would do is in the Planning Department's review of short-
18 term rental home permits or the Commission's you would do an evaluation or we would do an
19 evaluation is this short-term rental home going to change the character of the nearby shoreline?
20 You know, and that's a discretionary decision. It's a subjective decision. But you think about it
21 is if you had a whole lot of rental homes situated right near the shoreline that could probably
22 change something. If you have a short-term rental home on a top of a cliff out in Huelo is that
23 going to change anything? Probably not. It's, you know, it's not a place where the public has
24 general access to the shoreline, et cetera. So we would do that evaluation when we review
25 applications.

26
27 The second recommendation there was also...I would say there's a lot of discussion about
28 enforcement. At both meetings, hey you gotta do more enforcement on these things. So to the
29 community plan we would propose to add the following sentence, and say that illegal visitor
30 accommodations can diminish the availability and affordability of housing for residents and
31 should be subject to strict enforcement action.

32
33 The exact working of the bills are in your...of these revised bills are immediately following the
34 report and we're happy to discuss that. I would note for the record, you know so far we've
35 issued 47 permits within this area, the Short-Term Rental Home Permits and that means 47
36 people have lawfully gone through the permitting process and we are supportive that those
37 people be able to renew their permits as the renewals come up. We're not saying...so we
38 would have big problems if we said to stop now. I think we would have more problems if we just
39 let them, you know disappear over time. I think the people who have gone through the legal
40 process have the right to keep renewing and we would support that going forward. So
41 Commissioners...

42
43 Chair Duvauchelle: Okay, thank you. Is that end of the presentation? All right so at this point
44 we will open up the floor for public testimony and after public testimony we'll take questions from
45 the Commissioners and discussion. So first testifier that is listened is Francine Aarona.

1 Ms. Francine Aaronson: Good morning everybody. Thank you for being here it's very important.

2

3 Chair Duvauchelle: State your name and you'll have three minutes.

4

5 Ms. Aaronson: Yes, I know. Been here, done that. But thank you for listening Madam Chairman
6 and the Planning Commission. I'd just like to—

7

8 Chair Duvauchelle: Your name please?

9

10 Ms. Aaronson: Oh, Francine K. Aaronson, Aunt Mopsy for those Protect Paia. Okay, the short-
11 term rentals has been a rising development on the Island of Maui and through a movement of
12 concerned people in the community we say no more. It is always a learning experience when
13 given the opportunity to testify on these issues before this board. The ultimate goal is to be sure
14 that the community has a voice especially on community plans that govern the rules and
15 regulations of their district. I want to mahalo this board for your commitment to the community
16 of Paia-Haiku and recommending that the Planning Department hold a community meeting.

17

18 Presented to you is two bills that was originally from the July 25th. In reading the memorandum
19 this morning the recommendations are kinda like different. But I can only share the comments
20 from the Paia Community in their decision to amend the Chapter 19.65, Maui County Code to
21 prohibit new short-term rental homes in Paia-Haiku Community Plan area.

22

23 I wanna say mahalo to the Paia Association Board Noelani, the ED in helping Michele McLean
24 prepare for this meeting that we had at the Heritage Hall for this short-term rental decisions and
25 I can only share that in the comments and the people that were there there were majority short-
26 term rental people that were at that meeting. And their decision collectively was to prohibit new
27 short-term rentals. We would renew the short-term rentals that would be there, but if they sell
28 their property a`ole you're gone, no more short-term rental.

29

30 Mr. Spence brought up shoreline. Paia you only have two residents that I know of that have
31 shoreline and shoreline is ...(inaudible)...the beach is the back, your backyard. Only two people
32 live there. The rest is all short-term rental. So how you're going to collectively say that these
33 people no longer can have short-term rental in what you're presenting or your recommendations
34 very, very hard to do. Yes, you do have one on the mountain, on the hill—

35

36 Ms. Takayama-Corden: Three minutes.

37

38 Ms. Aaronson: --doesn't bother anybody. A comment from a young lady during that meeting said,
39 the Planning Department made a huge oversight.

40

41 Chair Duvauchelle: Please conclude.

42

43 Ms. Aaronson: --as far as not—

44

45 Chair Duvauchelle: Please conclude.

46

1 Ms. Aarona: --as far as not amending the community plan in 2012 when it went through here. I
2 don't care how many minutes you go through. That was a big oversight. So it continues to be
3 that. So Planning Department I urge you to look at the original recommendations. Do not allow
4 88 to be the cap, to stick with the community plan and prohibit new short-term rentals in the
5 Paia-Haiku department. I thank you very much.

6
7 Chair Duvauchelle: Thank you. Commissioner Robinson?

8
9 Mr. Robinson: Aloha Aunty Mopsey.

10
11 Ms. Aarona: Aloha.

12
13 Mr. Robinson: We heard earlier from Mr. Spence about there was a 100 people at the Haiku
14 meeting and did you attend either one of the Haiku meeting, the Paia meeting?

15
16 Ms. Aarona: I was at the Paia. I was kinda like...I sit on the board so I was like a mediator. I
17 hear the Paia-Haiku one was really boisterous and we had 50 plus or more, but majority of them
18 to my amazement, we didn't see too many brownies out there, but there were short-term rental
19 people. Now these are the people that hold short-term rentals that want this to be in effect.
20 There's too many short-term rentals. They're crowding us out right there in the town. So you
21 know—

22
23 Mr. Robinson: Aunty I got a question though.

24
25 Ms. Aarona: Yeah, yeah

26
27 Mr. Robinson: The question is is when we have this ordinance I saw that we're looking for two
28 changes.

29
30 Ms. Aarona: Yes.

31
32 Mr. Robinson: And I wasn't at the meeting. I assume there was a lot of people, a lot of passion,
33 and I see two sentences and that's it. After all of this, was there a consensus that...I mean, how
34 did the meeting, how do you feel they got these two sentences with the meeting was it
35 taken...was there any kind of back and forth and agreement with the community or was it the
36 Planning Department sort of absorbing what they felt they heard at that meeting?

37
38 Ms. Aarona: I think the Planning Department absorbed what they...what was being said at that
39 meeting. The bills were presented, big decision for them to make. Two conflicting bills. You
40 have the Paia Community Plan that says one thing. That doesn't allow short-term rental. It has
41 bed and breakfast in that terminology that Mr. Spence presented this morning and then you
42 have to prohibit new short-term rentals. Now, the cap 88 yet we have 47. We have more than
43 47. So again, you don't have the enforcement to say, brahdah you don't have vacation rental,
44 you don't have the proper permits yet you still operate. We have more than 47. Gosh I
45 can...anyway—

46

1 Mr. Robinson: Okay.

2

3 Ms. Aarona: But the consensus was in hearing all of that, that yes they felt that this was a huge
4 oversight. And that they don't want to see anymore short-term rentals. One gentleman says,
5 well I can't my kids out of the house, they're in their 20's but there's no available long-term
6 rentals or affordable housing for them to move to stay in their area in Paia. So go figure.

7

8 Mr. Robinson: Thank you.

9

10 Chair Duvauchelle: Any other questions? Thank you. Our next testifier is Timothy Wolfe.
11 Good morning. State your name you'll have minutes.

12

13 Mr. Timothy Wolfe: Good morning Commissioners, and I echo Mopsey's...thank you for being.
14 Stop what you started. Thank you very much for holding this meeting. I was here at the July
15 25th meeting.

16

17 Chair Duvauchelle: Can you state your name please?

18

19 Mr. Wolfe: I'm sorry, I'm Timothy Wolfe. I'm citizen of Haiku, 96708, and I'm also Treasurer of
20 the Haiku Community Association here to make a report both as a private citizen and also for
21 the meeting circumstances that happened at our Haiku Community Association meeting on
22 August 24th. Just for a point of reference we do not include Paia Town in the Haiku Community
23 Association. We have enough trouble dealing with the citizens in Haiku without bringing in the
24 whole north shore.

25

26 At the meeting on August 24th, our mandate and our meeting agenda was to report on the
27 request for feedback from you people regarding the short-term rental housing question. I'm
28 here to report on what the HCA Board of Directors got as far as results were concerned from
29 that meeting as also as private citizen from my own recommendations. I do not speak for the
30 board on my recommendations.

31

32 There were about 100 people in attendance all...from all sorts of areas of the community. Our
33 agenda was to attend to this Maui Planning Commission business, but as a...is common in
34 Haiku was a pretty rowdy meeting. People tend to come to those meetings with an idea of just
35 expressing whatever's on their minds and unfortunately the leadership and the moderation of
36 that meeting failed to kind of keep those voices in check. So it was a bit confused.

37

38 President de Naie presented three options for a voice vote at this meeting. The first option was
39 to maintain the status quo, i.e., amend the community plan to include the 88 permit limit. Option
40 two was not to amend the community plan but to change the STRH limit to no more than is
41 currently permitted, i.e., 47 units and no more. There was a third option to do nothing and the
42 votes in a voice vote were as follows: To amend the plan to allow the current 2012 limits there
43 were roughly 20 people who expressed their approval of that proposal. To amend the STRH
44 plan to cap of current rentals for...at 47 and not add any more was roughly the same, maybe 18
45 or 19 a little hard to tell. The third option was to do nothing there was one vote for that.

46

1 As I stand here today, David Raatz also took photographs of a display of three signup sheets
2 that we had for people to express themselves in writing. I don't have that information in front of
3 me, Lucienne is on the mainland and David is also on vacation. So I believe Mr. Spence and
4 others have said that the results are roughly the same. I'm sorry, to cap off, I want to agree to
5 Option A to amend to the 2012 limits, agree for stronger enforcement, do not lower the STRH
6 cap to zero, and please allow renewals. Thank you for your time.

7
8 Chair Duvauchelle: Thank you. Any questions for Mr. Wolfe? Commissioner Robinson?
9

10 Mr. Robinson: Hi, same question I had earlier. Were you at the committee meeting with the
11 County when they discussed these things?
12

13 Mr. Wolfe: Oh, I certainly was.
14

15 Mr. Robinson: And I just wanted to...and you agree with the two sentences that the County
16 pulled that out of the meeting that we talked about earlier for the...to limit the proliferation on the
17 water as well as to...
18

19 Mr. Wolfe: The current recommendation as stated in the papers you have here before you, yes,
20 if you are calling those the two sentences.
21

22 Mr. Robinson: Not your personal, is that what you grabbed from the meeting is my question?
23

24 Mr. Wolfe: Well, as I said in my statement I feel that the meeting was roughly half and half from
25 maintain the current STRH limits at 88 per 2012 and amend the community plan or reduce the
26 STRH limits to the existing permitted number which is 47 without amending the community plan
27 from 1995. Those were the two options and sentiment at the meeting was roughly equal.
28

29 Mr. Robinson: Thank you so much.
30

31 Mr. Wolfe: You're welcome.
32

33 Mr. Robinson: Thank you Chair.
34

35 Chair Duvauchelle: Thank you, Mr. Wolfe. Next testifier A.J. Palmeria, Palmeira? Please state
36 your name and you'll have three minutes.
37

38 Ms. A.J. Palmeira: Aloha and good morning Chair and Commissioners. I come from a little
39 different standpoint this morning than what you've heard. I'm in favor to amend the Paia-Haiku
40 Community Plan in order to allow short-term rentals and B&Bs in the Paia-Haiku area. I
41 currently live in a subdivision in Haiku with legally permitted STRs that are professionally
42 managed and we do not experience any conflict. I also work for Hookipa Haven Vacation
43 Services. This business helps me to provide, I'm a single parent, it helps me to provide for my
44 family as well as the numerous local businesses that are also hired by us to do work for our
45 rentals. So basically I just wanted to come by today and just ask to humbly ask you to protect
46 our licensed industry and to please recommend to County Council amending the community

1 plan with the caps established in the Title 19.65 and thank you very much for giving your
2 consideration this morning. Mahalo.

3

4 Chair Duvauchelle: Thank you. Any questions? Thank you very much.

5

6 Ms. Palmeira: Thank you.

7

8 Chair Duvauchelle: Next testifier, Scott Werden?

9

10 Mr. Scott Werden: Good morning. My name is Scott Werden from Haiku. So I think that the
11 issue here is a little bit more nuance than the two choices that we have in front of us. That it's
12 really more difficult problem than that. We have a woman who works for us and she was
13 recently kicked out of her house, a long-term rental house because the owner wanted to convert
14 it to short-term rental. So this is definitely a problem for people in Haiku, can't find enough
15 housing. But the reality is that the north shore of Maui is a world famous destination place for
16 windsurfing and surfing and a variety of other ocean sports. There's a lot of people who come
17 here as visitors and none of them want to stay on the south shore. They want to stay here on
18 the north shore. So the question is how to accommodate you know these two very needs. And
19 my belief is is that well, personally I think that allowing short-term rentals within an agricultural
20 environment is fundamentally inconsistent. I think that we have to somehow accommodate
21 visitors who come here who are looking for short-term rentals in the north shore area. If you
22 limit them by law to zero or 88 or 47 or whatever the number is there's just gonna be an
23 increase in the number of illegal short-term rentals that are occurring. It would be better if we
24 can figure out some way to legalize...to get all those illegal short-term rentals under control so
25 that you'd get tax revenue, they could be monitored and so forth and really that's what I came to
26 say today that I think this is a more nuance problem. It goes beyond just the numbers, it goes to
27 location. I believe Mr. Spence talked about how nobody's gonna care what happens in Huelo
28 but people do care. I don't live in Huelo but I do live in eastern Haiku and it, you know I care
29 very much if a short-term rental is gonna be next door to me. So it's not just the shoreline areas
30 that are impacted it is those of us that live and came to live in a rural environment and to all of a
31 sudden have you know strangers coming and going next door to us is not what we wanted when
32 we moved here. So I think that one proposal that would work is to allow some number of short-
33 term rentals but to keep them out of the more rural parts of Haiku, the parts that are more
34 agriculturally business oriented, perhaps more the...near more the town center such as Haiku
35 Town. Anyway, that's what I came here to say today. Thank you.

36

37 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Next testifier James
38 Huntington? Good morning, state your name you'll have three minutes.

39

40 Mr. James Huntington: Aloha, thank you. My name is James Huntington and I reside in Paia on
41 Luna Place. So I'm right in the center of Paia and I did just go through and get approved for a
42 B&B this last summer which is just starting up now. But I'm here to give testimony in support of
43 the STRH Plan that you have. It seems to be working well and what I'd say is that my
44 observations of my neighbors that have gone through that process is that they are not the
45 problem. They're well managed and well maintained and I just don't see a detriment to the
46 community. Contrary I think that most of those homes would sit particularly the ones near the

1 ocean because of the value would sit empty and because Paia is...has been kept so historic
2 and development has really been limited there, there really aren't any hotel rooms to speak of.
3 It's very limited. And to have a bunch of homes sitting vacant while their absentee owners are
4 not here for the season it just seems like it's a big waste. But what I'm saying is that the
5 problem isn't the people who have gone through the process and are adhering to the rules, the
6 problem I think is that there are more illegal rentals than there are legal rentals. I mean, I really
7 believe that in Paia and so this...all the talk of what this is doing to the community, I'm not
8 seeing any evidence of that from people who have gone through the system. I'm seeing that
9 with people that are breaking the rules. So I'd like to...I think that your system has worked, it's
10 working brilliantly. You have a bunch empirical evidence I think for over the years that it's
11 worked really well and perhaps the problem is overwhelmingly the people that are breaking
12 those rules not adhering to that system. So I really support your existing ordinance and
13 modifying the community plan to allow it. Thank you.

14
15 Ms. Duvauchelle: Thank you. Any questions? Thank you very much. Next testifier Dave
16 DeLeon? Morning Dave, state your name you'll have three minutes.

17
18 Mr. Dave DeLeon: Good morning. I'm Dave DeLeon. I'm speaking as a 23-year resident of
19 Haiku. I do not have a STR Permit and I don't represent any interests here today. I believe this
20 conversation is a bit premature because I think the first step needs to be a determination of all
21 vested rights of the people who have the permits currently. In my layman's non-attorney's
22 sense they do. And it's more than that, I think it's a moral right. They depended on the County
23 Code. They stepped up and did what the community asked them to do and you sit through this
24 processes you watch these people go through these it's not easy. It takes time, energy and
25 money and then to have somebody say, oh we're gonna pull the rug from underneath you it's a
26 bit much. For the record, the bill...if there's an amendment I would leave...I would change the
27 community plan to match the existing code, the 19.65.

28
29 I have to immediate neighbors who have STR permits and that experience has only been
30 positive. In a two-acre subdivision you rarely know what's going on in the neighboring property
31 in case except when my...the owners of the next door property who are Italian over there, then
32 you know they're there. Both of these properties are well managed by licensed professionals.
33 As a neighbor to these properties I prefer that these homes be occasionally occupied than sit
34 empty which is what would happen most of the year because the owners are well to do people
35 in their own communities and live there primarily.

36
37 The legal vacation rental use creates jobs, it creates customers for local businesses, it creates
38 real property tax for the County and it creates a kind of accommodation that a lot of people want
39 in this new world of internet vacationing. So it provides a variety of value to the community. It
40 should not, you know, just ignored.

41
42 On the question of short-term rentals eliminating long-term rental options for local residents, I
43 have a sense that this is a kind of a mango versus guava kind of comparison. By and large STR
44 properties are large, ...(inaudible)...pointed homes that would never become available as
45 affordable short-term rentals and would not unlikely be long-term rented in any case because
46 the property owners want to use them during the year and if you long-term rent it then you got

1 six months, a year's lease. You're not using the property any more. Why did you make that \$2
2 million investment? So yeah, I would think that complaint about these properties by and large, I
3 mean there are some small ones, but I mean by and large they're not...these properties are
4 relatively tiny portion of our community to start with as our housing stock and then the ones that
5 could possibly be used as long term rental I think is even much, much smaller. Mahalo.

6
7 Chair Duvauchelle: Thank you. Any questions? Thank you very much.

8
9 Mr. DeLeon: Thank you.

10
11 Chair Duvauchelle: Next testifier Audrey Antone? Good morning, please state your name.

12
13 Ms. Audrey Antone: Good morning everyone. My name is Audrey Antone. I am fifth generation
14 Portuguese. My great-grandfather came to Hana in 1880's and lived in a grass shack. He
15 managed to learn fishing and hunting with the Hawaiians and he managed to later purchase 100
16 acres of land for \$100 and this is the beginning of my legacy.

17
18 After thousands of hours and dollars, my daughter and I through fighting and crying decided that
19 getting this permit would be the future for my two grandsons. We literally spend I cannot begin
20 to tell you the amount of time and hours that it took to get this permit. And then after getting the
21 permit, the daughter decided that she really needed my help on Oahu helping raise the
22 grandkids. So I actually paid the taxes which is \$6,600 a year 'cause I am now a commercial
23 property so that I could spend the time with my grandchildren. And just recently, I started
24 running my vacation rentals. I have to compete illegals. I cannot begin to tell you with the
25 instant booking on the sites that allow you to book your properties what the illegals do is they go
26 on there and they list themselves like today and they do instant booking. What instant booking
27 does is it competes. The price will go up and it will go down. And if I am not competing with the
28 people who are not paying the soon to be 13.9 percent taxes, not paying insurance, not paying
29 the property taxes they can...almost every single time, they can get the booking and this is the
30 problem that we're begging for those of us that are legal. I cannot begin to tell you how many
31 people I personally know that are illegal that are telling me that I am stupid to have gotten my
32 license. They're laughing in my face because I went and got a license.

33
34 Okay, now that I've said that I want to tell you that I've had people from Japan, China, Mexico,
35 Germany, Switzerland, and presently yesterday, three construction guys checked in. They're
36 working at the airport. I do all my own cleaning, I do all my own yard work. This is...this was
37 done for my grandchildren. And I can tell you this land has been in my family since 1950 and
38 we're not going anywhere. And the experiences the people get when they come to my house is
39 lauhala hats, hula skirts. I plan on trying to do a imu pit so that we can do cooking underground.
40 I plan if it happens, I plan to build a hale so they can experience a true Hawaiian stay. My father
41 planted avocado trees, and orange trees, there's tons of fruit. They love it. I constantly give
42 them fruit.

43
44 Chair Duvauchelle: Please conclude.

45

1 Ms. Antone: And to conclude, I say if you want to go after the illegals get a fund, go online,
2 book the sites and then ask them for their license. Simple.

3
4 Chair Duvauchelle: Thank you very much. Any questions for Ms. Antone? Okay, we don't
5 have anybody else signed up. Okay, there's no one else signed up. So anyone else wishing to
6 to testify at this time please come forward.

