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**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
APRIL 11, 2017**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Director Will Spence at approximately 9:10 a.m., Tuesday, April 11, 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.)

Mr. Spence: Good morning everybody, I'd like to call this planning commission meeting to order. It's April 17, 2017 and it's about, excuse me, April 11, 2017 and it's about ten after 9:00.

**B. INTRODUCTION OF NEW MEMBERS – Tina Gomes and Christian Tackett**

Mr. Spence: First off I would like to introduce our new members. We have with us Tina Gomes and Mr. Christian Tackett. So welcome.

We're already buzzing through your agenda. We're on Number 3 already. The election of officers for the 2017-2018 commission year.

**C. ELECTION OF OFFICERS FOR 2017-2018 COMMISSION YEAR**

Mr. Spence: Normally our Vice-Chair would be acting, the former Vice-Chair would be acting, would be sitting in the Chairman's seat right now but she could not attend today. So I'll go ahead.

**1. Vice-Chairperson**

Mr. Spence: I would like to entertain nominations for the Chairmanship?

Mr. Robinson: I'd like to nominate Commissioner Higashi for Vice-Chair.

Mr. Carnicelli: Second.

Mr. Spence: Okay, we have a first and second for Mr. Richard Higashi to be the Chair of the Maui Planning Commission.

Mr. Carnicelli: No, Vice-Chair, excuse me. It's been a long morning already.

Mr. Giroux: Have you closed the nominations?

Mr. Spence: Any other nominations? Okay, I'll call for the question...is there any discussion?

Ms. Gomes: Yes, I'm sorry.

Mr. Spence: That's okay.

1  
2 Ms. Gomes: If you don't mind. I don't know if you want to wait till after but I will recuse myself  
3 for the voting of the Vice-Chair.

4  
5 Mr. Spence: Okay. Maybe Corporation Counsel wants to say something, but normally recusing  
6 yourself means you have some kind of financial interest or conflict and those things are normally  
7 disclosed on the record.

8  
9 Mr. Giroux: If there's no conflict and you recuse yourself then it's looked at as an affirmative  
10 vote.

11  
12 Ms. Gomes: Okay.

13  
14 Mr. Spence: Any other questions or discussion? So all in favor of Mr. Richard Higashi being  
15 the Vice-Chair please raise your hand? I see five ayes. Any nays? So congratulations  
16 Mr. Higashi. So you can run the nominations for the Chairman since you are now the  
17 Vice-Chair.

18  
19 **It was moved by Mr. Robinson, seconded by Mr. Carnicelli, then**

20  
21 **VOTED: Richard Higashi as Vice-Chair.**  
22 **(Assenting – K. Robinson, L. Carnicelli, P. Canto,**  
23 **T. Gomes-Abstained, C. Tackett, S. Castro)**  
24 **(Excused – S. Duvauchelle, L. Hudson)**

25  
26 **2. Chairperson**

27  
28 Vice-Chair Higashi: First of all, thank you for your confidence. I hope I'll be able to perform as  
29 well you hope with me. Right now we're open for our Chair, nominations for a Chair.

30  
31 Ms. Canto: Vice-Chair, I'd like to nominate Sandra Duvauchelle.

32  
33 Mr. Robinson: Second.

34  
35 Vice-Chair Higashi: Sandy Duvauchelle has been nominated as Chair. Are there any other  
36 nominations? If not, nominations are closed. All those in favor of Sandy Duvauchelle as  
37 Chairperson please signify by saying, "aye", raise your hand?

38  
39 Commission Members: Ayes.

40  
41 Mr. Spence: Okay, we have another abstention so we have five ayes, one abstention which is  
42 counted as a aye. So six ayes motion's carried.

43  
44 Vice-Chair Higashi: Motion carried. Okay, Sandy Duvauchelle will be the next Chair. Sandra  
45 Duvauchelle, not will, shall.

46

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

2  
3 **VOTED: Sandy Duvauchelle as Chair.**  
4 **(Assenting – P. Canto, K. Robinson, L. Carnicelli,**  
5 **T. Gomes-Abstained, C. Tackett, S. Castro)**  
6 **(Excused – S. Duvauchelle, L. Hudson)**  
7

8 Vice-Chair Higashi: All right, first thing on the agenda is public testimony but before we start  
9 public testimony we normally introduce members of the Commission. Starting on my left,  
10 Chairperson Lawrence Carnicelli.

11  
12 Mr. Carnicelli: I'm actually not the Chairperson, I'm just a member, but good morning Vice-  
13 Chair.

14  
15 Vice-Chair Higashi: Okay. Next is Commissioner Keaka Robinson.

16  
17 Mr. Robinson: Good morning Vice-Chair.

18  
19 Vice-Chair Higashi: Next is Commissioner Pua Canto.

20  
21 Ms. Canto: Good morning.

22  
23 Vice-Chair Higashi: Our Corporation Counsel Mr. James Giroux. Our Director is gone right  
24 now. He's over there, but Mr. Will Spence for the Planning Department. Our new member, Tina  
25 Gomes. Would you like to say a few words about where you're from or what organization or  
26 that you got this thing?

27  
28 Ms. Gomes: Sure. Hi, my name is Tina Gomes and I am not affiliated with any organization per  
29 se, but it's been about a year and half since I've done commission and board work. I was Chair  
30 of Cost of Government as well as member, Vice-Chair Campaign Spending Commission for the  
31 State of Hawaii for the Governor, Police Commissioner along with Pua Canto. I used to teach  
32 full-time. Now...I believe you were a Principal Mr. Higashi, Vice-Chair Higashi and now still  
33 make myself available for DOE and Kamehameha Schools, but I also am a court appointed  
34 special advocate ...(inaudible)...for judicial and quite business with other things and an  
35 independent consultant, I do statistics and data research primarily with Dr. Loren Pang. I'm kind  
36 of everywhere. Didn't know how to describe myself, but yes, thank you.

37  
38 Vice-Chair Higashi: Okay, the next new member is Chris Tackett. Would you like to say a few  
39 words Chris?

40  
41 Mr. Tackett: Yeah, is it on? My name is Christian Tackett. I was raised on Maui. I'm a Wailuku  
42 Elementary, Lao and Baldwin guy. My expertise is the construction industry. I'm a carpenter by  
43 trade and just felt like this is would be a good place for me to be with my background. So it's a  
44 pleasure to be here with you all. Thank you.

45  
46 Vice-Chair Higashi: Thank you. Welcome. And Commissioner, Stephen Castro, Mr. Castro.

1  
2 Mr. Castro: Good morning.

3  
4 **D. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be  
5 taken when each agenda item is discussed, except for contested cases under  
6 Chapter 91, HRS. Individuals who cannot be present when the agenda item is  
7 discussed may testify at the beginning of the meeting instead and will not be allowed to  
8 testify again when the agenda item is discussed. **Testimony will be limited to a**  
9 **maximum of three (3) minutes.**

10  
11 Vice-Chair Higashi: Now we'll open with public testimony. If anyone would like to come up and  
12 testify please come forward. There's certain house rules that we have and we'd like for you to  
13 observe them. Each testifier will have three minutes to testify. Our new recording secretary  
14 Leilani will be the one who will be doing the timing and when two and a half minutes are gone  
15 she will say two and a half minutes which means you have 30 seconds to complete your  
16 testimony. At three minutes, I, the Chair will close testimony for the next testifier to testify. All  
17 right, so that's the procedure that we follow. And normally if we have more than one the Chair  
18 will also announce the second person who will come forward and testify usually will be on the  
19 side so that we can roll along with our testimony without any interruptions. So with that, I'd like  
20 to open up for public testimony anyone who would like to testify who will not be able to testify  
21 during the normal agenda period. You will only have one time to testify. You cannot testify  
22 twice. Seeing that there are no public testimony to be made, public testimony is closed. Next  
23 on the agenda is our Orientation Workshop which will be conducted by our Director, Will  
24 Spence.

25  
26 **E. ORIENTATION WORKSHOP NO. 1**

- 27  
28 1. **Opening Remarks by the Planning Director – William Spence**  
29 2. **The Planning Framework**  
30 3. **Zoning**  
31 4. **Chapter 343, HRS, Environmental Assessments and Environmental Impact**  
32 **Statements**  
33 5. **Bed and Breakfast Homes and Short-Term Rental Homes**  
34 6. **Sunshine Law**  
35 7. **Ethics**  
36 8. **Contested Cases**  
37 9. **Property Rights**  
38 10. **Rational Nexus and Rough Proportionality**

39  
40 **Presentations were given by Planning Staff and Deputy Corporation Counsel.**

41  
42 Vice-Chair Higashi: Thank you very much. Now going back to our regular schedule with the  
43 Director's Report. Director Spence?

44  
45 **F. DIRECTOR'S REPORT** (To begin at 1:00 p.m. or soon thereafter)

46

1 Mr. Spence: Good afternoon Commissioners. We're on Item F of your agenda, Director's  
2 Report and there's a number of items under there. The very first one is a request by Kaala  
3 Buenconsejo, Director of Department of Parks and Recreation. They're requesting a two-year  
4 time extension on a SMA Permit to start construction Paani Maui Park in Hana. What this is for  
5 you're either first acknowledging your receipt of this request but then second your decision  
6 making is for this meeting is limited to either waiving your review of the request or saying you do  
7 want it to come back before you. And our Staff Planner for this project is Ryan Quigless. And  
8 he can fill in any blanks, answer any questions and I see we have a representative from the  
9 Parks Department.

10  
11 **1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning**  
12 **Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's**  
13 **SMA Rules of his intent to process the following time extension requests**  
14 **administratively:**

15  
16 **MR. KAALA BUENCONSEJO, Director, DEPARTMENT OF PARKS AND**  
17 **RECREATION requesting a two (2)-year time extension on the Special**  
18 **Management Area Use Permit condition to complete construction of the**  
19 **1.907 acre expansion and related improvements to Paani Maui Park located**  
20 **along Hana Highway at TMK: 1-4-006: 025, Hana, Island of Maui.**  
21 **(SM1 2008/0010) (R. Quigless)**

22  
23 **The Commission shall acknowledge receipt of the request. The**  
24 **Commission may decide whether to waive its review or review the time**  
25 **extension request at a future meeting.**

26  
27 Mr. Ryan Quigless: Aloha, good afternoon Commissioners, Chair, Director. I have some maps  
28 and plans that to familiarize yourself with the project if you'd like me to pass those out. I'll give  
29 you a couple minutes to review them.

30  
31 Mr. Spence: Ryan could you introduce yourself?

32  
33 Mr. Quigless: My name is Ryan Quigless, planner, landscape architect with the Maui County  
34 Planning Department. I'll wait a few minutes until you can take a look at the maps. We meet  
35 with you here today on behalf of the Planning Department and the Department of Parks and  
36 Recreation to request a two-year time extension for the Paani Maui Park project located along  
37 Hana Highway in the town of Hana, Maui. TMK for the property is (2)1-4-006: 025.

38  
39 The original permit is approved by the Maui Planning Commission and is a Special  
40 Management Area Permit. The permit number for that is SM1 2008/0010. The reason for the  
41 time extension request today is to allow for continued discussions and agreements between the  
42 County of Maui and the adjacent property owners in order to obtain a temporary right-of-way  
43 route to the park property through the adjacent property. The adjacent property is owned by  
44 Hana Ranch LLC. The access route through Hana Ranch was determined by the Hana  
45 community to be the only acceptable solution to gain access to the park. And today we also  
46 have Robert Agapay with the Parks and Recreation Department here with us to help answer

1 any questions that you may have related to the details of the Paani Park time extension request.  
2 I'll give you a few moments I know you may have questions.  
3  
4 Vice-Chair Higashi: Questions, Commissioner Robinson?  
5  
6 Mr. Robinson: First Ryan I'd like to say thank you. Hope your family understands how  
7 invaluable you are to the County of Maui and thank you for everything you do for Maui.  
8  
9 Mr. Quigless: Thank you.  
10  
11 Mr. Robinson: Question is has there been any comments from the Hana Commission?  
12  
13 Mr. Quigless: I'll refer to Robert Agapay from the Department of Parks and Recreation on that.  
14  
15 Mr. Robert Agapay: We haven't had any...Robert Agapay with the Department of Parks, CIP  
16 Coordinator. We haven't heard anything from the Hana Planning Commission, but I mean from  
17 the last time it was presented to them everybody was in agreement.  
18  
19 Vice-Chair Higashi: Commissioner Carnicelli?  
20  
21 Mr. Carnicelli: I think this directed towards you. I know there was some discussion about the  
22 County purchasing his.  
23  
24 Mr. Agapay: That is correct.  
25  
26 Mr. Carnicelli: Is that still on the table?  
27  
28 Mr. Agapay: Councilman Carroll and our Director is dealing with the Hana Ranch owners  
29 because there was discussion with exchanging some properties but now because they were  
30 asking for an old government road on the side but that's a State land and we don't own land so  
31 it's gone back to the owner and now they're discussing the amount or whatever the other  
32 exchanges is.  
33  
34 Mr. Carnicelli: So is that part of the reason for the need of the time extension?  
35  
36 Mr. Agapay: That is correct.  
37  
38 Mr. Carnicelli: Okay, thank you.  
39  
40 Vice-Chair Higashi: Any other questions from the Commission? Commissioner Canto?  
41  
42 Ms. Canto: So let me understand this. So it's requested for two years pending funding for the  
43 following improvements and you listed the improvements. What happens and we don't know  
44 what's happening between the County and the owner at this point, right?  
45  
46 Mr. Agapay: That's correct.

1  
2 Ms. Canto: And do you have any idea when that's going to happen?

3  
4 Mr. Agapay: I have no idea when that's going to happen.

5  
6 Ms. Canto: And just really quick question. So with this submittal there were three options and c  
7 was best option?

8  
9 Mr. Agapay: That's correct Option C was the best option. That's the one that the community  
10 came in and they all wanted that one.

11  
12 Ms. Canto: Okay, just one more question. So like these white arrows and it says stream?

13  
14 Mr. Agapay: It's right next to a stream, yeah.

15  
16 Ms. Canto: Okay, all right thank you.

17  
18 Vice-Chair Higashi: Any other questions from the Commission? Otherwise, we'll open it to  
19 public testimony on this issue? Are there any? If none, public testimony is closed. Director,  
20 recommendation?

21  
22 Mr. Spence: Commissioners it's really up to you. Really you're deciding whether you want to  
23 just allow the Director to administratively extend the SMA Permit or if you want it to come back  
24 to you for further review.

25  
26 Mr. Robinson: I move to waive review.

27  
28 Mr. Carnicelli: Second.

29  
30 Vice-Chair Higashi: Okay, there is a motion by Commissioner Robinson and second by  
31 Commissioner Carnicelli. Are there any discussion to the motion? None, would the Director like  
32 to restate the motion?

33  
34 Mr. Spence: The motion is for the Commission to waive its review and allow the Planning  
35 Director to administratively extend it, the SMA Permit.

36  
37 Vice-Chair Higashi: All those in favor signify by raising your right hand?

38  
39 Mr. Spence: Seven ayes.

40  
41 Vice-Chair Higashi: Opposed? Motion carried.

42  
43 **It was moved by Mr. Robinson, seconded by Mr. Carnicelli, then**

44  
45 **VOTED: To Waive Review of the Time Extension Request.**  
46 **(Assenting – K. Robinson, L. Carnicelli, L. Hudson, P. Canto,**

1  
2 **T. Gomes, C. Tackett, S. Castro)**  
3 **(Excused – S. Duvauchelle)**

4 Mr. Spence: Okay, Commissioners we have a public hearing. This is Ms. Debbie Mitchell,  
5 consultant for the requesting a Short-Term Rental Home Permits plural for the International  
6 Colony Club and our Staff Planner this afternoon is Mr. Kurt Wollenhaupt.

7  
8 **G. PUBLIC HEARING (Action to be taken after public hearing.)**

- 9  
10 **1. MS. DEBBIE MITCHELL, consultant, requesting Short-Term Rental Home**  
11 **Permits for the current owners of the following units at the International**  
12 **Colony Club in the R-3 Residential District at 2750 Kalapu Drive, Unit #22,**  
13 **29, 38, and 45, TMK: 4-4-006: 006, (0021, 0028, 0037, and 0044), Lahaina,**  
14 **Island of Maui. (STWM T2016/0030, STWM T20160031, STWM T2017/0002,**  
15 **STWM T2017/0007) (K. Wollenhaupt)**

16  
17 **These applications require a public hearing because there are at least two**  
18 **(2) permitted short-term rental home operations located within 500 ft. of the**  
19 **subject property.**

20  
21 Mr. Kurt Wollenhaupt: Good afternoon Members of the Maui Planning Commission. It's with  
22 great excitement that the first public hearing of the new commissioners will be on short-term  
23 rentals. This is something that you're going to be reviewing, learning about at probably most  
24 every meeting. Today is a request from four property owners at the International Colony Club  
25 which is located adjacent to the Kaanapali Resort to operate four single-family homes for the  
26 purposes of short-term rental.

