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**MAUI PLANNING COMMISSION
PORTION OF THE REGULAR MINUTES
ITEM E-2
AUGUST 14, 2018**

Mr. Robinson: ...is back in session. Paul, before you...before we start with you, we're going to let David of Corp. Counsel try to go through the steps of why we're here and give the commission some...a chance to ask before you start is that okay? Alright, thanks Paul. David.

Mr. Galazin: Thank you Chair. So Commissioners what you have it's a consolidated hearing for three discrete items. If you look down to the first item under 2.a. it's a request for a Community Plan Amendment from Agricultural to Public/Quasi-Public, State Land Use District Boundary Amendment from Ag to Rural and Change of Zoning from Ag to P1, Public/Quasi-Public. On that item, you are advisory, sitting in the advisory capacity making a recommendation to the County Council who will then take that recommendation and decide that at some later point in time. The Hana Advisory Committee did hold a hearing on this and you have a report and recommendation from the Hana Advisory Committee, but you can take that with that you will and independently you can decided that.

Then you also have an SMA Permit that is going along with those land use entitlements. However, the SMA Permit cannot be granted unless and until the County Council approves the land use entitlement changes. So while they are consolidated and they were heard all together by the Hana Advisory Committee which transmitted all its recommendations about all three, you do not need to act on the SMA permit today because it will be a moot point if the County Council does not agree with granting the land use entitlement changes. However, now the second portion is there's a petition to intervene which has been submitted and a petition pertains to both the land use entitlements and the SMA Permit. So before we do anything else we have to dispose of the petition to intervene. My recommendation would be to first deal with it as it pertains to the land use entitlements because that's what you're gonna make your advisory recommendation on and then you can get into the petition as it pertains to the SMA Permit because they are separate things. So let, you know, Staff give an overview and then we will give the petitioner and then I believe the Department has a Motion in Opposition to that.

Mr. Robinson: Okay, Corp. Counsel I have a question. On the motion to intervene on a recommendation is there intervention on a recommendation and not a voting motion...I mean, not a motion for approval or denial?

Mr. Galazin: Yeah Chair and thank you, in you rules pertaining to intervention and...so the Petition to Intervene and is going to be you know prior...a Petition to Intervene has to be ruled on and heard prior to the Commission taking final action on the application. And you are not taking final action on a recommendation. So as it pertains to what you are recommending to Council there is no final action, it's not a contested case. There is nothing to intervene into. But I'll allow the intervenors to make their case for that. I'm going to allow the Department to explain their position on that. But the rules, basically constrain what can be intervened and what cannot. Again, that will be your ultimate decision to decide on all three because it is a consolidated Petition to Intervene.

Mr. Robinson: Commissioner Tackett.

1 Mr. Tackett: I have one question before we start. How does it work when, when a lot like this is
2 used as a public school and then it burns down and then it applies for a public use again does
3 that play into it at all or does the prior use have nothing to do with what we're going forward into
4 today?
5

6 Mr. Galazin: Chair? Well, that goes to kind of the application itself and that will be part of what
7 the Council will consider. And then you know, I think that will be probably something that you can
8 consider in terms of making your recommendation, but...
9

10 Mr. Tackett: But it doesn't have grandfathered rights to be used as a public, as a public lot
11 because it's been used as a public lot historically?
12

13 Mr. Galazin: That is correct. The SMA requires consistency and conformity within the SMA area.
14 So regardless of how the land has been used its underlying zoning...I believe the Director can
15 probably allude to that a little bit better.
16

17 Mr. Tackett: Thank you.
18

19 Ms. McLean: The County Code, the Zoning Ordinance talks about nonconforming uses and
20 nonconforming structures. The school because the land is designated Agriculture the school was
21 considered an existing nonconforming use and with all nonconforming uses if the use is stopped
22 or suspended for 12 months or longer then it cannot be resumed. So when the school burned
23 down if it had been rebuilt or if the facility had been reused within 12 months then it could have
24 continued, but because it stopped and it's been...that use hasn't been conducted for quite a long
25 time it lost the grandfathering status.
26

27 Mr. Tackett: Thank you.
28

29 Mr. Robinson: Commissioners any other questions for Corp. or Director? Seeing none, Director.
30

31 Ms. McLean: I will read into the record the items on the agenda. You have before you a
32 recommendation from Gale Notestone, Chair of the Hana Advisory Committee transmitting the
33 Hana Advisory Committee's recommendation from the former Planning Director with as
34 Corporation Counsel described a Community Plan Amendment from Agriculture to Public/Quasi-
35 Public, State Land Use District Boundary Amendment from State Agriculture to Rural, and a
36 Change in Zoning from Agriculture to P-1, Public/Quasi-Public for 1.9 acres of land at 0 Nahiku
37 Road, TMK: 1-2-002: 023 in Nahiku.
38

39 Also a request from Kaala Buenconsejo, the Director of Parks and Recreation for a Special
40 Management Area Use permit for the Nahiku Community Center and related improvements at the
41 same location and this involves the replacement of the former school building site with a
42 community center building of approximately 2,472 square feet and related improvements
43 including a paved parking lot, driveway, and installation of an individual wastewater system.
44

45 And then lastly, a Petition to Intervene submitted by Terry Kristiansen, Irene Pavao, and John
46 Blumer Buell on the applications for the land use entitlements and the Special Management Area
47 Use Permit. That intervention request was received on October 10, 2017 with the intervenors
48 representing themselves as well as several other individuals listed on your agenda.
49

1 As the Chair and Corporation Counsel indicated the Commission needs to take action on the
2 Petition to Intervene first and so we will first have I believe Corporation Counsel will have the
3 Department still present an overview of the project and then the intervenors present their petition
4 is that correct? Okay, so the Staff Planner for this project is Paul Fasi.

5
6 **2. MR. GALE NOTESTONE, Chair of the Hana Advisory Committee, transmitting**
7 **its recommendations on the following:**

8
9 a. **WILLIAM SPENCE, then-Planning Director, transmitting the following**
10 **requests for the proposed Nahiku Community Center to be located on**
11 **approximately 1.9 acres of land at 0 Nahiku Road, TMK: (2) 1-2-**
12 **002:023, Nahiku, Hana, Island of Maui (P. Fasi) (Public hearing**
13 **conducted on October 26, 2017)**

- 14
15 1) **Community Plan Amendment from Agriculture to**
16 **Public/Quasi-Public, (CPA 2017/0002);**
17 2) **State Land Use District Boundary Amendment from State**
18 **Agriculture District to State Rural District, (DBA 2017/0002);**
19 3) **Change of Zoning from Agriculture to P-1 Public\Quasi-Public,**
20 **(CIZ 2017/0002);**

21
22 b. **KAALA BUENCONSEJO, Director, DEPARTMENT OF PARKS AND**
23 **RECREATION requesting a Special Management Area Use Permit for**
24 **the Nahiku Community Center Project and related improvements**
25 **located at 0 Nahiku Road, TMK: (2) 1-2-002: 023, Nahiku, Hana, Island**
26 **of Maui. (SM1 2017/0002) (P. Fasi) (Public hearing conducted on**
27 **October 26, 2017)**

28
29 **The proposed action includes the replacement of the former grammar**
30 **school building site with a community center building of**
31 **approximately 2,472 square feet in size and related improvements,**
32 **including a paved parking lot and driveway and installation of an**
33 **individual wastewater system. The proposed community center**
34 **includes a social hall, kitchen, storage areas, restrooms, and a**
35 **covered entry lanai.**

36
37 c. **TERRY KRISTIANSEN, IRENE PAVAO, and JOHN BLUMER BUELL**
38 **submitted a Petition to intervene on the applications for the Nahiku**
39 **Community Center on the land use entitlement requests by the**
40 **Planning Director and the Special Management Area Use Permit**
41 **request by the Parks Department by intervention request received on**
42 **October 10, 2017. They represent themselves and MOKE BERGAU,**
43 **ELLEN KAHOOKELE, JEAN MARY KAHOOKELE, JEFFREY C.**
44 **PAISNER, MAX MATTSON, JAMES KAHOOKELE III, TERESA**
45 **ALLRED, and SHARON KAHOOKELE.**

46
47 **The Commission needs to take action on the Petition to Intervene request**
48 **before taking action on the Planning Department initiated land use**
49 **entitlement requests and the Parks Department Special Management Area**
50 **Use Permit request.**

1
2 **Should the Commission act to grant the Petition to Intervene then the**
3 **Commission may act to select a Hearings Officer/Hearings Panel and**
4 **Mediator.**

5
6 **Should the Commission act to deny the Petition to Intervene on either the**
7 **land use entitlement request or the Special Management Use Permit request**
8 **then the Commission could take action on that request.**

9
10 *(Discussion begins at 01:21:17 of the audio recording.)*

11
12 Mr. Paul Fasi: Thank you and good morning.

13
14 Mr. Robinson: Good morning Paul.