7
8 Mr. Mark Vrieling: Hello my name is Mark Vrieling and I live out in Huelo and we're one of those
9 inbetweeners. We've been working on getting our license for seven years now and we haven't
10 quite got it. We're this close. And looking at the rules that you got we knew when we started
11 this that there was an 88 cap and we knew that there was a chance that it could be done or that
12 that could be over by the time we got our license and we chose to do it anyway. We've got, oh
13 well over \$10,000 in improvements we've had to do to the property to be able to make it so that
14 it's B&B ready. And after going to that much effort to think that we could be shut down now
15 because you draw line at only those that are existing seems unfair on a personal standpoint, but
16 on the bigger standpoint 88 is still very, very few for all of the north shore. You know we...I
17 used to come to Hawaii as just a visitor. We've been here, what seven years now and as a
18 visitor the first time we came here it was in the Lahaina area and we didn't come back for years
19 because it didn't do anything for us. However, when I discovered the north shore that was
20 Hawaii. That was the real experience and that's the type of people that we attract or the people
21 that don't necessarily want to be over in the big vacation areas but are looking for that type of
22 experience and I think it's a benefit to Hawaii to be able to give it to them. So my strong input
23 would be hold to the 88. That's the deal that you've made with people up until now and I'd love
24 to see it stay.

25
26 Chair Duvauchelle: Thank you. Any questions?

27
28 Mr. Carnicelli: I have one.

29
30 Chair Duvauchelle: One moment. Commissioner Carnicelli.

31
32 Mr. Carnicelli: Why is that taken seven years?

33
34 Mr. Vrieling: Okay, well one of them was we had a cesspool had to be changed to a septic. We
35 had a number of TMKs it turned out were mixed up and they were on my neighbor's property
36 rather than on mine. And each of those things we'd find out not oh, there's all these mix-ups,
37 we'd find out we got...we wanted to get this one thing TMK issued and then it would be after
38 that, okay, we're done, nope there's this issue. And so it's been that and going on for frankly
39 year after year. And again, I think I'm really close now and unless we get one more after this.

40
41 Chair Duvauchelle: Okay, thank you. Thank you very much. Anyone else wishing to testify
42 please come forward? State your name and you'll have three minutes.

43
44 Ms. Kutira Decosterd: Aloha my name is Kutira Decosterd and I'm a resident of Maui since over
45 30 years. The last time when I was in this room was quite maybe over 20 years because I was
46 one of the very first one who obtained the first bed and breakfast permit and it was an epic

1 event. I just...my heart went out to the lady who just was here because I cannot tell you how
2 hard I worked to get this license and how proud I was to have this license and I'm still proud.
3 But sometimes that thought comes up because I was laughed in my face too, why did you get a
4 license and I know many people who are illegal too and that's a hardship. My land in Huelo
5 which I bought in 1988 also with great luck but also with the endurance that I have to put in
6 sweat and prayer 'cause it has no water, no roads, no electricity, I created everything. And up
7 to this day I'm completely self-sustainable. And my guests come, they not just coming to want
8 to experience what it means to be connected to the Hawaiian nature. They have to go through
9 some teaching. They have to learn how to treat my chickens because I have chickens running
10 around. They have to learn how to conserve electricity because I have to create it myself.
11 When they leave, they leave with a kind of a feeling, wow, I was in tuned with nature. What is
12 important to me that I have to stay here again and fear about that a new rule could come in and
13 I get forced to sell what I have worked for 30 years with hardship. My husband is turning 70. If I
14 have to sell the land because I could not continue, you know what I have to sell it to somebody
15 who is very rich because no Hawaiian nor everybody could afford it because I need to live
16 somewhere else and no not somebody come and takes that good care as I do with organic
17 planting, teaching people and have truly the love of hosting people who come where they get
18 something about what's the aloha spirit. So I really hope that I don't have to come again and
19 testify, coming out of fear that you would cancel because I considered shoreline but I'm off the
20 cliff you know. I don't have tourists just coming into my land, it's the people who are coming to
21 my place. I'm not in Paia and I think there's a difference between Paia and Haiku. And the 88
22 that is really well balanced. If you're looking at the 400 permits which it renting to for the entire
23 island, those 400 permits on the entire island is not going to take anybody's affordable housing
24 away.

25
26 Ms. Takayama-Corden: Three minutes.

27
28 Ms. Decosterd: But the ones who do not pay the taxes, the ones who are illegal, yes they need
29 to be looked at. Thank you and I thank you for all the work you do. And I hope this was don't
30 have to come back.

31
32 Chair Duvauchelle: Thank you. Any questions for the testifier? Okay, thank you very much.
33 Anyone else wishing to testify please come forward?

34
35 Ms. Sharyn Stone: Good morning Commissioners. My name is Sharyn Stone and I'm actually
36 a neighbor of Kuteras. I have a bed and breakfast permit which I applied for in 2001, whoops I
37 ...(inaudible)... and got it in 2011. So as you can guess from the range of those date that was a
38 sort of fairly interesting process. We have worked very, very hard to become legal and we take
39 a great deal of pride in the fact that we are legal and have done everything possible to comply
40 with everything that's been asked of us. I simply ask you to do the right thing. So our current
41 legislation makes sense and the community plan is in sync. Please be fair to those who have
42 always tried to be lawful and comply. I was interested because I went to both the Paia meeting
43 and the Haiku meeting. The Paia meeting was beautifully run and with a great deal of courtesy
44 and respect to all. Obviously there was concern for illegals that is the main thing that is on
45 people's mind. The definition of near the shoreline should be clearly defined as in the
46 community plan so there it's not a gray area anymore. In the Haiku Community Association

1 meeting which I really thought I was sort of in Charlottesville. It was a truly horrifically run
2 meeting. People were offense and discourteous. Despite all that, the polling at the end showed
3 roughly a 50/50. A lot of people left in disgust because the meeting was not well run. I know
4 several people who made that comment to me personally. One of the shall we politely put it
5 authorities kept on saying 88 rentals in Paia without really understanding and clarifying that the
6 Paia Community Plan runs from Paia all the way out to Kailua and the cap of 88 I think is very
7 reasonable for that large area and I would ask you to consider that.

8
9 The other thing I would like to comment on and my husband was actually in the hospital last
10 week and he was hallucinating a little bit but he caught a program on television where, it was
11 AKAKU where they were saying that there 10,000 illegal vacation rentals in Hawaii. And I was
12 curious as to where that number was coming from because I did some research a couple of
13 years ago because I am legal and I wanted to know who my opposition was I came up with a
14 maximum of between one and two thousand illegal vacation rentals. So when you hear that
15 figure 10,000 I wouldn't take it very seriously it includes condos amongst other things. It's not a
16 thoroughly researched figure. So if you're getting excited about solving the affordable housing
17 issue because you have 10,000 illegal vacation rentals out there please don't be. Thank you.
18 That's all I want to say. I just...I would just like to do the right thing and have our plans in-sync
19 and be reasonable so everybody is treated with respect. Thank you very much.

20
21 Chair Duvauchelle: Thank you. Any questions? Thank you very much.

22
23 Ms. Stone: Thank you.

24
25 Chair Duvauchelle: Anyone else wishing to testify on this item? Please state your name you'll
26 have three minutes.

27
28 Ms. Molly Stimgist: Thank you. My name is Molly Stimgist. I don't own a short-term vacation
29 rental. I am long-term Maui resident and a long-term renter on the north shore. I work on the
30 north shore, self-employed for working for people who manage both short-term vacation rentals
31 and long-term rentals. So I see very much both sides. I do handyman services, I check people
32 in, I do all sorts of...a variety of work and I see the people, I meet the people that come here to
33 come to the north shore as someone else greatly stated that it's the most fabulous part of our
34 island I believe. That's why I live there and that's why I love it. But I just want to say that as a
35 collaboration for this whole issue as it is, there's problems with short-term vacation rentals but
36 those are the fewer problems. As a, like I said as a renter on the north shore the way the
37 availability for rentals for all the people that work like myself and want to live there is a big
38 problem in itself. I can go to one house in one neighborhood in Paia where we do a legal short-
39 term vacation rental check the people in, go around the corner to another house where we have
40 a long-term rental there is 12, 13 people living in this house and there's cars parked everywhere
41 and there's...it's an amazing thing. It has definitely more of an impact on the community than
42 the short-term vacation rentals. So I would say in a big picture listening to everyone and seeing
43 what the solution is, it has to be a collaboration. So the short-term vacation rental people have
44 to take some accountability for the people like myself that work and have to have a place to live
45 as well and the long-term renters need to be reasonable with rents or there needs to be some
46 kind of control on affordable housing for those us that work for a living and make it a

1 collaboration somehow I mean. But the short-term vacation rentals definitely aren't impacting, I
2 don't believe impacting the north shore because I think they are doing absolutely the best they
3 can and keeping their property in the best shape and controlling parking situations and all sorts
4 of things. So I would just to say overall it would be nice to see some sort of collaboration
5 between each and obviously the illegals are a factor in that as well. But overall, it still has be
6 something collaborative that works together. Thank you.

7

8 Chair Duvauchelle: Any questions? May I have your name again please?

9

10 Ms. Stimgist: Molly Stimgist.

11

12 Chair Duvauchelle: Okay Molly thank you very much. Okay, anyone else wishing to testify on
13 this item?

14

15 Ms. Katherine Clark: Aloha Commissioners. My name is Katherine Clark and I'm board
16 member of the Maui Vacation Rental Association. I want to be sure that we're not confusing two
17 issues. The first being a small number of highly regulated short-term rentals and the second
18 being the unpermitted, unregulated operators. Today we're here to discuss the regulated
19 industry and potential amendment to the Paia-Haiku Community Plan that would align this
20 document with 19.64 and 19.65. From Page 1, Part 1 of the Paia-Haiku Community Plan it
21 reads and I quote, The Paia-Haiku Community Plan, one of nine community plans for Maui
22 County reflects current and anticipated conditions in the Paia-Haiku region and advances
23 planning goals, objectives, policies, and implementation considerations to guide decision
24 making in the region through the year 2010. But now we're in 2017 so it could be argued that
25 this plan is not as relevant as it was even seven years ago. Many things have changed
26 including the way that people travel.

27

28 When the Bed and Breakfast and Short-Term Rental Home Ordinances were crafted there was
29 significant community outreach and many meetings in Council Chambers. There were many
30 opportunities for community members to come forth to express support or concern and many
31 took that opportunity to let their voice be heard. One of the concerns was proliferation and the
32 community plan caps were imposed to be certain that this was tightly controlled. From Baldwin
33 Beach out to Huelo and up throughout Haiku the total number of short-term rental homes that
34 can be permitted is 88. This control was necessary to limit impacts to housing and to address
35 the character of the area. Long-term lodging for local residents is an important issue, but many
36 of these properties occupied by the owners for several months each year so it would never
37 become long-term rentals. Keep in mind that as others have said visitors are attracted to the
38 north shore. There's a need for short-term lodging for family visiting local residents and to
39 provide jobs in Paia-Haiku where residents can work close to home. Where there is demand
40 there will be supply. Lacking legal rentals the illegal market will simply explode operating
41 without the rules imposed on the short-term rental homes. I encourage you to amend the
42 community plan to align with the ordinances. Thank you so much.

43

44 Chair Duvauchelle: Thank you. Any questions? Thank you. Anyone else wishing to testify
45 please come forward?

46

1 Mr. Tom Croly: Aloha Commissioners. My name is Tom Croly and like you I'm not a resident of
2 Paia-Haiku, but I did attend both of the meetings the Paia meeting and the Haiku meeting. I
3 didn't participate in either of the meetings but I just wanted to get a feel for what happened. And
4 the Paia meeting was held much like this one was here. Everyone got their say and I think that
5 the views that you just saw presented are probably pretty accurate to what happened in the Paia
6 meeting. There were many people saying leave the ability for legal short-term rentals to exist
7 and there many people talking about the illegals and the problems that come about as a result
8 of them. No one ...(inaudible)...that I saw in that meeting said we should get rid of short-term
9 rentals in Paia-Haiku at the Paia meeting.

10
11 The Haiku meeting on the other hand it got out of hand from the very moment that there was a
12 presentation from the board if you will that went on and on and it went on to the point that
13 people just left the meeting before the presentation was even over and then when the comment
14 period started it diverted to whole other issues, issues of Hawaiian sovereignty, issues of the
15 roads having potholes and so forth and really nothing good came...discussion came out of that
16 part of the meeting. But I think that you gotten a feel from the testimony up to this point as to
17 what was presented about these.

18
19 Now the intent of the Paia-Haiku Community Plan I believe was upheld by both the Bed and
20 Breakfast Ordinance and by the Short-Term Rental Ordinance that came later despite the fact
21 that the plan from 1995 that was actually you know came about in 1993 said no short-term
22 rentals. Back then we didn't have a Short-Term Rental Ordinance. We didn't have a Bed and
23 Breakfast Ordinance. But both of these ordinances did a couple things. They ensured tight
24 control on the permitted legal operations and they also limited them and that was key thing
25 about this shoreline thing. They picture that gee if we allow these the whole shoreline is gonna
26 be nothing but short-term rentals. Well with or without the ordinance most of the shoreline is
27 indeed owned by people who don't live those homes. That's just a fact.

28
29 The reality is with or without a permitting system there's going to be short-term rentals on the
30 north shore. The idea that the community plans says we shouldn't have them or should have
31 them is really not going to make a difference as to whether they exist. The question is do we
32 want to regulate them in some way? And the Short-Term Rental Ordinance attempts to do that.
33 You folks are a big part of that because you see these when they come by particularly in the Ag
34 District and we ensure that the agricultural uses are in place when there's multiple ones in a
35 nearby area and you get to be able to evaluate what the impacts are in that nearby area. So
36 taking away your ability to make those decisions would be worse than saying, you know, than
37 allowing that to continue. So do encourage you to recommend to changing the community plan
38 and allowing the system that's in place to continue. Thank you.

39
40 Chair Duvauchelle: Thank you. Any questions for Mr. Croly? Okay, thank you very much.
41 Anyone else wishing to testify? Please state your name sir, you'll have three minutes.

42
43 Mr. Kurt Magnes: Hello, my name's Kurt Magnes. I'm a resident of Kuau, Paia for 20, 25 years.
44 I've always lived next to short-term vacation rentals. I've never had a problem with them.
45 They've always been great people. You know, it's kinda like you know get to meet all different
46 kinds. It was never a problem. It brought money into the community. You have a ordinance

1 that is working. Why are we going back and revisiting this? It doesn't...it seems like, you know,
2 a complete waste of time. I mean, you got 47 to 88 that's like less than one percent of the
3 housing stock. You know it has...the long term rentals is really a separate issue. The short-
4 term doesn't really affect it. It's just there's 40 homes, 47 homes you know in right now. I think
5 we should we should keep it what you guys got. If you spend all that time and money and hours
6 and community back and forth coming up with a great ordinance. Let's maintain it. Thank you.

7
8 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to
9 testify? Please come forward. State your name, you'll have three minutes.

10
11 Mr. Wilton Leauanae: Aloha my name is Wilton Leauanae. I appreciate everyone's testimonies
12 today. But in review of the community plan there appears to be another conflict between the
13 Paia-Haiku Community Plan and another County ordinance that should be addressed as well.
14 There's a conflict between the Paia-Haiku Community Plan and the B-CT and B-2 Ordinances
15 involving transient vacation rentals. This is essentially the same problem within the Paia-Haiku
16 area but within the Business Districts and that's kinda what the Director referred to that they
17 noticed this going on and this conflict that was occurring.

18
19 According to the community plan its objectives and policies are to prohibit hotel resort
20 development within the region. The community plans prohibition against hotel or transient
21 accommodation conflicts with the County's ordinance involving improving the TVRS. Maui
22 County or the B-CT Country Town Business District Ordinance allows up to 12 bedrooms in
23 TVRs in the B-CT District of Paia and Haiku. The B-CT Ordinance was properly vetted just like
24 the ordinance today through the community, approved unanimously by eight members of the
25 County Council and signed by the Mayor in 2014. The B-CT's intent and purposes include
26 preserving and maintain the country town atmosphere and establishing a means of
27 implementing various provisions of the community plans. The majority of the business districts
28 in Paia-Haiku are zoned B-CT District. It's my understanding that the Paia-Haiku Community
29 Plan intended to prohibit large scale hotel resort development such as those located in South
30 and West Maui, but was never intended to prohibit small transient accommodations such as
31 those currently permitted by the B-CT Ordinance and commercial districts for up to 12 rooms.

32
33 For further clarification, the community plan should also be amended to include language
34 rectifying the conflict between the community plan and the ordinances allowing the TVRs in the
35 Business Districts. The TVRs are currently allowed in property zoned B-CT, B-1, and B-2. The
36 BT allowance is an outright use approvable administratively without neighbor notification,
37 community input, et cetera. I believe the best place for small scale transient accommodations is
38 within the Business Districts of our community.

39
40 By amending the community plan to allow for STRHs in residential areas and TVRs in the
41 Business Zoning Districts of Paia and Haiku this amendment will fulfill the purposes and intent of
42 the community plan. I believe that the intent of the passing the TVR use in the Business District
43 was to allow some relief to residential areas by providing TVRs in the areas that are already
44 commercial in nature and provide some economic diversity in the small towns.

1 I request that the Director amend the proposal to the County Council regarding STRH issue to
2 also include the TVR use in the B-CT and B-2 District when amending the community plan.

3
4 Chair Duvauchelle: Please conclude.

5
6 Mr. Leauanae: Thank you for your time.

7
8 Chair Duvauchelle: Thank you. Any questions? Seeing none, thank you very much. Anyone
9 else wishing to testify? Please come forward and state your name.

10
11 Ms. Ilima Smallwood: Hello, my name is Ilima Smallwood and I just wanted to testify today. I
12 have grown up on Maui's north shore. Paia has always been the gateway town. I grew up in
13 Huelo and East Maui in Lower Nahiku. So I've been going to Paia to do my laundry since I was,
14 you know, a kid. And there is an affordable housing crisis in our community on the north shore.
15 But I wanna say I don't think that the 47 legal homes that have been permitted are what's
16 creating that problem at all. And I don't think that if there were 88 it would be what's creating
17 that problem. I actually think that the permitted number of 88 homes is quite low for realistic
18 balance in the community as far as how many visitors want to stay there and what it could
19 support in a balanced way.

20
21 I am also a junior architect and I work in this industry and I do a lot of permitting. A lot of people
22 come to me for waiting, you know seeking permits and looking to create bed and breakfast,
23 short-term rental homes and there's a number of challenges. I think I agree with the other
24 testifier that said it's a really nuance problem. One of the problems that I see that I think might
25 be very helpful in rectifying the challenges between the code is clarifying the definitions. Right
26 now a hotel resort is basically defined exactly the same as a transient vacation rental in the
27 code and to me those just are not the same thing. You know the Grand Wailea is not the same
28 thing as you know a four-room transient vacation rental on the north shore. So I would
29 encourage that to be looked at as a possibility.

30
31 The other thing that I, you know just want to mention is the, you know as an architect I've
32 worked in other states as well and the one difference that I see in Maui County, I've worked in
33 New York and Seattle is that a lot of the code here is very subjective which makes the permitting
34 process very lengthy and more challenging for people trying to pursue permits. So the language
35 that was recommended here today for you know the shoreline I think to me that's just a
36 completely subjective code and to me I feel like code should be black and white so that you
37 know when your community members are coming to get their permits they understand what's
38 allowable, what's not allowable and that each property owner isn't faced with you know
39 subjectivity of the community and of everyone weighing it. You know, everyone in our
40 community should be treated equally and the code should support an equal treatment for
41 everyone in our community. So I just wanted to share that. Thank you.

42
43 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to
44 testify. Okay, seeing none, public testimony is closed. And before we take discussion and
45 questions we're gonna take a ten-minute break. We'll be back at 10:20.

46

1 A recess was called at 10:10 a.m. and the meeting was reconvened at 10:25 a.m.

2

3 Chair Duvauchelle: We're back. Good morning. Planning Commission is now back in session.
4 We are ready to entertain questions and discussions from the Commissioners on the agenda
5 item. Oh, Director?

6

7 Mr. Spence: First off, I wanted to apologize to Mr. Werden where he believes that I don't care
8 what happens out in Huelo and that's not the case at all. My example of you know, it was in the
9 context of discussing what is near the shoreline which is a question I would like the Commission
10 to comment on, but near the shoreline near a sandy beach where you could have a dozen or
11 you could have a whole lot of vacation rentals all lined up where the public is normally involved
12 versus some place like Huelo that you may have a vacation rental situated on top of a bluff with
13 no shoreline access, you know, I don't see...you know, you have miles of cliff top properties in
14 the Haiku area where I don't see where a vacation rental would affect the shoreline. But that's
15 something that should be evaluated on a case by case basis. So my apologies to him if I was
16 not clear.