27  
28 For the new commissioners the first question would be well why are we even here today? And  
29 that's because according to the Code there are two other short-term rental homes located within  
30 500 feet which triggers an automatic public hearing.

31  
32 Just by way of what was handed out there. There's a copy of the power point presentation that  
33 will be presented by Debbie Mitchell. There is a letter from one of the applicants, Dr. Costleigh  
34 who couldn't be here today, but he's extending his testimony. And then there's an explanation  
35 of the only protest that was made out of 500 letters sent out and it was evident that the people  
36 protesting believed that this was a different property so that was explained by Ms. Mitchell to the  
37 protestors. So essentially there were no protests that have been generated out of the mailing of  
38 the notice of the public hearing.

39  
40 Ms. Mitchell will be going into details as to the International Colony Club but just to give you  
41 some brief overview. It was developed in the early 1960s at the same time American Factors  
42 Corporation was developing the Kaanapali Destination Resort. Already built in 1965 was the  
43 Royal Lahaina Beach Hotel, the Sheraton Maui, the Kaanapali Hotel and of course the  
44 International Colony Club. From the beginning the owners of the International Colony Club and  
45 their CC&Rs all recognized that this was aka a resort community. Short-term rentals were  
46 allowed, their CC&Rs allowed them. We now move forward 60 years and through some



1 changes in the law the ICC now has to in order to do what they had been doing for years get  
2 permits. By way of history there are a total of 18 of these single family homes that have been  
3 approved at the International Colony Club, 17 were approved by this commission a few months  
4 ago and one was administratively approved because it was the first one. Consequently there  
5 have been some new owners who have come to play and they're also requesting today their  
6 permit in order to do short-term rental home operations.

7  
8 There are currently as of March 15<sup>th</sup> any way 61 permitted STR operations in the West Maui  
9 district. The cap is 88. So we are getting somewhat close. I'll come back later and talk about  
10 some of the conditions and also some of the issues as your deliberation. But Ms. Mitchell will  
11 give her power point presentation to update the commissioners on this project.

12  
13 Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell and I am a  
14 consultant with MMS Maui. I'm appearing before you today representing four owners applying  
15 for Short-Term Rental Home Permit at the International Colony Club located in West Maui.

16  
17 Taking you in from the start this gives you the feeling of where it is located in West Maui. And  
18 coming in further as you can see it is just mauka of the highway and as you'll see on the  
19 oceanside several very large resorts. The Westin Kaanapali they now have opened the Nanea  
20 their third resort area there. There's the Royal Lahaina. For all intents and purpose a resort  
21 area. This gives you a little overview of where in the red as you can see in the center of the  
22 slide the ICC is located. Just directly to the north is the old Sugar Cane Train Station and the  
23 coffee plantation which is really being developed now, full grown coffee producing operation,  
24 and the new hospital is being built there as well. As you can see to the south the Royal  
25 Kaanapali Golf Course intersects and there are again, the Royal Lahaina Resort. I'm just  
26 emphasizing the number of resorts that this community is located within.

27  
28 And this is the actual community itself. It was built in 1964. There have been as Kurt  
29 mentioned 17 permits were granted last September and then one was granted prior to that  
30 administratively. So the pink are the four that we are talking about today 22, 29, 38 and 45. It's  
31 approximately 10 acres of land that it encompasses.

32  
33 This is the view from the property facing west. That's the entrance to the North Kaanapali  
34 Beach area. The Aston Kaanapali Villas are directly on the other side of the trees and then on  
35 the far right is where the first Westin Kaanapali Villas are located. This is the corner, the  
36 northwest corner of the property. Puukolii Street goes up the hill and Kalapu Street runs down  
37 the main entrance to the property. This is continuing up east, Kaanapali Hillside is located in  
38 this area as well as the Masters. So that's another very large condominium complex. And this  
39 is across the street facing west and north. That is the Westin, two of the Westin Kaanapali  
40 Resort areas. This is the first Westin Villas. As you can see this is the first structure built and  
41 this is directly across the street. Next is the Aston Maui Kaanapali Villas and I've indicated so  
42 you can get an idea right where it sits just up there where the lettering shows where the actual  
43 ten acres sits. And then just more...this is the newest Westin so this is a heavily developed  
44 resort area. Again, the Royal Lahaina Resort to the south.

45  
46 Okay, the actual resort itself. This is the main entry road Kolepa Place and it is actually this is

1 one showing facing south and the road facing north. This is the main parking area. There are  
2 four parking areas for it, the property located around the property and the ordinance requires  
3 that each residence have two parking spaces. There are not assigned parking spaces in these  
4 four areas but there are guaranteed two parking places for each owners so it satisfies the  
5 ordinance in that case. And this next picture is the other parking areas which are around the  
6 property so there is adequate parking according to the ordinance.

7  
8 We have four houses that are being considered. This is one three-bedrooms so you can get a  
9 little idea of the floor plan and then the other three on the next slide this is a representation and  
10 not all exactly like this but it will give you the idea of how they're laid out. They're all single  
11 story. Here are the actual units themselves so you can get a little idea of what they look like.  
12 It's all uniformly painted. It's very neat and tidy, very well maintained. These are views. You  
13 can really see the manicured lawns and pool...one of the pools, there are two pools there and  
14 the ocean in the distance. It's really kind of just segregated by the road and the golf course kind  
15 of keep it all in one little compact package.

16  
17 The interiors, the bedrooms, one of the units has three bedrooms and the others have two. And  
18 then the livings spaces. As you can see this is a great answer for those visitors who are looking  
19 for a home atmosphere rather than a hotel room. They're looking for a nice little get away  
20 where they feel like they have their own home and they're not sharing it with all sorts of folks.

21  
22 These are our applicants. In cottage 22 we have Todd and Stacy Ulery, cottage 29 is Chuck  
23 and Lisa Severson, cottage 38 is Brian Costleigh who was not able to join us today and cottage  
24 45 is Jack Mathers. These applicants are mature local residents. Some live here, some of part-  
25 time residents and others just are frequent visitors all of whom have intent to come to Maui at  
26 some point and by having a permit it allows them to maintain the property so that they can  
27 eventually retire in this area.

28  
29 As Kurt...I won't bother you too much with the zoning thing because we covered that all, he  
30 covered it pretty much. It was zoned R-3 and the original ordinance only allowed one permit per  
31 tax parcel number. So we went to the County Council and the County Council considered it and  
32 made some changes to the ordinance that allowed it to be...it's a horizontal condominium  
33 regime so it allowed each applicant to apply separately for their own permit and as Kurt  
34 mentioned these folks have been renting here since 1964 since the inception and so in their  
35 minds they were legal to do so. So as soon as they found out this is the case they all applied  
36 for their permits which was what that last group was about and these are new applicants that  
37 either bought the homes since then or have changed the usage of it since then and this is just a  
38 little blurb from the Planning Committee meetings just showing you that the International Colony  
39 Club was what they had in mind, the Planning Committee when they were making these  
40 changes. So that went in and was approved on the 20<sup>th</sup> of May of last year.

41  
42 And this is just a little section of the Colony Club house and ground rules so it shows that these  
43 have been there since their inception so it shows the intent that vacation rentals were intended  
44 for this property from the get go.

1 Justification obviously for this is that this provides many benefits to local residences and  
2 businesses as well as tax revenues to the County and State of Hawaii. It also, any businesses  
3 that deal with visitor...property managers, landscapers, housekeepers, it provides great job  
4 opportunities for those folks in addition to the General Excise Tax and Transient  
5 Accommodations Tax and the State Income Tax.

6  
7 So on this all neighbors were within 500 feet were told about the permit. It was a huge mailing.  
8 I think it generated 520 pieces of mail because of the proximity so the post office was happy to  
9 see me coming. We did get the one neighbor which you all got a copy of his letter and I spoke  
10 with him. He is an elderly gentleman from Alaska and he was just very confused about where  
11 this was located so he said I don't have any objections. That was the only...and it should be  
12 noted that in the prior go round that we had no one from the International Colony Club  
13 protested. It was all of the owners received it, it was not protested at all. So we are here  
14 because of those other permits in the area which require the public hearing. And this is just to  
15 give you a little idea up there where International Colony Club is located and then the odd  
16 shape down there at the Kaanapali Golf Resort that is where Mr. Nelson thought he was...that's  
17 where his property is, that's where he thought the issue was. So it was nowhere near the  
18 International Colony Club.

19  
20 So thank you very much. We have some of the owners here other than Dr. Costleigh wrote you  
21 of his feelings about the property. So I'm here to answer questions as well as the owners that  
22 attended. Thank you very much.

23  
24 **b) Public Hearing**

25  
26 Vice-Chair Higashi: At this time we'll open up public testimony. Are there any person who will  
27 want to testify? Come up and identify yourself, your name?

28  
29 Mr. Andrew Kline: I'm Andrew Kline and I live at 2782 Kalepa Place which is just up the road of  
30 that presentation. We've been owners there for 33 years now. As far as testimony to the  
31 negative with the other previous applications there were 17 in number and approved basically in  
32 bulk I wrote in opposition to that and that has never seen the light of day. I'm curious whether  
33 the ingress and egress which is to our 15 homes that are on top of the hill bordering the golf  
34 course is that a private road or is it county road.

35  
36 Ms. Furukawa: It's a private road.

37  
38 Mr. Kline: Okay, speaking of that...it is private road?

39  
40 Vice-Chair Higashi: Yes, could you direct the question to the Chair.

41  
42 Mr. Carnicelli: Point of order. Chair, he's not allowed to ask questions during testimony. He's  
43 only allowed to testify.

44  
45 Mr. Kline: All right. The testimony that I gave prior in writing was that there is multiple blockage  
46 of that roadway. People are unloading and loading their belongings to get in and out of the

1 rentals. It creates a traffic hazard and last night there were three teenagers running about the  
2 roadway. Again, there's no sidewalk and it's not lit. It's a very dark area. During the time that  
3 we have lived there prior to all the acceptance of the short-term rental applications and I might  
4 add a bed and breakfast application that was recently approved there have been no real  
5 criminal activities but in the last year we've had two felony burglaries in our residence and this is  
6 I'm sure associated with the increase in transient activities and service providers that service  
7 the different units. So I think in general I would oppose this. There's also increased noise,  
8 drinking, and associated negative behavior. So I think that's it.  
9

10 Vice-Chair Higashi: Thank you. Are there any questions from the Commission? No? Are  
11 there any other testifiers? If not, public testimony is closed. Are there any questions from the  
12 Commission to the applicant? Commissioner Carnicelli?  
13

14 Mr. Carnicelli: Debbie, I think you knew this question was to come is was back in September  
15 when we approved the 17, we asked how many other people are gonna come forward and it  
16 was sort of unknown at that time so I guess my question is why didn't they step forward back in  
17 September when the other 17 people did?  
18

19 Ms. Mitchell: These are new owners.  
20

21 Mr. Carnicelli: Brand new owners?  
22

23 Ms. Mitchell: Brand new owners.  
24

25 Mr. Carnicelli: Okay.  
26

27 Ms. Mitchell: With the one exception, Dr. Costleigh. He was using it for his daughter during the  
28 time and as he explained he chose not to go to college so he missed that go round but wanted  
29 to get on as soon as that was possible, but the other three are brand new owners. So they did  
30 not own at that time.  
31

32 Mr. Carnicelli: Thank you.  
33

34 Vice-Chair Higashi: Commissioner Gomes?  
35

36 Ms. Gomes: I'd like to know Debbie is the other three owners aside from Dr. Costleigh are  
37 they...they're not here, they're on the mainland are they?  
38

39 Ms. Mitchell: No, they are here.  
40

41 Ms. Gomes: Oh they are here. They're present? They live here?  
42

43 Ms. Mitchell: No, they do not. They came here specifically for this meeting.  
44

45 Ms. Gomes: I see.  
46

1 Ms. Mitchell: Oh sorry, Todd.  
2  
3 Vice-Chair Higashi: You want him to testify?  
4  
5 Ms. Gomes: Would you like to testify with regards to...  
6  
7 Vice-Chair Higashi: Sir, would you step up forward to the podium and identify yourself?  
8  
9 Unidentified Speaker: Give your name, they have to record it.  
10  
11 Vice-Chair Higashi: Could you mention your name?  
12  
13 Mr. Chuck Severson: Yes, Chuck Severson.  
14  
15 Ms. Gomes: I'm sorry, Mr. Severson, you're a resident here for half the year?  
16  
17 Mr. Severson: Yes, we hold Hawaii residency, driver's license and cards and we are here about  
18 50 percent of the time primarily the winter months.  
19  
20 Ms. Gomes: And your plan is half of the other time is to obviously rent.  
21  
22 Mr. Severson: Right, mainland residents. We don't come in large periods of months at a time.  
23 We come three weeks at a time, two weeks at a time and move back and forth between the two  
24 areas.  
25  
26 Ms. Gomes: I see. Thank you. Do you mind if I ask where you reside in the mainland?  
27  
28 Mr. Severson: South Lake Tahoe.  
29  
30 Ms. Gomes: Thank you.  
31  
32 Vice-Chair Higashi: Any other questions? Commissioner Robinson?  
33  
34 Mr. Robinson: Kurt what is the current property tax for this location?  
35  
36 Ms. Mitchell: I can answer. Debbie Mitchell. It is the Hotel rate which is the highest rate  
37 available. Each of the owners was given a chance to choose which Hotel rate...or which rate  
38 they would be charged. This is from before. Since they thought they were legal they chose the  
39 Hotel rate and they actually when they got their permits it went down to the commercial rate.  
40  
41 Mr. Robinson: Debbie they chose the Hotel rate as a complete association and not as  
42 individuals?  
43  
44 Ms. Mitchell: No, as individuals they did. Each one was allowed to choose.  
45  
46 Mr. Robinson: So you're saying everybody in the Colony pays a Hotel rate.

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Ms. Mitchell: No, no.

Mr. Robinson: So the question is it's the Hotel rate are you talking the Hotel rate once they applied for this permit or prior to this. But my question is how long have they been on the hotel rate? Were they hotel rate prior to this application?

Ms. Mitchell: These are new purchasers so it would only have been since they purchased. It was purchased in the summer so it's been very new. I assume it was probably what was on the previous owner and that just carried forward.

Mr. Wollenhaupt: There's been a mixture of rates out there but surprisingly many of the owners out there voluntarily elected the hotel rate at some time in the past. Now I believe there's one person who lives there full time, Jo Rockwell. She would not most likely have the Hotel rate but she did get her short-term rental home permit. So this is an odd case that these people have essentially deemed themselves in the Hotel District and many of them, now I can't specifically say I don't have the TMK real property tax forms here for each one of them but many of them did voluntarily in the past have a Hotel rate which was unusual.

Mr. Robinson: I have a comment regarding the testimony. One was I had a verbal from you that the owner is all good. I only got written testimony that he's against it. I think when you start speaking for other people when the testimony is in the opposite of it, it does a disservice to our Commissioners if they don't understand that testimony. Unless you have something as affidavit I think that's you know, that's a slippery slope.

Ms. Mitchell: Okay.

Mr. Robinson: I disagree with that it benefits local residents. I think letting us be your landscapers and housekeepers and security guards is not what I see as a benefit. There's thousands of rooms that has nice union paying jobs with full time benefits, with retirements and all those sort of things right across the street and those employees need a place to live. I feel that...and when this was passed with these 17 which was very distressing to me when it was passed I commented that everybody else is going to sell their unit because now this area is gonna become a short-term rental homes and it's the American way to see an opportunity which these four people did and they see where they can now go ahead and make some money off of it. There's nothing wrong, they're following the law. Our problem is our law, our problem is our applying of it, our problem is us wasting so many, so many hours of trying to get AUDs and trying to get people to living in places and then all we see is negative house growth on the Lahaina side on the west side. It's terrible. And to try to justify that this is going to help the local crowd I just think it's a disservice to even try to attempt to push this on the local people. I understand that these people aren't doing it but I'm not going to support it. I think there's too many rentals in this area. I think coming in bulk is not a nice way to go. You mentioned that a Council Member was for this. Well, that Council Member is no longer a Council Member. I think times have changed. I think our County, and I'm sorry for pontificating but we're spending so much resources on homelessness, on subsidizing and all this stuff because we keep on flipping over residences and long term rentals to doctors, to people who are gonna use this as

1 income to people who aren't paying taxes, of income taxes but are part-times residences. And  
2 this is just another example in my eyes of us trying to do something good but it ends up hurting  
3 our community. Thank you Chair.