15
16 Mr. Fasi: In 2013, the Department of Parks and Rec obtained a Special Management Area Minor
17 Permit and building permits for the Nahiku Community Center replacement structure. Since the
18 cost was below the \$500,000 minimum threshold. However, due to delays and litigation it now
19 must seek an SM1 Major Use...SM1 Special Management Area Use Permit application 'cause
20 the cost is projected to be about \$1.5 mil. On June...well, let me back up, also in 2012, the
21 Department of Parks and Recreation issued a Chapter 343, Environmental Assessment
22 Exemption. The trigger for the Chapter 343 was the use of the State or County land or funds.
23 The exemption class was under Hawaii Administrative Rules 11-200-08, Exempt Classes of
24 Action and it was No. 2, Replacement or Reconstruction of Existing Structures and Facilities. So
25 what this means is on the State level they were granted an exemption for Chapter 343 laws. On
26 the County level the exemption was listed under Exemption Class 2-6 and this is the exemption
27 list for the County of Maui. Number 6 states that they exempt all parks and recreation buildings
28 and structures. The exemption list for the County of Maui was reviewed and concurred upon by
29 the Environmental Council on January 10, 2007. The Chapter 343, Hawaii Revised Statutes
30 authorizes the Environmental Council to establish procedures to exempt specific types of action
31 from an Environmental Assessment because the action will have a minimal or no significant
32 impact on the environment. So that covers the Chapter 343 Exemption and the rationale behind
33 it.

34
35 On June 16, 2017, the Planning Department received an SMA Use application from the Director
36 of Parks and Rec, Recreation. And by letter dated May 5, 2017, the Department made a
37 determination the proposed action is a public use and not permitted under the current zoning. So
38 a District Boundary Amendment, Community Plan Amendment, a Change in Zoning is necessary
39 as a community center is not an allowed use under the current State and County land use
40 designations of Agriculture.

41
42 So the Department of Parks put the application for the Special Management Area Use Permit, the
43 Director of Planning initiated the necessary permit applications for the land use entitlements, the
44 Community Plan Amendment, District Boundary Amendment and Change of Zoning and this is in
45 order for the Parks Department to develop the community center.

46
47 So after careful review and analysis by the Department Staff we concluded that there are no
48 negative impacts anticipated with this project including traffic, water, archaeological or socio
49 economics that would preclude the construction of this project.

1
2 On October 10, 2017, the Planning Department received a Petition to Intervene on the SMA
3 Permit. On October 26, 2017, the Hana Advisory Committee held a public hearing and a Petition
4 to Intervene was noted and recognized by the Hana Advisory Committee. The Members voted
5 unanimously five to zero to recommend to the Planning Commission to defer the item until an EA
6 is provided. As I just mentioned an EA is...this project is exempt from the EA requirement.

7
8 So today, the Commission needs to take action on the Petition to Intervene as the Director so
9 noted before taking action on the Department initiated land use entitlements. If the Commission
10 grants the Petition to Intervene on the SM1 then the Commission may act to select a hearings
11 officer or mediator and the land use entitlements are put on hold until the matter is resolved. If
12 the Commission acts to deny the Petition to Intervene on either land use...on the SM1, the
13 Commission may take action on those requests and resume reviewing the land use entitlement
14 requirements today. The third option is the Commission may take action to defer the Petition.

15
16 This concludes the Department's presentation. I'm not going to get into the details of the project.
17 As the Director noted we need to settle this matter on the Petition.

18
19 Mr. Robinson: Hello, at this time we'd like to invite the Petition to Intervene, Terry Kristiansen and
20 Irene Pavao and Mr. John Blumer Buell to say your...

21
22 Mr. John Blumer Buell: Good morning Chair Robinson and Commissioners. Aloha.

23
24 Mr. Robinson: Aloha.

25
26 Mr. Blumer Buell: I'm John Blumer Buell and I am one of 11 intervenors and they are all to
27 be...(inaudible)...These are lineal descendants of Nahiku. They are Hawaiian. They are
28 ...(inaudible)...of the community and they speak for the community I assure you. Now I'll be...I'll
29 try to be very brief here.

30
31 Thirty years ago there's a real big controversy in Hana regarding a proposed development and
32 Velma McWayne Santos, our former County Council representative found out how outrageous it
33 was and Velma was the one that said we need to have a Hana Advisory Committee to the
34 Planning Commission, this is 30 years ago, and the County they understood it and so we have
35 the Hana Advisory Committee and I thank you so much for referring this to Hana because the
36 Hana people get, the Hana Advisory Committee to the Planning Commission got it and they
37 recommended to you a solution for everything including the intervention all three of the
38 applications and the SMA. It's very simple. We simply want an Environmental Assessment as
39 required and triggered by law. Now I respect and like Paul Fasi. I do. I've known him a long
40 time. However, I don't agree with the Planning Department's and I know it's not Paul, take that
41 back, the Planning Department's legal characterization it's all wrong.

42
43 For example, in 2007 there was not exemption to the EA given by the State. The State Land
44 Board conveyed the property to the County and they simply said that the conveyance of the use
45 in itself did not trigger an EA. But if you look at the documents in our petition to intervene they're
46 in there. They said that the County was responsible for an Environmental Assessment. They
47 didn't waive anything. That's just not true.

48

1 Secondly, Paul is correct. An EA is triggered by the use of public lands or funds. In this case we
2 think at the funds. We still don't know who owns the property and that's in our intervention as
3 well and it's in our letter to you. So I go back and say that the Hana Advisory Committee and I
4 want to acknowledge that Vice-Chair Kawika Kaina did an outstanding job, he really was very
5 akamai, he got it, and unfortunately Gale Notestone, our Chair of the Committee was on an
6 emergency rescue in Nahiku. He did get back for the end of the hearing. So the...if you take the
7 Hana Advisory Committee recommendation you would simply say look we need a full
8 environmental assessment for this project for the...to get the entitlements and to have enough
9 information on which to inform the Special Management Area Permit very simple. We never...the
10 intervenors we never wanted to intervene. We simply intervened because we have...we have
11 gotten no due process for eight years, no legal due process. I can go into that. But the fact is the
12 County has not followed the law for the first seven years and it's very simple to explain to you. If
13 they had the applications for the entitlements made by former Director Will Spence are correct.
14 They should have been what they asked for eight years ago not last year. Those were the
15 entitlements that they should have gone for and we knew they needed to go for eight years ago
16 and they didn't.

17
18 What did they do instead, I'm sorry to say this because I like the County, and...but former Director
19 Correa made a Declaration of Exemption and by all, by all saying assessment that is fraudulent.
20 The memorandum that was created by the County of Maui between the Planning Department and
21 the Office of Environmental Quality Control we only found out about in the Director's Report at
22 the Hana meeting. That's, that's not right. So the County has done everything to avoid an
23 Environmental Assessment the most basic information document you can provide for eight years.
24 And it's just...it's terrible.

25
26 Now look, I'll be short as I can, I want you to know something about me because I'm not just sitting
27 here blabbering. I was named by former Mayor Hannibal Tavares to be on the first Hana Advisory
28 Committee. I was reappointed by former Mayor Linda Lingle to on that committee for the second
29 term. I was reappointed by I think by Mayor Arakawa to serve a third term and I spent years and
30 years and years as one of 25 members on the General Plan Advisory Committee. I spent years.
31 I drove over from Hana you know more times as I can remember. The point is I have spent a lot
32 of time in due process and respect for the law and due process for our community whether we
33 agree or not there is due process. And this...this particular project does not deserve an exemption
34 and I'll just tell you, I hate to say this, but the County filed a fraudulent F-R-A-U-D fraud SMA
35 Permit, Minor Permit to get the SMA. They said it was worth \$450,000. The trigger is 500,000.
36 So they got their SMA with fraud even though in 2012 *The Maui News* published said oh it's gonna
37 cost \$812,000 in the public newspaper. The Planning Department knew it. Mayor Arakawa says
38 it's gonna cost \$2 million. Well, not ...(inaudible)...when we have so many problems in Maui...in
39 our tri-island community plus Kahoolawe of course, you know you deserve the basic information
40 on which to make a decision. It's very simple. And I'll open myself up for questions.

41
42 However, I want to say that in our letter we have shown you two potentially fatal flaws in this
43 project and maybe three and we've asked you to get them resolved before you even ask for an
44 EA. And they are number one, it's in there. We ask, we ask the County and State to prove
45 ownership. With all respect to Lena Kahookele, who I believe is here in 2012 she said their family
46 still owns the land and I don't doubt it. And if they do God bless them, you know really. But to
47 not know that you own the land and be thinking about spending \$2 million on a project that's
48 gonna not be for the people is crazy.