17

18 The second thing I wanted to say there is I think Katherine Clark expressed it best, we are not
19 discussing the unregulated part of this industry today which I admit is a huge issue and we are
20 taking steps and Audrey Antone said something earlier and other people commented about the
21 competition of illegal rentals and we recognize that's very true. And whether there's 10,000 or
22 whether there's 5,000 or whatever we are taking steps towards improving enforcement. The
23 County Council put some money in our budget this year to look at hiring a contractor to help find
24 out exactly...half the battle for enforcement is knowing exact locations and names of operators
25 and so we're starting to involve a contractor to help do that as well as involving real property tax
26 and other entities towards enforcement.

27

28 So what we're talking about today is just the regulated side of this. We're talking about either
29 having in the Paia-Haiku Community Plan area which stretches from Paia all the way out to
30 Kailua where the baseyards are...the baseyards...(inaudible)...okay, anyway, Kailua is way
31 farther than...it's a lot closer to Keanae than it is, you know, just to out to Huelo or whatever. It's
32 a huge area. We're talking 88 homes within this very large area.

33

34 The number of homes is derived when the Council was taking up the Short-Term Rental Home
35 Bill. It was derived from a study that was done some years earlier where it roughly...the study
36 roughly identified there's probably so many in these different areas and we're talking like 2010,
37 we're talking a lot earlier before the explosion of Airbnb or just you know, it was just starting up
38 but it was before it had really exploded. So the study identified...there's roughly this many
39 within Maui County and so the County Council took those and set caps for each community plan
40 area. The whole idea behind setting caps was that it doesn't take away from local housing. If
41 you have only this many that's not going to take away from local housing opportunities. Of
42 course, the unregulated part of it that does present much more of a problem.

43

44 So to just reiterate the Department's position on doing these bills we're supposed to follow our
45 community plans when we get to discretionary permits. We do that for SMA, we do it for Special
46 Use Permit, you know, or B&Bs getting Special Use Permits in the Ag District or whatever.

1 There are specific things within the community plan we're supposed to follow them. So here we
2 see ...(inaudible)...and so this is something we have to resolve. In 1995 when the community
3 plan was adopted. There was no such thing as Airbnb. It wasn't...you know the introductory
4 part of the community plan was written, it was supposed to be effective up to 2010. The idea
5 was...it was supposed...the community was supposed to take care of things in the foreseeable
6 future. Well, there's a lot of things that have taken place that nobody foresaw and Airbnb is
7 certainly one of them. So you know we have a proliferation of this use is far beyond what we
8 could foresee at that time and so we have a very old policy and very...a much newer law and so
9 we're trying to reconcile those two. So just with that. Commissioners if you have questions I'm
10 happy to discuss it.

11
12 Chair Duvauchelle: Okay, Commissioners what we're looking for here is your recommendation
13 and/or amendments and if you support either version, and some discussion on why or why not.
14 Commissioner Carnicelli?

15
16 Mr. Carnicelli: I would like to make a motion. No, cannot, should not?

17
18 Mr. Spence: Okay, if Commissioners have questions and I do want to ask, I would...wanna
19 discuss the near shoreline issue before we go on.

20
21 Mr. Carnicelli: Okay.

22
23 Mr. Spence: Okay, well let me and okay, you can just hold your motion and ...(inaudible)...

24
25 Mr. Carnicelli: Okay.

26
27 Chair Duvauchelle: That's fine go ahead Director.

28
29 Mr. Spence: Particularly...part of this policy in the plan says, to avoid the proliferation of this
30 use near the shoreline. Okay, near the shoreline at one meeting was okay, shoreline properties,
31 another at the Paia-Haiku meeting it was suggested that near the shoreline means the SMA
32 line. Well the SMA line out in Haiku is a mile and a half deep. It abuts Hana Highway going
33 through that region. So from the shoreline to Hana Highway in some places is a mile and a half
34 and so I think that's a little stretching it. I would...if the Commission wants to make any
35 decisions on or make any recommendations on what near the shoreline means to me it's
36 shoreline properties. That's the Department's position. If you have any comments on that for
37 the record I would...

38
39 Chair Duvauchelle: Commissioner Carnicelli?

40
41 Mr. Carnicelli: To me if we're gonna go to the subjective part and the ambiguity in the words,
42 proliferation is a much more ambiguous word than near the shoreline.

43
44 Mr. Spence: Okay.

45
46 Mr. Carnicelli: You know, I mean and that's the part where you know is what does that mean?

1 'Cause we can go near the shoreline, we could define it on, we can define here, but we still have
2 this word of proliferation sitting out there and they're going like okay, well what does that mean?
3 'Cause we could define near the shoreline, but unless we have a definition of proliferation that's
4 you know, kind of a moot point. I also feel as though you know we're doing nothing more than
5 transmitting this to the County Council, and our current County Council likes to masticate on
6 things quite a bit and you know...

7

8 Mr. Spence: Which is also why I'm asking for things on the record.

9

10 Mr. Carnicelli: Okay, I see what you're saying so it's to give them something to say okay this is
11 where we're going. So then I'm gonna think another moment, I'll let my fellow commissioners
12 chime in while I think about what near the shoreline and/or proliferation is.

13

14 Chair Duvauchelle: Commissioner Robinson?

15

16 Mr. Robinson: Let me start with proliferation. Proliferation means a rapid increase in numbers.
17 So that's a definition. Now where we choose to take a definition out of a dictionary or we decide
18 to make up our own definitions which people like to do a lot that's what we can decide, but
19 proliferation is that's what it is in the dictionary. I think where I'm at Director is you know, usually
20 when we're presented something we usually have a few options or you know that green page
21 that we usually get, and unless I'm missing something I don't have that hear and it seems a little
22 bit more open about what were discussed. I know there's a recommendation for a couple
23 choices, but is it do you want us to just think about those two things that we wanna tweak or do
24 we have more levery to broaden it?

25

26 Mr. Spence: As with any recommendation made to the commission and these are
27 recommendations, we...back in July we made a recommendation where you know, please
28 commission select one of these bills either set the cap at zero or amend the community plan.
29 Now after going out to the community we've changed those...in listening to what people have to
30 say we've modified those recommendations and those are contained in your September 26th
31 report. Right after the report there are two bills and our recommendation are underlined as
32 modifications to existing code and as an amendment to the community plan. So you can, as a
33 Commission making a recommendation to the Council you can take these as they are or you
34 can propose your own changes or whatever. It's our recommendation to you.

35

36 Mr. Robinson: Have we come to a point where we accepted a fact that there's been a mistake
37 made? Or are we just saying that we'd like to do a little housekeeping because to me that's a
38 difference in my eyes.

39

40 Mr. Spence: I'm not sure...

41

42 Mr. Robinson: I'm sorry, oversight. Did we...I guess what I'm saying we're here for a reason.
43 We're here...Council passed a ordinance that we're here now talking about trying to change the
44 ordinance and we're doing it because of the wording, you know, of the community plan. So I'd
45 like to have directions on how is it supposed to be? Is the community plan supposed to be the

1 following...the follow of all or are we saying, well it's kind of old so now you know, we're
2 supposed to follow the plan, but because it's been so long we could tweak it if we want.

3
4 Mr. Spence: Okay, and we're gonna get into one of my favorite subjects whether the community
5 plans have the force and effect of law or not. The community plans in my opinion are...and he
6 way that the Department and the way the Corporation Counsel has always treated them is these
7 are guidelines except when another ordinance requires compliance. For instance, Special
8 Management Area says that no SMA Permit can be granted unless it complies with community
9 plan or I think it says General Plan and that's State law. So like the case that everybody likes to
10 quote as I recall the community plan said single-family and the guy wanted to do a business. So
11 the Hawaii State Supreme Court said no you can't do that 'cause it doesn't comply with the
12 community plan. There in that case it has he force and effect of law. In so many discretionary
13 permits there's also a requirement that the permits in order to be granted must comply with the
14 community plan. Subdivision it's in Title 18, Subdivision Code that the Director of Public Works
15 cannot grant subdivision unless it complies with the General Plan. Capital improvement project
16 for the budget and there might be a couple of other cases. So for this we should follow the
17 community plan. And whether you want to call it an oversight or a mistake or whatever you
18 would like to call it, this was not addressed in this specificity when we, and I include myself with
19 the County Council and this discussion adopting a Short-Term Rental Home Bill this particular
20 policy was not addressed to the degree that it should have been either by the Department or by
21 the Council. So thus we're going...maybe we shouldn't be granting any permits at all in Paia-
22 Haiku, but yet we have it and that's from 1995, and yet we have this new ordinance that says
23 you can grant permits, you can grant up to 88 of them in the Paia-Haiku area. So we're going
24 okay, I don't want to just let this lay. We could just sweep it under the rug and ignore it but I think
25 that no, it's best public policy, it's the right thing to do to bring this to the Commission and bring it
26 to the Council. So whatever your recommendations are we will transmit that to the Council. If
27 you want to modify these recommendations that's fine with me.

28
29 Chair Duvauchelle: Commissioner Higashi?

30
31 Vice-Chair Higashi: I have several major concerns about the policy that's being proposed. First
32 of all the community plan which was developed in 1995 definitely needs to be addressed but
33 when you have specific incidents where if I own a property on the beach I cannot have a short-
34 term rental, I think that's a discriminatory practice that should be addressed. If anything else it
35 should be looked upon as a designated area where it could be spread out, where it's like first
36 come, first served, those who have applied properly should be given that opportunity to have a
37 short-term rental right on the beach just like anybody else. But to say I cannot do that I think
38 that's a discriminatory practice that should be corrected.

39
40 Secondly, I think when we look at community plan we definitely have to address those issues
41 that come up from the community that says whether they're gonna go recommend increase or
42 status quo. I think that's part of our responsibility to be able to accommodate that.

43
44 And lastly, I think if anything else it should be the regulatory issue of enforcement. We have all
45 these people that come, they legally applying for a permit, spending tremendous amount of
46 money trying to get it legally done and here we have so many illegal ones that are getting by.

1 And I think if anything else the County Council should definitely address how we can increase
2 the amount of enforcement that we should have. Otherwise, don't have policies it doesn't make
3 any sense.

4
5 Chair Duvauchelle: Thank you. Any other comments or discussion? Commissioner Carnicelli?

6
7 Mr. Carnicelli: Trying to let other people talk. So I'll go ahead and address the near the
8 shoreline to avoid proliferation. I'm somewhat in agreement with Commissioner Higashi on this.
9 Because I think that there could be an argument made that properties on the shoreline should
10 be vacation rentals. The multi-million dollar, bazillion dollar mansion that sits on the beach
11 that's never going to be an affordable rental it's almost like make that one of the 88. I mean,
12 there could be the argument made for that saying that you know oh, you know the beaches and
13 shoreline is still public. You know, it's not like okay if we make these a vacation rental we're
14 gonna lose. If we lose access to the beach that's a different conversation because that's a
15 different law, that's a different, you know... 'cause again we're talking about ordinance, law,
16 versus enforcement, right? Do we have an issue with losing access to the beaches? Yes, we
17 do absolutely. But that's an enforcement thing, that's not a vacation rental thing. So there can
18 be that argument made. Do I think that we should amend this transmission to the Council to say
19 that? I don't think palatable to the community to do that. I just don't. So I wouldn't recommend
20 saying okay, let's eliminate near the shoreline because I just don't think that that's you know
21 what the community really wants.

22
23 So as far as like trying to draw a near the shoreline, the two very obvious ones are the SMA or
24 okay, are you on the beach, you know, are you directly ocean front? I think the SMA line is one
25 that as drawn when was that, 25 years ago, 30 years ago?

26
27 Mr. Spence: Early '70s.

28
29 Mr. Carnicelli: Yeah okay so we're talking 50 years ago plus or say roughly that. So I don't
30 think that the SMA line is probably you know an accurate place to draw it. So if we need to get
31 something that's you know more black and white, not as subjective then I'm gonna just say,
32 near the shoreline means on the shoreline. As far as the denotative or connotative definition of
33 proliferation I still think that that's gonna have to be...it's gonna be unfortunate but it's going to
34 be in the eyes of whoever has to make that decision at that time. I think that that it's important
35 to the community but I think that whoever's making that decision is gonna have to make that
36 determination at the time and I do like your example Director where you said okay, you know, if
37 this is on the cliff in wherever it is, you know, is that gonna be a difference of proliferation than
38 say in the heart of Paia? In my particular mind it will be. So that's, you know, just going to what
39 you asked and request us to talk about in this particular thing was that, that's my two cents.

40
41 Chair Duvauchelle: Any other discussion or questions? Director?

42
43 Mr. Spence: Just a comment on the proliferation what that means. I mean to me that doesn't
44 mean...that means the rapid increase, it doesn't mean that one or two isn't okay, but if you
45 had...if you turned the entire shoreline into vacation homes that would proliferation, that would
46 be an issue.

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Chair Duvauchelle: Commissioner Robinson?

Mr. Robinson: I think I would like to back up to what we are here and we're here, it's planning. Planning you have zoning, zoning you have residential, hotel, TVR, you have different...you plan different things to be in different areas and every time a short-term rental comes to us it's always asking for an exception. It wouldn't need an exception if it wasn't a TVR. You know, nobody is against vacation rentals, tourism tax dollars or tourists. It's zoning and having proper things fit into certain places and with this ordinance just with the community plan, the community plan says bed and breakfast, no short-term rental, legal, illegal, it doesn't matter, it doesn't. You know, it's people wanna plan and have a vision for a certain area and things changed. It changed from 95 to 2010, but then from...when they started discussing it. And now with B&B it changed from 2010 to 2017. Nobody had an idea of the amount of lack of...lack of accountability have in the County of Maui, in the state, in the nation where they do illegal things and laugh at people's face. The complicity of people working for illegal operations and just you know, it's...not to grandstand but it's the erosion of what our community stands for. And our community is people that work with neighbors and this proliferation of illegal activity, of people, you know, like I said just you know, this is our problem. So we have to go back to what the zoning is and the zoning it's not zoned for short-term rentals. Now we've allowed permits, we're gonna have to decide how we deal with those permits. You know we don't...you know I don't think legally once you people invest money and we're gonna go to court, but I think a normal way is if it does one way people will be able to use their permits till they expire and then they might not be renewed. I don't think anybody is looking at trying to hurt anybody who came to do a permit. In fact, if they've come in front of this board and they got a permit, you've had the majority approval of the commissioners saying we like what you're doing, we like your permit and here's a license and thank you for coming. But to have so many operations that are illegal to grant permits for legal ones when we haven't fixed the problem ahead of time, it's a quandary that I don't know how we as a planning commission can give a recommendation to a Council who as has a little bit different view than they did two years ago or five years ago. And legally we have to still follow what the legal parts of what we're supposed to do which goes back to zoning, which goes back to the community plan and we can recommend to not follow the law, but that's hard for me to say. It's hard for me to say I want to disregard the law, I want to disregard what all our commissions, our Councils, our legislators have done since we've become a state and now I think it's bad and wanna start changing it. I think that there's a process which is the Council that that thinks can do it and recommendation, I don't see me going against anything that's not you know, that's not based on the law. Thank you.

Chair Duvauchelle: Okay. So our recommendation is no recommendation?

Mr. Robinson: Chair you got one?

Chair Duvauchelle: All right, any other discussion? Commissioner Carnicelli?

Mr. Carnicelli: I have a question. I want to put Corp. Counsel on the spot.

Chair Duvauchelle: You've been too quiet today.

1
2 Mr. Carnicelli: I'm gonna take you all the way back to law school and I'm gonna ask you what
3 is—

4
5 Mr. Giroux: B+

6
7 Mr. Carnicelli: --what is the 21st Amendment to the U.S. Constitution?

8
9 Mr. Giroux: I don't got it. I'd have to look it up.

10
11 Mr. Carnicelli: The 21st Amendment to the U.S. Constitution, I'm gonna answer my own
12 question is the only amendment to the U.S. Constitution that repeals another amendment. It
13 repeals the 18th Amendment. The 18th Amendment is prohibition. Prohibition doesn't work. It
14 doesn't work. As one of the testifiers said, if we change the law to zero, we're not going to stop
15 vacation rentals on the north shore. We're just not. It's not gonna happen. It's still gonna
16 happen. We do have an illegal issue. We do have an enforcement issue absolutely. So we
17 have a discrepancy. To me this isn't that hard. It's like okay, we either you know like
18 Commissioner Robinson said we've got laws, we've got zoning, we've got a law that says this is
19 allowed in this zone and that's in conflict with another thing. So we fix it, that's why we're here.
20 We're saying okay, we're gonna try to fix it. We got two laws that are in conflict...that are
21 conflicting. So we say all right, we either fix this one to comply with that one or we fix that one to
22 comply with this one and we're not even doing it. We're doing nothing more than making a
23 recommendation to the Council 'cause the Council's the only one that can change the
24 community plan. There's a law that says we can change the community plan, the County
25 Council does that. They're the only ones that can do that. So we can just make a
26 recommendation and they don't have to listen to us. They can say you know what
27 ...(inaudible)...They can say no, you know what we're gonna set the cap at zero and they can
28 do that. So to me this is, you know, I mean we can wax poetic all day long which I'm known to
29 do, but to me I think that it's pretty simple is to me I think that we need to have a law in place to
30 make these things legal so we can regulate them. There's a gentleman that says it took him
31 seven...he's seven years in the process right now and he's gotta fix all kinds of stuff with his
32 property. He could have been making money for seven years. Could have been making money
33 for seven years and guess what, you know, I went online, I was looking at houses that are on
34 Airbnb that a rock is holding up the foundation. It's like I guarantee that guy doesn't have a
35 permit. So to me it's just let's give people the opportunity to be able to do it right. To be able to
36 be legal. And I'll get off my soapbox now.

37
38 Chair Duvauchelle: That's okay. All right, so what I feel like I'm hearing is maybe some
39 amendments to the language both shoreline and enforcement. Sounds like that we feel like the
40 shoreline the way it's worded is a little too strict to not allow any vacation rentals is that? So
41 maybe to soften that language to take them...allow the applicant, but to take them on a case by
42 case basis. Go ahead Director.

43
44 Mr. Spence: Okay so Commissioners if you look at your bill, the first bill to amend 19.65, at the
45 bottom it says Page 5, and you see the underlined language. There's...at the...towards the top
46 of the page it gives the cap. Hana is 30, Kihei-Makena 100, et cetera. Paia-Haiku we're

1 proposing to leave after listening to the community, after listening to the comments, we're
2 proposing to leave the cap at 88 for the Paia-Haiku area. Then to continue on with that, except
3 and maybe it should say, except that new permits, you know, after 47 or something, except that
4 permits may not be issued for shoreline properties that may affect the character of the nearby
5 shoreline. So we would have to do evaluation on a case by case basis on each application as it
6 comes in to say this may or may not affect the character of the nearby shoreline. So again,
7 we're changing our recommendation from offering that...offering an option to set it to zero, to
8 keep it at 88 and just recognize that these uses may affect the character of the shoreline. So it
9 would be another criteria that we would work with the application.

10
11 Chair Duvauchelle: Can we support that or Commissioner Robinson?
12

13 Mr. Robinson: My feeling towards the number is I could support that but I feel that there is an
14 unbalanced amount of rental properties, permitted rental properties in Paia compared to the vast
15 amount of land that this area is for. I feel that it's...in grouping Paia and Haiku together
16 it's...you could have you know way too many more homes than I think were previously thought
17 of in the Paia area and I think Paia is inundated with short-term rentals right now. And it's not
18 the number that I have problem with it's grouping it and not having some type of limit. And I
19 think the Council I hope they will address this too, let's say, you know we might have took the
20 whole acreage but we might of thought that gee, didn't think that you know sixty something of
21 them would be in the Paia area, you know, we thought it be spread out. While the bed and
22 breakfasts you know are majority on the opposite way. It's more of the upper area. So you
23 know, it's I think a reasonable approach is not playing with the cap but I would like to
24 recommend that they look at maybe splitting Paia and Haiku 'cause I think it is two different type
25 of communities and I don't think they should be combined.
26

27 Chair Duvauchelle: That's good.
28

29 Mr. Spence: We will note that in the transmittal.
30

31 Chair Duvauchelle: Commissioner Carnicelli?
32

33 Mr. Carnicelli: I just wanted to ditto that. I think that's a great comment, a great observation and
34 I would wholeheartedly support that. I mean, one's you know more of a town and the other's
35 very, very rural and spread out. So I think that that actually should be something that should be
36 addressed absolutely.
37

38 Chair Duvauchelle: Good. All right, any other comments on the shoreline? Commissioner
39 Higashi?
40

41 Vice-Chair Higashi: Although the Director mentioned that our main issue is on the regulated
42 side of what we're talking about I think we should strongly recommend to the County Council
43 that they look at the enforcement side because that has been a major problem with the policies
44 and laws that we regulate that there's no teeth to enforcement and I think the County Council
45 needs to address that.
46

1 Chair Duvauchelle: I agree with you and I was going to ask you folks to take up enforcement
2 next. So we're good with the recommendation and possibly splitting the number and the
3 grouping and then I wanted to talk about enforcement.