4  
5 Vice-Chair Higashi: Any other questions from the Commission? Commissioner Canto?

6  
7 Ms. Canto: Thank you. I'm gonna have to support Commissioner Robinson. Having read the  
8 submittal, the fact that we're very close to capping out at 88 I have a hard time with that and you  
9 know, I commend the Department ...(inaudible)...you know this submittal. However, I just feel  
10 that again, I don't want to reiterate what Keaka has mentioned but I'm gonna not be supporting  
11 the Department's recommendation. Thank you.

12  
13 Vice-Chair Higashi: Any other questions from the Commission? If not, will the Planner give the  
14 recommendation to the Commission?

15  
16 **b) Action**

17  
18 Mr. Wollenhaupt: Well this is an interesting case. Indeed the County Council's mission and  
19 ...(inaudible)...what I believe their goal should be and is was to develop limitations in each of  
20 the community plan districts. The west side being 88. It is true that we're about at 61 which  
21 we're reaching that cap. There was testimony at the past planning commission meeting that in  
22 fact aggregating short-term rentals within this area was actually a good thing and the  
23 Department feels that that is the way that we have looked at this. This has been a resort  
24 community from its inception. It's located within a resort area and whether or not one believes  
25 in idea of short-term home rentals the Council in their wisdom decided 88 is the right number for  
26 the West Maui Community Plan area.

27  
28 Now at such time as those 88 are marked...(inaudible)...essentially then that would be enough.  
29 But moving towards getting to that number this area in particular as contrasted in the more  
30 traditional single family home neighborhoods. The South Lahaina neighborhoods, Lahainaluna  
31 Road neighborhood which are noted by perhaps more family oriented local families those might  
32 not be such a good neighborhood to move from 61 to 88. So the Department in looking over  
33 the entire West Maui region believes that this area is particularly right for these four short-term  
34 home rentals. We look at the criteria. Have we had protests against them? Not with the  
35 exception of the one letter which is obviously looking at a different location. Are there too many  
36 in one area? Well, that was reviewed last time by the Commission and they sensed that this  
37 resort area was appropriate for this many. Have you had significant numbers of police reports?  
38 We looked, no there have not been. So they meet the criteria of the very detailed criteria in fact  
39 that goes on in the staff report of meeting the requirements for the short-term home rental  
40 permit. I know that the subject generates much consternation among lots of people but again  
41 the 88 number is the number by which we are ...(inaudible)... by. So in light of that, the  
42 Department continues to recommend approval of these four short-term home rental applications  
43 subject to the very extensive conditions, 22 conditions that are noted in your staff report. That  
44 being the case, I'm here to answer any questions that you may have as is of course the  
45 applicant or some of the owners.

1 Vice-Chair Higashi: Okay, Commissioner Hudson?  
2

3 Mr. Hudson: It's out of order to be asking questions now but I do have one question. The four  
4 were previously used as short-term home rentals is that correct except for one, the one with the  
5 doctor and that was his daughter is that correct?  
6

7 Mr. Wollenhaupt: I think the applicant's representative will have to answer the history of these  
8 four houses prior to the new ownership?  
9

10 Ms. Mitchell: I believe that two of them were and one was not. One was just used as a  
11 vacation home only.  
12

13 Vice-Chair Higashi: Any recommendation from the Commission? Commissioner Carnicelli?  
14

15 Mr. Carnicelli: I would like to make a motion to approve the application as recommended by  
16 Staff with one change and that would be to Item No. 1 in the recommendation says the permit  
17 shall be valid until April 30, 2020. I would like that to read, for the same exact date as the other  
18 17 that we approved in September so then you know they kind of all are on the same cadence  
19 then we're gonna get onesies, twosies, here and there. I think if we're doing them in bulk, let's  
20 treat them as bulk. 'Cause we can do it up to one year. I mean instead of saying just one year,  
21 I just would like to have that date be identical to the other 17 that we approved. So that's my  
22 motion.  
23

24 Vice-Chair Higashi: Are there any second to that motion?  
25

26 Mr. Hudson: I'll second.  
27

28 Vice-Chair Higashi: Commissioner Hudson seconds the motion. So the motion reads that you  
29 approve the application but with the amendment to state the approval will be for...how many?  
30

31 Mr. Spence: I have a question for Kurt. When are the other coming in for renewal?  
32

33 Mr. Wollenhaupt: I'm not sure. I believe it would be probably September 30, 2019. That's my  
34 assumption.  
35

36 Mr. Spence: 2019. Okay, so the motion is to approve as recommended by Staff except that all  
37 of them come in at the same time for their renewal.  
38

39 Mr. Carnicelli: Correct.  
40

41 Mr. Spence: At whatever the other ones were approved till.  
42

43 Mr. Carnicelli: Correct.  
44

45 Vice-Chair Higashi: Instead of the 2020.  
46



1 Mr. Carnicelli: Correct.

2

3 Vice-Chair Higashi: All those in favor of the motion.

4

5 Mr. Carnicelli: Wait, can we have discussion on the motion first Chair?

6

7 Vice-Chair Higashi: Okay. Open for discussion. Commissioner Hudson?

8

9 Mr. Hudson: I actually agree with Commissioner...(inaudible-not speaking into  
10 microphone)...and I kinda like the idea that they're all pooled together. I prefer them to  
11 be...(inaudible-not speaking into microphone)...

12

13 Vice-Chair Higashi: Any other?

14

15 Ms. Gomes: I would also like to say that I do agree as well with my fellow commissioners  
16 specifically Commissioner Carnicelli who is saying that there were 17. I was not here during  
17 this time of the other 17 that was approved. So this would be a total of 21 that we are now  
18 going to approve. I think I have a concern in regards if there's any more that will come about  
19 out of this complex. We are hitting to my understanding the limits that was you know briefed to  
20 us this morning as well. So I'm wondering if there would be any conditions if my fellow  
21 commissioners would agree that if there's going to be any more this is a limit or if there be any  
22 other considerations in the future for more requests from this area.

23

24 Mr. Wollenhaupt: Well, everyone is allowed to apply.

25

26 Mr. Spence: Right.

27

28 Mr. Wollenhaupt: And then it would be the history of this commission if they would see another  
29 one come in.

30

31 Vice-Chair Higashi: Are there any other? Commissioner Carnicelli?

32

33 Mr. Carnicelli: You know this is, I think we're gonna continue to have this discussion until we hit  
34 our caps. Where I think each one of us are really sensitive and aware of our affordable housing  
35 crisis that we have here on Maui and every single one of these that becomes a legal STRH is  
36 absolutely not going to be a home for a local resident. I'm still of the contention that I believe  
37 we have an illegal vacation rental problem not a legal vacation rental problem. That's just my  
38 own personal take on it. You know I think that it may have been a little bit of a disservice that  
39 we got the abbreviated presentation this time rather than the extended one that we got in  
40 September because it really I think painted the picture of the fact that this was originally  
41 developed as basically a vacation rental community. That the ICC is really, that's what it is  
42 actually for. The fact that we can have a quarter of roughly a quarter of the limit on West Maui  
43 in this one condensed area that's kind of built for that I'm personally in favor of that. You know I  
44 think that the last three or four that we've approved have been smattering here and there,  
45 Launiupoko, there's a cluster of them on the north end of Front Street. I think that it's actually  
46 beneficial for the community 'cause as we creep up towards our 88 that we get them in areas

1 where we want them kinda like what Kurt had said. So you know even if, you know to say okay,  
2 I'm concerned about whether or not more of the ICC ones would come forward, again, I still  
3 kinda come from the place that's kind of maybe in my mind where we'd want them. So I'm not  
4 as concerned about that. So anyways, I obviously I made the motion, I'll be supporting the  
5 motion and that's just kind of where I'm coming from on it.

6  
7 Vice-Chair Higashi: Commissioner Robinson?  
8

9 Mr. Robinson: I understand the capture of getting everything in one location. Unfortunately I  
10 don't think this location is the one. And when I looked at this location and when I testified last  
11 year it was...these pricing of these homes and these cottages are not out of the reach of rentals  
12 and locals. The one that we've approved up on Napili and Kapalua and even some of  
13 Launiupoko that are high, those are the ones that can't become homes. Those are the ones  
14 that won't ever become rentals. And so when we try to justify saying we're going to group all  
15 these I understand that catching but where we're at right now it's too close to each other.  
16 People are now buying it because now it is a vacation rental area and these homes were viable  
17 alternatives for people to afford that worked in the industry to support our number one industry  
18 and all we're doing is telling them to go live Upcountry and drive two hours a day and regardless  
19 if it's 88 or 61, us giving away homes that are in that price range, I think this is my biggest  
20 problem with that. Thank you.

21  
22 Vice-Chair Higashi: Any other comments? If not, will the Director read the motion?  
23

24 Mr. Spence: The motion is to approve as recommended by Staff except that the renewal date  
25 shall coincide with the renewal date of the other 17 that have been previously approved.  
26

27 Vice-Chair Higashi: All those in favor of the motion, raise your hand.  
28

29 Mr. Spence: That's three ayes.  
30

31 Vice-Chair Higashi: Opposed?  
32

33 Mr. Spence: Four opposed. Motion fails.  
34

35 **It was moved by Mr. Carnicelli, seconded by Mr. Hudson, and**  
36

37 **The Motion to Approve the Short-Term Rental Home Permit with the Amendment**  
38 **that the Renewal Date Shall Coincide with the Renewal Date of the 17 Previously**  
39 **Approved Short-Term Rental Home Permits in the International Colony Club,**  
40 **FAILED.**

41 **(Assenting – L. Carnicelli, L. Hudson, S. Castro)**

42 **(Dissenting – K. Robinson, P. Canto, T. Gomes, C. Tackett)**

43 **(Excused – S. Duvauchelle)**  
44

45 Mr. Robinson: Chair, I move to deny the motion, I mean to deny the recommendation.  
46

1 Ms. Canto: I'll second.

2

3 Vice-Chair Higashi: The motion at this time seem to be that we need to take a second look at  
4 the vacation rental situation and I go along with denying.

5

6 Mr. Robinson: Chair I have a motion to deny.

7

8 Vice-Chair Higashi: And we haven't gotten the result yet.

9

10 Mr. Spence: The motion to approve to failed.

11

12 Vice-Chair Higashi: Oh excuse me. Commissioner Robinson would you like to state your  
13 motion?

14

15 Mr. Robinson: I move to deny the recommendation and request.

16

17 Vice-Chair Higashi: Is there a second?

18

19 Ms. Canto: Second.

20

21 Vice-Chair Higashi: Commissioner Canto seconds the motion. Commissioner Robinson moved  
22 to deny the application. Any discussion? If not, all those in favor of the motion signify by raising  
23 your hand?

24

25 Mr. Spence: That's three ayes.

26

27 Vice-Chair Higashi: Opposed same sign?

28

29 Mr. Spence: That's four opposed. So that motion fails.

30

31 **It was moved by Mr. Robinson, seconded by Ms. Canto, and**

32

33 **The Motion to Deny the Short-Term Rental Home Permit, FAILED.**

34

34 **(Assenting – K. Robinson, P. Canto, T. Gomes)**

35

35 **(Dissenting – L. Carnicelli, L. Hudson, C. Tackett, S. Castro)**

36

36 **(Excused – S. Duvauchelle)**

37

38 Vice-Chair Higashi: Commissioner Carnicelli?

39

40 Mr. Carnicelli: Just for the sake of discussion, we can have discussion without a motion on the  
41 floor so I guess my question to my fellow commissioners who were denial of my motion is there  
42 an amendment to my motion that you would make to then make it acceptable to you or is it just  
43 your, you know, in opposition to the concept? 'Cause I mean, I can, we can do another motion  
44 to approve with other conditions or things to that affect to make it more palatable if that's what  
45 you wish to do?

46

1 Vice-Chair Higashi: Commissioner Carnicelli, the motion is denied.

2

3 Mr. Carnicelli: No I get it, both of them.

4

5 Vice-Chair Higashi: Yes, both of them were denied.

6

7 Mr. Carnicelli: ...(inaudible)...

8

9 Vice-Chair Higashi: Commissioner Robinson?

10

11 Mr. Robinson: I'm open to a deferment.

12

13 Vice-Chair Higashi: Commissioner Hudson?

14

15 Mr. Hudson: We are short one commissioner. This commission seems pretty split on this  
16 particular thing. I don't, I would second a motion for deferment but I'm not really sure as to what  
17 end that would be. So my question is either to Corp. Counsel or to the Director, we have a  
18 motion to approve denied, we have a motion to deny denied, I don't know, while I would support  
19 a deferral what's gonna happen if we cannot reach an agreement one way or another?

20

21 Vice-Chair Higashi: Director?

22

23 Mr. Spence: The Commission's options as I see them and Corp. Counsel may want to weigh in  
24 you could defer at this point and hold off till our missing commissioner comes back and rehear  
25 it...pardon me not rehear it, but bring it up again for deliberations and vote again. You could  
26 and in that deferment if that was the Commission's choice I would want to know if there was any  
27 additional information that this Commission wants from the Department or from the applicant. If  
28 after taking it up again there is no approval outright denial then you would...really after the  
29 public hearing, after this public hearing here's a 120-day clock started. If this Commission  
30 cannot make a decision either to approve or deny within that 120-days then the permits will be  
31 automatically approved.

32

33 Vice-Chair Higashi: So we have the motion on the floor—

34

35 Mr. Spence: Yeah, and ...(inaudible)...

36

37 Ms. Gomes: Excuse me—

38

39 Mr. Spence: -- I don't know which what conditions would apply at all. We just have a permit  
40 that the Commission has not specified conditions on.

41

42 Ms. Gomes: Okay, Chair—

43

44 Mr. Wollenhaupt: Yes, that is indeed the challenge then 'cause you have a permit now that's  
45 just approved, but no conditions if you wait the 120 days.

46

1 Ms. Gomes: So Chair—

2

3 Vice-Chair Higashi: At this time we have a motion—

4

5 Ms. Gomes: --Higashi— we don't have a motion. I do, I just want clarification and I have a  
6 suggestion. As I am looking at this aside from the four that has come before us is there 17 or  
7 18 permitted cottages right now?

8

9 Mr. Wollenhaupt: The history is that there was a couple from...(inaudible)...they were the first  
10 ones to come in.

11

12 Ms. Gomes: Okay.

13

14 Mr. Wollenhaupt: So now we go back to whole history of the Council of that this was a  
15 condominiumized property regime that only one person could have them. Then what happens  
16 is that once that first one got approved that would trigger a hearing under the old law for a  
17 subsequent one. However this was a condominium property regime which has problems. Now  
18 we get the Council to change the law to allow single-family homes and horizontal condominium  
19 property regimes each to be considered a lot for the purposes of a short-term rental. That then  
20 allows the 17 to come in with a hearing.

21

22 Ms. Gomes: Which was this past September?

23

24 Mr. Wollenhaupt: So we have a total of 18 approved at the International. The 17 that were  
25 approved in a public hearing, the one that was approved administratively because they were the  
26 first ones in and subsequently we have four people who are requesting approval today. And in  
27 response, rather than taking each of these individually, the Department did consider the  
28 similarity of each of the applications. The immense amount of staff time, commission time that  
29 would go in and looking at every single one of these separately in separate public hearings,  
30 separate mailings, that would be quite a process for the same permit essentially to be  
31 replicated. So that answers one question that really some commissioner had about well, why  
32 are we bringing this—

33

34 Ms. Gomes: Well I think that there are several concerns. I believe that there is an amendment  
35 that is and Corp. Counsel can correct me that will be coming up in regards to short-term rentals.  
36 Am I correct? That's gonna be coming up legislatively.

37

38 Mr. Spence: Right.

39

40 Ms. Gomes: Okay, that's one that the amendment would be that the individual is a resident of  
41 five years am I not correct?