49

1 Secondly, the County shown no jurisdiction to that road to the site or Lower Nahiku. No legal
2 jurisdiction. They have no right. And I gave you some case law in our last letter to you. I cited
3 some case law in the neighborhood from the old road going from Kaeleku was...it's where the
4 Hana Airport is to Ulaino. So the County and the State said we have no jurisdiction there but that
5 is a continuation of the road, old road to Lower Nahiku. Now...

6
7 And then the third thing we've asked you, this is the last thing to look at before you make a
8 decision is the County sued the builder and that case has been in court. It due to go to trial in
9 December. And there's issues that should be settled and become public including ownership that
10 should be resolved in that case. And so we simply ask you to defer everything and...or an
11 Environmental Assessment and to find out who owns the property. If the County has jurisdiction
12 which they have renounced recently on the Lower Nahiku Bridge, the County renounced any, any
13 jurisdiction recently in the last year.

14
15 And the last comment is we have as taxpayers we have already spent \$247,000 plus in cash plus
16 all the time it has taken the Planning Department, seven years. So I wouldn't be surprised that
17 the actual cost to the taxpayers has already half a million and we have not Environmental
18 Assessment ...(inaudible)...We said in our intervention, we said it in Hana, we said it in our recent
19 testimony to you. We are happy to withdraw the intervention if they will do an EA without out
20 getting, trying to get an exemption, without trying to have a memorandum with the Office of
21 Environmental Quality Control who controls the 343 process. So that's a lot of information that I
22 beg you, the people in Lower Nahiku have suffered for this. People want peace. And they want
23 due process under the law. That's all we're asking for and you know, God bless you and
24 everyone. And there may be other intervenors who want to say something but I did help, I
25 collaborated with all 11 of the intervenors, every one of them in putting together our last, our
26 last...our intervention, in our November 20th letter last year which is very important and our
27 testimony for today. That's 75 pages, I'm familiar with it. I wrote in collaboration with everyone
28 just to aloha, malama Nahiku. And I think there is a peaceful solution it is simply to defer and until
29 they do an Environmental Assessment. And if Michele our new Planning Director will give us her
30 word that they will do one without seeking an exemption, without seeking any avoidance of one
31 then we don't want to intervene. We don't want to waste more taxpayer money. We don't want
32 to...we spent more money just which we should have never have had to spend already. So you
33 know God bless you, and thank...again, thank you to the Commission for sending it to Hana and
34 they made the...a pono recommendation...(inaudible)...says please do an EA which is a
35 informational document before passing it onto the County Council for a decision. Please do an
36 EA, it's an informational document so that when...if a SMA is done –

37
38 Mr. Robinson: We hear you John.

39
40 Mr. Blumer Buell: Okay, I'm sorry—

41
42 Mr. Robinson: I got. And I know there's a lot of passion. I know this has been a lot longer
43 tribulation for you than any of us and we represent them.

44
45 Mr. Blumer Buell: Yeah.

46
47 Mr. Robinson: I want to make sure that...that if either you're representing the 11 or if there's any
48 other intervenors who like to speak at this time because there is 11 of you so I want to make sure

1 that if the intervenors want to, want to kind of jump in or if, of if John...so if you do want to jump
2 in I'd like to give you that opportunity.

3
4 Mr. Blumer Buell: Well, I thank you for that because I identified myself as myself, one individual
5 and also as an intervenor because the County response to our intervention is...tries to divide us
6 up as individuals and not having appropriate...by the way, this is the last thing Chair please. And
7 that is when we intervened we had a deadline and we did it on time, we came up with five hundred
8 bucks the County or something like that just to intervene. Now, I got the notice and—

9
10 Mr. Robinson: John, John I don't think this is...I think we should let other people speak, there's
11 only so much time.

12
13 Mr. Blumer Buell: Okay.

14
15 Mr. Robinson: But I got you.

16
17 Mr. Blumer Buell: Okay. I would like to comment one sentence that I agree other people should
18 go if they want.

19
20 Mr. Robinson: Thanks John.

21
22 Mr. Blumer Buell: Thank you so much.

23
24 Mr. Robinson: Would another intervenor like to step up at this time and speak? Aloha and please
25 introduce yourself.

26
27 Mr. Moke Bergau: Aloha mai.

28
29 Mr. Robinson: Aloha.

30
31 Mr. Bergau: My name is Moke Bergau and I'm one of the many intervenors from Lower Nahiku
32 concerning the project of Nahiku Community Center. And I just want to take off on what John left
33 off on the EA. It will answer all the legitimate questions like entitlement. My driveway starts up
34 at Makapipi on the Hana Highway. That's my driveway. And it's driveway for everyone that lives
35 down below there. County has no titlement to those roads. I have proof. All residents have proof
36 of that. We have a tax key map. And that driveway intercedes all the properties from the top of
37 the highway down to the water. It crosses over. It's referred to as a driveway. It has character,
38 Nahiku character. Okay, this project promotes public, public access. Funds are used, public
39 funds are used for this particular project. The cause of it and purpose it's not an issue at this
40 moment. The issue is this intervention. The reason why we're doing it. We are being run over.
41 Our entitlement is in jeopardy. My entitlement, my rights has been jeopardized by that project.
42 My property is at one, one mile exactly from the top of the highway and it's 2.3 miles down to the
43 project site from Makapipi that's the top of the highway, a public highway 2.3 miles out, on a
44 private driveway. County has no jurisdiction or has no entitlement for the...you know for that area.
45 It behooves me, it really confuses me to see this planning commission, this project proceeds for
46 10 years without any entitlement, without even making an effort to search for it or to say at least
47 yes, we have ...(inaudible)...interest. The County have interest in there. It is confusing. It is very
48 confusing.

49

1 Now, I don't know if you are familiar with my driveway in Lower Nahiku but it is character, it is a
2 very hazard...you know, it's uncoated, it's not coated. It's one lane, one lane highway, no
3 shoulders and you got drop off. If this public...if this project should go through planning
4 commission will be responsible if producing a havoc. Allowing the public to go down there like all
5 those buses and more cars on my driveway. And that is the first, first area that should have been
6 looked at before it has gotten this far where we are today. All this confusion, all this...all this
7 worthless, time consuming movement when the County cannot even come up with documents
8 saying that they have access down. And that is why our passionate and outlook on the planning
9 commission and the County position it's haha, it's very frightening. You know it's very frightening
10 to have it this long on the table. The longer it stays on here the worse it will get. A lot of creative
11 mind going come out. Lot of creative thinking going to come out and it has nothing to do with
12 Nahiku. It has everything to do with the completion of this planning commission mission. And it
13 has nothing to do with the people in Nahiku. The purpose of that project down there it does not
14 serve Nahiku. It only serves the public. And that environment down there it has...it cannot, it
15 cannot hold public attention or access. It just cannot. We've already accomplished in keeping
16 out the vans, the big tourist vans from going down there. And we needed to go to the company
17 themselves to let them know they not allowed and we did it. Smaller cars are permitted.

18
19 A developer wanted to do that development down Nahiku. We stopped it on the top of that road.
20 They couldn't do anything. Law enforcement couldn't even touch us 'cause we were on our
21 driveway protecting our rights from a developer until terms are met, Nahiku's terms. Right now,
22 Nahiku has no terms. We're being slaughtered by a project. We not setting the terms. We are
23 just being shoved to take actions that I don't want to take. We don't want...I didn't want to be a
24 intervenor, intervene, no. After today, the decision it will decide whether it will go into court,
25 litigation. That's the only choice we get if this project should follow through. And now again that's
26 another burden it will be placed on the Nahiku people litigation, court action. That is not the way
27 to live. But it all starts here today right in the planning, right on the planning floor right here.
28 ...(inaudible)...the purpose of it is not the issue today but it's a standing of the completion the
29 future. The foresight of this is just dangerous if we allow it. If I allow it to go through. Mahalo.

30
31 Mr. Robinson: Thank you Moke. At this time, is any other intervenors would like to speak? You're
32 a intervenor, sir?

33
34 Mr. Jeffrey Paisner: Yes.

35
36 Mr. Robinson: This isn't for the testimony. Are you one of the—

37
38 Mr. Paisner: Yes, I am a intervenor, sir.

39
40 Mr. Robinson: Okay. Sure, sir please come and state your name.

41
42 Mr. Paisner: My name is Jeffrey Paisner. I do promise that everything I say will be truthful. I first
43 bought property in Lower Nahiku in 1971 when the road down to the Lower Nahiku was a dirt road
44 before it was ever paved. I'm also want you to know that I am the sole individual citizen in the
45 entire Maui County who is a party in full standing to the contested water case hearings with a
46 focus on preserving the stream flow of the Makapipi River which courses through the community.

