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**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 23, 2018**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:02 a.m., Tuesday, October 23, 2018, 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.)

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

Mr. Robinson: Good morning everyone. Welcome to Maui Planning Commission. There's been a...there's been a few things that's been added to us these last couple days, testimony and procedural things and we wanna make sure so at this time Commissioners do we have any motions?

Mr. Carnicelli: Chair?

Mr. Robinson: Commissioner Carnicelli.

Mr. Carnicelli: Yeah, Chair I would like to make a motion to go into executive session to discuss our powers, duties, privileges, immunities and liabilities with Corporation Counsel.

Mr. Robinson: Do anyone have a second?

Kahu Hill: Second.

Mr. Robinson: Second, Kahu Hill. All those in favor please raise your right hand. That's six ayes. What that means out there everybody is that we're going into executive session. We're going to ask you to please exit the room. Sorry that you got comfortable, but it's better that we do this now. We're just going to go through make sure we get everything right and do this correctly and we'll bring you guys back in as soon as possible. Thank you.

It was moved by Mr. Carnicelli, seconded by Kahu Hill, then unanimously

VOTED: To Go into Executive Session to Consult with Their Attorney on Questions Pertaining to the Commission's Powers, Duties, Privileges, Immunities and Liabilities, Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

**(Assenting – L. Carnicelli, A. Hill, L. Carnicelli, T. Gomes, C. Tackett,
P D. La Costa)
(Excused – L. Hudson, K. Pali)**

1 *(The Planning Commission recessed the regular meeting at approximately 9:03 a.m. to enter into*
2 *Executive Session. The Planning Commission reconvened the regular meeting at approximately*
3 *9:43 a.m.)*
4

5 Mr. Robinson: Hello everyone, we're back to regular session from executive session. Thank
6 you for your patience. Director, would you like to read the agenda please?
7

8 Ms. McLean: Thank you Chair. There's one public hearing item on the agenda today and that
9 is a request from Mr. Derek Hoyte of D&S Ventures, LLC for a County Special Use Permit for
10 the Camp Maui Project in order to retain, rehabilitate, and improve a historic site with accessory
11 guided tours including a challenge course, museum, ziplines and onsite parking on 17.519
12 acres in the County Agricultural District at 2065 Kauhikoa Road, TMK: 2-7-012: 086 (por.) in
13 Haiku.
14

15 Commissioners this is rehearing on remand based on Judge Loo's decision and as such we will
16 turn this over to Corporation Counsel.
17

18 **B. PUBLIC HEARINGS** (Action to be taken after each public hearing.)
19

- 20 **1. MR. DEREK HOYTE of D&S VENTURES, LLC requesting a County Special**
21 **Use Permit for the Camp Maui Project in order to retain, rehabilitate, and**
22 **improve a historic site with accessory guided tours including a challenge**
23 **course, museum, ziplines and onsite parking on 17.519 acres in the County**
24 **Agricultural District at 2065 Kauhikoa Road, TMK: 2-7-012: 086 (por.),**
25 **Haiku, Island of Maui. (CUP 2015/0002) (P. Fasi)**
26

27 AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE
28 COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND
29 ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES,
30 PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION
31 92-5(a)(4), HAWAII REVISED STATUTES.
32

33 Mr. Robinson: Corporation Counsel.
34

35 Mr. Galazin: Thank you Chair. Thank you Director. So the applicant D&S, counsel if I could
36 cover a few things with you if you wouldn't mind? If you could stand up and identify yourself for
37 the record?
38

39 Mr. Cal Chipchase: Absolutely. Cal Chipchase for the applicant, D&S. Good morning
40 Commissions, Chair, Director.
41

42 Mr. Galazin: Thank you Mr. Chipchase. First things first. I wanted to make sure that I did
43 speak with your colleague, Mr. Goodin yesterday pursuant to Maui County Code
44 19.510.020(a)(5), the Director was to of submitted a report on the application six business days
45 prior to the date of the public hearing. It's my understanding that you have agreed to waive that
46 procedural requirement?
47

1 Mr. Chipchase: That's correct.

2

3 Mr. Galazin: Okay, thank you. I just wanted to...explain the procedures that we're going to be
4 operating under today. We have both the Maui Planning Commission Rules which prescribe
5 some of what our functions, what your functions are under the Code. This is a contested case
6 hearing as has been determined by the Judge's Order and as concurred with by the Department
7 and myself. As such, under the Commission Rules the applicant has the ability to both present
8 the case in ...(inaudible)...first, as well as have the last say, the rebuttal. Counsel would you
9 like to go first or would you rather that Staff give an overview and provide public testimony first?

10

11 Mr. Chipchase: So let me make sure I understand the procedures 'cause I don't believe that
12 what we're following is written out in anything and certainly haven't seen anything in writing. My
13 understanding coming in just based on discussions I think with your office was that the
14 Department would present its report, then we would present and then the public would testify
15 and then we would rebut. That was my understanding coming in here today. If that's different,
16 I'd like to know how and where that's set out in the rules.

17

18 Mr. Galazin: Okay, thank you counsel. So because this is a Special Use Permit and does
19 require a public hearing we are proceeding under Chapter 19.510.020 in the Maui County Code
20 which refers to applications that require a public hearing. So that is why the public is here
21 today. Normally for public hearings for a special use application we would have a staff overview
22 but as I said, the Commission Rules provide that the applicant does have the right to present
23 first and if you choose to exercise that right you may do so. Because it is a public hearing, the
24 public will be allowed to testify. They will be given their normal three minutes. Pursuant to
25 Judge Loo's ruling, the Commission cannot rely on any oral testimony that is not sworn under
26 oath and is not subject to cross-examination. So anybody who wishes to submit public
27 testimony you will be afforded an opportunity to cross-examine them. You'll also be afforded an
28 opportunity to later on rebut any evidence that they have provided. Of course, the Commission
29 will have the opportunity to ask questions of the testifiers as well. To the extent that there are
30 any exhibits that are brought in if the Commission has them, you have them, if somebody wants
31 to show up with an exhibit that the Commission hasn't seen before and that you haven't seen
32 before I will let you take a look at it and ask you how much time you need to review it before it's
33 shown to any of the Commission Members. We'll address it that way. We're operating under
34 Chapter 91, Contested Case Rules pursuant to State Law. Nothing in the Commission Rules
35 obviously is going to abrogate that.

36

37 So just looking at 91-9 which are Contested Case Procedures, the agency decision what we're
38 doing is creating a record. This is both for the Commissioners as well as members of the public
39 as well as for your counsel. The record is going to consider all pleadings, evidence received or
40 considered including oral testimony, exhibits, statements and matters officially noticed, propose
41 findings and exceptions, the report of the officer provided at the hearing, any staff memoranda
42 submitted to members of the agency. If we look forward to Chapter 91-10, the Rules of
43 evidence are relaxed in a contested case hearing. Any oral, oral documentary evidence may be
44 received, but every agency shall as a matter of policy provide for the exclusion of irrelevant,
45 immaterial or unduly repetitious evidence. Agency shall give effect to the rules of privilege
46 recognized by law. Every party shall have the right to conduct such cross-examination as may

1 be required for a full and true disclosure of the facts, and have the right submit rebuttal
2 evidence.

3
4 So counsel that is...those are the rules under which we are operating. And if you fully
5 understand that and are prepared to proceed today, that's fine. I do understand that there is an
6 Objection to Contested Case Hearing Procedures. If you wish to argue that first, we can go
7 ahead and dispose of that. If you understand the procedures that we're operating under and
8 you wish to withdraw the Objection, we can do that. I'll allow you to make that decision. If you
9 need a couple a minutes you can go ahead and do so.

10
11 Mr. Chipchase: Thank you. I don't think I need the minutes, but...and I think that I understand
12 the way you described the procedures today. I don't think that the procedures you described
13 are actually contested case procedures. In a contested case we would not hear the
14 Department's report, we would not hear from the public. I'm not aware of any rule that you have
15 or in Chapter 91 that allows the public testify in a contested case proceeding. What we would
16 have is evidence submitted by the parties to the contested case. The only party to the
17 contested case is D&S and that's the only party that should be submitting evidence in the
18 contested case. So with respect we don't withdraw our objection. And I can cover that in an
19 opening statement or we can take that separately it's really your election.

20
21 Mr. Galazin: So Chair I would suggest at that point that we...if it's okay with you that we allow
22 the applicant to present their Objection to the Contested Case Procedures at this time?

23
24 Mr. Robinson: I would like, I would like to see if you could explain one more time to the
25 applicant of why there's public testimony and why this is not a standard contested case like he
26 asked. I want to make sure that we're all on the same page and we understand what's here and
27 what's happening.

28
29 Mr. Galazin: Well, Chair they have submitted this objection and they are allowed to argue it.
30 I've given them a brief overview, they still wish to argue their Objection and have it considered.
31 So it is something that you are going to hear and dispose of.

32
33 Mr. Robinson: Okay.

34
35 Mr. Galazin: So I will let them go ahead and then to the extent that you have questions for me
36 or for the movant ...(inaudible)...question then we can deal with it at that point.

37
38 Mr. Robinson: Okay. And you're fine with that correct?

39
40 Mr. Chipchase: I'm fine with proceeding with our Objection Chair if that's—

41
42 Mr. Robinson: Okay, so it's...before we start with that proceeding, I'd like to introduce who we
43 have here on our Planning Commission today. We have Commissioner Kahu Hill.

44
45 Kahu Hill: Aloha kakahiaka Chair.

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47 Mr. Robinson: Commissioner Lawrence Carnicelli.

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Mr. Carnicelli: Good morning Chair.

Mr. Robinson: Good morning. Commissioner P Denise La Costa.

Ms. La Costa: Aloha Chair.

Mr. Robinson: Good morning. Commissioner Stephen Castro.

Mr. Castro: Good morning Chair.

Mr. Robinson: Commissioner Christian Tackett.

Mr. Tackett: Good morning.

Mr. Robinson: Good morning. And Commissioner Tina Gomes. And of course, we have the Deputy Director and our Corporation Counsel with us.

Mr. Galazin: Director.

Mr. Robinson: I apologize. We have the Planning Director with us, Michele.

Mr. Galazin: ...demoted Chair.

Mr. Robinson: I apologize this will be my last meeting. Sorry, sorry, I apologize. Please proceed sir.

Mr. Chipchase: Will do Chair.

Mr. Robinson: And could you please, you know for minutes reasons can you please restate your name and we'll kind of start it clean. That way kind of break off that introduction area. Thank you.

Mr. Chipchase: Thank you Chair. Good morning, my name is Cal Chipchase, I represent the applicant, D&S. This is the third time that we've been before the Commission on this application and I see a number of new faces and so if the Chair will allow me as we discuss the Objection that we filed I'll give a little bit of the history of how we got here and then sort of save where we're going for after the Chair disposes of or the Commission rules on our Objection.

The applicant, D&S and its lessee operate a guide tour on a property and he has a zipline. And until 2014 when this applicant was cited of a Notice of Violation for operating a zipline, I'm not aware of any permit the County has ever required the operation of a zipline on ag land and that's what we have here. It's not a residential subdivision. This is ag land. And under the Code, principal use of ag land can include agricultural activity such as livestock and farming, but it's not limited to that. But also includes ag land preservation, planting, maintaining, soil nourishing crops, crops that contribute to the environment, crops that aren't invasive and it restore land to its prior agricultural use. A principal use can also include historic preservation,

1 retention, and use of a historic site. Those are both principal uses. You don't need any permit
2 from this Commission or any discretionary permit at all to engage in that.

3
4 As an accessory to either of those uses or to farming or to raising cattle you can conduct a
5 guided tour and that guided tour can include mechanical element like a zipline. And until 2014
6 the County had always and you'll see evidence of that if we proceed today as we go forward
7 into future days, always allowed those ziplines, those guided tours as accessory to a principal
8 permitted use, to the agriculture, to the farming or in our case historic preservation in the
9 agricultural land conservation.

10
11 In 2014, the Department cited the applicant for its tour. As I say, as far as we can tell the first
12 time that's ever happened. We went to the Department and we said, we don't think that we
13 need a permit for this activity. We think that it is a permissive permitted accessory use to
14 permitted principal uses. And we don't want to fight that. So we will voluntarily come before the
15 Planning Commission and request a Special Use Permit. We will ask for it. And when we ask
16 for it, when we do that, you stay the Notice of Violation proceedings 'cause they'd be resolved if
17 we get a permit we don't have to fight out whether a permit's required. You'll let us come
18 forward even though we're operating the property. You won't say you have to stop before you
19 can come forward for a permit and we'll proceed that way and so we did, we did.

20
21 We proceeded that way and in July 2016, presented to the Commission many different
22 members, but presented to the Commission our application for a Special Use Permit. As part of
23 that application it wouldn't matter what the principal use is. You wouldn't have to find that the
24 principal use is historic preservation or agricultural ag land preservation. The whole point of the
25 permit is to presume it's not and just come in as a special use by this agreement with the
26 Department that we'll do this, we won't fight out what the County Code actually requires and
27 whether we've actually...(inaudible)... So we did that.

28
29 And when we came before the Commission in 2016, the Department supported the application.
30 Recommended approval of the application in 2016 as an appropriate special use of agricultural
31 and in presenting that to the Commission, the Department specifically found that the zipline is in
32 contenance with the goals, objectives and policies of the State Plan. It's what the Department
33 found and represented to the Commission that the zipline is permitted in the State Agricultural
34 District, that operation of the zipline while preserving historic artifacts and area is in contenance
35 with certain...(inaudible)...themes of the Countywide Policy Plan. That the zipline is in
36 contenance with the general intent of the vision statement of the Maui Island Plan. That is
37 zipline is in contenance with the community plan. That the principal use of the property is
38 historic restoration, rehabilitation, and improvement and that the accessory use of the property
39 is guided zipline tours. That's not, that's not me telling you that. That's what the Department
40 told the Commission in 2016. The County recommended approval of the application and we
41 came here before the Commission on our application and that report from the Department. No
42 other party to the proceeding. It was a contested case proceeding as Judge ruled, Judge Loo
43 ruled and the Department and Corporation Counsel agreed.

44
45 And a contested case proceeding is like a trial. It's an agency trial. The Court subscribe it as a
46 trial like environment. And when you're in a trial like environment when people's rights, the
47 applicant's rights are involved there's a high degree of due process that's required. A due

1 process means that the evidence among other things, the evidence that you consider has to
2 come from a party to the case. That's what the Commission considers when determining,
3 reaching a decision in a contested case proceeding.

4
5 In 2016, unfortunately that's not what happened. Instead the decision was based entirely on
6 public testimony, unsworn public testimony and exhibits that were provided by the public that
7 day. The application was denied exclusively based on that testimony. Nothing cited in the
8 Commission's decision involved the evidence submitted by the applicant or the recommendation
9 by the Department which again as I say, was to grant the permit. So we appealed that decision
10 and we went up to Circuit Court on it and the Circuit Court held that the Commission had denied
11 D&S due process that this wasn't really a contested case. That it was a blend of contested case
12 and public hearing and that the evidence that the Commission relied on was inappropriate and
13 so the court vacated it and sent it back.

14
15 The Court said in its order and I'll quote it for the Commission, "The Commission's failure to
16 distinguish between Chapter 92, Public Testimony and Chapter 91, Evidence, and its failure to
17 adhere to the proceeding safeguards required in HRS Chapter 91, Contested Cases resulted in
18 a violation of D&S's rights to due process because the decision was reached on a
19 lawful...because the decision was reached on unlawful procedure, the decision is invalid." So
20 the Court sent it back to the Commission in 2016. After that came down we all knew we would
21 come back before the Commission for rehearing in a continued Chapter 91 proceeding. It is still
22 Chapter 91 proceeding. It is still a contested case.

23
24 We were told that in light of the judge's decision which really...take a short step back, the
25 Commission's Rules do provide for contested case procedures, but the Commission's Rules are
26 structured around a two-party contested case, someone intervenes and that's when they
27 according to their counsel and according to your decisions that's when they're triggered. The
28 Courts have held for about 12 years now that one party makes a contested case. So your
29 Rules don't really align with what the Court say you need to do in contested case procedures
30 and so we were told on remand that you would adopt new rules. That there would be new rules
31 to address these single party contested cases where no one has intervened or no one has been
32 granted because they're just as much contested case as a two-party. If somebody intervened
33 and was a party to this just as much as a contested case as we have here today, no difference
34 between them, exactly the same kind of procedure. And so we were told that the Commission
35 would adopt new rules and we were told that that we would have an opportunity to review and
36 comment on those rules before they were adopted. And we said great. We said great because
37 as I said to the Commission back when it was adopting the last decision we only want to do this
38 once. Let's just do it once and do it right. Let's just follow all the right rules, all the right
39 procedures, let's not rush it. Let's just do it the right way and then you make your decision. You
40 guys have your jobs to do, I have my job to do, I understand, right but we have to do it the right
41 way. We have to base it on evidence from a party in the proceeding. And so we're happy to
42 have an opportunity to look at those rules, happy to be a part of a rule adoption procedure and I
43 have those representations in writing and we'll introduce them as part of this proceeding if we
44 go forward but that never happened. We've never seen a copy of any rules that govern this
45 procedure. We're not aware of the Commission adopting any rule, going through its rule making
46 procedures, goes up to the Mayor, you know, not aware of any of that ever happening in this
47 case.

1
2 Instead we were told maybe two weeks ago that the procedure would be as I described at the
3 beginning that the Department would present, that we would present, that then the public would
4 have an opportunity to testify, they would be sworn and that then we would have an opportunity
5 to rebut. We were just told that. Nowhere is that found in your rules for contested cases.
6 Nowhere is that found as far as I'm aware anywhere in writing and then we come today
7 prepared for that, we object to it because we think that's inappropriate procedure, then we come
8 today and are told the procedure is even different from that still. Not only different from that but
9 there are options which way we can go in how the contested case hearing is conducted and that
10 there are a bunch of other nuances that I was totally unaware of that the Commission would
11 consider exhibits that we haven't had an opportunity to review received from the public that I
12 may be given a few minutes to look at them. With respect, Commissioners that is not a
13 contested case proceeding. There's nothing trial like about that procedure. It's trial by ambush.
14 Like we have no idea who is gonna testify today. We have no idea what people are going to
15 submit. We received about 300 pages of documents as late as 9 o'clock last night and were
16 handed still more this morning. That's not how any trial is ever conducted. There's no trial
17 where you don't know who the witnesses are gonna be, where the witnesses are not called by a
18 party they're just members of the public who come and testify. Where you don't know what the
19 documents are that will be used against you and they're certainly not documents that are
20 admitted by any party following any procedure that is set out in your rules. That's not trial like,
21 that's trial by ambush. And so we submitted the objection.

22
23 We tried to avoid some of this by one moving for a hearing officer so that we don't have to deal
24 with these procedural clouds on this matter so that we can take it out of a context in which we
25 run into these kinds of problems and put it before a hearings officer that will follow the
26 prescribed Chapter 91 proceedings and we're doing that separately, the Board of Variances and
27 Appeals has appointed a hearings officer. We have hearings scheduled with that individual and
28 we're following the Chapter 91 procedures and so we moved to do that before this body. That
29 motion was granted in a sense, but you guys appointed yourselves as the hearings officer. So
30 we didn't really avoid the procedural problems that we were trying to settle and fix.

31
32 The other thing that we did was that there was a party that came to us and said hey we may
33 want to intervene. We may want to intervene and be a party to this contested case and we
34 stipulated to it. At least just to two of the parties. We didn't fight it. We said, okay you want
35 to be a party to this proceeding that's fine. We think that's orderly at least, you can have your view
36 expressed and we'll stipulate to it and then clearly we're within the rules governing two-party
37 contested cases even your own rules that as I say haven't caught up to the law but were there
38 squarely in them. And so there's no question as to which procedure we should follow. We have
39 to follow that procedure. The applicant withdrew their motion to intervene so that came off the
40 table. Rejected the stipulation that we prepared and submitted and the application to intervene
41 came off the table. And instead the applicant through counsel, all through counsel has put
42 forward in documents that we just received yesterday and received today what I presume would
43 have been all the same stuff that he would have submitted if he had been part of the contested
44 case procedure. So instead of having the benefit of notice, orderly proceedings, knowing who
45 our witnesses are and knowing what the exhibits are, we just get ambushed by them because
46 the applicant was able to withdraw request to intervene and reject our stipulation and pursue.

1 With respect Commissioners that is not lawful procedure. That is not in any of your rules and
2 that is not Chapter 91.

3
4 And so we do object to the proceeding today and proceeding as has been set out. We would
5 submit as we said in our objection that the proper procedure is a contested case under Chapter
6 91 where the parties are fixed as they have been now, the time to intervene has now passed.
7 Where the evidence received is from a party to that proceeding. Where the witnesses who
8 testify are identified and where the evidence it is to be submitted to the Commission is
9 exchanged and presented as we're the only party to that contested case. We're the only party
10 who should be presenting witnesses, who should be presenting evidence.

11
12 As far as the Chapter 92, Public hearing portion of it, the public is fine to stand up at the
13 beginning of the hearing and say whatever they want to say, but that is not evidence whether
14 sworn or not, where they're subject to cross examination or not that this Commission can
15 consider. Respectfully ask that our Objection be approved or be granted, that the Commission
16 not proceed on unwritten rules, rules that we had no notice of in any material form even in
17 without a ...(inaudible)...until the hearing begins and it would consider testimony from witnesses
18 who have not been identified, who are not on our witness list and documents that haven't been
19 identified and are not on our document list. For those reasons, Chair and Members we do
20 object to proceeding today in the manner that has been proposed.

21
22 Mr. Robinson: Thank you. Corporation Counsel would you like to respond?

23
24 Mr. Galazin: Yes, thank you. Thank you counselor. I just had a couple questions for you. One,
25 do you understand the permit for which you are here today for your applicant?

26
27 Mr. Chipchase: Yes.

28
29 Mr. Galazin: It is a Special Use Permit.

30
31 Mr. Chipchase: Yes.

32
33 Mr. Galazin: That is governed by 19.510.020 in the Maui County Code?

34
35 Mr. Chipchase: I take your representation. I have not checked that, but I will...I'm not disputing
36 it.

37
38 Mr. Galazin: Okay. So 19.510.020 refers to applications which require a public hearing. This is
39 a public hearing and the Commission does in fact have rules that speak to it. And I refer you to
40 Section 12-201-14, in Subsection I, Public hearings are noticed and held as required by law
41 subject to the following: Shall be published, published as required by law and I assume your
42 client did publish a notice of the hearing?

43
44 Mr. Chipchase: True.

45
46 Mr. Galazin: And the time of place was fixed for this hearing?

47

1 Mr. Chipchase: True.

2

3 Mr. Galazin: Okay. The Commission Chair shall conduct the public hearing and shall afford
4 interested persons a reasonable opportunity to be heard and to present evidence and argument
5 against or for the application request. So have you not reviewed that portion of the Commission
6 Rules?

7

8 Mr. Chipchase: As I said counsel your rules have not caught up with the law, right. You have a
9 separate procedure that governs contested cases. In the Commission's...the views of the
10 Commission Rules those contested cases, those procedures only apply when there are two
11 parties. But as the Court clearly held, one party is all it's required for a contested case.

12

13 Mr. Galazin: Sorry, counselor my question was did you review those?

14

15 Mr. Chipchase: Of course.

16

17 Mr. Galazin: Okay.

18

19 Mr. Chipchase: And as I said, they don't match the law, right. They don't...the Commission's
20 Rules because they limit contested case procedures, those safety nets, those trial like things to
21 two-party contested cases are just behind the times. The law for 12 years has been that one
22 party enough to have a contested case and all we've asked is that since we are a contested
23 case, since everyone agrees we're a contested case we be treated like a contested case and
24 not have rules sort of made up ad hoc to apply to our situation. And so that is the nature of my
25 objection and I would ask again that we not proceed.

26

27 Mr. Galazin: Okay. So counselor as a follow up you understand that regardless of whether the
28 Commission Rules have caught up with the law as you say that the agency is bound by
29 Chapter 91?

30

31 Mr. Chipchase: It certainly is.

32

33 Mr. Galazin: Okay. And to the extent that Chapter 91-10, the Rules of evidence and official
34 notice specifically provides that any oral or documentary evidence may be received but that the
35 agency may...shall as a matter of policy provide for the exclusion of a relevant, immaterial or
36 unduly repetitious evidence?

37

38 Mr. Chipchase: Of course counsel but it contemplates that you're a party to the contested case.

39

40 Mr. Galazin: I'm sorry the word party does not appear in there but I will back up just a little bit
41 here and go to 91-9 which again speaks to the procedures in a contested case and the record
42 itself which we are hoping to create and much as you do the Commission wishes to create a
43 clean record regardless of the Commission's ultimate decision on the application I think we all
44 are in agreement that we want to have something that is procedurally sound. The record itself
45 is going to include all the pleadings, motions, evidence received or considered, proposed
46 findings exceptions, the report of the officer presiding at the hearing, the staff memoranda, and
47 this is a public hearing. So this is not a Sunshine Law issue. This is actually an issue of the

- 1 County Code, following the County Code, Chapter 19.510.020 which applies for every single
2 Special Use Permit that ever comes before this Commission. So at that point, Commissioners I
3 don't know if you have any more...if you have any direct questions for counsel, you can ask
4 him. If you have any questions for me, I'm happy to answer them as well.
5
- 6 Mr. Robinson: Commissioners do you have any questions for the counsel at this time? I have
7 one question for you.
8
- 9 Mr. Chipchase: Yes Chair.
10
- 11 Mr. Robinson: In hearing your...in hearing your wish for how this would to be operated with be
12 it one party and a contested case, if that were to happen what happen once that contested case
13 is done?
14
- 15 Mr. Chipchase: So Chair...and if you allow me I'll back up and sort of describe how I think—
16
- 17 Mr. Robinson: We're pressed for time, but I mean this is quick question.
18
- 19 Mr. Chipchase: Understand.
20
- 21 Mr. Robinson: So in a contested case, what happens after a contested case?
22
- 23 Mr. Chipchase: So at the conclusion of a contested case the parties to it submit findings of fact,
24 conclusions of law, and proposed decision and order.
25
- 26 Mr. Robinson: And who would they submit that to?
27
- 28 Mr. Chipchase: If you had a hearings officer to the hearings officer. If the Chair acted as the
29 hearing officer to the Commission.
30
- 31 Mr. Robinson: Okay, so after contested case and had a independent hearings officer and they
32 had a conclusion then since it's still a permit it has to go wouldn't it still come back to this
33 Commission and would it then become a public hearing. And if that is so is the case—
34
- 35 Mr. Chipchase: No Chair.
36
- 37 Mr. Robinson: No?
38
- 39 Mr. Chipchase: It is a public hearing, but it's still part of the contested case and so—
40
- 41 Mr. Robinson: There's a contested case and the contested case with the one party and a
42 independent if it wasn't us hearing it would hear this—
43
- 44 Mr. Chipchase: Yes Chair.
45
- 46 Mr. Robinson: It would then bring the facts to us which it have many times before because
47 we're on the commission and this is what we do—

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Mr. Chipchase: Yes Chair.

Mr. Robinson: And then, then the public hearing then happens again with the findings of fact, and your wish to try to do it all one time and do it fast is what we want to do too and I think that's what we're trying to do and I understand your...I understand your wish that it could be a certain way but we think this is the fastest way or at least that's what has been the commission and the best way to get things done is when something...a verdict is done, usually people accept it. When people don't want the verdict that's accepted it's never done one, it's gonna be done second, third and different boards. And so that's why we're here. We're here to hear it again and do it that way. And I just wanted to make sure you understood that 'cause I want you guys to understand, I want you to understand that we're not trying to side procedures, we're not trying ad hoc you, you know, we got this this morning too. I believe Corporation Counsel wants to make sure that you're comfortable. If you're not comfortable now, you still have the right to say you're not comfortable. You still have the right to talk and defer and see if you want to do something else if you're not ready to proceed. And we want to make sure that you guys are comfortable and ready to proceed after this point.

