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**MAUI PLANNING COMMISSION  
PORTION OF THE REGULAR MINUTES  
ITEM B.3  
NOVEMBER 27, 2018**

Mr. Carnicelli: Good afternoon everyone. Maui Planning Commission meeting of November 27<sup>th</sup> is reconvened. To continue on with our public hearing items, Director.

Ms. McLean: Thank you Chair. This is your third and final public hearing item on today's agenda. A request from Rodell Notbohm for a Short-Term Rental Home Permit to operate Rodell Notbohm STRH, a six-bedroom STRH located on a 13,851 square foot oceanfront lot in the R-3 Residential District. The property is adjacent to Keawakapu Beach and located at 3066 South Kihei Road in Kihei at TMK: 2-1-010: 025. Jared Burkett is the project planner.

- 3. RODELL NOTBOHM is requesting a Short Term Rental Home Permit in order to operate Rodell Notbohm STRH, a six (6) bedroom STRH located on a 13,851 square foot oceanfront lot in the R-3 Residential District. The property is adjacent to Keawakapu Beach and located at 3066 S. Kihei Rd., Kihei, HI 96753, TMK (2) 2-1-010:025. (STKM T2018/0005) (J. Burkett)**

**There are already two existing permitted STRHs within 500 feet of the proposed STRH property.**

Mr. Jared Burkett: Hi Staff Planner Jared Burkett. So good afternoon. The owner-applicant Rodell Notbohm is seeking approval for a Short-Term Rental Home Permit at STKM T2018/0005 for rental named Imi Ola which previously it was not named so it was under his name. Since he has asked for it to be named Imi Ola. The address is 3066 South Kihei Road and again it's oceanfront at Keawakapu Beach. The County zoning is R-3. There is one home located on the property and that six-bedroom home will be used for short-term rental home when the applicant is not occupying the home himself.

Two things have triggered this permit to be heard by the Commission. There are two short-term rental homes within 500 feet property. You can see the location of those in Exhibit 5. The other trigger to bring this application before the Commission are that two out of the three letters of protests are adjacent lots to the subject property both of which are from out-of-state owners.

The applicant's consultant Mr. Tom Croly has a presentation that he will give and then he'll be available to answer any questions that you may have. After the applicant's presentation, I'll provide the Department's analysis and recommendation. If there are no objections I'll invite Mr. Croly up to give his presentation.

Mr. Carnicelli: Okay, thanks Jared.

Mr. Tom Croly: Thank you Jared. Tom Croly on behalf of Rodell Notbohm who is here in case you have questions directly for him. As Jared has already introduced this would be newly establishing a short-term rental that has never, never previously operated that will be called Imi Ola at 3066 South Kihei Road and it's for six bedrooms...it's for a six-bedroom house.

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1 Some of the property details. The owner, Rodell Notbohm is here and utilizes the home for he  
2 and his family with four children as a part-time residence. He comes here multiple times during  
3 the year as much as every month but isn't here the entire month when he's in residence. The  
4 proposal is that the home will be managed by private Paradise Villas who formerly were known  
5 as Tropical Villa Vacations and just a word about them. They really are the premier property  
6 management company on Maui. They deal with Four Seasons type of concierge attention to their  
7 guests. They very carefully vet the guests that are staying. They want to know why they're  
8 coming to Maui, what's the occasion, and they make sure that they place them in proper  
9 accommodations for what their needs are. As you'll see this home may not be the right  
10 accommodation for some families coming to Maui so it would be up to Tropical or  
11 Paradise...Private Paradise Villas to ensure that the right type of guests are in this property.

12  
13 Rentals would be limited to groups of 12 people or less. The property is flanked by two homes  
14 and you'll hear from those folks today that are also non-residents of Maui and utilize their homes  
15 as their vacation homes. I believe that you'll see this is a perfect location for a short-term rental  
16 use such as this.

17  
18 Jared did an inspection on the property and we have submitted all of the necessary requirements  
19 to meet all the regulatory concerns. Smoke detectors in each bedroom, fire extinguisher in the  
20 kitchen and upstairs, the adequate parking on site.

21  
22 It's very important to note that any approved bed and breakfast or short-term rental is subject to  
23 the house rules that you see here. Quiet hours from 9:00 p.m. to 8:00 a.m., all parking must occur  
24 on site, a maximum of 12 occupants that's two per bedroom and in the case of a short-term rental  
25 children two years and older are considered those people, okay. So it's not 12 adults and 12  
26 children. It's 12 adults and children other than children under two. So an infant doesn't count but  
27 anyone over two counts as one of those 12. And short-term rental homes and this is as opposed  
28 to bed and breakfast homes are subject to a requirement that allows no parties or group  
29 gatherings. So someone can't rent a short-term rental home and tell their friends who are staying  
30 elsewhere hey come and we'll party at this place. The only people that are allowed by virtue of  
31 the permit onto a short-term rental home are the registered guests. And those people have to  
32 per...in the case of Private Paradise Villas they have to sign and acknowledge the house rules  
33 prior to you know taking occupancy. There's also a notice for oceanfront homes as this one is to  
34 inform the folks staying in the home that the beach belongs to the public and they can't be shooin  
35 people out from in front of their beach. It's not their beach. If people are making to the access  
36 they're not to tell people hey you can't come through here. This particular home has a beach  
37 access just two doors to the north of it where the folks do make access to Keawakapu Beach.  
38 We hope that these house rules as will be enforced address the concerns that the neighbors  
39 with...who sent in letters of objection expressed.

40  
41 I want to talk a little bit about the neighborhood. This area is defined to the north by Kihei Surfside.  
42 You were just talking about the property just next to that and the Mana Kai both vacation rental  
43 condos and it's defined to the south by the Wailea Ekahi vacation rental condos. And then along  
44 this strip, most of us are familiar with it, the strip of homes along Keawakapu Beach I guess we  
45 would call it millionaire's row, multi-million dollar homes that are generally second homes for their

1 owners. I looked at the real property tax records and found that only four of the 30 homes along  
2 this stretch are registered as owner-occupied. So...and 24 of the homes along here are registered  
3 as being owned by out-of-state owners. So presumably most...the typical use of these homes is  
4 as vacation homes. This home is located directly across the street from the County-owned  
5 parking lot at the corner of Kilohana Drive and South Kihei Road. So directly across South Kihei  
6 Road is that parking lot which provides the parking for the beach access for people using  
7 Keawakapu Beach.