4
5 Mr. Carnicelli: Well, I guess. I don't know where we're at really with this because we don't have
6 motion as far as which way we're going, which way we're going or not.

7
8 Chair Duvauchelle: ...(inaudible)...recommendations yet.

9
10 Mr. Carnicelli: But if we're talking about...the shoreline issue, I think the word, may is...you
11 know, I mean if we go to Chapter 19 or if we're gonna go to the community plan, we've got, so
12 as to avoid, and then we've also got, may affect the character. To me it's just like okay, instead
13 of saying so as to avoid, what if we say, if, if it causes proliferation rather than you know, or if it,
14 you know, there's seems to be instead of just saying, so as to avoid it means all right is that
15 preemptive? Or does that mean this is the one that's the straw that broke the camel's back?

16
17 Mr. Spence: Okay, well the way that this is written—

18
19 Mr. Carnicelli: 'Cause we're not gonna transmit both of them, right? We're gonna try to make a
20 choice?

21
22 Mr. Spence: No, we would transmit both.

23
24 Mr. Carnicelli: Okay, so we're gonna—

25
26 Mr. Spence: We're proposing after going through this process, we're proposing changes to
27 both.

28
29 Mr. Carnicelli: Oh, I see. So you're now saying you want to do both at the same time to match
30 them...to get matchy matchy.

31
32 Mr. Spence: Yes. So they coincide each other.

33
34 Mr. Carnicelli: Okay. Matchy matchy that's a legal term right?

35
36 Mr. Spence: I've heard it used by Staff many times.

37
38 Mr. Carnicelli: So then why don't we take the exact verbiage from...'cause one doesn't say the
39 same thing that the other? One says, should not be situated near the shoreline so as to avoid
40 proliferation, and this one says, not to be issued for the shoreline properties that may affect the
41 character for nearby shoreline...

42
43 Mr. Spence: Okay, so we said—

44
45 Mr. Carnicelli: So I mean, it's just like let's make a match if we're gonna do it.

46

1 Mr. Spence: Okay, so do you like the avoid proliferation or do you like the may affect the
2 character? Well, character is ...(inaudible)...

3
4 Chair Duvauchelle: Commissioner Robinson?

5
6 Mr. Robinson: While Lawrence is deciding.

7
8 Mr. Carnicelli: Yeah, I don't want this to be my decision.

9
10 Mr. Robinson: Yeah, I know and I want to comment on the discrimination part of shoreline.
11 Zoning is discrimination. Being able to do certain things in Ag, do certain in, you know, TVRs,
12 so it's not that it's a discrimination of this person or that person, it's more of a zoning issue. And
13 I think that's what...so I don't wanna us think that oh it's not fair that we don't allow people to do
14 something 'cause discriminatory. I think this is a zoning thing that we're trying to decide and
15 trying to find out what's best and the Council will what we think is best for the area and it doesn't
16 matter who it is which is anti-discriminatory. It's this is what we're gonna do. And I actually like
17 the proliferation because it's the rapid increase. You know, things grow, things change slowly
18 and I think that with that we can adjust. The community is gonna be redone within hopefully the
19 next three years?

20
21 Mr. Spence: ...(inaudible)...

22
23 Mr. Robinson: Right. So you know, it's to do something rapidly, to increase, you know, instead
24 of the change of character because one house you know paint color could be character, right?
25 And Lord knows we see that too. Okay, so I just kinda...I like the proliferation.

26
27 Chair Duvauchelle: Commissioner Carnicelli?

28
29 Mr. Carnicelli: That side of the table can jump in here too, sorry guys. I would agree. I like
30 proliferation. I mean I'll have to agree with Commissioner Robinson.

31
32 Chair Duvauchelle: Okay.

33
34 Mr. Carnicelli: And the other part too, I mean, whether we like it or not the character has
35 changed, you know, that's the unfortunate part in all of this is you know it has and like
36 Commissioner Robinson said, I mean, it could be a lot of things. But proliferation I think that
37 that word needs to be in there.

38
39 Chair Duvauchelle: Any other discussion? So Director would you read our recommendations
40 on C-1a and b, agenda items. First set of recommendations.

41
42 Mr. Spence: Okay, the first we're dealing with, the language at the end of the...right by the cap,
43 the way the proposal currently reads is it says, except that permits may not be issued for
44 shoreline properties that may affect the character of the nearby shoreline. The way that I'm
45 hearing it now it would say, except that permits may not be issued for shoreline properties to

1 avoid the proliferation...except that permit...I'm not exactly sure how to word...doesn't fit
2 either—

3

4 Mr. Carnicelli: You could fix it later, but you know what we want with that.

5

6 Mr. Spence: Okay, you want proliferation in there.

7

8 Chair Duvauchelle: Yes.

9

10 Mr. Spence: Okay, and then the next bill deals with the amendment to the language in the
11 community plan. Right now it says, limit visitor accommodations to permitted short-term rental
12 homes. It's proposed to say, limit visitor accommodations to permitted short-term rental homes
13 and owner-occupied bed and breakfast homes that are residential in both scale and character.
14 Here we're getting into, any new bed and breakfast or short-term rental homes should not be
15 situated near the shoreline as to avoid the proliferation of these uses and subsequent changes
16 in the character of the regions coast.

17

18 Chair Duvauchelle: Okay.

19

20 Mr. Spence: And then it doesn't resolve the whole enforcement thing but there's...since this
21 was such a...this is an ongoing issue with these types of uses, we're proposing to add the
22 sentence at the end illegal visitor accommodations can diminish the availability and affordability
23 of housing for residents and should be subject to strict enforcement actions. So that would be
24 new language within the community plan towards enforcement.

25

26 Chair Duvauchelle: Okay, do I have—

27

28 Unidentified Speaker: ...(inaudible due to not speaking into microphone)...

29

30 Chair Duvauchelle: And separation of the cap between Haiku and Paia.

31

32 Mr. Spence: Okay.

33

34 Chair Duvauchelle: Commissioner Carnicelli?

35

36 Mr. Carnicelli: Do we know of the 47 right where they are?

37

38 Mr. Spence: Kurt do you happen to know? Okay, no.

39

40 Chair Duvauchelle: All right—

41

42 Mr. Spence: I'll just say we would report that...with your recommendation to the Council we
43 would report that to them. How many currently, how many bed and breakfast, how many short-
44 term rental homes in Paia, how many within Haiku and we would roughly draw a line at Maliko
45 Gulch.

46

1 Chair Duvauchelle: Commissioner Carnicelli?

2

3 Mr. Carnicelli: So looking at the second sentence in the community plan--

4

5 Mr. Spence: Okay.

6

7 Mr. Carnicelli: Any proposed new bed and breakfast homes or short-term rentals should not be
8 situated near the shoreline if it causes the proliferation.

9

10 Mr. Spence: The way that I'm reading this, should not be situated near the shoreline if it causes
11 the proliferation—

12

13 Mr. Carnicelli: Of these uses and subsequent changes in the character of the regions coast.
14 And then I guess is why wouldn't we just take that sentence and put that in after 88? I mean,
15 'cause now suddenly then we have matchy-matchy.

16

17 Mr. Spence: Okay.

18

19 Mr. Carnicelli: James what do you think?

20

21 Mr. Giroux: Purely policy.

22

23 Mr. Carnicelli: Okay.

24

25 Chair Duvauchelle: All right. Okay, so we have a consensus on the recommendation? I have a
26 question on enforcement. What is the current penalty for not being licensed when they are
27 discovered?

28

29 Mr. Spence: It's a \$1,000 a day...and just to give everybody an idea of what's happening in
30 enforcement and this is aside from what we're discussing.

31

32 Chair Duvauchelle: Yes, I know, sorry.

33

34 Mr. Spence: So we have seven people working in enforcement. We have six enforcement
35 officers if you will and one supervisor for them. And we respond mostly to, we respond mostly
36 to RFSs, Requests for Service called in by members of the public. We have done a
37 considerable amount of proactive enforcement. These six people, I mean, if somebody...let's
38 say somebody sends in a Request for Service normally they will send us a link, sometimes not,
39 they'll just say my neighbor is doing this. So then we have to go through the task of identifying
40 exactly where this property is and who is the owner. Sometimes that easy, sometimes it's very
41 difficult. Once we identify that owner, we will send him or her or the entity a Notice of Warning
42 where we give them, and this is by our Administrative Rules we give them an opportunity to
43 voluntarily shut down and sometimes they do and sometimes they don't or sometimes they'll
44 take their ads off of Airbnb and put them up on VRBO and so then we get to go chase them all
45 over again. But the way that our Short-Term Rental Code reads is the advertisement is prima
46 facie evidence of operation and we can issue violations off of that if they do not stop. Six people

1 out of, you've heard some wild numbers on how many vacation rentals we have on Maui, in
2 Maui County. I mean, think of it if it's half that, say we have 5,000 that's a lot of short-term
3 rental homes for six people to tackle. And then when...once we issue violations again, a good
4 portion of people will shut down and pay their fine. A lot people will shut down and don't pay
5 their fine. Some people continue to operate and then we get to engage Corporation Counsel or
6 they will either...they can appeal the violation in which we start down a whole legal track with
7 the Board of Variances and Appeal or we'll go to court to try to get an injunction and it's a lot of
8 time and effort with the attorneys and with Staff to go really pursue shutting somebody down.

9
10 Chair Duvauchelle: And who...what entity is it is it County Council that sets the penalty, the
11 \$1,000 a day?

12
13 Mr. Spence: The Charter.

14
15 Chair Duvauchelle: Oh, it's The Charter.

16
17 Mr. Spence: Charter and there was a proposed amendment last election to increase that
18 penalty.

19
20 Chair Duvauchelle: That was gonna be my question.

21
22 Mr. Spence: Okay, two elections ago. No, people voted against that.

23
24 Mr. Carnicelli: Voted it down.

25
26 Mr. Spence: But you know after 30 days it's 30,000, 60, 90, you know it adds up.

27
28 Chair Duvauchelle: Yes, Commissioner Robinson?

29
30 Mr. Robinson: Even though I'm agreeing with these recommendations I do think that if...I just
31 think that illegal rentals as well as legal rents does affect our affordable housing. It's just supply
32 and demand and that's all it is. It's not good guys against bad guys, it's just that's the reality and
33 if we had 10,000 more homes, I think we'd have 3,000 or 4,000 more vacation rentals. But as
34 far as enforcement goes I think we could look at states, departments, because we have the
35 Board of Water as our County we can take water meters, we can shut water meters down. I
36 think when you start doing dollar amounts, you start doing attorneys and you know 30,000,
37 200,000 it's going back and forth but locking out water meters is pretty easy, you know, and it's
38 a single report and you know, take it out at court. Thank you.

39
40 Chair Duvauchelle: I like that idea.

41
42 Mr. Robinson: It's not mine. It's Hawaiian Homelands.

43
44 Chair Duvauchelle: Commissioner Higashi?

45

1 Vice-Chair Higashi: I think some as possible solution to the problem is if you look at *The Maui*
2 *News* they have court orders on people who have been on DUI, et cetera and the amount of
3 fines, I think we should do similar with those illegal people who are doing rental and publicize
4 that if you are caught doing such things that this is the fine that would be publicized on it
5 because we don't enough publicity to show that people who are doing it illegally are really being
6 caught and fined for it and that's what need. We need something that would show the public
7 that we have laws and they better follow it like the people who are following laws by doing
8 permits.

9
10 Chair Duvauchelle: All right, well I'm sorry, I got kind of off track unless we're making that as
11 one of our recommendations.

12
13 Mr. Robinson: Yes, yes. Please add those.

14
15 Mr. Spence: Add that sentence to the community plan policy.

16
17 Mr. Robinson: No as a side note—

18
19 Chair Duvauchelle: Recommendation to Council that they should—

20
21 Mr. Robinson: --for enforcement.

22
23 Chair Duvauchelle: ...(inaudible)...as the enforcement Charter.

24
25 Mr. Spence: Take away people's water meters.

26
27 Mr. Robinson: Water meters, shame 'em.

28
29 Mr. Carnicelli: Public shaming.

30
31 Chair Duvauchelle: All right Commissioners we better roll on. Commissioner Carnicelli?

32
33 Mr. Carnicelli: I would like to make a motion.

34
35 Chair Duvauchelle: Thank you.

36
37 Mr. Carnicelli: My motion is to transmit the alternative proposed bills as amended within this
38 particular meeting to County Council.

39
40 Vice-Chair Higashi: Second.

41
42 Chair Duvauchelle: Thank you. Okay, moved by Commissioner Carnicelli, seconded by
43 Commissioner Higashi. Any further discussion? Director would you repeat the motion?

44
45 Mr. Spence: To transmit both bills to the Council as amended.

46

1 Chair Duvauchelle: All those in favor?

2

3 Mr. Spence: That's four ayes, five ayes.

4

5 Chair Duvauchelle: Opposed? One opposed. Motion carries. Thank you very much.

6

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

8

9 **VOTED: To Transmit the Alternative Proposed Bills to the County Council as**
10 **Amended.**

11 **(Assenting – L. Carnicelli, R. Higashi, K. Robinson, C. Tackett,**
12 **S. Castro)**

13 **(Dissenting – L. Hudson)**

14 **(Excused – T. Gomes)**

15

16 Chair Duvauchelle: Okay, our next agenda item?

17

18 Mr. Spence: Okay, Commissioners we are on Item D-1. This is a public hearing for Edic Sliva
19 and Lisa Tollner-Sliva and they are requesting a Short-Term Rental Home Permit that is not in
20 the Paia-Haiku area. It's in Lahaina. The Staff Planner this morning is Tara Furukawa.

21

22 **D. PUBLIC HEARING** (action to be taken after public hearing.)

23

24 **1. EDIC SLIVA and LISA TOLLNER-SLIVA requesting a Short-Term Home**
25 **Permit for the Lahaina Palms, a four (4)-bedroom short-term rental home in**
26 **one dwelling located in the R-2 Residential District at 36 Kai Pali Place,**
27 **TMK: 4-5-004: 053, Kaanapali, Lahaina, Island of Maui. (STWM T2017/0018)**
28 **(T. Furukawa)**

29

30 Ms. Tara Furukawa: Good morning Commissioners. This item's under your review because the
31 applicant is requesting a Short-Term Rental Home Permit for Edic Sliva and Lisa Tollner-Sliva.
32 The Slivas wish to operate a four-bedroom short-term rental home in one dwelling that sits on
33 7,535 square feet in Lahaina. The application is before you today because there are at least
34 two other STRHs within 500 feet of the proposed STRH. At this time I will introduce you to the
35 applicant's consultant, Mikal Torgerson who will present to you the scope and details of the
36 project.

37

38 Mr. Mikal Torgerson: Mahalo Tara and Madam Chair, Board Members thank you for the
39 opportunity to present to you today. Tara will bring up a power point here and out of respect for
40 your time I'll try to go through things quickly, but I'm available here for questions and the
41 homeowners are here and available for questions as well.

42

43 Okay, the Slivas have owned this home at 36 Kai Pali for the past 20 years or so and they've
44 applied for a short-term rental permit. It's on Kai Pali which is a short little cul de sac there in
45 Lahaina on Baby Beach. Their home doesn't front the beach but it's on that same cul de sac.
46 So this is Kai Pali and their home is situated right there and I'll zoom in on that. So their home is

1 the own with the brown roof. You can see their pool in the back there. And that's a zoom in.
2 So you can see it's on a short cul de sac of homes. There's beach access to Baby Beach in
3 that area and the street is actually very heavily used by beachgoers.

4
5 This is a front elevation of the home bringing you into the great room. Those stairs lead upstairs
6 to several of the bedrooms. There's one bedroom on the main floor. That's the entry to the
7 home and this is the family room off of the kitchen and this is their dining room again looking
8 toward the entry. The kitchen. This is the first bedroom, this is on the main floor. And bedroom
9 No. 2, of course all the bedrooms have this required smoke detectors and everything you can
10 see. One of them are up on the wall there and that's all been properly inspected. Bedroom No.
11 3, and this is the master bedroom of their home. The have a small lanai in the back fronting a
12 private pool in the backyard. And this would be the mauka side of the home.

13
14 We have a site plan here that illustrates that they have onsite, they usually park four cars and
15 that's in excess of their required amount of parking and I have some photos that will illustrate
16 this a little bit better but the cul de sac in this area is all marked and painted red and there are
17 signs that say no parking. And that's for the fire trucks to be able to turn around in the cul de
18 sac. And so like all short-term rentals there would be a strict prohibition from parking on the
19 street if the short-term rental were approved. And it's...in addition to that it's marked red so that
20 they wouldn't park out there. Here we have a main floor plan of the home. The second floor
21 which is predominately the bedrooms.

22
23 So 19.65.030(n) sort of lays out the nine items that the Code says should be reviewed relative to
24 this application to decide whether it should be granted a permit. The first item relates to
25 homeowners association's approval of that use. There's no homeowners association or a
26 governing board on Kai Pali so this one wouldn't apply to us.

27
28 The second item is the existing land use entitlements and uses. Kai Pali has been a small
29 enclave of beach front luxury homes since it was developed. Many of these homes have been
30 second homes or traditionally vacation rentals back in the day before it was sort of the
31 unregulated west. But they've also been second homes for the most part. At this time
32 according to the assessors records six of the eight properties on Kai Pali are off island owners
33 and I took a slice of the neighborhood around it and I have a map that will illustrate this 32 of the
34 45 lots in the area are off site ownership and the five of the lots are in trusts. So really, and then
35 an additional seven of the 45 are multi-family and commercial. So it illustrates that this has
36 been a somewhat transient neighborhood anyway. I would submit that second homes
37 frequently function similarly to short-term rentals in a sense that you have people for a shorter
38 period of time, they tend to carry the same hours as vacationers and that kind of thing and tend
39 to be significantly more compatible than say a working class neighborhood where people need
40 to you know get up at 6 o'clock and make it to work by 8 o'clock.

41
42 The proposal is consistent with the community plan and the next ...(inaudible)...is that it not
43 have adverse impacts including excessive noise, traffic or garbage. Rubbish for the home is
44 stored on the side of the home away from view of the public and the street. They have standard
45 county rubbish service so it's not anticipated that this would create any particular issues. If
46 anything, less rubbish would be generated I think as the home is intermittently used.

1
2 And this criteria, the number of permitted short-term rental homes surrounding the proposed
3 short-term rental and the distance from their property I think is, I'm assuming would be the area,
4 the most oversight in this one. There's several well-managed short-term rental homes that are
5 approved on Kai Pali Street and I would submit for your consideration that just as it makes
6 sense to cluster the hotels in Kaanapali and Wailea, Makena, that area, it does make sense in
7 certain instances to cluster short-term rentals and this I would argue is a neighborhood where
8 that makes sense because as short-term or as second homes these homes are having people
9 coming in and leaving frequently it's just family and friends or business associates, those tend to
10 carry the same hours. They tend to stay up later, maybe wake up a little later except for when
11 they go up to Haleakala for the sunrise, so it would be less disruptive to the neighborhood as a
12 whole to have short-term rentals in this kind of a neighborhood than say a working class
13 neighborhood or that sort of thing.

14
15 As I mentioned, the parking would be all onsite. It would be off peak from typical working class
16 neighborhoods. And all of these homes where they're second homes or short-term rentals
17 typically employ a good number of local folks to do their landscaping, housekeeping,
18 maintenance and that sort of thing.

19
20 The colors didn't come out very well on this one, all these colors was intended to be yellow. It's
21 yellow on my screen. Those are properties that are...their taxes go to a mainland address or an
22 off island address. And so what you see here is it's 71 percent of the lots in this area are in
23 offsite ownership and the ones that you see that are white are folks that receive their tax bill at
24 that address and those would clearly be local owner-occupied properties. The gray ones are in
25 trust and they're mailing goes to post office boxes so it's a little undermined but once could
26 assume that those are owner-occupied as well. These color are all multi-family rentals and as
27 I'm sure you're all familiar Kahoma Village is taking off and they'll be bringing 203 units I think it
28 of affordable housing to the area. And so as it relates to affordable housing too, I would submit
29 for your consideration that these homes are in the million plus dollar range on Kai Pali and
30 whether they're second homes or short-term rentals these aren't the ones we need to concern
31 ourselves with displaying worker housing. And fortunately in the area we're seeing new
32 development of worker housing providing that need for us. Sixteen percent of the lots in this
33 area are multi-family and like I said, 13 percent are owner-occupied single-family homes. So I
34 feel like this is a particular area where this kind of use and then a clustering of a few short-term
35 rentals is appropriate. It wouldn't be appropriate say in my neighborhood where people are
36 going to work in the morning and raising their kids, they're walking to school and that kind of
37 thing.