Mr. Chipchase: Well so Chair if I may just completely respond to your question. The Commission absolutely would adopt the findings and recommendations of the hearings officer if you had one or reject them or amend them that's your prerogative and there would be public testimony as a hearing but you couldn't base your decision on anything the public said 'cause it wouldn't have been part of the contested case and the contested case indeed would have been closed and findings and conclusions would have been prepared and submitted. So while the public is of course free to testify at any public hearing they're not free to testify as part of a contested case and this Commission is not free to consider their testimony as evidence and that's, that's the problem Chair and so that's where we go wrong. And so, I mean candidly we're not comfortable with the procedures. We don't agree with them. We're prepared to proceed if the Commission forces us to proceed on these procedures. And I know everybody is trying to get it right. You have a great counsel. I don't think that anyone is intentionally and the Corporation Counsel is always trying to follow unlawful procedure and you have to listen to your attorney I understand that. I just respectfully submit as I did a couple of years ago that the procedure of following is not the right one and I would much rather do the right one and have to take it up and come back and do it again. That's our entire position on the procedural side of it. So we're not comfortable, we don't want to proceed on these basis, these unwritten ad hoc procedures that have been explained to us just this morning. We want to proceed under the rules for contested cases as set out in the Commission's Rules.

Mr. Robinson: Commissioners any other questions? Commissioner Carnicelli.

Mr. Carnicelli: I have a question for Mr. Galazin. So it just seems as though what's being discussed right now is, we're trying to say that okay, this is a contested so then therefore it's not a public hearing and it just seems like we're conflating the two. And if you could speak to the difference between 91 and 92 and where it is that we're following right now?

Mr. Galazin: Thank you Commissioner Carnicelli. So Chapter 92, colloquially referred to as the Sunshine Law is a law that basically provides any time there is an item that is on a commission

1 agenda for any board and commission, you know state, county, whatever level, if it's on an
2 agenda then the public has a right to come and provide public testimony limited to you know
3 reasonable time period usually it's three minutes.

4
5 What you have before you is a contested case and I think...counsel for the applicant and myself
6 we both agree that is a contested case. What you also have is the fact that this is a public
7 hearing pursuant to a section of the County Code which requires a public hearing to be held
8 before this permit can be granted. You cannot grant this permit without holding a public
9 hearing. So to the extent that there is a public hearing and people are testifying it's not a
10 Sunshine Law issue. Whether it's noticed or not it's not an agenda item issue. This is simply a
11 matter of following the requirements of the County Code that you have a public hearing and that
12 evidence what Judge Loo ruled was the fact that the people who testified at the last public
13 hearing were not first sworn in, were not subject to cross examination by the applicant and the
14 applicant asserted that they were not able to submit rebuttal evidence and the applicant also
15 argued that they did not believe that the Commission was going to rely on anything that the
16 public said. I want to make sure that they understand this time this is a public hearing, that
17 members of the public are going to be able to testify, that the applicant is going to have the
18 opportunity to cross examine them, the applicant is going to have the opportunity to provide
19 rebuttal evidence and that it will become part of the record because this is not a Sunshine Law
20 issue. This is not a question of members of the public showing up to testify on an agenda item.
21 This is an issue of a public hearing which is required for a Special Use Permit.

22
23 To the extent that there are rules prescribed what happens that's within 19.510.020 that's in one
24 section of your Commission Rules and it's very, very clearly laid out in Chapter 91, the
25 contested case procedures in State Law. This Commission is bound by those statements in
26 State Law regardless of what rules you may or may not have adopted or will adopt in the future
27 you cannot adopt anything that is in conflict with the State Law. You must comply with State
28 Law. Where your rules do not consider a scenario then the default is to follow what the State
29 Law says and to follow what Judge Loo has said. State Law says this is how you conduct your
30 hearing. Judge Loo said if you're gonna accept public testimony it can't be unsworn, it has to be
31 subject to cross examination, you were wrong to rely on that in making your decision the last
32 time around or the Commission was wrong in making the decision last time around. We are
33 going to remedy that by still holding the public hearing, but following the contested case
34 procedures that are very clearly spelled out in State Law. So if that answers your question?

35
36 Mr. Carnicelli: Thank you. Chair if I might have one more question?

37
38 Mr. Robinson: Yes.

39
40 Mr. Carnicelli: Mr. Chipchase?

41
42 Mr. Chipchase: Yes.

43
44 Mr. Carnicelli: So during your presentation you said this, I just want clarification that your client
45 agrees in order...your client is agreeing that they need to get a Special Use Permit?

46
47 Mr. Chipchase: No. So let me, let me—

1
2 Mr. Carnicelli: So wait, wait, you answer then is no. I asked you a yes or no question.

3
4 Mr. Chipchase: Yes. It's the answer's no. We don't need Special Use Permit.

5
6 Mr. Carnicelli: So you do not need a Special Use Permit is what you're saying?

7
8 Mr. Chipchase: That's correct.

9
10 Mr. Carnicelli: So you didn't say that in your testimony earlier?

11
12 Mr. Chipchase: No. I didn't. But what I explained Member was that by agreement with the
13 County after the Notice of Violation it issued, we went to the County to then former Director,
14 Director Spence and said we don't think we need a Special Use Permit.

15
16 Mr. Carnicelli: No, but you said in your testimony that then you voluntarily were going to come
17 and get this permit.

18
19 Mr. Chipchase: Without waiving our argument that one isn't required. We're doing it—we –

20
21 Mr. Carnicelli: Oh, okay so you are saying that you're going to come do it voluntarily.

22
23 Mr. Chipchase: We are here voluntarily—

24
25 Mr. Carnicelli: Okay.

26
27 Mr. Chipchase: --per agreement with the County.

28
29 Mr. Carnicelli: Okay.

30
31 Mr. Chipchase: That's absolutely right.

32
33 Mr. Carnicelli: Thank you.

34
35 Mr. Robinson: Commissioners do we have a motion on the floor? Does anybody have a motion
36 to either accept?

37
38 Mr. Galazin: And Chair one more question.

39
40 Mr. Robinson: Okay, let's David. Go ahead David.

41
42 Mr. Galazin: Thank you Chair. There's one more issue that I wanted to address in the
43 Objection that Counsel didn't directly raise but is addressed in the Objection anyway and I
44 wanted to make sure that it was clarified. I believe there was a statement within the Objection
45 that this body relied on the opposition to appointment of a hearings officer which was presented
46 on behalf of the Planning Department. As I recall from the last meeting when the motion was
47 made to appoint a hearing officer, the motion was made to appoint the entire Maui Planning

1 Commission the hearing officer. I do not recall there was any reference made to the document
2 submitted by Corporation Counsel on behalf of the Planning Department. I believe that the
3 motion was made pursuant to the definition of a hearing officer contained within your rules
4 which includes...and let me back it up...under 12-201-5, Definitions, hearing officer means any
5 person or persons including the entire commission designated and authorized by the
6 commission to conduct a contested case hearing. End quote. And I believe that was the
7 motion and that was what was voted upon. So although it was not addressed directly by
8 counsel I wanted to make sure that that was clear on the record also. So thank you for allowing
9 me indulging that Chair. You may go back to the motion.

10
11 Mr. Robinson: So what we're looking for is we're looking for a motion to accept or deny the
12 Objection of the counsel.

13
14 Mr. Carnicelli: Chair?

15
16 Mr. Robinson: Commissioner Carnicelli.

17
18 Mr. Carnicelli: I would like to make a motion to deny the Objection to the Contested Case
19 Hearing Procedures.

20
21 Mr. Robinson: We have a motion to object. Do we have a second?

22
23 Ms. La Costa: I second the motion Chair.

24
25 Mr. Robinson: We have a second. P Denise. Would you like to speak to the motion?

26
27 Mr. Carnicelli: Yes, thank you Chair. I do believe that the movant bears the burden of proof in
28 this particular...in the motion and I don't believe that they have fully satisfied the burden of proof
29 necessary to grant the objection. I do believe that we are following procedure as laid out by
30 Corporation Counsel and as necessary by State Law, County Code and Maui County
31 Commission procedure.

32
33 Mr. Robinson: Thank you. Any discussion on the motion? Seeing none, and I actually, I also
34 agree with you. I think person's preference compared to procedure is two different things. I
35 think people have difference preference of procedures but I do think we're following the Code
36 and I'd like to take it to, take it to vote. Director.

37
38 Ms. McLean: Chair, the motion is to deny the Objections to the Contested Case Hearing
39 Procedures.

40
41 Mr. Robinson: All those in...all those in favor of denial please raise your right hand.

42
43 Ms. McLean: Six ayes.

44
45 **It was moved by Mr. Carnicelli, seconded by Ms. La Costa, then**

46
47 **VOTED: To Deny the Objection to Contested Case Hearing Procedures.**

1
2 **(Assenting – L. Carnicelli, P D. La Costa, A. Hill, T. Gomes,**
3 **C. Tackett, S. Castro)**
4 **(Excused – L. Hudson, K. Pali)**
5

6 Mr. Robinson: That's six ayes. Motion has been denied. Director would like to move onto the
7 next agenda item please. David.
8

9 Mr. Galazin: So Chair that would be as counsel has indicated they wish to, elect to proceed first
10 as we discussed yesterday and is their right under the Commission Rules. So if the applicant is
11 ready to go then the applicant may begin their presentation.
12

13 Mr. Robinson: One second for point of order is I heard that they thought that the Planning
14 Department was gonna go first and then second, now is is that an option that we can consider
15 or is that not procedural how things work?
16

17 Mr. Galazin: Thank you Chair. There was an attempt and this kind of goes back to some of
18 what was in the earlier motion that you just voted on. There was a dialogue that took place this
19 summer. There was an attempt to make sure that we were on all on the same page as far as
20 the procedural requirements. I think there was some miscommunication, I think there was some
21 intransigence perhaps on both sides regarding how we would arrive at the proper procedures. I
22 spoke with counsel, co-counsel personally over the phone yesterday to explain that generally in
23 a contested case whether you know if it's a single party contested case generally we do a staff
24 overview in order to orient both the members of the public and the commissioners to the
25 application and then turn it over to the applicant. However, I think we're all pretty clear what is
26 going on here and the applicant pursuant to your Commission Rules has the right to both open
27 and close on the application and so I believe they have elected to avail themselves of that right.
28

29 Mr. Robinson: Counsel is that your understanding?
30

31 Mr. Chipchase: I'm all coming to this today. It's all new descriptions to me today of how we're
32 going to proceed. And so I as I understand it now the Department will not present. We will
33 present our evidence so I assume the contested case has begun at some point.
34

35 Mr. Robinson: Well yeah so it's what Corp. Counsel says, you guys have the right to open and
36 to close. You can waive your right to open and just present at the end and close but that's your
37 choices and we're still offering you those choices right now.
38

39 Mr. Chipchase: I see so...
40

41 Mr. Robinson: If you'd like a five-minute recess to confer to make sure that you're comfortable
42 with it we can do that as well.
43

44 Mr. Chipchase: Why don't we take that Chair? Let me try understand what we're doing.
45

46 Mr. Robinson: Everyone will take a quick five-minute recess. Thank you.
47

1 A recess was taken at 10:27 a.m., and the meeting was reconvened at 10:40 a.m.

2

3 Mr. Robinson: The Maui Planning Commission is now back in session. Director.

4

5 Ms. McLean: Thank you Chair. I believe that the applicant asked for the Department to give its
6 presentation first is that correct?

7

8 Mr. Chipchase: Correct.

9

10 Ms. McLean: Yes, and Paul Fasi is the project planner.

11

12 Mr. Paul Fasi: Good afternoon. The reason we are here today is D&S Ventures who is the
13 applicant is requesting a County Special Use Permit for existing Camp Maui uses, outdoor
14 recreational activities located on approximately 17.5 acres of a 36-acre parcel in the County Ag
15 District, TMK: 2-7-012: 086, Haiku, Maui. The applicant is D&S and they're being represented
16 by PBR Hawaii and Associates and this is a Special Use Permit request seeking approval for
17 existing commercial outdoor recreational activities.

18

19 Land use designations are State Land Use District Ag. Paia-Haiku Community Plan is
20 Agriculture. The County Zoning is Agriculture. In the Maui Island Plan it's part of the
21 undesignated lands.

22

23 So the applicable regulations for this particular permit are Maui County Code 19.510.070. As
24 far as the comments from reviewing agencies there were three from the department...state
25 departments, five from County. There is one TIAR completed. The comments were
26 nonsubstantive at this point.

27

28 There are eight criteria that have to be met for the County Special Use Permit and we'll get into
29 that I don't know at a later date. As far as testimony there's been a significant amount of
30 testimony still being passed out even today and the Department has received several telephone
31 inquiries and a few people did come to the Department to review the record. So that will
32 conclude the Department's report. I'm going to turn it over to the applicant so they can get into
33 their presentation. If there are no questions for the Department, I'm gonna turn it over to the
34 applicant.

35

36 Mr. Robinson: I apologize. Do we have any questions for Paul at this time? Okay, seeing
37 none, thank you Paul.

38

39 Mr. Fasi: Thank you.

40

41 Mr. Robinson: Counsel.

42

43 Mr. Chipchase: Thank you Chair. So Mr. Chair, I will provide an overview of the evidence that
44 we're going to present today. I understand this is the contested case. I understand that we're in
45 the contested case hearing now and so I'm gonna give an overview of the evidence that we'll
46 present as part of that contested case and then I'm going to turn it over to my co-counsel,
47 Mr. Goodin and you don't have to hear from me again the rest of today.

1
2 Mr. Robinson: Is we'd love to hear from all you guys. Please always introduce yourself for the
3 minutes. We want to make sure that everybody is as we're gonna switch to different people that
4 we make sure that it's states.

5
6 Mr. Chipchase: Understood. I'll try to remember to do that each time. My name is
7 Cal Chipchase I represent D&S.

8
9 Mr. Robinson: Thank you Cal.

10
11 Mr. Chipchase: Thank you Chair. So Chair and Members, we come to the substance of why
12 we're here and as I said we were here a couple of years ago on an application that the
13 Department recommended approval of. The only difference between this amended application
14 and the application the Commission heard two years ago was that the original application
15 sought to add an additional feature, an 80-foot tall tower, the zipline. That is not part of the
16 amended application. That was withdrawn shortly after the original hearing and the amended
17 application as it comes to the Commission is just for the elements that are on the ground and
18 existing. No new elements are sought in the application.

19
20 We got into a little bit of a discussion in the beginning about principle and accessory uses and I
21 did that because it's part of the Department's report. I just want to be absolutely clear and I
22 drew a question from the Commission I just want to be absolutely clear about our position and
23 our view of things that if your principal use is set out in the Code as permitted on an Ag District
24 which includes historic preservation and agricultural land conservation you don't need a Special
25 Use Permit. If you have an accessory to that that is set out in Code like a guided tour, you don't
26 need a Special Use Permit. You only come before this Commission for a Special Use permit if
27 you don't have a permitted principal and accessory use. And as I said the Department has for
28 many, many years and in fact all the other examples I can think of allowed zipline tours as a
29 permitted accessory use on Ag land.

30
31 On a Special Use Permit you're looking at entirely different criteria. The Department noted
32 those eight criteria, didn't get into them and so I'll read them to you just so that we have some
33 context for the factors that influence your decision on a Special Use Permit. Under the Maui
34 County Code there are eight requirements for a Special Use Permit. The proposed request
35 meets the intent of the General Plan, the Objectives and the Policies of the applicable
36 community plan of the county. The proposed request is consistent with the applicable
37 community plan land use map of the county. The proposed request meets the intent and
38 purpose of the applicable district. The proposed development will not adversely affect or
39 interfere with the public or private schools, parks, playgrounds, water systems, sewage and
40 solid waste disposal, drainage, roadway and transportation system or other public requirements,
41 conveniences, and improvements. The proposed development will not adversely impact the
42 social, cultural, economic, environmental and ecological character and quality of the area. The
43 public shall be protected from the deleterious effects of the proposed use. Those are the eight
44 criteria. And as I said a couple years ago, the Department found that we had met all eight and
45 that the...did I miss two, I may have, I'm sorry. That the need for public service demands
46 created by the proposed use shall be fulfilled and if the use is located in the State Agricultural
47 and Rural District as we are, the Commission shall review whether the uses complies with the

1 guidelines established in Section 15-15-95 of the Rules of the Land Use Commission of the
2 State. So those are the criteria and as I say, eight years ago we met them or two years ago we
3 met them all, nothing has changed in the use or operation and I respectfully suggest we still
4 meet them today. It's part of our evidence on that subject.

5
6 You'll hear from a number of witnesses today and as we go forward we have Professor David
7 Callies with us today. He's a professor at the University of Hawaii, Richardson School of Law
8 and an expert in land use and state government. He will talk about principal and accessory
9 uses because they were part of the Department's report. He will also explain just as I did the
10 distinction between uses permitted as of right and uses that require a permit.

11
12 As the Department noted you'll also hear from Ms. Kimi Yuen of PBR Hawaii who is the
13 applicant's planner in this matter. She prepared the application and she is herself an expert in
14 land use planning and permitting. She'll explain the eight criteria.

15
16 We have with us Dr. Mike Dega. He's an expert in archaeology and historic preservation and
17 he will discuss the historic preservation plan for the property. The property is a historic site and
18 there is a preservation plan recognized by the State Historic Preservation...Preservation
19 Division for it.

20
21 You'll also hear from Jaap Eijzenga. He's with SWCA. He's a biologist and an expert in
22 agricultural land conservation, environmental and natural resources management. He'll explain
23 the ag, ag land conservation requirements and discuss the conservation occurring on the
24 property.

25
26 You'll hear from the owner's representatives about the operation. You'll hear from tour guides
27 who participate and accompany visitors through the entire length of the tour. You'll hear from
28 the Department witnesses whom we call about the differences between the current report and
29 prior report. You'll hear about the traffic study that was commissioned showing there's no
30 measurable increase in traffic, about the noise study showing that we meet all applicable
31 Department of Health noise guidelines and then we will close.

32
33 And at that point, Members you will render your decision or rather we'll submit findings of fact,
34 conclusions of law, decision and order to you for you to consider and we'll come back in a later
35 proceeding for you to render your decision. I...as I said earlier you know we all have a job to
36 do. I understand that you're volunteer members of the commission, I respect that. I respect
37 your rules today. We may not always agree on everything and how procedures go, but I do
38 respect what you do and I appreciate your time today. Thank you Chair.

39
40 Mr. Robinson: Thank you Cal. Before we proceed, do you have...I know we have the exhibits
41 here from you and you know you have a lot of people testifying, do you have a...the testifiers
42 and are we allowed to...I mean, is there a way for us to follow along as they testify without us
43 having to write all the notes down as they're...or is most of it should be we can find somewhere
44 in here.

45
46 Mr. Chipchase: It's question and answer form Chair so I hope it's easy to follow. We don't have
47 written testimony of them or for them.

1
2 Mr. Robinson: Okay, but is there any power points or anything...is there any part of the
3 paperwork that's inside or is it just strictly gonna be power point?
4
5 Mr. Chipchase: Both Chair. There's both exhibits that we'll refer to during the testimony and
6 there's power point as well.
7
8 Mr. Robinson: Okay, thank you so much.
9
10 Mr. Chipchase: You're very welcome.
11
12 Mr. Chris Goodin: Hello, I'm Chris Goodin for the applicant. If it's okay, may I present from here
13 so that I can operate the power point?
14
15 Mr. Robinson: Sure. Do you have a pointer, do you need a pointer?
16
17 Mr. Goodin: I don't need a pointer.
18
19 Mr. Robinson: Okay, thank you.
20
21 Mr. Goodin: And so as a preliminary matter I see that you all have the binders. You have our
22 Exhibits and so I'd just like to confirm that those have been received by the Commission in
23 evidence.
24
25 Mr. Robinson: Is we can reconfirm as you go through the exhibits instead of just saying we got
26 all your evidence. We do have the binder and as you go through it we can confirm if that's what
27 you'd like us to do.
28
29 Mr. Goodin: Yes. Well I just initially as a preliminary matter I'd like to move those exhibits into
30 evidence that they're all part of the record as evidence.
31
32 Mr. Robinson: Okay, so moved.
33
34 Mr. Goodin: Thank you. So for our first witness I'd like to call Professor David Lee Callies. He
35 is sitting to my left. Professor Callies could you please state your current occupation?
36
37 Mr. David Callies: I'm the Benjamin A. Kudo Professor of Law at the William S. Richardson
38 School of Law at the University of Hawaii, Manoa.
39
40 Mr. Robinson: Is I apologize, we just want to get you a—
41
42 Mr. Callies: Thank you.
43
44 Mr. Goodin: Thank you Chair. How long have you been—
45
46 Mr. Robinson: I apologize can you we do that one more time the microphone didn't...both of
47 you please speak in the mic.

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Mr. Goodin: Let me start from the beginning.

Mr. Robinson: Thank you.

Mr. Goodin: Professor could you please state your full name for the record.

Mr. Callies: David Lee Callies.

Mr. Goodin: And what is your current occupation.

Mr. Callies: I'm the Benjamin A. Kudo Professor of Law at the William S. Richardson School of Law at the University of Hawaii at Manoa.

Mr. Goodin: How long have you been teaching at Richardson?

Mr. Callies: Just over four years.

Mr. Goodin: And what classes do you teach?

Mr. Callies: I teach the first year course in real property and I teach land use and state and local government law.

Mr. Goodin: As a law professor do you conduct legal research?

Mr. Callies: Yes, various types but for today I'll mention that I conduct research on the interpretation of land use controls both public and private including zoning.

Mr. Goodin: Have you published any books or articles related to land use?

Mr. Callies: Yes, I published or co-authored 20 books and over a hundred articles.

Mr. Goodin: Are you member of any professional organizations?

Mr. Callies: Several. I'm a member of the Hawaii State Bar Association, the American Bar Association, the American Law Institute, the College of Fellows of the American Institute of Certified Planners, American College of Real Estate Lawyers, and the American Association of Law Schools.

Mr. Goodin: Have you held any positions in any of these professional organizations?

Mr. Callies: I have. I'm the past chair of the Hawaii State Bar Association Section on Real Property and Financial Services, past chair of the American Bar Association Section on State and Local Government Law, and past chair of the American Association of Law Schools Section on State and Local Government Law.

Mr. Goodin: We've submitted a copy of your CV. It's marked as Exhibit 10.2. I'm showing you

1 a copy of Exhibit 10.2. Is this a copy of your CV?

2

3 Mr. Callies: It is.

4

5 Mr. Goodin: Have you previously testified as an expert witness?

6

7 Mr. Callies: Over ten times.

8

9 Mr. Goodin: In what subject areas did you testify as an expert witness?

10

11 Mr. Callies: Land use and state and local government including interpretation of zoning
12 ordinances, housing discrimination and eminent domain.

13

14 Mr. Goodin: With that background Chair I would respectfully request that Professor Callies be
15 recognized as an expert in land use and state and local government law.

16

17 Mr. Robinson: That's fine. You know, if you need the laptop can at least testifier stand up and
18 get here...it's hard to see people behind that wire and doing the testimony please? So that way
19 if there's going to be a Q & A if he could be on the podium that would be great.

20

21 Mr. Goodin: Okay.

22

23 Mr. Robinson: I apologize Professor, but I know we're gonna have questions for you so...

24

25 Mr. Callies: Needless to say given what I do for a living I'm comfortable behind a podium.

26

27 Mr. Robinson: Thank you.

28

29 Mr. Callies: Of course that will triple my time speaking but I'm sure you understand.

30

31 Mr. Robinson: I'm sorry, I should have done that earlier.

32

33 Mr. Callies: If I appear to slouch I have some difficulty with glasses and distance, so I'll do what
34 I can yeah, thanks.

35

36 Mr. Robinson: Thank you.

37

38 Mr. Goodin: So Professor Callies could you briefly explain what zoning is?

39

40 Mr. Callies: Yeah, zoning is a traditional local government form of land use control. It's a
41 process of dividing land into zones and that will indicate which certain uses are permitted in
42 each zone. Is this working? Typical examples of zones or districts include residential,
43 commercial, industrial, institutional, agricultural and so forth. The specific zone or district
44 determines whether a specific use is allowed. Some uses are allowed as of right and some
45 uses are allowed conditionally with a permit, a conditional use permit or in this case, a special
46 use permit.

47

1 Mr. Goodin: Professor I'd like to ask you some questions about Maui County Code zoning
2 provisions specifically in the Agricultural District. Are you familiar with those provisions?

3
4 Mr. Callies: Yes, I am.

5
6 Mr. Goodin: I'd like to ask you about how uses are permitted specifically the entitlement to
7 certain uses. Are there different ways a person can be entitled to engage in a use?

8
9 Mr. Callies: Yeah, as I think I mentioned a minute ago, there are two basic ways. The first is a
10 use permitted of right. That's listed as a specifically permitted use in a particular district
11 classification. The second is a use permitted only on condition with a special permit, conditional
12 use.

13
14 Mr. Goodin: Okay, so we have two categories here. Uses permitted as of right and uses with
15 the special use permit. Let's look at the first category, uses permitted as of right. When you say
16 as of right what does that mean?

17
18 Mr. Callies: Those are uses that don't require a special or conditional use permit. If you're an
19 owner of the property or lessor of the property or a lessee of the property you can engage in
20 those uses automatically. You don't need prior approval from the Planning Department, it's the
21 owners right to engage in those uses as matter of law.

22
23 Mr. Goodin: And are there different types of uses permitted as a matter of right?

24
25 Mr. Callies: Yes. There are at least two, the principal use which is listed in the ordinance,
26 applicable ordinance and an accessory use which is also usually listed in the ordinance. Both
27 are permitted as a matter of right without asking for permission to make those uses.

28
29 Mr. Goodin: Okay, let me put up some code definitions that you're referring to. Could you read
30 those for us?

31
32 Mr. Callies: Principal use means the primary or predominant use of any zoning lot. Accessory
33 use means uses that are incidental or subordinate to or customarily used in conjunction with a
34 permitted principal use.

35
36 Mr. Goodin: Okay. Are these pretty typical definitions that you'd find in a zoning ordinance?

37
38 Mr. Callies: Yes they are.

39
40 Mr. Goodin: Okay. In Agricultural District are there specific principal and accessory uses
41 permitted as of right?

42
43 Mr. Callies: Yes, there are.

44
45 Mr. Goodin: Okay. Let me put up the relevant section and this is Section 191.30A.050 and
46 we're specifically looking at Subdivision A for principle uses. And so is this the list of principal
47 uses that are permitted as of right?

1
2 Mr. Callies: Yes, principal uses are permitted of right.
3
4 Mr. Goodin: And so there I've bolded a couple of them we have in point two, ag land
5 conservation. You see that?
6
7 Mr. Callies: I do.
8
9 Mr. Goodin: And then we also have in point 6 what I'll summarize as historic preservation. Do
10 you see that?
11
12 Mr. Callies: Yes.
13
14 Mr. Goodin: Okay. Now there's also a list of permitted accessory uses as of right. Is that your
15 understanding?
16
17 Mr. Callies: Yes, that's my understanding.
18
19 Mr. Goodin: Okay let me put up that section. That's Subdivision B of the same section. Okay,
20 so it's a long list. And I'd like to highlight some of the relevant language which I'll zoom in on.
21 So specifically there we have as listed guided tours, do you see that?
22
23 Mr. Callies: I do.
24
25 Mr. Goodin: Okay. And so if a proposed project satisfies this standards the use would be
26 permitted as of right is that correct?
27
28 Mr. Callies: That would be correct.
29
30 Mr. Goodin: So you wouldn't need a special use permit for these uses is that correct?
31
32 Mr. Callies: That's correct you would not.
33
34 Mr. Goodin: Okay, and so in this matter is it your understanding that the Planning Department
35 has taken the position that the proposed use doesn't meet the standards for use as of right?
36
37 Mr. Callies: As I understand that's correct.
38
39 Mr. Goodin: Now if D&S were to obtain a Special Use Permit here would it moot the issue on a
40 going forward basis?
41
42 Mr. Callies: Yes it would. If you had a special use then it wouldn't make much difference
43 whether the use was a primary use or accessory use.
44
45 Mr. Goodin: Okay. So we've been talking about the first category of permitted uses and those
46 are uses permitted as of right. I'd like to move now to the second category of permitted uses
47 that you mentioned, special uses and these are also set out in the Maui County Code is that

1 correct?

2

3 Mr. Callies: That's correct.

4

5 Mr. Goodin: Okay. Let me put up a slide for special uses. This is a definition in the Code of
6 special uses could you read it for us?

7

8 Mr. Callies: Yeah, special use means a use which meets the intent and purpose of a zoning
9 district but which requires the review and approval of the appropriate planning commission in
10 order to ensure that any adverse impacts on adjacent uses, structures or public services and
11 facilities which may be generated by the use can...I'm sorry...can be and are mitigated.

12

13 Mr. Goodin: Is this a pretty typical definition of what you'd see in a zoning ordinance?

14

15 Mr. Callies: Classic definition of the special use and what it's for. Yes.

16

17 Mr. Goodin: So this definition says that, "a special use is a use which meets the intent and
18 purpose of the zoning district." Does that mean that if a certain use is specifically listed as a
19 special use in the Code by definition it meets the intent and purpose of the zoning district?