8  
9 I knew that this would be difficult for you to read up on the screen so I handed everybody out a  
10 print out of this and I just again want to go over the area, this area so everyone understands where  
11 we're talking about. Here's Kihei Surfside condo, here's the Mana Kai, here's the beach parking  
12 that has been...you may have seen a lot of controversy about it at the County Council level, next  
13 to that is the hotel that is the...I think today it's a Best Western Hotel or Day's Inn it used to be.  
14 Next to that is the Hale Hui Kai vacation rental condos then begins the 30 homes that front  
15 Keawakapu Beach. And each of the ones that I have a star on are ones that are in the tax records  
16 shown as being owned by out-of-state owns and then the ones that say H.O. are the ones that  
17 are homeowners, full-time residents living on site. And then the X's, the three X's that you see  
18 here are the letters of objection. Again, you'll hear from some of those folks today and the  
19 applicant's property is right there. Across the street the beach parking for Keawakapu Beach and  
20 then a greenbelt area that kind of acts as a separation between this Wailea area and South Kihei  
21 Road.

22  
23 The circle that you see here is the 500 foot notification area. So everyone whose property is  
24 within that got notification and I would also note the short-term rental that's up here on Keawakapu  
25 or on Kilohana and then another short-term rental that's over here just three doors down from the  
26 applicant's property on South Kihei Road. So those are permitted short-term rentals and as Jared  
27 pointed out that's one of the reasons why we're here before you today. I wanted to show you this  
28 and just have everyone understand the area because sometimes what's before you are is this  
29 short-term rental or is this bed and breakfast being located in the right place and to me this seems  
30 like no better place that one could be located. The area is basically a vacation home area flanked  
31 on either sides by vacation rentals. I'll leave it at that and be ready to answer any questions.

32  
33 The applicant respectfully asks the planning commission to grant this approval of this permit for  
34 two years. And just so you understand too the revocation procedure. If the applicant were to  
35 break the rules that are required as part of their permit and that were reported by neighbors on  
36 multiple times, by multiple neighbors on multiple times or by the Department through an  
37 investigation or them being told that hey, this guy's parking in the street, this guy's making noise  
38 outside of the times he should the permit can be revoked. So granting this permit doesn't mean  
39 that it's there forever. It's means subject to the conditions that the permit is being granted by.  
40 Thank you Chair that completes my presentation. If you have any questions for me or  
41 Mr. Notbohm we're here.

42  
43 Mr. Carnicelli: Thank you Mr. Croly. At this time we're gonna go ahead and open it up for public  
44 testimony. And just to remind everybody from...if you weren't here earlier this morning,  
45 everybody's testimony will be limited to three minutes. We do want to hear from everybody. We

1 want to hear what everybody has to say. However, we're going to limit it to three minutes for each  
2 person out of respect for everyone else. So is there anyone that would like to come up and testify  
3 on this item? Please state your name.

4  
5 Mr. Woody Paylor: My name is Woody Paylor.

6  
7 Mr. Carnicelli: Hi Woody, do you promise to tell the truth?

8  
9 Mr. Paylor: I promise to tell the truth.

10  
11 Mr. Carnicelli: Okay great. You have three minutes.

12  
13 Mr. Paylor: Thank you very much. We've had a home on the island for about 20 years and we've  
14 lived on the beach there for the last 10 years or so and we just love it down there. It's just terrific.  
15 We do have a short-term rental house it went in a couple of years ago, I believe one year ago, it's  
16 about three or four door down and we were wondering why we're getting another one right away  
17 like a year later type of thing. And I just wanted to bring a couple of things in. I enjoyed the  
18 meeting all morning. It's all those things about the traffic and everything, well you walk outside  
19 our gate we have a crosswalk there. It's between the two houses and there's people going over  
20 there pretty much all day. There's the parking lot across...the beach parking lot holds about 125  
21 cars. So you know on the weekends it's plumb full and they're coming across. There's not many  
22 days or Sundays that that parking lot is not full. Sunday I had a...I could hear the crash, but my  
23 wife and I have heard it several times. They're smacking right in front...the tourist slow down and  
24 somebody hits them from the back and next thing you've got an accident. They're waiting for the  
25 police, you gotta get it cleared away. Sometimes there's kids walking across there, they're pulling  
26 their wagons and bringing their goodies from the car or maybe from the Wailea Kai which is right  
27 across the street with a hundred homes. So it's a very busy area. Also we have ambulance and  
28 fire trucks that come from the Fire Department they go straight down Kilohana. That's the way  
29 they come a lot of the time. They're also parking on Kilohana now too when the parking lot's full  
30 there will be up to 25 cars there. What I'm trying to say it's a very busy place and I really don't  
31 think we need another rental there and that's what I'd like to share. My wife has a couple of words  
32 to say.

33  
34 Mr. Carnicelli: Does the applicant have any questions for the testifier? No? Okay, thank you  
35 Woody. Would anybody else like to come forward?

36  
37 Ms. Val Jenson: I'm Val Jenson. I'm live adjacent to the property.

38  
39 Mr. Carnicelli: Okay, do you promise to tell the truth?

40  
41 Ms. Jenson: I do and I promise to stay three minutes because you'll know that I do like to talk.  
42 And I do want to say thank you to the Commission for allowing us to talk and sitting here three  
43 hours this morning, I know you're passionate about Maui and that was clear with that you wanted  
44 to bring up and I was so thankful to hear that before we came forward. So I stand before you and  
45 I'm not familiar with Title 19, but I've done a lot of reading about it because it isn't a vacation home

1 for us. It's a retirement home. And I want to clarify that. It's really important to me that I know  
2 the neighbors. We've been to neighbor's houses, we've gone for dinner. I go to a local church.  
3 I volunteer at the Keawalai. We're very invested in this community. We're not vacation. We don't  
4 rent it. And I...it's not a vacation home. Sewing machines, I live here and so that's why I'm  
5 coming before you because it's important to me.

6  
7 One of the things, and I did get it cleared already they have a posting on their sign that says it's  
8 a vacation rental. I'm not sure how that happens because we did not disapprove Joe Sugarman  
9 but the vacation rental is still clearly on the gate and they said, oh we'll take it down no problem.  
10 Well, if you want a new permit that should have been down when you first came. So they may lip  
11 service, but why is that still there. I question that.