42

43 Mr. Spence: No. The—

44

45 Ms. Gomes: Of that they—

46

1 Mr. Spence: That the property be owned for five years.

2

3 Ms. Gomes: That the property be owned for five years okay. So is it possible that there is a  
4 condition and I don't know if my fellow colleagues and again, it's the law that they can submit for  
5 application but there's a cap on this particular community if this four is approved? I don't know  
6 if—Corp. Counsel.

7

8 Mr. Wollenhaupt: Well, there's—

9

10 Vice-Chair Higashi: Commissioner Carnicelli?

11

12 Mr. Carnicelli: I don't believe that it's within our authority. I mean, I'll ask Corp. Counsel and the  
13 Director to place a cap on other folks other than...I mean, we're here to rule on these four  
14 people that have petitioned. I don't think that —

15

16 Ms. Gomes: Well, I'm just considering—

17

18 Mr. Carnicelli: --and to sit there and say like we're gonna put constraints on future commissions  
19 to not be able to approve other people, I think that's outside of our boundary.

20

21 Mr. Giroux: That would be illegal rule making.

22

23 Ms. Gomes: Right, well I—

24

25 Mr. Carnicelli: Thank you. Thank you Mr. Giroux.

26

27 Ms. Gomes: I thought that I just wanted to, you know, find some solution.

28

29 Vice-Chair Higashi: You're out of order right now. Commissioner Hudson?

30

31 Mr. Hudson: Chair I am ready to make a motion.

32

33 Vice-Chair Higashi: Before you make a motion the planner has a, Kurt has a —

34

35 Mr. Wollenhaupt: In response you bring up an interesting point on ownership. Duration, five-  
36 year durational ownership. 'Cause I believe it floated back down to the Land Use Commission  
37 for review. That being the case it presents an interesting sort of  
38 automatic...(inaudible)...happen is that any new owners at the International Colony Club  
39 subsequent to that law passing then would have to wait five years. So might have an automatic  
40 capping process should that...depending on where it goes, we don't know where it would go but  
41 that tries to amplify what your thoughts were on that.

42

43 Vice-Chair Higashi: Okay, thank you. Thank you for your explanation. Commissioner Hudson?

44

45 Mr. Hudson: Move to defer.

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Mr. Robinson: Second.

Vice-Chair Higashi: It has been moved and seconded to defer the application. Any discussion?  
Commissioner Robinson?

Mr. Robinson: Motion got denied both ways. I think having another person might have. I think, you know, with all due respect to our two new commissioners they took a lot of information in this morning and I think you know whichever way they choose I think 60-days, 90-days I think will help. Our deliberation and our decision here does not prohibit the four owners of that condo from making a living and renting their units out on a long-term, six-month basis. They can still do that. A lot of people do that and so there's still incoming having. It's a not a dire need. I think there's no legislation but there's no certainty that they're gonna pass. Our Council is probably as divided as our Commission. So I think time is not a bad thing on either side. It's not a yes, and it's not a no and I think information for everybody might be the best thing right now.

Vice-Chair Higashi: Commissioner Carnicelli?

Mr. Carnicelli: You know, I'm gonna have to agree with both Commissioner Hudson and Robinson. You know, it looks like we're not gonna get anything done today. My only concern is that if we, you know, end up next meeting or whenever this gets rescheduled we're still split taking it down the road and then we end up with an approval with conditions. That would be my biggest concern is that. The other part to just because I'm privy to the process there I not legislation, there's a lot of different pieces to it that are gonna come about. One is a potential amnesty period, one is potential...it's also based on application not on approval and so the fact that these people already have their application in, we don't know how that...so to try to make our decision based on some potential legislation that might happen is a little bit of a slippery slope is also. I'll support deferment with the hopes that we can come to a decision one way or the other.

Vice-Chair Higashi: The Chair has a question for the Director? If we're talking about the timeline of 120 days will this particular application appear on a agenda within the next 120 days?

Mr. Spence: Well, that was gonna be my question is does the maker of the motion want this to appear on every subsequent agenda or a 119 days from now or...

Vice-Chair Higashi: Commissioner Hudson?

Mr. Hudson: So my understanding is...the question to me is when do I want to see this on the agenda?

Mr. Spence: Yes.

Mr. Spence: Next one?

1  
2 Mr. Hudson: Negative. I won't be here next time. I would like to see it on the second Thursday  
3 next month.

4  
5 Mr. Spence: Second Tuesday in May?

6  
7 Mr. Hudson: Yeah Tuesday, sorry.

8  
9 Mr. Spence: Okay. And is that a part of your motion?

10  
11 Vice-Chair Higashi: Commissioner Tackett?

12  
13 Mr. Tackett: As I see it I kinda was the crux of the problem. I was against it both ways and I'm  
14 against it both ways because I agree with what Keaka was saying and I also agree with what  
15 Lawrence was saying. What I was saying or what I was considering is that I do believe that the  
16 way the place was structured it seems like it was built for this kind of structure which I find that a  
17 benefit as opposed to being in random places then you go to Keaka and now you're losing  
18 houses and making people travel all the way around the island to get there. I don't really know  
19 whether or not those properties would be the type of property that Lahaina workers can afford to  
20 rent or not. I would be interested to know if that's the kind of property that falls within these  
21 people's income level. That was part of my problem. So I would be interested in that. I would  
22 really not want to take houses away from the people of Lahaina. But if it is beyond what the  
23 working class people would be paying for rent then I would probably be more open to allowing  
24 them to go forward in that space.

25  
26 Vice-Chair Higashi: Any other comment? Commissioner Robinson?

27  
28 Mr. Robinson: Commissioner Hudson is I understand the timing of when you want to do this,  
29 but wanna see if you can reconsider in doing it 105 days or longer so that way the people, the  
30 applicants only have to guarantee one more time and it's gonna be a yay or nay and if we can't  
31 agree and do our job as a commission then it will get automatically approved.

32  
33 Vice-Chair Higashi: Commissioner Hudson?

34  
35 Mr. Hudson: I agree with him. Move it to the preceding before the 120 days on a Tuesday.

36  
37 Mr. Spence: Okay.

38  
39 Vice-Chair Higashi: Planner Kurt?

40  
41 Mr. Wollenhaupt: Oh just to help your question. I've got information from the...I received for  
42 Commissioner Tackett in your answer I got information from the applicant that there's been one  
43 cottage rent for \$3,200 and one cottage is rented for \$3,600. So that would appear to be the  
44 rents that we're looking at for these cottages.

45



1 Vice-Chair Higashi: Okay, thank you for your comment. We have a motion on the floor. Would  
2 you like to state the motion?

3  
4 Mr. Spence: The motion as I understand it is to defer this item until the planning commission  
5 meeting just preceding the expiration of 120 days.

6  
7 Mr. Hudson: That's correct.

8  
9 Mr. Spence: Is that the seconders? Okay, so the seconder—

10  
11 Vice-Chair Higashi: All those in favor of that motion raise your hand?

12  
13 Mr. Spence: That's five ayes.

14  
15 Vice-Chair Higashi: Opposed?

16  
17 Mr. Spence: One opposed. Motion carried.

18  
19 Vice-Chair Higashi: Motion carried.

20  
21 **It was moved by Mr. Hudson, seconded by Mr. Robinson, then**

22  
23 **VOTED: To Defer the Matter Until the Planning Commission Meeting Just**  
24 **Preceding the Expiration of a 120 Days.**  
25 **(Assenting – L. Hudson, K. Robinson, P. Canto, T. Gomes,**  
26 **C. Tackett, S. Castro)**  
27 **(Dissenting – L. Carnicelli)**  
28 **(Excused – S. Duvauchelle)**

29  
30 Vice-Chair Higashi: Next Director Spence?

31  
32 Mr. Spence: Commissioner's we're on Item H of the Director's Report. This is Unfinished  
33 Business. This is Mr. Rory Frampton of Frampton Consulting on behalf of Makila Ranches  
34 requesting deletion of Condition Numbers 17 and 20 of an SMA Permit for Makila Ranches  
35 Phase 2 Subdivision. Our Staff Planner is still Mr. Wollenhaupt.

36  
37 Mr. Wollenhaupt: Going to be a minutes here gotta hook up things.

38  
39 Vice-Chair Higashi: While they're setting up, we'll take a five-minutes recess, get back at 2:30.

40  
41 A recess was called at 2:25 p.m., and the meeting was reconvened at 2:33 p.m.

42  
43 Mr. Spence: Commissioners, again we're on Item H, Mr. Rory Frampton of Rory Frampton  
44 Consulting Inc., on behalf of Makila Ranches Inc., requesting deletion of Conditions 17 and 20  
45 of an SMA Permit and our Staff Planner is Mr. Kurt Wollenhaupt to explain everything there is to  
46 know about this particular permit and the conditions thereof.

1  
2 **H. UNFINISHED BUSINESS**

- 3  
4 1. **MR. RORY FRAMPTON of RORY FRAMPTON CONSULTING, INC. on behalf**  
5 **of MAKILA RANCHES, INC. requesting deletion of Condition Numbers 17**  
6 **and 20 of the previously approved Special Management Area Use Permit**  
7 **for the Makila Ranches Phase 2 Agricultural Subdivision creating eleven**  
8 **(11) agricultural lots, one (1) non-developable greenway lot, and two (2)**  
9 **roadway lots with associated improvements and infrastructure at TMK: 4-7-**  
10 **014: parcels 1-14 (formerly TMK: 4-7-001:026), Launiupoko, Lahaina, Island**  
11 **of Maui. (SM1 2009/0014) (K. Wollenhaupt) (Deferred at the January 24, 2017**  
12 **meeting.)**

13  
14 **Condition Nos. 17 and 20 related to the County of Maui's anticipated**  
15 **acquisition of Lot 12, a non-developable greenway lot and public use of the**  
16 **subdivision roadway to access Lot 12.**

17  
18 **The SMA Use Permit was approved by the Commission on**  
19 **December 9, 2014.**

20  
21 **The Commission may take action on this request.**

22  
23 Mr. Kurt Wollenhaupt: Well good afternoon Commission. This is actually an item that was  
24 deferred. It was deferred from the January 24, 2017 Commission meeting in which there is a  
25 request in order to delete two conditions of a Special Management Area Use Permit for the  
26 development of Makila Ranches in Launiupoko. There's been handed out to all the members a  
27 map and we're fortunate to have our division head for Plan Implementation, Kathleen Aoki is  
28 going to be giving a better historical perspective than I can of the history of this project. And  
29 also with regards to its compliance with the Maui Island Plan and Community Plan.

30  
31 But in essence the SMA was for the creation of 11 agricultural lots, one non-developable  
32 greenway lot, that's noted in yellow on your handout. That's approximately 37.7 acres. And  
33 then there were subsequent two other roadway lots. Again, this is an SMA which was reviewed  
34 by the Commission in 2014, December 9.

35  
36 The reason it was deferred is that Commissioners wished to have a better record of the history  
37 of the project. They wished to have the staff report, the minutes of that past meeting, what  
38 transpired at the meeting back in 2014 as they consider the applicant's request to delete two  
39 conditions which are highly interrelated to Lot 12 being this non-developable greenway lot.

40  
41 Also, any SMA has to reflect representations made at the time the SMA was granted. There is  
42 a discussion in the report about the County purchasing this non-developable greenway lot via  
43 resolution. I think we all know that resolutions are not binding. They are not ever set in stone.  
44 And it was at a budget hearing in which the Council then decided that they were not going to be  
45 purchasing this lot. However, it also is critical to understand that in the representation and the  
46 criteria of the SMA that lot, this non-developable lot figures prominently into the applicant's

1 application, into what the community believes was going to happen with this lot. And so the  
2 Commissioners had a number of questions, well does the applicant is it their intention now to  
3 consolidate and resubdivide this lot. What is the applicant's intention to be putting on this lot  
4 that was to be owned by the County of Maui?

5  
6 It's important that you go into the SMA and you find in many of the criteria of the SMA the  
7 response is that this lot is going to be for recreational purposes which was  
8 ...(inaudible)...Therefore the Commission needs to determine would uses that perhaps weren't  
9 considered at the time of the approval be in some sort of conflict with consistency with the Maui  
10 Island Plan states the greenway ...(inaudible)...

11  
12 So the applicant because the County is not buying this wishes to delete certain conditions that  
13 relate to it. But then it's also important that we see what might potentially be built on it and then  
14 how does it relate to long term uses for this area.

15  
16 So that just gives an over view of why we're here today and essentially it was deferred because  
17 the Commissioners wanted the entire record which they were given, what's happened in the  
18 past and perhaps add some questions of the applicant as to what might be happening in the  
19 future. One of the items and the report was...in the applicant's application creation of the non-  
20 developable lot was a major design for the project and allows for future opportunities to realign  
21 portions of the highway, provided for the proposed Lahaina Watershed flood control channel  
22 project, to establish a greenway or bikeway parallel to the highway and if they had expanded  
23 coastal recreational areas along the shoreline in the event the existing highway is realigned and  
24 taken out of service. So that's from the applicant's application.

25  
26 So Kathleen has a better historical perspective on this project and I'm sure the Director still has  
27 comments. Thank you.

28  
29 Ms. Kathleen Aoki: Good afternoon Commissioners. My name is Kathleen Aoki and I am the  
30 Division Chief now for the Plan Implementation Division. But what I wanted to share with you all  
31 today is I started with the Planning Department in 2002 in the Long Range Division and at that  
32 time we were under Director Foley. Well, Director Foley started in January 2003 and it was  
33 under him that we ventured forth with what was called the Pali to Puamana Master Plan. And  
34 what that was a document that was just a plan. It was never adopted by ordinance, but it was a  
35 vision for an eight-mile kind of coastal park from the Pali to Puamana. So this was my project  
36 and that's why I'm very familiar with it.

37  
38 This project they actually for this subdivision initially filed for subdivision in 2003. So we're  
39 looking at 14 years in the making. Still discussing the project. And it was denied and the  
40 reason why it was denied was Director Foley denied it for my review of things. Some of the  
41 reasons were that this...there was no mention of this coastal park which is listed in the  
42 community plan...well, not specifically but there are items in the community plan that address  
43 this and also because there was no alignment for the future Lahaina Bypass and we knew that it  
44 would someday probably go through this area.

1 So there were ongoing discussions with everyone and in August of 2006 they applied for  
2 subdivision again and had now included this greenway lot, this non-developable greenway lot.  
3 So there were discussions going on about the subdivision and then over a year later the  
4 Department, Planning Department provided additional comments to the subdivision and this  
5 passed the 45-day comment that we were supposed to comment within 45 days which we did  
6 but they were more detailed comments so the applicant filed for an appeal because they didn't  
7 agree with the Department coming in and you know, asking for things to be addressed.

8  
9 So you have a lot of different things going on at the same time. You have their appeal pending.  
10 You have the Countywide Policy Plan which was going on and then subsequently got adopted.  
11 You got the Maui Island Plan that's sort of starting to be discussed. You've got...I was working  
12 on an Environmental Assessment for the Pali to Puamana Plan to change...do a community  
13 plan amendment to designate these areas in Open Space and Park. So it's hard for me to give  
14 you a timeline without being thoroughly confused because I've been trying to work on it for a few  
15 days and it's like oh my, I didn't really realize how much...how many things were going on at the  
16 same time.

17  
18 So in the end what happened was they...the applicant applied for an exemption for this project.  
19 So that was in 2007 and SMA Exemption because in order to get subdivision approval if you're  
20 located within the SMA you need an SMA approval first. So they applied for an Exemption and  
21 the way that it was sort of described was they were looking at just the coastal lot. They weren't  
22 applying the SMA application to the entire project. Yes Larry?

23  
24 Mr. Hudson: So for clarification you're talking about this Lot 12?

25  
26 Ms. Aoki: Lot 12, that's correct.

27  
28 Mr. Hudson: That was the Minor SMA that they were applying for?

29  
30 Ms. Aoki: Yes, they applied for an Assessment. So we hadn't determined whether it would be  
31 exempt or whether we'd get a minor or whether there'd be a major but that was the application  
32 that was submitted and the application stated that it was the creation of a coastal reserve lot in  
33 support of long-term environmental policies and goals. The coastal reserve lot allows for the  
34 possible realigned Honoapiilani Highway, the proposed Lahaina flood control project, and the  
35 expanding of coastal recreation areas. So at that point, Director Hunt and Planner Jeff Dack  
36 wrote them a letter stating that essentially you need to apply for a major permit. We think that  
37 this entire project should be reviewed. So there was discussion about that.