20

21 Mr. Callies: That's what, that's what the Code says, yes.

22

23 Mr. Goodin: And does the Maui County Code have a list of special uses permitted in the
24 Agricultural District?

25

26 Mr. Callies: It does.

27

28 Mr. Goodin: Let me put up that section. This is Section 19.30A.060. Is this the list of special
29 uses in the Ag District?

30

31 Mr. Callies: Yes it is.

32

33 Mr. Goodin: Okay. If you could, could you read Paragraph A?

34

35 Mr. Callies: Can I look over...(inaudible)...

36

37 Mr. Goodin: Sure, sure, sure, yeah.

38

39 Mr. Callies: Having a little...The following uses and structures are permitted in the Agriculture
40 District of a special use permit as provided in Section 19.510.070 of this title is obtained, except
41 that if a use described in this section also requires a special use permit as provided in
42 Chapter 20...that's Chapter 205, Hawaii Revised Statutes and if the land is subject parcel of
43 15 acres or less the State Special Use Permit shall fulfill the requirements of this section.

44

45 Mr. Goodin: While we're here, could you also please read the bolded section in Paragraph 7.

46

47 Mr. Callies: Certainly. Number 7 of the permitted use...of the special uses are open land and

1 recreational uses and structures or facilities that do not meet the criteria of
2 Section 19.30A.050(b)(10).

3
4 Mr. Goodin: And from there there's a list of specific uses in that category including
5 skateboarding, camping, bungee jumping, rollerblading, playing fields, is that correct?

6
7 Mr. Callies: That's correct.

8
9 Mr. Goodin: Okay. So open land recreation uses are by definition special uses is that correct?

10
11 Mr. Callies: That's correct.

12
13 Mr. Goodin: And this particular open land recreation use so long as it doesn't fall within one of
14 the listed exceptions in this section 'cause there are listed exceptions is going to meet the intent
15 and purpose of the zoning district is that correct?

16
17 Mr. Callies: That's correct. That's what the ordinance says.

18
19 Mr. Goodin: And that's because it's specifically listed, right?

20
21 Mr. Callies: That's correct.

22
23 Mr. Goodin: Okay, now I want to come back to some of those definitions we talked about
24 earlier, principal and accessory uses. Is there anything in this section that we're looking at that
25 says a special use needs to be a principal use?

26
27 Mr. Callies: No there is not.

28
29 Mr. Goodin: Do the words principal use show up anywhere in this section?

30
31 Mr. Callies: No it does not.

32
33 Mr. Goodin: In your experience does a special use need to be a principal use?

34
35 Mr. Callies: No it does not. The term principal use is irrelevant to a special use application.

36
37 Mr. Goodin: Is there anything in this section that we're looking at now that says that a special
38 use needs to be an accessory use?

39
40 Mr. Callies: No there is not.

41
42 Mr. Goodin: Do the words accessory use show up anywhere in this section?

43
44 Mr. Callies: No they do not.

45
46 Mr. Goodin: Now let's look at these listed special uses. Let's look at Item No. 11, and that's
47 landfills, right?

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Mr. Callies: Yes.

Mr. Goodin: Could a landfill ever be an accessory use to one of the listed principal uses we looked at earlier such as farm or a grazing operation?

Mr. Callies: No it could not.

Mr. Goodin: So let's look at Item No. 5, major utility facilities. Could a major utility facility like a MECO plant ever be accessory to a listed agricultural principal use?

Mr. Callies: No it could not.

Mr. Goodin: Okay now let's look at some of the permitted examples in Item No. 7 and that's the one for open land recreation uses. There's an example for skateboarding. Now let's recall that accessory use is defined as use of land or a building...oh, I'm sorry, well it's a use of land that's customarily, incidental or subordinate to the principal use of the land. Is that correct?

Mr. Callies: That's correct.

Mr. Goodin: And so could skateboarding ever be viewed as customarily, incidental or subordinate to one of the listed agricultural principal uses?

Mr. Callies: No it could not.

Mr. Goodin: Okay. I mean let's go through the specific principal uses that we reviewed. I mean could skateboarding ever be incidental and subordinate to agriculture?

Mr. Callies: No it could not.

Mr. Goodin: Livestock.

Mr. Callies: No.

Mr. Goodin: Historic preservation.

Mr. Callies: No it could not.

Mr. Goodin: So under the Maui County Code does a special use need to be an accessory use?

Mr. Callies: No it does not.

Mr. Goodin: Now let's bring this home to the application here. The special use sought is open land recreation use. Is that your understanding?

Mr. Callies: That's my understanding.

1 Mr. Goodin: And specifically it's a challenge course with ropes and ziplines correct?

2

3 Mr. Callies: That's also my understanding.

4

5 Mr. Goodin: Would you agree that a challenge course with ropes and ziplines is a open land
6 recreation use?

7

8 Mr. Callies: Yes.

9

10 Mr. Goodin: And to get a special use permit does the challenge course with ziplines need to be
11 accessory to another use?

12

13 Mr. Callies: No. Once again, the ordinance doesn't so say and since it doesn't so say it would
14 not be required. You're talking about apples and oranges.

15

16 Mr. Goodin: To get a special use permit does the challenge course need to be a principal use?

17

18 Mr. Callies: No again, it does not. The Code does not so say.

19

20 Mr. Goodin: But could a challenge course be the principle use and still obtain a special use
21 permit for purposes of the Maui County Code?

22

23 Mr. Callies: Sure it could. It doesn't really matter whether it's accessory or principal. The
24 special use ordinance provision doesn't speak to those terms nor should it a principal or
25 accessory. It sets out specific uses including open land recreational uses that don't meet
26 necessarily the criteria of the right section of the use that's what the ordinance said.

27

28 Mr. Goodin: Now, I've shown you previously a copy of the Department's report in this matter
29 that was issued within this last week, right?

30

31 Mr. Callies: That's correct.

32

33 Mr. Goodin: Okay. And you had a chance to review that document, right?

34

35 Mr. Callies: Yes, I have.

36

37 Mr. Goodin: Okay, I'd like to talk about some of the conclusions drawn by the Department in its
38 report. First, I'd like to look at Page 8 of the report in the analysis section. I'll put it up on slide.
39 I'll read a portion of that paragraph. Principal use, the claimed principal use of restoring and
40 maintaining historical significance of the site appears actually to be a secondary use. The
41 primary use of the property as previously mentioned are the ziplines. And so there the
42 Department in analyzing whether a special use...whether there's a special use is bringing in
43 concepts of primary or secondary or principal and accessory uses, right?

44

45 Mr. Callies: Right.

46

47 Mr. Goodin: Is the Department's conclusion here regarding principal and accessory use of the

1 property legally relevant?

2

3 Mr. Callies: No, again it's not. You're talking about two different things. There's no, there's no
4 needful discussion nor does the Code provide nor should it provide that the granting or not
5 granting of a special use permit has anything to do with whether a use is primary or accessory
6 or secondary.

7

8 Mr. Goodin: Let's take a look at Page 10 of the same report, and I think we see the same thing.
9 I'm gonna put it up on the screen. I'll read this portion. The zipline activity should be the
10 "accessory use that is secondary to the principal use. Therefore, unless it can be shown that
11 the zipline and similar activities are accessory to the historic preservation activities the current
12 operations do not meet the intent and purpose of the applicable district." Do you see that?

13

14 Mr. Callies: I do.

15

16 Mr. Goodin: Must a zipline...must the zipline activity be accessory to the permitted principal use
17 in order to obtain a special use permit?

18

19 Mr. Callies: No, as I mentioned before with respect it's not accurate to conclude that a special
20 use needs to be an accessory use. The fact that it's...whether it could interpreted as an
21 accessory use is completely irrelevant to an application for a special use permit. The same
22 thing is true with respect to primary use that that not part of the investigation of whether a
23 special use permit is required or not. The Code is very specific, it lays out the eight principals
24 and those are the only applicable ones and they say nothing about an accessory or principal
25 use. A special use permit application stands on its own subject to that portion of the Code and
26 no other portions of the Code as written.

27

28 Mr. Goodin: And earlier we looked at the definition of special use and if a use is listed as a
29 special use in the district then it necessarily meets the intent and purpose of that district,
30 correct?

31

32 Mr. Callies: That's correct. That's what the Code says in its first two lines.

33

34 Mr. Goodin: And here the use is open land recreation, correct?

35

36 Mr. Callies: That's correct.

37

38 Mr. Goodin: And so therefore it meets the spirit and intent of the district, correct?

39

40 Mr. Callies: That would be correct.

41

42 Mr. Goodin: I have no further questions at this time.

43

44 Mr. Robinson: Thank you professor. At this time Commissioners do we have any questions for
45 the Professor? No? Commissioner La Costa? Your microphone is out? That other one
46 doesn't work.

47

1 Mr. Callies: Thank you for sharing your microphones, appreciate it.

2

3 Mr. Robinson: No problem.

4

5 Ms. La Costa: Mahalo Professor. Appreciate you being here and your testimony. So you're the
6 expert, I am not. If the property is zoned Ag does that not connote that the primary use should
7 be agriculture versus some kind of commercial use?

8

9 Mr. Callies: Well if we were speaking in...with a blank slate that may very well be true, but the
10 truth of the matter is you're governed by what you permit in your Code and your Code permits a
11 variety of other things that are not strictly speaking purely agriculture. You could have written it
12 differently, you could not, it could have say different things, it does not. So the answer to your
13 question is the Code governs and the Code lists all these other uses and so they are permitted
14 of right or accessory uses.

15

16 Mr. Robinson: Commissioner Tackett.

17

18 Mr. Tackett: So my question is if...so it seems to me the reason we're here is because
19 the...what is being placed in that area is severely impacting other people that live in that area
20 and I don't know if you can answer this or not, but if you were living in a house and all of a
21 sudden you were looking out your living room and had people going down a zipline in front of
22 you and you were in this situation what would be your advice to those people that are trying to
23 protect their peace and quiet in these neighborhoods where their houses have been built, you
24 know, and it's...they've gone through this situation for many, many years and to look out your
25 window and to see something like that what would you tell people like that that are coming out
26 and trying to find a way to defend themselves against this special use, you know, which is not
27 the use that they purchased in this area. You know they purchased in this area to live and to
28 live in a ag lifestyle and what's trying to be had is a special use and under that situation what
29 would you, what would you tell those people?

30

31 Mr. Callies: Well Commissioner I sympathize, I do. I get the questions a lot in hearings like this.
32 I get the questions from my students. I get the question from friends and relatives who are
33 interested in my free legal advice on something because I'm a relative. And I so I guess my
34 answer would be that for good or for ill, it would be helpful and it doesn't happen often, it would
35 be helpful to have a look at what the permitted uses are around you. Most folks when they buy
36 into a particular parcel or property look around and see what's happening. And it could very
37 well be that the property next door is zoned for industrial. And if someone would come in and
38 want to build an industrial plant they would be very upset, but that would be a legally permitted
39 use. We have somewhat the situation, same situation here, thankfully not industrial, but
40 the...as you would describe commercial and I'm not saying for a minute that this is a
41 commercial use, I don't believe that it is, but this use of the property is a permitted use under
42 your Code. If folks have a problem with that and I can certainly understand why they would
43 have a problem then the problem is with the existing public land use controls and the limitations
44 on the use. Under our system one I entitled to use one's property any way one wants to
45 provided it is in accordance with doing active land use regulations. The regulations expressly
46 permit this kind of use on the property. I sympathize with them. I've had folks come up and
47 say, somebody just built in my view plane. I had a nice view and now my neighbor put a third

1 story on. Would our private and public land use controls prevented that, that's a perfectly, a
2 perfectly valid permitted use. I think regrettably that would be the answer from the neighbor's
3 standpoint. I sympathize with it, but it's a permitted use.
4

5 Mr. Tackett: So a permitted use and a...to me, it sounds like a special use is a special use and
6 a permitted use is a permitted use. Wouldn't a special use wouldn't it have to go through a
7 process to become a special use and wouldn't, wouldn't people impacted by that have a way to
8 weigh in and say that this is adversely affecting me. What would be their avenue to go down
9 that path?

10
11 Mr. Callies: Yeah, that's a two-part question and it's very tempting to say it depends and leave
12 it at that but, but let me try to answer the question. If one were to go down the special use route
13 which as I understand the situation here the applicant is not required to do but has agreed to do
14 so in an agreement with the Commission then one of your criteria is to permit a special use but
15 to condition it in a such a way that the offsite impacts are mitigated. So in the special use
16 process, the Commission has the ability with the help presumably of the Planning Department
17 and Corp. Counsel to attempt to mitigate the offsite impacts. Mitigation doesn't mean eliminate.
18 So that the parties undertaking these these particular, these particular uses still have the right to
19 proceed but they can be, they can be, their permit could be conditioned. Again, that's assuming
20 that the only route is a special use permit. You know I need to reiterate which is sort of a
21 background to your question and I believe you asked it in that fashion that if as I believe and as
22 I testify these uses are permitted of right or they are accessory then the applicant has a right to
23 those uses without a special use permit. So the ability of the Commission or any other entity of
24 the County of Maui to condition that use of right is limited solely to whether or not the use is
25 going to be permitted as a special use.
26

27 Mr. Tackett: So if I could?

28
29 Mr. Robinson: Please.
30

31 Mr. Tackett: So was the zipline specifically permitted in as a permitted use or were it things of
32 that nature that were...is zipline a specifically permitted as an outdoor use?
33

34 Mr. Callies: The zipline is not named per se, but it doesn't need to be the way your Code is
35 written. That's, that's the easy answer.
36

37 Mr. Tackett: And so like the Airbnbs and all these things that come up there's a learning curve,
38 you know what I mean? There's things that before there were ziplines I mean we didn't know
39 what, what Codes would have to be implemented, what impacts would come from them. My
40 question is, is to me it seems like it's kind of an unknown thing. Seems like there's a lot of
41 safety concerns with it. To what tolerances. I have kind of a construction background. We
42 build things four to one, three to one, make sure that they cannot be...that they don't, they don't
43 destruct until they reach those ratios. Seems to me because and I remember a few years back
44 somebody died on one of these ziplines. I can't remember where it was, but seems to me
45 before we make this like a main, a mainstream accepted use that there should be some sort of
46 protections in place for the public and for the people that, that use these kinds of things because
47 you're...what we're asking, what they're saying is an accepted outdoor use is a very dangerous

1 thing. And people...and there's no, there's no codes to protect those people. There's nothing
2 written to make sure that these kinds of things are safe and so to group it...do you think it's fair
3 to group it into those kinds of groups because it's definitely different than the other types of uses
4 like a guided tour it doesn't have a safety component to it, but a zipline has a, should have a
5 safety component to it and has never had a safety component to it I think because nobody has
6 ever looked at it in that way and that's why it's...it bothers me that that's a generally accepted
7 use under these terms. Like is there...do you understand what I'm saying? And my question is,
8 is do you, do you share that sentiment like should there be special things if this is gonna be an
9 outdoor use there should be some things laid down as to safety factors for the general public
10 you know and in that use not just oh, it's under this broad blanket and you can build it anyway
11 you see forth to build it without these protections in place for the general public because they're
12 gonna out and use it. They're gonna think it's safe. You know what I mean? But nobody's
13 inspected it, and nobody...there's no rules to say what is acceptable and what is not acceptable
14 and so for me it seems dangerous to automatically put that under that blanket like this is the
15 same as the rest because it's not, you know. Like it's, it's a dangerous thing if handled
16 improperly. I'm sure—

17

18 Mr. Robinson: Commissioner—

19

20 Mr. Tackett: --very safe.

21

22 Mr. Robinson: Let's let him answer and then we'll—

23

24 Mr. Tackett: Yeah, sorry about that.

25

26 Mr. Robinson: No, that's all right. We're all passionate. We're all passionate here.

27

28 Mr. Goodin: Commissioner if I may? We will have somebody speaking to the operational
29 components of the project. Professor Callies wasn't retained to testify to operational
30 components but he can answer your question to the extent he understands and he has
31 information.

32

33 Mr. Tackett: Okay, thank you.

34

35 Mr. Robinson: I apologize in the future if you're gonna speak up out of turn, you please
36 announce yourself. That's fine. Is I get that. And I know that was a five, six part question but
37 I think the question was, you know is just simple it's do you think that because it's not already in
38 the Code that should automatically be in it, like okay well since...and what he's trying to say is
39 you know, just you know there's new things going on and just because is somebody ten years
40 ago didn't think that there might be ziplines and so therefore we didn't put that in there. It's not
41 a permitted use that it's automatically things are permitted.

42

43 Mr. Callies: Okay, I think that in general the comments that the Commissioner made are sort of
44 above my pay grade and strictly beyond the testimony that I'm prepared to offer. I'm not a
45 structural person. He's obviously had a lot more information than I do. I would only observe in
46 passing that the County has approved other ziplines, ziplines in the Agricultural District--

47

1 Mr. Robinson: Okay that's fine.

2

3 Mr. Callies: --without comment or objection. And so—

4

5 Mr. Robinson: That's fine. Commissioner Carnicelli.

6

7 Mr. Carnicelli: Thank you Chair. Just a couple quick questions for you. First off I want to say
8 that is the longest CV I think I've ever seen in the history of CVs ...(inaudible)...

9

10 Mr. Callies: Yeah, I apologize for that. I was in another...in another life I was a practicing
11 attorney and we were told to keep track of stuff and I just kept keeping track. So yeah, I would
12 not expect anybody to have to read it, but thank you or not.

13

14 Mr. Carnicelli: So just for the record, you are a paid expert by the applicant, correct?

15

16 Mr. Callies: That's correct.

17

18 Mr. Carnicelli: And so you're also aware that the applicant has voluntarily agreed to get a
19 special use permit to operate what it is that they're operating, correct?

20

21 Mr. Callies: I'm sorry Commissioner I'm gonna have to fall back to the testimony by, by the
22 attorney, one of the attorneys representing the parties here, Mr. Chipchase. There is no such
23 admission. They are here by agreement to do it with the County as a matter of combined
24 ...(inaudible)... The County gave a little bit, they gave a little bit, they're here for a special use
25 permit.

26

27 Mr. Carnicelli: Okay so they are—

28

29 Mr. Callies: They do not, they do not concede as I understand it nor do they represent that they
30 need a special permit to operate this particular, this particular tour in connection with ziplines.

31

32 Mr. Carnicelli: But it is your understanding that they're here to get one?

33

34 Mr. Callies: It's my understanding that they are here to apply and to go through the hearing
35 process. It is not my understanding that they, that they have conceded or in any way presented
36 they need one to operate. Their major position as I understand it is that this is a permitted use
37 of right and or an accessory use of right and that no special use permit is necessary.

38

39 Mr. Carnicelli: Okay. So they are here to apply and whether it's an accessory use or a primary
40 use is not relevant to the eight criteria for that special use permit is that correct?

41

42 Mr. Callies: That's correct.

43

44 Mr. Carnicelli: Okay. So whether it's an accessory use or a primary use does not necessarily
45 mean that they will or do adhere to all eight criteria?

46

47 Mr. Callies: If I understand your question that would be correct. One would not consider the

1 primary or access use aspects of this at all.

2

3 Mr. Carnicelli: Right. So whether...so basically what I'm saying is whether it's accessory or
4 primary it doesn't necessarily mean that it fits all eight criteria?

5

6 Mr. Callies: All eight criteria if I can rephrase your question just a bit, the eight criteria apply
7 regardless of whether this is regarded as a, as a use of right, permitted use or an accessory
8 use.

9

10 Mr. Carnicelli: Thank you.

11

12 Mr. Robinson: Commissioner La Costa.

13

14 Ms. La Costa: Thank you Chair. One of the eight criteria is public service demands can you
15 please explain to me what part of the public has demanded this kind of service.

16

17 Mr. Robinson: Commissioner? Thank you. That's public service such as police, fire...what that
18 use would demand from our public.

19

20 Ms. La Costa: Okay, disregard.

21

22 Mr. Robinson: Any other questions? Corporation Counsel do you want some questions or
23 clarification?

24

25 Mr. Galazin: Yes, thank you Chair. Professor good to see you again.

26

27 Mr. Callies: Yes, nice to see you again.

28

29 Mr. Galazin: I had a question, Mr. Goodin if you could go back to the slide that showed the
30 special use section in 19.30A.060? Is that it? I can't quite see from here, but... okay, thank
31 you.

32

33 Mr. Callies: Neither can I, but an assumption.

34

35 Mr. Galazin: So professor I believe I heard you say that a special use in the ag zone if it's, if it's
36 allowed, if it's listed here as a special use, they get a special use, it's a permit and then it's a
37 permitted use because that's what's listed in this section of the Ag Zoning District is that
38 correct?

39

40 Mr. Callies: If it's listed in that area as a, as a permitted use, a primary use that would be
41 correct. The same would apply for an accessory use.

42

43 Mr. Galazin: Okay. But I just wanted to make sure that in Subsection A, in the beginning of the
44 special use section the following uses and structures are permitted as a special use in the Ag
45 District as provided in Section 19.510.070 of this title is obtained. So all these special uses
46 while potentially special uses within the Ag zone still are viewed through the lens of a special
47 use permit generally within 19.510 of the Zoning Code not the Ag Zoning District is that correct?

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Mr. Callies: They both speak to itself.

Mr. Galazin: Okay, thank you.

Mr. Robinson: Thank you. Any other questions? I have a question. Since you, since you're a professor of law. If law is so simple and clear cut why do we have two attorneys every time? I'm serious.

Mr. Callies: Can I plead the fifth?

Mr. Robinson: Is it interpretation?

Mr. Callies: It's complicated. For a variety of reasons there may be two sides to any question besides maybe legal, besides maybe political, they may be sociological, they may be economic, the tendency is to have an attorney represent each side.

Mr. Robinson: And so when there's two sides that have different opinions of reading the same sentence then it comes to a judge or a decider is that usually how, usually how things work?

Mr. Callies: I think today more often the two sides try to come to what my colleague in the law school would say is an alternate method of dispute resolution and that is not going to court and attempting to settle it among themselves. I'd say this is as likely as having a decider.

Mr. Robinson: Okay. And are...is the Commission here to decide for permits or are we, are we considered you know in between two lawyers and trying to decide which one is reading the Code correctly?

Mr. Callies: In this proceeding you are, you are a decider on a permit which is a quasi-judicial contested case process as the judge in the appeal of this matter before states in his opinion.

Mr. Robinson: Okay. Thank you. Thank you for your time. Thank you for sharing your knowledge with us.

Mr. Callies: Sure. Thank you. I'm usually on for another 25-30 minutes in class you guys get off well.

Mr. Robinson: We have one more question for you. Commissioner La Costa.

Ms. La Costa: Thank you and thank you for indulging my questions and I'm not quite on same page. I'm fairly new at this. So in Paragraph A it talks about properties 15 acres or less and then all the criteria below but this is for 17.519 acres. Am I confused about whether this falls under that or not because the acreage is larger then?

Mr. Callies: I'm not sure I understand the question.

Mr. Robinson: It's, it's...well, let's let the Director and because it's Maui Code so it's not a...

1
2 Ms. McLean: Because we're dealing with a County Special Use Permit the 15-acre threshold is
3 not applicable here. That 15 acres comes into play if it were a State Special Permit because if
4 the property involved is larger then the State Land Use Commission would be the reviewing
5 body. So we're not talking about a State Special Permit, we're talking about a County Special
6 Use Permit so there isn't an acreage limitation.

7
8 Ms. La Costa: I was just going on the...(inaudible-not speaking into mic)...Okay, thank you.

9
10 Mr. Robinson: Thank you. Thank you. Thank you Professor. Please continue.

11
12 Mr. Goodin: Next I'd like to call our planner, Kimi Yuen.

13
14 Mr. Robinson: Hi, hello. Kimi before we start since this is a proceeding and you're not a
15 professor or attorney, you promise to...everything that you testify to be truthful?

16
17 Ms. Kimi Yuen: I do. I do.

18
19 Mr. Robinson: Okay, thank you. Please introduce yourself.

20
21 Ms. Yuen: Aloha Commissioners. Chair, I thank you for having me here today. Kimi Yuen,
22 PBR Hawaii for the record.

23
24 Mr. Goodin: Ms. Yuen if I could I'd like to go a little over your background.

25
26 Ms. Yuen: Sure.

27
28 Mr. Goodin: You said you worked for PBR Hawaii. What is your position with PBR Hawaii?

29
30 Ms. Yuen: I am a Principal with the firm and a planner.

31
32 Mr. Goodin: Could you please summarize your educational employment background?

33
34 Ms. Yuen: Sure. I have an Undergraduate Degree in Architecture from University of California,
35 Berkley. I have a Masters in Urban and Regional Planning from the University of Hawaii at
36 Manoa. I've been with PBR for 18 years. Worked as a planner for 20.

37
38 Mr. Goodin: Over the years how many projects have you worked on?

39
40 Ms. Yuen: If you're counting contracts per se that I've logged time to it's probably on the order
41 of 200 or so various types of projects. I've been a project manager for about 40 of them so it's a
42 pretty diverse range of projects that I work on including land use permits, environmental impact
43 statements and assessments. I've also worked on long range plans for counties as well as
44 master plans and physical design. So it's quite a broad range of work that I've had the pleasure
45 and you know, great honor of working on and all of them have been in the State of Hawaii.

46
47 Mr. Goodin: How many times have you appeared as a planner before a commission, board or

1 council in Hawaii?

2

3 Ms. Yuen: Probably, and in some cases it's multiple times but maybe 10 to 15 projects over my
4 career.

5

6 Mr. Goodin: And could you give some examples of your work?

7

8 Ms. Yuen: Sure. As I mentioned it ranges from environmental review documents to land use
9 permits to long range planning documents that the counties will use to implement to help guide
10 them in terms of future development, growth and that sort of thing. So it's a pretty diverse range
11 master plans, physical planning projects, urban design guidelines.

12

13 Mr. Goodin: Okay. Have you been previously qualified as an expert witness?

14

15 Ms. Yuen: Yes I have.

16

17 Mr. Goodin: Where was that?

18

19 Ms. Yuen: The State Land Use Commission.

20

21 Mr. Goodin: And what were you qualified in?

22

23 Ms. Yuen: Land use planning and environmental planning.

24

25 Mr. Goodin: To show you a document that's been marked as Exhibit 10.1. Is this a copy of
26 your resume?

27

28 Ms. Yuen: Yes, yes.

29

30 Mr. Goodin: Okay. With this background I'd like to request that the Commission recognize
31 Ms. Yuen as an expert in land use planning and permitting.

32

33 Mr. Robinson: No objections.

34

35 Mr. Goodin: Thank you. What is PBR Hawaii's role in this matter?

36

37 Ms. Yuen: PBR, we completed the Special Use Permit for the County's application and
38 submitted it to the Planning Department. We also served the notices for the public hearing as
39 well as had the notices published in *The Maui News* for circulation in the previous three
40 Tuesdays.

41

42 Mr. Goodin: And I believe I've shown you previously a copy of a document marked as
43 Exhibit 2.1. Is that a copy of the original application that you filed in this matter?

44

45 Ms. Yuen: Correct.

46

47 Mr. Goodin: All right. And also now I'd like to show you Exhibit 2.3. Is this a copy of the

1 amended application in this matter?

2

3 Ms. Yuen: Yes. Yes it is.

4

5 Mr. Goodin: What are the differences between these two applications, the original and the
6 amended?

7

8 Ms. Yuen: The only difference as I understand is the removal of the 80-foot tower that was
9 included in the original application and from what I understand this was done at the request of,
10 you know some of the discussions with the neighbors to try to mitigate some of their concerns.
11 So, so I understand the current application does not include the 80-foot tower.

12

13 Mr. Goodin: I'd like to put up a location map of the area we're talking about. Could you tell us a
14 little more about what we're looking at here?

15

16 Ms. Yuen: Sure. This is the location map of the project site. To give you some orientation, the
17 ocean is at the top of the slide. The project site under this application is outlined in red and
18 highlighted in yellow. It's located off of Kauhikoa Road in Haiku. I don't have a pointer so if I
19 may go old school and borrow your mic, I'll go up and give some point of references so people
20 understand how the property relates in terms of the former U.S. Marine Camp Maui that was
21 located there. I'm sorry, I apologize.

22

23 So again, Hana Highway at the top of the slide, Kauhikoa Road runs mauka-makai, project site
24 is located here. Kokomo Road is located here for reference. There's a pu'u or hill with the
25 same name, it's actually the road on which the project site is located, that pu'u is called
26 Kauhikoa as well. For reference there is also a county park that is named in dedication of the
27 U.S. Marine Corp, the fighting force that was stationed here during World War II and it's located
28 right at the base of that hill.