47
48 I think the problem we have here is certainly this has severely divided this community. It's caused
49 tremendous animosity in this community. There is no peace in this community any more over this

1 community center. I wouldn't even say...when I say it's divided the community, I'm not inferring
2 that it's divided the community almost equally because the fact is if you could take a vote of Lower
3 Nahiku residents, if you would do that you would find out that the vast majority of Lower Nahiku
4 residents do not want this community center in this location.
5

6 There's perception in the County of Maui that the Nahiku Community Association is the
7 spokespeople for our community. They are not. All you have to do is to go on the internet look
8 at their website and you will see who their Board of Directors are and you will find out that over
9 80 percent of them are all from the same family. That certainly doesn't represent a cross section
10 of residents of Lower Nahiku.
11

12 But I want to offer a solution because if the County is squandering hundreds of thousands of
13 dollars of taxpayer's money, all of you are being paid to be here today to hear us speak.
14

15 Ms. La Costa: No we're not.
16

17 Mr. Paisner: Okay, you're not being paid, excuse me.
18

19 Ms. La Costa: No.
20

21 Mr. Paisner: Okay, I apologize.
22

23 Mr. Robinson: It's okay guys.
24

25 Mr. Paisner: I apologize. Okay, I didn't mean to insult you.
26

27 Mr. Robinson: Jeffrey, you're good. You're good.
28

29 Mr. Paisner: I didn't mean to insult you. I am not against, many of the intervenors are not against
30 there being a Nahiku Community Center. Not all of the intervenors are against Hawaiian culture
31 being represented. I think that's a wonderful thing. Lower Nahiku has a rich, rich tradition of
32 Hawaiian culture. The problem is the location that is being considered. It is wrong from the start.
33 The community center, I support a community center. I support Hawaiian culture being, being
34 promoted. But the community center needs to be on a public road that people have access to
35 that all of the residents of Upper Nahiku have access to, that all of the tourists have access to and
36 that would be off of the Hana Highway where there is no question about whether or not that is a
37 legal road for legal access.
38

39 It is a fact that Lower Nahiku Road whether you call it a driveway or whatever, however you want
40 to term it, it trespasses on numerous private properties. None of you here could get a permit to
41 build house anywhere on this island if you could not prove to the County that you have legal
42 access to your property. I spent \$75,000 of my own money getting legal access to my property
43 in Lower Nahiku. Within two months of getting it the County closed the Lower Nahiku Bridge,
44 didn't tell me, didn't notify me, can't even get to my property now. They claim they have no
45 jurisdiction over the bridge. They've been begged by the State Legislature over 15 years ago to
46 determine who has ownership of the bridge. They have failed to do that. They've failed in their
47 obligation to the citizens of Maui.
48

1 So again, I am not against the community center. I support the community center, but this is
2 absolutely the wrong location. The idea that it's a good place in case of emergencies, ridiculous.
3 It's at one of the lowest elevations that there are in Lower Nahiku. If there was ever a tsunami in
4 Nahiku that's the last place, that's where you're gonna evacuate people, not where you're going
5 to provide them blankets and bed them down. The road to get down there for emergency vehicles,
6 it's basically a one lane road. I don't know if any of you have ever driven down the road to the
7 landing. But if you haven't you need to pay less attention to the laws and the rules and regulations
8 and more attention to what's actually going on on the ground there 'cause reality is what you need
9 to make decisions based on not just laws. So you can't, you couldn't even get, you can't get a
10 fire truck there and another car up at the same time. Somebody would have to pull into someone's
11 driveway off the road for two cars to pass at the same time. I ask you, is that the right place to
12 put a community center with the idea that it's gonna service people in times of storms or tsunamis.
13 It's just the wrong location.

14
15 And the fact that the County is spending hundreds of thousands of dollars. We're already up to
16 over a million and a half. We don't even know how much the litigation is gonna cost with Kuponu
17 Builders. They're just starting their trial. That could be hundreds of thousands of dollars more in
18 taxpayer money spent on a lawsuit that originated from the wrong site choice. I've watched you
19 look at applications for people who want to put bed and breakfast up, you want to know where,
20 how close is it, how close is this neighbor to the person who wants to put the bed and breakfast.
21 Those things are of concern to you. Well, it should be a concern to you that you even have the
22 authority to approve that a community center be built down a rural one lane road that the County
23 of Maui does not have jurisdiction to. Now could they get jurisdiction? Of course maybe through
24 adverse possession. There are legal means to get it 'cause you can't land lock land. But they
25 would have to go through the process first. And if one single private property owner spent \$75,000
26 to get an easement to his property could you imagine what it's gonna cost the County of Maui to
27 get a legal easement that goes three and a half miles down a road and over a bridge to a landing
28 where the County of Maui refuses to do their job and even find out, do a simple title search who
29 owns that bridge. If I could find who owned all the ...(inaudible)...owned three different pieces of
30 land going back to my jungle property with my own resources, the County of Maui could do a
31 simple title search and pay for it. They will spend more money on litigation against Kuponu
32 Builders than they've spent on that. Wrong location.

33
34 I support the Nahiku Community Association in their desire to have a community center 110
35 percent. The County should abandon this location and look for an appropriate site off the Hana
36 Highway that's more accessible for everybody and maybe then we can have some peace in our
37 community. Thank you.

38
39 Mr. Robinson: Thank you Mr. Paisner. Is there any other intervenors that would like to speak at
40 this time? Yes, please.

41
42 Ms. Teresa Allred: Hi my name is Teresa Allred. Aloha.

43
44 Mr. Robinson: Aloha Teresa.

45
46 Ms. Allred: I just have one quick thing I'd like to add. In the beginning when we first...I was a
47 member of the Nahiku Community Association and a lot of us were and when the idea of a
48 community center came up we were in favor of it. I'm sure that there's a document around that
49 has my signature on it voting for it. But when...as things progressed and time progressed we

1 realized that this was not the right thing to do so there was really no way to take my name off of
2 that document that I signed earlier. But I think that the three gentlemen who spoke before me did
3 a really job of presenting our point of view and I thank you for your consideration.
4

5 Mr. Robinson: Thank you. Aloha, would anyone else of the intervenors would like to speak at
6 this time? They're talking. You guys, you guys okay or would you guys like to speak?
7

8 Unidentified Speaker: No, they're not the intervenors.
9

10 Mr. Robinson: Okay, ...(inaudible)...you guys okay, all right, okay. Thank you. John, would you
11 like to add anything at this time?
12

13 Mr. Blumer Buell: I will brief.
14

15 Mr. Robinson: Okay.
16

17 Mr. Blumer Buell: And this is for our new planning director and corporation counsel. Normally
18 when people exchange legal documents you have 10 or 30 working days to respond. I received
19 a copy of the Corporation Counsel response on last Thursday. We haven't had time to send it
20 even to an attorney. So I don't think it's appropriate. This is common courtesy in law. This is a
21 not a dispute but when you send a...when you file something three or four days before a hearing
22 like this that's not fair and we're going to send the Counsel's, Corporation Counsel's letter to
23 several attorneys and we have not had time to get a response. I know, and I'm not here to argue
24 with Corporation Counsel. I know that some of the information in that rebuttal to our intervention
25 is dead wrong. I know it. But I'm not here to argue a legal points I don't have time...I didn't have
26 time to go through the law books.
27

28 The last thing, this is the last thing Chair and thank you again everyone. I simply ask you to follow
29 the recommendation of the Hana Advisory Committee to the Maui Planning Commission.
30

31 Mr. Paisner: May I add one thing?
32

33 Mr. Robinson: Jeffrey I will allow it. Please go to the mic.
34

35 Mr. Paisner: I would just like it to be understood that the letter—
36

37 Mr. Robinson: Jeffrey please introduce yourself one more time.
38

39 Mr. Paisner: Jeffrey Paisner.
40

41 Mr. Robinson: Thank you.
42

43 Mr. Paisner: I just want to add that the letter that you got from the Corporation Counsel is not a
44 legal decision so you should not base a decision based on that letter. That's just an opinion and
45 it's an opinion that could be litigated. So I don't believe any decision you make should rely on the
46 Maui County Corporation or Maui County Counsel if I'm saying correctly. It's only their opinion.
47

48 Mr. Robinson: Thank you. John are we good?
49

1 Mr. Blumer Buell: Yes.

2

3 Mr. Robinson: Okay, thank you so much. Aloha, now can we have a Department's representation
4 now please? Would you like some time or are you okay?

5

6 Mr. Tom Colby: No, I'm okay. Thank you. Good morning all, my name is Tom Colby. I'm the
7 attorney for the applicant which is the Department of Parks and Recreation in this matter. That
8 was an awful lot of information that we got from people who have obviously a lot of concern about
9 this particular community and this particular project. I'm going to follow the—

10

11 Mr. Robinson: Tom, I apologize can you speak into the mic.

12

13 Mr. Colby: Am I not close enough? Is that better? Okay. I'm gonna try to limit my comments to
14 the intervention as it relies to the first half of the entitlements that we're talking about first and then
15 I can explain our position on the second half.