38  
39 Then I found like meeting after meeting after meeting with them and that goes back to what  
40 Director Spence mentioned this morning that applicants will come in and meet with us and  
41 discuss with us their projects so that everyone is on board and the Director and the Department  
42 is comfortable with supporting the project. So there were a lot of meetings in between and a lot  
43 of it wasn't necessarily about this greenway lot. The Director at the time liked that greenway lot.  
44 It had to do with the subdivision above and how many lots were gonna be up there and this is  
45 while the appeal is pending on those comments. So we're still having discussions while that  
46 appeal is heard.

1  
2 So then we get to the County...you know, we're going through the Countywide Policy Plan, then  
3 we get to the Maui Island Plan and when we're at the Maui Island Plan they came and testified,  
4 actually...that was another thing, then I was working on the Maui Island Plan as a Long Range  
5 Planner and they provided testimony like a lot of the developers would come in and share their  
6 development plans with the GPAC for their consideration and what was represented was again  
7 this coastal greenway lot. That is repeatedly said in all their applications and their subdivision  
8 map and then in testimony. And then they presented to this body, Maui Planning Commission  
9 after it had gone through the GPAC's review and again they mentioned the same kind of idea  
10 for this lot. Then we get to the County Council and this would be partially under...oh, I forgot to  
11 mention I was also Deputy Director and Director after my tenure with Long Range, so I've kind  
12 of worn a lot of different hats, sorry forgot to mention that. So we get to the Maui Island Plan,  
13 but they actually came to present I had, you know Director Spence was our Director now so  
14 there was testimony provided at County Council and I don't want...I have everything here if you  
15 folks are interested or want me to share with you but it's a lot so I'm not going to read every little  
16 thing that I have. But if you have questions or want to know what was represented at certain  
17 stages I'm happy to share that with you.

18  
19 So now we get to...I think one thing I'd really like to emphasize is all during this process up till  
20 2014 I guess when that Resolution, is that when the Resolution was, there was no resolution.  
21 There was nothing, there was nothing promised that we would...the intent was originally from  
22 what my recollection was that this would remain private. It would remain homeowners, the  
23 homeowners association would maintain it and own it but there was also this sort of idea that  
24 one day the County hopefully would come in and buy it but there was never an agreement either  
25 way. So the applicant provided this lot as a means of addressing a lot of the concerns and  
26 addressing the Maui Island Plan. And what's kind of confusing too is that this application came  
27 in before the Maui Island Plan got adopted. So again, it's something that just kinda got folded  
28 into the Maui Island Plan because we had all talked about it and agreed. So in the Maui Island  
29 Plan it's designated Park and there are implementing actions that discuss the Pali to Puamana  
30 Parkway Master Plan which this addresses. Actually it addresses it even better than what was  
31 in the actual P to P Plan.

32  
33 So now we get to here we are today, and so I had talked to Kurt and I wanted...and the  
34 Director, and we just wanted to provide you with sort of this long involved history that dates  
35 back, all the way back to 2003 on how we got this lot incorporated into the subdivision proposal.  
36 Thank you.

37  
38 Vice-Chair Higashi: Director?

39  
40 Mr. Spence: Kathleen, I haven't reviewed the SMA application. Was this lot Mentioned for as  
41 mitigation for impacts or...

42  
43 Ms. Aoki: The original SMX?

44  
45 Mr. Spence: No, for the SMA Major for this whole subdivision?

46

1 Ms. Aoki: Yes. Okay, so for the SMA application for the Major that was submitted in 2009 then  
2 revised in June 2010, in short, yes. The answer to your question is that in every, almost every  
3 kind of when you have scenic resources or recreational facilities, here's one it says, for potential  
4 impacts and mitigation measures the project has incorporated a 37-acre a non-developable  
5 greenway lot into the project plans. The greenway lot runs parallel to the existing Honoapiilani  
6 Highway and would allow for portions of the highway to be realigned in order to avoid disruption  
7 of service to the storm wave action. Where the highways realign there could be potential for  
8 expansion of coastal recreational opportunities. The greenway lot could also facilitate  
9 development of a greenway bikeway parallel to the existing highway. So that's one example.

10  
11 Mr. Wollenhaupt: Oh, just and also to taking the application that we provided, if you look at the  
12 SMA objectives, start with Hawaii Coastal Zone Management Program, first objective number,  
13 recreation resources, the response, as noted earlier the project...(inaudible-not speaking into a  
14 mic)...seven-acre non-developable greenway lot adjacent to the highway. The greenway  
15 lot...(inaudible)...recreation just along the corridor.

16  
17 Mr. Robinson: Kurt, I'm sorry we're jumping all over the place. I want to follow.

18  
19 Mr. Wollenhaupt: That was a continuation from Will's application.

20  
21 Mr. Robinson: If you're going to read something verbatim I want to be able to follow it with you.  
22 I have no problem with you reading it, just help us, help us stay on because this is getting deep.

23  
24 Mr. Wollenhaupt: It's Attachment 4, staff report.

25  
26 Mr. Robinson: That exhibit? Staff report.

27  
28 Mr. Wollenhaupt: Attachment 4.

29  
30 Ms. Aoki: So it would be the staff report.

31  
32 Vice-Chair Higashi: Kurt, the problem is, the problem is we have three documents. Which one  
33 are you addressing so we can follow through?

34  
35 Ms. Aoki: So if you go to Page 19 of the staff report...

36  
37 Mr. Robinson: Okay. Page 19 of the report?

38  
39 Ms. Aoki: Yeah. Page 19 of the staff report.

40  
41 Vice-Chair Higashi: It's on Page 19 on the Memorandum April 11, 2017 and if you turn to the  
42 middle, Page 19.

43  
44 Ms. Aoki: So on Page 19 you'll see at the bottom, Number 5 is addressing CZM Law. So if you  
45 turn to Page 20 you will see under response on the lower part of the page, but they talk about  
46 as noted earlier the project has incorporated a 37-acre non-developable greenway lot adjacent

1 to the Honoapiilani Highway. This greenway lot will facilitate recreational uses along its corridor  
2 adjacent to the highway. Then if you go over to Page 21 for Scenic and Open Space  
3 Resources, Number 3, down at the bottom, their response to mitigate this criteria again  
4 mentions this non-developable greenway lot. It does talk about this acquisition which is a  
5 resolution, adverse impacts of coastal and open space resources or adverse effects on public  
6 views to and along the shoreline resulting from the proposed ag subdivision are not anticipated  
7 because of this lot. We go over to Page 23 on the top, Number 6, Coastal Hazards, again to  
8 mitigate this the response, the last sentence, the non-developable greenway lot would allow for  
9 realignment of portions of the existing Honoapiilani Highway that are subject to storm wave  
10 action or erosion if required. Page 24, Number 9, Beach Protection. So these are all things that  
11 Commissioners are required to look at as far as CZM Law is concerned. So beach protection,  
12 their response, third sentence, a non-developable greenway lot has been established adjacent  
13 to Honoapiilani Highway on the mauka east side, adverse impacts to beach processes are not  
14 anticipated as a result of the proposed project.

15  
16 So that's as far as CZM Law. Also, like my job is to make sure we implement all of our plans,  
17 well, to try, to try to encourage that to happen. Not my job to do it all. And so with any CZM  
18 application you have to be consistent with the General Plan. So with a lot of their comments  
19 that pertained to the West Maui Community Plan, the Countywide Policy Plan and then because  
20 this application was filed for in 2010 but it didn't get heard until 2014, they don't address the  
21 Maui Island Plan but that's not their fault because it wasn't adopted yet but Kurt put it in the  
22 report. So it talks about how it's consistent, that this greenway lot allows for consistency with  
23 the Maui Island Plan, the Countywide policy plan and the West Maui Community Plan

24  
25 Another thing I think is interesting is on Page 41 of that report the alternatives to the proposed  
26 action, so a lot of what the Planners and the Staff pulled for their reports is what comes from the  
27 application. Okay, you don't see the application but a lot of that information is pulled over into  
28 these reports. So this language here was actually provided by the applicant. So the preferred  
29 alternative which is what Kurt read to you earlier so I won't read it again, the first paragraph was  
30 just the four different ways that this lot addressed CZM and everything else. They do say that it  
31 providing...if you look at—

32  
33 Vice-Chair Higashi: May I ask you a question?

34  
35 Ms. Aoki: Sure.

36  
37 Vice-Chair Higashi: Where are we present in this situation with the County Council?

38  
39 Mr. Spence: We'll get to that.

40  
41 Vice-Chair Higashi: ...(inaudible-not speaking into mic)...just give all the background?

42  
43 Ms. Aoki: Yeah.

44  
45 Vice-Chair Higashi: Okay.

1  
2 Ms. Aoki: If you look at Page 42, b, Subdivision Layout Alternatives, in the middle of that  
3 paragraph it states, another layout alternative would be to maximize the parcel size and  
4 eliminate the non-developable greenway lot, an alternative that clearly would defeat the idea of  
5 providing a greenway from Puamana Beach Park to Olowalu. So it's laudable that they did this  
6 because they knew not putting it in would not...well, wouldn't address many of the CZM Law, it  
7 wouldn't address our General Plan, and it wouldn't be for the benefit for the public. So that  
8 answers your question Director Spence I hope.

9  
10 Mr. Spence: Okay, so Commissioners that's kinda the history there is of this lot. We'll get to  
11 you Rory, and the applicant will have things to...the question before this Commission is what  
12 are we gonna do with those...the request is to remove Condition Number 17 and I understand  
13 their concern about the condition that that the roadway be provided, open to the public to  
14 provide access to a private property. That's kinda weird. I mean that the way that they'll  
15 address this in their discussion. And also Condition 20 which addresses Resolution No. 13-151  
16 which is what our Vice-Chair was asking about. That Reso went nowhere. The Council decided  
17 not to put purchase this property. So I can totally appreciate wanting to uncouple this project  
18 from that resolution. It just avoids confusion and questions and everything. The...I think more  
19 in relation, the last the Commission brought up questions about okay, so what happens to this  
20 lot after these conditions are removed, et cetera and so we'll have that discussion. I think Mr.  
21 Frampton wants to address the Commission, has a power point.

22  
23 Mr. Rory Frampton: Thank you Commissioners, I'm Rory Frampton, a planning consultant on  
24 behalf of the landowner and I'll try not to confuse you any more than you might be with this long  
25 involved project.

26  
27 I got involved with this project back in around 2005 and this was after that initial subdivision had  
28 been denied. And the initial subdivision simply ran the lots down to the highway and Director  
29 Foley as Kathleen noted had concerns about a bypass that was coming through there, that the  
30 status was somewhat uncertain. Also the greenway, the Pali to Puamana Plan was somewhat  
31 uncertain a well and here was just a lot of discussions at the time. So when we came in and we  
32 started comprehensively looking at all of the Makila Lands in his area both above and below the  
33 future bypass it soon became apparent that the lands abutting the shoreline were obviously the  
34 most sensitive or obviously lands that people wanted to preserve at least in Open Space and  
35 potentially Park Space and I'm going to come back to that theme Open Space and Park Space,  
36 two different purposes. And so you know we basically went through and we did, we were  
37 looking at...the owners were looking at future entitlements. At one point they were looking at  
38 requesting future entitlements along the shoreline in which case they would have actually  
39 probably built beach parks if they had received more entitlements. The decision was made to  
40 not pursue additional entitlements for this area and to simply proceed with 11, 15-acre lots  
41 which is what the Agricultural Ordinance allowed for. So it was...it's actually a fairly low use of  
42 the land. Eleven lots on 214 acres. So it's one lot per 20 acres gross, right? So what we did is  
43 we took it down, all the lots down to the 15 acres minimum lot size, took the surplus land, ran it  
44 along the highway and that became this Lot B where the 37 acres. So sorry for going back in  
45 history. So this is the area again, it's between Puamana and Launiupoko Beach Park.



1 A couple of the reasons why everything was delayed so long was that there was an  
2 additional...there were two alignments for the bypass. We didn't know where the alignment was  
3 gonna go. The Maui Island Plan was being formulated. There were a lot of moving parts and it  
4 took a while for all those parts to kinda settle down before we came to the Commission in 2012.  
5 So this is more close up look of the 11 lots with the roadway running along the makai side  
6 separating the lots from the ocean. And here's...there was a similar project proposed on this  
7 side that the County ended up buying the entire portion. So again, the project scope as was  
8 mentioned, 11 Ag lots, 1 non-developable greenway lot that means you can't put houses on it.  
9 Two roadway lots and all the underground utilities, drainages, et cetera, et cetera. And at the  
10 time we were proving two alternative corridors for the bypass 'cause we didn't really know where  
11 it was going to go. Now we know where the bypass is going, the bypass is under construction  
12 right now today along the top of the project. These subdivision roads have been built. The  
13 project is done. This project has...the project asked to develop the 11 lots. They have  
14 developed the 11 lots. They've put in the roadway. They've created the non-developable  
15 Lot 12.

16  
17 The acquisition that was proposed consisted of two properties, Property A and Property B.  
18 Property A consisted of the entire 148 acres, and B again was just this parcel. But at the time  
19 that it was being considered for acquisition the subdivision hadn't been approved. It hadn't  
20 gotten an SMA so what happened was the Council in 2013 passed a resolution to acquire 185  
21 acres both parcels and attached that resolution Kurt was a purchase agreement. So the  
22 Council authorization, the Council Resolution authorized the execution of a purchase agreement  
23 which is binding. And so the resolution is not a fluffy thing that was a wishful thing. It was, it  
24 was approved, there was an attached purchase agreement. That purchase agreement was  
25 eventually...well, they put money into the budget, the purchase contracts are executed just a  
26 few weeks after the monies were put into the budget and approved by resolution and it said that  
27 Lot B would be acquired after final subdivision or 27 months from the budget amendment. So  
28 we had 27 months from 2014 to get all that done. Property A was acquired as is. So it's done.  
29 It was acquired about a month or two...well, it was acquired on February 24 just a month or two  
30 after the County approved the purchase. Ten months later we had the SMA hearing before this  
31 body. This body approved it. Final subdivision was approved couple months after that. That'  
32 18 months after the budget amendment well within the 27 months. We've got all the closing  
33 documents ready, everything was ready to be purchased. And then the Administration notifies  
34 the applicant that the funds had lapsed. So Administration requested the Council to  
35 reappropriate the funds. It was not...that matter was not scheduled by Budget and Finance, the  
36 Mayor submitted it in his proposed budget, the Council chose not to and they voted on May 20t  
37 with very strong statement by all, by the West Maui Councilmember, the Budget Director, and  
38 the Council Chair that they did not want to pursue or follow through with acquisition of Lot B.

39  
40 Mr. Carnicelli: Rory, what was the dollar amount?

41  
42 Mr. Frampton: The remaining amount...so there was a...the total amount was \$3.1 million that  
43 we've paid for...or I should say the owners have been paid for the flood control. The remaining  
44 allocation is \$2.2 million for about...well, for the entire parcel. And in October of last year, the  
45 acquisition agreement was terminated because it was clear the Council wasn't going to buy this  
46 property. So we're requesting to delete Condition 17 and 20 and amend our representations to

1 this Commission so that for the record we're telling you that the County is not going to buy this  
2 land. Everything else remains the same. Same roadways, same detention basins, same  
3 greenway, non-developable greenway lot. Everything remains the same except who owns this  
4 lot. Well, I go into it a little bit later. So Condition Number 17 says that the applicant  
5 understands that the intent of the internal access road is that it shall be open to the public  
6 providing access to Lot 12 because Lot 12 was gonna be owned by the public it would become  
7 a park so the access would be provided to it. Now that the County is not going to own it that  
8 condition is moot. And 20 just references the purchase. The purchase isn't going to happen.  
9 We'd like that deleted as well.

10  
11 Reasons of support. That's a fancy sentence it says the County is not gonna buy it so it wasn't  
12 our choice. We did everything we could to get to provide...to do all the steps so that the County  
13 could acquire it. The County Council has decided not to. They're not gonna buy it. And so we  
14 need to update the representations to the Commission and amend the conditions and we really  
15 see this as a housekeeping measure. No changes in the project plans or physical  
16 improvements. The improvements are complete. And our representation for Lot 12 is that it's  
17 going to be privately owned. It's still considered at non-developable lot meaning that  
18 development of residential dwellings for farm dwelling purposes are not allowed. Other non-  
19 residential uses are allowed in accordance with State and County land and environmental laws.