29

30 Mr. Goodin: Thank you. Let me put up an aerial photograph. Now could you please describe
31 what we're looking at here?

32

33 Ms. Yuen: Sure. This is an aerial photograph of the site again. This is the 17.5-acre portion of
34 TMK: 2-7-12: 86. The entire TMK is outlined in yellow. I don't know if you can see it, but it
35 extends almost like a mirror and it creates rather a rectangular square shaped TMK that totals
36 35 acres. Kauhikoa Road again runs on the left side of the project site and you can see the
37 access road that comes into the portion of the project site that is the subject of this application.
38 And you can see there's, you know, a kind of cleared area, you can tell where there's trees
39 where it's kind of the lumpy looking green, but the road actually comes off at almost a 90-degree
40 angle from Kauhikoa Road into the project site and makes another 90 degree turn. So I think
41 some of our next exhibits will relate how this is actually...the entire 35 acres was once part of
42 the U.S. Marine Corp base known as Camp Maui that was stationed here between 1943 and
43 dismantled after the war in 1946.

44

45 Mr. Goodin: Okay, let's move onto the next historic photograph.

46

47 Ms. Yuen: Yes.

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Mr. Goodin: Can you tell us a little bit about this?

Ms. Yuen: Okay so if you can remember my orientation on that USGS overall location map, the hill that you see in the foreground on the right is that pu`u I mentioned, Kauhikoa. The park is actually on...the county park that exists today is actually at kind of the foot of the hill, but you can see the extent of the former Marine base. It covered over 1,600 acres. It's quite a sizable site formerly used as ag before it became the base and was there like I mentioned for...the duration of World War II and it's the location where at any one time there was over 20,000 Marines stationed there. There were training facilities, there were of course living quarters, but there were also recreational facilities, ball fields and they had, you know, they'd set up boxing rings for that sort of thing, but it's basically a place where the Marines would come during the Pacific Campaign to rest, to relax, to train, there were live, live fire training grounds on the camp as well as I think a grass air strip. And to give you some orientation of where we are and the extent of the camp at that time and where we are in terms of the project site, the project site is located in the upper left corner of the site and I'm gonna go old school again and borrow your mic. Sorry.

So if you remember the location map, it was based on the USGS map, we're kind of flipped so we're looking mauka this way. So this is the pu`u Kauhikoa and the project site that's under the subject of the application is located in this area. So this is the roadway that it comes off of. This actually Kokomo Road to give you some sense. So if you remember there's a bend in Kokomo Road here and the project site is located in this area of the photograph and so the old historic roads that were once part of the Marine base are still there on the site today.

Mr. Goodin: Thank you.

Mr. Anthony Ranken: ...(inaudible-not speaking into a mic)... I just have to give something to the Chair and Corp. Counsel. May I raise a point of procedure? My name is Anthony Ranken. I represent most of these people.

Mr. Robinson: ...(gavel)...please—

Mr. Ranken: Could you please find out...(inaudible)...

Mr. Robinson: Please...please continue.

Mr. Goodin: I've put up another photo from the application could you please tell us about this one?

Ms. Yuen: Sure. This is a graphic that came from the archaeological inventory survey that was prepared by Cultural Surveys Hawaii in May of 2007. This shows an overlay of the sites they found during this archaeological inventory survey or AIS for short and highlights in it's kind of a pinkish in this projected image of the remaining building foundations from Camp Maui. In yellow, again is the historic macadam road that was part of Camp Maui that still exists today and is actually used as the entry driveway for the Camp Maui site. In blue outline is the entire TMK parcel for which the AIS covered. It's the full 36 acres, but of course again, this application is

1 only for the 17.5 portion of that TMK. And I understand actually there are co-owners on that so
2 just as some background information the idea is to subdivide that TMK between the owners and
3 that the lower portion would go to D&S, the applicant. And so a portion of that part that would
4 remain includes, I think it's one, two, three, four, five, six, seven building foundations as well as
5 the segment of the historic road and that's all part of what the applicant has agreed to preserve
6 in place in respect to Camp Maui. Yeah, so there's...I'm sorry there you go...so there's the
7 outline of the project site. And from what I understand from the AIS this is actually one of the
8 few remaining portions of that historic road too, so...

9
10 Mr. Goodin: I've put up another site map. Is that a copy of the site map for this project?

11
12 Ms. Yuen: Correct. This was the site map...the site map that was submitted as part of the
13 original application. It shows the footprint of the challenge course as well as you can...for
14 orientation again, Kauhikoa Road is still on your left side, it's the lower portion of the full TMK
15 which I think is labeled as Lot 3B on this figure and that would be the portion once subdivided
16 would be under the full control of D&S. But again, this image shows the access and entryway
17 off of...and entry road off of Kauhikoa Road, a parking facility, a museum which is designed as
18 a yurt you know kind of in the spirit of the old military camp structures. It's a canvas type tent
19 with minimal foundations. There are also dotted lines which show the challenge course
20 alignments and as you can see this is...I mean this is the 17.5 acre portion of the site which has
21 very minimal structures or buildings. I think, I think Tower 3 on this image is that 80-foot tower
22 that will no longer be built or requested of this Commission to consider. It's now taken out of the
23 application. But basically that is the footprint of the accessory use which shows the challenge
24 course.

25
26 Mr. Goodin: Now put up the photo again, historic photo from Camp Maui. Is this a historic
27 property?

28
29 Ms. Yuen: Yes. Yes, so as part of the AIS that was completed for the project it recognizes the
30 site as being fully part of what was once Camp Maui during World War II and deemed significant
31 and eligible for listing on the Historic Register. So...

32
33 Mr. Goodin: Put up some photos from the application. Are these training courses that Marines
34 engaged in in World War II?

35
36 Ms. Yuen: Right. These are examples of some of the training activities that the U.S. Marines
37 did during World War II. They included aerial and rope challenge courses, climbing structures
38 with cross-bracing and so although these photos may not necessarily be directly from Camp
39 Maui itself they represent the types of activities and training courses that once were done by the
40 U.S. Marines during the war, World War II.

41
42 Mr. Robinson: Counsel, you know, she's an expert in land and stuff but not of what the military
43 should do, we could...you know we're on a time basis 'cause of your request that you have a
44 certain time so I appreciate all the testimony. We've heard this before. If there's a way you
45 could you know please, you know please move this along as quickly as possible besides...if you
46 get what I'm saying? I want to make sure you have enough time but—

47

1 Mr. Goodin: I understand, we'll do our best.

2

3 Mr. Robinson: Thank you so much.

4

5 Mr. Goodin: What is the State agency that regulates historic property?

6

7 Ms. Yuen: That would be the State Historic Preservation Division of the Department of Land
8 and Natural Resources under the State of Hawaii.

9

10 Mr. Goodin: And you mentioned that SHPD has recognized Camp Maui as a historic site is that
11 correct?

12

13 Ms. Yuen: Right. Right, the AIS was submitted to SHPD and they did indeed accept and
14 approve the AIS.

15

16 Mr. Goodin: And this site, Camp Maui was given a site number is that correct?

17

18 Ms. Yuen: Right. Right, there's a State Inventory of Historic Places number assigned to
19 Camp Maui as a whole. I think there were artifacts found on other sites too, but it did recognize
20 this as part of that recorded site.

21

22 Mr. Goodin: And you mentioned that there are features of Camp Maui that are still on the
23 property today?

24

25 Ms. Yuen: Right. Right, those would be the building foundations shown in the prior slide as well
26 as the road.

27

28 Mr. Goodin: And has the project owner taken steps to preserve this historic property?

29

30 Ms. Yuen: Yes, I understand that project owner has cleared some of the invasive species that
31 were around those building foundations and opened up some of the historic view planes to
32 show those that go on the historic tour some of the landscape, given how big the camp was at
33 that time, to give them some perspective of where things were in the camp. There's historic
34 maps of the camp and I understand the guides also give that information during the challenge
35 course activity.

36

37 Mr. Goodin: Are you familiar with the preservation plan that was prepared for this project?

38

39 Ms. Yuen: Yes, that I believe is Appendix D in the application, original application.

40

41 Mr. Goodin: And what determinations did the preservation plan make?

42

43 Ms. Yuen: So there were two things that were recommended preservation of the historic sites,
44 an interpretation of the historic sites and so this was something that technically is not, you know,
45 required because actually in the AIS SHPD agreed that...you know actually the AIS was
46 submitted to do a residential neighborhood. It wasn't actually for a preservation I think, but
47 they...the applicant decided instead to preserve the remaining artifacts from Camp Maui. I

1 think, I think the AIS gave the ability for them to remove those building foundations and even the
2 roadway but instead the applicant chose to preserve them in site and clear open the view
3 planes of the historic site, the 17.5 acres that are under his control or their control and then have
4 accessory hiking and guided tours. So the preservation plan specifically focused on two areas
5 of preservation which the applicant has done as interpretation in terms of the guided tours.

6
7 Mr. Goodin: I'd like to walk through some of the photographs of the site. I'd like to put them up
8 on the screen and ask you to comment on what we're looking at.

9
10 Ms. Yuen: Sure. Okay, so this is the view off Kauhikoa Road of the entry to the project site.
11 You can see right down the middle the driveway apron connects to the historic macadam road
12 that was recorded as part of the AIS. There's an entry fence and then kind of in the distant
13 background and to the sides of the road are tents where the applicant has put up historic
14 vehicles from the World War II era.

15
16 Mr. Goodin: Just to be clear so we're all on the same page, I'm showing Exhibit 4.3, Page 1,
17 this is Page 2.

18
19 Ms. Yuen: Yeah. And so this is a closer view of those World War II era military vehicles that
20 are on display.

21
22 Mr. Goodin: Page 3.

23
24 Ms. Yuen: Yes, that's another zoom in, the applicant has been restoring and acquiring historic
25 World War II era vehicles to display at the site.

26
27 Mr. Goodin: Page 4.

28
29 Ms. Yuen: Page 4, this is a view of the parking area and a temporary shade structure tent for
30 the comfort of the...those going on the tours or visiting the site. In the background you can see
31 the pointy roof of the museum yurt, and that's where there's also other historic information and
32 you know, things that he's acquired over time related to the Camp Maui.

33
34 Mr. Goodin: Page 5.

35
36 Ms. Yuen: Page 5 are images of some of those historic photos and artifacts. I think there's a
37 guide there that specifically references Camp Maui.

38
39 Mr. Goodin: Page 6.

40
41 Ms. Yuen: More historic photos that are display in the museum yurt.

42
43 Mr. Goodin: Is that like a USO building?

44
45 Ms. Yuen: Yeah, it's a USO building on the bottom. There's a...as I mentioned there was a
46 grassy airstrip as part of the site and there's a, there's a plane in the upper right-hand corner,
47 Wailuku, Maui on it.

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Mr. Goodin: Page 7.

Ms. Yuen: Page 7, that's the historic layout of Camp Maui when it was indeed occupied by the U.S. Marine Corps during the war.

Mr. Goodin: Page 8.

Ms. Yuen: This is another historic photo that's on display to give visitors, you know, some insights to what Camp Maui used to look like during World War II.

Mr. Goodin: And what area would this be in?

Ms. Yuen: I believe this is actually in that shade structure right by the, the parking, the parking area.

Mr. Goodin: So this is the area where visitors are getting acquainted with the site and kinda setting up for the tour?

Ms. Yuen: Right, right, right. I think we could you know, people could also just go and see some of these things and walk through the museum without having to take the tour. ... (inaudible) ... so you know, a lot of this ... a lot of these displays are available.

Mr. Goodin: You know so from that check-in area, that yurt museum—

Ms. Yuen: Right.

Mr. Goodin: --where do the, where do the visitors go from there?

Ms. Yuen: So from there they set off on a hiking trail that takes them past some of those building foundations that remain on the project site.

Mr. Goodin: And at the start of the tour does the company have a script where they try to tell visitors about Camp Maui?

Ms. Yuen: Right, right, right they do. And what's on the screen right now looks like Exhibit 6.5 in our submittals which is and I can read to you what the tour guides share with those that go on the challenge course tour. The historic tour of Camp Maui. It says, we welcome everyone to the NorthShore Zipline Company's tour of Camp Maui. Camp Maui during World War II was home to the 4th Marine Division of the United States Marines. The Fighting Force as they became known fought four major battles during World War II, Roi Namur, Saipan, Tinian and Iwo Jima. Although the 4th Marine Division never numbered more than 24,000 at any one time, a total of 81,718 Marines assigned to it saw combat action with the Division one or more times during World War II. Between 1944 and 1945, the Fighting 4th experience a casualty rate of 21.6 percent, the highest casualty rate of any military division in the history of the United States. In fact, there were some infantry companies of the 4th Marines which had more than 80 percent of their original members killed or wounded. Once Company, Company A had 97 percent

1 casualties from the 250 men they started with only seven made it back to Camp Maui alive and
2 uninjured.

3
4 Mr. Goodin: To your knowledge is this accurate historical information about Camp Maui?

5
6 Ms. Yuen: Yes. Yes.

7
8 Mr. Goodin: Chair, I believe we've been going for about an hour and a half. Is now an okay
9 time to take a short bathroom break?

10
11 Mr. Robinson: Are you, are you through with this witness?

12
13 Mr. Goodin: No, I'm not.

14
15 Mr. Robinson: How much more, how much longer do you have for this witness? And again,
16 this is all stuff that you can say will we accept as part of evidence if you want to put it into
17 evidence. But if you want somebody to read out every single piece of evidence, we're not going
18 to get what, to what all your, all your people that you have a time limit for. So there is other
19 ways to get evidence into the record if you want and just to let you know. It's always up to your
20 choice. So how much more time do you think you have with this witness?

21
22 Mr. Goodin: Oh with this witness I probably have about another hour.

23
24 Mr. Robinson: Everyone, everyone, everyone, everyone please. At this moment we'll take a
25 five-minute recess. Thank you so much.

26
27 Mr. Goodin: Thank you.

28
29 A recess was called at 12:00 p.m., and the meeting was reconvened at approximately
30 12:13 p.m.

31
32 Mr. Robinson: Aloha, thank you. We're back in session. Counsel, with all due respect another
33 hour for unless there's something real pertinent, something that's not in here that we've already
34 accepted into record, you know this is a process and we hope that you use your time wisely.
35 Another hour of this, of this testimony is I think is irresponsible on your guys side but I'm not
36 going to tell you what to do, but if it gets out of hand I am going to limit it. Okay, so if you have
37 something pertinent that we did...we already accepted this into evidence, so having us to read
38 every single evidence that was exhibit...(inaudible)...this again is unnecessary. We're here for
39 a hearing and we're here to try to do something at one time and timely. You guys set the
40 parameters of having limited time so please use it wisely. Okay.

41
42 Mr. Goodin: I understand Chair and we're—

43
44 Mr. Robinson: And you understand I have that authority here as the Chair.

45
46 Mr. Goodin: I'm sorry?

47

- 1 Mr. Robinson: You understand that I have the authority to limit testimony time if I deem it's
2 redundant and not pertinent to have you to have a testifier as an expert compared to what's
3 already been submitted as, as evidence.
4
- 5 Mr. Goodin: I understand Chair and we're trying to, trying to present our case the best we can
6 and to present the evidence.
7
- 8 Mr. Robinson: Okay, photos of the military, the third time you've been here, it's already in
9 evidence and I just...please use your time wisely 'cause we all, we all, we all have work to do as
10 well.
11
- 12 Mr. Goodin: I understand Chair.
13
- 14 Mr. Robinson: Thank you. Please continue.
15
- 16 Mr. Goodin: Thank you. Just briefly, I'd like to also go through some additional photographs of
17 the guided tour and if you could please briefly comment on them. This is the continued
18 examination of Kimi Yuen and I'm Christopher Goodin. This is from Exhibit 4.3, Page 10 what
19 are we looking at here.
20
- 21 Ms. Yuen: Right. So this is the beginning of the hiking tour with the historic road in the
22 foreground. Next, this is the view along the hiking trail—
23
- 24 Mr. Goodin: And this is Page 11 now we're looking at.
25
- 26 Ms. Yuen: Right. So this is a view of one of the challenge course towers from the hiking trail
27 and along both sides of the trail are some of the historic era vehicles. This is the photograph of
28 the...is one of the building foundations that have been preserved in place. And again, more of
29 the hiking trails to the challenge course with the historical vehicles on the right side. A close up
30 of one of the vehicles.
31
- 32 Mr. Goodin: And this is Pages 13 and 14 we just looked at. Page 15.
33
- 34 Ms. Yuen: Right, this is a view of one of the platforms that's been built into a tree, existing tree.
35
- 36 Mr. Goodin: Page 16.
37
- 38 Ms. Yuen: And this is the suspension bridge and a view of the towers designed, you know in
39 the spirit of Camp Maui some of the old historic structures that were there.
40
- 41 Mr. Goodin: Page 17.
42
- 43 Ms. Yuen: This is a historic photograph showing the historic landscape in reference to the
44 current landscape so that those that are on the guided tour get a sense of the historic landscape
45 that is Camp Maui.
46
- 47 Mr. Goodin: And so are those in that photograph I know it's kind of small, but are those yurts?

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Ms. Yuen: Yes, yes. Those are tent like structures, yurts.

Mr. Goodin: What are we looking at here Page 18?

Ms. Yuen: It's another photograph of the existing site with a historic photo up on one of the support posts and in the photo I don't know if you can see there's a—

Mr. Goodin: We can zoom in.

Ms. Yuen: Zoom in, there's a boxing ring. So this gives a, you know, the perspective of the historic landscape as it was back in World War II and then the current site. And this gives you know the visitors a sense of what Camp Maui and what happened here in World War II. This is again more images of the hiking trail back towards the museum yurt past some more the remaining building footprint, building foundations from Camp Maui.

Mr. Goodin: And this is Page 20. Page 21?

Ms. Yuen: Yeah, and then you can start to see that shade structure by the entrance and parking area.

Mr. Goodin: Okay. And to your knowledge were the towers on site designed by a licensed engineer?

Ms. Yuen: Yes, Figure 10 in the application is a signed and stamped set of drawings for the towers on the challenge course that a licensed engineer in the State of Hawaii signed.

Mr. Goodin: And do you know if the site has a safety manual and conducts periodic safety inspections?

Ms. Yuen: Yeah, I understand from the owner that there are daily safety checks done as well as periodic inspections, monthly for more intensive inspections and then annually by a certified inspector for similar challenge course structures.

Mr. Goodin: And to your knowledge does site have a safety manual?

Ms. Yuen: Yes it does.

Mr. Goodin: Have you assessed the project's compliance with applicable plans, provisions and policies?

Ms. Yuen: Yes, I have.

Mr. Goodin: Has the Planning Department assessed the same?

Ms. Yuen: Yes.

- 1 Mr. Goodin: I'd like to show you exhibit...a document marked as Exhibit 5.1. Is this a copy of
2 the report that the Planning Department prepared in 2016 for this application?
3
- 4 Ms. Yuen: Yes this is.
5
- 6 Mr. Goodin: In this report did the Planning Department finding conclude that the project
7 complied with all applicable plans, provisions and policies?
8
- 9 Ms. Yuen: Yes, it did.
10
- 11 Mr. Goodin: Did the Planning Department send you another report more recently on the
12 application?
13
- 14 Ms. Yuen: Yes it did.
15
- 16 Mr. Goodin: And when did you receive that report?
17
- 18 Ms. Yuen: I received it yesterday via email.
19
- 20 Mr. Goodin: In this new report did the Planning Department finding conclude that the project
21 complied with all applicable plans, provisions and policies?
22
- 23 Ms. Yuen: No.
24
- 25 Mr. Goodin: Did the proposed use change between the 2016 report and 2018 report?
26
- 27 Ms. Yuen: No.
28
- 29 Mr. Goodin: Did the 2018 report the one that you received yesterday explain why the findings
30 were different or reconcile them with the 2016 report?
31
- 32 Ms. Yuen: No it did not. And I'll just clarify there was one amended change which I mentioned
33 earlier between that was the removal of the 80-foot tower. So that was the only change, but in
34 terms of its use it did not change.
35
- 36 Mr. Goodin: So in terms of use it was a less intense use—
37
- 38 Ms. Yuen: Correct.
39
- 40 Mr. Goodin: --between 2016 and 2018?
41
- 42 Ms. Yuen: Correct. Correct.
43
- 44 Mr. Goodin: Now coming back to the 2018 report that you received yesterday does it mention
45 the 2016 report that the Department signed?
46
- 47 Ms. Yuen: No, it does not.

1
2 Mr. Goodin: I'd like to look into some, some of these compliance issues. Let's start with the
3 Countywide Policy Plan. What is the Countywide Policy Plan?

4
5 Ms. Yuen: So the Countywide Policy Plan is the overarching County vision, kind of goal
6 statements for the County as a whole and how it sees or would like to see development or
7 growth happen countywide. So it's one part of Maui County's General Plan 2030, it's the
8 overarching vision statement for the entire County. Maui County is unique as you know it has
9 multiple islands and so there are three parts to the General Plan. The first being the
10 Countywide Policy Plan for the entire county. It then goes into an Islandwide Plan for Maui,
11 Maui Island Plan, and then has subsequently smaller areas where the in terms of the long range
12 vision and policy statements for growth and development in the future for Maui is identified and
13 it's done through a public process, legislative process adopted by Council. But the General
14 Plan kind of gives the broad umbrella vision for how the County would like to see itself grow and
15 develop.

16
17 Mr. Goodin: Let me put up some of the standards from the Countywide Police Plan. Could you
18 please review these standards?

19
20 Ms. Yuen: Sure. So these are two of the vision statements from the Countywide Policy Plan or
21 CPP for short. It reads, Maui County will be a leader in the creation of responsible, self-
22 sufficient communities and environmentally sound economic development and land stewardship
23 and that which makes Maui County unique in the world will be preserved, celebrated and
24 protected for generations to come.

25
26 Mr. Goodin: Is the project consistent with the plan?

27
28 Ms. Yuen: Yes, under, you know the vision statements Countywide Policy Plan the proposed
29 project which is preserving what was once Camp Maui is a pretty significant right as
30 acknowledged by the SHPD and what they're doing there is providing guided tours and
31 information about the historic site. And so this also lends itself to job creation. You have tour
32 guides that are employed at the site as well as sound land stewardship because the structures
33 that are built as part of the Camp Maui facilities are relatively easy to remove if you think about
34 the challenge course structure, they're easily removed. There's not a lot of foundations. It's not
35 like you have these big structures that were built there. And so the actual land you know it's in
36 the Ag District could actually easily revert back to land should the, should the historic
37 preservation aspect of it cease and the tours stop.

38
39 Mr. Goodin: Let me put up some additional standards specifically the core principals from the
40 plan. Could you take a look at these?

41
42 Ms. Yuen: Sure. So again as you mentioned the core principals that the project is in
43 consonance with are one, the excellence in stewardship of the natural environment and cultural
44 resources. Five, number five reads, honor for all cultural traditions and histories and six,
45 consideration of the contributions of past generations as well as the needs of future generations.

46
47 Mr. Goodin: Does the project comply with these standards?

1
2 Ms. Yuen: Sure. You know again, the primary use is historic preservation of what was once
3 Camp Maui from World War II. And so what it's doing is perpetuating a pretty significant historic
4 site for future generations as well as acknowledging what was once there in the past.

5
6 Mr. Goodin: Let me put up the Countywide Policy Goals and Objectives. Take a look at these.

7
8 Ms. Yuen: Okay, so you know, so these policy documents go from these broad visions and
9 then they start moving into more specific goals objectives policies and actions and so the
10 proposed project we found was consistent with...identified under B which say preserve local
11 cultures and traditions. Objective 3 reads preserve for present and future generations the
12 opportunity to know and experience the arts, culture and historic of Maui County. Under that G,
13 policy and action include supporting the development or repositories for culture, historic,
14 genealogy, oral history, film and interactive learning. Objective 4 reads preserve and restore
15 significant historic architecture, structures, cultural sites, cultural districts, and cultural
16 landscapes and promote...let's see, under that objective B reads promote the rehabilitation and
17 adaptive reuse of historic sites, buildings and structures to perpetuate a traditional sense of
18 place. D reads to protect and preserve lands that are culturally or historically significant. And E
19 reads support programs that protect, record, restore, maintain, provide education about and
20 interpret cultural districts, landscapes, sites and artifacts in both natural and museum settings.

21
22 So again, the proposed preservation...well, the actual preservation of Camp Maui and the
23 remaining sites that are on the property are definitely in concert with all of these and that they
24 are...as SHPD said you didn't need to preserve them but they're going ahead despite that and
25 preserving it and having these historic tours, guided tours and in a creative way, you know this
26 adaptive reuse of historic sites allowing for a use that is actually permitted under your current
27 Code. If you think about it Maui County is actually, and we'll get into the zoning it allows historic
28 preservation, rehabilitation, and improvements of historic sites as of an outright permitted use.
29 And so that's what they're doing here. The accessory use are the hiking and the guided, guided
30 tours.

31
32 Mr. Goodin: In the 2016 Planning Department report did they determine that the project
33 complies with these standards that we've been reviewing?

34
35 Ms. Yuen: Yes, it did.

36
37 Mr. Goodin: Let me put up a copy of the report. Could you read that for us?

38
39 Ms. Yuen: Sure.

40
41 Mr. Goodin: And this is specifically our Exhibit 5.1...(Inaudible)...7.

42
43 Ms. Yuen: So the Planning Department found that the proposed project is in consonance with
44 the following Countywide Policy Plan core themes. A, protect the natural environment and J,
45 promote sustainable land use and growth management. In their analysis they state that the
46 proposed and existing uses for outdoor recreational activities while preserving the...while
47 preserving the maintaining historical artifacts and areas is in consonance with the above core

- 1 themes A and J. The development will be limited to existing structures and recreational
2 equipment structures leaving the land open and undeveloped.
3
- 4 Mr. Goodin: Okay, so that was the 2016 report.
5
- 6 Ms. Yuen: Right.
7
- 8 Mr. Goodin: Now I'd like to fast forward to the 2018 report. In that report did the Planning
9 Department determine that the project complies with the Countywide Plan?
10
- 11 Ms. Yuen: No, it did not.
12
- 13 Mr. Goodin: Well, what did it determine specifically do you know?
14
- 15 Ms. Yuen: Let me see, apologize. I just got this yesterday. So in its analysis this time it states
16 that the Department has been unable to conclude that the primary purpose of the site is the
17 identification, protection, preservation, enhancement and appropriate use of cultural resources,
18 cultural practices, and historic sites that provide a sense of history and define a sense of place
19 for the Paia-Haiku region or to foster an awareness of the diversity and importance of cultural
20 resources and the history of Paia-Haiku.
21
- 22 Mr. Robinson: Kimi, apologize can you please speak a little closer to the mic?
23
- 24 Ms. Yuen: Oh, I'm so sorry. I'm so sorry.
25
- 26 Mr. Robinson: No, yeah, thank you so much.
27
- 28 Ms. Yuen: Yeah, so it concludes that the applicant has not demonstrated that the project meets
29 the above criteria.
30
- 31 Mr. Goodin: Has the use changed between 2016 report and 2018 report other than declining in
32 intensity?
33
- 34 Ms. Yuen: No. No.
35
- 36 Mr. Goodin: Did the Department provide any factual basis for its different conclusion in the
37 2018 report?
38
- 39 Ms. Yuen: No, it does not. That is the extent of its analysis in its report.
40
- 41 Mr. Goodin: Now let's take a look at the Maui Island Plan. What is the Maui Island Plan?
42
- 43 Ms. Yuen: So again this is when you think of the broader vision and values and goals of the
44 County this is now specific to the island of Maui so it similarly has core principals, vision
45 statements, objectives of that sort, so...but specific to Maui Island.
46
- 47 Mr. Goodin: Let me put up some of the standards from the Maui Island Plan. Could you please

1 review these?
2

3 Ms. Yuen: Okay, so these are two of the core values with which we found the project consistent
4 with. B, respect and protect our heritage, traditions and multi-cultural resources. And G,
5 support efforts that contribute to a sustainable and diverse economy for Maui.
6

7 Mr. Goodin: Let me put up some additional standards from the plan. Could you please review
8 these as well?
9

10 Ms. Yuen: Sure. So these again are the next tier of goals and objectives as well as policies
11 and actions that the County is seeing for Maui Island. Goal 2.1 reads, our community respects
12 and protects archaeological and cultural resources while perpetuating diverse cultural identities
13 and traditions. Objective 2.3 read, enhance the island's historic, archaeological, and cultural
14 resources. Policy 2.1.3.d, promote the rehabilitation and adaptive reuse of historic sites,
15 buildings and structures. Goal 4.2 reads, a healthy visitor industry that provides economic well-
16 being with stable and diverse employment opportunities. Related to that Objective 4.2.1 reads,
17 increased economic contribution of the visitor industry to the island's environmental well-being
18 for the island's residents quality of life. And Policy 4.2.1.e, diversity the tourism industry by
19 supporting appropriate niche activities such as ecotourism, cultural tourism, volunteerism, ag-
20 tourism, health and wellness tourism, educational tourism, medical tourism and other viable
21 tourism related businesses in appropriate locations.
22

23 Mr. Goodin: Does the project comply with these standards?
24

25 Ms. Yuen: Yes, absolutely. As noted earlier by preserving the site and having guided tours and
26 hiking trails that recall what was once there, a military training camp and having, you know,
27 challenge courses is absolutely in ...(inaudible)...especially with the lower one where you're
28 promoting, the County is promoting different types of tourism activity that involve health and
29 wellness, challenge courses are often seen as physical activities. And this one is actually
30 designed to allow a wide range of ages to do some of these challenge courses. I think the
31 youngest is five-year-olds could do it and older folks could also do it too as long as they're, you
32 know, properly dressed and physically able to meet the requirements that they've set out and
33 identified. But you know, this is the...the historic, and you know, hiking, the guided tours that
34 happen very much are in the spirit of what was once there as a historic military training facility,
35 Marine camp.
36

37 Mr. Goodin: In the 2016 report by the Department did it determine that the project complied with
38 the Maui Island Plan?
39

40 Ms. Yuen: It did, yes.
41

42 Mr. Goodin: Let me put up a slide. Would you review this for us?
43

44 Ms. Yuen: Sure. This is the analysis from the 2016 report. It reads, the property is in an
45 undesignated area of the MIP or Maui Island Plan. As stated earlier the subject parcel is in the
46 State Agricultural District. It is also designed Agriculture by Title 19, MCC or the Maui County
47 Code. It is outside of the MIP Urban Growth Boundary. The proposed development and use is

1 in consonance with the general intent of the vision statement of what constitutes many of the
2 desired elements and what the direction for open space areas versus urban growth designated
3 areas should be and then then it refers to Exhibit 9.