16

17 I agree with Mr. Galazin in his analysis that you can't intervene in the recommendation. The rules
18 are what authorize any interventions and in this case, Maui Planning Rule, 12-201-39 describes
19 when a petition to intervene can be entertained by this body. In this case because you as the
20 commission are not going to be taking final action and are not the final authority to the entitlements
21 which are going to be the County Council's kuleana they can't really intervene in that. And that's
22 not to say that they can't participate and be heard and weigh in on their opinions about whether
23 or not those entitlements ought to be granted. But that process should take place as members of
24 the community have every right to go ahead and to explain their side. We've heard a lot of
25 substantive arguments against the granting of this particular project, but I think those should wait
26 for comments to the County Council or as public testimony for you guys to consider in your
27 recommendation, but there is a not a legal basis, a legal mechanism for them to them to intervene
28 as to a community plan amendment, the change in zoning for the County and the district boundary
29 amendment. Those are things the County Council has to consider.

30

31 Each of the intervenors who spoke here today did mention that what they really want is an
32 environmental assessment. Respectfully I don't think that's something that the Maui Planning
33 Commission has the authority to order. There is a mechanism, there is a due process mechanism
34 for people to challenge an exemption, to challenge whether or not an environmental assessment
35 is necessary that's the Circuit Court. I, in my moving papers went ahead and identified Hawaii
36 Revised Statutes, 343-7 which explains the timing on when you do that and where you do it and
37 it specifically says that you do it in the Circuit Court. So the intervenors already intimated that
38 they are likely to want to challenge this in Court. I think we don't have to get there today. I don't
39 think you guys have to necessarily address that issue. You have to look to what the planning
40 commission may allow intervention on and we do have one permit that intervention would be
41 allowable under our rules and that's the Special Management Area Major Permit which is the
42 other item I think Item b, on this matter. You would do the analysis that the intervention rules
43 require under these circumstances. They would have to either demonstrate that they are entitled
44 to intervention as a matter of right because of some property interest or that they reside on the
45 property or let me quote it, their interest in the proceeding are clearly distinguishable from that of
46 the general public. And we can talk about that a little bit later, but that's where intervention is
47 within your power to grant and to allow them to not just participate in this particular project but
48 actually to be a party to it. And being a party to it is different than just being able to stand up here
49 and to provide their insights into what that community is about, how this project would affect them

1 and to participate in that sense. It would actually require us to do other types of actions. We
2 would have to do a mediation section which the County of Maui Planning Department would
3 probably automatically be a member or a party to that action. There would be the determination
4 as to whether or not this project requires a hearings officer, whether this body needs to assign
5 one or more of its members or somebody from the public at public cost to be the hearings officer.
6 And so it kicks this into a different process that we have.

7
8 Now there is a way that we could kind of maybe ...(inaudible)...some type of a little ground on
9 that. It is apparent and I...please consult your attorney that they can't intervene as to the
10 entitlements that are gonna go up to the County Council. So to that extent what we could do and
11 I think the County would be in agreement to do is to allow that process to go its course, for you to
12 hear the testimony of the folks and the project this afternoon, to take those considerations and
13 make your recommendations. In the event that the County Council then takes up the boundary
14 amendments, the community plan amendments and all of that, at that point they could determine
15 whether or not the intervenors are satisfied with whatever approvals with conditions are passed
16 back down for your consideration to determine in the SMA. If the project at that point, they don't
17 get the entitlements then what we have is a we've probably rendered the intervention moot
18 because at that point there's nothing for us to act on. The SMA can't go forward until those other
19 entitlements are in place because part of what you're going to look at is whether or not these
20 community plan amendments, the various things that...the factors that are identified under 205A.

21
22 So I totally understand their concerns raised by members of the public. I am not prepared to
23 answer the question about legal access to this road. I can defer though to people who may be
24 more familiar with that project, but if, in fact that is a concern of this body then that's the other
25 reason you may want to defer hearing on whether or not intervention in the SMA Permit is
26 appropriate to gather that particular information. Otherwise, they're correct issues of ownership
27 are things that need to be decided by a Circuit Court not by this Commission. Access and
28 jurisdiction to travel that road are things that would have to be resolved in the Circuit Court and
29 not in this Planning Commission.

30
31 And I will acknowledge that there is a lawsuit involving breach of contract or maybe other claims
32 but certainly that regarding the original folks who were gonna be building the community center
33 and that litigation in that matter is ongoing. I don't know how that actually impacts our decision
34 today as to whether or not intervention is appropriate. But I am happy to answer any questions.
35 I really, I really want to just emphasize that the County is not saying that these folks shouldn't be
36 part of this process and that their opinions on these projects aren't important. Our position is just
37 intervention is not the appropriate mechanism there and to the extent that they're trying to
38 intervene in things that you don't have the authority to grant them it's simply that shouldn't be
39 considered. So I'd be happy to answer questions. If there are questions related to title or to
40 access to that road, again it's a Circuit Court matter, but there may be people who are more
41 familiar with the project who could provide you with further information. Thank you.

42
43 Mr. Robinson: At this time John, I'd like to...if you'd like, to give you a couple of minutes if you'd
44 like to comment on Tom's testimony.

45
46 Mr. Blumer Buell: I would.

47
48 Mr. Robinson: John, one second.

49

1 Mr. Galazin: Sorry, thank you Chair. I would just recommend that you probably ask the
2 intervenors to designate one individual to...if there's going to be a response that we don't end up
3 with seven more responses. We've heard a lot of testimony from the intervenors so far, so if one
4 person does want to provide a response then that would be appropriate.
5

6 Mr. Robinson: Intervenors would you guys like to have a minute to decide who would like to be
7 that person?
8

9 Mr. Blumer Buell: Would you mind Jeffrey?
10

11 Mr. Paisner: I'm fine with John
12

13 Mr. Bergau: Mr. Blumer Buell will be fine.
14

15 Mr. Blumer Buell: Thank you.
16

17 Mr. Robinson: John I would like to give you a few minutes to if you would like to respond just to
18 what John has said not to...
19

20 Mr. Blumer Buell: I thank you. And with all respect to Corporation Counsel. With all respect to
21 Corporation Counsel and to Pat Wong, and I have to say that Pat Wong I met and have worked
22 for on Hana health issues in the past so we're on good terms as far as communication. But with
23 all respect, it wasn't until this last application and last...late last year 2017 that Pat Wong and the
24 County finally decided to follow the law. Pat told the County Council several years ago, it's in the
25 record and it's mentioned in our intervention. He said...he was asked I think by either Chair Mike
26 White or Budget Chair Riki Hokama have we been following the law? And Pat said yeah, you
27 know. Well, they haven't been and the proof that they're asking for the correct entitlements now
28 is proof of my point. That's all. It's that simple.
29

30 Now I like one thing that Corporation Counsel said and that is we have already offered I believe
31 in our last letter or dated for this meeting we have offered to mediate, we're happy to mediate.
32 And I think the mediation it be appropriate to mediate should we do an EA or not. I'd be happy to
33 and I think the intervenors would be happy to mediate on the subject of an environmental
34 assessment. It's not to blame anybody. That is a document that is going to give the community
35 a chance to interact. I've been part of many EAs and EISs. It gives everybody in the community
36 a voice. You submit a question, the applicant has to answer it, and it's a back and forth and
37 should be very complete. It would answer all the questions we don't want to go Circuit Court to
38 have to prove. So an EA is vital and you know, if we get an honest EA report and there's honest
39 ...(inaudible)...there's the option to contest the final result of the EA and that's a
40 ...(inaudible)...So we'd be happy as intervenors to mediate the subject of an EA and I think that's
41 very appropriate. That would, that is...the last thing is please take the mana`o of the Hana
42 Advisory Committee to heart. That was a good recommendation. They recommended deferral
43 of all issued until...that includes all the entitlements and the SMA until you have an Environmental
44 Assessment. They understood. That's what the community wants. It's what we need. It's what
45 is fair due process and that's all we're asking for.
46

47 Mr. Robinson: All right.
48

49 Mr. Blumer Buell: You know that's all. Thank you very much.

1
2 Mr. Robinson: All right, thank you John. Commissioner's at this time I'd like to open up the floor
3 for us for discussion, for questions if we have. We have the intervenor here as well as Corp.
4 Counsel if we'd like some clarification maybe on, we have some people in the audience that...I
5 know I'd like to ask the question about ownership of the road and some history on that. Is that
6 something we think we might want to start at Commission? Would you like to...you have another?

7
8 Mr. Carnicelli: Go ahead. Go, go, go.

9
10 Mr. Robinson: It's Tom, I know you said that we have somebody in the audience that might help
11 us with the ownership issues, entitlements and some history if you could help us with that. I think
12 that will help us instead of starting to ask questions?

13
14 Mr. Colby: May I request then a five-minute recess to discuss this with—

15
16 Mr. Robinson: Yeah, we'll have a ten-minute recess.

17
18 A recess was called at 11:43 a.m., and the meeting was reconvened at 11:52 a.m.