38
39 The code dictates that you should also consider the number and substance of protest letters to
40 the short-term rental. I had only received one up until this morning letter and that owner had
41 submitted this letter. His concerns were related to parking on the street which can be a
42 challenge on Kai Pali primarily because that's where most people go to park and then go down
43 to Baby Beach or Keiki Beach. So I don't believe that this application would contribute to that
44 problem number one because the cul de sac that it's on is already painted red and has signs
45 that say no parking and in fact, the owner Edic has served on the board for that road
46 maintenance because it's a private road and they worked with the Fire Department to paint

1 those curbs red to keep folks from parking in front of it. So that is an area of concern and we'd
2 certainly have rules that would prohibit parking on the street as well. And then the density of
3 short-term rentals in the area. And as I mentioned the code not specific about whether density
4 is good or bad, it just prompts the need for additional review which I think is prudent and I would
5 argue in this area that it is appropriate. This is a copy of his letter.
6

7 The second letter that was just given to me this morning really talks about...so this is a letter
8 that's concerned about traffic and the number of short-term rentals in the area. The resident
9 who sent this letter...it's this house right? Is that what you said? Yeah, it's this house and they
10 take access from an entirely different street system back over here by the mission in that area.
11 So it's not anticipated that this home would have any impact on her traffic over here. For
12 reference, the other petitioner that was opposed that home is right here inside of a condo
13 complex of multiple homes, five of which are currently listed for available for short-term rental.
14 So it's not clear to me whether the objection was to competition or there's just too many in the
15 area.
16

17 There are no open RFS complaints on the home and there's no known noncompliance with
18 government regulations. And so with that as I mentioned, I'd like to brief. I'm available for any
19 questions or clarification that you may have. We respectfully request approval of this short-term
20 rental home permit. The Slivas have owned the home for over 20 years now. It's their desire to
21 keep the home and use it for a good portion of the year, they and their families and friends, but
22 also have the opportunity to rent it when it's vacant. And I'd like to introduce Edic Sliva and Lisa
23 Tollner-Sliva, they're the homeowners.
24

25 Mr. Edic Sliva: Good morning. Want to make it really short because we're coming up to lunch
26 and I know you're all hungry, so like many other others who testify when we mentioned to our
27 friend's manager neighbors that we're going to get a permit for our house they laughed at our
28 face. They said that we shouldn't do that. That we're not gonna get or it's not the right thing to
29 do to keep the running. Here we are three years later and many, many thousand dollars later
30 before you to see if they were right or not and we respectfully ask for you guys to approve our
31 rental. Again, as he mentioned we are...we're gonna live it hopefully when we retire most of the
32 year or good portion of the year but we wanna have the option of being able to rent it to friends
33 and family when they want to come out and stay here in Maui. We've been coming here for 30
34 years. The first time we came here was in honeymoon. It was the first time I was in Hawaii 30
35 years ago. And I'm just glad that we didn't go to Haiku because I wouldn't have gotten a permit
36 if I did that, so...but if you have any questions we're available to answer any questions. Thank
37 you.
38

39 a) Public Hearing

40
41 Chair Duvauchelle: Thank you. We're gonna open the floor for public testimony now that the
42 presentation is done. Anybody in the...that's here that wishes to testify please come forward?
43 Okay, seeing none we'll close public testimony and we'll take questions from the
44 Commissioners and/or discussion. Commissioner Castro?
45

46 Mr. Castro: I have a question. You're in the cul de sac?

1
2 Mr. Sliva: Yes, that's correct.
3
4 Mr. Castro: It's painted red now?
5
6 Mr. Sliva: Yes, the cul de sac itself is privately owned and we as a owners of the homes around
7 there we decided to paint it red because we wanted to give the Fire Department...after meeting
8 with the Fire Department we wanted to give them the ample area for them to do a complete
9 turnaround rather than do a three point turnaround. They recommended that we do that so we
10 took the parking out of the whole one side. We do pay thousands of dollars each home every
11 year to maintain the road, maintain the curb, maintain the pavement on the road. It's mostly
12 used by the beachgoers as keiki beach is right there near our house. So we have ample
13 parking in our...we have two garage and carports that are hardly ever occupied. So but yeah
14 we are in a cul de sac and it's painted red.
15
16 Mr. Castro: The reason I ask that is because I used to frequent that quite often to take my
17 grandchildren down there and park—it's horrendous. I mean it's hard to get any parking.
18
19 Mr. Sliva: Actually I do occasionally when I'm there, I do occasionally let people park in our
20 driveway especially people with kids because they're just...can't walk from far away.
21
22 Mr. Carnicelli: Take you up on that.
23
24 Mr. Castro: Get in line. Okay, thank you. It was just a concern, but that was with approval with
25 the Fire Department?
26
27 Mr. Sliva: Right, we met with the Fire Department and again, we had the option of having
28 parking on both sides but they recommended that to do instead of three point turnaround to
29 a...we needed a certain distance to make a complete turnaround and collectively we decided
30 that we will paint side so we have that distance required for the fire truck to turnaround.
31
32 Mr. Castro: Thank you.
33
34 Chair Duvauchelle: Commissioner Robinson?
35
36 Mr. Robinson: Puunoa Beach Estates is that that driveway to the top left?
37
38 Mr. Sliva: Correct, yes.
39
40 Mr. Robinson: And so you guys painted the sidewalk just on the cul de sac or the whole lane to
41 prevent any parking?
42
43 Chair Duvauchelle: You need the microphone. Excuse me sir, one moment.
44

1 Mr. Sliva: So to get the turnaround we took the one side of the cul de sac from here, actually
2 from here around to their gate and painted it red. This side still you can park but this give us the
3 distance required for the fire truck to come in and make a full turnaround.

4
5 Mr. Robinson: Okay. Thank you. I have a clarification for Tara. I notice on the RFSs there was
6 one that their house is for sale and then yet there's another application that says that they were
7 offering a short-term rental and they want to be charged for three-years tax?

8
9 Ms. Furukawa: Yeah, they had a Notice of Warning in 2014 for advertising their home. So they
10 did come in during the amnesty period and they paid back taxes and they to submit
11 documentation on that so I have it in my file.

12
13 Mr. Robinson: So were you the one that got the RFS for the...did the research that say that the
14 property was listed for sale and not for rental?

15
16 Ms. Furukawa: Yeah, we did see ads for that so our zoning inspector looked into it and she said
17 that it looked like it was from ads where they were trying to sell the property so it was pulled
18 from that.

19
20 Mr. Robinson: So you're selling the house and also have a application for a short-term rental?

21
22 Mr. Sliva: No,...(inaudible)...we only if we can't get the application because we can't really
23 afford to keep it if we can't rent it so that's why it was for sale. And then the advertisement that
24 was for rental it was hijacked from us and our pictures and our home and we don't even know
25 who was advertising it for rent. We had to...I don't know what my wife did, something she
26 pulled to get them to take it down otherwise we had nothing to do with it.

27
28 Mr. Robinson: And may I ask what is your asking price for your property?

29
30 Mr. Sliva: Two point...I think we just reduced it a while back to 2.1

31
32 Mr. Robinson: Thank you.

33
34 Chair Duvauchelle: Any other questions? Discussion? Motion? Gentlemen don't all talk at one
35 time.

36
37 Mr. Spence: We do have a recommendation, well kind of a recommendation

38
39 Chair Duvauchelle: Okay, I'm sorry shall we hear the Department's recommendation? Thank
40 you Director. Maybe that will break the ice.

41
42 **b) Action**

43
44 Ms. Furukawa: Okay, so in Exhibit 6 in my staff report there are five other STRHs within 500
45 feet. As of June 30, 2017 there are 65 permitted STRHs in the West Maui Community Plan
46 region and the STRH cap is 88 permits and there are 10 permitted B&Bs within the community

1 plan region. The cap is also 88 permits. Neighbor notice was provided twice, once for the
2 short-term rental home application and more recently for the STRH application public hearing.
3 As a result of the noticing process two letters of protest were received about the numbers of
4 STRHs in the vicinity. All of the Request for Service filed with Department are closed and there
5 are no police complaints. The Department would like the Maui Planning Commission to decide
6 whether to approve or deny the permit. The Department's not making any recommendation
7 either way at this time. Should the Commission approve the permit the Department would
8 recommend approval subject to the 22 standard conditions and the Department would also
9 recommend that the Maui Planning Commission adopt the Planning Department's report and
10 recommendation prepared for the September 26, 2017 meeting as its findings of fact,
11 conclusion of law and decision and order and to authorize the Director of Planning to transmit
12 the said written decision and order on behalf of the Planning Commission.
13

14 Chair Duvauchelle: Director?
15

16 Mr. Spence: And Commissioners if you look at Exhibit 6, as Tara mentioned the reason we
17 don't have the recommendation one way or the other is we look at that and look at the other
18 permitted short-term rental homes in that area, there's quite a few, there's quite a concentration.
19 And I think Mr. Torgerson makes a good point that are some areas where you would want to
20 concentrate them perhaps. You know, but that's...I look at the number and this little
21 neighborhood is turning into really just vacation rentals and I also appreciate his comment
22 where he says that you know, most of the owners in this area don't live there. They're...you
23 know they have mainland addresses, so this was very difficult. They meet all the criteria and
24 everything which we would normally just go okay, great they meet the criteria we can come to
25 you with the recommendation for approval. In this case, it's not a reflection on the applicant so
26 much as it is the changing character of this neighborhood at least in observation. So we
27 certainly respect the opinion of the Commission on this.
28

29 Chair Duvauchelle: Thank you, Director. All right, Commissioners? Commissioner Carnicelli?
30

31 Mr. Carnicelli: I am going to make a motion to approve with the 22 conditions in the staff report.
32

33 Chair Duvauchelle: Thank you.
34

35 Mr. Hudson: I'll second.
36

37 Chair Duvauchelle: Moved by Commissioner Carnicelli, seconded by Commissioner Hudson.
38 Director would you like to...or discussion on the motion? Commissioner Robinson?
39

40 Mr. Robinson: Director, I like the stance of the Planning Department on this and I think this is
41 what we should have done with Paia and I think Paia is more of a community town than this
42 Lahaina Front Street and these homes and these home are little bit more built out, a little more
43 modern. I think this is a...what is a example of cluster on a shoreline which I think is, you know,
44 even though it's a different ...(inaudible)...subject but this is what Paia's problem is. But I do
45 agree that if we're gonna choose areas Puunoa Beach Estates is all, it's TVR. Those homes

1 over there and the residences. I'm not for any short-term rental but if we're gonna put an area I
2 think this is an area that I could agree with. Thank you.

3
4 Chair Duvauchelle: Thank you. Commissioner Carnicelli?

5
6 Mr. Carnicelli: I'm gonna agree with the sentiments of the Director and Commissioner Robinson
7 on this one. I'm actually very familiar with Kai Pali Place. I used to live on Front Street. I still
8 take my daughter to Baby Beach or Keiki Beach whatever we call it. I'd like to say I surf Mala
9 but I'm not good enough to surf there, no leashes, so I have to have a leash. But this particular
10 neighborhood you know when we talk about changing of the character it kinda is the character
11 of this particular neighborhood when you look at these big, huge homes on Kai Pali Place. So
12 that's why I made the motion and you know, anyways I'll be supporting it.

13
14 Chair Duvauchelle: Thank you. Any further discussion? All right, Director could you please
15 repeat the motion?

16
17 Mr. Spence: The motion is to approve the Short-Term Rental Home Permit with the listed
18 conditions that are in the staff report.

19
20 Chair Duvauchelle: Thank you. All those in favor of the motion please raise your hand? That is
21 four ayes.

22
23 Mr. Spence: That's four ayes.

24
25 Chair Duvauchelle: Opposed? Two opposed.

26
27 Mr. Spence: Two opposed.

28
29 Chair Duvauchelle: And it's my turn. And I would move to approve.

30
31 Mr. Spence: Okay, that's five ayes.

32
33 Chair Duvauchelle: That's five ayes. Motion carries. Thank you very much.

34
35 **It was moved by Mr. Carnicelli, seconded by Mr. Hudson, then**

36
37 **VOTED: To Approve the Short-Term Home Rental Permit as Recommended**
38 **by the Department.**
39 **(Assenting – L. Carnicelli, L. Hudson, S. Castro, R. Higashi,**
40 **S. Duvauchelle)**
41 **(Dissenting – K. Robinson, C. Tackett)**
42 **(Excused – T. Gomes)**

43
44 Chair Duvauchelle: Okay, let's deal with our next agenda item. Commissioners are we good
45 with that? Thank you very much. All right, next agenda item.

46

1 Mr. Spence: Commissioners, this is a Communication item. We're on Item E-1, Kenneth and
2 Anjali Desure requesting an amendment to their State Land Use Commission Special Permit to
3 replace Dani Nuesca and Troy Wagner as the co-permit holder. Our Staff Planner this morning,
4 it's still morning and it is still Tara Furukawa.

5
6 **E. COMMUNICATIONS**

- 7
8 **1. KENNETH & ANJALI DESURE requesting an amendment to their State Land**
9 **Use Commission Special Permit to replace DANI NUESCA with TROY**
10 **WAGNER as a co-permit holder for the Maui Ocean Breezes Bed and**
11 **Breakfast Home in the State Agricultural District at 240 Holokai Road, TMK:**
12 **2-8-004: 104, Haiku, Island of Maui. (SUP2 2012/0004) (T. Furukawa)**
13

14 **The Commission may take action on this request.**
15

16 Ms. Tara Furukawa: This item's under your review because the applicant is requesting an
17 amendment to one of the conditions of their State Land Use Commission Special Permit for the
18 Maui Ocean Breezes B&B. The Desures wish to add Troy Wagner and delete Dani Nuesca as
19 a permit holder for their B&B located at 240 North Holokai Road in Haiku. Wagner recently
20 purchased 50 percent of the property from the Desures and has an agreement to eventually
21 purchase the remaining 5 percent of the property by 2020. The applicant is also requesting a
22 five-year time extension of the SUP2 permit which the Director can approve until October 31,
23 2022. The applicant holds a B&B Permit that can be approved administratively for the same
24 duration as the SUP.

25
26 The property has two detached farm dwellings with a total of three bedrooms for B&B use. The
27 farm dwelling is a two-story, four-bedroom home with two bedrooms on the lower floor permitted
28 for B&B use. The second farm dwelling is a one-story cottage with one bedroom permitted for
29 B&B use. The applicants were issued farm plan approval in 2009, and an updated approval this
30 year which you should have received by email. Agriculture on the property includes apple
31 banana, coconut, ginger varieties, lilikoi, breadfruit, lychee, papayas, citrus, pineapple, and
32 tropical flowers and there are also goats on site.

33
34 Anjali Desure is here for any questions. Troy Wagner is also here.

35
36 Chair Duvauchelle: Thank you. Is this a public hearing item or not?

37
38 Ms. Furukawa: No, it's a Communications item.

39
40 Chair Duvauchelle: Just communications, okay thank you. All right, any questions by the
41 Commissioners? Commissioner Carnicelli?

42
43 Mr. Carnicelli: Actually this is more for you Tara. So I'm not understanding how the ball
44 bounced here because the kinda looks like a duck and what I mean by that you know, acts like a
45 duck, sounds like a duck, walks like a duck. Is this seems like it's a transfer of title that they sold
46 it, you know, and we're not allowed to do this. Like you know, new owner needs new permit.

1
2 Ms. Furukawa: Right.
3
4 Mr. Carnicelli: This is like, okay, no, no, no we're gonna just slide this guy in now and put him
5 on the thing and then okay, you know we bought out the one guy and then he's gonna buy us all
6 out and it's just sort of a end around to transfer title, I mean, not to transfer title but to transfer
7 the permit.
8
9 Ms. Furukawa: So the Desures were a Conditional Permit holder. A TVR permit holder from
10 way back when and then they applied, were one of the first B&B applicants. So at that time, you
11 could have a caretaker on site and Dani Nuesca was the caretaker. So she's also a property
12 owner. And then, so they just want to replace Dani with Troy.
13
14 Mr. Carnicelli: Okay, you're gonna have to walk me through the title then 'cause I see a title
15 transfer here and—I'm sorry, I'll talk into the mic. You know, as I look at it's like you're either on
16 title or not. I mean, whether you're you know, the caretaker or not, I don't see how that goes
17 with an SUP. I mean, I get what you're saying but I mean we're looking at the legality of is this
18 now just an end around way of people being able to transfer these things?
19
20 Mr. Spence: No.
21
22 Chair Duvauchelle: Director?
23
24 Mr. Spence: If you look at the Exhibit 4.
25
26 Mr. Carnicelli: Okay.
27
28 Mr. Spence: Second page—
29
30 Mr. Carnicelli: Hang on, let me get to it. Second page, okay.
31
32 Mr. Spence: Condition No. 3.
33
34 Mr. Carnicelli: All right.
35
36 Mr. Spence: That the State, the subject State Special Land Use Commission Special Use
37 Permit shall not be transferred without the prior written approval of the Commission. So they're
38 coming to the Commission to be able to transfer. So they're coming to you. If you approve, we
39 will write a letter and that will be the written. Am I saying that right?
40
41 Chair Duvauchelle: Yeah.
42
43 Mr. Carnicelli: Okay, so that's I guess maybe where I'm...is STRH Permits, a B&B Permit...like
44 the STRH Permit cannot change title, but the SUP can?
45

1 Mr. Spence: You can transfer...you're going to see over the year conditions of permit the way
2 that they're specifically written will change. We'll come across some nuance in case and
3 change the way they're written you know in all the subsequent cases. But in this particular
4 case, this Condition No. 3 says that it can be transferred with your written approval. So if you
5 decide not to approve it then...(inaudible)...but it's very possible.

6
7 Chair Duvauchelle: Commissioner Carnicelli?

8
9 Mr. Carnicelli: Anjuli do you live on property?

10
11 Ms. Desure: No, not any more. Can I give a little history?

12
13 Mr. Carnicelli: Sure.

14
15 Ms. Desure: Okay, I moved to Maui in 1999 in Haiku with my husband and two children and
16 they were doing a vacation rental there in 1999. They were...nobody was getting permits,
17 nobody wanted to get permits. I went to get a permit and Will Spence was my planner.

18
19 Mr. Spence: Once upon a time.

20
21 Ms. Desure: We were both young then.

22
23 Mr. Spence: Yes we were.

24
25 Ms. Desure: And I got the permit. I was the first one in Haiku to get a permit. Then I got a
26 TVR. They used to be called a TVR then and the TVR was owner may live or may not live
27 onsite. Okay, but then they came up with a new thing called a B&B and I was told that the TVR
28 was gonna be taken away. You apply for the B&B now because TVRs no longer gonna be
29 renewed. So I applied for B&B in 2009 and I got it. And then in 2012 when I came up for
30 renewal well, by then my husband had this blood disease that needed treatment at the
31 University of Washington where he has thick blood and he could have stroke. There's no
32 treatment on Maui. So we moved to Washington, Seattle for treatment for my husband blood
33 disorder. And I asked the Department, I asked I forget his name, the Deputy Director at the
34 time, I said Clayton Yoshida, I said Clayton what should I do? I've been putting a lot of money
35 into this place, my sweat and blood, I mean I painted every wall and I planted every tree, I'm
36 not giving it up, but I can't live in Maui full-time. So he said...I said, why can't I have my TVR
37 back you guys took away my TVR? You said it was gonna be no longer given, but everybody
38 else is renewing their TVRs. I said, why? Why did not...why was I given wrong advise by my
39 planner who's no longer in the county? He doesn't work for the county my planner? He quit. I
40 said, why was I given wrong advice that I shouldn't renew my TVR but go for a B&B? No one
41 answered that. No one can answer that. So then Clayton Yoshida said well, get your caretaker
42 on your property title and who lives on Maui, Maui resident and we get you another five-year. I
43 said okay. So by then I've been you know...by now I've been doing this Maui Ocean Breezes
44 for 19 years, 19 years and it's like it has a life of its own. I mean, 50 percent of the people we
45 get are people coming from mainland that their child is having a child, you know grandparents
46 and there's not enough room for them. It's affordable. You know, it's not fancy. It's kinda

1 well...I mean, I could...I don't have pictures. I didn't have...never hired a attorney or consultant
2 for anything. There was... I mean, I always went to the County and they helped me. Never had
3 a ...so here I am and now, Dani Nuesca has a drinking problem. I can't have that. So I got Troy
4 Wagner and I would please like to just keep on going because it was unfairly taken away my
5 TVR. I mean, all the other people that got the TVRs at the time I got are still going. Like Oprah
6 Winfrey got a TVR at the same time I got my approval which was way back when and then
7 there's other TVRs and they keep on renewing, renewing and the owners don't have to live
8 onsite.

9
10 Chair Duvauchelle: Okay, thank you. So any questions? Commissioner Hudson?

11
12 Mr. Hudson: Troy, you're gonna be living on property?

13
14 Mr. Wagner: Yes, I am.

15
16 Chair Duvauchelle: Can you come to the microphone?