20  
21 In summary, the amendments are necessary to the Council not purchasing the property.  
22 Development plans have not changed. Impacts and conclusions remain essentially the same  
23 with the one caveat that some of the information that Kathleen mentioned to you is that if the  
24 County bought it there would be a potential of having recreational uses on the property. Well,  
25 there was never specific discussions of what the Council was gonna do with this property  
26 whether they were gonna use it for open space or park. So when we came in and got this SMA  
27 approval they County wasn't telling you what was gonna be done with the lot. All we said and  
28 all the County said was that they were gonna buy it and at some point in the future when or if  
29 any improvements were gonna be made. So we're simply providing an opportunity to the  
30 County if they wanted to buy the lot for public use purposes.

31  
32 By approving or amending the subdivision we're not foreclosing any opportunities for the County  
33 to acquire the Park Space in the future. The County has the power of eminent domain should a  
34 future County Council decide that they want some or a portion of this area to be purchased for  
35 park space they certainly, if they can't reach an agreement with the land owner they can come  
36 In and condemn it. And condemn it and they'll figure out...the judge will figure out the price and  
37 it will be available for public use. There's not gonna be dwellings on it so it will be a lot less  
38 complicated. That's the summary of my presentation. I have a whole bunch of information if you  
39 guys have other questions but I'll leave it at that for now.

40  
41 Vice-Chair Higashi: We're now open for questions. Commissioner Canto?

42  
43 Ms. Canto: Hi Rory. So there's nothing on Lot 12 then? No improvements or anything?

44  
45 Mr. Frampton: Except for the flood control. The County build a flood control and occupies  
46 about 9 ½ acres of land. The County has an easement for that flood control and the landowner

1 was actually paid for that easement. So of the 37 acres, about 9 ½ acres contain a pretty  
2 significant structure, the flood control that runs along the side of the highway.

3  
4 Ms. Canto: Okay, thank you.

5  
6 Mr. Frampton: Yeah.

7  
8 Mr. Carnicelli: Chair are we taking public testimony?

9  
10 Vice-Chair Higashi: Commissioner Carnicelli?

11  
12 Mr. Carnicelli: Public testimony?

13  
14 Vice-Chair Higashi: Public testimony? Are there any public testimony? Hearing none, public  
15 testimony is closed. Staff do you have any other additional presentation?

16  
17 Mr. Spence: I gotta a question. So Rory when you say non-developable and you're saying just  
18 no home?

19  
20 Mr. Frampton: Correct.

21  
22 Mr. Spence: So what else could be developed on the property or what do you guys think?

23  
24 Mr. Frampton: It's not determined right now. It's anything that would be allowed in the Ag  
25 District other than farm dwellings.

26  
27 Mr. Spence: And I'll tell you because part of my concern is that you know development, there's  
28 all kinds of things termed developed under SMA that are not homes. There could barns, there  
29 could be whatever. I mean, since the whole intent and purpose of this, it seems for a very long  
30 time prior to even discussion of the County purchasing this lot you know was part of the reason I  
31 asked Kathleen was mitigation for visual impacts and those kinds of things. So I'm just  
32 concerned that if—

33  
34 Mr. Frampton: Anything...sorry for cutting you off...but anything...I understand your concern is  
35 that if something that might be done on that property might somehow impact concern of the  
36 SMA if so, you know they'll have to come in and get permits. So if there is something that looks  
37 like it can could be a significant impact either this Commission or our Department will be allowed  
38 to review it. The SMA line runs through this property so this property is considered in the SMA.  
39 So you know it's really...it's hard because all along the idea was this was gonna be private  
40 homes above the road and public land below the road and now that whole game has been  
41 changed and well, we hope it has. If we get these conditions off it then the landowner's allowed  
42 to kind of start making plans for what they're gonna do with it. There's no active plans right  
43 now. There's no...there's nothing proposed. If they are gonna propose anything it's gonna be  
44 whatever's allowed in conformance with State and County land use and environmental laws.  
45 Just like if the County were to own it, same exact thing, they'd have to come before you to  
46 propose a park or could propose whatever if they were gonna do any development.

1  
2 Mr. Spence: Absolutely, but I'm just thinking because it's a whole concept that this was  
3 supposed to be for open space and everything and that entirely predates the concept of that the  
4 Council purchasing this property. They date back currently to...  
5  
6 Mr. Frampton: Right it would either...the idea was either it was gonna be Open Space 'cause  
7 an early iteration of the Pali to Puamana Plan just had...well, an earlier iteration had no part of  
8 this property in the Pali to Puamana Plan.  
9  
10 Ms. Aoki: It had a little portion next to Launiupoko.  
11  
12 Mr. Frampton: It had a little portion next to Launiupoko Park. A mauka expansion of  
13 Launiupoko Park. We actually said look at this thing's sensitive why don't we try to achieve the  
14 whole thing. Steve Goodfellow was very much involved with the P to P vision that started  
15 before Mike Foley. It started with Kimo Apana and it involved the Ukumehame landowners, the  
16 Olowalu landowners, and the Makila landowners and the idea was a contiguous Open Space or  
17 a Park plan along the entire stretch of the eight-mile shoreline. This was our attempt to try to  
18 accommodate that and I think nothing's changed except for the County's not gonna buy it.  
19 There was no discussion all along whether it was gonna be County owned or non-County  
20 owned. We were providing an opportunity that if the County wanted to purchase it, they could.  
21 It got to the point where the County agreed to purchase it and we finalized the subdivision and  
22 then the County—  
23  
24 Mr. Spence: Yeah, I understand, and I don't mean to cut you off—  
25  
26 Mr. Frampton: Thanks.  
27  
28 Mr. Spence: --but I do—  
29  
30 Mr. Frampton: And I need to be.  
31  
32 Mr. Spence: --so and don't get me wrong. I'm supportive of removing these two conditions.  
33  
34 Mr. Frampton: Yeah.  
35  
36 Mr. Spence: I think they cause confusion on the whole thing. I mean, they reference things that  
37 are no longer applicable.  
38  
39 Mr. Frampton: Thank you.  
40  
41 Mr. Spence: And they should not be applicable. One...there's a concern about what's gonna  
42 happen, I mean, you and I talked a little bit off the record about okay, could this lot be  
43 reabsorbed into the 12 lots and consolidated and resubdivided. You know that would forego the  
44 County's options in purchasing in the future. No, then you would have 12 different landowners  
45 to deal with, that's a problem. Well, having been in some negotiations myself, I'll disagree but  
46 there are issues with negotiating with multiple owners as opposed to one. So I'm voicing some

1 of the concerns that I heard last time. Okay, that if it's consolidated and resubdivided and also  
2 what kind of development could go on it? Anyway those...within that, with those questions off to  
3 the side, I agree those two conditions should be removed, absolutely.

4  
5 Vice-Chair Higashi: Commissioner Robinson?

6  
7 Mr. Robinson: Aloha Rory.

8  
9 Mr. Frampton: Aloha.

10  
11 Mr. Robinson: First, respect for you I know this has been a very long process, over a decade so  
12 yeah, I just want to say...I understand, I understand, you know that it's been a long time. I'm  
13 not at the place the Director's in where these two should take off. So I wanted to just come at  
14 you straight. A lot of new commissioners here and they haven't heard it for that. So my  
15 question is what is stopping you from developing with these two conditions? That's the first  
16 thing. And the second thing is, what's stopping you from donating this land and just getting this  
17 over with?

18  
19 Mr. Frampton: The first question is that with these conditions on there, I mean, I think by just  
20 coming here before you...(inaudible)...the record and I'll ask the attorney if by appearing before  
21 you and representing to the Commission that the Council is no longer going to buy it that we've  
22 cleared the air in terms of what our past representations were. I don't like coming to this  
23 Commission and telling you it's gonna be A and B and then changing it and not coming back  
24 and informing the Commission when things have changed kind of considerably that you know in  
25 terms of the County not buying the land. So part of it is just being straight up with the,  
26 Commission. I think that that condition about providing public access...Lot 12, I mean the  
27 roadway providing public access to Lot 12 when Lot 12 is privately owned, that's a problem.  
28 Yeah, I mean, if you had a road in front of you property and the County said hey, we want you  
29 to...we want the public to access through your property. I mean, they could do that but they  
30 gotta compensate you for it.

31  
32 Mr. Robinson: Maybe like Makena Landing and Makena Development. This is sort of a same  
33 type of situation where there's a public road going between the lots.

34  
35 Mr. Frampton: Right.

36  
37 Mr. Robinson: And yet there's a park there and they take care of the lot and it's kind of working  
38 with the County because the developer has been lucky enough to have been a beneficiary of  
39 hundreds of thousands of acres?

40  
41 Mr. Frampton: Right. Yeah, and just like Wailea too and Kaanapali.

42  
43 Mr. Robinson: It's not unforeseen is what I'm saying.

44  
45 Mr. Frampton: It's not unforeseen. I mean, I think you have to put it in context. This is 11 lots  
46 as opposed to Wailea Resort was over 2,000 units when it was first approved. Wailea Resort

1 was rather extensive so I think going back to the discussion that you had with your attorney  
2 earlier about the proportionality.

3  
4 Mr. Robinson: Yeah, but again there's also segmentation Rory. You can't say that this  
5 developer has only 11 lots in this whole side of the mountain. I mean, if you want to go back  
6 that way to use Wailea. You know again, I just want to go straight at it because so you  
7 answered number one 'cause I don't see anything stopping you from number one except the  
8 road being public which actually might save you guys money and there's trash over there.  
9 Number two, I know—

10  
11 Mr. Frampton: It's not publicly owned roadway. It's just that the public can—

12  
13 Mr. Robinson: Has access.

14  
15 Mr. Frampton: Right to a private lot, to a privately owned lot.

16  
17 Mr. Robinson: Which could be donated or condemned, correct?

18  
19 Mr. Frampton: It could be condemned yeah.

20  
21 Mr. Robinson: It could be donated, it's not—

22  
23 Mr. Frampton: Theoretically.

24  
25 Mr. Robinson: It not the stance now, but there is that option there.

26  
27 Mr. Frampton: Yeah.

28  
29 Mr. Robinson: Right?

30  
31 Mr. Frampton: Correct.

32  
33 Mr. Robinson: Thank you.

34  
35 Vice-Chair Higashi: Commissioner Hudson?

36  
37 Mr. Hudson: Thank you Commissioner Robinson. If everything's gonna be the same and you  
38 want these two things taken out can we put something in having the same language saying that  
39 Lot 12 will still be used for that? What say you to that? If everything's the same and you said  
40 everything is the same then we can take it out, reword it and stick it back in so that the idea  
41 behind it stays the same. You understand?

42  
43 Mr. Frampton: Yeah, and when I said everything stays the same I was referring to the physical  
44 development and I did say except for the ownership of the lot. So with the ownership being  
45 private instead of public the potential for future park development really seem...by the County is  
46 unlikely.

1  
2 Mr. Hudson: So let me reword this then. Would you be willing to put something back into the  
3 conditions so that we would be fine with this because right now I am not fine with this? I took  
4 notes and I got pink 'cause my boy stole the yellow, but I am not fine with this. To me, it's not  
5 housekeeping. That's like the Liquor Control is housekeeping. This is not housekeeping. This  
6 is major. We're making a permanent change to a section of our island that I have a problem wit  
7 and hear me out. If was here and paid attention the first time 'cause I don't think I voted on this  
8 the first time, I would have voted no. I would never have supported this. Without this lot being  
9 in place I would support it. You understand what I'm saying? If this lot stays the way it is I'm  
10 okay. You take this lot out, I'm not okay. Are you guys willing to do this? I have one other  
11 question but that's kind of a aggressive so I won't ask it. Just answer that question please?  
12

13 Mr. Frampton: I'm sorry, so could you repeat the question? Are you saying if you put a  
14 condition on here that said that the County would own it?  
15

16 Mr. Hudson: No. You want 17 and 20 taken out. Correct?  
17

18 Mr. Frampton: Correct.  
19

20 Mr. Hudson: Are you willing to put back in a condition that saying Lot 12 will be used for Open  
21 Space that means no dwellings, no farm dwellings, no nothing in perpetuity forever, are you  
22 willing to do that so that lot stays the way it supposed to be, the way it was put down in the SMA  
23 yes or no?  
24

25 Mr. Frampton: No.  
26

27 Mr. Hudson: Okay.  
28

29 Mr. Frampton: Let me clarify.  
30

31 Mr. Hudson: Well, you said no. I heard no.  
32

33 Mr. Frampton: The way the property is right now and what we've represented is that there  
34 would be no dwelling on it and that's what we're representing is that there will be no future  
35 dwellings on this property. It's the leaving it in complete open space and not allowing any type  
36 of ag use or any type of use at all, if you're saying there could be no use of that property that's  
37 what to me becomes problematical because you're saying zero use for the private landowner.  
38

39 Mr. Hudson: You never mentioned ag use until now I don't think. Where is that?  
40

41 Mr. Frampton: I'm sorry, that's what the...any uses allowed by the County and State Laws  
42 which would be the Ag Zoning Law.  
43

44 Mr. Hudson: Okay, so you're just mentioning it now then. I didn't see it—  
45

46 Mr. Frampton: No.

1  
2 Mr. Hudson: --in all of this stuff I didn't see an ag plan or anything.

3  
4 Mr. Frampton: There's no ag plan but it's Ag zoning. It's whatever's allowed in the Ag District.

5  
6 Mr. Hudson: All right. And so there's—

7  
8 Ms. Aoki: If I can interject Commissioner Hudson? Are you...is your question whether or not in  
9 their representation and the applicant --'cause I found that too. I'll just say that. All the  
10 representations that were made on Lot 12 were never about Ag use. It was about Open Space,  
11 it was about recreation, it was about park. There wasn't really a discussion about the zoning.  
12 That was sort of...this was part of the development process. So I think if I'm hearing Mr.  
13 Hudson if that's what your question is?

14  
15 Mr. Hudson: That's correct. Thank you.

16  
17 Vice-Chair Higashi: Just as an opinion from listening to what has happened as a landowner of  
18 this particular property 12, if someone offered me "X" amount of dollars to make this open space  
19 for public use 12 acres I would say yeah, I would consider that. But now, I understand the  
20 Council looking at it saying, well if they're gonna open space why should I pay for that amount of  
21 money. And as a private owner I have a problem with that. You're giving 12 acres free on  
22 prime area there's a problem and I think that's where as the Chairperson I'm a little concerned  
23 about promises that are made that are not followed through. Commissioner Carnicelli?  
24 Commissioner Carnicelli has something.

25  
26 Mr. Carnicelli: You know I think like Keaka said, first thing I want to do is just say I don't know  
27 why anyone would develop on Maui ever at all so the fact Rory you're here, Heidi, and saw  
28 Peter earlier and everything like that you know, my hat's off to you just for trying. So that's the  
29 set up. I have kind of a similar sort of thought about the languaging and to me I'm like leave it or  
30 take it out. To me, in my mind I think it needs to be wordsmithed is where I'm sort of headed  
31 with this just to sort of let you know is to say okay, the Reso to buy it didn't happen. Maybe there  
32 could be another Reso. The fact that you know there's a road to private lands, I get that too.  
33 That's kind of ....but if it is purchased then we have the other lot. It's gotta flip flop back and  
34 forth. The other part too is I do feel like there's a little bit of a slide of the hand in saying okay,  
35 it's gonna be a privately owned lot and you're gonna just go to zoning and if you can do ag on it,  
36 you can do ag, and you know what can be built, can be built, and I get that. So it's not like, you  
37 know, the intention all along was that this remain an open space or park and/or. The fact that,  
38 okay you're saying it's a landowner, now we're forcing him or her to do that, but that was always  
39 the intention just the difference is going to be \$2.2 million in your pocket versus not. So this  
40 really comes down to you know, we didn't give you your 2.2 that you're owed and so now what  
41 do we do with that? But the other part too is since we're opening, we're reopening the SMA  
42 Permit total, is this is a whole new Commission.

43  
44 Mr. Spence: No, we're reopening just for these two issues.