19
20 Mr. Robinson: Corporation Counsel needed a little bit more time. We're gonna reconvene here
21 back at 1 o'clock after lunch. See you guys all at one. Aloha.

22
23 A recess was called at 11:52 a.m., and the meeting was reconvened at 1:11 p.m.

24
25 Mr. Robinson: Aloha, welcome back. Thank you for the break. Planning Commission is now
26 back in session. Counsel, do you have something to say?

27
28 Mr. Tom Colby: Thank you, this is Tom Colby. I did have a chance upon your request for further
29 information regarding the property ownership of either the road and/or the property and we did
30 reach out to Public Works and some others and believe that we probably could get that issue
31 resolved. But more to the point there was really two issues that I think you should consider right
32 now. The first is that we would like to clear up that issue and provide you with all documentation
33 related to ownership so that's simply not an issue for you to have to wrestle with. The other is
34 that I conferred with Mr. Buell and Mr. Bergau and Mr. Paisner about the possibility of staying this
35 proceeding in terms of their intervention into the SMA Permit until we have a chance to kind of
36 discuss that issue as well as a couple issues that they've raised. The benefit of that is that in his
37 initial discussion with you he mentioned the fact that he didn't have a chance to show the County's
38 position on this to an attorney or someone else. Out of an abundance of caution and to make
39 sure that everybody has the due process that they want I think it would make some sense for us
40 to give them the time and for us to have further discussions with the potential intervenors and so
41 my request would be to stay this proceeding as to Section c to some further date so that we can
42 have those conversations and allow us to come back after having discussed those things, take
43 up the matter of the petition to intervene again.

44
45 In terms of what the timing of that is I don't know how crowded they are future meetings. It may
46 make some sense since the other half of this has to do with the entitlements that are going to be
47 considered by the County Council for us to find out what happens with that and then take the
48 matter back up afterwards. But I'll defer to you in terms of the time frame you'd like to give us but

1 that would be in the nature of a joint request so that we can pursue options and see whether or
2 not we can work this out.

3
4 Mr. Robinson: Is...Tom at this time and Director, correct me if I'm wrong is, is can you, can you
5 meet with Paul to find out exactly what the Planning Department's stance is right now. There's a
6 lot that was just said and I want to make sure that we progress in the correct way.

7
8 Mr. Colby: I certainly can. I'll just say this the applicant actually is the Department of Parks and
9 Recreation.

10
11 Mr. Robinson: Okay.

12
13 Mr. Colby: And I met with the Director and I have...I understand their position on this and there
14 are Parks folks in the audience too, in the event that you needed to kind of confirm what their
15 position is.

16
17 Mr. Robinson: Okay, I apologize is I just wanted to make sure that we're gonna do the step by
18 step. So is Corp. Counsel can you repeat what you think Tom is saying so, so that way it's in our
19 head twice.

20
21 Mr. Galazin: Yeah, so thank you Chair. You know what the Corporation Counsel, my colleague
22 is suggesting is that after conferring with the intervenors and I need to make sure that the
23 intervenors are on record as agreeing to this as well that they defer...that you folks defer taking
24 any intervention portion of the SMA...of the applications that pertains to the SMA Permit which
25 means deferring taking any action on the SMA Permit itself because you obviously have to
26 dispose of the Petition to Intervene before you take action. So if both sides are stipulating to, you
27 know continuance and that's I get that both on the record, then I think that's fine to go ahead and
28 defer that. It could be to a date certain or can be to a date after which the County Council has
29 had a chance to weigh in on the land use entitlements that would be...if that is your
30 recommendation and again, if both parties agree to that voluntarily to that level of deferment that
31 will ample time for them to collaborate, work out some of these issues, get a little better handle
32 on the land title issues that have been brought up so that is...that is something that both sides
33 have conferred about, they agreed on in concept you know a deferral, but the time frame itself is
34 not set. That would be at your discretion. In advising you I think it would make more sense to
35 defer it until after Council has a chance to weigh in because as I believe you know Deputy
36 Corporation Counsel Colby noted earlier Council may take an action that would moot the SMA
37 altogether and which would moot the need for the intervention. So I think rather than trying to
38 spend a lot of time and energy and money perhaps on these...working out these issues only to
39 find out the Council's effectively quashed it, it may make more economical and more equitable
40 sense to defer both the Petition to Intervene and consideration of the SMA Permit itself until after
41 Council has had a chance to vote, you know, one way or the other on the land use entitlements.
42 Again that's provided that both sides, both the Parks Department, the applicant and the
43 intervenors agree to that stipulation.

44
45 Mr. Robinson: Well, and again, it doesn't have to be exclusive that you guys could agree on
46 something before the Council acts as we know that takes time. So to the intervenors, are you
47 under the same understanding as we are?

48
49 Mr. Blumer Buell: I'm not sure he just said...

1
2 Mr. Robinson: Would you guys like to confer for a minute?
3
4 Mr. Blumer Buell: Why don't you the...I think—
5
6 Mr. Paisner: May I ask the question here?
7
8 Mr. Blumer Buell: Yeah please.
9
10 Mr. Paisner: I just wanted, I just wanted...Jeffrey Paisner, I just wanted to be certain that if we
11 have this mediation that that would preclude the Maui County Council from making any decisions
12 until after we've had that mediation.
13
14 Mr. Robinson: Is that is not my understanding. So there's different items on it. There's one...we
15 only have a recommendation so...and that's for the first part. The second part with SMA which
16 we do have power here for that's where the intervention part is part of. And what we're doing is
17 we're staying making a decision of approving or denying an intervention for you guys both to work
18 together, hopefully gather some more information which, which we think will help all parts of this
19 because, because you're intervention is what we're dealing with right now and that's part of the
20 SMA, but had nothing to do with the Council.
21
22 Mr. Blumer Buell: Okay we understand this is only regarding the SMA and our intervention.
23
24 Mr. Robinson: Correct.
25
26 Mr. Blumer Buell: And we respectfully agree with Corporation Counsel. It's very constructive.
27 You know this is very constructive in our point of view. We'd rather be in Hana today though we're
28 happy, we're happy that this issue—
29
30 Mr. Robinson: Probably all of us, yeah.
31
32 Mr. Blumer Buell: Yeah. It's this issue this is right I think and then we can deal with the other
33 issues introduced by former Director Spence after this. So this, the SMA intervention we agree
34 with Corporation Counsel.
35
36 Mr. Robinson: So Corp. Counsel, correct me if I'm wrong but at this time I will table the
37 intervention portion of it and the Commission we won't have to discuss it until it comes up to us
38 again? Is that correct?
39
40 Mr. Galazin: That is correct Chair although I don't know if you want to specify the time frame for
41 that?
42
43 Mr. Robinson: I'll leave it up to the Commission. I know you guys have been silent and listening
44 very well. I think if you guys understand what's happening here, our question to us now is we
45 want to do a time frame limit on this, 30 days, 60 days, 90 days, does anybody have any feeling
46 on that? Commissioner Carnicelli.
47
48 Mr. Carnicelli: Thank you Chair. I think it makes the most sense for the time line to be after
49 Council has made a determination because at that point in time if they say no, this whole thing

1 just goes away. So if we try to do something before that, then you know we go through this again
2 only to get Council saying no. So I think you know, should it be first available meeting after
3 Council makes a determination?
4

5 Mr. Robinson: Is, is, is my opinion is I understand your point of view. I'm concern is if we have
6 the intervenors agreeing for a stay which means you know they came here for a decision today
7 to intervene, if we don't give them a certain amount of time what would bring the other party to
8 the table if they can wait till after the Council. I think they want information regarding the rights
9 which I think will be pertinent to...you know when they're talking they're talking about rights and
10 they're talking, you know, and they might be at the Council. So I understand wanting to wait after,
11 but if the Council takes six months, I mean, I think there's other things that can ...(inaudible)...and
12 when is a reasonable time for them to expect to them their arbitration and mediation and to come
13 back in front of us. So if we say 90 days I'm saying that hopefully they will talk before 90 days. If
14 we say after the Council it may never come back to us. Director.
15

16 Ms. McLean: Thank you Chair. Another option could be...well, I'll make a couple of comments.
17 I know that the next two meeting agendas are probably pretty full. I don't know what we're looking
18 at the few agendas after that. So one option for your consideration could be till we are notified by
19 the parties that they are ready for this to be heard again by you and if the parties in their discussion
20 agree that it makes sense to wait until after Council then we could wait until after Council. But if
21 either says we want to come back before then either party has that power if you will over the other
22 to bring it forward. And as long as both are participating then they can come up with a time that
23 they agree to. That's another option for you.
24

25 Mr. Robinson: I think that's a great option. Commission?
26

27 Mr. Carnicelli: Chair I have a question for clarification.
28

29 Mr. Robinson: Sure.
30

31 Mr. Carnicelli: Maybe David you can answer this. So we have an intervention right now. Is the
32 intervention on the CPA, DBA, CIZ and SMA or is it just on the SMA? And if it's on all four is what
33 they're agreeing to is bifurcating those two things? Please clarify that.
34