12  
13 The other thing, and it worries me. And we know that the permit is not transferrable, thank you  
14 for that, but then on Section Zero of the Title 19 it clearly states the application for the short-term  
15 rental home permit and the dwelling unit shall be owned by the occupant for at least five years  
16 prior to the date of application. I have five more pages on this about how I feel about it, but if  
17 we're doing our homework...and he seems very nice, Rodell seems very nice. I'd love him as a  
18 neighbor, but I don't want people coming and going and we don't want to turn Maui into people  
19 from off the island including ourselves coming in, buying up your real estate and turning it into a  
20 rental fiasco.

21  
22 There's more than five rentals within our area. We paid a lot of money, you bet we did to be there.  
23 We chose that area after eight years up on...off the beach. We went to the different islands before  
24 we purchased that home. It's gated. We wanted the privacy. And I ask you do live next to a  
25 rental? Do you pay over a \$100,000 a year in taxes? We all do there and I think and I pray that  
26 you have our back for what we do. And we chose that area to spend with our family and we  
27 already know tourist coming in don't follow traffic laws. Woody talked about the accident on  
28 Sunday, they rear ended. I was out in the yard working and I'll hear the smash and that's not the  
29 first. We crawl out our driveway and I have no doubt that Rodell's daughter that lives there crawls  
30 out as well. But people that come to island will not come crawling out our driveways. We know  
31 that. We've seen it. We live there.

32  
33 Ms. Takayama-Corden: Three minutes.

34  
35 Ms. Jenson: Sorry two minutes.

36  
37 Ms. Takayama-Corden: Three minutes.

38  
39 Ms. Jenson: I guess my biggest thing is that they haven't owned the property for five years and  
40 at that time I would like them to consider it and we will see how they treat you know our  
41 neighborhood, the private that it is and there's lot of rental places in that area. Why do we need  
42 more when you...it says that—

43  
44 Mr. Carnicelli: Please conclude.

45

1 Ms. Jenson: Sorry, I had one more about, oh in your Title 19 also states the County's General  
2 Plan use laws is to retain the character of the residential neighborhoods.

3  
4 Mr. Carnicelli: Thank you.

5  
6 Ms. Jenson: And I close with that. What is the character on that beach? Thank you.

7  
8 Mr. Carnicelli: Thank you. Commissioners do you have any questions or clarification from the  
9 testifier? No? Does the applicant have any questions for the testifier?

10  
11 Mr. Rodell Notbohm: I'd like to make a statement.

12  
13 Mr. Carnicelli: You'll have time. You'll have a chance to, at the end you get the last word as it  
14 were, but do you have any questions at this point for testifier?

15  
16 Mr. Notbohm: No sir.

17  
18 Mr. Carnicelli: Okay, thank you. Thank you for your testimony. Would anybody else like to come  
19 forward and testify at this time? Seeing none, then without objections we'll go ahead and close  
20 public testimony. Okay...Mr. Croly? Is the Commission okay with reopening testimony?

21  
22 Mr. Tackett: It's your call Chair.

23  
24 Kahu Hill: Yeah, your call Chair.

25  
26 Mr. Carnicelli: Well, okay. We'll allow it. Go ahead come forward. Please identify yourself and  
27 you'll get three minutes.

28  
29 Mr. Albert Perez: Thank you I don't need three minutes. Albert Perez.

30  
31 Mr. Carnicelli: Albert do you promise to tell the truth?

32  
33 Mr. Perez: Yes, I do.

34  
35 Mr. Carnicelli: Thank you.

36  
37 Mr. Perez: I'm the Director of Maui Tomorrow. You know we've talked about the issue of short-  
38 term rentals, bed and breakfast at the Maui Tomorrow Board. And our feeling is that although it's  
39 not ideal that the bed and breakfast situations is better. There's an owner on site. And it's not so  
40 much like a hotel. What we we're talking about with these short-term rentals, we have virtual  
41 hotels going on. And we all know we've heard about all the details. I went to a planning  
42 conference I think Lawrence Carnicelli was there and they said that like the Outrigger on Oahu  
43 owns a thousand of these short-term rentals that they rent out. You know they're single-family  
44 homes, they're condos or whatever. So it's a virtual hotel.

45

1 I was not really gonna testify on this, you can tell I'm not prepared but I was triggered by the  
2 phrases that were used to describe this area, Millionaire's Row. I don't, I don't like that. Four out  
3 of 30 of these homes are occupied by owners. This is what's happening because we keep  
4 granting these things. So I think that by granting a short-term rental home permit for this property  
5 we're encouraging this process to continue because others will say, look they got it, I can get it  
6 too. We need to put our...we need to put our foot down at this point. Our affordable housing  
7 crisis is beyond critical. We need to be doing everything we can to encourage people to rent to  
8 long term owners and just because it's a nice six-bedroom home doesn't mean that some long-  
9 term owner can't live there. So I think we need to be doing everything we can to preserve our  
10 housing stock instead of converting it to short-term rentals. Thank you very much.

11  
12 Mr. Carnicelli: Thank you Albert. Commissioners you have any questions or comments? Okay,  
13 Commissioner Pali.

14  
15 Ms. Pali: Hi, I just would like some clarification. There was a couple phrases I tuned in on too  
16 with one of the testifiers. And it was that she paid a lot of money to be here and so the reality is  
17 we really can't stop the trend in real estate and the hikes in the prices. It's not just here on Maui.  
18 It's all over our country right now. And so for me, I don't ever seeing any...I don't ever see any  
19 local family affording this home as a primary residence. The other thing is...oh, so what's your  
20 take on that because the bottom line is if you look at all of the homes here, there's only four, four  
21 homes that have made it an owner occupant and I think that's great. I think if we all had it our  
22 way we would like to see them all be primary residences, but I want to continue to stress to  
23 everybody that here's publicly we don't grant, we don't make laws here. We are just here for  
24 transparency of the public to see if the applicant has followed the laws. So I just want to urge you  
25 and also maybe suggest that if we don't like what we're seeing we should take that at County  
26 Council who makes the laws, that says these are things are allowed. I think for us as  
27 commissioners and I'm speaking for myself, but we don't carry the burden of what's allowed and  
28 what's not allowed. We just carry the burden of transparency and was the applicant following the  
29 current laws that were already created. And so my struggle is how does this permit affect traffic?  
30 How does it affect the noise? We have specific things that we have to look at and so may I ask  
31 you to give you an opportunity. The law already permits these type of uses. There's nothing we  
32 can do about that, but do you have anything specific that you can talk to on this motion that we're  
33 here today to determine how this applicant may not be following the current laws that we are here  
34 today to figure out?