45



1 Mr. Carnicelli: But Director, I don't think that we can look at this completely separate because  
2 it's an SMA Permit that was issued by this body that is now being readdressed and everything,  
3 you know kind of fits together. There's segmentation. I get that these two things are separate  
4 tied to a particular resolution that didn't happen and executed contract that was breached by the  
5 County. However, you know as a new Commission that has come up with new standards for  
6 SMA we kind of tightened the screws kind of as even since I've been here so suddenly you  
7 know are there additional things as I read through all of this and I'm looking at some of the  
8 testimony would we want to put additionally on it?  
9

10 Mr. Spence: No, and I think to deal with some of the representations Rory's now making I think  
11 it's perfectly appropriate to put other conditions on it like no home will be built on Lot 12.  
12

13 Mr. Carnicelli: Right. I mean, we can put an easement, put an entire easement over the top of  
14 the entire thing. We could do a lot of different things, that you know...I'm also looking at one of  
15 the big things that we've done a lot more of is view corridors. So now suddenly we know where  
16 the bypass is going so now it's just like okay we want view corridors over the top of those 11 lots  
17 to be able, you know for the future. That's gonna be part of the SMA. So I'm just saying is  
18 there's a lot more to chew here than just as easy as saying you know what the County didn't  
19 buy this, please remove these two things 'cause I understand where you're coming from, but it  
20 just...there's a lot more moving parts to it than that.  
21

22 Mr. Spence: No, I agree. I agree. I mean, you already know my opinion that those two  
23 conditions should come off, but now that there's...they've made a point of making new  
24 representations I think other conditions should be appropriate as it applies to this lot.  
25

26 Vice-Chair Higashi: Rory?

27  
28 Mr. Frampton: Just one...couple small points. You mentioned view corridors that was  
29 considered the first time around for both highway alignments.  
30

31 Vice-Chair Higashi: Rory can you use the mic?  
32

33 Mr. Frampton: Sorry. For both...so you mentioned view corridors and that was considered you  
34 know the first time around. And from this mauka view the alignment that was chosen there's a  
35 150-foot setback which allows for the homes to be considerably lower and farther away.  
36 There's also a 60-foot front yard setback from that lower road that's also buffered from the  
37 highway so a lot of those items were considered in the previous project, I mean assessment.  
38 Agriculture is allowed in the Open Space District and agriculture is considered open space so  
39 that's an allowable use in the Open Space District. And the big difference is really it's the public  
40 use of the property. I mean, you mentioned...yeah, right and so that's substantial.  
41

42 Mr. Carnicelli: If I could Chair? And that's the part to me where I think that it needs to be  
43 wordsmithed rather than just removed. It's...(inaudible)... you know, 'cause is to leave it as it is  
44 and to say like, okay the public gets access to your private lot I don't think that's right either. So  
45 can we put on our junior attorney hats and...  
46

1 Vice-Chair Higashi: Mr. Frampton?  
2

3 Mr. Frampton: If I may? Thank you. At the previous meeting there was a condition that was  
4 discussed that should the County purchase Lot 12 or a portion of Lot 12 then the roadway would  
5 be used for access to that property. The landowner is fine with that. That was the original  
6 intent. So if we want to do a condition like that, I think it's okay. I think as worded now, it's too  
7 explicit. I think it needs to be refined. So we're comfortable with an amended condition that  
8 would allow for public use of that roadway should the County come in and buy Lot 12 or a  
9 portion of Lot 12 'cause they might not want the whole thing.

10

11 Vice-Chair Higashi: Commissioner Robinson?  
12

13

14 Unidentified Speaker: All the roads private?  
15

16

17 Mr. Frampton: All the roads are private in that whole area, yes.  
18

19

20 Vice-Chair Higashi: Commissioner Robinson?  
21

22

23 Mr. Frampton: All the roads in...oh, I'm sorry there was a question about the owner—  
24

25

26 Mr. Robinson: Rory, Rory, that's fine. I was going to ask you to repeat that. That was my  
27 question.  
28

29

30 Mr. Frampton: Okay, so all of the roads in the Launiupoko area that were developed by multiple  
31 entities by the way, it wasn't all one entity up there. There are different ownerships, different  
32 individuals owning those lands, but the commonality is that the roads are privately owned roads  
33 up there.  
34

35

36 Mr. Robinson: No, actually I think the question was Rory, is can you please restate what you're  
37 open to as far as a contingency on if that property were to change hands of you opening up that  
38 road back to public?  
39

40

41 Mr. Frampton: So it would be that—  
42

43

44 Mr. Robinson: I mean can we fix the wording but is that what I'm hearing from you?  
45

46

47 Mr. Frampton: That the road would be allowed to access Lot 12 or whatever portion of Lot 12.  
48 It's should the County ever purchase Lot 12 or portion of Lot 12 then that roadway above it  
49 would be used to access it?  
50

51

52 Mr. Robinson: Purchased, condemned or be donated? Let's just take possession, take  
53 possession, it could be lease possession, it could be free rent possession, but let's leave it open  
54 so that we don't have to end up back here again.  
55

56

57 Mr. Frampton: Sounds good.  
58

59

60

1 Mr. Robinson: And I guess what we're talking about too is the first time this SMA came on the  
2 guardians of the shoreline was gonna be the County. So you're gonna be now the guardians of  
3 the shoreline and when we talk about this SMA Permit and how ...(inaudible)...before, so I'm  
4 sorry, am I misunderstanding, do I have it wrong?  
5

6 Mr. Frampton: Well, the shoreline is actually on the makai side of the highway right now and  
7 that's all State owned land. And then the state highway is at least 80 feet wide. So you have  
8 the shoreline, you have the state highway—  
9

10 Mr. Robinson: Well, shoreline has shoreline setback and you can't build right off the highway  
11 and I guess I was getting to that because as we know the bypass and what we've learned in this  
12 about the water raising, this is gonna be shoreline in you know, in 10 to 20 years. So I  
13 apologize for that, but that's what I'm looking at. I'm looking at Honoapiilani Highway being  
14 obsolete and it being you know, another thing. And I think that's where the SMA part and the  
15 controls and I'm saying this because there was a storm about maybe five, six weeks ago and I  
16 was driving back from Lahaina and I wasn't sure if it was your kuleana or if it was the County's  
17 kuleana...(inaudible)...but in that frontage it was all brown. You know, and so it is a  
18 ...(inaudible)... for me in who's going to protect that property before it goes into the ocean. And  
19 that's why I said I wasn't 100 percent comfortable. I feel bad that you folks got stuck in a  
20 situation where you guys made a deal and it got reneged. I think you guys probably could have  
21 negotiated a better price for what you actually paid for that lot, but you know, anyway that's not  
22 a reason why I would deny this. I'm open to language that could do, I would like the road to be  
23 able to stay public in the case of possession of the County. And I think from hearing from my  
24 other Commissioners I think that was one of our stumbling blocks.  
25

26 Vice-Chair Higashi: Any further discussion from the Commission? Commissioner Hudson?  
27

28 Mr. Hudson: Hi Rory, how are you?  
29

30 Mr. Frampton: I'm still good.  
31

32 Mr. Hudson: Could you repeat what you said the most specifically with the houses being on  
33 Lot 12. Would you ever build houses on Lot 12?  
34

35 Vice-Chair Higashi: Commissioner Hudson talk into the mic please? Thank you.  
36

37 Mr. Hudson: I've never been accused of being too quiet. Did you get the question Rory?  
38

39 Mr. Frampton: Lot 12 is defined not only in the SMA application but in the subdivision it's called  
40 a non-developable lot and it's meaning there's no dwellings allowed and so that is our  
41 representation that we put in writing that you see right there as well as in our request to amend  
42 the conditions. This is our representation is that Lot 12 will be privately owned and still  
43 considered, still considered a non-developable lot meaning development of residential dwellings  
44 for farm purposes are not allowed.  
45

46 Mr. Hudson: Okay.

1  
2 Mr. Frampton: So no dwellings are gonna be allowed on Lot 12.

3  
4 Mr. Hudson: My question to Kathy Aoki, could you give some clarification on that please?

5  
6 Ms. Aoki: Well, I guess...I mean, it's just a difference of opinion because for the representation  
7 from 2003 was non-developable meant non-developable. It didn't mean just no dwellings, it  
8 meant open space, it meant park. And non-developable in the sense of sort of a again, I guess  
9 I just fall back to it was never suggested that it would be used for ag. I realize it's zoned for Ag,  
10 but the representation was 11 agricultural lots with one non-developable greenway lot. And if  
11 you look up the definition of a greenway it talks about using it, that's usually left open for  
12 recreational use...I mean, there's a gamut of definitions for greenway. In the Maui Island Plan  
13 like I say we have it designated for park. When I heard that, when they came in January the  
14 discussion was that non-developable meant no farm dwellings that was the first I'd ever heard of  
15 that being the only thing that wouldn't be suggested to be used on the property. So in, I mean in  
16 Ag there is a provision that allows for open land recreation. That's one of the uses in Ag zoning.  
17 So that to me makes sense. That coincides with to me what was represented. So it would be  
18 up to the Commission to decide if you're okay with just saying no farm dwellings or putting on  
19 some other kind of condition that you want to look at as far as how it is meeting the objectives of  
20 the CZM Law on the use of that property and what was represented.

21  
22 Vice-Chair Higashi: Commissioner Hudson? Oh, Commissioner Robinson, excuse me.

23  
24 Ms. Aoki: Sorry, can I just add something, sorry to Mr. Hudson. Some of the things that are  
25 allowed on Ag can be farm stands, you're now allowed a 1,000 square foot commercial—

26  
27 Vice-Chair Higashi: Thank you very much. I think we understand your position on that  
28 particular property. Commissioner Robinson?

29  
30 Mr. Robinson: Okay, so I think we have a little movement Rory so I wanna stay on this. And  
31 what I hear a concern is, is I think it's two concerns. It's one we want a greenway but we don't  
32 want to turn it into a Ag/events on the property. My concern and it's I think it's probability that in  
33 some point this land will become public. It may not be in the next 10 years, but I think at some  
34 point because it's just of what your...the limitations are. And my concern is you folks developing  
35 it and then that cost that you develop will then be then part of what we'll have to purchase it for  
36 and I think something...I might be comfortable with it would have to be assessed and property  
37 would have to moved to its natural, you know, to its original form for it to be able to do it  
38 because like you said, it's we have 20 and 20 states Rory you know this project you know is tied  
39 to the SMA and to the County and we're trying to remove that, but part of this was keeping it a  
40 greenway and again, you got an SMA because of the greenway. And if we change this  
41 greenway, and it becomes a negative impact if we want, if you want to donate something that  
42 makes more money now or we take it over and take possession and then there's now  
43 infrastructure on it, there's cost that are associated to it, I think that's something that we would  
44 want to prevent from but not prevent you from using the property during that process. Your  
45 thoughts?

46

1 Mr. Frampton: I think your comment you want to...essentially you don't want the landowner  
2 to—

3  
4 Vice-Chair Higashi: Rory use the mic?

5  
6 Mr. Frampton: You don't want the landowner to be able to put any value to the property that  
7 would cost more in the future is that basically what you're saying?

8  
9 Mr. Robinson: It would still have to be raw land value. It couldn't be developed. You know if  
10 you put electricity to it, if you put showers for your people up above and you ran water  
11 it's...because it's supposed to be a greenway, and again, if we're gonna...I mean, 'cause I'm  
12 fine with you just building your property the way it is in the SMA and I don't think it should affect  
13 you with the land but if you want us to remove these hindrances is I wanna look 10 years down  
14 the line. So you know everything that's been said about the representations of the greenway  
15 are the...what we've committed to all along that there would be no structures down there, there  
16 would be no development, when we came in front of you very specifically in 2014 and made  
17 representations that it was going to be a greenway, we had an agreement with the County.  
18 They were gonna buy it. And so now we're changing...we're asking for an amendment to those  
19 representations and so that's why it's changed. It's because the whole deal has changed and  
20 it's just...that's the fact of that. You know, I have...fundamentally I have a problem that if the  
21 County had a chance to buy it today for \$2.2 million, \$2.2 additional dollars for the 37 acres and  
22 they had that chance and they said no, we don't want it. We want it as open space and that's it.  
23 We're fine if we don't own it. The landowners should be able to develop it and use it without you  
24 know, of course still without impacting the coastal zone resources and if anything significant is  
25 proposed down there he has to come before the County and they have to go through all the  
26 environmental procedures and come through this Commission to propose anything down there.

27  
28 Mr. Robinson: But Rory don't you also think it's fair that the Council probably read the SMA and  
29 read the two conditions that you want pulled out and that gives them little comfort?

30  
31 Mr. Frampton: Well, you mean before they agreed to purchase it?

32  
33 Mr. Robinson: No, when the rescinded on the amount of the purchase.

34  
35 Mr. Frampton: Yeah, when they rescinded on the amount of the purchase, so—

36  
37 Mr. Robinson: We're here because you want to take two things out not because we're not  
38 allowing you to develop. If you leave the two things in, you know you can do whatever you want  
39 to do.

40  
41 Mr. Frampton: Councilmember, let me see, both Councilmember Cochran and Councilmember  
42 White when they were interviewed after we were here in January they spoke to this and neither  
43 White...this is from *The Maui News*, I'm quoting *The Maui News* and it says neither White nor  
44 Councilmember Ellie Cochran who holds the West Maui Residency Seat believe removing the  
45 two conditions for Makila's permit would affect shoreline access and Cochran described the 38  
46 acres as dry, rocky scrubland that the developer couldn't build on anyways. They're

1 basically...they don't want to buy it. They think it's open space, it's not going to be used for park  
2 and they're fine with removing the conditions.

3  
4 Mr. Robinson: That's secondhand, that's secondhand—

5  
6 Mr. Frampton: Well, yeah you could...you're right, but it's a quote from *The Maui News*. It's  
7 their quote.

8  
9 Vice-Chair Higashi: Director Spence?

10  
11 Mr. Spence: Just a comment commissioners. Whatever is decided with this lot, and what I hear  
12 Rory saying he's agreeable to some conditions on it. But you can't say that this landowner can  
13 do nothing with this property. You absolutely cannot say that unless we want to go back to  
14 court and do all that kind of stuff. We're in court right now with a similar situation where we told  
15 a landowner...I won't get into the details of it but one point his SMA permit was I don't want to  
16 misquote the facts on that. Basically he's claiming a takings because he can't build a house on  
17 his property. He had no economic use of his property. So somehow in this particular case the  
18 landowner has to have some economical use of his property either agriculture if they want to  
19 clear off all those rocks and farm it. They have an economic use of that property. If they want  
20 to develop it as a private park and thus give value to the lots mauka they should be entitled to  
21 do that. You can't say you can't do anything with this property. So whatever direction the  
22 conditions go and they've already volunteered that they're not gonna build any homes on it, so  
23 but they still have to have an economic use of this property. So as we go forward and as this  
24 discussion progresses hopefully not too much longer, you know you have to keep that in mind.  
25 They're open to no homes. They're open to at some point in the future should the County  
26 purchase this property that road would be reopened for public access.

27  
28 My one concern about it is that and maybe Rory wants to comment on this my concern is that if  
29 this lot is consolidated, resubdivided into the other properties that it would be, it would be  
30 difficult, more difficult for the County to engage in some kind of purchase in the future.

31  
32 Mr. Frampton: I would like to comment on that. So I don't think whether it's one owner or 12  
33 owners if the County wanted to come in and condemn it they could come in and condemn it.  
34 They have to establish that it's a public purpose and you're gonna have 12 parties there and a  
35 judge is going to determine the value of the land and the County is going to pay the 12, I don't  
36 know how many people there would be. There would be only be 4 thru 11. There might be  
37 seven owners that possibly could own that piece if they do what you're suggesting they do. It's  
38 a hypothetical we don't know. But it's not going to stop the County from condemning it. It's  
39 gonna, and then the judge has to determine the value of the land. So and there might be more  
40 value that these guys put into their property but again, it's more of a fundamental principle that  
41 you just addressed that you can't take away all value of that land and you have to allow, if your  
42 County is not gonna buy it, the private landowner deserves an opportunity to make some  
43 economic use. Ag is about the lowest economic use you could get. We're taking away  
44 residential. So you know I think the landowner has come a long way from what they were  
45 initially proposing back in 2002. I'll stop at that.