17
18 Mr. Wagner: Yes, I do plan on living on the property.

19
20 Mr. Hudson: Okay, thank you.

21
22 Chair Duvauchelle: Commissioner Robinson?

23
24 Mr. Robinson: I'm even more confused now. First of all, I think you know you can go for a
25 short-term rental instead of a B&B and that's...I think that's still allowed. If we didn't hit the cap
26 yet. But—

27
28 Mr. Spence: It's not near the shoreline either.

29
30 Mr. Robinson: Not near the shoreline and people care about it. It's not in Huelo. The question
31 is you're transferring ownership?

32
33 Ms. Desure: Fifty percent.

34
35 Mr. Robinson: You're selling...so you're growing your business by bringing an investor in is that
36 what I'm hearing?

37
38 Ms. Desure: Well, yeah there's gonna be improvements made.

39
40 Mr. Robinson: No, no investor. So your business, this property is a commercial business and
41 you're bring an investor in for 50 percent of your investment, I mean of your company? That's
42 correct. And this investor is also gonna live on the property to keep your B&B?

43
44 Ms. Desure: Yes.

1
2 Mr. Robinson: But I'm saying it's...you also have an option to go for a short-term rental where
3 you don't need anybody to live on the property.

4
5 Ms. Desure: Yes, but that's a long drawn out process and I would have to shut down and since
6 I've been operating for 19 years with a permit that means that all the—

7
8 Mr. Robinson: Yeah you know, it's...Director, if they have a B&B Permit they can continue to do
9 B&B while their short-term rental application is going on isn't that correct? I mean it seems like I
10 mean I'm not sure do you wanna sell half your house 'cause it seems to be like you're trying to
11 find a solution and the solution is giving up half your house when another solution is just get a
12 different permit. So I mean if you want to do I'll apologize and I'll step back, but there's other
13 ways.

14
15 Ms. Desure: Well, this past year I went through a life change and I nearly died and this is, I
16 cannot do too much work anymore.

17
18 Mr. Robinson: Okay.

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

21
22 Mr. Carnicelli: Director, the B&B Permit cannot be transferred correct? I mean, we can do this
23 for the SUP, but the B&B Permit still stays with her?

24
25 Mr. Spence: I think that's correct, but we can process another B&B Permit that's an
26 administrative approval, but they would need this as a part of it.

27
28 Mr. Carnicelli: And if she wanted to do a STRH as Commissioner Robinson talked about that
29 would not be administrative?

30
31 Mr. Spence: No it would be. The approval for a short-term rental home would be administrative
32 but they would have to get another short-term rental home...they would have to get another
33 special use permit this one would not apply.

34
35 Mr. Carnicelli: Okay, that's my question then.

36
37 Mr. Spence: They would have to go through—I mean, it's true, they...Ms. Desure could live
38 there, operate a B&B while the Short-Term Rental Home Permit is being processed but that's
39 also many thousands of dollars and six or eight months of her time as well, so I trust the owner
40 knows what she wants to do.

41
42 Chair Duvauchelle: Any further questions? Commissioner Robinson?

43
44 Mr. Robinson: Did you have a partner? Was Mr. Nuesca a partner of yours or was he an
45 employee of yours?

46

1 Ms. Desure: Well he was a employee and a partner.
2
3 Mr. Robinson: He was on the title?
4
5 Ms. Desure: Ahuh
6
7 Mr. Robinson: Okay, so you're switching one person out and putting another person on?
8
9 Ms. Desure: Yes, sir.
10
11 Mr. Robinson: Okay. But you were always only half owner?
12
13 Ms. Desure: With Nuesca I was more than half owner.
14
15 Mr. Robinson: What percentage were you?
16
17 Ms. Desure: With Nuesca I was 98 percent.
18
19 Mr. Robinson: Ninety-eight percent.
20
21 Chair Duvauchelle: Commissioner Carnicelli?
22
23 Mr. Carnicelli: And is that on title or 'cause we're also talking about a couple different things
24 here. We're talking about the title of the property and we're also talking about the business. So
25 is that the same case? Those percentages is that the same case in the ownership of the
26 property and the business or just the business itself?
27
28 Ms. Desure: Dani Nuesca didn't have any money. Troy Wagner has money.
29
30 Mr. Carnicelli: Okay no my question is, my question is on title was he 50 percent on title? Was
31 he 98 percent on title? Was he on title?
32
33 Ms. Desure: Dani Nuesca?
34
35 Mr. Carnicelli: To the property.
36
37 Ms. Desure: Dani Nuesca was two percent on title.
38
39 Mr. Carnicelli: On title, okay. And that was also your agreement in the business?
40
41 Ms. Desure: Yes.
42
43 Mr. Carnicelli: Okay, and he sold his two percent?
44
45 Ms. Desure: Yes.
46

1 Mr. Carnicelli: And you sold another 48 percent—

2

3 Ms. Desure: To Troy Wagner.

4

5 Mr. Carnicelli: To Troy. Okay, thank you.

6

7 Chair Duvauchelle: All right, Department's recommendation please.

8

9 Ms. Furukawa: So the Maui Planning Department is recommending that the Maui Planning
10 Commission approve the addition of Troy Wagner as a permit holder and the deletion of Dani
11 Nuesca as a permit holder on the State Land Use Commission Special Permit and the existing
12 conditions of the Maui Planning Commission will remain with the exception that the Planning
13 Director would issue the time extension as provided for in the SUP2 Permit condition. It would
14 also approve the B&B Permit for a similar duration. We're also recommending that the
15 Commission adopt the report and recommendation prepared for the September 26, 2017
16 meeting as its finding of fact, conclusion of law and decision and order.

17

18 Chair Duvauchelle: Thank you Tara. Commissioners? Commissioner Robinson?

19

20 Mr. Robinson: Permits aren't supposed to be sold. This becomes a commercial...I hear her
21 story and I understand she got some bad advice somewhere from somebody who's no longer
22 around. And I think the two percent was a circumvention of our laws to try to make sure that a
23 B&B is somebody that's a owner is on property renting. I think the STRH would have been the
24 way to go. I still think it's the way to go, but when we start adding people on 50 percent with you
25 know, hundreds of thousands of dollars values, we're selling the business too not just the
26 property and which means we're selling the permit and one thing I know that was never the
27 intention is these permits are never to be sold. It has to be to individual owner to come and
28 apply for it. There might be a short lapse of time between applying for a permit and getting a
29 permit and unfortunately that's just a cost of doing business. But I think if he wants to buy the
30 property and she wants to sell the property, buy it out, sell it out and come in and get a new
31 permit and I don't see a reason why they wouldn't get a permit from us because if they're
32 already following all the rules and regulations and have a good record that we'd probably
33 approve the new permit as well. Thank you.

34

35 Chair Duvauchelle: Commissioner Carnicelli?

36

37 Mr. Carnicelli: Yeah, I'm gonna just agree with Commissioner Robinson on this one in that I do
38 appreciate the troubles that you've been through and the struggles of life and life changes, but
39 actually right now they're not even operating legally if the owner's not living on property, if the
40 permit holder is not living on property with the B&B. You know, so as Commissioner Robinson
41 said this is sort of a circumvention. I also think this is precedent setting for us as a commission
42 you know, and I don't want to make this too heavy and whatever, but if we suddenly say like you
43 know what if they come to us for a special use permit and we're okay with it and we're gonna
44 transfer it now suddenly we're kinda like we're stepping into some new territory at least in my
45 tenure here I've never seen this and so as much as I understand the situation and hardship it is

1 a business, you know there's...and we kinda have rules that we shouldn't be able to just sell
2 these things and so that's where I'm lying.

3

4 Chair Duvauchelle: Director?

5

6 Mr. Spence: Commissioners the way that the condition is written on their existing permit it says
7 that they can transfer with your permission. Okay, that's what I...I'm hearing something else
8 saying that these aren't for sale, you're not...we're never ever supposed to do this. That's not
9 the case. This says, this very condition says it shall not be transferred without prior written
10 approval of the commission. It's entirely possible to do it.

11

12 Mr. Carnicelli: That's the SUP though right?

13

14 Mr. Spence: That's the Special Use Permit.

15

16 Mr. Carnicelli: Right, but it's tied to...the only reason why she has an SUP is because she has a
17 B&B.

18

19 Chair Duvauchelle: Commissioner Hudson?

20

21 Mr. Hudson: Director have we done that before?

22

23 Mr. Spence: For, for which?

24

25 Mr. Hudson: For the transfer like this?

26

27 Mr. Spence: Like for the Special Use Permit?

28

29 Mr. Hudson: You're saying that we can approve it.

30

31 Mr. Spence: You can approve the transfer of the special use.

32

33 Mr. Hudson: Did the Commission do that before? Has it been done before or is this the first
34 time it's being done to your knowledge?

35

36 Mr. Spence: I'm not aware of a special use permit, it's fairly common with SMA permits that
37 applicants will come before...a project is sold to a new entity and they will come and they will
38 ask for a transfer and the Commission okays those. That is not uncommon.

39

40 Chair Duvauchelle: Further discussion or motion? Commissioner Hudson?

41

42 Mr. Hudson: Move to approve.

43

44 Mr. Tackett: I second.

45

1 Chair Duvauchelle: Moved by Commissioner Hudson and seconded by Commissioner Tackett.
2 Discussion on the motion? All right, Director...oh, Commissioner Higashi?

3
4 Vice-Chair Higashi: This is for the Director. Is this particular proposal from the Planning
5 Department something that sort of unusual not a usual way of the procedures in which we
6 normally approve a recommendation from the Department?

7
8 Mr. Spence: It's rather unusual that an application would ask to transfer a permit or add
9 somebody to permit. But it's just...permit amendments are not that unusual. I mean, now that
10 I'm thinking about it, I mean it's not unusual like I said for an SMA Permit to ask permission of
11 the commission to change the ownership of that permit. It's also not unusual for what you're
12 doing at least for this special use permit is you're amending a condition. You see amendments
13 to conditions fairly regularly with time extensions, with those kinds of things. Permit
14 amendments are not unusual. This is just one that isn't amended very often.

15
16 Chair Duvauchelle: Commissioner Robinson?

17
18 Mr. Robinson: I disagree with the characterization of a SMA and Special Use Permit. It's we're
19 commercializing a special use permit. We're selling a permit. SMA is a qualification for a
20 construction site that they have to follow certain things so no matter who it is, they're following
21 the same rules and it is commercial. While this is a home, a resident that became commercial
22 and it follows certain rules and a certain amount of time for this permit it's different than a SMA
23 and although I feel for the applicant, I think there's a different way and I think the proper way is
24 to sell it and reapply and if I'm on this commission they'll have my approval then.

25
26 Mr. Spence: I can appreciate that...the distinction between a larger housing project and...or
27 whatever the case may be. Both of them are discretionary permits, the special use permit, SMA
28 permit they're both discretionary permits. Both of them undergo a public hearing. Both of them
29 have conditions attached to it and some of the conditions are very similar including the
30 requirement that if you change ownership it, you know, in so many cases it requires the
31 approval of the commission, but I'm drawing that parallel in here while certainly appreciating the
32 difference between a residence and the other.

33
34 Chair Duvauchelle: We have a motion on the floor to approve. Director you want to repeat the
35 motion?

36
37 Mr. Spence: The motion is to approve as recommended by Staff.

38
39 Chair Duvauchelle: Thank you. All those in favor please raise your hand?

40
41 Mr. Spence: That's three ayes.

42
43 Chair Duvauchelle: Opposed?

44
45 Mr. Spence: Two opposed. One—

46

1 Chair Duvauchelle: One abstained.

2

3 Mr. Spence: Abstained. So that's four.

4

5 Chair Duvauchelle: Comes to me then. We gotta get a quorum here going with a few more
6 people.

7

8 Mr. Spence: We do have a quorum.

9

10 Chair Duvauchelle: I know, but we need a few more people here. I can see very clearly the
11 argument on both sides and I do sympathize that the process has changed over time and it
12 sounds like our applicant has done...made every effort to comply every time the County's
13 changed its mind, but anyway, I'm going to move to approve. Thank you, motion carries.

14

15 **It was moved by Mr. Hudson, seconded by Mr. Tackett, then**

16

17 **VOTED: To Approve the Amendment to the State Land Use Commission**
18 **Special Permit as Recommended by the Department.**

19

19 **(Assenting – L. Hudson, C. Tackett, S. Castro, L. Carnicelli – abstain,**
20 **S. Duvauchelle)**

21

21 **(Dissenting – K. Robinson, R. Higashi)**

22

22 **(Excused – T. Gomes)**

23

24 Chair Duvauchelle: Okay, we're gonna break for lunch. We will reconvene at 1:15.

25

26 A recess was called at 12:10 p.m., and the meeting was reconvened at 1:17 p.m.

27

28 Chair Duvauchelle: Planning Commission is now back in session. Deputy Director our agenda
29 item?

30

31 Ms. McLean: Thank you, Chair. The next item is a Communication item from Mr. David Goode,
32 the Director of the Department of Public Works requesting comments on the Draft
33 Environmental Assessment for the proposed Napili Culvert Replacement Project at
34 TMK: 4-3-001: 003 (por.), 4-3-002: 023 (por.) and 045 (por.) and 40-foot county right of way.
35 Jim Buika is the project planner.

36

37 **F. COMMUNICATIONS**

38

39 **1. MR. DAVID GOODE, Director, DEPARTMENT OF PUBLIC WORKS**
40 **requesting comments on the Draft Environmental Assessment for the**
41 **proposed Napili Culvert Replacement Project, TMK: 4-3-001: 003 (por.), 4-3-**
42 **002: 023 (por.) and 045 (por.), and the 40-foot County right-of-way. (J.**
43 **Buika) (previously scheduled for the September 12, 2017 meeting.)**

44

45 **The Department of Public Works is the approving agency for the**
46 **Environmental Assessment. (EAC 2017/0003)**

1
2 **The Commission may provide their comments on the Draft Environmental**
3 **Assessment.**
4

5 Mr. Jim Buika: Thank you Michele. Good afternoon Madam Chair, Commissioners, Deputy
6 Director, Corporation Counsel. My name is James Buika, Planner with the Planning
7 Department. The project is known as the Napili Culverts Replacement Project. It's located on
8 Lower Honoapiilani Road up in Napili and the project is coming to you in the Draft
9 Environmental Assessment stage. So Madam Chair I'd like to provide a few opening remarks,
10 turn it over to Gwen Rivera, Munekiyo and Hiraga who's representing Public Works on this
11 project to describe the project briefly.
12

13 The objective here today is to gain your comments for the Draft Environmental Assessment. My
14 role is to capture those comments to include for the Final Environmental Assessment. It is a
15 very important good project. The culvert provides drainage under Lower Honoapiilani Road. It's
16 not on the shoreline but it is 550, 600 feet mauka on a major gulch that connects a major
17 watershed to Napili Bay directly and there are condos between Napili Bay along the gulch edge
18 and Lower Honoapiilani Road. It is an intermittent stream with drainage control upstream as I
19 said in the watershed.
20

21 It is a Public Works project and although it's basically repair and replacement it is a major
22 undertaking with significant mitigation built into it in order to improve the drainage system in the
23 area. The project evaluation is \$3.21 million and as I said it's a very important project to move
24 forward. So any additions to the EA, any good comments, mitigation that you can think of add
25 in after the presentation would be great.
26

27 So the major reason the Planning Department and the Public Works Department are bringing
28 this project forward to you for comment is because the project will when it is constructed has
29 very high visibility in the area. To complete the culvert replacement project Public Works must
30 close down Lower Honoapiilani Road for probably two months so there's gonna be a major
31 traffic disruption if you know the area there and we'll show you pictures of it. So the lower road
32 services many condos in the area and the main impact from the project probably will be this
33 traffic diversion so it will be highly visible so we want to make sure we get it in front of you guys
34 today.
35

36 So this opportunity today just provides another public review, education outreach for the public
37 with your input it's an additional step in a more extensive education outreach process that will
38 be undertaken with Public Works with the local community up there. And besides the SMA
39 Assessment there are also Federal and State permits that are required and the Planning
40 Department has full confidence that the project will be fully mitigated through the permit
41 process. I'm very familiar with the project site and from the Department's initial analysis the
42 project improves the drainage system significantly. So those are my opening remarks and with
43 the Chair's permission I'll turn it over to Gwendolyn Rivera to present the project, short, brief
44 summary of the project and then we'll turn it back over to you. Thank you.
45

46 Ms. Gwendolyn Rivera: Thank you Jim. Good afternoon Chair Duvauchelle and
47 Commissioners. My name is Gwendolyn Rivera. I'm with Munekiyo Hiraga and we're

1 representing the Department of Public Works and requesting your review and comments with
2 respect to this Napili Culverts Replacement Project Draft Environmental Assessment.

3
4 The Department of Public Works is proposing...is the proposing and determining agency for the
5 EA. Representing Public Works today is Mr. Ty Takeno. The civil engineers for the project are
6 with Fukumoto Engineering represented today by Mandy Saito and Mike Silva. We, Munekiyo
7 Hiraga are the planning consultants and also here from our office is Karlynn Fukuda.

8
9 The Chapter 343 Environmental Review process was triggered as this was a County project
10 which involves the County right-of-way as well as State owned lands. A Draft EA was prepared
11 in order to analyze all the potential impacts of the project as well as mitigation measures for the
12 proposed actions. A number of technical studies were carried out with respect to water quality,
13 biological species, cultural impacts, and archaeology as part of the Draft EA. And this led to an
14 Anticipated Finding of No Significant Impact when the document was published in March of this
15 year. And at this point, the Draft EA has undergone agency review and public review and based
16 on a request from the Planning Department we're requesting review by the Commission as well.

17
18 This map shows the general location of the project. It is off the Lower Honoapiilani Road in the
19 Napili area. Sorry the dot is kinda black. The culvert to be replaced is Napili 4/5 Gulch where it
20 crosses Lower Honoapiilani Road. The project area includes the county right-of-way as well as
21 State owned lands both mauka and makai of the roadway which make up the drainage ways.

22
23 In this aerial map you can see the location and the surrounding areas, surrounding uses. It's
24 set back from Napili Bay as Jim suggested about 550 feet at its closest point and mauka of the
25 project area is a drainage area with a drainage basin structure.

26
27 The Department of Public Works determined that the culverts which as we said pass under the
28 roadway are in a deteriorated condition and that erosion is causing undermining of the
29 embankments below the roadway. And to address these issues the Department of Public
30 Works proposes replacement of the culvert structures with some configuration, reconfiguration
31 of the design which will improve the drainage properties and flow conditions to minimize the
32 incidents of future erosion and damage this will involve grading and stabilization of the drainage
33 channel. It will involve some roadway improvements. Currently the traffic lane over the culverts
34 is narrow and it creates a situation where pedestrians and vehicles are trying to cross safely in
35 the same narrow space. There'll be some improvements and a sidewalk added which will help
36 address that situation as a improved safety issue. The project will also involve some rerouting
37 of the drainage channel...I'm sorry, during the duration of construction the project will involve
38 rerouting of the drainage channel, water lines and sewer lines.

39
40 To provide some further information on the proposed project and its technical aspects I will now
41 ask Mandy Saito to step up and address the Commission.

42
43 Ms. Mandy Saito: Hi, I'm Mandy Saito with Fukumoto Engineering. I'll go over some of the
44 project objectives. As mentioned by Gwen previously one is to replace the deteriorating
45 structure, improving the stream water quality, providing pedestrian and bike access and
46 widening of the roadway shoulder. This slide shows the existing condition of the culvert. This is
47 a downstream view of the outlet looking mauka. There's roughly a 20-foot drop from the outlet

1 to the existing ground level and as you can see from this photo there's substantial erosion near
2 the outlet, near the headwalls and along the embankment. It's a little dark but in this area and
3 also in this area and also right here, you'll see a lot of erosion. It's kind of like a big hole.
4

5 From these photos you can see the existing 12-inch water line that's fastened to the face of the
6 existing culvert. With this project it will also be replaced and buried under the roadway. These
7 photos right here show a little bit closer look of the erosion near the embankments. You can
8 see a ledge right here, you know, the structure is getting undermined and there's native planting
9 here in this photo that will be restored once construction is complete.

10
11 This photo here gives a view of the roadway section. The photos to the left right here you could
12 see in the back there's a pedestrian and a vehicle trying to cross the existing culvert. The car,
13 the vehicle needs to shift towards the opposite lane to allow the pedestrian cross. You can see
14 that the roadway is definitely too narrow. The right, right here shows the overview of the
15 roadway a clear section. As you can see there's no safe pedestrian routes on either side of the
16 roadway and there isn't adequate shoulder width.