35  
36 Mr. Perez: That was—

37  
38 Ms. Pali: A lot.

39  
40 Mr. Perez: --a lot. So...

41  
42 Ms. Pali: Just the end part will be fine.

43  
44 Mr. Perez: My response would be that we have a community plan that people put hundreds of  
45 hours into. It talks about preserving the opportunity for a residential lifestyle here. A short-term

1 rental home is not residential and the people who are nearby who are raising objections they have  
2 a right to quiet enjoyment. That's part of your bundle of property rights. So I think that the planning  
3 commission does have a leg to stand on here in terms of just saying, you know, this doesn't  
4 comply with the community plan and therefore, this permit is denied So as far as local people  
5 being able to live here I don't think that we can say categorically that local people can't afford it.  
6 There may be somebody out there, you know who was born and raised here and who has a lot  
7 of money, there could be a hui that comes in. There's a lot of different possibilities, but what we  
8 are doing by granting these short-term rental permits is we're increasing the value of those  
9 properties which makes it less likely that the people down the road will be able to afford their long-  
10 term residential property. Thank you.

11  
12 Ms. Pali: Yes, and thank you for giving me that. I was looking for something with teeth. Thank  
13 you.

14  
15 Mr. Perez: Okay, thank you.

16  
17 Mr. Carnicelli: Does anybody else have any questions for the testifier? Seeing none, does the  
18 applicant have a question for the testifier?

19  
20 Mr. Notbohm: No

21  
22 Mr. Carnicelli: Thank you Albert.

23  
24 Mr. Perez: Thank you for letting me testify.

25  
26 Mr. Carnicelli: So does anybody else want to testify before we close public...no I'm sorry, you've  
27 already gotten a chance. You've already gotten more than your three—

28  
29 Ms. Jenson: I wanted—

30  
31 Mr. Carnicelli: You already gotten more than your three minutes. I appreciate it. I love your  
32 passion. I love the fact that you want to speak, that's great, but you've already gotten your three  
33 minutes. Is there anyone that would like...is there anyone else that would like to testify on this  
34 particular item before we close public testimony.

35  
36 Kahu Hill: Is she saying her husband's outside?

37  
38 Mr. Carnicelli: Is there anyone else?

39  
40 Kahu Hill: Would you like some water?

41  
42 Ms. Jenson: I just wanted to let you know the tsunami ring that went off was Air Canada calling  
43 the man that was to testify who got food poisoning off Air Canada flight. He's been in and out and  
44 is sick in the bathroom and he would love his three minutes. But clearly you need to move on.



1 He's been throwing up since we picked him at 8 o'clock this morning. Thank you that was all I  
2 wanted to say. We appreciate that.

3  
4 Mr. Carnicelli: Thank you. So without objection, we'll go ahead and close public testimony. Okay.  
5 I will now give the applicant a chance to do a final presentation.

6  
7 Mr. Croly: Thank you Chair. Tom Croly again for the applicant. A few things were said in public  
8 testimony that I didn't want to challenge directly but I just want to clarify for the record. The  
9 community plan of Kihei does not in any way, shape or form forbid short-term rentals. It's  
10 important to know that short-term rentals in Kihei pay the bulk of the taxes that fund the entire  
11 island. More than four times the property taxes of all the hotels combined are paid by the short-  
12 term rentals of Kihei and West Maui.

13  
14 Also, the applicant has not owned the property for five years. However, the law was recently  
15 changed in that regard. No more applications can come forward for someone who doesn't own  
16 the property for five years but when that law was changed which was in September of this year is  
17 when it went into effect this applicant's application had already been with the Planning Department  
18 for several months. So he's not subject to that five-year rule which has kicked in for new  
19 properties that would be purchased in the future or someone who has purchased a property within  
20 the five years and hasn't yet made application.

21  
22 I also want to point out that the applicant's use of this property is almost identical and what he's  
23 asking for is almost identical to the use of the rest of the properties on this street. He comes here  
24 and makes it his home several times a year just as the testifiers that you heard from do. And this  
25 home specifically has on one side it's bordered by an area that's flowing out to the ocean. There's  
26 kind of a retention channel that the waters that come down from Wailea would separate this from  
27 the next neighbor. And on the other side by a rather large wall. So there isn't a whole lot of  
28 interaction between these two properties both gated properties that where you're really not going  
29 to meet your neighbor on a regular basis or even see your neighbor because the separation that's  
30 created. So again, the applicant's desire to use the home as a short term rental for the periods  
31 when he's not here again does not equate to a hotel. He's using it most of the year for his own  
32 use and then he would, he would have guests here when he's absent of that and those guests  
33 would be monitored by the agent who takes care of the home. Thank you Chair.

34  
35 Mr. Carnicelli: Thank you Mr. Croly. You're okay?

36  
37 Mr. Croly: Yes.

38  
39 Mr. Carnicelli: So at this time we will go ahead and open up for questions from the  
40 Commissioners. Commissioner La Costa.

41  
42 Ms. La Costa: Thank you Chair. This is either for Tom or Rodell, the owner. So there's a six-  
43 bedroom home that we're talking about it. Will it be rented as...the home in its entirety or will it  
44 be parceled so that four people can come in here and two people can come in there?

45

1 Mr. Croly: Very good question. The requirements of the permit of all the short-term rental permits  
2 are that the entire property must be rented to one party. So while he could rent it, he would have  
3 the option to rent it as a two-bedroom home to a couple that...you know, with two kids and maybe  
4 give them a lower rate. The other four bedrooms would not be allowed to be rented to someone  
5 else while it's being rented that way. So it would be just one party at a time.

6  
7 Ms. La Costa: Okay. Thank you, appreciate that.

8  
9 Mr. Carnicelli: Kahu Hill.

10  
11 Kahu Hill: I wanted to know about the parking and for the six I see on Exhibit 2 it shows G1, G2,  
12 and G3 and I'm very aware of that street and the parking. I don't see where...I mean there could  
13 be up to 12 cars. We don't know if people are checking in if they're brothers and sisters or how  
14 many cars there's gonna be. So do you know about this parking?