4
5 Mr. Goodin: In Exhibit...in the 2018 report did the Planning Department determine that the
6 project complies with the Maui Island Plan?

7
8 Ms. Yuen: It did not.

9
10 Mr. Goodin: I think it did.

11
12 Ms. Yuen: It did? Okay, well there's...in their conclusions of law it says that based on the
13 finding it...oh you're right, you're right. In the conclusions it did say that it complied with two
14 although arguments on Page 7 of its report, let's see...maybe you're right, maybe you're right it
15 did conclude that it did. Oh, wait, wait, wait. Okay, wait Page 9, I'm sorry I had the wrong
16 reference. Page 7 it does say that it...actually the analysis is exactly the same but then on
17 Page 9 it says that actually the property is designated as Agriculture in the Paia-Haiku
18 community land use map and it is recognized that these types of activities are generally
19 conducted on lands designated as Ag. The application is not...oh, sorry...you're totally right.
20 Not inconsistent, I read that wrong. I apologize. You're right, it did find it in—

21
22 Mr. Robinson: For the record, you want to slow down and read that again because it was kind
23 of—

24
25 Ms. Yuen: I'm sorry, you're right. So, on Page 9 it read, the application is not inconsistent with
26 the community plan land use map, it is not inconsistent. So in general—

27
28 Mr. Robinson: Is not inconsistent is –

29
30 Ms. Yuen: Is not in consistent—so it is--

31
32 Unidentified Speaker: That's a double negative.

33
34 Ms. Yuen: It is consistent. I'm sorry I apologize. You're right. You're right it does meet that
35 according to the—

36
37 Mr. Robinson: Thank you please carry on.

38
39 Mr. Goodin: Let's talk about the project's compliance with the Paia-Haiku Community Plan.
40 Could you please describe that plan?

41
42 Ms. Yuen: Right. So this again takes it to another smaller scale in terms of setting goals and
43 visions and objectives recognizing that you know different areas on the island of Maui have their
44 own unique character and populations and uses and that sort of thing. So what these long
45 range plans try to do is give the umbrella vision for the county, how does it relate to each
46 individual area whether it's the island of Maui or then dives into the nine different community
47 plan areas which are more specific to a community or neighborhood scale of the portion of Maui

1 County.

2

3 Mr. Goodin: Let me put up some of the standards from the Paia-Haiku Community Plan. Could
4 you please review these for us?

5

6 Ms. Yuen: Sure. So under cultural resources the goal states, identification, protection,
7 preservation, enhancement and appropriate use of cultural resources, cultural practices and
8 historic sites that provide a sense of history and define a sense of place for the Paia-Haiku
9 region. Objectives and policies include Item No. 3 which says, identify, protect, preserve and
10 where appropriate restore significant archaeological and cultural sites and resources unique to
11 the State of Hawaii and to the Island of Maui. Four reads, foster an awareness of the diversity
12 and importance of cultural resources and of the history of Paia-Haiku. My apologies. Promote
13 distinct cultural resources as an identifying characteristic of the region and under economic
14 activity the goal states a stable economy that compliments the real character of the region and
15 provides opportunities for economic diversification and community needs.

16

17 Mr. Goodin: Are...is the project consistent with these standards?

18

19 Ms. Yuen: Yes. Again, a lot of these objectives and policies mirror what is in the higher level
20 policy statement for the County in terms of preserving and protecting, identifying significant
21 historic sites especially those that are unique to the Island of Maui in this case which we believe
22 Camp Maui as it is called is exactly that type of site. The Marine base held a unique place as
23 one of the largest Marine bases and home to highly decorated...of course, you know, set of
24 military service people that served our, our, our...served the United States during the Pacific
25 campaign in World War II, and so the tours, the artifacts, the museum, all of that help promote
26 an awareness of Camp Maui and the tours also support employment for those who give the
27 tours as well as an economic driver that does pay into County resource in terms of taxes.

28

29 Mr. Robinson: Counsel could you please conclude with your witness in the next five minutes
30 please?

31

32 Mr. Goodin: Chair, I don't think we're gonna be done in the next five minutes. I think it's
33 important that we review each of these standards and also review the Department's
34 determinations. There are conflicting determinations.

35

36 Mr. Robinson: Yes, and I appreciate that. We are the Planning Commission. We go through
37 studies. We are well-aware if you guys have to reread it for yourselves, I totally understand
38 that. But this is what we deal with, we're the planning commission. So we deal with everything
39 that you've read to us in the last half hour to forty-five minutes. I talked to you half an hour ago
40 about it, I talked to you 20 minutes ago about it and we continue read things that are in our
41 handbooks that we have study courses for. So if it's something that you want to review
42 personally to do it, but, but again this is part of what you've already put in as evidence and we
43 understand what is part of this Code. We understand our jobs as commissioners. So, so to be
44 reread this again and again, it's it's just, it's just redundancy.

45

46 Mr. Goodin: And Chair—

47

1 Mr. Robinson: So if you have highlights and highpoints that you wanna address please do that.
2 Please say we want to highlight this point and highlight this point, but going back and forth for a
3 Q and A for over an hour now and all you're doing is reciting paperwork that's already come
4 from this commission. That is not the best use of commission time and I think of your time. So
5 if you have longer than five minutes that you cannot conclude then that is your call, but we will
6 be calling lunch...I already extended 15 minutes from what it was so at 12:45 we'll be calling
7 lunch.

8
9 Mr. Goodin: I understand Chair.

10
11 Mr. Robinson: Thank you.

12
13 Mr. Goodin: And again, I believe that the conflicting determinations in the Department's report
14 are essential to review and to understand the factual basis for those determinations. I think
15 that's a key point in this proceeding and that's why I want to go through what the standards are.
16 We can, we can not read them, we can just put them up on the screen to review but to
17 understand what those determinations, what the standards are and what determinations were
18 made in 2016 and what determinations were made today, I think those are really important
19 points for the commission to consider.

20
21 Mr. Robinson: That would be great to leave with Corporation.

22
23 Mr. Galazin: Thank you. Counselor we're here today to consider one application that is the
24 application that's been submitted for 2018. We're not looking back to the 2016 application. So I
25 would urge you to stop referring to it and try and prove on your merits that this application meets
26 the criteria. Staff will be able to provide its report. We'll be able to provide questions of Staff at
27 that time. This is not the venue for that.

28
29 Mr. Goodin: Well, I respectfully disagree. I believe that that report is a very essential document
30 especially if there are no factual differences between what was...what was an issue in 2016,
31 and what was an issue here in 2018.

32
33 Mr. Robinson: Duly noted.

34
35 Mr. Goodin: Thank you. So looking at these standards does the project comply with these
36 standards?

37
38 Ms. Yuen: Yes, as mentioned earlier they do.

39
40 Mr. Goodin: And in 2018, I'm sorry in 2016, did the Department determine that the project
41 complied with these standards?

42
43 Ms. Yuen: It did.

44
45 Mr. Goodin: I'll just put that up there for you can review it and the Commissioners can review it
46 as well, you don't have read it but you can see that the Department determines that the project
47 complies with these standards, correct?

1
2 Ms. Yuen: Correct. That it proposes to restore and maintain a history site know as Camp Maui.

3
4 Mr. Goodin: Okay.

5
6 Ms. Yuen: And that it employs 15 people.

7
8 Mr. Goodin: In its 2018 report did the Department reach the same conclusion?

9
10 Ms. Yuen: In this case no. It did not.

11
12 Ms. La Costa: I can't hear you please.

13
14 Ms. Yuen: It did not. It did not.

15
16 Mr. Goodin: And do you recall what the specific analysis was by the Department in its 2018
17 report on this point?

18
19 Ms. Yuen: It says that the zipline activity should be the accessory to use that is secondary to
20 the principal use therefore it...unless it can be shown that the zipline and similar activities are
21 accessory to the historic preservation activities current operations do not meet the intent and
22 purpose of the applicable district. I argue that that's not what's being analyzed here in terms of
23 accessory or principal use. We're just seeing if this is consistent with your community plan.

24
25 Mr. Goodin: And has the changed—

26
27 Ms. Yuen: No.

28
29 Mr. Goodin: --with respect to these particular standards—

30
31 Ms. Yuen: No.

32
33 Mr. Goodin: --in light of these specific standards has the use changed between 2016 and
34 2018?

35
36 Ms. Yuen: No, it hasn't changed.

37
38 Mr. Goodin: And did the Department provide any basis for why its factual findings changed
39 between that period?

40
41 Ms. Yuen: No, no, it just said that the applicant has not demonstrated even though in 2016 it
42 did.

43
44 Mr. Goodin: Now let's talk about Maui County Zoning. And so, how are...you heard
45 Professor Callies testify earlier about how uses are permitted under the Zoning Ordinance.
46 Would you agree with his analysis?

47

1 Ms. Yuen: I do. I do and that is actually written in our application on Page 10 of the amended
2 application where we acknowledge that while the Planning Department has taken a position that
3 the zipline component requires the County Special Use...the application was submitted
4 acknowledging the historic preservation, rehabilitation and improvement of a historic site as the
5 primary use and so it should be consistent with what is permitted as of right in the Ag District.
6 And the Ag District, you know Maui County...I think should be commended because it does
7 have that. Not all the counties outright permit it even though under State Law it is one of those
8 that are identified as a permitted use under State land use. I think Hawaii County is the only
9 other one that specifically cite the actual restoration, rehabilitation, improvement of historic sites
10 as outright permitted primary uses in the Ag District. And so Maui County...like on, on, on...in
11 the City and County of Honolulu you have to get a...do a public hearing and get a permit from
12 the department, but in this case it's an outright permitted use which I think is to be commended
13 because it does acknowledge you know the historic features and significance and what makes
14 Maui unique.

15
16 Mr. Robinson: Okay, thank you. At this time, we're gonna take a quick two-minute break. Can
17 the Commissioners please stay in their seats until then? Thank you.

18
19 A recess was called at approximately 12:45 p.m., and the meeting was reconvened at
20 approximately 12:47 p.m.

21
22 Mr. Robinson: Maui Planning Commission, October 23rd Item B.1 will be recessed at this time
23 until 9:00 a.m., December 11, 2018.

24
25 Unidentified Speaker: No objections.

26
27 Mr. Robinson: At this time we're on lunch, thank you.

28
29 Mr. Goodin: Thank you Chair.

30
31 A recess was called at approximately 12:48 p.m., and the meeting was reconvened at
32 approximately 1:52 p.m.

33
34 Mr. Robinson: Aloha welcome back to the Planning Commission, 23rd, October 23rd. At this
35 time we're gonna do our SMA Workshop and to lead us in that is Director.

36
37 **C. Workshop on the Planning Department's proposed amendments to the Maui**
38 **Planning Commission's Special Management Area Rules and Shoreline Area**
39 **Rules conducted by Planning Department Staff. (M. McLean)**

40
41 The workshop is for information purposes.

42
43 Ms. McLean: Thank you Chair. I was not intending to give this presentation but the Council's
44 Land Use Committee is still continuing its meeting from this morning so David Raatz, our
45 Administrative Planning Officer who was going to give the presentation is still up at Council. So
46 between one of our Senior Planners, Jeffrey Dack, and Tara Owns and myself we will...I think
47 we'll be able to cover everything that we need to.

1
2 So what we're doing today is what we've calling a workshop on the SMA and Shoreline Rules
3 and these work hand in hand. So we've put up some power point slides on the SMA Rules and
4 then we can put up the draft language of the rules themselves and walk through those and then
5 we'll do the same with the Shoreline Rules. So Jeff is gonna man the power point and I will
6 walk you through it.

7
8 Mr. Robinson: So this is proposed new rules, right?

9
10 Ms. McLean: These are proposed amendments to your existing rules, yes.

11
12 Mr. Robinson: Okay.

13
14 Ms. McLean: We do not have a hard copy, no. So our three planning commissions, Maui,
15 Molokai and Lanai are the sole authority over the Special Management Area and that comes
16 from State Law and the County Charter that you folks are the authority in all matters relating to
17 the Coastal Zone Management Law which creates the Special Management Area.

18
19 The rules that we're working on now have been in the works since before I started with this
20 Administration. So this is going back to 2010 if not before and it is...we have a staff team from
21 most of our divisions who've been involved with this because in one way or another most of our
22 staff end up being involved with the SMA so we have a staff team that's been working on it.
23 Some of them have been working on it from the beginning and as I mentioned the Shoreline
24 Rules need to accompany the SMA Rule changes 'cause some of the thing we're proposing to
25 do in the SMA Rules really simplifies SMA by taking some of the shoreline specific out of it but
26 then that needs to be covered in the Shoreline Rules.

27
28 And one of the reasons for these rules is because of the recent Hawaii Sea Level Rise
29 Vulnerability and Adaptation Report that was adopted by the State. It was a State Inter-Agency
30 Climate Adaptation Commission. Jeff Dack who's here with us today was the County's
31 representative on that panel and that report that was adopted last year.

32
33 We have been doing a bit of outreach. We did hold a public meeting here on October 2nd, and
34 then just last week we presented the proposed rules to the Council's Planning Committee and
35 we also did a sneak peek with you folks last year or earlier this year, excuse me. So we've
36 been conducting various outreach and we're getting input and once we get your input today,
37 we'll make some changes and tweaks as needed and then hopefully bring these back to you for
38 formal adoption later this year. So ultimately these are your rules. They will come back to you
39 for a formal public hearing. They would be published in the newspaper. Formal public hearing
40 and you would adopt them and then the Mayor would sign them. So that's the adoption process
41 for both sets of rules.

42
43 Ms. Gomes: Is it okay to ask questions at the time or do want me wait?

44
45 Ms. McLean: Chair, if it's okay with you, I'm fine with Commissioners asking questions at any
46 time?

47

1 Mr. Robinson: Wanna grab the mic?

2

3 Ms. Gomes: Oh yeah, I'm so sorry. Is it on? I don't have much of a voice too. Sorry. So this
4 will be house rules basically for us for Maui specifically or we're adopting it via through Council?
5 ...(inaudible)...this is just for us?

6

7 Ms. McLean: No, again these are...the authority over the SMA is solely with the planning
8 commissions. So we have Maui, Molokai and Lanai, three planning commissions.

9

10 Ms. Gomes: Correct.

11

12 Ms. McLean: Each Commission has its own rules.

13

14 Ms. Gomes: Right.

15

16 Ms. McLean: So these are your folk's rules.

17

18 Ms. Gomes: Right.

19

20 Ms. McLean: And that's it. No Council approval needed.

21

22 Ms. Gomes: Right. And of course, you know, 'cause I know, 'cause I did the Cost of
23 Government, you understand, this is just pertaining to Maui. Molokai and Lanai has their own?

24

25 Ms. McLean: That's right.

26

27 Ms. Gomes: Okay.

28

29 Ms. McLean: So fundamentally State law, HRS Chapter 205A says, any "development" what
30 they define as a development within the SMA needs a permit. And then that same law goes on
31 to define what is a development and what is not a development. And then an action that is not a
32 development is exempt from getting an SMA Permit. And so it has this long list of exemptions
33 and so you think, oh that's easy if you're on that list you don't need an SMA Permit, but at the
34 very end of that list it says, provided that the proposed action will not have a significant
35 environmental or ecological effect which means even if you're on that list we have to assess it to
36 make sure that it's not a development. So even though it's listed as an exemption we still need
37 to assess it. You want the lights off?

38

39 Kahu Hill: Yeah.

40

41 Ms. McLean: Okay, you cannot get sleepy. Commissioner Gomes?

42

43 Ms. Gomes: Sorry Director, Chair question again. Can you define development?

44

45 Ms. McLean: Development as defined in HRS 205A is basically any action on land or in water
46 that...now I'm at a loss...I look over to Corp. Counsel. It's a very broad definition—

47

1 Ms. Gomes: All right, Corp. Counsel.

2

3 Ms. McLean: I have it in my folder.

4

5 Ms. Gomes: Sorry.

6

7 Ms. McLean: No, no.

8

9 Ms. Gomes: Just, just want clarification, I mean specificity, you know.

10

11 Ms. McLean: I probably have it in my folder.

12

13 Ms. Gomes: Since we don't have the hard copy. 'Cause I'm thinking development like yeah,
14 major, you know development not like...I mean are we talking about ohana, dwelling, I mean
15 anything...trellis

16

17 Ms. McLean: Okay, development means any of the uses, activities or operations on land or in
18 water within which and within the special management area that are included below. Number
19 one, placement or erection of any solid material or any gaseous, liquid, solid or thermal waste.
20 Number two, grading, removing, dredging, mining or extraction of any materials. Number three,
21 change in the density or intensity of use of land including but not limited to division or
22 subdivision of land. Number four, change in the intensity of use of water, ecology related
23 thereto or of access thereto. And number five, construction, reconstruction, demolition or
24 alteration of the site of any structure.

25

26 Unidentified Speaker from Audience: Could I ask a quick question?

27

28 Ms. McLean: So it's very broad. No sir. So it's very broad.

29

30 Ms. Gomes: It's very broad. Okay.

31

32 Ms. McLean: Okay.

33

34 Ms. Gomes: Thank you.

35

36 Ms. McLean: Okay. So Jeff back to the power point. So the first significant proposed change
37 to the rules is...oh, one too far. Okay, so that last arrow, proposed changes would create a few
38 new definitions for various actions and for what we're now calling, proposing to call, exceptions
39 for actions that are in that list of exemptions in State Law, but that undeniably don't need to be
40 assessed. So you have that list of exceptions in State Law, but it says after that list as long as it
41 doesn't have an environmental or ecological affect. We tried to narrow that list down to the no-
42 brainers, to the easy ones that we think you know what you should just be able to do these and
43 not have to have us assess it first. The example that we always use, today if someone calls us
44 and says I want to put in a new mailbox post at the end of my driveway, do I need an SMA
45 Assessment? We have to say, yes you do. So what we're trying to do is to define that type of
46 action to say, this is now a no need. So that the rules say that. You don't have to come in and
47 ask us the rules say it. So we have the examples up there, mailbox post, interior renovations

1 that's another big one. Completely interior renovation under the law we still have to assess it.
2 So interior renovations, minor exterior changes, adding rooftop PV, ground signs, civil defense
3 sirens. So there are a number of items and we'll, we'll look at the language so you can see
4 what we're talking about where this would be no need for an assessment.

5
6 Now it's important to note on there and the outreach that we have conducted so far we have
7 gotten comments that some of those exceptions go too far, that we may be are being a little too
8 lenient, being a little too loose so we may need to tighten those up a bit. So we will go through
9 the language today but just so you know we're gonna take another hard look at those make
10 sure that we are confident that we should be able to call these exceptions in the rules.

11
12 Another proposed definition change would modify the existing definition of a single family
13 dwelling. So that it would include not just the main dwelling but also all accessory structures so
14 that would include a garage, a swimming pool if they have, and it would include an ohana if they
15 have it. That's actually a long standing practice of the Department but it hasn't been spelled out
16 clearly in the rules so we're proposing to change that.

17
18 Mr. Carnicelli: Quick question for you then. So my question is single family dwelling over 7,500
19 square feet is not exempt?

20
21 Ms. McLean: That's correct.

22
23 Mr. Carnicelli: So if we had a cumulative...say so let's just say okay, I'm going to build a house
24 and an ohana and a garage but cumulatively it was over 7,500 square feet would it get triggered
25 or would it all be...case you know the ohana's exempt and then all of a sudden the house is
26 exempt and the, you know, the garage is exempt. You know is the cumulative now suddenly
27 trigger the SMA or no?

28
29 Ms. McLean: Yes.

30
31 Mr. Carnicelli: It does?

32
33 Ms. McLean: This would help us put all those together.

34
35 Mr. Carnicelli: Okay.

36
37 Ms. McLean: And it's not changing that 7,500 square feet. That's already in State Law. This is
38 just saying what falls under single family dwelling.

39
40 Mr. Carnicelli: So if I had let's say a house of 6,000 square feet and I had an ohana of 1,000
41 square feet and I wanted to build a 600 square foot, you know those already existed and then I
42 wanted to build a 600 square foot garage will that garage get triggered if they were done
43 separately? 'cause you know there's like this sort of piecemeal thing happens sometimes.

44
45 Ms. McLean: If it can't all fall under the...an exemption so it together exceeds 7,500 then yes, it
46 would trigger SMA review.

47

1 Mr. Carnicelli: Okay.

2

3 Ms. McLean: For whatever goes beyond 7,500.

4

5 Mr. Carnicelli: Thanks.

6

7 Ms. Gomes: I have a question and I'm sorry, just for clarification purposes. This is, this for the
8 purposes of private land. This isn't subdivision with CC&Rs and everything else because that in
9 itself has its own conditions. I'm assuming that this is not attached to let's say Maui Lani, Keha
10 Lani Subdivisions. I mean you're already are in an association and you are already triggered off
11 with all of this, you know design review committees, the DRC, and everything else? I mean, this
12 isn't applying?

13

14 Ms. McLean: This would apply to the entire Special Management Area. So any land that's
15 within the SMA which is generally your coastal lands makai of the main coastal highway.
16 Anything within the SMA would be subject to these rules. There could also be private CC&Rs
17 that apply that may be more restrictive this but this doesn't change CC&Rs. CC&Rs are a
18 private agreement that are separate from County land use regulation.

19

20 Ms. Gomes: So you possibly could be held to two?

21

22 Ms. McLean: Yeah, yeah.

23

24 Ms. Gomes: Multiple.

25

26 Ms. McLean: Yes, there could also be zoning conditions on a piece of property too that would
27 also govern that property in addition to SMA Rules, CC&Rs.

28

29 Ms. Gomes: Okay, thank you.

30

31 Ms. McLean: Then other changes that we are proposing would simply clarify the procedural
32 steps when someone is proposing an action in the SMA. So quite simply, we'd need to first look
33 at is it an exemption and if it's not an exemption or excuse me, is it exception which is the new
34 term that we're using for the no needs. If it's not exception, is it exempt? If it's exempt, could it
35 had a cumulative impact? If it could, does it need a minor or a major permit? So that's the
36 sequence that we would follow and we proposing changes to just clarify that.

37

38 Other changes would improve and clarify the procedure that you follow for an emergency
39 permit. And currently emergency permits are allowed with a verbal approval because
40 oftentimes it's an emergency they need to know right away so we give them a verbal approval
41 but we're broadening the use of that. After a verbal approval is given the applicant still has to
42 submit a written application so we're giving them more time because it's typically an emergency
43 situation they don't have time to put an application together right away. Then it also calls for the
44 applicant to give a timeline for when those temporary protective measures would get removed
45 or and/or what their long term plan is. Again, if it's an emergency due to let's say coastal
46 erosion they need to put in sandbags that's all fine. You need that emergency measure, but

1 then what is your long term plan for that? So will those get removed? If they're gonna get
2 removed then what's your permanent, your permanent strategy? Commissioner Carnicelli.

3
4 Mr. Carnicelli: So in that I mean what we've kind of seen is that you know like say sandbags are
5 there for 10 years, you know, or years and years. 'Cause even if you come up with your
6 remedy...I guess what are we looking for in that saying okay, this is what our remedy is, but if
7 you've got to go get a full EIS and do that whole you know song and dance, you know, suddenly
8 that temporary remedy is a lot more permanent than temporary. I mean, how are we balancing
9 that I guess this question.

10
11 Ms. McLean: That's a great question and part of the reason that we're putting this in is because
12 in the past there hasn't been that long term plan requirement. But yes, if someone's long term
13 plan does require an EIS then we understand the amount of time that that's going to take so that
14 will be in the plan and we are going to want to see progress toward that. So if after a year they
15 hadn't done any studies, they hadn't commissioned any consultants, they hadn't engaged in
16 implementing that plan then we will step in and say, hey you could be in violation of your permit
17 you're supposed to be moving toward this long term plan.

18
19 Mr. Carnicelli: Okay so in that then the follow up question would be as they come up with a long
20 term remedy is part of the new rules gonna be having benchmarks? You know 'cause you
21 kinda say like okay if a year from now if you haven't done anything, but I mean, is the temporary
22 permit going to have conditions on it you know, saying okay, you must...I don't know do a study,
23 commission somebody, come up with whatever it is within this timeline and hit these
24 benchmarks and measurable?

25
26 Ms. McLean: Yes.

27
28 Mr. Carnicelli: Okay.

29
30 Ms. McLean: And it's intended to be a cooperative effort between the Department and the State
31 'cause oftentimes this involves State permits as well and the applicant to understand what the
32 most appropriate long term measure is, how it's going to take to get there and what reasonable
33 milestones are. Tara or Jeff do you want to comment any more on that?

34
35 Mr. Dack: Explanation was fine. Thank you.

36
37 Ms. McLean: Commissioner Hill.

38
39 Kahu Hill: I have just one question on the emergency permit just looking at the sea levels rising
40 and what we've been presented how is that going to play out in the future when they get
41 temporary measures for emergencies and permits if there's not a long term resolution because
42 the sea level's rising or the beach is depleting and there's really nothing that can be done on
43 certain places?

44
45 Ms. McLean: That will tie in a little bit more with the Shoreline Rules, but Tara do you have a
46 comment on that for now before we go into Shoreline Rules.

47

1 Ms. Owens: I think—

2

3 Ms. McLean: Can you use the mic?

4

5 Ms. Owens: Maybe I'll just defer until we get there. I think we can answer some more of these
6 types of questions in that context.

7

8 Ms. McLean: And then lastly with the emergency rules right now the emergency rules strictly
9 apply to habitable structures, protection of habitable structures and we're proposing to expand
10 that. For example, sometimes infrastructure is threatened so it shouldn't just be habitable
11 structures. And as is the practice now the Commission gets notified when an emergency permit
12 is granted and that practice will continue.

13

14 Other changes would allow the Director to approve and I can't see the Chair's reaction
15 so...allow the Director to approve time extensions up to five years. Currently the practice is two
16 years with the Commission's waiver. Permit transfers which are currently allowed also with
17 notification that would continue. And nonsubstantive revisions to project scope and conditions.
18 This also reflects long standing practice. The rules are silent on it. A good example is a new
19 apartment complex that has parking and a swimming pool and a barbeque are and as they start
20 doing the site design for different reasons they want to switch the location of pool and the
21 parking and some of the amenities. The unit count is the same, the impacts are the same, it's a
22 site plan modification, things like that it's current practice for the Department to approve
23 administratively. So we're proposing to continue that practice but to establish that in the rules.