17
18 This photo right here shows the grassy channel. So the photos taken the upstream side and
19 you're looking makai towards the inlet.
20

21 Next I will briefly go over the options that were considered during design. The sketch to the left
22 is a cross-section of a portion of the stream and the roadway and as you can see here the 20-
23 foot drop right here is clearly shown and that's the main cause of the erosion that's happening
24 and the undermining of the structure.
25

26 The sketch on the right shows the preliminary design that our office when through. It
27 incorporates the basic project objectives while incorporating the community's concerns by
28 minimizing the amount of concrete within the stream or the channel, sorry to provide more of a
29 natural look. The preliminary design consist of lowering the culvert so the outlet is with the
30 ground level as you can see here there is no longer the drop and then regarding the upstream
31 side so to accommodate the elevation change.
32

33 In general this is the proposed design. It resulted in a combination of various alternatives due to
34 the site constraints which includes a shallow drop inlet located here and regarding the channel
35 to accommodate the 20-foot elevation change.
36

37 This is the general plan where the orientation is a little different from the slides that we've seen
38 previously. The mauka or left side...on the left side is on the left side which is also where the
39 existing desilting basin is and it's flowing from mauka to makai with the right side being the
40 makai side.
41

42 Various design features were incorporated to maintain the natural look, reduce erosion and
43 improve water quality within the channel. These features include a vegetated channel
44 stabilization right here as you can could see and also a vegetated articulating concrete open
45 block mat channel reinforcement. Also on the outlet side we are doing a ungrouted riprap.
46 Other design features include verti block which is a precast block. It was used in lieu of like
47 doing a cast in place wall for the headwalls of the culvert located along this side and this side.

1 The precast walls will minimize curing and provide better construction sequencing for the
2 contractor.

3
4 So this is a bunch of sections of the channel and the culvert. The top section shows the full
5 section of the channel including the roadway and the outlet. As you can see here with the...in
6 green this is the proposed improvements. You can see that there was a pedestrian access and
7 bike lane added to address the traffic and safety concerns.

8
9 The next section in the middle shows a section of the articulating concrete open block mat. It's
10 a basically a view from the inlet side looking towards makai so the color is not coming out that
11 great but I think in red is the verti block which is the headwalls and you can see the concrete or
12 the culvert...(inaudible)...culvert and then the articulated mat extends up to the green section.
13 The bottom section also shows the typical channel section of the...that has the articulated or
14 sorry, the vegetated reinforcing along the slopes in green.

15
16 Next I'll go over the construction considerations. Construction will basically take an estimated
17 six to nine months. Generally the construction sequencing would include installing the bypass
18 lines for water, sewer and drain, minimize impacts that will minimize the impacts to the utilities
19 for the surrounding property. Close the road and replace the culvert and install the drainage
20 inlet then regrade the mauka channel and install the vegetated channel, stabilization and
21 reinforcing and finally install planting and open the road.

22
23 For traffic management, the contractor will notify the public and the surrounding businesses
24 through the media such as the newspaper or radio. There will also be adequate signage along
25 the highway and detour route to direct traffic. The next slide shows our traffic management plan
26 for the project. As you can see in the orange, it's kind of orange that's the detour route. So for
27 the properties on the left you go access Napilihau Street from the highway and that will be the
28 detour route from that side and then for properties on the right of the project kind of in this area
29 they will use Office Road and the highway to ...(inaudible)...the project.

30
31 So during construction the following best management practices will be installed to mitigate the
32 project impacts. A permeable berm ditch guard will be placed along the channel. The guards
33 will act as check dam to counteract erosion and sediment loss by reducing the velocity of water
34 flow and capture and retain sediment in the event of a storm. Silt fences will be installed
35 downstream of the culvert to capture sediment from construction activity. A temporary soil
36 stabilization with appropriate vegetation will be installed as necessary on the disturbed areas.
37 In addition, the contractor will use water trucks for dust control and to minimize emission of dust
38 to the surrounding properties. After construction the contractor will install permanent
39 stabilization with perennial vegetation and will irrigate and maintain until vegetation is
40 established. That concludes my portion. Gwen will go over the SMA Assessment
41 requirements.

42
43 Chair Duvauchelle: Thank you very much.

44
45 Ms. Rivera: So in addition to Chapter 343, Environmental Review, the project will be going
46 undergoing a number of other permitting processes which I can touch upon here starting with
47 Special Management requirements. The project is located within the SMA. We do note that

1 most of the proposed actions are repair and maintenance type actions which could be
2 considered exempt from development category for SMA purposes. After the Final EA is
3 completed the SMA Assessment application will be submitted to the Planning Department.

4
5 Since work is proposed within a stream with a drainage channel the Army Corp. of Engineers
6 has reviewed the project for potential impacts to the U.S. waters and they determined that Napili
7 4/5 Gulch is a water of the U.S., and is under jurisdiction of the Corp. and the project qualifies
8 for one of their Nationwide Permit Categories in the area of maintenance. So that permit will
9 be...that permit application will be prepared and submitted.

10
11 The project will undergo review for a few additional permits. Section 106 Compliance which
12 relates to historic or cultural resources. That will be reviewed by the State Historic Preservation
13 Officer. Section 401, Water Quality Certification is a Federal requirement along with the Section
14 106 this is triggered by the Corp. of Engineers jurisdiction over the project area. The Water
15 Quality Certification that is subject to the State Department of Health, Clean Water Branch.
16 Stream Channel Alteration Permit will be applied for via the State Department of Land and
17 Natural Resources. And County permits will also be required for grading and grubbing and work
18 in the County highways.

19
20 A community outreach program has been implemented to provide information about the project
21 and solicit feedback from the public and interested parties. This has included a meeting and
22 ongoing coordination with the Napili Bay and Beach Foundation. A community meeting was
23 conducted in August of this year in Napili and another community meeting is to be held to
24 provide additional updates prior to the start of construction.

25
26 So to summarize, today the Department of Public Works is requesting the Commission's review
27 and comments on the project Draft Environment Assessment. Following this, the next step will
28 be the publication of the Final Environmental Assessment followed by the additional Federal,
29 State and County permits which apply to the project. So I thank you for your consideration and
30 we would now be happy to take questions and comments.

31
32 Mr. Buika: So Chair, I'll turn it back over to you. Turn it back over to you.

33
34 Chair Duvauchelle: Thank you.

35
36 **a) Public Hearing**

37
38 Chair Duvauchelle: All right, thank you. So at this point we'll open up the floor for public
39 testimony. Anyone wishing to testify on this agenda item please come forward? Seeing none,
40 we'll close public testimony and we'll take questions and comments from the Commissioners.
41 Commissioner Carnicelli?

42
43 Mr. Carnicelli: Deputy Director does the FEA come back to us?

44
45 Ms. McLean: No, the Commission is not the accepting agency for the EA, so this would be the
46 only time the Commission sees it.

47

1 Mr. Carnicelli: But we've been a FONSI for other particular items, right?

2

3 Ms. McLean: When...depending on what that project was and what permits were required for it
4 oftentimes the Commission is the accepting agency for an EA. In this particular case because
5 it's an agency action then the agency can also be the accepting authority. So in this case, the
6 Public Works Department would be the accepting authority.

7

8 Mr. Carnicelli: Okay.

9

10 Chair Duvauchelle: Commissioner Higashi?

11

12 Vice-Chair Higashi: I have a question for the lady. It has to do with the drainage under the
13 bridge?

14

15 Chair Duvauchelle: So wait till she comes to the microphone. Hang on there a minute.

16

17 Vice-Chair Higashi: I saw your diagram, if you go back to the picture.

18

19 Ms. Saito: Okay.

20

21 Vice-Chair Higashi: Yeah this one right here. You see the two opening at the bottom of the
22 bridge what's the dimension on that for the...is that where the water is gonna be flowing out
23 from?

24

25 Ms. Saito: Yeah, that's dimensions of the culvert.

26

27 Vice-Chair Higashi: How wide is that? Is that enough so that as the storm drain the water is
28 going to flow through that two small opening from the mauka side into the makai?

29

30 Ms. Saito: Yeah, it's designed for, you know, for the 100-year reoccurrence interval so it's
31 designed to accept the flood. We designed it pretty much assuming that in the event the
32 desilting basin isn't there and it doesn't operate it can handle the entire flow from the channel
33 from the stream above in the drainage area.

34

35 Vice-Chair Higashi: So the volume of water that's coming from the mauka side to the makai that
36 two opening is large enough to accommodate the flow of water?

37

38 Ms. Saito: Yes, and then the drop inlet so what was happening with the existing culvert is that
39 the flows were overtopping the road because of the elevation was a lot higher. So with that
40 we've enforced this portion to accommodate that elevation drop and the velocity of the water
41 coming down and allowed a higher depth right at the inlet of the structure. So that's gonna
42 prevent the overtopping of the roadway and allow for the actual flow that the design...an
43 adequate design flow.

44

45 Vice-Chair Higashi: So that layers that you have there of brick that's all concrete that's gonna
46 be supporting the bridge is that what it is?

47

1 Ms. Saito: The second section, the middle section? Yeah, that's the verti block. It's like these
2 precast blocks that will act as the retaining wall.

3
4 Vice-Chair Higashi: The retaining wall.

5
6 Ms. Saito: Well, yeah with the roadway being built up in this section yeah. And you can see
7 here with the utilities they're all going to be buried now.

8
9 Vice-Chair Higashi: Thank you.

10
11 Chair Duvauchelle: Commissioner Robinson?

12
13 Mr. Robinson: One more question please come back. So with lowering the culvert to the
14 bottom on the inlet side what height are we at and how do you plan to clean it when necessary.
15 I know before they just had a excavator to go on the road and pick up and grab all the debris.
16 So if that culvert is eight feet by five feet is that correct? So how low is that now and what is our
17 plans to clear it in time of need?

18
19 Ms. Saito: So are you talking on the—

20
21 Mr. Robinson: Inlet side.

22
23 Ms. Saito: The inlet side. So it's gonna be 20-foot lower, 20 feet lower.

24
25 Mr. Robinson: From the top or from the bottom?

26
27 Ms. Saito: From the top of the road.

28
29 Mr. Robinson: So it's gonna be 25 feet down or 28 feet? I know it says 8 x 5. I wanna know
30 which was width?

31
32 Ms. Saito: Are you talking about the culvert specifically or the entire drop from the roadway?

33
34 Mr. Robinson: Debris is a natural occurrence.

35
36 Ms. Saito: Yes, yes, yes.

37
38 Mr. Robinson: So what is the plan to clear the debris from the culvert in time of need?

39
40 Ms. Saito: So you're talking about the inlet box right?

41
42 Mr. Robinson: Inlet box.

43
44 Ms. Saito: So the inlet box I believe it's about two and half foot in depth. It's three-foot in depth.
45 When you go upstream from the channel I guess you could come down and it will be easy to
46 clean out. It has concrete bottom so you just have to kind of shovel out.

47

1 Mr. Robinson: I thought it was eight feet by five feet?
2

3 Ms. Saito: So that's the culvert itself. I guess I need to clarify what exactly you're referring to is
4 it the culvert opening right here these two boxes?
5

6 Mr. Robinson: Yes, yes.
7

8 Ms. Saito: Yeah.
9

10 Mr. Robinson: So what depth is that and I'm just concerned about how we're gonna clean it? Is
11 the height is an area where we can get a excavator from the road of that's something we have
12 to manually get down there and clean because currently we don't have to do that.
13

14 Ms. Saito: Okay, Ty's gonna address that.
15

16 Mr. Ty Takeno: I'm Ty Takeno with the Department of Public Works. To answer your question
17 there's a basin above that the Department ... Highways Division normally maintains and they
18 have access to there so they have access to cleaning via the existing Napili 4/5 dam. I not sure
19 where the slide is, but there's a picture...you see how nice...I guess the picture is light, but you
20 see how nice and green the grasses that leads to there, yeah our Highways Division maintains
21 that.
22

23 Mr. Robinson: And I just want to make sure it's not gonna be slanted down, it's not going to be
24 at the same height, but you're saying our machines or excavators can reach to where that
25 culvert is gonna be?
26

27 Mr. Takeno: Yes, they would be able to maintain it.
28

29 Mr. Robinson: From that same area that we've used prior?
30

31 Mr. Takeno: Yes.
32

33 Mr. Robinson: Thank you so much.
34

35 Mr. Takeno: You're welcome.
36

37 Chair Duvauchelle: Any other questions or comments from the Commissioners? Commissioner
38 Carnicelli?
39

40 Mr. Carnicelli: My question's for Molly as well. Do the presentation you get the questions.
41

42 Ms. Saito: Glad to answer them.
43

44 Mr. Carnicelli: Okay. If we go back to inlet, that one. So on the makai where we had the
45 erosion before how far, I can't remember what you called the ungrouted whatever it was on the
46 outlet side, how far is that gonna go from the roadway or the bridge makai?
47

1 Ms. Saito: You mean the width of the apron it's about 10 feet.

2

3 Mr. Carnicelli: About 10 feet.

4

5 Ms. Saito: And you won't have that extreme like erosion conditions just because you don't have
6 that 20 foot drop anymore, we lowered it and the slopes are pretty minimal. It's less than a
7 percent. So the slope of the culvert so it's slowing down the water as it exits the culvert.

8

9 Mr. Carnicelli: Okay, I guess I'm not following you. If you're increasing the grade on the mauka
10 side, you're increasing the grade on the mauka side so technically...I mean, at least I mean I'm
11 not an engineer but I would think that the water will be going faster than it is currently when it
12 goes through the culvert and then onto the other side. I'm also going to make an assumption
13 and maybe I'm wrong that when they built that bridge originally it didn't have a drop. It was
14 probably all like we're making it now and just over the course of time the water eroded on the
15 makai side and that's how we ended up with a 20-foot drop 'cause you end up with a you know,
16 10-foot foot drop which turns into a 12 which turns into 16 and now it's 20. So I guess my
17 question is is as we then are looking at speeding up the velocity of the water by increasing the
18 grade on the mauka side then there's gotta be something going on on the makai side that
19 unless...you know, and again I'm not an engineer but I'm just thinking aren't we gonna have to
20 mitigate that?

21

22 Ms. Saito: Yeah, I can explain that. I'm gonna go back to the slide with the section here. As
23 you can see this is about 44 feet, 40 feet so as the water, you know, that's why we have these
24 reinforcing because the velocity is speeding up in this section and please keep in mind that this
25 scale is very exaggerated. So this slope here is about three...about four percent at the most
26 and here it's 15 percent. So there's a vertical scale to it so it's probably five times the vertical.
27 So the water has about 40 feet to slow down. So that's what the...it's gonna be slowing down
28 within the culvert itself so the water spreads out and it's at it's slowest slope or you know a less
29 steep slope and it has about 40 plus feet and plus the 10 feet outside of the outlet
30 ...(inaudible)...So the water's going to be slowing down within the culvert as it enters that drop
31 inlet and then it slows down and as it exits the culvert you're not gonna have that erosion
32 condition.

33

34 Okay, I show you some examples. I think toward the end we have some of the products that we
35 will be using. Right here this is the Armorflex or articulating concrete block mat. This will be in
36 the steepest portion on the upstream side and it's grow in with vegetation so it's gonna pretty
37 much look like grass but it will be reinforced with this. So the erosion there will not be a concern
38 with this product installed. This is the reinforcing that's upstream where the four percent of that
39 slope of the channel will be enforced. This doesn't show the grassed end product but this would
40 be the reinforcing that will be on the channel bottom lining it and all of these have been taken
41 into account, the design storm of 100 years recurrence interval so the cfs is about 750 cfs. I
42 don't know if that helped. There is a hydraulic...(inaudible)...that kinda shows the water path as
43 it...sorry, this section. Okay, so here you see the water level. This is the line of the water level
44 and this is what happens during the full event of the storm. And you can see that it won't top the
45 roadway but it's flattening out here and it will just continue to flow and it has, you know, the
46 adequate slopes that will prevent erosion. I'm not sure that answers your question.

47

1 Mr. Carnicelli: If I may Chair?
2

3 Chair Duvauchelle: Yes, please go ahead.
4

5 Mr. Carnicelli: I'm worried about what's gonna happen 11 feet makai, right. We're going
6 10 feet, we've you know, we're hardening 10 feet from there, but at 11 feet, you know that's I
7 guess my question or concern because that's where we're gonna end up with say, you know,
8 potentially erosion there as much as you say that it's gonna slow down going downhill.
9 Anyways that's just my concern and I get that you know we don't have to make any decisions
10 here and I can't change your plans. I'm just telling you what it is when I look at this I think about
11 that and also when you go to aerial of this the...is from where the bridge currently to the ocean it
12 serpentines and so I'm also just concerned about erosion there especially if we're gonna be,
13 you know, obviously there's vegetation that is there currently that's gonna slow down the water,
14 it's gonna change certain things, I don't know they might even have a mosquito problem,
15 whatever it is, but sandwiched between I believe that's the Maui...I can't remember the names
16 of those places, but the two condominium complexes there as it serpentines through and again
17 in a 100-year flood and then you know, is stuff gonna just go from straight from the basin to the
18 culvert and now suddenly we're dumping straight onto the beach and as Commissioner
19 Robinson talked about when get that 100-year flood suddenly you know we end up debris
20 coming through as well.
21

22 Mr. Takeno: I would like to try and answer your question. I'm Ty Takeno with the Department
23 of Public Works. That's a very good question you had given us and I believe you are correct. It
24 probably was at the elevation level before and with the amount of the runoff going through it did
25 probably scar it and then over the years it probably gave that undermining condition. So I
26 believe you're probably correct. Our solution to that is by increasing the size of...I think what
27 happened was the culverts probably weren't sized for the 100-year storm so normally in the
28 normal storms we have those...we have the basin, you see this we have the Napili 4/5 Basin
29 that is supposed to be like the desilting basin but it's not probably designed for the 100-year
30 storm or the big storm events so it overtops it and then from there it probably...I think the
31 existing size is 8 x 3 and now it's gonna be I believe 10 x 5...8 x 5. Okay, so it's gonna be
32 larger. So by doing that and also...I think this drop structure here also helps reduce the velocity
33 and the spreading out the wider box it will make the velocity slower to prevent it from scaring
34 and we also have these rock revetments along the bottom to help prevent it from scaring.
35

36 Chair Duvauchelle: Commissioner Carnicelli?
37

38 Mr. Carnicelli: And are the sides of the stream makai on either side where the two condominium
39 complexes are?
40

41 Mr. Takeno: Yes?
42

43 Mr. Carnicelli: Are they hardened?
44

45 Mr. Takeno: No.
46

47 Mr. Carnicelli: Will they be?

1
2 Mr. Takeno: No.

3
4 Mr. Carnicelli: Okay.

5
6 Chair Duvauchelle: One more.

7
8 Mr. Carnicelli: Since you're Public Works I want to ask you this.

9
10 Mr. Takeno: Sure.

11
12 Mr. Carnicelli: It's a two-part question. One is what's the life span of this because we built you
13 know bridges to last 50 years, 70 years ago and the other part is how much is going to comply
14 with Phase 4 of the lower road which is supposed to go in. The lower road is supposed to from
15 what, Kahana all the way to Kapalua is supposed to be redone. Is this going to be the same
16 size as what that whole...that whole phase is supposed to be? Because the last thing we want
17 to do is put in Phase 4 of the lower road and then we gotta dig this thing back up again.

18
19 Mr. Takeno: Okay, the Phase 4 project doesn't go this far. It ends at Napili. So no, it doesn't.
20 So we're not going...the life span is supposed to be 30 to 50 years, 50 years, I mean we stretch
21 it at the County.

22
23 Mr. Robinson: Move to approve.

24
25 Chair Duvauchelle: Whoa. I'm sorry go ahead.

26
27 Ms. Rivera: Thank you Chair Duvauchelle. I did want to state a correction to what is in the
28 agenda and Mr. Buika's report. The TMK parcel ending with 045 that's 4-3-002: 045 I not a part
29 of the project and is not covered in the Draft Environmental Assessment. This TMK was
30 included in earlier design of the project and has since been removed from the project for the
31 record. Thank you.

32
33 Chair Duvauchelle: Okay, I think we kind of got a little off track. Does anybody want to
34 provide...is that our comments on the Draft EA? Is there any other discussion? Jim?

35
36 Mr. Buika: Thank you chair. I can recap. I have three good comments here. Commissioner
37 Robinson, make sure the excavators can reach the cleanout. I think we should have that fully
38 described in the EA. Make sure we can do that. Excellent question.

39
40 Second one from Mr. Carnicelli, explain how the whole system slows down the water into
41 that...in that project there.

42
43 And, then actually those were two main comments that we discussed. I will add kinda one as to
44 clarify here I think something that isn't fully explained maybe in the EA and the presentation is
45 the upstream sediment channel that was alluded here that will slow down. So the water will slow
46 down and desilt farther upstream because of the Napili 4/5 culvert and then it will go through the
47 valve and then go down into this system. So there's a secondary slowdown of major water

1 coming down. So I think...It's all calculated in but I think what we'll do is we'll add in, we'll be
2 able to add in drawings to show the complete system of how the water flows through here. So
3 add photos and explanation of the water channel all the way throughout the channel to include
4 the desilting basin. So if you like I can include that. I think that would help clarify some of your
5 issues.