15  
16 Mr. Croly: Yeah, the house has a garage and the garage has two parking spaces which we have  
17 reserved for the owner's use exclusively. When he's not here he leaves his car in the garage  
18 there. The requirement for a six-bedroom short-term rental is three parking spaces so we only  
19 showed three parking spaces there. Yes, you could cram more parking, more cars onto this  
20 property if you wanted to, but the parking needs of 12 people staying in there who presumably  
21 are all of you know one group they're not each going to have a car. You know you wouldn't have  
22 12 cars among a group of 12 people if there were 12 people. And the Council when they made  
23 the law relating to this said the normal parking requirements for this home would be two parking  
24 stalls. That's what would be required if you built the home for residential use. They felt if we're  
25 going to give someone the ability to rent it out as a short-term rental and that short-term rental  
26 has four or more bedrooms in it then we want to add one more space and three spaces is what's  
27 required. I could have showed more spaces on the parking plan because there is space for more  
28 spaces there, but I didn't really want the neighbors to believe that there would be more people  
29 coming there 'cause that's not the intent.

30  
31 Mr. Carnicelli: Commissioner Pali.

32  
33 Mr. Croly: I'm not sure if I fully answered the Commissioner's question.

34  
35 Kahu Hill: Yeah, I'm believing you...you believing that with 12 guests with...that can have two-  
36 year-olds, but babies or infant aren't included that the most amount of cars would be three parking  
37 stalls, three parking places rather inside, inside the gate. But if they had a fourth car I'm assuming  
38 or a fifth car or more, you're looking at outside on the road is that—

39  
40 Mr. Croly: No, I'm saying there is more parking on this site that more cars could fit on there if they  
41 wanted to. As well, if the owner needed to make more spaces available because a guest  
42 requested that he could probably have his cars moved out of the garage and give them access to  
43 the garage if necessary. I'm just saying that the requirement of the Code is for three parking  
44 spaces and that's why three parking spaces are shown.

45

1 Kahu Hill: Three parking places for residential, right?

2  
3 Mr. Croly: Three parking spaces when the property is permitted for a short-term rental.

4  
5 Kahu Hill: Okay, mahalo.

6  
7 Mr. Croly: If this was permitted as a bed and breakfast where each of those rooms could be  
8 rented separately then there would be a requirement for in this case eight parking spaces, one  
9 for each bedroom plus two for the owners. But as a short-term rental where it must be rented to  
10 one party the requirement is only three. Thank you.

11  
12 Mr. Carnicelli: Commissioner Pali.

13  
14 Ms. Pali: Hi, I'm hoping maybe you can clarify this. I think I've gotten some conflicting information  
15 in regards to the neighborhood and the value. We have a letter of opposition that's in the packet  
16 that says he believes or this person believes that their neighborhood's value would decline  
17 because of the permit and then I believe the gentleman who testified with Maui Tomorrow I believe  
18 it was it said that if the vacation rental permit was approved it would potentially increase the  
19 values. My question is do you have a comment on that? And number two, is that even...is that  
20 something that's part of the application process. And then question number two is, house rules.  
21 I believe that they are required to have house rules. Is the house rules available and if so, does  
22 it address the sensitive traffic with the beach parking access across and really highlight our locals  
23 coming to the beach and crossing right in front of your driveway?

24  
25 Mr. Croly: Thank you for those two questions. Remind me again the first question—

26  
27 Ms. Pali: It was about it—

28  
29 Mr. Croly: Oh, the values. You know I was present when the Bed and Breakfast Ordinance and  
30 the Short-Term Rental Ordinance were promulgated with the County Council. And we had this  
31 discussion over and over again. If we allow this uses it's going to drive property values up. Then  
32 we had folks from Wailea saying if you allow this use it's gonna drive my property values down.  
33 So I don't know that there is a true answer on that. What I can say though about that is the homes  
34 along this stretch, the land values of each of those homes is are assessed at \$10 million per acre.  
35 Some of the lots are a full acre, some of the lots are something less than that. But the land value  
36 alone is \$7 to \$10 million that's the assessed value of the land. The cost for these folks to build  
37 these homes with all the regulations that go about it's not unusual for them to spend another \$10  
38 million building a home along here. Now what that home will sell for there's no shortage of people  
39 who can afford that \$20 million home whether they're gonna use it as a short-term rental or  
40 whether they're not. I don't believe that that's an influencing factor in this particular case  
41 particularly when we recognize that 24 of the homes are already owned by people who don't make  
42 their full-time residences here and are not using them presumably not using them as short-term  
43 rentals.

44  
45 With respect to —

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Ms. Pali: House rules.

Mr. Croly: --the house rules and so forth. There's three places where the house rules are enforced. One is before the reservation is made each of the residents have to sign off that they have acknowledged the house rules that they are there. The second is in the home the house rules are posted and we certainly can add additional house rules if they're appropriate for a particular location such as this where you know that's a busy road out there so make sure that you stop that you know before going out to the road something like that. And then the third is that all of the neighbors that are immediately adjoining this property get the...a copy of the permit including the house rules and including the notification of people that they could call to notify if there were any infractions of the house rules that would take place. So the house rules are well covered in terms of being known by the folks who are subject to them and being known by the people who might report an infraction of them.

Mr. Carnicelli: Answered your question? Commissioner La Costa.

Ms. La Costa: Thank you Chair. Tom, two questions. First of all, how often is Rodell and his family...are Rodell and his family here?

Mr. Croly: I'd like to have Rodell answer that question.

Ms. La Costa: Okay, thank you.

Mr. Rodell Notbohm: I've got small kids at home.

Mr. Carnicelli: Please just state your name for the record so we know who we're talking to?

Mr. Notbohm: Rodell Notbohm.

Mr. Carnicelli: Thank you.

Mr. Notbohm: I've got two small children in home, in high school and in middle school. So I typically am out here every other week except for when during the summer when they're out of school sometimes we all come out here. This last summer me and my extended family, my parents and my brother and his kids came out here. So I'm typically out here every other week to answer your question.

Ms. La Costa: So looking at this...I'm sorry, Chair may I?

Mr. Carnicelli: Go.

Ms. La Costa: Thank you. So looking at this permit if you are here that often then I guess I'm kinda confused as to why it's necessary if, if this is basically your second home rather than an investment property.