35 Mr. Galazin: Okay. Thank you for that question. Chair? Thank you for that question
36 Commissioner Carnicelli. Yes, the intervention is for all four items. You will have to dispose of
37 three of those items one way or the other. And those would be for the advisory recommendations
38 you make to the County Council. We can get into a discussion about that. I think a decision could
39 be made on those items as far as intervention. I believe that can be done today. You can come
40 back at a later time before Council has acted. You can come back at a later time and decide on
41 the intervention portion of the SMA Permit without taking up action on the SMA Permit. You just,
42 you can't take action on the SMA Permit without dealing with the intervention. But you could deal
43 with the intervention in 90 days or 100 days. You know as the Director suggested, when the
44 parties agree that they're ready to, if they both stipulate to that time frame if they want to come
45 back in six months, Council hasn't done anything yet, and they're both prepared to present their
46 arguments for and against intervention on the SMA Permit then you guys could take that up and
47 make a decision on that knowing that the underlying SMA Permit would not come back until
48 Council takes action. So if you are willing to let the parties work amongst themselves for the time
49 frame then you could vote as the Director has suggested to allow them to defer action on just the

1 intervention on the SMA Permit until such time as they're ready to come back on that. But you
2 do...I would say that's incumbent upon you dealing with the intervene for the Community Plan
3 Amendment, District Boundary Amendment and Change in Zoning. Those have to be disposed
4 of first. Does that answer all your questions?
5

6 Mr. Robinson: Yeah, I mean and—
7

8 Mr. Carnicelli: No, I'm fine. I just don't know if everyone understood that.
9

10 Mr. Robinson: Yeah, well, as long as the, as long as the intervenors and the Parks know what
11 they're agreeing to, I think that's, I think that's a point and I think Director's point of when they're
12 ready to come back we're available for them instead of setting a time date which, which to your
13 point might be after, hopefully after the Council. You know hopefully, we won't, we won't be here
14 before something again. Commissioners any other questions or clarifications? Okay. Yes,
15 Commissioner La Costa.
16

17 Ms. La Costa: Thank you Chair. If the parties do have to come back before us I would request a
18 full title report so that we all know what the ownership of the property is so we can make a better
19 determination rather than he said, she said, I said, we said?
20

21 Mr. Robinson: That's good. We can request it. And I think, I think the Parks already agreed to
22 that that they would have that information and I think they're gonna get that information during
23 their discussions with the intervenors. So I think that's all part of intervention people agreeing to
24 sitting down with them. Right Tom?
25

26 Mr. Colby: Yeah, that's correct. If we don't have the documents, we'll get them. But I believe we
27 already have them. I'm just...I'm not prepared to discuss them with you today, but we can get
28 that and we'll be providing that information to the intervenors as well.
29

30 Mr. Robinson: Okay, thank you. With that being said, do we have a motion on the floor to defer
31 this intervention and to...and Director Mclean will use the terminology. We need a motion first.
32 Yes, Commissioner.
33

34 Ms. La Costa: I so move.
35

36 Mr. Robinson: Do I have a second?
37

38 Mr. Carnicelli: Second.
39

40 Mr. Robinson: Okay, and now we'll let the Director.
41

42 Mr. Carnicelli: Tell us what the motion is.
43

44 Mr. Robinson: Tell us what the motion is.
45

46 Ms. McLean: If I understand your motion correctly. It would be to defer taking action on the
47 Petition to Intervene in the Special Management Area Permit until either Council makes a decision
48 on the Change in Zoning, Community Plan Amendment and District Boundary Amendment or
49 either or both parties request the Petition to Intervene to be considered.

1
2 Mr. Robinson: And can we clarify the item on this that we're voting on?

3
4 Ms. McLean: This is specific to Item E.2.c.

5
6 Mr. Robinson: E.2.c. Okay, all those in favor, please raise your right hand. That's six ayes.
7 Okay, thank you

8
9 **It was moved by Ms. La Costa, seconded by Mr. Carnicelli, then**

10
11 **VOTED: To Defer Action on the Petition to Intervene Until Either the County**
12 **Council Takes Action on the Community Plan Amendment, District**
13 **Boundary Amendment and Change of Zoning or Either or Both Parties**
14 **Request the Petition to Intervene to be Considered.**
15 **(Assenting – P D. La Costa, L. Carnicelli, S. Castro, A. Hill, K. Pali,**
16 **C. Tackett)**
17 **(Excused – T. Gomes, L. Hudson)**

18
19 Mr. Robinson: Now we are back to 2.a.

20
21 Ms. McLean: We need to continue ...(inaudible)...

22
23 Mr. Robinson: We need to continue with c?

24
25 Mr. Galazin: Yeah, we need to continue with c.

26
27 Mr. Robinson: I apologize Commissioners we need to continue c.

28
29 Mr. Galazin: So Chair if I may? Thank you. So Commissioners now that that motion has been
30 taken, you've heard arguments from both the intervenor as well as the opposition as it pertains to
31 solely Item a, Community Plan Amendment, State Land Use District Boundary Amendment and
32 a Change of Zoning. You can vote now on whether or not to grant intervention on those item. I
33 would just note that you know, as was stated before in Section 12-201-39 of your Rules which
34 describe the Petition to Intervene, all proceedings in which action by the Commission will result
35 in a final determination of legal rights, duties or privileges of a specific party or parties and which
36 is appealable pursuant to Section 91-14, as amended is a contested case. Petitions to intervene
37 in such proceedings may be filed. You're not in making recommendation to County Council
38 making a final determination as to the legal rights, duties and privileges and it is not appealable,
39 your recommendation is not appealable and it is not a contested case. So with that in mind I
40 leave it to you decide whether to grant the petition to intervene although those are the standards
41 by which you judge it.

42
43 Mr. Robinson: Commissioner Carnicelli.

44
45 Mr. Carnicelli: So I just again clarity, clarity, clarity, we could hypothetically, I'm just gonna use a
46 hypothetical, we could deny the intervention on all three of those and still recommend to the
47 Council that they not approve all of them. I mean, that's...so it's not making a ruling as to whether
48 or not we want to pass those three things or we're going to recommend those three things to the
49 Council but rather just we're going to talk about whether or not they have standing or we have the

1 authority to grant the intervention for those three things. Just the intervention is what we're gonna
2 make the ruling on.

3
4 Mr. Galazin: Chair?

5
6 Mr. Robinson: Yes.

7
8 Mr. Galazin: Yes, that is correct. That is the first step you will take.

9
10 Mr. Carnicelli: Okay.

11
12 Mr. Galazin: And if the decision is to deny intervention then you can take up the item of—

13
14 Mr. Carnicelli: Recommendation.

15
16 Mr. Galazin: --yeah, of Subsection a, the recommendation regarding those land use entitlements
17 and you can recommend whatever you want.

18
19 Mr. Robinson: Okay, Commissioners I think we've heard a lot about intervention today and
20 hopefully we've all understood what the criterias for intervention and I think with the parties
21 agreeing to talk I think that's what we always want. We want the public to be heard. We want
22 the, you know, the County department to be able to come and explain things and clarify things for
23 people. So I think, I think we're gonna get what we want. Intervention is very hard to get from
24 this Commission in the past, first of all that's why we're here for. We're here to make decisions.
25 Second of all, we always got to be cognizant of the fact that sometimes when we grant intervention
26 it's actually more of a hardship to the intervenors financially because then it becomes a legal
27 process instead of a open public process and that's the last thing we want to do...intervenors
28 especially now that we got them to have sit and down and talk. So I think, I think we know where
29 this is going. But if somebody make a motion that would be, would be great. Commissioner
30 Carnicelli.

31
32 Mr. Carnicelli: I make a motion to deny the Petition to Intervene on the District Boundary
33 Amendment, Change in Zoning and Community Plan Amendment.

34
35 Mr. Robinson: And do I have a second? Would like to speak to the motion? I don't have a second
36 yet, would you like to speak to it so we maybe get a second?

37
38 Mr. Carnicelli: Sure, is we're not denying them their rights in total. They still have the right...if
39 this motion were to pass they still have their rights under the SMA. The SMA still has to come
40 back to us no matter what, right. So they're not...if this...we were to say deny these three, it still
41 means we can grant them their rights under the SMA. They still can have their rights under the
42 SMA. So what this does is it allows the process to continue onto the County Council, let them
43 make their decision while these people sit down at the table and try to iron this out.

44
45 Mr. Robinson: Okay, and I think it's, it's we don't think they don't think they have a legal right to
46 it and even though we approve it, it still might be contested anyway because there's certain criteria
47 for intervention and because we're not the final word on any of this, we're just giving a
48 recommendation, it's really as they said, it's sort of moot but this is the process.