1 Vice-Chair Higashi: Commissioner Gomes?  
2

3 Ms. Gomes: Yes, I just wanted to clarify because I understand just by reading the legend here,  
4 the notes here with Lot 12 that it's not just greenway but the possibility of bikeway lot and that  
5 would be owned by the Makila Ranches Homeowners Association as the way it stands right  
6 now to my understanding. Is that correct?  
7

8 Ms. Aoki: The diagram, the map that you're looking at was what it was all those years and then  
9 in 2014 there was this resolution so that didn't, you know, didn't get purchased.  
10

11 Ms. Gomes: And that was reneged.  
12

13 Ms. Aoki: So we're gone back to it being, I guess it would be under...I don't know, Rory could  
14 answer who's gonna own Lot 12.  
15

16 Ms. Gomes: I mean I do see where Commissioner Robinson is coming from 10 years from now  
17 when you're thinking about you know, shoreline access and you know, I mean erosion or any  
18 sort of those kinds of things happening. And then I also see where Director's coming from but I  
19 do believe that as you were saying Rory, that you know, the homeowners are coming to some  
20 form of compromise in regards to not developing I'm assuming residential homes. The chances  
21 of the County condemning it though that's hypothetically speaking though, I mean it's not a  
22 guarantee of course.  
23

24 Mr. Frampton: That's correct. And I would add you know this Council seems dead set against  
25 buying it. They just want to keep it in Open Space. That's one of the purposes of the Pali to  
26 Puamana Parkway Plan. It's either Open Space or Park. So keeping it as private open space  
27 relatively free of structures especially dwellings, I mean, those are the things that become most  
28 objectionable. It's a fairly narrow strip. But I would add, you know, if this was park property it  
29 could have parking lots, you could have structures on it, you could have bike lanes and  
30 pavement so it could be developed. And it just, all along with the County said they were gonna  
31 buy it, we didn't know what they were going to do with it. They could go ahead and put all kinds  
32 of structures on it, amphitheaters. There was all kinds of discussions of what the future uses  
33 would be but it was left open for the County to pursue it in the context of the environmental and  
34 land use laws in place. We're asking for the same opportunity. It's going to be privately owned.  
35 There's very...it's a very real possibility that one or two of the owners or however that land gets  
36 divided up a private guy might wanna come in and put a park in there. He might wanna come  
37 and put a parking lot and put a little concession stand or something. He'd have to comply with  
38 all the things. To me that's...my personal opinion that's the best use of the land 'cause of its  
39 proximity to the contrary to Councilmember Cochran who says it's a...(inaudible)...from the  
40 land. It's not related to the coastline.  
41

42 Ms. Gomes: Right and of course I mean that's a two-year roll of die though because we change  
43 council members every two years possibly. But another thing that I just wanted to state was in  
44 regards to open space, who would care for this open space, would it be the homeowner's  
45 association or would it be the County?

1  
2 Mr. Frampton: It wouldn't be the County and the County owns a lot of land right now and  
3 whether or not the County is better steward or a private landowner is a better steward I think is  
4 probably arguable.

5  
6 Ms. Gomes: Thank you.

7  
8 Vice-Chair Higashi: Commissioner Hudson?

9  
10 Mr. Hudson: Thank you Chair. I just want to make a comment. The Planning Commission is  
11 here to consider SMAs. Yes, we take into consideration private ownership, but private  
12 ownership has to be responsible which is why they come before us to get an SMA. So to  
13 narrowly and specifically address that yes, you're private homeowner but you can't build a six-  
14 story condominium on the beach regardless if it's your property or not. If that were the case  
15 then we would have no room for...(inaudible)...we could just dissolve. So that being said, we  
16 have to consider the SMA. Now and this I agree with Rory. When there was no funding from  
17 the Council everything changed. I agree with you that's exactly what you said. And if  
18 everything's changed why are we chopping up an SMA, why don't we put it all in a circular filing  
19 cabinet and start the process again? In this way we don't have any loose ends and I like your  
20 expression.

21  
22 Ms. Gomes: You should have seen your neighbors. Yeah, Commissioner Carnicelli's  
23 expression.

24  
25 Vice-Chair Higashi: Commissioner Carnicelli?

26  
27 Mr. Carnicelli: I guess my first question is do you want to address that? Hitting the reset  
28 button?

29  
30 Mr. Frampton: No I don't really. And the project's been developed.

31  
32 Mr. Carnicelli: So Rory here's what I guess I'm trying to go to 50,000 feet right now and what I  
33 get with you know the Council's tasked with what they tasked with. They write checks you  
34 know. We're tasked with what we're tasked with and that's protecting open space, shoreline  
35 views, things like that. And so there's a little bit of fear right now you know about okay, what  
36 could this be? Like we thought we knew what it was going to be and then it's now and now  
37 we're like oh, insert expletive, what's it going to be? So I think that part of what the fear is right  
38 now is saying okay, we're talking to a developer, what does a developer do? A developer  
39 develops. So you know, is what I can see happening here is...and I don't even know if we're  
40 gonna be able to do this today unfortunately I mean it's...is work...'cause what I want to do is  
41 not just...I mean, not just say take these out even though they do need to be addressed. This is  
42 where I'm now is to work with the Department on language whether it's us right now or whether  
43 it's, you know, between now and the next meeting working on language that says something to  
44 what we've kind of talked about where the County still has, you know, can still buy this by  
45 another reso, and if they do that that road then you know goes and does what we said it did  
46 before. And then the other part is I think that I would like to also just because the



1 representation's been made put the condition that says that no habitable dwellings will exist on  
2 this lot. Just put that condition in there.  
3  
4 Mr. Frampton: I want to respond to that.  
5  
6 Vice-Chair Higashi: Commissioner Canto?  
7  
8 Mr. Frampton: Can we just take 30-second break?  
9  
10 Mr. Carnicelli: Sure.  
11  
12 Vice-Chair Higashi: You want to ask your question while they're talking.  
13  
14 Mr. Robinson: ...(inaudible)...with them.  
15  
16 Mr. Spence: Okay, on the record.  
17  
18 Mr. Robinson: Yes. Director, if they wanted to put a fruit stand on top of this property would  
19 they already have the SMA approval for it or would they have to come back in?  
20  
21 Mr. Spence: It depends. Well, we're talking and distracted and Kurt...  
22  
23 Mr. Robinson: We're still in...  
24  
25 Mr. Spence: Okay, the question was if they wanted to put a fruit stand on the property could  
26 they? We would want to look at an assessment to see really what an SMA Assessment is to  
27 determine whether they...it's a development or not, whether it get the permit or not. It may or  
28 may not be exempt, but under the current zoning, yes they could. And if it...  
29  
30 Mr. Robinson: Well, they already have an SMA so would they have to get another SMA just for  
31 that structure?  
32  
33 Mr. Spence: Yeah, they would have to come to us.  
34  
35 Mr. Robinson: Come back in.  
36  
37 Mr. Spence: They would have to apply with the Planning Department with an Assessment.  
38  
39 Mr. Robinson: Okay.  
40  
41 Mr. Spence: And would just mention you think of the kinds of structures that could go on a  
42 public park, you can have bathrooms, you can have...I mean, because the argument is, you  
43 know this was intended for park and open space and stuff like that. At a regular park you would  
44 expect bathrooms, you would expect, you know kind of—  
45  
46 Mr. Robinson: Hales.

1  
2 Mr. Spence: --hales, different kinds of structures, different kinds of uses that are consistent with  
3 the park use. Within the Ag District, most of the time you're talking about structures that how  
4 much size wise they're not that much different. Appearance wise, function wise very different,  
5 but a roadside stand as you were...I don't know if this is a public...if this is a private road and  
6 there's no access, they could put up a farmers market or roadside stand. Not too many people  
7 would have access to it though just the owners within that lot so that's kind of...I doubt if that  
8 would go anywhere.

9  
10 Unidentified Speaker: It would keep it open.

11  
12 Mr. Spence: But those—

13  
14 Mr. Robinson: Yeah, they would have access just like how the pumpkin patch opens up their lot  
15 so people can drive into the farm. Sorry, Chair.

16  
17 Mr. Spence: But those kinds of structures would be consistent with what you would see size  
18 wise, massing wise would be about the same as you would see in a park.

19  
20 Vice-Chair Higashi: Okay, Rory you have the floor.

21  
22 Mr. Frampton: I have a couple comments if I may? One Commissioner noted that all the...kind  
23 of insinuated that all the County Council does is write checks. The County Council doesn't write  
24 checks. The County Council, well in addition to writing checks there's a legislative body, they  
25 adopt the Island Plan, they implement the Island Plan, they set zoning. They're the body that  
26 determines the use of the land. A private landowner can't do a six-story apartment project on  
27 his property because the zoning wouldn't allow it. Who sets the zoning? The Council sets the  
28 zoning. There are laws in place that would prevent all that from happening and you can use  
29 your land in accordance with what the zoning allows and the environmental permits allow.

30  
31 So you know, we were...to address your comment we were willing to do, you know, allowing  
32 the use of the road to access Lot 12 if the County were to purchase it, but I think at this point I  
33 think we've made our representations that it's not gonna be owned by the property and we'd be  
34 willing just to withdraw our request for amendment.

35  
36 Vice-Chair Higashi: Okay, Commissioner Canto?

37  
38 Mr. Spence: Clarification first. Rory is that...you're withdrawing?

39  
40 Mr. Frampton: Yes. Yes, so on behalf of the landowner we'd like to withdraw our request to  
41 amend the permit conditions.

42  
43 Mr. Spence: Okay, but —

44  
45 Mr. Frampton: But we do for the record want to make sure that we accurately represented that

1 it's going to be privately owned and not owned by the County and that's about it. And I don't  
2 think it requires an amendment to the conditions.

3

4 Mr. Spence: So both the conditions are gonna stay as they are?

5

6 Mr. Frampton: Yep.

7

8 Mr. Spence: Okay.

9

10 Ms. Canto: All right, then I have nothing to say.

11

12 Mr. Spence: Commissioners this discussion is moot.

13

14 Vice-Chair Higashi: Okay, I think we've kinda burned out all of the options and suggestions.  
15 Does the Commissioner have any—

16

17 Commission Members: He withdrew.

18

19 Mr. Robinson: No more, he withdrew.

20

21 Vice-Chair Higashi: What's that?

22

23 Mr. Robinson: He withdrew. So next topic.

24

25 Vice-Chair Higashi: Okay.

26

27 **After Commission discussion, the applicant withdrew his request requesting the deletion**  
28 **of Condition Numbers 17 and 20 of the previously approved Special Management Area**  
29 **Use Permit for the Makila Ranches Phase 2 Agricultural Subdivision.**

30

31 Mr. Frampton: I just want to thank you. I know you guys are all...have a lot of...this is all  
32 coming from the heart so thank you very much.

33

34 Vice-Chair Higashi: Director?

35

36 Mr. Spence: Okay, Commissioners we're on Item I, Acceptance of the Action Minutes of March  
37 28, 2017, and Portion of January 24<sup>th</sup> meeting, Item E-1.

38

39 **I. ACCEPTANCE OF THE ACTION MINUTES OF MARCH 28, 2017 MEETING AND**  
40 **PORTION OF THE JANUARY 24, 2017 MEETING, ITEM E-1.**

41

42 Mr. Hudson: Move to approve.

43

44 Mr. Carnicelli: Second.

45

46 Vice-Chair Higashi: Moved and seconded. All those in favor?

1  
2 Commission Members: Aye.

3  
4 **It was moved by Mr. Robinson, seconded by Mr. Carnicelli, then**

5  
6 **VOTED: To Accept the Action Minutes of the March 28, 217 Meeting and**  
7 **Portion of the January 24, 2017 Meeting, Item E-1.**  
8 **(Assenting – K. Robinson, L. Carnicelli, L. Hudson, P. Canto,**  
9 **T. Gomes, C. Tackett, S. Castro)**  
10 **(Excused – S. Duvauchelle)**

11  
12 **J. DIRECTOR’S REPORT**

13  
14 **1. SMA Minor Permit Report**

15  
16 **2. SMA Exemptions Report**

17  
18 Mr. Spence: Okay, Item J, Commissioners you have as a part of each one of your agendas we  
19 send to you the SMA Minor Permit Report and the SMA Exemptions Report and if you have  
20 questions on those we can discuss those. Normally you just acknowledge receipt of them.

21  
22 **3. Discussion of Future Maui Planning Commission Agendas**

23  
24 **a. April 25, 2017 agenda items**

25  
26 Mr. Spence: Clayton has a memo. Everybody this is Clayton Yoshida, he is the division head  
27 for the Current Planning Division. Thank you, sir. And normally what Clayton does, one of the  
28 many things that he does is he hands out...he gives us a memo of what’s gonna be coming up,  
29 what’s scheduled for the next Commission meeting. So next meeting you have three public  
30 hearing items, a SMA Permit, Kamaole Grande, so a development permit. Mr. Kelly O’Kief  
31 requesting a short-term rental home permit in Paia or Kuau. And then Christopher John  
32 ...(inaudible)...requesting a short-term rental home permit to operate the Hoaloha Hale, two  
33 dwellings, short-term rental home permit. Then number B, we’re gonna review an  
34 SMA,...(inaudible)...review and approve an SMA Management Area Settlement Agreement  
35 with the Mahinahina property. Basically they had some violations and we’ll get into what those  
36 were, but your rules say if we have a settlement agreement, if we have a negotiated settlement  
37 agreement for SMA violations you authorize the Planning Director to negotiate but it comes to  
38 the Planning Commission for final approval. You may say the Planning Director was ---

39  
40 Ms. Gomes: Off his rocker.

41  
42 Mr. Spence: Yes, off his rocker, he had no idea what he was talking about or you may say, wow  
43 you sure smacked those guys. I don’t know what you’re gonna say. But it will come to you for  
44 review and a final approval.

45  
46 Mr. Carnicelli: Chair?

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Vice-Chair Higashi: Commissioner Carnicelli?

Mr. Carnicelli: So Director I would like to, I don't know if I need to do this via motion or just recommendation, in our last, second to last, either last or second to last meeting it came up this 120-day mark that we hit automatic approval at 120 days. And I would like to schedule a time in a future meeting coming up where we can amend our own rules that it's not just a blanket approval with no conditions on it.

Mr. Spence: Yeah, that's probably a good idea.

Mr. Carnicelli: So I'd just would like to put that on a future agenda ASAP please.

Mr. Robinson: Second.

Mr. Carnicelli: Officially a motion then. I am making a motion to address our own rulemaking in an upcoming agenda.

Mr. Robinson: Second.

Vice-Chair Higashi: It has been moved and seconded that we address rulemaking at the next scheduled meeting which is the 25<sup>th</sup>?

Mr. Carnicelli: No, it's gonna be just...soon.

Vice-Chair Higashi: Just a future.

Mr. Carnicelli: The next one is already set.

Vice-Chair Higashi: Any questions? All those in favor? Opposed?

Mr. Spence: Okay, motion is carried.

Mr. Giroux: We did discuss that internally.

Mr. Spence: I'll have to look for it again.

Mr. Giroux: We'll try to get you some stuff you guys can look at.

Vice-Chair Higashi: So you're gonna have to put it on the schedule

Mr. Spence: Okay.

Vice-Chair Higashi: Any other items we need to?

1 Mr. Spence: You have two other things on your next agenda, you're gonna have an orientation  
2 workshop if we can get through all those public hearings and the settlement agreement. Then  
3 you'll have Director's Report where we've apparently issued an Emergency Permit, Emergency  
4 SMA Permit, we'll inform you of that.

5  
6 Ms. Gomes: I'm sorry, Chair. I just have a question for Corp. Counsel, Director. So the agenda  
7 comes out, I'm sorry I'm not used to because I usually do my agendas. So I...so it comes out in  
8 advance two weeks? I mean usually you have at least prior to, but to amend, but if not this is  
9 the agenda that's coming up in the next two weeks. Is that the procedure that's provided?

10  
11 Mr. Spence: Staff works with the Chair to come up with the agenda.

12  
13 Ms. Gomes: When it comes out every two weeks.

14  
15 Mr. Spence: The way we do the agenda, we notice, we send it out, we post it online.

16  
17 Ms. Gomes: Okay, way ahead than the—you have at least seven days, but yeah, you have at  
18 least a week. So I mean okay, I'm just surprised. I was like when was the agenda coming out.

19  
20 Vice-Chair Higashi: Before we adjourn we'd like to welcome again Commissioners Gomes and  
21 Tackett. Welcome.

22  
23 **K. NEXT REGULAR MEETING DATE: APRIL 25, 2017**

24  
25 **L. ADJOURNMENT**

26  
27 The meeting was adjourned at 4:08 p.m.

28  
29 Submitted by,

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33 Carolyn Takayama-Corden  
34 Secretary to Boards & Commissions II  
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**RECORD OF ATTENDANCE**

**Present**

- Pua Canto
- Lawrence Carnicelli
- Stephen Castro
- Sandy Duvauchelle
- Tina Gomes
- Richard Higashi, Vice Chairperson
- Larry Hudson
- Keaka Robinson
- Christian Tackett

**Excused**

- Sandy Duvauchelle, Chairperson

**Others**

- Will Spence, Director, Planning Department
- James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
- Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)