1  
2 Mr. Notbohm: Well, I wanna be able to share my home with others. There's times that I'm not  
3 here that are actually very popular times. I'm typically in Seattle during Christmas for instance.  
4 But I just want the ability to share my home when I'm not here. The long term plan for that house  
5 for me and my family is my retirement home, but I'm not quite retired yet. But I was fortunate  
6 enough to be able to buy the house in May of last year and been coming out every other week  
7 essentially except for some less time during the summer...longer duration but less amount of  
8 times during the summer because my kids are available more often. That's the answer.

9  
10 Ms. La Costa: One more please? Thank you. I would like to also address the house rules. I  
11 don't know if Tom this is yours or Mr. Notbohm if this is yours. In that area because it is right on  
12 the ocean, the reef is incredibly important and because we don't have a copy of the house rules  
13 we can't see what is included and so it's important that it is understood that the health of the reef  
14 and the respect for the reef is in those house rules so that people don't walk on it, et cetera, et  
15 cetera, and I think that's a responsibility if you have guests there that they know how to treat the  
16 aina and the kai.

17  
18 Mr. Notbohm: Yeah, that makes sense to me and I think it makes sense to inform them about  
19 reef safe sunscreens as well. And to address the parking, I will just say you could very easily  
20 park at least six cars in that driveway area without even using the garage. It's quite a lot of space.

21  
22 Mr. Carnicelli: Any other questions from the Commissioners? I have one for Tom. It's just sort  
23 of piggy backing off of what Commissioner La Costa had just brought up and because I know  
24 you've been here and you're familiar with it, we've added the condition about educating guests  
25 prior to arrival in the past. Is the applicant or you...I'm asking you rather than him just because  
26 you understand what I'm talking about is, you know, are you guys okay with having adding that  
27 type of conditions should this thing proceed forward?

28  
29 Mr. Croly: Absolutely. And just as a matter of an update that was one of the bed and breakfast  
30 permits that came before you a couple of months ago and that applicant has been working with  
31 Mr. Lindsey to come up with, you know, some specific bullet points that we at the Maui Vacation  
32 Rental Association will make sure that we share with all of our folks and making those a  
33 requirement as part of the house rules, I don't see any problem with that. I'm sure the applicant  
34 would be happy to do that as part of the—

35  
36 Mr. Carnicelli: Let the record show he's nodding up and down saying yes.

37  
38 Mr. Croly: Yes, thank you.

39  
40 Mr. Carnicelli: Okay, thanks Tom. Any other questions?

41  
42 Ms. La Costa: I have a question.

43  
44 Mr. Carnicelli: Okay.

45

1 Ms. La Costa: This is procedural. Is it possible to redirect a question to one of the testifiers or  
2 no? No? Okay. Thank you.

3  
4 Mr. Carnicelli: Any other questions? Jared.

5  
6 Mr. Burkett: Staff Planner Jared Burkett. I just wanted to point out that if you look in the staff  
7 report on Page 7 that has the house policies which are the house rules, Section Q or Item Q.  
8 Those are the standard policies and then the one that was submitted in their application contains  
9 the standard policies but also has one more that states...have to find which one...Guests must  
10 be aware that they are in residential...in a residential neighborhood and as such sound that is  
11 audible beyond the property boundaries during non-quiet hours shall not be more excessive than  
12 would be otherwise associated with the residential area which is kind of a combination of  
13 the...they just split the first and second house policy on their paper up for Item 1 on Q. But...so  
14 I just wanted to point that out.

15  
16 And if I may there's also something else that was brought up in the testimony that there was  
17 potential illegal vacation rentals or rental use and the Department requires that staff research this  
18 whenever we get an application. I researched it thoroughly I did not locate any ads,  
19 advertisements for the vacation rental. We also have lodging rev that is searching out for vacation  
20 rentals and they did not...locate any either. So that wasn't something that we could use or  
21 otherwise we would have researched that further and even may put in a Request for Service to  
22 have Zoning research it. And also, it is correct that the applicant did apply on May 1, 2018 which  
23 was before the short-term rental home ordinance changed. It took effect on September 27<sup>th</sup> so  
24 this falls under the old ordinance.

25  
26 Mr. Carnicelli: As far as the five-year ownership requirement?

27  
28 Mr. Burkett: Five, yes.

29  
30 Mr. Carnicelli: Thank you. Commissioner Tackett.

31  
32 Mr. Tackett: Could you please clarify that the purpose of the radius that they draw around each  
33 property? What is the purpose of that radius drawn around each property?

34  
35 Mr. Carnicelli: Director?

36  
37 Ms. McLean: Thank you Chair. That has been a provision in the County Code for a variety of  
38 permits that the Planning Department processes that some applications require that recorded  
39 owners and lessees of property within a 500 foot radius be notified when an application has been  
40 submitted and then if the application requires a public hearing that they be notified of the public  
41 hearing, the date, time and place of the public hearing. And then certain applications like STRH  
42 applications and B&B applications also use that same group of people to trigger a different level  
43 of review. So if there were not the other operations within 500 feet or if there weren't the protest  
44 letters received within 500 feet then Commission review would not have been triggered for this

1 application. It could have been approved by Staff. So there are a number of things. It's notice  
2 of application, notice of public hearing, and then can trigger Commission review.

3  
4 Mr. Tackett: And when that review is triggered say in this case we have a property and then we  
5 have neighbors that are, that are against it, direct neighbors what is the substance of that in  
6 relation to the circle?

7  
8 Ms. McLean: That is another one of the triggers not just the other permitted operations within 500  
9 feet. If there were no permitted operations within 500 feet then those letters would have triggered  
10 commission review.

11  
12 Mr. Tackett: Okay, and what substance are we allowed to put to those letters?

13  
14 Ms. McLean: That—

15  
16 Mr. Carnicelli: Corporation Counsel.

17  
18 Ms. McLean: Thank you.