49

1 Mr. Carnicelli: Right.

2
3 Mr. Robinson: I would love a second or if not, then we can...I'll withdraw the motion. Second,
4 okay...your motion is—

5
6 Mr. Carnicelli: I'll withdraw the motion.

7
8 Mr. Robinson: Motion is withdrawn.

9
10 **A Motion was made by Mr. Carnicelli to Deny the Petition to Intervene Regarding the**
11 **Community Plan Amendment, District Boundary Amendment and Change of Zoning Which**
12 **He Withdrew His Motion After No Second was Received.**

13
14 Mr. Robinson: Do I have another motion? Commissioners we gotta, we gotta make a motion
15 some way. We have to...'cause and again once we have a motion we still have discussion guys,
16 but we gotta, we gotta get something on the floor.

17
18 Mr. Galazin: Chair may I ask?

19
20 Mr. Robinson: Yes, yes please.

21
22 Mr. Galazin: There seems to be a resounding silence right now. So again, I would just reiterate
23 that something that is not a contested case and is not a final determination by this body is not
24 something that's subject to intervention. As it pertains to the land use entitlements you are making
25 a recommendation to Council. That recommendation Council can toss out to the window. You
26 are not the final authority on that. They cannot appeal your recommendation. I see no legal basis
27 within your rules for granting a petition to intervene. I see a basis within 12-21-39 to...12-201-39
28 to deny a petition to intervene, but I do not see anywhere in the rules that would allow for
29 intervention in this process. If somebody would like to move that they would need to point to a
30 specific section of the rules that allows it. So far I see one second which very definitively does
31 not allow it and that is my suggestion to you.

32
33 Mr. Robinson: Commissioners if you have questions please ask, but it's, it's we have the
34 intervenors agreeing and seems like we're the ones that aren't agreeing. Commissioner Tackett.

35
36 Mr. Tackett: So if I understand correctly if we do, if we do deny the motion it's because the motion
37 or what they're asking for is not appropriate for us anyway?

38
39 Mr. Robinson: That's correct. Because we do not have the final say. We are not appealable.

40
41 Mr. Tackett: I understand.

42
43 Mr. Robinson: Director.

44
45 Ms. McLean: Thank you Chair. There's been a lot of very important information shared with you
46 from the intervenors and the Department in a situation like this doesn't take a position on the
47 petition to intervene that's for the parties to make their arguments to me, but I just leaned over to
48 David and said, if you grant the Petition to Intervene in the three entitlements what are we going
49 to do? We're responsible for administering that intervention process and I don't know how we
50 would carry that out because it's just not something that rules call for. So that's not making a

1 judgment on, on the intervenor's arguments and all the important issues that they raised, it's more
2 of a procedural quandary that we would be put in because we follow a process prescribed in the
3 rules but this falls outside of that. So I just...I don't know what we would do if you granted the
4 intervention in this component it's...as Corporation Counsel said the rules don't allow for it.

5
6 Mr. Robinson: Commissioner Tackett.

7
8 Mr. Tackett: I would like to motion to deny the intervention.

9
10 Mr. Robinson: Motion to deny Commissioner Tackett. Do I have a second?

11
12 Mr. Carnicelli: Second with clarification. Clarification is on the District Boundary Amendment,
13 Change in Zoning, and Community Plan Amendment only not on the SMA?

14
15 Mr. Robinson: Is that what your motion is?

16
17 Mr. Tackett: It is. Is that the appropriate scope for...

18
19 Mr. Robinson: Yes.

20
21 Mr. Tackett: Then yes, that's the motion.

22
23 Mr. Robinson: Okay.

24
25 Mr. Carnicelli: And again if I could speak to the—

26
27 Mr. Robinson: You could speak to the second.

28
29 Mr. Carnicelli: Well, I'll speak to...yeah, the second the motion. The reason why I seconded that
30 is again, just for clarification the District Boundary Amendment, Change in Zoning and Community
31 Plan Amendment, we're nothing more than a recommendation to County Council. We don't have
32 the authority on that. We do have the authority on the SMA where that's our kuleana. So it's like
33 no, we're gonna let them intervene in our kuleana and what is the Council's kuleana we're
34 gonna...you know, it's gonna be dealt with another way. So that's why we're saying is we're
35 separating those things out and saying what's in our wheelhouse we're letting, you know we're
36 not going to deny that. We're gonna just deny the part that is not our kuleana. That's all. That's
37 what this motion speaks to.

38
39 Mr. Robinson: And Commissioners if you have apprehensive, you're not still clear that's what
40 we're here for. You know, we still have the opportunity and I, and I like the fact I feel that we're
41 all here making sure that the people get to have their say, and they don't get you know, they don't
42 get checked, box checked out off of doing something and I think that's where the intervenors and
43 I think that's where Tom met outside and I think they're gonna, I think they're gonna get a lot
44 of...more answers and more openness this way than if we did if it was intervention and it won't
45 be at a financial expense to the intervenors. And that's what we always remember once it
46 becomes legal then it's just lawyers and the intervenors gonna have to, have to pay instead of
47 them doing it openly. And when it does comes back, if it does, if it does, if the Council approves
48 it, it still has to come back to us with SMA and we have 100 percent authority of the SMA. We
49 have a 100 percent authority to ask for questions, for everything related to that area which
50 includes the safety, which includes the road, which includes all of that which is I think is gonna be

1 more important than just a land code.

2

3 Mr. Galazin: Yeah, and Chair maybe if I may speak up real quick?

4

5 Mr. Robinson: Sure Corp. Counsel.

6

7 Mr. Galazin: Thank you Chair. And just to be clear if you deny the Petition to Intervene for those
8 three items, then you can act on those three items today. If you grant a Petition to Intervene in
9 addition to the Director's comments I don't know how the heck we'd even make that work, you
10 wouldn't be able to do anything more with it today. So you can, you can deny the Petition to
11 Intervene and still recommend to the Council not make the changes. So the denial of the Petition
12 to Intervene doesn't have any impact on what your recommendation to Council is going to be. It's
13 just the fact that you are making a recommendation and it's not a case where you're adjudicating
14 anything. You're just gathering information and providing a memorandum to the County Council
15 to say, hey this is what we think you should, you should do. That's all.

16

17 Mr. Robinson: Is there any other discussion? Any questions? Yes, Kahu Hill.

18

19 Kahu Hill: So clarification, just looking if we move forward in this way we would be able to vote
20 on the SMA permit today or that's not...unless it comes back to us?

21

22 Mr. Galazin: Chair? Thank you Kahu Hill. No, the SMA...the SMA permit you would not be
23 taking any action on right now. You wouldn't be taking any action on the intervention which means
24 that you can't take any action on the underlying permit until you deal with the intervention. You've
25 already, you've already stayed the intervention determination so that precludes you from doing
26 anything with the SMA permit today. That part's already...it's all pau.

27

28 Mr. Robinson: And guys if you have any more questions and if we look at this at the big sense,
29 and again, Commission we have to move on, we have to make a vote that's what we're here for,
30 but will it even make this Council, we don't know, right? Time is up. Will the next Administration
31 pull this project altogether? We don't know. So this is this Administration, this project going on
32 so you know, you know, so you know so there's other factors and then again, it still comes back
33 to us for SMA. So we're just trying to clear up. You know, it's the intervenors threw everything at
34 the wall and they agree to the most important which is the stay on the intervention of the SMA
35 which we do have power over and the Council is something different. And what we have to do is
36 we have to take a step either to allow them intervention which we can't enforce and we can't
37 facilitate or to deny intervention and then we can get to the topics of whether we recommend to
38 approve or disapprove of the projects or approve or disapprove of the things on which I think is
39 what we're really here for to give recommendation. So I'm gonna call for a vote and hopefully,
40 hopefully we can move forward. Director.

41

42 Ms. McLean: The motion before you is to deny the Petition to Intervene on the Community Plan
43 Amendment, the State Land Use District Boundary Amendment and the Change in Zoning.

44

45 Mr. Robinson: All those in favor of denial please raise your right hand. That's four. All those
46 opposed? We have four ayes and two abstains which, which considers as a, as a yes and the
47 motion has been approved which the intervention has been denied and you can save your money.
48 Thank you.

49

50 **It was moved by Mr. Tackett, seconded by Mr. Carnicelli, then**

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**VOTED: To Deny the Petition to Intervene on the Community Plan Amendment,
District Boundary Amendment, and Change of Zoning.
(Assenting – C. Tackett, L. Carnicelli, A. Hill, K. Pali,
S. Castro – Abstain, P.D. La Costa - Abstain)
(Excused – T. Gomes, L. Hudson)**

Mr. Robinson: Parks Department, Tom, can we ask you folks to go ahead and draft the order?

Mr. Colby: Yes.

Submitted by,

Carolyn Takayama-Corden
Secretary to Boards & Commissions II