24

25 And related to enforcement, the proposed revisions clarify how the Department determines SMA
26 violations to be resolved and that would mean a payment of fines and that the use has stopped
27 or if it involves illegal construction that that construction has been removed or proper permits
28 have been obtained.

29

30 And a proposed changed would allow for enforcement Notices of Warning or Violation to be
31 posted on the property or published in the newspaper. Right now they have to be served via
32 Certified Mail and oftentimes they don't get signed for and so we can't consider those to be
33 properly served. This would allow us to post it on the property or to publish it in the newspaper
34 and for it to be considered properly served.

35

36 Mr. Carnicelli: If I could just on, sorry Chair...on the fines I know that it had been brought up in
37 testimony here in...at the planning commission and then the Council actually has talked about it
38 as far as the fines going into an SMA Fund rather than just going into the General Fund. Is that
39 something would be part of our rules that we, you know, I mean 'cause our hands were tied
40 when it was brought up. Like hey, let's...there was some fines that were being levied and we
41 were asked to do that and we really couldn't. I don't know where the Council is on that but is
42 that something that...

43

44 Ms. McLean: That bill was adopted by Council.

45

46 Mr. Carnicelli: Okay, cool.

47

1 Ms. McLean: So now monies that are received for any type of SMA application, the application
2 processing fee—

3
4 Mr. Carnicelli: Right.

5
6 Ms. McLean: And as well as SMA violations will go into that fund.

7
8 Mr. Carnicelli: Okay, and that doesn't need to be addressed in our rules then. Okay great.

9
10 Mr. Robinson: On the notice on property are we talking about a sticker on a window notice type
11 of violation posting or are we talking about just dropping something in their mailbox?

12
13 Ms. McLean: It's the actual notice that same as the notice as we would send. We'd put it in a
14 plastic sleeve and we attach it to the gate or attach it to the front door.

15
16 Mr. Robinson: Front door and take a picture of that once you attach it there.

17
18 Ms. McLean: Exactly. Exactly. Commissioner Castro?

19
20 Mr. Castro: Notices are sent Certified Mail or Certified Restricted?

21
22 Mr. Robinson: We want to get away from Certified.

23
24 Ms. McLean: Right now it is Certified and we're proposing to give us other options if the
25 Certified Mail gets returned to us unclaimed.

26
27 Mr. Robinson: I think as we seen the post office has pulled back on what they used to do for
28 delivery. They don't get out of their vans anymore, I mean really so they put a notice and they
29 send you to the post office which is making hard for us to get returns back so I think this is a
30 good idea.

31
32 Ms. La Costa: But this says or versus and. So what if people don't read the newspaper can
33 they claim stupidity out...(inaudible—not speaking into a mic)...

34
35 Mr. Robinson: It will be posted on the property in a plastic sleeve and I think is I think that's
36 what we're talking about today for proposed changes where we can change that to and.

37
38 Ms. McLean: No, this would be or because right now we can only do Certified mail and we're
39 putting these two options, not both of them but one of them because there could be a
40 circumstance where there isn't a good place for us to post it. So it...that would be our
41 preference is to post on the property and take a picture, a date stamp photo to show that we
42 done it. But if for example, I'm trying to think of a good circumstance—

43
44 Mr. Robinson: So there's a property that has rain runoff, it's a vacant parcel and the person
45 lives on the mainland, you can't post the violation.

46
47 Ms. McLean: There's no place.

1
2 Mr. Robinson: But if you put it in the paper he'll never see it.
3
4 Ms. La Costa: Right.
5
6 Mr. Robinson: So that's a bad scenario right there.
7
8 Ms. McLean: Right, and the rules will say that that's considered properly served and we get an
9 affidavit from the Maui News that shows that it was posted.
10
11 Mr. Castro: Same as in Court. Same...(inaudible-not speaking into mic)...
12
13 Mr. Robinson: Court certified though. But we're saying we're not doing certified so that's the
14 thing. So we could certify three times, we have no reply then it becomes considered served.
15
16 Mr. Castro: Or post it...(inaudible-not speaking into mic)
17
18 Ms. Gomes: Or summons.
19
20 Mr. Castro: Post it in the newspaper.
21
22 Mr. Robinson: Post it in the newspaper and summons.
23
24 Mr. Castro: Yeah.
25
26 Mr. Robinson: Okay.
27
28 Ms. McLean: And then—
29
30 Mr. Robinson: Make sure you have a property manager maybe.
31
32 Ms. La Costa: Plain land doesn't have a property manager.
33
34 Mr. Robinson: Yeah, well if you're in an SMA area then the liability will be stuck on you as being
35 a property owner.
36
37 Ms. McLean: Our first option will always be to do a Certified mailing.
38
39 Mr. Robinson: Right.
40
41 Ms. McLean: And if that gets returned to us, we hold onto that as evidence that we tried and
42 then we could try one of those options.
43
44 Mr. Robinson: Kahu Hill.
45

1 Kahu Hill: So if they're not going to get Certified and maybe they are living somewhere else
2 part-time or they're traveling and they don't receive that and you don't know that, how long are
3 they going to have once you post?

4
5 Ms. McLean: Typically in a Notice of Violation they have 30 days from the date of the notice to
6 appeal that notice to...They have 30 days to appeal that notice. So if they're an absentee
7 property owner then they could very well lose their...you know, if they're not informed they might
8 not be aware that that time has passed.

9
10 Kahu Hill: And there's nothing...also I want to...(inaudible)...there's nothing on the internet or
11 digitally or something where people could access things in the future or log in somehow to see if
12 they're...they wouldn't know.

13
14 Ms. McLean: At this point we're not proposing that.

15
16 Kahu Hill: Okay. If you post in the Maui News are you going to do it on the internet as well
17 under their website?

18
19 Ms. McLean: That I don't know. We haven't explored into that kind of detail.

20
21 Mr. Robinson: Commissioner Gomes.

22
23 Ms. Gomes: I'm just wondering with the 30 days is it calendar days or business days?

24
25 Ms. McLean: Calendar days.

26
27 Ms. Gomes: So from the time of it being postmarked, calendar days?

28
29 Ms. McLean: Correct.

30
31 Ms. Gomes: I'm sorry, just I know she mentioned, I know Kahu Hill, Commissioner Kahu Hill
32 had mentioned the posting of Maui News. How about with property tax office? Is that a
33 consideration of connecting with them?

34
35 Ms. McLean: No.

36
37 Ms. Gomes: .On this or corroborating with them?

38
39 Ms. McLean: We haven't...we are not proposing that at this time.

40
41 Mr. Robinson: But on notices say Kahu somebody wanted to monthly check to make sure
42 they're okay, the RFS is still on top the internet right? So that would show up there that they
43 had a RFS because they had...you giving them an NOV is that correct?

44
45 Ms. McLean: There would be...yeah, there would be an RFS generated before we issue a
46 Notice of Violation.

47

1 Mr. Robinson: So on their property they could look on top there, you know theoretically not that
2 anybody would that there is a way that you'd pull up your property and it would show that there's
3 something on your property.

4
5 Kahu Hill: Okay, one last question. If somebody has their property and they're using a P. O.
6 Box as their primary mail and they're not there and they are traveling or off island or in the
7 mainland how's that going to work then if they don't even use that mailbox or use—

8
9 Mr. Robinson: That's their kuleana. That's their kuleana. So the Certified mail notice at post
10 office will leave it inside their box, that box will get to them and then they gotta go pick up the
11 certified.

12
13 Kahu Hill: Right. And if there's no more Certified then...

14
15 Mr. Robinson: We'd do Certified first—

16
17 Ms. McLean: Hold on, hold on, hold on. Let's back up for a second.

18
19 Mr. Robinson: Yeah, doing Certified first.

20
21 Ms. McLean: When we, when we conduct enforcement the first thing we do is issue a Notice of
22 Warning and that's sent by Certified Mail or posted on the property or put in the newspaper and
23 that's a warning that says we believe you have a violation and this is what we think you're doing
24 that is not allowed. And...lost my train of thought. Then it gives them a certain amount of time
25 to either contact us or to correct that violation. If we do not hear from them and the violation is
26 not corrected then we proceed with the Notice of Violation and then we repeat those steps
27 again. We try Certified Mail or now with these options posting on the property, posting in the
28 newspaper. So this would be the second attempt to let them know. First would be a warning
29 and that gives them the opportunity to say, oh I didn't know I wasn't allowed to do that. I need a
30 permit for that? I didn't know. And we can say okay, get your permit submitted and we aim for
31 problems to be corrected without going to a violation. A violation is when the fines start. We
32 actually have it as one of our Department's measurables in our annual budget that we aim for
33 85 percent at least to be resolved without going to a violation. So most of them get resolved at
34 the Notice of Warning level then if they don't then we go to Notice of Violation.

35
36 Can you please not...Livit, please don't distribute anything else till we're finished.

37
38 Ms. Callentine: Oh sorry.

39
40 Ms. McLean: Just finish up what you're doing.

41
42 Okay, then last proposed change would allow the Director to negotiate a settlement for
43 violations if the fines don't exceed a total of \$50,000 without requiring commission approval. So
44 if fines go beyond \$50,000 and there's some sort of settlement that would come to you for
45 approval, but if it's \$50,000 or below, the violation has been cured, and now we just have a
46 payment of the fines we're proposing for that to be able to be negotiated with the Director and
47 the commission would be notified.

1
2 So again these are just proposals that will come to you folks for adoption or not. So these are
3 just things that we're recommending and when we come back to you formally then you'll have
4 your chance to approve them or modify them or not approve them at all.

5
6 Okay, so I don't know how you guys are feeling. What we had thought we would do is to put up
7 the actual language that we're talking about with these rule changes and then we can just walk
8 through those. Not in, not in a whole of detail but just to go through them as your first glance.

9
10 Okay, so your SMA Rules are Chapter 12-202 and we're not proposing to change the title or the
11 substantively change the purpose. Moving down, Jeff you can keep going. I'm just looking for
12 the...for the real substantive changes. Okay, you had asked about the definition of
13 development. Currently the rules do not have a definition of development, and so we think it's a
14 good idea to put in your rules the definition of development and all that's going to do is tie it
15 back to the definition in State Law so that that's clear what a development is.

16
17 Proposing a new definition for exception. Those are the no needs. And we're proposing that
18 that be defined as a proposed use, activity or operation for which an SMA Assessment,
19 Emergency, Minor or Use Permit is not required.

20
21 Then an exemption action or exemption, those are the ones that I talked about in State Law is a
22 proposed use, activity or operation that's not a development as determined by the Director and
23 as defined by State Law.

24
25 Mr. Carnicelli: So if I could?

26
27 Ms. McLean: Yes.

28
29 Mr. Carnicelli: So in that it says, as determined by the Director is going to be black and white in
30 definition 205A-22. So the Director is going to determine whether or not it's in 205A-22?

31
32 Ms. McLean: That is the current practice now, yes

33
34 Mr. Carnicelli: Okay. So it's not like there's gonna be some things outside of that then the
35 Director then gets discretionary. It's either in that, not, that determination is made by the Director.

36
37 Ms. McLean: Right.

38
39 Mr. Carnicelli: Okay.

40
41 Ms. McLean: That's current practice.

42
43 Mr. Carnicelli: So it's not like there's like this...yeah, there's this like okay well, it's not a
44 development but it's not part of 205A-22, okay.

45
46 Ms. McLean: Right.

47

1 Ms. Gomes: And, I'm sorry Chair? Director so just you have arbitrary discretion to make that
2 decision just to piggy back on Commissioner Carnicelli's?

3
4 Ms. McLean: It's won't be arbitrary, but yeah the Director will have that discretion.

5
6 Mr. Robinson: Director is there guidelines to your discretion?

7
8 Ms. McLean: The...are there guidelines to the Director's discretion?

9
10 Ms. Gomes: ...(inaudible)...my comments.

11
12 Ms. McLean: It's really you...you look at the rules, you look at applicable Code provisions, you
13 look at 205A, look at past practice, look at any legal precedent.

14
15 Mr. Robinson: I mean, and I'm just saying this just in, you know, prior developments and
16 Directors get put in tough situations because they get too much leniencies and it becomes
17 political and we end up with a Montana Beach. You know, and so it's not that we don't trust the
18 Directors it's we also want to insulate Directors from having to make a decision that is, that is
19 not guided, you know, kind of help the process, is it's I think it's the more guidelines the
20 better it is for the position instead of having it too open to where well, you could sign it if you
21 wanted to you know.

22
23 Ms. McLean: What we're proposing in the rules by having those no needs, none of the other
24 counties in the state do SMA Assessments like we do. We go into a lot more analysis than the
25 other counties do. If they...the other counties will look at that list in State Law and say, oh these
26 are exemptions and they just say, no need. We don't do that. We, we analyze all of those
27 exemptions. And what we're proposing to do now is to take some of those, the what we think
28 are the really straightforward clear cut ones and say okay, these truly are no needs and that's
29 what the other counties do and those directors are exercising their discretion to do that. We
30 actually have less discretion in that sense than the other directors do.

31
32 Mr. Carnicelli: And does the Commission still get notified?

33
34 Ms. McLean: Not of the no needs. The no needs you just do 'em.

35
36 Mr. Carnicelli: Got it.

37
38 Ms. Gomes: And I'm sorry Director and only because again I know that Molokai and Lanai you
39 know they like to have their own decision making in regards to what they do and you know that
40 I've done the report on that one. Is that gonna apply to them as well? Are you gonna go across
41 the board because we're...I know that Maui, you know there was...we've given...well at least
42 Maui Planning Commission has had this arbitrary type of decision with the Director or Deputy
43 Director, so forth to have these kinds of decision making skill...well, decision making I guess, I
44 wouldn't say skills but sort of saying onsets you know to do, but Lanai and Molokai do things
45 differently and we know Lanai definitely does things differently. So is this gonna be something
46 that is gonna be proposed across the board, tri-isle?

47

1 Ms. McLean: First I want to say again clearly for the record it's not arbitrary.

2

3 Ms. Gomes: Okay.

4

5 Ms. McLean: That's very important to say. These are just for Maui.

6

7 Ms. Gomes: Just for Maui.

8

9 Ms. McLean: These are just for Maui.

10

11 Ms. Gomes: Okay.

12

13 Ms. McLean: We're proposing to add new definitions for renovation and repair and that's
14 because those terms are used in the exceptions so we wanted to be clear that if we're calling
15 something an exception meaning no need for SMA Assessment we wanna be sure that it's clear
16 what renovation means and what repair means so that if something is no need we know exactly
17 what we're talking about.

18

19 Then, oh go back please Jeff, single-family residence so that's what we were talking about
20 before revising the definition of single-family residence. So it's a single-family dwelling and all
21 accessory structures thereto including one accessory dwelling. Okay, then moving along...

22

23 Now here we get to the exceptions. These are the ones where we're saying...I think it's
24 important to go ahead and read this. So Section 205A-22 HRS, provides a definition for
25 development. Any development requires an SMA Permit pursuant Chapter 205A-22 in these
26 rules. Section 205A-22 also provides for a list of uses, activities and operations excluded from
27 the definition of development. These excluded uses, activities and operations however must
28 first undergo an SMA assessment to determine whether they have a cumulative impact or a
29 significant environmental or ecological effect on the SMA. If the Director assesses any such
30 use and determines it does not have a cumulative impact or significant environmental or
31 ecological effect on the SMA then an SMA permit is not required. We issue, the Department
32 issues hundreds of SMA Exemptions a year, hundreds. We assess hundreds of proposed
33 activities and issue exemptions. And so by having this next section of exceptions that will
34 reduce that number dramatically. Those are people who don't have to come in to get assessed
35 because they want to change out their kitchen cabinets. People that don't have to come and
36 get assessed because they want to put in a new mailbox post.

37

38 So this section goes onto to say, it's hereby assessed and determined that any use, activity or
39 operation listed below is not considered, "development" pursuant to Section 205A-22 by its
40 minimal nature does not have a cumulative impact or a significant environmental or ecological
41 effect on the SMA and thereby is an exception to any requirements for an SMA assessment or a
42 permit. We want to make sure though however, such uses, activities or operations may be
43 subject to other assessment or permitting requirements such as if they are situated in a historic
44 district, a flood hazard area or the shoreline vicinity. So even if you're an exception here, you
45 might have other permit requirements.

46

1 So, and again I want to say some of the previous outreach that we've conducted, we've gotten
2 comments that some of these may go too far. All right so especially if you feel some of these go
3 too far please let us know that so that we can make revisions and pull them back in a little bit.
4

5 So the first one, common and customary activities that do not all, that do not adversely affect
6 the ground water, dunes, beaches and other environmentally sensitive areas. Examples
7 include, business sales, everyday dwelling related activities, cleaning and light maintenance not
8 involving repairs or physical improvements, Native Hawaiian cultural practices, everyday
9 recreational activities such as camping and equipment are pertinent to everyday recreational
10 activities including portable chairs, tables, barbeques, and tents.
11

12 Next, transfer of land title. Creation or termination of easements, covenants or other rights.
13

14 Next, normal and customary agricultural activities on land currently or historically used for such
15 activities.
16

17 D. Changes in use and activities or operations that do not increase the density or intensity of
18 use.
19

20 E. Changes between the short-term and long-term occupancy of dwelling units. That one has
21 been the practice of the Department ever since the B&B and STRHs came into effect. We just
22 wanted to put that in the rules.
23

24 F. One temporary event and its signage such as a fundraiser, community event, festival, fair or
25 luau. Right now the Hawaii Food and Wine Festival is going on on the west side and they do an
26 SMA Assessment every time they come in. We're saying that those kinds of things once a year
27 what we're proposing is that those would be a no need.
28

29 Next under G. Different kind of testing, archaeological testing, geophysical testing, percolation,
30 engineering, soils testing involving temporary excavation. We did have a situation where an
31 archaeologist was doing trenching for an archaeological survey and one of our inspectors
32 questioned whether they needed an SMA Permit when in fact the work that they were doing was
33 to put together the studies needed to put together an SMA Permit application
34 so...Commissioner Kahu?
35

36 Kahu Hill: I wanted to know on that one because of the iwi kupuna and things that have been
37 very sensitive as far as testing. Is there any guidelines as far as how much soil is needed for
38 archaeological testing and things like that. I think it's important that we look at that.
39

40 Ms. McLean: If we go back to that one if we could Jeff? There's not a particular standard. We
41 left it up to the minimum extent determined necessary and appropriate by the licensed
42 professional who's conducting the work.
43

44 Kahu Hill: So local kupuna or anyone associated with any sacred sites or anything that nobody
45 would be consulted only archaeologists is that correct?
46

47 Ms. McLean: Correct.

1
2 Mr. Dack: Again, this is just through SMA Rules. There may be other rules in effect that SHPD
3 or other entities establish and enforce. This is just to say that such activities would not require
4 any SMA review.

5
6 Kahu Hill: Okay. I just hope that we keep in mind the cultural experts as well in sensitive areas.
7 Mahalo.

8
9 Ms. McLean: Next letter H. Nonstructural interior maintenance, repairs, and renovations for
10 existing lawfully established structures that involve no expansion and no ground disturbance.
11 So that's paint, floors, carpets, cabinets, interior walls and doors.

12
13 Next letter I. Exterior nonstructural maintenance repairs and renovations to existing lawfully
14 established structures. Again with no ground disturbance. And it also relates to painting with
15 related prep work for structured erected in 1981 or after. And that relates just to the painting
16 and that's because that's the date after which lead based paints were discontinued and so if it's
17 prior to 1981, we would want to see what kind of prep work is being used and what kind of
18 disposal methods are being considered.

19
20 Mr. Carnicelli: Directors, just in where it's talking about photo voltaic and then you know cellular
21 towers, things of that nature, is that going to include photo voltaic... 'cause we're starting to get
22 photo voltaic that's not roofed mounted, but like you know like the trees, that are like the fake
23 trees that are photo voltaic, you know like that's... is that going to fall into this as well?

24
25 Ms. McLean: Okay, that's the next item letter J. Exterior nonstructural installation on and
26 maintenance, repairs, and renovations to existing lawfully established structures that involve no
27 ground disturbance. So for PV in that instance it's roof mounted equipment. So it's new ground
28 mounted then it would probably... it would need an assessment.

29
30 Mr. Carnicelli: Okay.

31
32 Mr. Robinson: But—

33
34 Ms. McLean: It wouldn't fall under J.

35
36 Mr. Robinson: --doesn't SMA also, also cover view planes?

37
38 Ms. McLean: It does, yes.

39
40 Mr. Robinson: Okay.

41
42 Ms. McLean: Where are we? Next, structural or non—oh, Commissioner Gomes.

43
44 Ms. Gomes: Would that also include like you know when you have dish network, you have to
45 put that... there's some that is on the roof. So that would also include that as well?

46

1 Ms. McLean: Yes. It would include that. Next structural or nonstructural single story
2 enclosures of existing lawfully established structures such as decks, lanais, and carports that
3 are accessory to dwellings and multi-family structures. These would not include commercial
4 because if a commercial space is enclosed then that triggers other reviews. So this would just
5 be for dwellings and multi-family.

6
7 Next, ground disturbance up to 12 inches deep and up to 1,000 square feet cumulatively over a
8 one-year period including minor surface grading and grubbing, installation of turf, shallow
9 landscaping, et cetera. I believe that's one of the ones where we have received comments that
10 that may go too far. So we're gonna take another look at that one.

11
12 And then similarly, ground disturbance more than 12 inches deep and up to 32 square feet
13 cumulatively for a one-year period for holes or trenching including the installation, removal of
14 trees and shrubs, utility pedestals, wireless telecommunications, facilities, ground signs, et
15 cetera. And that's another one that we will want to take a look at and make sure that it's not
16 going too far. That that's not too much ground disturbance to allow as a no need.

17
18 Mr. Dack: Did you want to say anything else on here?

19
20 Ms. McLean: Oh, next the assessment and determination procedures. I really don't think there
21 are any substantive changes in this next section. That's where I mentioned we're just gonna
22 clearly lay out the step by step of is something a no need, is it exempt, does it need a minor
23 permit, does it need a major permit?

24
25 Jeff, do we wanna just move ahead to the emergency? See I don't wanna skip over anything
26 substantive. I'm just trying to remember what the key provisions are. What the key proposed
27 changes are.

28
29 Mr. Dack: There may be something in extensions here you might want to go over. I guess
30 that's not in there. I guess, we're at emergency permits so that's fine.

31
32 Ms. McLean: Okay. So there's a long introductory paragraph here and this ties back to some of
33 your folks questions on the emergency permits that it's really trying to establish that this is
34 intended to be a cooperative effort with the property owner, the applicant and the State if
35 applicable to make sure that that the emergency situation is taken care of but also that there's a
36 long term plan. And Jeff and Tara please jump in if you have anything to add.

37
38 Ms. Owens: I do want to make sure your original question gets answered Commissioner Hill.
39 We will be talking more about sea level rise in the context of the Shoreline Rules update so this
40 may come up again. But your question was if the Department is authorizing emergency
41 measures in the context of sea level rise how would we come up with a solution? I think that
42 was the question is that correct? So I just really quickly say there isn't always an easy long-
43 term solution but the idea behind these updates to the emergency rules is that there is a more
44 prescriptive process for follow up. There will be triggers for the owners or applicants to come to
45 the Department. And in doing so, it gives everyone the opportunity to discuss what the feasible
46 options might be and including in the context of sea level rise. You know, in my experience with
47 a lot of these issues and we've had a lot of these emergency issues come up, a lot of times the

1 owners or applicants they've never experienced this before and they have...you know they don't
2 know context and know really expert knowledge on what the viable options might be. And so
3 this gives us at least the opportunity to sort of lay those out and discuss them in the larger
4 context.

5
6 Kahu Hill: Mahalo.

7
8 Mr. Dack: I'd move beyond...okay, the Director has the opportunity
9 currently...(inaudible)...continue to maintain the opportunity to give a verbal approval and then a
10 written application needs to come in and we're moving to where the written application has been
11 provided but now we have a lot of underlined wording where these triggers for progress are
12 actually addressed specifically in the rules. Okay, so you'll see that when under H, when there's
13 an initial written approval, the approval needs to include the following conditions. And Number
14 one, is within 90 days the applicant has to provide the Department...the Department a
15 description of potential long-term alternatives designed to alleviate the emergency situation.
16 And it tells what kinds of alternatives need to be looked at including a relocation of a threatened
17 structure, possible beach restoration. This isn't the case of coastal erosion. Description of how
18 alternatives comply with the various chapters of the Commission's rules, draft timeline, design,
19 list of potential permits. So the idea is to...we'll issue them a initial permit, written permit, but
20 they need...there'll be conditions that they need to be within 90 days thinking about all of these
21 aspects and how they're...what, what...how they're gonna move onto their long-term solution.
22 Then within 90 days of that approval they need to consult the Department about long-term
23 alternatives and understand the requirements and restrictions of work permitted in the shoreline.
24 And if they, if they...the temporary measure needs to be removed unless the applicant submits
25 an application by date specified in the permit to allow the temporary to remain. So again, we're
26 kinda...we're holding their feet to the fire. Then they apply for a temporary extension. Again,
27 which includes this time...first time we asked them to think about it. Now we're gonna ask, okay
28 describe what your preferred alternative is, show you're making adequate evidence...have
29 adequate evidence that you're making progress towards completion, permanent measures, you
30 have a plan and timeline for obtaining all necessary permits on a permanent basis. And then
31 again, we may issue them a further extension, the Director may if there's no substantial or
32 eminent threat...as long as they...we see that they're continuing to make progress and as
33 Commissioner Carnicelli I think it was raised, if they need to have extra time, but they're working
34 due...diligently towards a permanent solution, they need extra time to complete an EA or EIS,
35 we'll allow them. So again if it's...we don't want these things to languish, we don't temporary
36 sandbags to become permanent, and this whole section was designed to avoid that kind of thing
37 that we've seen happening unfortunately on our shorelines.

38

39 Mr. Carnicelli: Jeff if you could go up one more page.

40

41 Mr. Dack: Sure.

42

43 Mr. Carnicelli: I think it's talking about the...yeah, the bottom there when you're saying like okay
44 the applicant...basically saying hey, listen we're working toward long term solutions, A and B is
45 kind of just okay, basically it's retreat or beach restoration. I mean there's a lot of other things. I
46 mean, I've seen Tara's presentation about 27 times now and there's you know a lot of things
47 that we can do to mitigate this and to say that, okay the long-term solution is only these two

1 things. I guess that would be one of those things that I'll put in as just as far as comments if you
2 could kinda maybe address in the next draft that comes back to us to say, okay the only two
3 long-term solutions you're putting on in the rules right there are that basically beach restoration
4 and retreat and we should probably add other things in there too.

5
6 Ms. Owens: Thank You. I understand your comment. There is one slide that I often share that
7 has sort of a range of alternatives including retreat and setbacks to the other end of the
8 spectrum which is armoring and lots of things in between such as elevating and adapting in
9 other ways. So if desired that could be made more specific.

10
11 Mr. Dack: This list, A and B isn't exclusive. They are not the only alternatives, but we...but
12 these rules as written would require that they at least look at relocation and beach restoration.
13 That's not saying they can't look at other alternatives also as its written.

14
15 Mr. Robinson: And that's only shoreline. There's more than just shoreline for SMA, so
16 there's—

17
18 Mr. Dack: Correct.

19
20 Mr. Robinson: --different emergency situations.

21
22 Mr. Dack: Yeah, you can have a...if you have a big hole in your roof, you want to take care of
23 that and that could be done in an emergency basis.

24
25 Mr. Robinson: Sink hole, you know. Commissioner Kahu Hill.

26
27 Kahu Hill: Mahalo. This might be inside here and I just don't, I don't see it. Let's say there's
28 a...hypothetical, let's say Halama Street in Kihei and there's all these rocks and it's whose
29 kuleana is it if it's State land or if it's County or if it's theirs if the rocks come down in front them,
30 in front of their property into the ocean or onto that beach and they bought this house you know
31 50 years, 75 years later, who owns that or whose kuleana is it to do part of this restoration if
32 let's say they wanna replace the rocks for instance, the pohakus in front, do they even have the
33 right to do that if it's State or County? Does that make sense?

34
35 Ms. Owens: I believe your question is about ownership and with all of these shoreline issues it
36 does become very complex the shoreline. Everywhere seaward of the high wash of waves is
37 State land and that location is ephemeral, it's changing. As sea level rises so rocks that may
38 not have been part of the public State lands may become part of the public State land.
39 Everything landward that is County jurisdiction. But regardless whenever any alternatives are
40 being looked at whether it's repairing rocks or groins or walls the State and County are generally
41 both involved in resolving the issue or coming up with a solution.