19  
20 Mr. Galazin: Thank you for that question Commissioner Tackett. When you're sitting up here  
21 and reviewing any number of permits but specifically right now the STRH ordinance and we  
22 touched on this a little bit at the last meeting...you allowed me to explain the sort of the differences  
23 between the B&B Ordinance as well as the STRH Ordinance. One of the most pertinent  
24 differences being that the STRH Ordinance has a number of different criteria above and beyond  
25 what the Bed and Breakfast Ordinance has primarily because these operations that are not  
26 owner-occupied. What you are to...the overarching thing that you want to keep in mind when  
27 you...before you even take in the public testimony is when you're looking at Subsection N, it says  
28 that the short-term rental home shall conform to the character of the existing neighborhood in  
29 which they're situated. So that's what you want to look at first and that sort of prescribes what  
30 you're viewing. And then it says that as the commission you shall consider the following nine  
31 things in deciding whether or not it conforms to the existing character of the neighborhood. One  
32 is...you know it's the existing land use entitlements, community plan, community input, but if  
33 you're talking about the number and substance of protests that's that the thing that you're gonna  
34 have to weigh as a body and if, you know, there's notification has gone out to you know maybe a  
35 dozen, less than 20 properties and you've received three letters, you didn't receive any in support  
36 but you've received three letters in opposition, two from either side and one immediately adjacent  
37 to the southern parcel. You gotta take those and weigh what was brought out in those letters  
38 versus what the applicant has demonstrated in the application and you gotta take those and weigh  
39 what was brought out in those letters versus what the applicant has demonstrated in the  
40 application. And that's sort of the crucial function of you folks as a body is to decide how you  
41 balance those things. There's not one ...(inaudible)... line rule that's always going to apply. You  
42 know protest letters that aren't specific to the application that are just sort of like, well I don't like  
43 short-term rentals. I think it goes to what Commissioner Pali was saying earlier that well the  
44 County Council decided that short-term rentals are an okay thing and they're going to into  
45 residences so they're going to be in a residence somewhere that's presumably in a residential

1 neighborhood. So you've gotta consider what are the specific impacts that are probable that  
2 people have raised in their protests. So you consider that, you consider what's in there. You  
3 consider how many you've got in relation to how many potential ones you could have gotten and  
4 then view things that way. And again, I am, you know counselor, I counsel you, I give you advice  
5 but I don't have a vote in this, you know. I'm not going to tell you have to vote one way or the  
6 other. I'll give you my advice and you're free to listen to it or not as you so choose. But you know,  
7 I will try and do my best of my abilities keep you on a path where you at least making a decision  
8 based on the relevant criteria. And when it comes to public testimony there's subjectivity to it and  
9 you got to...you know, that's where you folks land as a quasi-judicial function in this matter. Thank  
10 you.

11  
12 Mr. Tackett: Thank you.

13  
14 Mr. Carnicelli: If you want to...have a question for the applicant, that's fine.

15  
16 Ms. Pali: Oh for this guy.

17  
18 Mr. Carnicelli: No, that's Jared. He's the Staff Planner.

19  
20 Ms. Pali: Sorry.

21  
22 Mr. Carnicelli: You have a question for the applicant?

23  
24 Ms. Pali: I do.

25  
26 Mr. Carnicelli: Okay.

27  
28 Ms. Pali: I think Tom.

29  
30 Mr. Carnicelli: Tom.

31  
32 Ms. Pali: So hearing what Corp. Counsel had to say I briefly went over the three letters of  
33 opposition just to help give clarity to the Commissioners here and myself and I made sort of a  
34 bullet point...I extracted the items and I would like you to be able to address these items. The  
35 four main concerns were parking, noise, safety for the children, and their value. Out of the three  
36 letters, three of them expressed the parking issues. Two of them expressed noise concerns. One  
37 expressed safety for children and then two expressed decrease in value. What is the applicant's  
38 response please?

39  
40 Mr. Croly: Okay, so each of the concerns with respect to parking and noise and what was the  
41 third one—

42  
43 Ms. Pali: Safety.

44



1 Mr. Croly: Well okay, we'll get to safety. The noise and the parking issues are directly addressed  
2 in the house rules that are a condition of the permit. So the house rules aren't just did we get the  
3 person who we rented to abide by the house rules because if they didn't it's a violation of the  
4 permit and the permit with multiple violations can be revoked. So it's not just as simple as well,  
5 we can tell these people to do this, but if they don't, then you know how do we control? Well, we  
6 control it by the guy could have his permit revoked. So I do think that that we've addressed those  
7 concerns.

8  
9 The safety concern. This home is on a busy South Kihei Road. The bus actually stops right out  
10 in front of this property and it's a gated property. It's a property where you really can't wander  
11 into unless you're going through a gate and if you're coming out of it, you're just a member of the  
12 public on the street. It's bordered on both ends by busy vacation rental condos and so forth where  
13 who knows who stays there as well. So it isn't as if there's no danger from a stranger in this area  
14 who doesn't belong because that's who's in this area, strangers who are visiting this area. So I  
15 don't think that's a reasonable concern to have about the use that has been requested for this  
16 short-term rental permit.

17  
18 And then as far as the value thing, again, it might bring values up, it might bring values down  
19 depending on who you ask, but I don't think that's a criteria that should even come into play 'cause  
20 it's not a criteria that the County Council chose to even make part of this ordinance. And I will  
21 say that I lobbied for the short-term rentals only to be applied for values...for higher valued  
22 properties so that they wouldn't impact homes of values that residents typically live in. The  
23 response of the County Council to my lobbying for that was no, everyone should have that this  
24 opportunity. We don't want to be restrictive and say it should only be the rich guy who gets this  
25 opportunity and not someone else. So that's again...it's not a part of this ordinance. The County  
26 Council chose not to make it part of this ordinance. So there you go.

27  
28 Mr. Carnicelli: Thank you Tom. Any other questions from the Commission? Then Jared if you  
29 could please give us the staff recommendation?

30  
31 Mr. Burkett: Staff Planner Jared Burkett. The Department found that the application is complete  
32 and the applicant to be eligible to apply for this Short-Term Rental Home Permit. There are no  
33 reports filed with the Police Department for this property. There are zero, no requests for service  
34 for this property for the whole time it's been existing. They also have designated Ms. Irene Ann  
35 Aroner, who will be the designated manager for this property upon permit approval. And as was  
36 stated I conducted a site visit and confirmed that the property is as it is represented on the  
37 application and that all conditions for approval have been met including the posting of the house  
38 rules in the home, that there's an approved fire extinguisher that's easily accessible, that there  
39 are working smoke detectors in the required locations and that the designated parking is in place  
40 for the rental.

41  
42 The application complies with the applicable standards for a short-term rental home permit as  
43 described by Maui County Code Section 19.65.030, and therefore the Department is  
44 recommending approval of the STRH for a two-year permit subject to the 12 standard conditions  
45 that are described in the Department's recommendation. In consideration of the foregoing if the

1 Commission approves of this permit, the Planning Department recommends that the Maui  
2 Planning Commission adopt the Planning Department's report and recommendation as its  
3 findings of fact, conclusion of law and decision and order and to authorize the Planning Director  
4 to transmit said written decision and order on behalf of the Planning Commission. Thank you.