6
7 Mr. Carnicelli: I would...If I could Chair, thank you. Is I would like to add one other thing
8 because Susan Burr who is from what is it AECOS, Inc., who was a consultant that you guys
9 hired said that basically she doesn't see any problem unless a large storm happens during
10 construction. So I would just add that please build this during the non-rainy season. I know you
11 said it's six to nine months, but that's a 50 percent swing you know, in timeline but maybe do it
12 during the summer. Do it sometime when we're not anticipating a storm.

13
14 Mr. Buika: Excellent question and we'll capture that. We have communicated with the condos
15 up there through the Napili Bay and Beach Foundation that's kind of a consortium of the condos
16 and talked about when their best time is. I mean shutting down, they were suggesting late
17 August, like right now, late August, September, October. Kind of the end of you know, still the
18 dry season and low season also. So we'll coordinate closely on that.

19
20 Chair Duvauchelle: Commissioner Robinson?

21
22 Mr. Robinson: And Jim I know we didn't touch on the traffic but that's gonna be a concern
23 which I'm sure you guys gonna hear a lot about.

24
25 Mr. Buika: Yes.

26
27 Mr. Robinson: Please make sure that the detours are taken care before the project. Whatever
28 paving or reinforcements or you know, instead of people start detouring and then they start you
29 know driving in potholes on the side just make it worse.

30
31 Mr. Buika: Okay.

32
33 Mr. Robinson: Because I'm assuming that this isn't gonna be a 7:00 to 3:00, this is gonna be a
34 complete shut down for a few months.

35
36 Mr. Buika: Yes, I assume. ...(inaudible)...two months, basically pretty much two months.
37 There'd be close coordination with the police. Karlynn you have some comments?

38
39 Ms. Karlynn Fukuda: Just to clarify so it is a complete shutdown but only of that portion of the
40 culvert, you know that was shown on the map. It's not the entire Lower Honoapiilani Road. It's
41 just that one portion because they need to be able to actually get in there to do the construction.
42 So, but yes, that will be coordinated with the Police Department.

43
44 Mr. Buika: Mandy Saito just stated two to four months that will be closed, right? So I know
45 there is close coordination with the Police and the Highway Division on all of this so that is a
46 major impact. Thank you for that comment. So we'll include that in. So we have those,
47 basically those four comments Chair. Turn it back over to you.

1
2 Chair Duvauchelle: All right, so do we have a motion, discussion? Are we doing a motion?
3 Yeah, to adopt the comments into the Draft EA.

4
5 Mr. Robinson: Move to adopt the recommendations to the Draft EA.

6
7 Vice-Chair Higashi: Second.

8
9 Chair Duvauchelle: Moved by Commissioner Robinson, seconded by Commissioner Higashi.
10 Deputy Director would you like to repeat?

11
12 Ms. McLean: The motion would be to forward these four comments to be addressed in the Final
13 EA. First is to clarify or confirm that the county equipment such as excavators can get down to
14 clear any debris that accumulates at the inlet. Second to confirm that the flow of water will be
15 slowed down and that include more information on the upstream channel and whether additional
16 drawings or photos are included to further illustrate that that can be included. Third
17 recommendation not to do the construction in the culvert during the wet season or the busy or
18 tourist seasons, and lastly to ensure that the roadways used for the detour are ready before
19 construction begins.

20
21 Mr. Buika: And I'll add in the change in the TMK as for the record also as the fifth one.

22
23 Chair Duvauchelle: All right, all those in favor please raise your hand. That's five ayes. Thank
24 you very much.

25
26 Mr. Buika: Thank you.

27
28 **It was moved by Mr. Robinson, seconded by Mr. Higashi, then**

29
30 **VOTED: To Forward the Commission's Four Comments on the Draft**
31 **Environmental Assessment.**
32 **(Assenting – K. Robinson, R. Higashi, L. Carnicelli, C. Tackett,**
33 **S. Castro)**
34 **(Excused – T. Gomes, L. Hudson)**

35
36 Chair Duvauchelle: Deputy our next agenda item?

37
38 Ms. McLean: Thank you Chair, the next item is for the Commission accept a long list of
39 minutes. We have the Action Minutes of the August 22, 2017 Meeting and Regular Minutes of
40 the November 22, 2016, December 13, 2016, June 13, 2017, July 11, 2017, August 22, 2017
41 Meetings and Portion of the Regular Minutes of the February 28, 2017 Meeting-Item C-1 ad
42 Portion of the July 25, 2017 Meeting – Item C-1.

43
44 **G. ACCEPTANCE OF THE ACTION MINUTES OF THE AUGUST 22, 2017 MEETING**
45 **AND REGULAR MINUTES OF THE NOVEMBER 22, 2016, DECEMBER 13, 2016,**
46 **JUNE 13, 2017, JULY 11, 2017, AUGUST 22, 2017 MEETINGS AND PORTION OF**

1 Mr. Robinson: Do you have an update on the time table and how they're doing with the
2 construction?

3
4 Chair Duvauchelle: Please state your name.

5
6 Mr. Greg Walker: I've been waiting all day to talk. Hi, my name is Greg Walker. I'm an officer
7 of Victory Development. Yes, we're currently working on our sales right now. We've got for four
8 or five sales in the pipeline. We do need about 50 percent of them which is 14 to 15 sales to go
9 to construction. So that's why we're asking for this extension.

10
11 Chair Duvauchelle: Any other questions? So does the Commission choose waive the review?
12 Commissioner Tackett?

13
14 Mr. Tackett: I personally would like to review it as I don't know anything about it whatsoever.
15 So I would be in favor respectfully of a review of this project just so I can come up to speed.

16
17 Chair Duvauchelle: Deputy Director?

18
19 Ms. McLean: That can be a motion. The Commission has the option of deferring this item,
20 waiving it review or requesting to review the item. So you could take any of those actions today.

21
22 Chair Duvauchelle: Commissioner Tackett?

23
24 Mr. Tackett: I would like to move to review the item.

25
26 Mr. Carnicelli: I'll second it for the sake of discussion?

27
28 Chair Duvauchelle: Second by Commissioner Carnicelli. Discussion on the motion?
29 Commissioner?

30
31 Mr. Carnicelli: I understand where you're coming from. I do get that. For me, I wasn't here for
32 that particular project when it came before this Commission. What I'm gonna...where I'm kinda
33 coming from on it is I was just more curious as to why they, you know, wanted an extension,
34 kind of understanding that I'm going to trust the Commission that came before me that approved
35 this and say that you know, it's like I don't need to review what the previous Commission did. It
36 was more just a curiosity as far as like, okay is there a legitimate reason why we need to do
37 these extensions. So even though I seconded it, I won't support the motion to review it. I would
38 rather just go ahead and waive that right and let it happen administratively so that's just where
39 I'm coming from. But I do understand you know, you're desire to want to see more.

40
41 Chair Duvauchelle: Any further discussion? Commissioner Higashi?

42
43 Vice-Chair Higashi: Yes, is there a possibility of Commissioner Tackett getting whatever
44 material he needs to review it but in the meantime not to delay the project itself from moving
45 forward 'cause I think this project has a tremendous amount of value about housing, et cetera
46 and we've been looking forward to getting this thing expedited as soon as possible.

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Chair Duvauchelle: Deputy?

Ms. McLean: Thank you Chair. The project does have a valid SMA Permit and it could proceed at any time and that permit runs until the end of this calendar year. They need to initiate construction before the end of this calendar year and kudos to the developer for asking for this time extension early on. You know, we're only in September, oftentimes there's a crunch time they in their request early. So right now there isn't anything that isn't allowing it to move forward but I do understand from the developer's side they might not be ready to do that if they think they only have till the end of the year. So nothing is standing in the way of it proceeding at this time, but a decision would have to be made on this time extension before the end of the year.

Mr. Tackett: So are you saying that there isn't enough time for a review to happen? I'm just trying to figure out how long ago was this permit?

Ms. McLean: It was approved on December 9, 2014.

Mr. Tackett: So it's three years later.

Ms. McLean: So they had three years to initiate construction from the time they received their SMA Permit.

Mr. Tackett: So for one thing I don't know anything about it and then on the other hand three years is a long time. A lot of stuff can change in three years and then as far as Mr. Higashi's comment I don't understand is this an affordable housing project is that what this is, it's affordable housing? Or is it market?

Vice-Chair Higashi: A combination of both.

Mr. Walker: It's actually a combination of both and our price point going to be from the high 400s to 500.

Mr. Tackett: So that's kind of the...since there is enough time it would be nice to be able to understand what we're approving and what we're not approving and right now I have no idea what's being approved or not being approved. So that's why I'm respectfully requesting a review.

Chair Duvauchelle: We have a motion on the table to review the SMA. Do we need to repeat that or shall we take a vote? Okay, all those in favor please raise your hand?

Ms. McLean: One aye.

Chair Duvauchelle: Opposed?

Ms. McLean: Four.

Chair Duvauchelle: Four. Okay, motion fails.

1
2 **It was moved by Mr. Tackett, seconded by Mr. Carnicelli and**

3
4 **The Motion to Review the Time Extension of the Special Management FAILED**
5 **(Assenting – C. Tackett, K. Robinson-Abstain)**
6 **(Dissenting - S. Castro, L. Carnicelli, R. Higashi)**
7 **(Excused – T. Gomes, L. Hudson)**
8

9 Chair Duvauchelle: Okay, Commissioner Robinson?

10
11 Mr. Robinson: Commissioner I understand you want to review it. I think as Commissioners
12 when something's on the agenda that we want to review it's up to us to get Carolyn to ask her
13 for information to acquire things. Just from my own experience it happens to me all...I mean, it
14 still happens. There's things that are still coming before...three, four years. And even though
15 it's not a problem that we can push back to our agenda, it sometimes open up a can of worms
16 that unless you see something, to me Commissioner, you say you know what I notice in this
17 packet that I'm not comfortable with this and that, this for instance, and that something I say well
18 if you're not comfortable then that's something of course I could be with you when you do the
19 vote, but we're supposed to...and that's what the agenda, we're supposed to look at stuff and
20 say you know what I wanna...can I see more this or that and I think that's the time for it. And I
21 understand there's a time for everything and I'm not saying that abstain, 'cause either way I'm
22 fine with, but in the future my history has been Keaka you gotta go find out. You know, look it
23 up and if you have one thing that you're not comfortable with I think that's a valid point to bring it
24 back up.

25
26 Chair Duvauchelle: All right, do we have any further discussion or a motion?

27
28 Mr. Carnicelli: Motion to waive review.

29
30 Chair Duvauchelle: Thank you. Seconded by Commissioner Castro. Oh, I'm sorry, that
31 wasn't—

32
33 Mr. Castro: That was a delayed second.

34
35 Chair Duvauchelle: I thought I heard you say second. Sorry. Okay, all right. All those in favor
36 of waiving the review as the motion on the floor please raise your hand? That's three ayes.
37 Noes?

38
39 Chair Duvauchelle: One no and one abstain. Gotta get more people here. And the Chair, I'm
40 going to, I will...I was here during the presentation. I understand the project. I would encourage
41 Commissioner Tackett, I think it's great to...I'm sure Planning can provide you that SMA
42 application that we had initially but I will vote to waive also. So we'll waive our review. Motion
43 carries.

44
45 **It was then moved by Mr. Carnicelli, seconded by Mr. Castro, then**
46

1 **VOTED: To Waive Review of the Special Management Area Use Permit Time**
2 **Extension.**
3 **(Assenting – L. Carnicelli, S. Castro, K. Robinson-abstained,**
4 **R. Higashi, S. Duvauchelle)**
5 **(Dissenting – C. Tackett)**
6 **(Excused – T. Gomes, L. Hudson)**
7

8 Chair Duvauchelle: All right Deputy?
9

10 Ms. McLean: The next item is the meeting schedule for calendar year 2018. You have that in
11 your packets in blue. The Commission may take action to accept or amend the proposed
12 meeting schedule.
13

14 **2. Meeting Schedule for Calendar Year 2018**
15

16 **The Commission may take action to accept or amend the proposed**
17 **meeting schedule.**
18

19 Mr. Castro: Move to accept.
20

21 Chair Duvauchelle: Moved by Commissioner Castro.
22

23 Mr. Carnicelli: Second.
24

25 Chair Duvauchelle: Seconded by Commissioner Carnicelli.
26

27 Mr. Robinson: I have a question. Would these dates have more commissioners by chance?
28

29 Ms. McLean: I left my crystal ball back in the office. I'm sorry.
30

31 Chair Duvauchelle: I think for this group we're gonna have to bring it next time. So no problems
32 with the meeting dates for next year? All those in favor please raise your hand? All right that's
33 our schedule. It passes.
34

35 **It was moved by Mr. Castro, seconded by Mr. Carnicelli, then**
36

37 **VOTED: To Accept the Meeting Schedule for Calendar Year 2018.**
38 **(Assenting – S. Castro, L. Carnicelli, K. Robinson, C. Tackett,**
39 **R. Higashi)**
40 **(Excused – T. Gomes, L. Hudson)**
41

42 Chair Duvauchelle: Deputy?
43

44 Ms. McLean: Next, reports from Commissioners who attended the 2017 Hawaii Congress of
45 Planning Officials Conference at the Alohilani Resort on Oahu last week for information
46 purposes.
47

1 **3. Reports from Commissioners who attended the 2017 Hawaii Congress of**
2 **Planning Officials Conference (September 20-22, 2017) at the Alohilani**
3 **Resort, Honolulu, Island of Oahu.**
4

5 Chair Duvauchelle: Commissioner Robinson?
6

7 Mr. Robinson: I went to a couple of breakout sessions. One of the breakout sessions was the
8 Complete Streets and unfortunately Maui had nobody on the panel to brag about what we're
9 doing with complete streets. It was a little disconcerting, but people are getting a lot of Federal
10 funds to do things and do construction project kinda like what we did with the sidewalks over to
11 the Kamaole you know those types of things, bike lanes, nothing earth moving but they were
12 doing and there's a lot good and lot of nonprofits who are getting involved with partnerships with
13 Federal funding as well as County funding. I wish they would use that energy to more
14 affordable housing but you know, people are doing things and money's being spent, we just
15 gotta get on the ball and get some of that money.
16

17 Chair Duvauchelle: Thank you Commissioner Robinson?
18

19 Mr. Carnicelli: Haven't you guys heard enough of me today already? I think my biggest
20 takeaway from the whole thing was it was actually really kind of a...I'm kinda bummed out there
21 was only two panels that had Maui people on it and that was because there was somebody from
22 every single island or I mean, every single department. It was only the times when there was
23 somebody from every single department that there was a Maui person up there and that was
24 twice. And so like all of the presentations Maui was left out, I was a little bit sour about that. But
25 on the positive note, there are some positive things going on. Kauai's doing a lot of really great
26 stuff with affordable housing, public-private partnerships, leveraging the money that they have.
27 And then I also was very intrigued with Oahu started it, Kauai copied it, the affordable dwelling
28 unit ...(inaudible)...in allowing smaller ohanas on smaller lots which is something that we
29 absolutely need to do here. And of course, you know, what's a planning conference without
30 talking about vacation rentals. So that was also ...(inaudible)...
31

32 Chair Duvauchelle: Okay, thank you.
33

34 Ms. McLean: The next two items are the SMA Minor Permit Report and the SMA Exemption
35 Report. Are there any questions on those?
36

37 **4. SMA Minor Permit Report**
38

39 **5. SMA Exemptions Report**
40

41 Mr. Robinson: I do have a question. I apologize. I have a question on the parking lot in Lahaina
42 from AAAAA Rent a Space. The conditions that is added and exactly where it's at?
43

44 Ms. McLean: Was approved with conditions. So I can find that and send it out to the
45 Commissioners. I'll send you the approval letter that would have the conditions.
46

47 Chair Duvauchelle: Any other comments on the SMA Reports? No?

1
2 Ms. McLean: And the last item on the agenda is discussion of future Commission agendas.

3
4 **6. Discussion of Future Maui Planning Commission Agendas**

5
6 **a. October 10, 2017 agenda items**

7
8 Ms. McLean: You have a memorandum dated September 25th from Clayton Yoshida listing two
9 public hearing items and a Director's Report item for the next meeting.

10
11 Chair Duvauchelle: Okay, thank you. Any other questions or discussion?

12
13 Mr. Robinson: I would like to discuss a email about Commissioners being requested to a new
14 law or council I ask for some information on that. Hawaiian

15
16 Ms. McLean: Oh the training.

17
18 Mr. Robinson: So is that a required training or all planning commission members now?

19
20 Ms. McLean: The Council adopted an ordinance requiring that all three planning commissions
21 as well as the Hana Advisory Committee members receive training from this organization in
22 Native Hawaiian Law provided that funds are available for them to provide the training. And
23 when Council was considering that ordinance and we participated in the discussions we tried to
24 explain to them some of the logistical problems and scheduling problems and they assured us
25 that it would all be fine. It could be done as part of a commission's routine business and then
26 come to find out that oh no, it takes an entire day and they send five trainers over and they can
27 only do it on this day and no, we can't go to Molokai, we can't go to Lanai and it just turned into
28 what was not sold at the time that the ordinance was passed. We were given the impression
29 that it would be several hours, maybe half a day on one of your regular meeting days that they
30 could come in and they would go to Lanai and do the same, go to Molokai, go to Hana and now
31 it's no we can it once and only once and this is the day and everyone has to be there. So we
32 are not at all satisfied with it.

33
34 Mr. Robinson: So if I don't attend I turn in my resignation.

35
36 Ms. McLean: No, please don't do that. You're welcome not to attend, but you would not...if
37 members don't attend or aren't able to attend then maybe the following year it will work out.

38
39 Mr. Robinson: Maybe recommend maybe they have a workshop for the whole state and do
40 something over the web that we can watch on our screen or something, during our regular
41 commission days since we're volunteer.

42
43 Chair Duvauchelle: Commissioner Higashi?

44
45 Vice-Chair Higashi: I have a concern. This goes to the Director's Office I was not present in the
46 last three meetings that we had because of personal reasons but however I looked at the news
47 that happened and in my four years on the term as planning commission I have never seen the

1 County Council go against the planning commission's recommendations and I was just
2 wondering what is their reason for the rejection of the recommended proposal from the Planning
3 Commission to the County Council? It doesn't make any sense for a commission to be in
4 majority of proposing passage of a particular request and it's been turned by the County
5 Council. And I'd like to know what's the rational for it. It doesn't make any sense.
6

7 Ms. McLean: There are a couple of projects recently that the Council either went completely
8 against the recommendation or changed it significantly and we'd have to rely on the record at
9 that time of their reasons for doing so. You know, I'm not going to speculate as to what their
10 reasons were for doing that, but it is rare in my experience that is quite rare.
11

12 Vice-Chair Higashi: It was very unusual because normally most of it just goes through as an
13 approval but this particular one I think there were like three out of five requests that were turned
14 down by the County Council which was approved by the Commission.
15

16 Ms. McLean: Yes, basically there have been a few. Yeah, it is unusual.
17

18 Chair Duvauchelle: Okay, are you serious you have an announcement?
19

20 Mr. Giroux: If you'll allow me.
21

22 Chair Duvauchelle: I will allow you, but then I also have one more thing to cover and we'll be
23 done.
24

25 Mr. Giroux: I just want to let you guys know October 1st is my last day. I'm officially retiring from
26 the County. So I didn't want it to be a shock. I know how people disappear around here and
27 everybody's like what happened to him. Like what did he do now? You know, now that you
28 guys...
29

30 Chair Duvauchelle: I told him he can't go till March. James we will miss you. And I wanted to
31 mention on my desk today I found the resolution to thank Clayton Cravalho, Jr, for the Hana
32 Advisory Group and he is now off it and commend him and thank him for his service for five
33 years. All right, thank you very much. Planning Commission is closed.
34

35 **I. NEXT REGULAR MEETING DATE: October 10, 2017**
36

37 **J. ADJOURNMENT**
38

39 The meeting was adjourned at approximately 2:28 p.m.
40

41 Submitted by,
42

43
44 Carolyn Takayama-Corden
45 Secretary to Boards & Commissions II
46
47

1 **RECORD OF ATTENDANCE**

2

3 **Present**

4 Lawrence Carnicelli

5 Steven Castro

6 Sandy Duvauchelle, Chairperson

7 Richard Higashi, Vice Chairperson

8 Larry Hudson (excused at 12:10 p.m.)

9 Keaka Robinson

10 Christian Tackett

11

12 **Excused**

13 Tina Gomes

14

15 **Others**

16 William Spence, Director, Planning Department (excused at 12:10 p.m.)

17 Michele McLean, Deputy Director, Planning Department (in attendance at 1:15 p.m.)

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