42
43 Kahu Hill: Mahalo.

44
45 Mr. Robinson: Commissioner Gomes.

1 Ms. Gomes: And I just wanted to ask in regards to restoration we do have a moratorium on
2 sand so do you have any idea how you're gonna restore that?

3
4 Mr. Robinson: The moratorium is on our sand, but not on other people's sand, right?

5
6 Ms. Gomes: True. But I mean sand is very valuable. I mean, ...(inaudible)...you gotta ship
7 that stuff in.

8
9 Mr. Robinson: Or we vacuum it right?

10
11 Ms. McLean: The moratorium is on the excavation of inland sand in a specific geographic area.

12
13 Ms. Gomes: In a specific geographic area.

14
15 Ms. McLean: The beach nourishment projects that are underway or that we're aware of that are
16 being contemplated would take sand that is...that has migrated just a little bit offshore,
17 collecting it from there and then bringing it back on the beach.

18
19 Ms. Gomes: Which would kind of still do the same thing like how Ala Moana is? Or is it
20 Waikiki?

21
22 Mr. Robinson: Dredging, the dredge and –

23
24 Ms. Gomes: The would just keep on dragging back and forth, back and forth, back and forth,
25 right?

26
27 Ms. McLean: That's where the sand would come from. It wouldn't be inland sand.

28
29 Ms. Gomes: Right.

30
31 Mr. Dack: I believe that concludes all the major changes that the Staff was suggesting to the
32 SMA Rules.

33
34 Ms. McLean: Okay, thanks Jeff. Yeah, just in the interest of time Chair, we'll go ahead and
35 move onto the Shoreline Rules?

36
37 Mr. Robinson: Yes.

38
39 Ms. McLean: We wanted to start this overview by going over the purpose of the Shoreline
40 Rules. There are a few purposes. We're ...(inaudible)...to preserve and protect the shoreline
41 area and open space resources to ensure the public can access, use and enjoy the shoreline
42 area and for constructed features to be compatible with the shoreline area. So keeping that in
43 mind the rules accomplish that by establishing shoreline setbacks. So that's the area from the
44 shoreline behind which a property can be developed. And new definitions are needed to
45 implement a new methodology to use the erosion hazard line. Tara do you want to just touch
46 on what the erosion hazard line is that's a new, a new term, a new science-based concept that

1 we are proposing to incorporate into Shoreline Rules as one of the setback determination
2 options.

3
4 Ms. Owens: Sure. I can give some additional context. Well, I think it's good to preface this with
5 the fact that since 2003 Maui County has been determining setbacks using a science-based
6 method which relies on erosion rates. So the faster that your shoreline is changing or eroding
7 the larger the setback will be. Those rules were adopted in 2003. We were the first county in
8 the state to do something like that. It was very proactive at the time and other counties have
9 since followed suit and adopted similar rules or ordinances. The main flaw in that formula is that
10 we're relying on historic erosion and not looking forward to the future. The future can do things
11 that we now know or what we're seeing on the ground but are also being modeled and through
12 the work that's being done at UH and with the Statewide Sea Level Rise Report. So Michele
13 mentioned earlier that in 2017 if you haven't seen it the State issued and adopted this Hawaii
14 Sea Level Rise and Vulnerability and Adaptation Report. And there is also a companion view to
15 go with this if you haven't looked at it, it's hawaiisealevelriseviewer.org. You can zoom around
16 any property and you can look at what is being referred to as the sea level rise exposer area.
17 There are three models that are included in that exposer area. The one we are looking at here
18 is there's a model for erosion, future erosion with sea level rise and basically any property in
19 that area...we'll call it a red line, you'll see it and we can bring it up if it's useful later on. It's
20 basically that there's an 80 percent probability that that land will be impacted by erosion. So the
21 County is now looking at replacing the formula method we have that looks at past erosion and
22 projects it forward into the future 50 years and now just adopting instead this red line on a map
23 that represents future erosion which is based on past erosion and projections into the future as
24 well. I guess I'll stop there, yeah.

25
26 Ms. McLean: Okay, Jeff can you go back where you were just a second ago? Okay, so as Tara
27 mentioned how setbacks are determined the current rules create the shoreline setback by using
28 a formula that uses annual erosion hazard rate. The proposed rules will use this new erosion
29 hazard line in many circumstances, not in all circumstances. And there's the website,
30 hawaiisealevelriseviewer.org and then the next slide shows what that looks like where you can
31 see that red line. You can zoom in to any of the areas that show it.

32
33 Okay, next slide. The current setback process requires a certified shoreline survey. That's one
34 thing that we were aiming to get away from. The certified shoreline survey is a process where
35 an engineer goes to the property, surveys what that engineer determines to be the shoreline.
36 That gets sent to the State and the Department of Land and Natural Resources has to certify
37 that shoreline. And sometimes there's back and forth between the State and surveyor until they
38 finalize that survey and the State certifies it and that certification is good for one year. And
39 previously our SMA Rules and Shoreline Rules called for the certified shoreline and for every
40 applicant with a shoreline property and it's time consuming. It can be expensive. It can be
41 difficult if that year passes and there are changes to the shoreline and we're relying on
42 information that we know to perhaps no longer be accurate. So we're trying to get away from
43 that being an absolute requirement. So the three options in the current formula is 25 feet plus
44 50 times the annual erosion hazard rate or it's based on the lot depth and that can vary from as
45 little as 25 feet to as large as 150 feet or it's 25 percent of the lot depth for irregularly shaped
46 lots and that can also be to a depth of 150 feet.

47

1 The process also has three options most of which do not require the certified shoreline survey.
2 So one is using that red line, the erosion hazard line that Tara described plus 40 feet. Another
3 option is for areas where the red line does not apply because it does not apply to the entire
4 shoreline area of Maui it's 200 feet from the shoreline as mapped by the Department. Now the
5 Department has just completed mapping the shoreline for the non-redline areas. So if you're
6 ... (inaudible)... line and you're 200 feet setback from that then that's the setback, you don't
7 have to do the certified shoreline. The third option is 25 percent of lot depth for irregularly
8 shaped lots that's no change. And so those, those are the three options. Or with that second
9 option I should say if you think that the Department's mapping is not accurate or you want to do
10 your own certified shoreline you can go ahead and do that and then you follow the old formula.
11 Tara?

12
13 Ms. Owens: I think it might be helpful to make the distinction that the erosion hazard line that
14 was modeled by UH for the State Sea Level Rise Study this is for areas, it has to do with
15 geology, areas that have been sandy shorelines that are erodible and we can track the
16 shoreline movement through time. The other areas that are not mapped by the red line or the
17 erosion hazard line are other types of geologies which might be volcanic headlands or clay
18 bluffs that are not, you know they don't the... the same erodability.

19
20 Ms. McLean: Thank you for that clarification. So the rules will continue to have a minimum
21 buildable area on lots so even if that red line takes up your entire property, you nonetheless will
22 still have a minimum buildable area and that's 35 feet from your front yard setback. So
23 whatever is allowed with your side yard setback you'd still have a minimum buildable area.
24 Yes?

25
26 Kahu Hill: I just want to make sure I understood 'cause you just said you finished mapping the
27 shoreline and updated that and you were also speaking about UH and that this Hawaii Sea
28 Level Rise Viewer is based on that. Is this information overlapping?

29
30 Ms. McLean: No, they do not overlap. It's where the entire circumference of Maui is now
31 mapped either by UH with a red line or in areas where UH's red line has not been created then
32 the County has filled in those gaps.

33
34 Kahu Hill: And will be able to see those online?

35
36 Ms. McLean: Yes.

37
38 Kahu Hill: Through this viewer?

39
40 Ms. McLean: The viewer you can see the red line. The Department's mapping we haven't
41 released yet but we can do that very soon. That was just completed last week I think. So we
42 haven't released that but we will.

43
44 Okay, I do... okay, the recent comments I did want to point that out, some of this is restrictive
45 and there's been... we've received a lot of input some of which may have been distributed to you
46 and we will be sure that all of that information is provided to you when we do present these for
47 your consideration for adoption. That there are a lot of concerns from folks particularly those

1 with shoreline properties that this would be very restrictive. What the impacts would be to
2 developed properties if suddenly they become nonconforming when they were built lawfully and
3 under the current rules they would be considered lawful. Now what happens if they're
4 considered nonconforming? So this, this is a very critical and important issue for the
5 Commission to discuss and to get input from the public and we'll also be, before we come back
6 to you getting input from Corporation Counsel because on the one hand you know we want to
7 be prepared for what we are expecting to happen in the future and at the same time we also
8 need to support folks who want to protect their private property and their investment. So it's a
9 difficult question and we need to have some really substantive discussion on this.

10
11 Next we're proposing to add some of those no needs from the SMA Rules to the structures and
12 uses that are not subject to the Shoreline Rules. Proposing to clarify and expand the structures
13 and activities that are allowed in the setback such as repairs to permitted seawalls, actions that
14 received an Emergency Permit, enclosing an existing residential lanai, temporary events, and
15 some more recent comments. While these activities allowed that means that they're allowed
16 with an approval, they're not allowed outright so it would still need either an administrative
17 approval by staff or approval by the commission.

18
19 And that concludes it. Do you want to pull up the sea level rise viewer just so we can zoom in
20 on a couple of areas? Pick an area where the line is...goes pretty far mauka so the
21 Commission can see how far these go. I don't know that we need to go through the language of
22 the Shoreline Rules. I think just looking at the viewer should be enough for today.

23
24 Ms. Gomes: Are we going to be getting a hard copy Director?

25
26 Ms. McLean: Of the power point?

27
28 Ms. Gomes: Yes.

29
30 Ms. McLean: Sure. We can get that to you.

31
32 Mr. Robinson: Commissioner Hill.

33
34 Kahu Hill: Could you define temporary events?

35
36 Ms. McLean: As defined in the rules I think it's no more than...I'll need to check but I think it's
37 no more than 96 hours in a one-year period. So that's including setup and breakdown, but let
38 me, let me double check while Jeff and Tara pull up the viewer.

39
40 Mr. Dack: I heard Keawakapu mentioned so we're trying to get to Keawakapu. Here we go.
41 This is a sea level rise viewer that's based upon the sea level rise report adopted by the Climate
42 Commission so it's approximately a year old information.

43
44 Ms. Owens: But the base map here is just a generic like a Google base map so I couldn't tell
45 you what the date of the aerial imagery actually is. The red line is—
46

1 Mr. Robinson: Mr. Buika can you please turn the commission's lights back on please? Thank
2 you. So is it I saw a different viewer that had a year, a year trigger instead of a foot trigger is
3 that, is that a different, is that the Federal or something like that that I saw? I saw where I could
4 do 25 years, 50 years instead of by feet.

5
6 Unidentified Speaker: You can do that.

7
8 Mr. Robinson: You can do that as well? I was playing on it with...I was playing on something
9 that we had a meeting and I remember doing that before.

10
11 Ms. Owens: I'm not sure which viewer you're referring to. There is a national viewer by NOAA.
12 They also do not put a timeline. They have a slider bar and you can go from zero to six feet at
13 sea level rise. That's based on only one type of model and then this viewer which is a
14 companion product to the state report has mapped these sea level rise thresholds from one
15 foot, two foot and 3.2 feet without assigning an actual timeline. The language in the report is
16 such that we can expect to see three feet of sea level rise as early as midcentury so maybe like
17 2060 but it could be as late as 2100 and so instead of looking at exact timelines we're looking at
18 thresholds and the State suggests we should be planning for three feet of sea level rise
19 probably as a conservative target at this time.

20
21 Mr. Robinson: Maybe the viewer I was looking at it was more, it was more topography where it
22 showed a beach but some...you know it showed where the water is, the line wasn't straight
23 defined like that as far as the setback line. It was more of a water inundation type of viewer.

24
25 Ms. Owens: Yeah, you can also turn on the blue exposure area.

26
27 Mr. Robinson: Yeah, okay. I think that's what, that's what I was looking at.

28
29 Mr. Dack: But again, that's still based on feet.

30
31 Mr. Robinson: Still based on—

32
33 Mr. Dack: Feet of sea level of rise.

34
35 Mr. Robinson: Okay.

36
37 Mr. Dack: Not a date associated with it.

38
39 Ms. McLean: Chair if I may jump in?

40
41 Mr. Robinson: Yes, please Director.

42
43 Ms. McLean: Off topic here, there is a vehicle parked in a reserved stall if anyone here who
44 has—

45
46 Ms. La Costa: I just moved it.

47

1 Ms. McLean: Thank you Commissioner.

2

3 Mr. Castro: That red line is that based on a 30-year period or...

4

5 Ms. Owens: The red line you see displayed here is 3.2 feet of sea level rise. So there's an 80
6 percent probability that land within that red line or seaward of that red line will experience
7 erosion. And again, that three feet sea level rise is projected to occur as early as midcentury
8 which would be maybe 2060 to as last as 2100.

9

10 Mr. Robinson: So Director is what's going to be in front of us and what our options are? I
11 mean, our options aren't to legislate we believe in armoring or we believe in restoration is our
12 authority here just to set what we think the setback line should be?

13

14 Ms. McLean: Today we only have a workshop. So no decision making today. At a future
15 meeting if we are able to bring these to you for your consideration to adopt them you can adopt
16 what we have proposed or you can make changes to it. So if for example in the Emergency
17 Rules or in the Shoreline Rules you wanna go so far as to say you know armoring will not be
18 allowed, repairs to seawalls will not be allowed it is within your authority for the rules to state
19 that.

20

21 Mr. Robinson: How about the opposite? Are we allowed to say armoring is allowed, repairing is
22 allowed?

23

24 Ms. McLean: Yes. So alternatively in the SMA Rules, the Emergency Permit Rules where we
25 talk about we want a long-term plan you could say if your plan is armoring then you don't have
26 to do those other studies. So...and in the Shoreline Rules if you feel that this approach goes
27 too far you can say no we want to keep the existing shoreline setback process. So that is an
28 option that is available to you absolutely.

29

30 Mr. Robinson: That be a lively discussion.

31

32 Mr. Carnicelli: So...I think it was something that we received in testimony and that you know,
33 the viewer and the study was done based on say static intervention by human beings. This is
34 that beach is going to look at that if we don't do anything, right? So let's say okay, we armor,
35 we do it, but let's just say I don't know proactively all of the rich folks in Keawakapu want to put
36 T-groins out there now suddenly that line's probably not going to be that line. And if we adopt
37 our rules based on that line without you know...is how flexible is this model? I guess you were
38 in the, you know the commission that came up with is this gonna be redone like every year or so
39 like the computer model going to change. It's like oh okay the rich folks put T-groins out and so
40 then suddenly this line's going to change. Will the model be redone?

41

42 Mr. Dack: The model, the model will be updated and Tara and I were having a discussion
43 earlier today just...and UH is having a discussion just on how that will occur. The only thing we
44 really have to fix and apply to now is the lines that were adopted in the sea level rise report. So
45 that's what these rules reference. But we will be having discussions about update
46 methodologies. And relative to your comment about say for example, all the folks in
47 Keawakapu want to hui together and they want to eliminate their entire beach and they want to

1 put up, you know, a entire seawall shoreline armoring just to throw out an example, conceivably
2 that's very speculative of course, any kind of particular response that involves such a major
3 ...(inaudible)...very speculative. So I, as staff, would recommend that we keep something like
4 this in place but then we realize that should such a hui occur then it would be a very appropriate
5 to at least consider a possible amendment to the setback for that area in my mind it could be
6 reasonable to pursue that. There is a provision in the existing rules that allows for someone to
7 make...request an amendment to an average erosion hazard rate setback established setback
8 line and that same provision is carried over into allowing someone an opportunity to request an
9 amendment to the setback that would be set by this red line. So this provisions, there's relief,
10 there's lots and lots of relief values so to speak written into the rules to provide opportunities for
11 people to do things that end up so you don't have takings and you can respond to various
12 situations in the future. But we're trying to target to what is the most gonna be the most
13 common case and then we deal with exceptions from there.

14

15 Mr. Carnicelli: All right. Okay, thank you.

16

17 Ms. McLean: And if I could add, we have gotten testimony. Some has been shared with you,
18 some have just been Q & A back and forth with us, but yeah, if there is a beach management
19 effort, beach restoration effort, offshore structures that will keep the erosion at bay, you know,
20 are there opportunities for those to be incorporated in some way. So yeah, that's...we will take
21 another look and make sure that there's relief valves as Jeff called them are clear so that we
22 don't want to discourage that so that there's opportunities would still in place and that people
23 would like they can invest in those opportunities rather than oh this is a lost cause I'm just
24 gonna walk away. So yeah, we wanna make sure that that's clear.

25

26 Mr. Robinson: Corporation Counsel.

27

28 Mr. Galazin: Thank you Chair. I just wanted to speak to some of the members who may or may
29 not have gone through rule making process before. I mean right now the Department's giving
30 you broad strokes, ...(inaudible)...guys to as to what, you know is being proposed, what its
31 intent is. There is a specific procedure set forth in State law that when there...they have at least
32 a final draft of the rules ready to go they will publish at least 30 days notice of a public hearing.
33 It will have a description of the subjects. It will have where a person can obtain a copy of the
34 proposed rule changes and notice that all people can submit written testimony, can show up,
35 provide their oral testimony and the agency, you folks when you got the rules you must fully
36 consider all written and oral submissions respecting the proposed rules. And you can make the
37 decision at the hearing or announce at some later date when you intend to make the decision.
38 But if they...if you are requested to by anybody who is interested and has submitted something
39 you shall issue a concise statement on the principle reasons for or against your determination
40 as to whether you wanted to agree with their proposal or disagree with their proposal. So it can
41 depending on, you know, on the public involvement. You know hopefully we get a lot of people
42 who come forth, bring some good ideas, but you know be prepared that it's not sort of a here's
43 the new rules what do you think? Sounds good. Let's vote on it and we're done. It can be, it
44 can be you know a multi meeting process. So just to, just to get you on the page of where you
45 are.

46

47 Mr. Robinson: You guys done Tara?

1
2 Ms. Owens: Yes.

3
4 Mr. Robinson: Please hang around we might call you back. I want to get to public testimony at
5 this time so we can go forward. I didn't thought there was public testimony but I got just handed
6 this card, so...At this time, we would like to take public testimony. John Bender are you here
7 sir?

8
9 Unidentified Speaker: John said he had to leave. He's going to submit something in writing.

10
11 Mr. Robinson: Okay, thank you. I see Kai's not here either. Mr. Tom Jenkins. Please
12 introduce yourself, you have three minutes sir.

13
14 Mr. Tom Jenkins: I'm new at this so I'm gonna try whip through it 'cause I got three minutes.
15 My name's Tom Jenkins. I've been in Paia for 17 years, live in non-shoreline. Kids went to
16 elementary school here in Paia. I'm a civil engineer. I'm the owner's rep for a Stable Road
17 property and I'm also part of a groin hui in that area. We're doing some works on the groins.
18 The SMA Rules that you're coming out with perfect. Unbelievable job should have been done
19 45 years ago. Way over kill, window, carpet, you know, interior, exterior to go through an SMA
20 application it seems outrageous. But I do recommend removing the SLR and EHL and just
21 enacting the SMA Rules. It can be done. It's very little reference to each one.

22
23 The Shoreline Rule pros, certified shoreline is not required. That's great. The SMA application,
24 Assessment application should be revised to reflect that. Here's the cons for the Shoreline Rule
25 cons. It will hurt both non shoreline and shoreline properties. Lots abutting shoreline are gonna
26 be killed in some cases. I gotta quickly explain that. If you have one lot on the shore, two or
27 three back, the one, the third way back that's engulfed it is now a shoreline. At one time they
28 could have a house and a cottage, not they're gonna be jammed way back we're gonna say 35
29 feet and then they're gonna have minimal building area of 1,500 square feet in some cases for
30 small lots like the ones in Paia. Okay, minimal building area are considered land taken and it
31 has potential of lawsuits. The SLR viewer is not intended to be the determined setback. It's not
32 linear. What you saw there was a line but in some cases it jags back and forth, it clots
33 everywhere. It's not perfectly linear like that. Okay, these shoreline properties now comply with
34 FEMA and County rules. For instance, our Stable Road property we had to be elevation 20
35 above sea level. We used to be 75 feet back, now we have to go 200 feet back. It's hard to
36 know because that line, that red line they're talking about there's no coordinates, zero
37 coordinates. So where is that line? On the satellite view you get an idea but you don't know
38 exact. Okay, the SLR does not reflect beach restoration. You guys brought that up. Okay,
39 that's a big, big thing. Shoreline property owners may choose not to do this because it is land
40 taken away. Now they're stuck in the back, you know, and not only are they stuck in the back,
41 they're saying well—one more minute, okay, shoreline recommendations prior to enacting,
42 consult shoreline engineer, provide coordinates and notify the property owners affected by the
43 EHA and EHL and certain language to protect non shore owners, non-shoreline and shoreline
44 properties. Study impacts of decrease and increase to property devaluation, taxes, hotel,
45 employment, insurance, finances, and business expenses. The SLR is based on projections in
46 potential of 100 years. We have time. Summary real quick. Enact the SMA Rules, they're
47 great, but remove all the sea level rise and erosion hazard lines, at all...just take it out, you don't

1 need it. It's ...(inaudible)...you can work on that later. Do not enact the proposed Shoreline
2 Rules until all impacts known. Any questions?

3

4 Mr. Robinson: Thank you. Do we have any questions? Mr. Carnicelli.

5

6 Mr. Carnicelli: Thank you Chair. So I get that you don't like the viewer lines?

7

8 Mr. Jenkins: Yeah.

9

10 Mr. Carnicelli: 'Cause we don't coordinates. So what would you...what would you recommend
11 then? What's your alternative?

12

13 Mr. Jenkins: Okay, this is what I...get the SMA Rules passed done right away. The shoreline
14 you need coordinates on that. Every person needs to know how they're affected. Listen to me
15 if you were three back in your property line in Paia, you know those small little lots in the back,
16 and you back there and all of a sudden you're a shoreline. You wanted to build a house and a
17 cottage you can't do that now. They jam you way in the back of your lot. They give you 35 feet
18 based on your setbacks. Do the math. You have to be elevated. You're gonna be left with
19 1,200 square foot. Do the math. I did the math. Someone's gonna look at it. My property is
20 shoreline, I'm okay. It's 400 feet. ...(inaudible)...it's really the small guy that's getting killed.

21

22 Mr. Robinson: Okay, that's it? It's the ocean. It's not us. Next Mr. Perez.

23

24 Mr. Albert Perez: Sorry you caught me by surprise. Albert Perez, Maui Tomorrow Foundation.
25 You folks all got a copy of what we passed out?

26

27 Mr. Robinson: Yes, the handout from...

28

29 Mr. Perez: There are some things that we like that are proposed in the Shoreline Rules and the
30 SMA Rules but we have some major concerns. We don't think that a creation of a new class of
31 exceptions as opposed to exemptions is authorized in the State Law. So we're also concerned
32 with what's the implications of that is number one, if they're in the exceptions category the
33 Planning Department is never going to look it. It's outright permitted. You can do whatever you
34 want including putting in a 1,000 square feet of asphalt or concrete per year, per year, enclosing
35 it. That's just all not going to be looked at by the Planning Department. What this does is,
36 currently you have an exemption that...is gets reviewed by the Planning Department and then
37 the Planning Department can make a determination as to whether there is a significant
38 environmental or ecological impact or if there's a cumulative impact from this same type of thing
39 happening. And they can then declare that to be a development that needs a permit. That is
40 not going to happen with this new class of exceptions that they're proposing to be created. So
41 we think that's very dangerous.

42

43 Oh and also, under the current system when the Planning Director makes a determination that
44 something is exempt there is a period for appeal. I believe that it's 30 days from the day that
45 the Director makes a determination or 10 days after the Planning Commission reviews those
46 exemptions. The things that are put in the exception category are not gonna have any appeal
47 possibility at all. So we think that that's not a good idea. You're talking about the Special

1 Management Area that was created by the State Legislature. It needs extra scrutiny because
2 there are resources there that all of us depend on. Our coastal ecosystems depend on them. If
3 we need to do a little more work to make sure that that area is gonna be protected that's what
4 we should be doing.

5
6 Do I get three minutes for shoreline too? I'll just keep continuing. There's a...I think there was
7 a statement that people still need to comply with other laws and permit requirements but people
8 who don't live in the permit world they're not going to know about these other laws and
9 requirements. So you can't just expect them to know everything. If I'm making contact with the
10 Planning Department, the Planning Department could just say you know what, no big deal.
11 They could have a separate checklist and say—

12
13 Ms. Takayama-Corden: Three minutes.

14
15 Mr. Perez: --you know if you're on this side then no big deal. There are ways to streamline.
16 Can I know address the shoreline setbacks?

17
18 Mr. Robinson: Let's see if there's...we got questions for you on the SMA.

19
20 Mr. Perez: Okay.

21
22 Mr. Robinson: Nobody has questions for Albert? Any questions? I have a question.

23
24 Mr. Perez: Yes.

25
26 Mr. Robinson: How do you feel about a SMA Permit for painting the inside of your house?

27
28 Mr. Perez: I don't see a big problem with that.

29
30 Mr. Robinson: And I think, I think we're reading it, you know we see certain things of course,
31 you know driveways and certain things you know that might be something that we're gonna look
32 at, but I think and I hope you can agree that the SMA Rules are maybe something that we can,
33 we can try to trim down so that way that we're truly looking at things that affect the coastal
34 instead of having our inspectors or having times waited so when something does come across
35 our desk it is actually pertinent to protecting the environment. And we might agree on all the
36 ones that they want to exclude or exempt but I think there are, I think we can start trimming is
37 what I think we can start doing.

38
39 Mr. Perez: I agree with you. I think I misinterpreted your question. I think painting the inside of
40 your house is no big deal. I don't think it should require a major process, but I also don't think it
41 should be an exception because I don't think there's a place in State Law that allows for that to
42 be created. I think it should be an exemption. It's a quick review, painting the side of our house
43 there's a check box, check that off and boom it doesn't take long at all.

44
45 Mr. Robinson: Well, the person that would paint would have to still apply for the permit.

46
47 Mr. Perez: They would have to come in for review.

1
2 Mr. Robinson: Yeah, and that's for inside. I'm not talking about the outside, inside of the house.

3
4 Mr. Perez: So that's one side of the examples.

5
6 Mr. Robinson: Okay.

7
8 Mr. Perez: The other side it's like putting in a cell tower.

9
10 Mr. Robinson: Yeah.

11
12 Mr. Perez: I think that was proposed to be an exception. And a lot of these exceptions that are
13 listed the way they are they don't have any kind of scale or quantity. So if I, I don't know, you
14 can put in a mailbox post but how big is the mailbox supposed to be, I don't know.

15
16 Mr. Robinson: And I hear what you're saying, but we also be cognizant that Maui is growing.
17 The SMA property and surrounding our shoreline is large, you know, twice the size of some of
18 the other island that we have do and we still have one counties and so many taxes especially
19 with us maybe losing some property 'cause of the shoreline. But you know what, is Albert is I'll
20 give you a minute on the shoreline I hope that's enough for summation.

21
22 Mr. Perez: That's good enough. So we really like the erosion hazard line. The bottom line is
23 that like you said, it's the ocean. It's gonna be rising. You could be putting all kinds of money
24 into protecting your property that's on the shoreline. Over time that's gonna go away. What we
25 really need to do is find ways to help people move out of that area. The thing about the erosion
26 hazard line is that it doesn't have any particular width on the ground and I don't know how
27 you're gonna determine where it is on the ground in order to measure back behind it. Where do
28 you measure it from? We are working on some managed retreat financing programs that would
29 give people a way out as the sea level rises so they don't just lose their property and too bad.
30 So we're working on that. But in order for that to work bodies like this planning commission
31 need to stand firm on not letting things continue. ...(inaudible)...with no review. I think there's a
32 proposal for seawall repair with no review. That becomes an exception under the Shoreline
33 Rules that are being proposed to be changed. I think that kind of a thing should go in for review.
34 And in general we have the same kind of comments. If you don't have the Planning Department
35 reviewing it then you're leaving it up to the public to make any kind of interpretation. And by the
36 way my last point is that these changes in use are part of the exceptions, changes from short-
37 term to long-term and so something like the Paia Inn could just be done. It wouldn't have to
38 come in for any kind of review by the Planning Department.