5  
6 Mr. Carnicelli: Thank you Jared. Do we have a motion from a commissioner? We gotta make a  
7 decision. Commissioner La Costa.

8  
9 Ms. La Costa: My motion is said so that a vote can be taken?

10  
11 Mr. Carnicelli: Or just even you can put a motion on the floor so we can have discussion.

12  
13 Ms. La Costa: I move that we deny the permit and go against what the recommendation is for  
14 the—

15  
16 Mr. Carnicelli: Okay, so a motion to deny the STRH Permit. Do I have a second?

17  
18 Kahu Hill: I'll second.

19  
20 Mr. Carnicelli: Okay, second. Discussion?

21  
22 Ms. La Costa: In looking...excuse me, in looking at the map that we were provided and  
23 understanding the location there is the said property, the subject property on either side there are  
24 protests. To the north there is another protest or the south, excuse me. There's then again a  
25 short-term rental next to that. So the people who have spoken against this project already have  
26 one short-term rental within a hundred feet and the salient points for their opposition I understand  
27 perfectly and I don't think that two short-term rentals that close together with opposition directly  
28 adjacent to it should happen.

29  
30 Mr. Carnicelli: Okay, thank you. Also if I could just remind the Commissioners that when we vote  
31 affirmative in a motion to deny if that makes sense right? So kind of the opposite negative thing.  
32 So when we vote...if we were to vote in favor of this motion it's important to establish a record as  
33 to why based on the criteria. So that's just...is part of the discussion right now is if you, you know  
34 are in favor of this motion or not, part of the discussion is to establish a record because at some  
35 point in time, our Corporation Counsel will have to draft up a decision and order based on what it  
36 is that we decide. So anyways, further discussion? Kahu Hill.

37  
38 Kahu Hill: I know this area very well and used to frequent it coming down to that beach. Before  
39 it was called Millionaire's Row my friend the Beppus and many others lived there and it's changed  
40 and now it's in the newness of where it is. I see...I'm with looking at that this is a beach access  
41 not just a beach parking. There's a beach access that the neighbors know, people in this area  
42 and the locals know and there's so many children and people that come. Keawakapu wasn't so  
43 busy back then. Now it's got so many people. We have so many more people on the island, in  
44 Kihei, Wailea, Makena. So many people on the beaches, therefore, the crossing of the street  
45 there is very important. It's right in, it's right in front this area I'm concerned about N, Number 5,

1 the potential adverse impacts. I'm concerned that 12 people can make noise and make a party  
2 just by 12 people that don't live here and don't know the rhythms for excessive noise. I am  
3 concerned about the traffic because of where they're proposing for this home. It's a  
4 beautiful...beautiful area, but to have so many guests coming that are not used to this area,  
5 coming in and out of that house with the way everything is situated and the growing visitor  
6 population and the safety of the children that concerns me as well I am looking at the next door  
7 to the three neighbors, the STRH and the number of the protests on either side. So I have several  
8 reasons why I'm having a challenge with this and the safety for the children and those people  
9 coming in and out are primary.

10  
11 Mr. Carnicelli: Thank you. Commissioner Tackett.

12  
13 Mr. Tackett: I also share those sentiments. The way I see it is everybody that would be affected  
14 by it is against it, you know so it would be one thing if the two neighbors closest to it were in favor  
15 of it and then there was a buffer between other people being opposed to it. But what you have  
16 here is everybody directly around it is opposed to it. And those are the people that are gonna  
17 have to live with it every day. And to me, what...what approving it would be doing would be  
18 changing the neighborhood in which these people understood to be as they live there. So that's  
19 the reason, that's the issue that I have with it.

20  
21 Mr. Carnicelli: Do you want to speak to the motion? No? Okay, so Director if you could do your  
22 best to summarize what has been stated on the record as far as for the motion to deny.

23  
24 Ms. McLean: Thank you Chair, I'll tie it into the criteria that are listed in the STRH Ordinance. So  
25 the standards against which you make your determination on this application come from Section  
26 19.65.030 of the Maui County Code and from the statements made, the criteria of Section N,  
27 specifically Numbers 4, 5, and 6 have not been met. Number 4 relates to community input and  
28 based on the letters received from the adjacent owners who were the most affected by the  
29 operation as well as other letters and testimony from owners in the area indicate opposition. Then  
30 Item Number 5, relates to potential adverse impacts including excessive noise, traffic and garbage  
31 and there's a concern over traffic and safety with it being a busy road with the nearby beach  
32 access and beach access parking. And thirdly, Number 6, the number of permitted short-term  
33 rental homes surrounding the proposed short-term rental home property and their distance to the  
34 property that there are too many short-term rental operations in this area.

35  
36 Mr. Carnicelli: Kahu Hill.

37  
38 Kahu Hill: I didn't hear you say 7. You said 4, 5, and 6, but we were concerned about 4, 5, 6,  
39 and 7 under N, unless I just missed that.

40  
41 Ms. McLean: No, you're correct. Yes, 7 as well, the number and substance of protests to the  
42 short-term rental home application and protests related to the cumulative short-term rental homes  
43 in the neighborhood or area.

44

1 Mr. Carnicelli: Any other questions or comments from the Commission? So if you could then  
2 restate the motion?

3  
4 Ms. McLean: The motion would be to deny the SMA or excuse me, the STRH application because  
5 it does meet the standards of Maui County Code, Subsection 19.65.030 (N), 4, 5, 6, and 7.  
6

7 Mr. Carnicelli: All in favor of the motion please raise your hand? That's four. Opposed? None.  
8 The motion passes.  
9

10 **It was moved by Ms. La Costa, seconded by Kahu Hill, and**

11  
12 **VOTED: To Deny the Short Term Rental Home Permit as it does not meet the**  
13 **standards of Maui County Code Subsection 19.65.030(n)(4),(5),(6),**  
14 **and (7)**

15  
16 **(Assenting – P D. La Costa, A. Hill, C. Tackett, L. Carnicelli,**  
17 **K. Pali - Abstained)**

18 **(Excused – S. Castro, T. Gomes, L. Hudson, K. Robinson)**

19  
20 Respectfully Submitted by,

21  
22  
23 CAROLYN TAKAYAMA-CORDEN  
24 Secretary to Boards and Commissions II  
25