39
40 Mr. Robinson: Thank you. Any questions? Thank you Albert. Looking forward to seeing you
41 as this moves forward. Mr. Hall. I gave Albert one of your minutes so now...yeah go ahead.

42
43 Mr. Isaac Hall: Good afternoon Chair Robinson and Members of the Maui Planning
44 Commission. My name's Isaac Hall and here speaking for Hui Alanui O Makena. My
45 comments 'cause been restricted going down the SMA Rules. Many of the proposed
46 amendments do more harm than good. They're inconsistent with State Law. And what was
47 said by the Hawaii Supreme Court in Mahuiki case is state primacy has been retained in 205A.

1 The Legislature has sought to maintain the integrity of its declared policy by providing guidelines
2 be followed by the Counties in reviewing applications for SMA Permit.

3
4 I'm going to cite some examples for you. A new single-family residence exemption says one
5 single-family dwelling, all accessory structures thereto including one accessory dwelling. Now
6 that brings into the single-family residence exception carports, driveways, swimming pools,
7 retaining walls, what does the State Law says under that exemption. Construction or
8 reconstruction of a single-family residence, a single-family residence that is less than 75...7,500
9 square feet in size. That's it. You have no authority to expand that exclusion, exemption and
10 drag in retaining walls, carports, second dwelling, any of those things you can't do it.

11
12 I agree with this business about creating these new exceptions. There's no authority under
13 State law to do that particularly in the manner in which they're being done here. They're being
14 exceptions to the third step. The Hawaii Supreme Court, ...(inaudible)...the Board of Appeals
15 described the three steps. Is it a development? Is it exempted? Or and if it may have a
16 cumulative impact or a significant impact on the environment then the use is defined as a
17 development. And where they have put these exceptions is they say we predetermined that
18 these uses cannot have a cumulative impact on the environment. That's just not allowed under
19 State Law.

20
21 My third example is the attempt to heighten the statutory standard review. There's a standard
22 review under State Law that says what you have to mitigate against is something that may have
23 a...may have a substantial impact on the environment. That brings a lot of things under your
24 review powers. If it doesn't...if that doesn't fit there then you don't. What I found throughout
25 these new rules is a change that you have to prove that the development would have a
26 substantial and detrimental effect. That's not found anywhere in State Law and exceeds the
27 State Law and if you applied that heightened standard of review you'd leave out a lot of things
28 that need protection.

29
30 Agency review again. They want to change your rules so that you have to ask for agency
31 review, but if you don't get it in 30 days we're moving ahead. I have had situations where the
32 SHPD can't get their comments in in 30 days and they say well, forget we're just gonna move
33 ahead. We can't do that. State Law requires us and you're concerned about whether SHPD
34 reviews projects, well under these proposed new rules if SHPD doesn't respond in those 30
35 days, they say well go ahead, we'll just give you the SMA Permit anyway.

36
37 Ms. Takayama-Corden: Three minutes.

38
39 Mr. Hall: I don't think that's permitted. I have a lot of other examples that are like that but I'm
40 very, very concerned with what the Planning Department has done here to do things that State
41 Law which avails does not allow the planning commission to do and I ask you to be very careful
42 in reviewing these not to adopt anything that's inconsistent with State Law. Thank you

43
44 Mr. Robinson: Thank you. We have any questions for Mr. Hall? Seeing none, thank you. Look
45 forward to seeing you in the future. Would anybody else at this time like to testify on this?
46 Please step to the mic. That's for the next item. Okay, seeing none, public testimony is closed.

1 At this time, before we start our next item we will take a quick five-minute break. Thank you.

2
3 A recess was called at 3:36 p.m., and the meeting was reconvened at 3:44 p.m.

4
5 Mr. Robinson: The Planning Department is now back in session. Director.

6
7 Ms. McLean: Thank you Chair. Your next item is also a public hearing item. This is a request
8 for William James Heaney III and Alejandra Heaney for Short-Term Rental Home Permit to
9 operate a three-bedroom short-term rental home in the R-3 Residential District at 40 Halelo
10 Street, TMK: 4-4-009: 001 in Lahaina. Livit Callentine is the project planner.

11
12 **B. CONTINUATION OF PUBLIC HEARINGS** (Action to be taken after each public
13 hearing.)

14
15 **2. WILLIAM JAMES HEANEY III AND ALEJANDRA HEANEY requesting a**
16 **Short-Term Rental Home Permit in order to operate a three (3)-bedroom**
17 **short-term rental home in the R-3 Residential District at 40 Halelo Street,**
18 **TMK: 4-4-009:001, Lahaina, Island of Maui. (STWM T2017/0029)**
19 **(L. Callentine)**

20
21 **This application is being referred to the Maui Planning Commission for**
22 **action because there are at least two (2) permitted short-term rental homes**
23 **located within 500 feet of the subject property.**

24
25 Ms. Livit Callentine: Aloha Chair and Members of the Planning Commission. Good afternoon.
26 Good afternoon to Corporation Counsel and to Director Mclean. Just a slight correction, one of
27 the applicant's first names is Alejanda. Just a correction. Not a big deal.

28
29 So there is one dwelling on this property which the Director already listed the address. In
30 addition to the three bedrooms in the house there are two bathrooms, one kitchen, one dining
31 room, a living room, an attached garage and a lanai. And you have copies of the...well, you're
32 gonna see a presentation by the applicant as soon as I finish but you are the approving
33 authority for this Short-Term Rental Permit because there are two or more existing short-term
34 rentals operating within 500 feet of the subject property.

35
36 The land is designated in the State District as Urban, by the Maui Island Plan it is Urban...it is
37 within the Urban Growth Boundary and outside of any protected areas. In the West Maui
38 Community Plan it's designated Single-Family Residential. By County zoning it's designated
39 R-3 Residential and it's not in the SMA. The property is surrounded by single-family residential
40 and by Kaanapali Golf Course on several sides. To the west, Honoapiilani Highway and the
41 ocean, the Pacific Ocean. And to the north, the International Colony Club, the golf course and
42 the Kaanapali Plantation Condominiums.

43
44 As of October 1, 2018, the West Maui Community Plan region had 57 permitted short-term
45 rentals whereas the cap is 88 permits. There have been four Request for Service filed on the
46 property. However, all four of these requests were filed prior to the purchase of the property by
47 this applicant. There's been no new RFSs filed by the applicant...about this property since the

1 applicant purchased the property. And the Police Department has no record of disturbance at
2 the property.

3
4 This proposed project is in keeping with the Hawaii State Plan, with the Countywide Policy Plan
5 which has several areas that...several policies and objectives that call out diversification of
6 visitor accommodations. The Maui Island Plan the project is in conformance with the Maui
7 Island Plan and with the West Maui Community Plan as well. Then when we go into the Maui
8 County zoning of course you have an extensive section of restrictions and standards that must
9 be met prior to approval or recommendation of approval by the Planning Department to the
10 Planning Commission.

11
12 So we've gone through in the report each one of the standards and restrictions and how they
13 were addressed by this application. Unless you have any questions about those, I'm not going
14 to go through them individually in the interest of time but would be happy to answer any
15 questions.

16
17 I'll just point out a few things that are important. Existing or past complaints about rental
18 operations on the property. As I mentioned there were four Requests for Service. Those are
19 actually listed for you in Exhibit 7 of your report and the map showing there's no complaints and
20 Police complaints on the property is shown in Exhibit 8. The applicants submitted a short-term
21 rental application in compliance with the rental with the ordinance. Were cooperative in allowing
22 Planning Department Staff to inspect the property and have followed the public hearing noticing
23 requirements.

24
25 The Department has determined that no adverse impacts are anticipated on the socio-economic
26 health of the island as a result of this project. And there are no other government approvals
27 aside from this STRH application required. As of October 2nd, the date that this report was
28 completed, the Department had received no testimony. I just wanted to show you a couple of
29 quick slides. Just to be clear you're gonna see...the applicant's gonna show you the short-term
30 rentals within the 500-foot area I wanted to expand that boundary just a little bit so you realize
31 this small cul de sac neighborhood does have a couple more permitted short-term rentals and a
32 proposed B&B outside of the 500-foot radius around this particular property. We haven't had
33 any complaints about those existing permits. And I think that's important to bring up because
34 when we do see complaints we know there's problems. Then the applicant or the applicant's
35 consultant, Debbie Mitchell submitted to us five letters of support. One of them was from a
36 tenant who didn't own property and didn't identify his residential address at all in his letter so I
37 didn't include that in my packet to you which is...looks like this. I just passed it out. It's got
38 three letters in it. One of them you had gotten permanently. The applicant passed out this
39 packet to you earlier and so you'll just know that that came from the applicant. But I just wanted
40 to clarify that for the Department's purposes we consider there to have been four support letters
41 submitted. There were no protests received at all which is kind of unusual in this area, but you
42 received those support letters this morning. So that's it for me. I'd like to go ahead and turn the
43 podium over to the applicant's representative at this time unless you have any questions for me
44 now.

45

1 Mr. Robinson: I'd like to thank you first of all for having the RFS available and how you've done
2 it to where we can see clearly instead of trying to read it ourselves. I think this is the easiest for
3 our commission to see. And thank you also for giving us an expanded view so we can get a
4 picture of the neighborhood. I mean this is...helps us make a decision and helps us get to
5 better questions so thank you for that.

6
7 Ms. Callentine: You're welcome.

8
9 Mr. Robinson: Question. Kahu you have a question?

10
11 Kahu Hill: E kala mai i'au. I'm not clear Livit, it's been a long day. I just wanted to understand
12 that from the RFS I see that the previous owner was cited as you had mentioned for the TVR
13 without the permit and then the property was sold in March 2017.

14
15 Ms. Callentine: Correct.

16
17 Kahu Hill: I just want to know was it a TVR then or was after that happened with the previous
18 owners did the activity cease?

19
20 Ms. Callentine: Well—

21
22 Mr. Robinson: I think the applicant can answer that.

23
24 Ms. Callentine: The applicant may not know because again they weren't the owner at that time.

25
26 Kahu Hill: Right.

27
28 Ms. Callentine: But I'll just...if you want to have them come up that's fine. There were Notices
29 of Warning sent and in one case, an NOV was issued to the owner at the time Angelina
30 Tolentino. I suppose the activity ended when she sold the property. I really don't know when
31 their activity ended but when I inspected the house was completely empty and there was no
32 sign of ongoing rental. So I quite certain the activity ended prior to my site visit.

33
34 Mr. Robinson: Commissioner Carnicelli.

35
36 Mr. Carnicelli: Thank you Chair. Just for clarification the application was in prior to
37 September 27th?

38
39 Ms. Callentine: Correct. It was in last year.

40
41 Mr. Carnicelli: Okay.

42
43 Ms. Callentine: So even though they purchased it less than five years ago...is everyone aware
44 of the amendment, the new ordinance which requires an owner to own the property for five
45 years prior to application unless they filed prior to September 27, 2018. And so in this case they
46 certainly did that.

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Mr. Robinson: Thank you Commissioner Carnicelli. Another one?

Mr. Carnicelli: And just, one of the...and I know we've you know seen more than one application on Halelo Street and I'm always trying to go back to I thought that Halelo was actually within the Kaanapali District like the Hotel District?

Ms. Callentine: The Resort District, yes.

Mr. Carnicelli: The Resort District.

Ms. Callentine: Yes.

Mr. Carnicelli: And so why...but it's not included...but yet they still need the permit though?

Ms. Callentine: Yes.

Mr. Carnicelli: So it's in the Resort District but yet it's not.

Ms. Callentine: Well, the Director might be able to help me with this but as far as I know there's no like metes and bounds, this definition of what the Kaanapali Resort District actually is. It's not a recognized land use designation that we would...would have guidelines that we would be subject to.

Ms. McLean: Thank you Chair. That's a good explanation. It comes down to that the property's zoning is. And there may be a Wailea Resort area or Kaanapali Resort area but it comes down to a particular parcel and what its zoning is and that dictates what uses are allowed on the property. So in this case the property is zoned residential and so they're eligible to apply for a Short-Term Rental Home Permit but transient vacation rentals are not an outright use like they would be in the Hotel District.

Mr. Robinson: Thank you.

Ms. Callentine: Would you like to excuse me and bring up the applicant?

Mr. Robinson: Yeah, thank you. Sorry.

Ms. Debbie Mitchell: Aloha Commissioners, my name is Debbie Mitchell and I am here today representing Jim and Alejandra Heaney in their Short-Term Rental Home application.

Mr. Robinson: Aloha Debbie.

Ms. Mitchell: Aloha. They have a Short-Term Rental Home application at 40 Halelo Street in Lahaina. Just to show where this is located it's directly in the heart of the resort district as Mr. Carnicelli mentioned it is just mauka of the Kaanapali Parkway turnoff from Highway 30. This just kinda clarifies it a little bit. You'll see all the resort activities and then Halelo Street, 40

1 Halelo Street is the first house that you encounter as you turn right off of Highway 30. So it's
2 the very first in line. This is a little visual representation so you'll see on the far left of the photo
3 is the...oh thanks, Livit that would help...the Kaanapali Kai Course which basically surrounds
4 the little neighborhood there on Halelo and Holomakani. On the left side is the Kaanapali Royal
5 Golf Course. Moving in you can see the juncture and the location of the home which is as I
6 mentioned it's the first home you encounter turning off the parkway. And the house itself is
7 surrounded by mature landscaping which definitely assists with noise abatement and privacy for
8 other owners on the street. This is the main entrance just so you get an idea of how
9 clear...close that is to Highway 30. It is located at the intersection of Holomakani and Halelo as
10 you can see the signage from both angles. The subject property is right there at that
11 intersection.

12
13 It has a two-car garage which is in keeping with the requirements for this short-term rental home
14 permit. It's three bedrooms. So it requires two parking places and the great thing about this is
15 that it allows one to turn around before exiting the property so no backing into the street is
16 required. The exterior of the house it was built in 1974. And the views as you can tell are
17 mainly of the golf course on fairly three sides of it. It does face out to Halelo on the east side
18 but you can see that it's fairly surrounded by the Kaanapali Kai Golf Course. The interior plan
19 shows it's a one-story building and it has three bedrooms and two baths and is surrounded by
20 an extensive lanai on the west side of the house. The entry into the home. The kitchen, living
21 and dining rooms. Three bedrooms and two baths. And then as I mentioned this lanai which
22 surrounds it on three of the sides of the home.

23
24 I did this in the handout that I gave you. I did the slide so you can see it. As regards the
25 administrative portion of this all the neighbors were notified twice, once at the application and
26 the second of the public hearing. We did receive five support letters. As Livit mentioned, the
27 Department disallowed one because it was from a tenant and it's marketed as a letter from the
28 tenant in your packets. So they did receive two support letters from neighbors within the
29 500-foot circle and then one just outside, he's a lot just outside. The other letter was from the
30 tenant and then there was a general support letter from someone in Napili. This owner has
31 made significant effort to reach out to this neighbors through this process and I think that was
32 instrumental to his not receiving any protests. I'm sure some of you have been to the hearings
33 where in this area which were further south where there has been rather vocal resistance from it
34 and I believe it's due to his efforts that you received no protest letters and no testimony against
35 him.

36
37 The reason we're here today is because there were two more permitted short-term rental homes
38 in the...within the 500 foot radius and so that's why we are appearing before you today. It's just
39 as I mentioned several times. It's just mauka of Highway 30 and so therefore the entrance to
40 the home is right at the beginning as you turn onto Halelo. It's the first house you encounter so
41 that reaching it doesn't require driving through the neighborhood and interrupting folks that live
42 there. So it makes it much easier. This gives a little bit of a visual. Livit had somewhat the
43 same graphic, but this and the pick dots show where the support was received and this basically
44 being surrounded by the golf as you can tell there. And finally just the overview itself so you can
45 see Highway 30 and the intersection there.

46

1 So we thank you for listening to us. The owners have complied with all the requirements of the
2 application and we ask, just ask for your approval. Thank you for listening. Aloha.

3
4 Mr. Robinson: Thank you.

5
6 Ms. Mitchell: The owner is here too as well if you wish to ask him any questions.

7
8 Mr. Robinson: Thank you. Commissioners, anyone do you have any questions for the Debbie
9 or the applicants? Kahu would you like Debbie or the applicants?

10
11 Kahu Hill: I wanted to know if the applicants are living on the property.

12
13 Mr. Robinson: Okay, thank you. Sir, hi welcome. Please introduce yourself.

14
15 Mr. William Heaney: Sure. Aloha, my name is William Heaney the third so I go by middle name
16 Jim. This is my wife Alejandra.

17
18 Mr. Robinson: Aloha. Folks, can you agree that everything you testify today will be truthful?

19
20 Mr. Heaney: Yes, definitely.

21
22 Mr. Robinson: Thank you so much.

23
24 Mr. Heaney: Definitely. And as far as us living there, we don't live there full time. Right now we
25 spend about three months a year here. We do have older children in college that I have and we
26 have a two and four year old. So our plans are to be here the entire summer, usually around a
27 month at Christmas time and then for spring break definitely. And then our long-term plans are
28 to live in Maui. This is for sure when I retire and hopefully I can retire sooner rather than later.
29 So we do plan on it being eventually a home that we would most likely live in unless we bought
30 another property on the island. But right now we do not live there full time.

31
32 Mr. Robinson: Any other questions? Okay, thank you.

33
34 Mr. Heaney: Thank you.

35
36 Mr. Robinson: At this time, we'll take public testimony. Seeing none, can we get the Planning
37 Department's recommendation please?

38
39 Ms. Callentine: The Planning Department recommends approval of the short-term rental home
40 application subject to the following conditions which you're familiar with. There are 22 standard
41 conditions shown in your recommendation report. If you have any questions about those I'd be
42 happy to answer them. Should the Planning Commission favor approval of the Short-Term
43 Rental Home Permit the Commission should conclude that the application for the short-term
44 rental home permit complies with the applicable standards for a short-term rental home in
45 accordance with Chapter 19.65.030, restrictions and standards, Maui County Code which are
46 fully listed in the applicable regulation section of our report. Should the Planning Commission

1 favor denial of the Short-Term Rental Home Permit the Commission should conclude that the
2 application for the a short-term rental permit does not comply with all the applicable restrictions
3 and standards for a short-term rental home and identify with which standards it does not
4 comply.
5

6 So in consideration of the foregoing, the Planning Department recommends that the Maui
7 Planning Commission adopt the Planning Department's report and recommendation prepared
8 for the October 23, 2018 meeting as the findings of fact, conclusions of law, and decision and
9 order and authorize the Planning Director to transmit said written decision and order on behalf
10 of the Commission. However, should the Commission choose to deny the permit, the Planning
11 Department recommends that the Commission clearly identify the reasons for its denial and
12 request that the Department return to the Commission at a subsequent meeting with draft
13 findings of fact, conclusions of law, and decision and order for the denial.
14

15 Ms. Callentine: Thank you.
16

17 Mr. Robinson: Thank you so much. At this time, I'd like to ask one question of the applicants. I
18 apologize. Is I only have one question for you, is do you currently have any relationship with the
19 prior owner that had any of these TVRs or are you in communication with that prior owner at all?
20

21 Mr. Heaney: No, absolutely.
22

23 Mr. Robinson: Thank you so much. That was my only question. Thank you sir. Anybody
24 would like to motion?
25

26 Mr. Castro: Yeah, I'd like to motion that we accept the Planning Department's recommendation
27 with the conditions.
28

29 Mr. Robinson: We have a motion to accept the Planning Department's recommendation with
30 conditions.
31

32 Ms. La Costa: Second it.
33

34 Mr. Robinson: We have a second with Commissioner La Costa. Discussion? Would you like to
35 speak to the motion?
36

37 Mr. Castro: I think they've complied with everything that's been asked of them so I think it's only
38 fair that we approve this.
39

40 Mr. Robinson: Okay, thank you. Discussion? Commissioner Kahu Hill.
41

42 Kahu Hill: I just wanted to suggest since you're not here year round and learn about the culture
43 and have house rules and make sure you can share that with those coming. Mahalo.
44

45 Mr. Robinson: Commissioner Carnicelli.
46

1 Mr. Carnicelli: Yeah, I'll speak in favor of the motion Chair. I think the biggest one for me is
2 we've seen applications come as Livit had mentioned from different people on this street and
3 had several neighbors come out against it and the fact that no neighbors spoke against this
4 speaks to the outreach that you've done.

5
6 The other thing that I would also ask that you know, isn't necessarily going to be a condition.
7 I'm not going to make a motion to amend the...make a recommendation to amend the motion
8 but in...what we've done recently is we've had part of your house rules to be environmental and
9 ocean awareness. If you could kinda try to include that kind of stuff for your people that would
10 be wonderful.

11
12 Mr. Robinson: You're talking about the environmental education?

13
14 Mr. Carnicelli: Yeah.

15
16 Mr. Robinson: That was part of the new conditions?

17
18 Mr. Carnicelli: Yeah.

19
20 Mr. Robinson: Okay.

21
22 Mr. Carnicelli: So thank you Chair.

23
24 Mr. Robinson: Thank you. Any other discussion? Commissioner Gomes.

25
26 Ms. Gomes: I'm not even sure that this is a question or a comment but do you have a property
27 manager when you're not here? Is that okay to ask Chair?

28
29 Mr. Heaney: Yeah, I mean we already have a property manager that's going to take over when
30 it's able to be a rental.

31
32 Ms. Gomes: 'Cause you are only here three...

33
34 Mr. Heaney: Exactly and I also have my children's babysitter comes and collects mail, flushes
35 the toilets, runs the water every week to two weeks just to make sure the house is always in
36 operational condition and we don't come back two months later to a blown pipe or something
37 like that

38
39 Mr. Robinson: She might do more than that while you're not there.

40
41 Ms. Gomes: Yeah exactly, she's gonna live there.

42
43 Ms. Heaney: I think she enjoys the lanai sometimes.

44
45 Mr. Robinson: You know is Commissioner Carnicelli you brought up a good point about no
46 letters and I'd just like to share because I recently was a neighbor that got a notice and in the

1 notice it gives you no email address to send it, it gives you no self-addressed envelope, gives
2 you no guidelines on what you can complain about., gives you no guidelines on what your rights
3 are. It just says you got this letter and somebody is gonna go ahead and do something there
4 and that's something that I'd like to address with the Commission in the future about, you know,
5 maybe give, you know, we look at so many rules and what could be applicable. And again, this
6 applies to all of them, not to them, but when we start weighing the lack of correspondence and
7 letters that's why I'm bringing this up because myself who's involved in this I almost didn't do it
8 until the last minute 'cause I was busy doing something and luckily I have the email address of
9 Carolyn that I could find out where to send the email and to send the testimony from. And you
10 know, and so I think if we're gonna be true in wanting to have testimony from neighbors and
11 input we should make the process a little bit easier and little bit addressed and then that way we
12 will truly know if we make it easy for them and there's no stuff then there's no gray area. Yes,
13 Commissioner Gomes.

14
15 Ms. Gomes: And I'm sorry, I just wanted to piggyback on what you're saying too and that we
16 obviously would have an actual, hopefully a factual testimony, you know that it's not anonymous
17 and that it's just you know a ghost type of testimony.

18
19 Mr. Robinson: Yes.

20
21 Ms. Gomes: Yes, I agree.

22
23 Mr. Robinson: Thank you. Director would you like to call for the vote?

24
25 Ms. McLean: Chair, the motion on the floor is to approve the application with the standard
26 conditions listed in the staff report plus an additional condition that the house rules shall include
27 environmental and cultural education for guests.

28
29 Mr. Robinson: Yes, and we actually asked that to be the new standard and conditions.

30
31 Ms. McLean: And Commissioner Kahu and I have been emailing to come up with language that
32 we'll present at a future meeting.

33
34 Mr. Robinson: Okay. All those in favor please raise your right hand.

35
36 Ms. McLean: Six ayes.

37
38 Mr. Robinson: All right, motion passes. Congratulations.

39
40 **It was moved by Mr. Castro, seconded by Ms. La Costa, then**

41
42 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
43 **by the Department with the Additional Condition that the House**
44 **Rules Shall Include Environmental and Cultural Education for**
45 **Guests.**

46

1 (Assenting – S. Castro, P D. La Costa, L. Carnicelli, A. Hill, T. Gomes,
2 C. Tackett)
3 (Excused – L. Hudson, K. Pali)
4

5 Mr. Robinson: Director.
6

7 **D. DIRECTOR'S REPORT**
8

9 **1. Native Hawaiian Law Workshop**
10

11 Ms. McLean: Thank you Chair. Under Director's Report the first item is the Native Hawaiian
12 Law Workshop. This is something that we had been trying to organize and the folks who
13 present this training would not accommodate our needs and so the only way we're able to do
14 this is we're able to send four members of the commission to the next training that they have
15 which is on Maui at the Cameron Center on December 7th. So we will be conducting you folks
16 to see who's interested, who's available, but we will only be able to send four and that's
17 because of the Sunshine Law requirement. Then the next time around we can send four more
18 and then catch the last person the last time around. So just a heads up that that will be coming
19 out to see who's available and who we'll have to go to that training.
20

21 Ms. Gomes: I'm sorry Director I just wanted to add whomever is going to go is going to come
22 back and report back.
23

24 Ms. McLean: Not necessarily, no.
25

26 Ms. Gomes: Don't need to?
27

28 Ms. McLean: No. It's not one of those ...(inaudible)...
29

30 Mr. Robinson: It's a workshop.
31

32 Ms. Gomes: Okay.
33

34 **2. SMA Minor Permit Report distributed with the October 9, 2018 agenda**
35 **packet (The Commission lost quorum before it got to this item.)**
36

37 **This is for notification and review purposes. No action is anticipated.**
38

39 **3. SMA Exemptions Report distributed with the October 9, 2018 agenda**
40 **Packet. (The Commission lost quorum before it got to this item.)**
41

42 **This is for notification and review purposes. No action is anticipated.**
43

44 **4. SMA Minor Permit Report**
45

46 **This is for notification and review purposes. No action is anticipated.**

1
2 **5. SMA Exemptions Report**

3
4 **This is for notification and review purposes. No action is anticipated.**

5
6 Ms. McLean: Then next under Director's Report you have the SMA Minor and Exemption
7 Reports from the October 9th meeting where we lost quorum and also for today's meeting. So if
8 you folks have any questions on either, any of those four reports I'm happy to take your
9 questions.

10
11 Mr. Robinson: Any questions? Seeing none, moving on.

12
13 **6. Discussion of Future Maui Planning Commission Agendas**

14
15 **a. November 13, 2018 agenda items**

16
17 Ms. McLean: Okay, next is future commission agenda. You have your memorandum from
18 Mr. Yoshida. The next hearing has or the meeting has five public hearing items on it. It should
19 be another full day. That's for November 13th. We also looking at full agendas for the other
20 November meeting as well as the December meeting, and we might even poll members to see
21 about having an additional special meeting December if we're able to get folks 'cause there are
22 a lot of things that we want to try to get through this term because I may not be here next year
23 and applicants are also trying to get things heard. So we'll see if, we'll see if we have
24 availability for an extra meeting in December.

25
26 Mr. Castro: You'll be here.

27
28 Ms. Gomes: You'll be there.

29
30 Mr. Robinson: I might not be here.

31
32 Ms. Gomes: Yeah, we might not be here.

33
34 Mr. Robinson: All right—

35
36 Ms. La Costa: I have a question. On the Native Hawaiian Law Workshop can you volunteer to
37 go to that?

38
39 Ms. McLean: Even if you were to attend as not a commissioner, if you were to attend wearing a
40 different hat you'd still be considered a commissioner.

41
42 Ms. La Costa: Okay. 'Cause you said you wanted four, so I—

43
44 Mr. Robinson: Well, I mean you'll be the first person we ask.

45
46 Ms. Gomes: Well, obviously you want to go. It seems like you want to go.

47

1 Ms. La Costa: ...(inaudible)...

2

3 Mr. Robinson: I'm sure, we'll defer to you. All right, Commissioners thanks for a long day.

4

5 **E. NEXT REGULAR MEETING DATE: NOVEMBER 13, 2018**

6

7 **F. ADJOURNMENT**

8

9 The meeting was adjourned at 4:14 p.m.

10

11

Respectfully Submitted by,

12

13

14

15

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

16

17

18 **RECORD OF ATTENDANCE**

19 **Present**

20 Lawrence Carnicelli

21 Stephen Castro

22 Tina Gomes

23 Kahu Alalani Hill

24 P Denise La Costa

25 Keaka Robinson, Chair

26 Christian Tackett

27

28 **Excused**

29 Larry Hudson, Vice-Chair

30 Kellie Pali

31

32 **Others**

33 Michele McLean, Director, Department of Planning

34 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel