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**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 12, 2019**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:07 a.m., Tuesday, March 12, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Robinson: Welcome to Maui Planning Commission, March 12th. We have a pretty short agenda today so hopefully we will be out before lunch. We have a little education today, we'll talk about some of our rules that we'll get to going. First I'd like to introduce Vice-Chair Commissioner Hudson.

Mr. Hudson: Good morning Chair.

Mr. Robinson: Good morning. Commissioner Pali.

Ms. Pali: Good morning Chair.

Mr. Robinson: Commissioner Carnicelli.

Mr. Carnicelli: Good morning Chair.

Mr. Robinson: Commissioner La Costa, welcome back.

Ms. La Costa: Good morning Chair. Aloha.

Mr. Robinson: Commissioner Castro.

Mr. Castro: Good morning Chair.

Mr. Robinson: Good morning. Commissioner Tackett.

Mr. Tackett: Good morning Chair.

Mr. Robinson: I think Commissioner Hill might come in straggling a little bit later and Commissioner Gomes will not be here today. We have Director McLean.

Ms. McLean: Aloha Chair.

Mr. Robinson: And we have Corporation Counsel, Mr. Galazin. Good morning. Let's just get right at it. Director.

Ms. McLean: Chair, the first item is a Communication item, a request from Mr. Marty Herling to add his daughter, Halaina Di Martino to an approved State Land Use Commission Special Use Permit and a Conditional Permit for the Banyan Tree Transient Vacation Rental within the State

1 Rural District and County RU-1, Rural District at 3265 Baldwin Avenue at TMK: 2-4-002: 002 in
2 Makawao. Kurt Wollenhaupt is the project planner.

3
4 **B. COMMUNICATIONS**

- 5
6 1. **MR. MARTY HERLING, requesting the addition of his daughter**
7 **HELAINA DI MARTINO, to an approved State Land Use Commission Special**
8 **Use Permit (SUP2) and a Conditional Permit (CP) for the Banyan Tree**
9 **Transient Vacation Rental (TVR) within the State Rural District and County**
10 **RU-1 Rural District at 3265 Baldwin Avenue, TMK: (2) 2-4-002:002,**
11 **Makawao, Island of Maui. (SUP2 2000/0007) (CP 2000/0012)**
12 **(K. Wollenhaupt)**
13

14 Mr. Kurt Wollenhaupt: Good morning Members of the Maui Planning Commission.

15
16 Mr. Robinson: Good morning Kurt.

17
18 Mr. Wollenhaupt: Thank you.

19
20 Mr. Robinson: Thank you for keeping it short and sweet.

21
22 Mr. Wollenhaupt: Today we are here to discuss Mr. Marty Herling's request to add his
23 daughter, Helaina Di Martino both of whom are here today to his current permit and he has two
24 permits. We hear a lot about short-term rentals, bed and breakfast but then there's the other
25 item which is the transient vacation rental. This was the process going through the planning
26 commission, going through the County Council before we had a B&B Bill before we had a Short-
27 Term Rental Bill. So Mr. Herling in the year 2000 started this process and he was granted by
28 the County Council his Conditional Permit to operate his existing Banyan Tree Transient
29 Vacation Rental. It's operated successfully. There's no Request for Service. There have been
30 no complaints. He requested an extension which was able to be granted as there were no
31 complaints from any of the neighbors and that extension is good until 2021.

32
33 So today, you're here to discuss with the applicant his request to add and it's important we're
34 using the word, "add" his daughter to the permit as she learns the business more and more and
35 he prepares for an eventual transfer. Now at such time as he's requesting a transfer then this
36 will come back to you. It also will have to go to the County Council because any transfer has to
37 be approved by the Council. This is anticipated when he will come back in 2021 for his renewal.
38 At that time then he'll probably come for also the transfer. So today we're just concerned about
39 adding his daughter, Helaina to the permit and there's a couple of items one is that there's a
40 Conditional Permit and there is a State Land Use Commission Special Permit.

41
42 So on the Conditional Permit the Director has already deemed it's a nonsubstantive amendment
43 so it would be up to the Commission to decide if they would agree with that and then on the
44 State Land Use Commission Special Permit adding her to that permit would require discussion
45 among the group here. So Mr. Herling is in the audience with this daughter. If you'd like to ask
46 any questions. There's no power point as there's nothing has been changed. It's exactly as
47 approved. It's a seven bedroom transient vacation rental. I've looked at the property. They are

1 complying with their conditions regarding driveways, safety, things like that. So I can either help
2 to answer questions or you can talk to the applicant.
3
4 Mr. Robinson: We'll do public testimony first.
5
6 Mr. Wollenhaupt: Okay.
7
8 Mr. Robinson: If you're done with the initial, I can go to that and then I'm sure the Commission
9 might have something after that.
10
11 Mr. Wollenhaupt: I'm finished.
12
13 Mr. Robinson: Okay, thank you. At this time, I'd like to open the floor for public testimony if
14 anybody would like to speak on this topic? Seeing none, public testimony is closed. At this
15 time, Commissioners do we have any questions for the applicant or for Kurt? I do Kurt. So Kurt
16 is this is not a STRH because it's over five bedrooms is that why we're here for a TVR?
17
18 Mr. Wollenhaupt: Well, we're here for a TVR because there was no bed and breakfast bill when
19 they applied.
20
21 Mr. Robinson: But could they roll it over to a STRH?
22
23 Mr. Wollenhaupt: No they couldn't.
24
25 Mr. Robinson: They couldn't.
26
27 Mr. Wollenhaupt: Because it's seven. Seven bedrooms that's...yeah.
28
29 Mr. Robinson: Okay, thank you. Commissioner Castro.
30
31 Mr. Castro: Yeah, you mentioned seven bedrooms. Is it seven or six?
32
33 Mr. Wollenhaupt: Seven that's why they need this Conditional Permit.
34
35 Mr. Castro: Oh okay. Thank you.
36
37 Mr. Robinson: Commissioners any other questions? Would anybody like to entertain a motion?
38 Oh, I apologize, Kurt could I have your recommendation please?
39
40 Mr. Wollenhaupt: The recommendation would be to add Ms. Heliana Di Martino, daughter of
41 the current permit holder Martin Herling to the State Land Use Commission Special and to the
42 Conditional Permit for the Banyan Tree Transient Vacation Rental located at 3265 Baldwin
43 Avenue in Makawao.
44
45 Mr. Robinson: Commissioner La Costa.
46

- 1 Ms. La Costa: I would like to make a motion that we accept the commission's or the
2 Department's recommendation.
3
- 4 Mr. Robinson: We have a motion to accept the recommendation of the Department. Do we
5 have a second?
6
- 7 Mr. Hudson: Second.
8
- 9 Mr. Robinson: I have a second by Commissioner Hudson. Would you like to speak to the
10 motion or any discussion on the motion?
11
- 12 Ms. La Costa: It's straightforward. He just wants to add his daughter so I'm fine with that.
13
- 14 Mr. Robinson: Thank you. Does any Commissioner...yeah, Commissioner Pali.
15
- 16 Ms. Pali: I just have a question. So I understand that if the home were to be sold then the new
17 owners would then have to come back and reapply because you cannot transfer these kinds of
18 permits with a sale is that correct?
19
- 20 Ms. McLean: That is true for Bed and Breakfast and Short-Term Rental Home Permits.
21
- 22 Ms. Pali: Okay.
23
- 24 Ms. McLean: That's not what this applicant has. This applicant has a State Special Permit
25 which many B&Bs and STRHs also need.
26
- 27 Ms. Pali: Okay.
28
- 29 Ms. McLean: They have a Conditional Permit and transfers need to be approved by the Council
30 for the Conditional Permit.
31
- 32 Ms. Pali: Okay.
33
- 34 Ms. McLean: So if the property sold and they wanted to transfer the permit it would come to the
35 Commission first and then to the Council.
36
- 37 Ms. Pali: Okay. And so do you know if we're talking about adding kids to deeds which I...is this
38 what this is...is he just wanting the permit to go to her first and then maybe a deed transfer
39 would follow. I just want to make sure that if we have rules that we're not doing other things to
40 circumvent the rules in other ways. I'm totally for this, but just for a discussion item and future
41 this could set a precedent for the future.
42
- 43 Mr. Robinson: Kurt, why don't you try to answer that please?
44
- 45 Mr. Wollenhaupt: Well, okay there's a couple of things here. In...and I talked to the applicant
46 about this, in the event...this is an addition of a daughter. This indicates that Mr. Herling will
47 remain the business manager, will remain in charge. Now should Mr. Herling meet a demise

1 before a transfer occurs then it would be incumbent upon Helaina to immediately come to the
2 Department and to start the transfer process. They would need to work with Zoning and
3 Enforcement on the transition period about bookings and things like that and their
4 understanding of that.

5
6 Mr. Robinson: We're good? Commissioner Carnicelli.

7
8 Mr. Carnicelli: So just speaking to the motion. I'm gonna to support the motion, but when I first
9 read this it was kinda like okay is this one of those work arounds? You know that...that we
10 kinda allowed one sorta I think to slip underneath our fingers one day but the fact that the full
11 transfer needs to be, you know, vetted that this isn't a work around it's just adding the daughter
12 and they're actually doing it the right way. This is one of those again they could of just done it,
13 you know and nobody would have known. But they're actually trying to do it the right way so
14 because of that I'm gonna go ahead and support the motion so thank you Chair.

15
16 Mr. Robinson: Thank you. Commissioners anyone else? Seeing none, Director.

17
18 Ms. McLean: The motion on the floor is to approve the addition of Ms. Di Martino to the permits.

19
20 Mr. Robinson: All those in favor of the motion please raise your right hand. That's six eyes.
21 Thank you. Motion carries. Good luck.

22

23

24 **It was moved by Ms. La Costa, seconded by Mr. Hudson, then**

25

26 **VOTED: To Approve the Addition of Helaina Di Martino to the Approved State**
27 **Land Use Commission Special Use Permit and Conditional Permit as**
28 **Recommended by the Department.**

29

30 **(Assenting – P. D. La Costa, L. Hudson, L. Carnicelli, K. Pali,**
31 **C. Tackett, S. Castro)**

32 **(Excused – A. Hill, T. Gomes)**

33

34

35 Mr. Robinson: Director next item please.

36

37 Ms. McLean: The next item is the Adoption of a Written Decision and Order. You have before
38 you Proposed Findings of Fact, Conclusions of Law, and Decision and Order denying the
39 request for a Short-Term Rental Home Permit by Mr. Rodell Notbohm in order to operate Imi
40 Ola, a six bedroom STRH located on a 13,851 square foot ocean front lot in the R-3, Residential
41 District. The property is adjacent Keawakapu Beach and located at 3066 South Kihei Road in
42 Kihei at TMK: 2-1-010: 025. The application was heard by this Commission because there
43 were already two existing permitted STRHs within 500 feet and the Commission may take
44 action to adopt, adopt with modifications or take some other action regarding the Proposed
45 Findings of Fact, Conclusions of Law, and Decision and Order.

46

47

1 **C. ADOPTION OF WRITTEN DECISION AND ORDER**

- 2
3 1. **Proposed Findings of Fact, Conclusions of Law and Decision and Order**
4 **denying the request for a Short Term Rental Home Permit by Mr. Rodell**
5 **Notbohm, in order to operate Imi Ola, a six (6) bedroom STRH located on a**
6 **13,851 square foot oceanfront lot in the R-3 Residential District. The**
7 **property is adjacent to Keawakapu Beach and located at 3066 S. Kihei Rd.,**
8 **Kihei, HI 96753, TMK (2) 2-1-010:025. (STKM T2018/0005) (J. Burkett) (Action**
9 **on the application was taken at the November 27, 2018 meeting)**

10
11 **The subject application was heard by the Maui Planning Commission**
12 **because there were already two existing permitted STRHs within 500 feet of**
13 **the proposed STRH property.**

14
15 **The Commission may take action to adopt, adopt with modifications, or**
16 **take some other action regarding the proposed Findings of Fact,**
17 **Conclusions of Law and Decision and Order**

18
19 Mr. Robinson: Thank you Director. I was not here at that meeting. Commissioner Carnicelli I
20 believe you did that. If you'd like to have any comments towards to or is it self-explanatory?

21
22 Mr. Carnicelli: Thank you Chair. No I think that it's pretty straightforward in reading the D&O
23 that was drafted. I find it to be accurate.

24
25 Mr. Robinson: Thank you. Do we have enough people here at this meeting that was there at
26 that meeting for the majority vote? Please.

27
28 Mr. Galazin: Thank you Chair. So it's not necessary that somebody voting on this D&O was
29 actually voting on the decision itself so long as they have reviewed the record and can confirm
30 that this D&O captures what was decided by that body at that time. So even though somebody
31 may not have made that vote or somebody may have voted in opposition to it, as long as you've
32 reviewed it and feel comfortable approving the written D&O as presented then you can go
33 ahead and approve that. If you have not reviewed it, you don't feel comfortable voting on it, we
34 could either...it be up to the Chair where you take a recess or you could defer there's a number
35 of things we could do, but as Commissioner Carnicelli stated, you know, it's his belief that this
36 does capture everything so long as everybody has reviewed enough information to feel
37 comfortable doing that.

38
39 Mr. Robinson: Thank you. Having said that can we take a quick roll call on who was here for
40 this? Of course Commissioner Carnicelli, La Costa was here, Tackett was here, Mr. Castro
41 were you here?

42
43 Ms. McLean: And Kahu Hill.

44
45 Mr. Robinson: So Kahu Hill...

46
47 Ms. McLean: The three and four, five.

1
2 Mr. Robinson: So for Commissioner Castro and Commissioner Hudson...I, unfortunately have
3 not reviewed this.

4
5 Mr. Hudson: I have.

6
7 Mr. Robinson: Apologize. So you have and Castro you have.

8
9 Mr. Castro: Yes.

10
11 Mr. Robinson: And are you folks comfortable, do you need...are we good and we can move
12 on?

13
14 Mr. Hudson: Yes.

15
16 Mr. Castro: We can move on.

17
18 Mr. Robinson: Okay, so...at this time do we have, do we have Mr. Rodell Notbohm here by
19 chance? Are you the signed representative please?

20
21 Mr. Tom Croly: Chair, Tom Croly. I am here on behalf of Mr. Notbohm, yes.

22
23 Mr. Robinson: Do you have something stating that?

24
25 Mr. Croly: Yeah, that's in the file. I am registered as the—

26
27 Mr. Robinson: He is? Okay, great. Okay, thank you. Would you like to say anything to this,
28 we'd like to open it up for you?

29
30 Mr. Croly: No, I don't have any statement today.

31
32 Mr. Robinson: Okay, all right. Thank you so much. Okay, we just approve the findings? Go
33 ahead Director.

34
35 Ms. McLean: What's before the Commission would be to adopt the proposed Findings of Fact,
36 Conclusions of Law, and Decision and Order or you may make modifications.

37
38 Mr. Carnicelli: Move to accept.

39
40 Mr. Robinson: I have a move to accept. I have a second with Commissioner La Costa. All
41 those in favor, please raise your right hand. That's six ayes. Thank you.

42
43

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

45

46 **VOTED: To Adopt the Findings of Fact, Conclusions of Law and Decision and**
47 **Order Denying the Short-Term Rental Home Permit.**

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

6 Mr. Robinson: We're gonna take a quick five-minute recess.
7

8 A recess was called at 9:22 a.m., and the meeting was reconvened at 9:27 a.m.
9

10 Mr. Robinson: Aloha Planning Commission is now back in session. Commissioners and
11 audience, I apologize but Commissioner Kahu Hill is integral part of our topic and she's running
12 a little bit late so we're gonna skip ahead to our workshop and hopefully she'll come in and
13 when she does, we'll jump right back onto it. And so we're going to jump forward to Item
14 number F. Director.
15

16
17 **F. Workshop on improving the notification process to owners and recorded lessees**
18 **within 500 feet of proposed projects to include review of applicable code and rule**
19 **requirements.**
20

21 Ms. McLean: Thank you Chair. This was a workshop requested from the Commission on
22 improving the notification process to owners and recorded lessees within 500 feet of proposed
23 projects. And so in your packet is an excerpt from the Maui County Code relating to public
24 notice so that first section 19.64 that's bed and breakfast homes and then jumping down the
25 next section 19.65 is short-term rental homes, and then on the back 19.510 that's a general part
26 of the Zoning Code that relates to any kind of application that requires a public hearing. So
27 highlighted in yellow on those sheets are the sections or the subsections that relate to giving
28 public notice. And then the next documents attached to that are the notices that are part of our
29 applications for the Notice of Filing, for the Notice of Public Hearing for various kinds of permits.
30

31 So I believe it was these forms themselves, the notices that we give to applicants to use to send
32 to their neighbors that the Commission was mostly concerned about that these somehow
33 weren't clear enough or weren't user friendly enough. So I'm happy to answer questions or
34 hear what kind of comments or suggestions you may have to improve this.
35

36 Mr. Robinson: Thank you Director. Is I was also concerned on the notice that neighbors
37 received and I think that's when I, you know, when I actually got a notice that's where I noticed
38 that it didn't have information on if I could send something...applications through email, there's a
39 email address and the timing instead of just having to mail something. And so I don't know if we
40 can get somebody to get us a copy of that to where the neighbor's receipt of notices. So I see
41 this is for applicants, but then the backside is what then neighbors or people inside the...an
42 affected zone would be receiving in the mail.
43

44 Ms. McLean: Well, they would receive one of these forms.
45

46 Mr. Robinson: Which one would...so...

1
2 Ms. McLean: So this one the neighbor Notice of Filing of Bed and Breakfast Permit Application.
3 So when someone wants to operate a B&B Permit the first thing they do is notify the neighbors
4 that they're going to be applying for it.

5
6 Mr. Robinson: Okay I don't remember.

7
8 Ms. McLean: And then the next page is the public hearing. So the applicant sends this sheet to
9 neighbors, fills out the blanks of the location, they provide a map. So a neighbor gets this it
10 says, oh this guy a couple door down is going to or is applying for a Bed and Breakfast Permit
11 and that is how a neighbor can—

12
13 Mr. Robinson: I got you—

14
15 Ms. McLean: --write to the Planning Department to say I object and it's those protest letters that
16 may trigger, the one which is a public hearing.

17
18 Mr. Robinson: A public hearing. Okay, thank you. Commissioner La Costa. And before you
19 say...so this is what the current thing is now and if we can discuss of how we...each one of us
20 would like to see it or what we think it's sufficient or not or if there's any changes and so this is
21 just a discussion on it and then we can decide later if there is a consensus. I'll get back to
22 Corporation Counsel on how this actually goes if we are able to change this but, but we'd like
23 hear what everybody thinks.

24
25 Ms. La Costa: Thank you. Yeah, my question is verification that neighbors actually received
26 notification because personally I was not notified of something going on, the next thing I know it
27 happened and none of my neighbors were either. So on this form I didn't see anything that said
28 as Chair said, to confirm that yes, neighbor A, B, C, and D actually received what they're
29 supposed to rather than someone saying they mailed them and they didn't.

30
31 Ms. McLean: Right. The requirement as you see on the first couple pages are that the notices
32 have to be sent certified mail, return receipt requested and so a lot of times those get returned
33 because you get a note, you're not home, you get a notice in your mailbox saying you have to
34 come to the post office and sign for your letter, a lot of people don't do that. And so the post
35 office will leave a couple of notices or they'll try to redeliver and if it doesn't get claimed then it
36 gets sent back. I don't know if that's what happened in your particular case. But the applicant
37 gives us all the green cards that they...that they receive back. So the applicant is responsible
38 for doing the mailing the certified mail, return receipt and then they give us all the green cards
39 and the list of who they notified with the map that shows those properties within the 500 feet so
40 we have all of that. We receive all of that. And we require that they make their best effort to do
41 it. If they get, if they're not claimed then you know we don't require any further notification to
42 those.

43
44 Mr. Robinson: And we're lucky enough to have Mr. Croly in the audience today as a resource
45 and you have some examples of what we're looking at and again, guys this is a workshop so it's

1 not public testimony. We're just trying to get information so Mr. Croly I'd love to see what you've
2 got there.

3
4 Mr. Tom Croly: Thank you Chair. Yeah, this was just an appropriate time because I was
5 preparing a mailing to send out to...for one of the applications that you'll see soon. And the
6 addresses all come from the Real Property Tax records. So whatever address is on file in Real
7 Property Tax is the address that we'll get mail to. And then each letter is sent by Registered
8 Mail or by Certified Mail to the applicants and to then the Certified Mailing receipts which is this
9 packet here are given to the planner to show that each of these was mailed. This is the proof
10 mailing if you will. Now the...some of the 500-foot notice also require Return Receipt
11 Requested which are these green cards that come in and then when the mailman delivers it he
12 has you sign it and then the green card goes back. Some of them don't require the Return
13 Receipt. But in either case if the mailman is unable to deliver the Certified and get someone to
14 sign for the Certified then it comes back to, in this it will come back to me and I can tell you from
15 experience roughly ten to fifteen percent of these come back as unclaimed. Maybe it's going to
16 an address that's not being monitored, maybe the person says this is Certified Mail this can only
17 be bad news so I'm not gonna take it and chooses not to pick it up. But then the ones that
18 come back, I give them to the planner and the planner puts them in the file. So if someone later
19 comes and says, I never received notice we can look up the mailing receipt to show that
20 something was mailed and we can look up whether it was claimed or not based on the Return
21 Receipt. If the owner doesn't live in the United States and a fair number of people don't then we
22 have to send them by Registered Mail and Registered Mail is about \$20.00 for each one to send
23 out. This particular mailing has about a hundred that have to be sent out 'cause this is because
24 there were 20 homes that were single family homes within 500 feet and there were two
25 condominium complexes each with about 40 owners in that. So this one turned out to be a
26 hundred. There's another one that I have the Return Receipts for here that was 250 because
27 he had a couple condos within in 500 feet. So in some cases if it's out in the Agricultural District
28 there might only be ten or fifteen people that get notified of this and those are fairly clear as to
29 who they are. When it's in an urban area particularly if it's in the areas where we have the
30 condos and so forth, an awful lot of people will get this mailing and for the applicant it becomes
31 a rather large expense to send out this mailing and the proof that they got it is the mailing
32 receipts and not receiving this back. There are some of the items that require Return Receipt
33 Requested and then the proof is the actual green cards that gets signed. So I just thought that
34 might be helpful to understand the process that the applicants go through in making these
35 mailings.

36
37 Mr. Robinson: Actually that's very helpful especially that visual so that's a good thing.
38 Commissioners while we have Mr. Croly any questions? Commissioner Pali.

39
40 Ms. Pali: This is a two-way street question. So I had the ah ha moment that the applicant's
41 doing all this not the Department. And two, is there any rules prohibiting the owner that's
42 required to send it to adding to what's being sent? In other words, are they sending this notice
43 that we see, Neighbor Notice of Filing, but then adding their, their letter of, hey I'm new to the
44 neighborhood, you know, putting their story in. Is there anything prohibiting a neighbor from
45 adding to what's being mailing alongside of the application?

46

1 Ms. McLean: Nothing would prohibit the applicant from doing that.

2
3 Ms. Pali: And Tom do you know that applicants at that time take the opportunity when they mail
4 the notice to sort of give a summary of the family and what they're hoping to do?

5
6 Mr. Croly: Yeah, thank you for that question. I always do encourage my applicants to include a
7 letter just further explaining, you know, what they're, what they're asking to do particularly in that
8 the notice just says this many bedrooms and this many dwellings and it's really not clear what
9 their intent is. So I do encourage them to include a letter to say as you said, if they're new to
10 the neighborhood introduce themselves to the neighborhood. Also to allow the neighbors to
11 have a contact so that they could contact the owner if they had any questions specifically about.

12
13 Mr. Robinson: Commissioners anything else for Mr. Croly? No? Thank you so much.

14
15 Mr. Croly: Thank you.

16
17 Mr. Robinson: Commissioner Carnicelli.

18
19 Mr. Carnicelli: So Chair you know you brought this up as someone that received one of these,
20 you know. And as I look through these, you know, these notices. It's...I don't know it seems as
21 though they were written by an attorney, right which is what they should be. And there's a
22 paragraph in each one of them it says, Testimony relative to this request may be submitted in
23 writing...in just knowing that we live in the Twitter world and when Twitter went from 140
24 characters to 280 characters people stopped reading Twitter. We have three paragraphs with
25 which people probably aren't going to read and it just seems very legalese and so what your
26 point was when you received one of these was it wasn't super clear how I can weigh in as a
27 neighbor. So is here a way...I mean, now going to you know, Director your I guess, your
28 question to us is if we're gonna start going to start tweaking this is to make it say maybe more
29 recipient friendly. For one, there's no email address. Right, like that's the just right off the top,
30 it's just like okay rather than...okay, testimony can be submitted and then it will say, okay, now I
31 gotta write a letter and I gotta go buy an envelope probably 'cause I don't have any in my house.
32 You know so it's like just digitally, oh here's the website you can go to or here's an email
33 address is probably one thing I would look at. And even this paragraph that says, testimony
34 relative to, is almost like should that be just the "fine print" where just when I get this it says, oh
35 bed and breakfast application this is how you—

36
37 Ms. Pali: Comments or concerns.

38
39 Mr. Carnicelli: Yeah, comments or concerns, thank you. Yeah is to do something just real plain
40 and simply easy.

41
42 Mr. Robinson: And you know that's really good point you brought up and Corporation Counsel
43 has obliged me to answer some of these questions about the validity of testimony as well. I
44 know we kinda had that question which goes with instructions that we want...able to put on.
45 'Cause I think you folks are like me it's where our mailperson has evolved over the years to
46 where they don't leave their vehicle anymore so all they leave is notices inside the mailbox.

1 There is nobody that's gonna come and get a signature. And if you have at your business they
2 even deliver at your business anymore. You know and that's just the life we live, so but these,
3 but these notices hasn't moved on with that because we have these different type of things and
4 you know, maybe even, you know maybe even property taxes might start asking people for their
5 email addresses instead of their mailing addresses.

6
7 Mr. Carnicelli: Yeah, I mean ideally that would be good.

8
9 Mr. Robinson: Yeah, you know for taxes and stuff like that, you know, because that's just...like
10 you said, that's what we're moving forward. So is what I'd like to, is I'd to bring up Corporation
11 Counsel to first find out what they're allowed or what the testimony should be valid before we
12 say what we can put on the rights on what we'd like to do that. Commissioners is that okay with
13 you guys? Okay, thank you. I promised him that I'd be, I'd be nice.

14
15 Mr. Galazin: Okay.

16
17 Mr. Robinson: But I'd like you to go up on the podium if you could please 'cause I'd like for us to
18 be...and it's just because I think it's easier for us to kind of listen this way. Sorry.

19
20 Ms. La Costa: Excuse me Chair?

21
22 Mr. Robinson: Yes?

23
24 Ms. La Costa: Commissioner Hill will be here in five minutes.

25
26 Mr. Robinson: Awesome. Okay so is I'll start it off. It's is I was fortunate enough to be a, to be
27 a testifier and being on this Commission for four years just to let you other commissioners know
28 I was nervous before I walked up to the podium and Will Spence and I, you know we both said
29 it's a different feeling and it's really strange because I can talk here all day but as soon as you
30 step on that side it's a little different feeling so the empathy that we have for you testifiers you
31 know it's really is there. I don't know if you feel a little bit different from just switching spots but it
32 does make a difference.

33
34 But first I was saying is my contention on that day was that that testimony should be weighed in
35 a decision for a permit, for neighbors and I wasn't sure what I heard that day that testimony has
36 only so much of a weight and if you could expand on what actual are the rights of, of notices of
37 neighbors testimony and how they should be viewed as a commissioner or even legally.

38
39 Mr. Galazin: Okay, thank you. First thing I would start out with as the Director noticed when
40 applications get sent out there's that Notice of Application and there is a time frame that's set
41 within the County Code by which people have to submit written protests just to the application
42 itself and that will dictate if something wasn't otherwise going to come before the commission if
43 it then kicks it to something that's gonna come before you. So that's the first stage of where
44 there's public involvement and that goes outside of your purview. That's really for the
45 Department to take in, but it is incumbent upon them to make sure that the applicant's gone
46 ahead and mailed out those notices.

1
2 The second portion comes when you receive notice that the actual public hearing is going to be
3 held by you folks. There are some big differences between the different types of permits that
4 you get and you've seen Bed and Breakfast Permits, Short-Term Rental Home Permits was the
5 two most common, but as we just saw earlier today there's Conditional Permits for TVRs, there
6 could be Special Use Permits and they all have different criteria that go with them.

7
8 I'm gonna start with the Short-Term Rental Home Permit. That's the one I think we've probably
9 seen more often and you typically see a lot more public testimony when it comes to that. So
10 when you review it you're in 19.65.030(N) and those are the standards and criteria by which an
11 applicant must meet those in order to be granted a permit. And some of them are...it's really
12 Subsection N as a whole is designed to say that any short-term rental home shall conform to the
13 character of the existing neighborhood in which they're situated. So that's everything that goes
14 underneath that is with that caveat in mind, it's supposed to conform to the character of the
15 neighborhood. And in trying to decide if it does conform to the character of the neighborhood
16 there are specific things that you need to look at. There's existing land use entitlements,
17 community plan, and then some of the things do specifically involve public testimony. There is
18 community input is specifically defined. There are the potential adverse impacts which are
19 specific factual things, and the number and substance of protests to the short-term rental home
20 especially related to the cumulative impact and then complaints and whatnot.

21
22 So what you have when you get public testimony for a short-term rental, they'll look and see,
23 okay does it fall within one of these specific categories. Is it speaking to something specific, a
24 specific impact like okay, I have seen this one short-term rental home and now there's on my
25 road. There's a lot more car traffic. There aren't any sidewalks, my kids are walking to school.
26 If we have another one that's gonna be that many more cars, that a specific danger. And what
27 you are supposed to do when you get that public testimony is it's incumbent upon you to really
28 drill down and flesh that out. To some extent some people may have unfounded fears about
29 something. People may just think well, I don't want this in my neighborhood at all, but they don't
30 really give any explanation. If you receive a letter that says, hey I'm against this short-term
31 rental, but there's nothing else to it you can't weigh that as much as somebody who comes in
32 and says here are the exact specific things that are going to...that I believe are going to happen
33 if this is approved and this is why I believe these things. I think you know Vice-Chair Hudson
34 is...said on more than one occasion you can't just say I don't like blue cars, say why don't you
35 like blue cars. So when you receive public testimony that's in opposition if it simply says I
36 oppose this and nothing else is attached to it from a standpoint of what the County Code
37 requires you can't weigh that as much as somebody who comes in and says okay, I don't like
38 this because X, Y, and Z and here are the things that support my contention. However if
39 you...there's you know 12 homes in this neighborhood and 11 of them send letters that say I
40 don't like this there's nothing else to it. Well, you can weigh the volume of that.

41
42 Mr. Robinson: Counsel...you wanna ask a question?

43
44 Ms. Pali: ...(inaudible-not speaking into a mic)...
45

1 Mr. Robinson: Okay, great. And as you're going through this is there anything that's stopping
2 us from on top of this form showing them what we see where it has triggers?
3

4 Mr. Galazin: Let me grab the form real quick.
5

6 Mr. Robinson: And what I'm saying is you know when we review something is we have...does it
7 have community effects, does it have you know, all these different categories that we can look
8 to approve and deny. Is that something that would be able to be an application to where we
9 could help steer the community that does wanna put input...yeah, not steer, if we wanna, if want
10 to...if we wanna show them of what testimony should be based on on certain criteria instead of
11 just random saying blue house.
12

13 Mr. Galazin: Yeah, and thank you Chair and that's a really good point you bring up because I
14 think you've seen a lot of people come in and they don't really know what the standard that you
15 folks have to use, what that standard is and so sometimes they may...all they will have
16 submitted was to say well, I don't like this and then they don't understand why that doesn't, why
17 that doesn't allow you to deny something if just that standalone statement if one person submits
18 that. And they may actually in their head be thinking about a bunch of different things the
19 negative things that go along with that. But if they don't know that that's the kind of information
20 that you need, yeah it does make it more difficult. Can we or can the Department I guess
21 change this notice in order to include some of these relevant criteria, I suppose that's possible.
22 That's something that they could look at. You know short of just restating what's in the Code
23 right there. I don't know that we could get into a position of trying to elaborate or explain and
24 give examples of what these things are, but certainly that could be, that could be included to say
25 these are the criteria which the commission's going to look at and people could then be a little
26 more specific in terms of what they want to bring to you. So really, you know you start from the
27 standpoint of...applicant comes in, it's their burden to prove by just a preponderance of the
28 evidence which is just 51 percent. They just gotta cross that threshold that it will conform to the
29 character of the neighborhood. And then if you get something that's in opposition if you think
30 the applicant hasn't done their job to begin with then you could point to what thing that you look
31 at and just deny it. Most of the time, they've worked with the Department to a point where the
32 Department at least usually feels comfortable bringing it before you which means it's gotta be at
33 least close to 50 percent before the Department recommends it. There's probably a rare
34 occasion where the Department will either not support it or be noncommittal if it's maybe not
35 quite there and then the applicant would have to prove to you it in a public hearing. But say
36 there's something where an application comes in and the applicant has done a fair job of trying
37 to show okay, there are there these nine criteria in 19.65.030(N) and here's why I meet all of
38 them. So if they go over that burden, they meet that first and then you get public testimony
39 coming in so there it comes to a point where you gotta weigh, okay does this start to tip the
40 scale back at all? And then the applicant always gets a chance to provide, you know at a
41 closing statement or rebuttal if you will an attempt to tip it back. So if you think about it in terms
42 of a balance they've gotta get...the applicants gotta get to a point first where it tips in their favor.
43 If you think that the public testimony tips it back, at least the applicant has an opportunity to try
44 and rebalance the scale if they can. But it's really, it's critical to say, to look at it through this
45 lense that's why the Department's staff report always lists these criteria, they always analyze it
46 and a lot of times they don't have the benefit of all the public testimony when they make their

1 analysis so they may have a recommendation that doesn't necessarily reflect what you are
2 presented the actual day of the hearing.

3
4 But as far as public testimony especially for the short-term rentals it really does need to speak to
5 these specific criteria and in terms of how you, how you help people understand that these are,
6 there are categories, these are boxes that you need to check off and if they don't really, they're
7 not speaking to one of the boxes it's really difficult for you to incorporate that into a decision and
8 order and say, well okay, I'm gonna vote for denial of this permit because I make a conclusion
9 of law based on the finding of fact and the finding of fact is it doesn't meet the character of the
10 neighborhood because of...you gotta fill in that blank with something. If you can't fill in the blank
11 with anything then your conclusion that it doesn't meet the character of the neighborhood is not
12 supported by the record. And then they, you know file an appeal in court and I've gotta up there
13 and explain why you folks did what you did.

14
15 Mr. Robinson: Which is the right thing, but...so now, now what's the difference between STRHs
16 and bed and breakfast and I think this is the interesting part.

17
18 Mr. Galazin: Yes, and let me scroll back to that. So the bed and breakfast homes they've got
19 similar sort of requirements in terms of the application when they put out notice. So for the bed
20 and breakfast home they get the application, they send out the notices and again if there are
21 certain benchmarks met it will come before you folks as the commission but it doesn't have
22 those same, those same specific criteria as the STRH does. And primarily from what my
23 recollection is in knowing the legislative history of this the Council was more concerned about a
24 short-term rental home because nobody...it's not a requirement that the owner is onsite or even
25 on island. They could have a manager there and the owner could be somewhere else not that
26 that's more detrimental to the neighborhood than any other type of vacation or transient use.
27 However it just means that there is a greater probability for not quite the level of responsiveness
28 that some people would want. With bed and breakfast home permits somebody has to live on
29 the property and rent out a portion of it. So there is an owner onsite. And for that reason I think
30 the criteria are different in terms of what you look at. And again, there you wanna say, if there
31 are disturbances, if the owner is not responsive despite the fact that they live there, it doesn't
32 mean that they will necessarily be responsive, it just means that it's probably more likely.

33
34 Mr. Robinson: So Counsel I'll help you out. So is on the short-term you had community input—

35
36 Mr. Galazin: Yeah.

37
38 Mr. Robinson: --right, and you had, deleterious effects, whatever it is, is that in the bed and
39 breakfast or is that not in the bed and breakfast criteria?

40
41 Mr. Galazin: No that's not, that's not in the bed and breakfast as with the specificity that it is
42 with a short-term rental home.

43
44 Mr. Robinson: And, and if you guys remember that's what I was, I was sort of like, how is it one
45 for the other and I didn't understand that there's different criteria. I figured it was all the same—

46

1 Mr. Galazin: Yeah.

2

3 Mr. Robinson: --and ...(inaudible)...Commissioner Carnicelli you got a comment?

4

5 Mr. Carnicelli: Yeah, thank you Chair. So the other part of this that I think is important to bring
6 in 'cause let's just go to that same exact one. The neighborhood was mostly concerned about
7 parking. And part of the permit was no on-street parking, right and so suddenly all this
8 testimony going parking, parking, parking, parking, parking and we mitigated that concern.
9 They were concerned about noise. Well, part of the permit had the noise restriction. So that's
10 the other piece of this that I would like for you to also address because ironically enough
11 Ekolu Lindsey is sitting in the audience right now and we had a B&B in Lahaina several months
12 back that he was concerned about the impact on the reef in Lahaina and we put a condition to
13 mitigate that which ironically has morphed into Item D.1 on our, on our agenda today. And so
14 like that's the other piece of this that if you could, you know, as an attorney you're gonna use
15 attorney legalese to decide...that I think that that's the other piece of this that also needs to be
16 included in this discussion.

17

18 Mr. Galazin: Thank you Commissioner Carnicelli. That is an excellent point. Part of what you
19 are supposed to do is look at not only are there potential impacts but what can be put in place to
20 mitigate that. It's not as specific as what you do with the SMA where in the State Statute it calls
21 out, you know if you identify impacts you have to look at okay, can these possibly be mitigated
22 in any way? Because there's so much of the area that's covered by the SMA if you couldn't
23 mitigate for impacts, you couldn't allow for that, almost anything would have an impact.

24

25 In here in the Code for these types of uses it doesn't specifically call that out but if you look at
26 what the applicant is proposing if in the example Commissioner Carnicelli used all of the issues
27 seem to be about parking and the applicant proposes a solution to that and it seems reasonable
28 then you can't rely on everyone's concern about parking because you can't have that finding of
29 fact that it will have a detrimental impact on parking. And again, it is difficult in that I think and
30 maybe Commissioner Pali had mentioned at one point, you know, how do you get them to prove
31 a negative? All these issues are speculative for the most part because you have an applicant
32 coming in, they haven't done this use at this location so everyone's concerns are what will
33 happen if this use comes in and starts? That presupposes that it hasn't started there in the
34 past. So you've gotta, you've gotta kind of take everything and look at it and go, okay, do I think
35 that this is going to have, is it more probably than not this is gonna have a negative impact and
36 there's no way that it can be avoided. If that's what the evidence leads you to believe then you
37 go ahead and you vote denial as long as you can say this is the evidence I'm using and that's
38 where the public testimony can come in, kinda bring it back around.

39

40 When people submit their written testimony it can be useful but especially if it's very vanilla, it
41 can be hard looking at a B&B Permit it's hard to incorporate that to say yes, I can totally rely on
42 that. But the applicant's here and then if somebody comes in and they bring their testimony,
43 you can question them on it, well why do you think that this is gonna have, why do you think this
44 is gonna increase the noise so much. In some cases they may have specific complaint. They
45 may say well, you know I live just on the backside of this, there's absolutely no fence, they have
46 huge pool in the backyard and every time there's more than two people it's super noisy and

1 you're gonna have you know four bedrooms, you're gonna have maybe eight, ten people at a
2 time, it's gonna be really loud and there's no way that they can fix that. If that's the case, maybe
3 that's a situation where you look at and say, well I don't think we can mitigate this at all, and you
4 could say quiet hours but even then you're talking about 10:00 at night, at 9:30 somebody's out
5 there with a pool party it can still be disruptive if you got up at five in the morning and go to your
6 job.

7
8 By the same token if somebody's just saying well, you know I don't think they make good
9 neighbors or I don't like this guy, you know, he's coming in for this application but he was a real
10 jerk to me yesterday so deny him this permit. And those are the kinds of things that you gotta
11 realize there is a sentiment among the community and sometimes that sentiment doesn't get
12 expressed as coherently as some people might otherwise like to because emotion comes into it,
13 but that's where you as especially as you're ...(inaudible)...fact finders in these things and these
14 permits these are all contested cases. These are quasi-judicial proceedings. So I mean for the
15 benefit of the applicants coming in, for the people testifying, and for you it's almost like a mini
16 courtroom. You come in, you're all sort of acting as the judge to say all right if somebody's
17 coming and they're being a witness and providing testimony they don't have somebody there
18 advocating for them so some of it you gotta kind of lead them along a little bit and say, okay, I
19 understand your concern is about this, here's what we have to look at. And I think you do a
20 fairly good job of explaining that to testifiers most of the time that okay, understand what you're
21 saying, you've got to look at these things here in the Code can you be more specific, 'cause are
22 you talking about one of these specific things? And that's where you gotta come in and see
23 does somebody you believe that are showing a factual basis or do you believe perhaps that
24 they seems like they have some kind of personal bias or other motive to their testimony. That's
25 something you weigh as a finder of fact. It's witness creditability to weigh not only the value but
26 the credibility of witness testimony. And it's very subjective, but you've got the collective
27 opinions of all of you and the hope is that the consensus is going to produce a good outcome
28 every time.

29
30 Mr. Robinson: Commissioners do we have any more questions at this time? He's available for
31 us all day, but on this topic if we another specific question from to go on...Commissioner Pali.

32
33 Ms. Pali: If I can bring it back to the forms in question here. Would it be advantages to mimic
34 the Chair here as we try to simplify this using less words so that the reader can have a little bit
35 more access ...(inaudible)...

36
37 Mr. Robinson: And Commission Pali is I think that's something that we can decide that he
38 doesn't have to—

39
40 Ms. Pali: Oh okay.

41
42 Mr. Robinson: --and we can bring him back, but you know just for legal, 'cause I know—

43
44 Ms. Pali: The legal question would be like you said, what about just like the reason for your
45 support or denial and then having like check boxes and having the criteria on the check boxes
46 or the other box which is then where they right it in.

1
2 Mr. Robinson: Yeah, and I plan to get that with you guys 'cause as we enter the form.

3
4 Ms. Pali: Okay

5
6 Mr. Robinson: But if you have something as far as the legality goes. Thank you so much for
7 going up there and after all my time I still learn so I appreciate it. Commissioner Carnicelli.

8
9 Mr. Carnicelli: So this one for the Director and I've been thinking about this for a while and I've
10 talked to couple other planners about this is I think based on what he just said you know in
11 trying to help the public understand why are we here? Right? I love...Kurt does that, right?
12 This is why we're here. We're here for this permit. Here is the criteria for this permit. So where
13 I'm going with this is you know the Department and everybody in the Department bust their butt.
14 They do a great job, but we don't have a consistent message. Each planner kinda wings it on
15 their own. I mean, and I don't mean that in a bad way that you know that they're not doing their
16 job because they're all doing their job really well, but there's no standardization for us. There's
17 no standardization for you know the public. So for me is if there would be and especially a
18 visual, maybe just one slide this is an SUP, here's the eight criteria for a SUP. And every time
19 that the Department comes up and does their presentation that is a part of it, right. So now it's
20 standard. Every time it's an SUP we know, even though we've heard it 75 times there might be
21 somebody waiting to testify who has no idea what the eight criteria for an SUP is. So you put it
22 up there, you go like okay, here's what you have to decide. If you decide that they don't meet
23 one of these criteria then it's gonna go him for you know, for a D&O and that's...so then it's
24 really clear as to why we are here.

25
26 Mr. Robinson: Well it's...Commissioner, I think that's different than what we're trying to talk
27 about now.

28
29 Mr. Carnicelli: Well, but I'm tying it into what—

30
31 Mr. Robinson: Yeah, no—

32
33 Mr. Carnicelli: 'Cause you brought, you brought all that other stuff in and if we're going into
34 notification and for neighbor—

35
36 Mr. Robinson: Well—

37
38 Mr. Carnicelli: Let me finish.

39
40 Mr. Robinson: Yeah, for just the neighborhood.

41
42 Mr. Carnicelli: It's for neighbor...(inaudible)...

43
44 Mr. Robinson: Not for us though, it's for the...it's to, it's to cut out the...it's to the neighbors
45 know not to say I don't like blue cars. It's for notification for the neighbor.

46

1 Mr. Carnicelli: Correct.

2

3 Mr. Robinson: So if it's a slide that's too late. Is we wanna get it 30 days prior to that.

4

5 Mr. Carnicelli: Then include it in the notification.

6

7 Mr. Robinson: Exactly.

8

9 Mr. Carnicelli: Which is fine too.

10

11 Mr. Robinson: Exactly.

12

13 Mr. Carnicelli: But I also think that there's...but if somebody didn't write a note, somebody didn't
14 send an email, somebody didn't call the planner and they just showed up based on this, I think
15 that it would be really beneficial for them. You know 'cause it might also be somebody, 'cause
16 we're talking about specifically this, but I'm also just kind of since we're in the topic, you know
17 what if it's an SMA I just remembered like people showing up for the Makena property and they
18 were passionate about the Makena property but they didn't realize we weren't here to approve
19 the Makena property we were here to discuss an SMA Permit.

20

21 Mr. Robinson: Right.

22

23 Mr. Carnicelli: And they were talking about all these things that weren't in SMA Permit and we
24 had a full day's worth of testimony of which a lot wasn't relevant. So that's what I'm just saying
25 is I'm tying something that's not part of what we're talking about in this topic today, but I just
26 think that it kinda layers to this.

27

28 Mr. Robinson: And going back to that it's all these categories are inside online before we meet,
29 right? Everything we see should be online and people are able to get it, but it's the notice of the
30 30 days prior before this comes and what they...(inaudible)...do about it. And what I'd like to
31 offer up is at this time if a commissioner or even a few commissioners would like to do a sample
32 notice. You know instead of us all trying to decide and try to spend our time doing it that way if
33 a few commissioners would like to make a little committee and then you know, and then you
34 guys could kind of work together to do that and then we could get a paper form and maybe you
35 guys could talk to the Planning Department and kind of get to where we can kind of skip ahead.
36 You know, because I think, I think we're all on the same page where, where two things, we want
37 to speed up time and not waste testimony but also help to notify the neighbors that this is the
38 criteria for what we'll be addressing and it behooves you to if you object to it to do it or for the
39 applicant to say these are what your neighbors might do. So when your notice out maybe add
40 your letter that you're supporting these other areas that the criteria will be doing too. Do we
41 have volunteers? We have Commissioner La Costa, Commissioner Pali. I think that's good. I
42 think two's plenty, guys.

43

44 Kahu Hill: ...(inaudible)...

45

46 Mr. Robinson: How many can we have at the most a sub? Okay so you'll be on another one.

1
2 Kahu Hill: How long do we sign up for this?

3
4 Mr. Robinson: And guys I appreciate you guys doing that 'cause I think it's gonna make things
5 easier in the future and I think notification is gonna, is gonna help people understand instead of
6 them passionately upset about something they didn't realize it was something about, okay.
7 Commissioners are we good? Can we table this and let the subcommittee take over? Okay,
8 thank you. We'll take a quick recess. Kahu we're gonna let you get your bearings together with
9 the Director and information and we'll continue that workshop in a second. Thank you.

10
11 A recess was called at 10:07 a.m., and the meeting was reconvened at 10:13 a.m.

12
13 Mr. Robinson: Maui Planning Commission back in session. Next item is Item D. Director.

14
15
16 **D. Proposed new standard condition for all Bed and Breakfast Home and Short-Term
17 Rental Home permits:**

18
19 ***The applicant shall ensure that all guests are educated about Maui Nui's history
20 and culture, and about potential detrimental impacts to natural and cultural
21 resources, particularly to the coastal environment and nearshore waters.
22 Evidence of such an education program shall be provided to the Planning
23 Department prior to operation.***

24
25 **The Commission may vote to have this condition added to all Bed and Breakfast
26 Home and Short-Term Rental Home permits.**

27
28 Ms. McLean: Thank you Chair. This is a proposed new standard condition for all Bed and
29 Breakfast Home and Short-Term Rental Home Permits. This comes from as was referenced
30 earlier a application that came before you quite a few months ago and the Commission at that
31 time voted to add a condition relating to educating guests about our history and culture and I
32 worked with Commissioner Kahu Hill on a proposed condition. If the Commission today
33 chooses to approve this condition then the Staff would be adding that to applications that come
34 before you for consideration in the future.

35
36 I'll just read it into the record. The applicant shall ensure that all guests are educated about
37 Maui Nui's history and culture, and about potential detrimental impacts to natural and cultural
38 resources, particularly to the coastal environment and nearshore waters. Evidence of such an
39 education program shall be provided to the Planning Department prior to operation.

40
41 Mr. Robinson: Thank you. There is no presentation but Kahu Hill if you'd like to speak to the
42 condition?

43
44 Kahu Hill: Mahalo and aloha kakahiaka Chair.

45
46 Mr. Robinson: Aloha.

1
2 Kahu Hill: Yeah, mahalo Michele for doing this with me and the wording and want to
3 acknowledge Lindsey and his time and being here to help with that and how it could go and
4 it's...reflecting this morning on my kupuna and Papa David Kaalakea and that all knowledge is
5 not learned in just one school as we move forward that if you accept this condition today that
6 education and sharing of the culture and ahupuaas and the mokus and the different places
7 whether it's by the ocean and upcountry or wherever it is on the sides of the island and Maui Nui
8 is something that I see wouldn't come from one person. It would open up to kupuna. It would
9 open it up for everyone to know and learn not just in the permits but from there that we also do
10 something for this culture. So if this needs to be reworded or if any...if this is not pono for
11 anyone to me, to us as we worked on it many months, this is where we are. So I just want to
12 say mahalo and as we move forward always remember Hawaii and our kupuna and our aina.

13
14 Mr. Robinson: Thank you. At this time we're gonna open this up for public testimony. I have,
15 and even though if you didn't sign up I'll still call and have opportunity for people to speak. First
16 I have is it Heather Harde? Aloha. Aloha, please introduce yourself you have three minutes.

17
18 Ms. Heather Harde: Sure aloha. Aloha Commissioners and Chairperson. Thank you for your
19 time this morning. My name is Heather Harde. I'm a resident of Lahaina and my boyfriend,
20 Pavel Hladis and I have the bed and breakfast license from 2018/0003 which has this extra
21 condition to it. So I just shared materials that we put together following our condition. There's a
22 handmade version that you'll see that's what we put together and submitted to the Planning
23 Department and that I shared with Ekolu Lindsey. And then there's a second version, a much
24 more professional, beautiful version, a two-sheet that has wonderful graphics on it that Ekolu
25 developed with Alana Yurkanin from the Nature Conservancy. With his improvements I think
26 the front sheet talks about general coral reef safety that we'd like all visitors of Maui to be aware
27 of. And then the back sheet has specific recommendations with respect to the three closest
28 beaches to our bed and breakfast one of which is Polanui which is Ekolu's with family maintains
29 with special buoys that we highlight for our visitors marks a safe sand channel for entry and exit
30 of that beach around the coral reef. I don't have a big presentation but I just wanted to be here
31 and accessible to answer questions about our process if it's helpful.

32
33 Mr. Robinson: Aloha Heather. Thank you. Commissioners this is nice, this is what we're
34 talking about, you know. Good job. Do we have any questions for Heather?
35 Commissioner La Costa.

36
37 Ms. La Costa: I don't have a question. I would just like to say mahalo nui. You have really
38 taken responsibility. If everyone follows this and our reefs will be a lot healthier so mahalo.

39
40 Mr. Robinson: Is this trademarked or can people copy this and use this?

41
42 Ms. Harde: We would...I think Ekolu and I would welcome that it be...you know that it be
43 heavily copied and distributed and continued to be improved on.

44
45 Mr. Robinson: Fantastic. Kahu Hill.

46

1 Kahu Hill: Just wanted to confirm that you support this condition?
2

3 Ms. Harde: We do. Yeah, we're happy to enforce it and honestly guests are happy to be
4 educated as well in my opinion.
5

6 Kahu Hill: And one last thing. Have you had any thoughts about visual of any kind presentation
7 that could be inside of a vacation rental. Not that it would be on you but to open it up that
8 people could also see something that's recorded.
9

10 Ms. Harde: Yeah, I think over time maybe there's still some kind of video or something that we
11 might be able to develop that puts these messages into nice sound bites for people. I think it is
12 as folks were saying a little earlier it's always challenging to get people to read on vacation. So
13 I think what Ekolu did in terms of trying to make things more graphical and just break things into
14 you know small sentences is a good way to digest it. But I think continuing to improve on other
15 visuals would be an improvement that could be applied across many properties.
16

17 Kahu Hill: Mahalo. Mahalo for your time and support.
18

19 Mr. Robinson: Anyone else? Thank you so much. So Kahu you're talking about maybe like
20 with the hotels they have their looping channel and concierge and something like that that they
21 could...the county or something could have something that would have a two-minute tutorial on
22 it?
23

24 Kahu Hill: Absolutely. I believe that documenting whether it's NOAA or any authorities not only
25 the ocean but in different ahupuaas, whoever would come forward that could share...so share
26 about the area that they're in, this whole area not just the hotel but a entire ahupuaa areas such
27 that they could see how precious everything is here and this, we don't know if they're gonna
28 read it so something like this is really important but I do see that having a beginning here and
29 then hopefully it would bring out the kupuna and the halaus and bring out the ones that are
30 carrying this on which is also oral and the traditions and teach about those areas so that
31 everyone can have this and it can evolve into the future where people can come forward and
32 share their mana`o and share their thoughts.
33

34 Mr. Robinson: Thank you.
35

36 Kahu Hill: Yes, mahalo.
37

38 Mr. Robinson: Would anyone else here like to testify at this time? Aloha please introduce
39 yourself, you have three minutes.
40

41 Mr. Ekolu Lindsey: Aloha, I'm Ekolu Lindsey.
42

43 Mr. Robinson: Aloha.
44

45 Mr. Lindsey: Thank you for the opportunity to speak and I want to thank this Commission for
46 recognizing the challenges that we're faced with with our short-term rentals and the many

1 challenges with visitors overburdening a lot of the resources that we have. And in developing
2 this I wanted to convey to you that it was difficult. I was hoping that the applicant could just take
3 care of it and it magically appears to a level that is inspirational for others. But I wanted to set
4 this high.

5
6 So she did the first draft and I wanted to go higher than that and I had a hard time doing it
7 because it was really difficult to come up with, without changing the messages that she had. So
8 thank goodness for the Nature Conservancy and Emily Fielding and Alana for stepping up and
9 telling me that they have a budget to support some of these messages. So on one side you'll
10 see...and for me when we were developing it, it needed to be quick read and you needed to
11 have links for those who wanted to read more and it needed to be...have pictures to inspire
12 people to read it. And so when we can up with this one side you got more coral reef safety with
13 links and where you can go for more information. We covered sunscreens, how to...you know
14 it's about health and safety and not just the environment but yourself. So how they can enjoy
15 their vacation more and leave a small footprint.

16
17 And on the other side it was some of her messages more directly responsible for that area. It is
18 our hope that this can go into every single home, every single vacation rental, every single B&B
19 and everybody else around. So what we're working on now is to generalize it more that it can
20 be adopted into other agencies if you will or whoever wants to use it because the protection of
21 the reefs and not just the reef side it's the terrestrial side too yeah, so this one's specific for the
22 ocean safety. But I think we need to keep everybody safe. Some people just don't understand
23 the simple things like currents or when rain get big water coming down, stay away from these
24 places. So we're just working on the ocean side for now. I think this is a good start and I think
25 the applicant did a great job and I think she has, they have got that checkbox from my
26 perspective.

27
28 The implementation part I'm not sure how that's gonna work for that and how that information is
29 going to get out to the visitors that are coming to her place. Hoping it's in the applicant, the
30 welcome ...(inaudible)...when they show up. The links were an important part of this. So I think
31 that's all I have to say. Thank you very much.

32
33 Mr. Robinson: Mahalo. Commissioner Carnicelli.

34
35 Mr. Carnicelli: Thank you for being here Ekolu and kinda being the spark of this whole entire
36 thing. And also thank you for your work 'cause we kinda knew that we putting this condition on
37 them that was gonna create work for you. So thank you for stepping up and being a part of this.
38 The question I guess I have is because we talked about it that day how okay, this isn't gonna
39 work in Kihei 'cause this is Lahaina. This isn't going to work in Kaanapali, you know, so does
40 the Nature Conservancy have the resources to be able to you know suddenly go, okay this is
41 Lahaina, this is Kaanapali, this is Kapalua, this is North Kihei, middle Kihei, South Kihei, you
42 know like do they the resources to come with something that is say is more specific or should
43 we pull back and try to go more general to cover everything and then sorta try to get more
44 specific as we go?

45

1 Mr. Lindsey: I can't speak to the resources that are available for them specifically but they will
2 support community groups like myself Polanuihui who will step up and this is our backyard, this
3 is an important part of who we are and this is what we need to protect. We talked about halaus
4 and other organizations that will step up and protect their areas. With this being a condition, if
5 the community groups does step out and say we need to protect this, the Nature Conservancy
6 will support any community based movement towards protecting nearshore ecosystems and
7 management. That has proven, they're doing it time and time again. I just got back from
8 Molokai for our network meeting that we have six communities in and some of the things we're
9 talking about right now we've already discussed. We want to get this out at a higher level.

10
11 So like I say we're working on a generic one right now that would be applicable to all of West
12 Maui, and that's something I'd be more than happy to take on as far as finding the other groups
13 form South Maui, Central, and East Maui. East Maui's got a huge, huge, huge group but many
14 other challenges that they're faced with with the one million visitors they're getting out there a
15 year and the access issues that they got. More than happy to work with that. We're trying to
16 galvanize the East Maui community to really work with us and the organizations the Nature
17 Conservancy supports to protect their kuleana out there in a way that visitors can still enjoy
18 themselves. So thank you for that. If community groups do step up the Nature Conservancy
19 will support them.

20
21 Mr. Robinson: Commissioner? Commissioner Kahu Hill.

22
23 Kahu Hill: In the beginning when you were here and this began really looking at this a really
24 good job, I just wanted to acknowledge all your heart in here. I had envisioned like you, other
25 kupuna and others that are know the areas actually being documented and reduce that area
26 and not only what not to do but just to know where you are, where...(inaudible)...this ahupuaa,
27 this moku, this area, this pond, and you know Kalepolepo, wherever it is to be documented the
28 kupuna and those here and I wanted to see where your thoughts are that. Not that we're
29 looking who's all going to create the education part of it, but does that sound something that
30 could be for all people or to actually find those people that could step up and share their
31 mana`o?

32
33 Mr. Lindsey: Sure I think that's possible. I think the kupuna, the generation above me they're
34 getting on, they're moving on to different levels so it's coming down to my generation to step up
35 to the plate, harvest that or ask what's appropriate to share because we don't want to share all
36 the secrets, we want to just maintain the integrity of certain spots, where you know get a what to
37 share and what to hold back. So I think it's definitely something that can be done. The right
38 people gotta step up though. If I gotta go shake the bush I can shake 'em.

39
40 Kahu Hill: We can all shake it together. A little hula. Mahalo.

41
42 Mr. Robinson: Thank you. Thank you for your testimony.

43
44 Mr. Lindsey: Mahalo.

45
46 Ms. Francine Aaronson: Aloha.

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Mr. Robinson: Aloha.

Ms. Aarona: You all know me as Aunty Mopsey, Protect Paia, but Francine Aarona is my legal name and I came here to familiarize myself with the workshops and to find my amazement to different things, but not knowing that I could testify on what is being presented as far as that permits and the applications. And I give you a prime example, in the Paia-Haiku it's a way of life now –

Mr. Robinson: So Aunty this is, yeah this item is not about the permit process but you will be able to do that when we bring it up in another time for the form. This is about the workshop for the ocean—

Ms. Aarona: The ocean.

Mr. Robinson: The ocean and –

Ms. Aarona: Yes.

Mr. Robinson: I apologize, but we gonna—

Ms. Aarona: No, no, no, and education is part of it sitting here and listening and shoreline yes, we need to be more aware of what is presented to us, what is allowed and we cannot just say yes because the realtors feel that the vacation rentals are great on the shoreline and that it should be for them.

We totally against that in Paia-Haiku. Sometimes our elders don't understand the process and they've tapped on me knocking at my door how do you do this, how do you do that. But it's a big concern that we're being invaded. It's uprooting our culture, our way of life as far as how we go about and so the education that you provide for us is greatly needed so that we can all understand the process and so that we can appear here and know what we're saying to you that we're in opposition to all of the facts. Mahalo.

Mr. Robinson: Thank you.

Ms. Pali: Question.

Mr. Robinson: Wait Mopsey—

Ms. Pali: Hi, Aunty Mopsey.

Mr. Robinson: No, it's just a comment it's not a—

Ms. Pali: I would like to comment.

Mr. Robinson: You can, after, but thank you.

1
2 Ms. Aaron: Okay.

3
4 Ms. Pali: ...(inaudible)...

5
6 Mr. Robinson: I know, I'll let her comment after, otherwise we're gonna...please introduce
7 yourself you have three minutes.

8
9 Mr. Tom Croly: Aloha Chair, aloha Commission. Tom Croly. I want to just share some mana`o
10 from two perspectives. One as a bed and breakfast operator for the last 17 years and how I do
11 this with my guests. I greet all my guests when they come. I show them around my property. I
12 point out the islands that they can see. I give them a little bit of insight to those islands. I then
13 ask the guests what are you planning to do when you're here and if they say I want to go
14 snorkeling then I try to guide them to places that I think would be appropriate for them and also
15 tell them places that shouldn't go, you know equally important both for their own safety and for
16 you know, just keeping things good. So I'll say don't go down to La Perouse Bay to snorkel. Go
17 down to La Perouse Bay and take pictures but don't go in the water there because it's not for
18 you. You know you're gonna get injured down there. Go to Ulua Beach and snorkel because
19 you can stand in the sand and you could stick your face in the water and you can see fish and
20 that's the experience that you're looking for and you're gonna be safe if you do that. But don't
21 do it if the waves are at shoulder height that's not the day to do it. These are things that visitors
22 don't know and I enjoy bringing that perspective to them as an individual bed and breakfast
23 operator.

24
25 I can't see where it could be regulated that everyone do what I do necessarily and that's where I
26 shift the perspectives to I help people make application and help people become aware of what
27 the rules are, how they have to operate, how they make application and so forth and I wonder
28 like how do we distill this down to something where we say you must do this. For example, you
29 must display this, this particular thing in your rooms. Okay. And how does the Planning
30 Department determine that they have met that criteria. That's my only concern here. I've
31 always supported what we're talking about here educating the visitors and I do it on a daily
32 basis with my guests, but from the perspective of a regulatory thing how do we ensure that the
33 message we're asking for get out is properly presented and that those materials are there that's
34 the bigger challenge for the Department and/or for this Commission to determine in you know
35 what, how we would enforce this condition. Thank you.

36
37 Mr. Robinson: Thank you. Anybody else would like to testify please? Aloha please introduce
38 yourself, you have three minutes.

39
40 Ms. Jen Russo: Aloha Commission. My name is Jen Russo. I am testifying on behalf of the
41 Maui Rental...Vacation Rental Association.

42
43 Mr. Robinson: Aloha.

44
45 Ms. Russo: And I just wanted to say that we support this condition in any way that we can.
46 Thank you.

1
2 Mr. Robinson: Would anyone else like to testify on this item? Seeing none, public testimony is
3 now closed. Did anybody have a comment...first everybody had a chance to read the condition,
4 anybody would like to have any comment or discussion on the...Commissioner Carnicelli...on
5 the condition, that's the word.

6
7 Mr. Carnicelli: Here's my...you know I don't think that any of us are opposed to what this says
8 in the intent. My question is directed at the guy with the ponytail at the end over here, is, you
9 know, this ponytail guy—

10
11 Mr. Robinson: Yeah, there's a couple.

12
13 Mr. Carnicelli: Not that ponytail guy. It's this ponytail guy is you know have you had a chance
14 to review this and as far as, you know, again within our criteria and how the law is written is this
15 something you know that we can do? I mean, we all want to do this, but can we?

16
17 Mr. Robinson: Mr. Corporation Counsel.

18
19 Mr. Galazin: Thank you Chair. So far when this has been brought up and you've asked
20 applicants about this condition they've all agreed to abide by this. Is it something that
21 specifically is called out within the County Code? No. Is it something that would mitigate the
22 potential impacts that have been specifically identified in certain applications? Yes. Is it going
23 to be across the board 100 percent completely applicable for every application? No. What you,
24 what you hope to do is get something in place that's going to be as useful as possible for both
25 the applicants and their guests. You may have situations where it might not be appropriate for a
26 particular application. And in that case if an applicant requests to not have that condition
27 applied you would have to evaluate that and understand their reasoning why and then
28 individually determine if it's something that you could require in that condition, in that situation
29 even if they weren't amenable to it, but I think what you've heard from the public and what
30 you've heard from the applicants who come before you everybody seems pretty much on board
31 with those concepts. I don't think there's anybody who is working in the visitor industry who
32 doesn't want to educate their guests and it's something that I think you can certainly provide and
33 have as a standard that you're gonna ask each applicant to agree to. And if they come to this
34 voluntarily we don't need to worry about that. There may be a situation down the road where
35 somebody does not want to agree to that and we would have to look at that specifically but in a
36 vacuum you can't really say, yes, it's completely enforceable or yes, you absolutely can't do this
37 and you're going down the wrong path. It's certainly appropriate in a lot of circumstances but I
38 think more than that it's welcomed and even more...(inaudible)...

39
40 Mr. Robinson: Commissioner Carnicelli.

41
42 Mr. Carnicelli: I forgot what my follow up question was.

43
44 Mr. Robinson: That was, that was what he was trying to do.

45
46 Mr. Carnicelli: I think so. I think so.

1
2 Mr. Robinson: You know when we look at this and like what the Director was saying that all
3 tourist travel so having them stay one place and seeing this picture, but they're gonna go to all
4 the other beaches, you know we have trail maps at almost every trail. Right, we have the
5 placards showing the type of birds and different things and hopefully DLNR or something could
6 take this and you know attach it to the lifeguard stand or something that at least there's
7 information at every beach there and once a tourist knows that they can walk to a certain place
8 and always look for safe places to swim, you know they're pretty cagey nowadays and they look
9 for information online. I'm gonna go this beach and then one of these things all of a sudden
10 popping up as a disclaimer when you go this beach here's where to swim, not to swim. So I
11 think this is a great start that we did and I think that it can grow very rapidly and not too hard.
12 Commissioner Carnicelli.

13
14 Mr. Carnicelli: We need app. I guess, and I don't know if this is for the Director or for
15 Corporation Counsel but is just from what the testifiers said evidence of such an education
16 program shall be provided. So what if we I guess done and what are we going to do, you know
17 it just seems a little bit like is I guess how do we reconcile that verbiage?

18
19 Ms. McLean: I don't...I don't know that it needs to be reconciled. Prior to operating we want to
20 see something like this.

21
22 Mr. Carnicelli: Okay.

23
24 Ms. McLean: And if they give us you know two sentences on a sheet of page that says don't
25 walk on the coral that's not gonna be adequate. So that does put the judgment into the hands
26 of the planner to see what the applicant...because as Kahu said it's not for us to tell them you
27 have to say these words. It's...could be geared toward the location of their home or it could be
28 broad for all different kinds of areas not just the ocean but also hiking trails and other areas. So
29 it's up to the applicant to spell that out but we need to see that okay, this hits the main points
30 that it needs to and if it's not adequate we'll tell them to spend more time on it before they
31 operate.

32
33 Mr. Robinson: So what I'm hearing is these aren't Maui County forms, these are forms that
34 Maui County deems appropriate for the criteria of that condition. And so a planner might say
35 well, other people have used this you guys might want to look at this website and look at these
36 forms.

37
38 Ms. McLean: Correct.

39
40 Mr. Robinson: Commissioner Kahu Hill.

41
42 Kahu Hill: Mahalo. I think it's a beautiful time for us to be aware, to remember and learn about
43 Hawaii and about Maui Nui and that some of it not's just what not to do again but sharing about
44 the island, sharing about the history, sharing about the culture. And so just in that right now it's
45 not even about how in my view, how they would be educated that's gonna evolve and those, we

1 can invite those to come out to share that so it's not just in one place so that we can open it up
2 to education if that makes sense.

3

4 Mr. Robinson: Okay, so if not, I think we're ready to vote on the condition. Director

5

6 Ms. McLean: The Commission could move to—

7

8 Mr. Robinson: Do we need a motion or is this already on the agenda we don't—

9

10 Ms. McLean: It could be by —

11

12 Mr. Robinson: Would you like to make a motion Kahu Hill?

13

14 Kahu Hill: Sure. I would like to make a motion to accept the Condition D today. That's it.

15

16 Mr. Robinson: Do we have a second? Second by Commissioner La Costa. Director...do we
17 have discussion on the motion? Aloha Commissioner Pali.

18

19 Ms. Pali: I want to discuss this topic since there was a testimony that I just wanna to clear the
20 record because I have great respect for Aunty Mopsey but I think it's important when we
21 determine to come up and do testimony and testify on a people group and how they think, I
22 think it's advantageous and beneficial for the person testifying to stick with testifying on your
23 own behalf.

24

25 I think it's part of the culture where we kinda deem that we in our minds think that his people
26 group believe this and the reality is there's no connection with the people group and you put
27 yourself in a position where you're stating something that's not factual. And to the other item
28 where our Corp. Counsel went up and talked about testimony and how important it is and how
29 to keep it factual I think it benefits everybody, the testifiers understanding what factual means
30 and it helps us commissioners determine what's factual and what's not. And I think working
31 together what happens as a commissioner if we start hearing a testimony and then we start
32 hearing testimony that aren't factual it hurts the testifier because then it starts to lose credit.
33 The testifier loses credit on other things they say because we already have identified things that
34 are not factual and it just doesn't help the case.

35

36 And so the comment about realtors want vacation rentals that's not factual. I sit on their board.
37 I met the president coming in, president-elect Mike Trotto. He was on the committee who was
38 the core group who put permitting and process for TVRs and he pulled me aside and shared
39 with me that they put the 500-foot radius to protect neighborhoods from being overwhelmed with
40 vacation rentals. And so I appreciated him sharing that with me. He's not for vacation rentals.
41 He's for neighborhoods staying local. So when I hear non-factual comments on a people group
42 where that person who is testifying has no association, it's not, it's not a good feeling and
43 respect you, I respect what you're doing. So to help you be a better testifier and others we
44 should really stick factual on your personal experience and your feelings and not try to testify on
45 what you think people think because then we start getting lost and we go...we start to go down a
46 trail and we can't come back.

1
2 In regards to this particular topic ocean safety, I'm so grateful that we've come together. I
3 support this 100 percent and I appreciate that we're able to do positive things like this on the
4 Planning Commission. Thank you.

5
6 Mr. Robinson: Director.

7
8 Ms. McLean: Thank you Chair. The motion on the floor is to approve the proposed additional
9 condition.

10
11 Mr. Robinson: All those in favor please raise your right hand. Passes,

12
13 **It was moved by Kahu Hill, seconded by Ms. La Costa, then**

14
15 **VOTED: To Approve the Proposed Condition as a Standard Condition to All**
16 **Bed and Breakfast Home and Short-Term Rental Home Permits.**

17
18 **(Assenting – A. Hill, P D. La Costa, L. Carnicelli, K. Pali, L. Hudson,**
19 **C. Tackett, S. Castro)**

20 **(Excused – T. Gomes)**

21
22
23 Mr. Robinson: At this time Commission, I'm gonna to apologize I'm gonna resign as
24 Chairperson. I can no longer do this job effectively and I failed you guys and take a five-minute
25 recess.

26
27 A recess was called at 10:45 a.m., and the meeting was reconvened at 10:55 a.m.

28
29 ***Chair Robinson resigned as Chair and Vice-Chair Hudson chaired the remainder of the***
30 ***meeting.***

31
32 Mr. Hudson: Maui Planning Commission is back in session. Vice-Chair Larry will be running it
33 for the rest of the meeting. The next item we have, Director.

34
35 Ms. McLean: Thank you Chair. The next item we have is a workshop on the Planning
36 Department's proposed amendments to the Maui Planning Commission's Special Management
37 Area Rules and Shoreline Area Rules, and we have Jim Buika who is the...one of the heads of
38 our shoreline planning team. And today we wanted to focus on the Emergency Rules. So
39 under the SMA Rules the provisions for Emergency Permitting. And Jim has a short slide
40 presentation. We also have copies of that excerpt of the rules if you wanted to get into that
41 detail depending on how the time goes but we'll start off with Jim going through some slides.

42
43
44 **E. Workshop on the Planning Department's proposed amendments to the Maui**
45 **Planning Commission's Special Management Area Rules and Shoreline Area**
46 **Rules conducted by Planning Department Staff. (M. McLean)**

47

1 Mr. Jim Buika: Aloha Vice-Chair Hudson, Director, Commissioners. My name is Jim Buika,
2 Coastal Resource Planner with the Planning Department and what I will be addressing is the
3 slide set, short slide set and you have a handout in front of you and I will just be addressing part
4 of the emergency...proposed amendments to the Emergency Rules for the Special
5 Management Area Rules for the Maui Planning Commission. So again, this is your authority
6 and again that is why we are here just to discuss proposed amendments and as Director said
7 we have handouts of the portions of it but...of the actual rules and I will...I have some of the
8 actual proposed language in some of the slides but the idea behind this is just to provide a
9 framework for why we're changing the rules, the importance of changing the rules and to
10 give...and to gain your concurrence on this direction because it's very important.

11
12 I have been with the Planning Department working on the shoreline for over a decade and even
13 though I don't come to you often with major big developments on the shoreline, most of my work
14 is very busy behind the scenes dealing with coastal erosion and emergencies along the
15 shoreline. It consumes all of my time and others in our group also and these are not necessarily
16 large discretionary permits that come to you. We do report out on them emergencies and,
17 and...authorizing emergency permits which actually require regular permitting after the
18 emergency is authorized. But the reason it's reported to the commissioners after the
19 emergency is authorized by the Director is because it's an emergency. We can't wait for a
20 planning commission meeting to decide whether or not to sandbag a threatened building or
21 there may be a sinkhole underneath the foundation. We need to make a...we have to drop
22 everything, deal with it, I have to get information to the Director and we have rules that authorize
23 us to do that, and then after-the-fact we inform you.

24
25 So the idea here, we have been working for the last several years on many major changes to
26 the SMA Rules and the Shoreline Rules but there are a lot of them and so by taking this little
27 bite size chunk today it's easier I think for all of you obviously to absorb.

28
29 So again, I do have some of the exact language and that's with the Vice-Chair's permission I'll
30 move forward with the slides and I'll tag team with the Director and then turn it back over to you
31 for questions and discussion.

32
33 Mr. Hudson: Please proceed.

34
35 Mr. Buika: Thank you. So just an outline of the key points. The section of the...this is the SMA
36 Rules it's not the Shoreline Rules but your SMA Rules it's 12-202-16 and it's titled Special
37 Management Area Emergency Permit Procedures and I have four short little sections why the
38 proposed rules changes, second or I just have two quick examples of common
39 emergency...common emergencies we could give you a couple dozen but we're not gonna do
40 that here today. We can share more later on in our training sessions. Third is to go over these
41 proposed rules and also within the proposed rules this proposed process. We want to change
42 the process within our rules so that's the important thing I want to emphasize today is what we
43 have the applicants do as conditions of these emergency permits. After all it's an emergency
44 we should deal with the emergency and find a solution. What we've been doing for ten years on
45 the shoreline is we have an emergency, we placate the emergency, there's nothing in our rules
46 so it's me and others who have to deal with applicants forever because we don't have a process

1 in our rules for...well, the rules tell...tell you, you have to do this so that's after a decade's worth
2 of experience that's where we're going. If you ask for an emergency permit you are committed
3 to solving your emergency and coming up with a long-term coastal erosion solution. So that's
4 the direction that's embedded in these new rules. I just have three slides on that at the end.

5
6 So why the rule changes? Current rules only address the immediate emergency and do not
7 encourage or provide guidance to address the situation for the long-term solution. So our
8 current rules are reactive and they're not being proactive so we want to change them to being
9 more proactive and to the second as I mentioned to clarify a process for addressing coastal
10 erosion. We don't do it now we're in deep trouble. So why the proposed rules again? What we
11 have now temporary property protection measures for coastal erosion as I stated are they're not
12 becoming permanent but it seems like they're becoming permanent. I have like six or seven
13 ways...again, in this current cycle it creates an endless work for the staff, me, myself, and I and
14 others. Property owners have become complacent. We authorize sandbags or some protection
15 in front of a property that has waves lapping at its seawall or shore. They say okay, we're
16 protected now we don't have to do anything else. Right, they get that and then they just
17 want...they don't want to hear from the Planning Department any more. They just want their
18 sandbags.

19
20 Temporary measures are costly. So even though they're temporary for 180 days and they're
21 required to take them out, they're not willing to take them out. Some of these sandbags, these
22 big sandbags cost \$3,000 a pop and you're putting in a 180 sandbags. The bags cost \$300 to
23 \$800 a piece, get the sand, all the labor it's a half million dollars. They don't want to take it out
24 in 180 days obviously. It's protection. It cost them a lot of money. It's costly prohibitive what
25 we're doing now. So temporary measures are costly so owners are unwilling to remove them
26 even when the beaches recover and we have perfect examples of that, the resistance. We
27 always get resistance for complying with our rules.

28
29 Temporary property protection measures four through six, a "permanent" solution such as
30 beach nourishment, I shouldn't say seawall, some other option because seawalls are illegal, but
31 is costly to permit and to execute. Permitting is lengthy. It often requires an environmental
32 document such as an Environmental Assessment or an EIS. Besides being lengthy and costly,
33 the permitting besides the EIS or EA that goes with it, the permitting is very complex. It involves
34 the County, it involves the State, it involves Federal agencies. So it's a multi-jurisdictional
35 shoreline permit process that is extremely convoluted, extremely complex. It takes years and
36 can...four or five years to get through this process and it costs, potentially over a million dollars
37 just for the EIS and all the permitting to find a solution. So there are these roadblocks, barriers,
38 cost and time issues that are involved. So that's kind of the basis from changing the rules.

39
40 So just two examples of a common emergency here. You can see the nice seashore,
41 Paspalum lawn in front of Kahana Bay, Valley Isle Resort was chewed up by waves, an episodic
42 event that happened and then we put out sandbags out front. Right, so the end those are brand
43 new sandbags you can tell, I can tell they're brand new, nice, white, shiny sandbags out there.
44 And what happened is at the end there's an end effect, right? So you put sandbags down, the
45 water goes around the end and so it in...within in weeks of protecting this project it went right

1 around behind the end of the sandbags so we have another emergency. So it's this domino
2 effect that's cascading end effect on these property that happened here.

3
4 So again another reason this despite the temporary property protection impacts often continue
5 in terms of erosional end effects that may cause further shoreline degradation, ecosystem
6 degradation caused by the sandbag hardening of the shoreline under an emergency permit. So
7 we're just complicating the situation, we're not solving it. So what we have been forced to do is
8 temporary sandbags are extended by the planner after 180 days. The State often gives them
9 three years to stay in place and so they stay in place for years until we get into this. Finally get
10 the applicant to do an Environmental Impact Statement or an Environmental Assessment and to
11 then to go down the line of completing permits to find some other solution.

12
13 So these are the barriers again, and what I'll do is I'm going to just move down the coastline and
14 look at the end effect from this area right here. So I'm gonna move from Valley Isle down to the
15 Sands of Kahana. So that circle there is the exact same location we were looking at where the
16 end effect was. So this is the...the first picture with the sand I didn't show you the big building
17 behind it but this is the only other example I have but that end effect after a storm required these
18 sandbags in the foreground at the Sands of Kahana. So we moved down the line. So this
19 example of...just the question you know when I look at this I say, you know, how and why does
20 coastal erosion occur to result in this threatened coastal zone? You know I mean, look at the
21 situation we're in right here. It's pretty dire. And so part of it has to do with our permit process
22 here as I already explained. So here we have a 12-story condo built in the 70's that had a
23 beach out front. One storm or a couple storms with cascading effects of this domino effect has
24 created this situation in Kahana Bay.

25
26 And so how is this occurring kind of the how and why? Asking how is it occurring and why is it
27 occurring just so you understand. So to quote one of my favorite authors Ernest Hemmingway,
28 how did you go bankrupt Bill asked? Two ways, Mike said, fragilely and suddenly. So that's
29 kind of the situation on the shoreline, right is...I'll go through this. So that's kind of the how it
30 happened. So the why, kinda whereas is, whereas is beach...so again it's multi-jurisdictional,
31 right so beaches and shorelines are public trust resources, right. Beaches and shorelines are
32 managed by the State. They're not managed by the County. So the beach right in front there is
33 managed by the State, by people in Oahu. Private owners are unable to intervene on public
34 lands, right. Owners observe gradual coastal erosion over the years. I'm losing my beach,
35 right, but I can't do anything about it. It's not my land. It's the public trust resource. It's the
36 State's kuleana, responsibility, but managing shorelines are not their responsibility, right? Until
37 suddenly a large episodic storm comes along and causes severe erosion fronting their parcel.
38 Then the erosion problem suddenly becomes their problem and owners must take the situation
39 into their own hands. So that's this conundrum that we're dealing with. And then so, sandbags
40 go out in front of Valley Isle and then what happens? It has a domino effect, the hardened
41 shoreline at Valley Isle moves down the line and we require emergency sandbags out front of
42 Sands of Kahana. Another impact is that the sand that was up at the top of these sandbags in
43 the foreground because of the sandbags the entire beach is deflated, seriously deflated also.
44 So there are you know environmental impact. So then this is then when we put the sandbags
45 out here our reactive shoreline planning process kicks in for the next parcel here.

1 So getting to the rules that's a little back down here. So the proposed rules we've been working
2 on them for quite a while. We vetted them with these rules that I'll share with you, we vetted
3 them with our kind of our counterpart agency Department of Land and Natural Resources,
4 Office of Conservation, Coastal Land and also the Office of Planning, got input from them. It
5 augments our existing rules and it primarily establishes a process to move from temporary
6 protection to a more permanent solution. And they provide an applicant with a knowledge of a
7 planned path forward to alleviate the emergency situation. So embedded right in our rules. And
8 incorporating this process into our rules provides a stronger framework for requiring a solution
9 beyond temporary structures. It provides transparency and consistency in our approach and it
10 takes the burden off of the Planning Department to push these people to find a solution.

11
12 So here are the key proposed changes and again, I'm just taking part of it. We have other
13 pieces in the emergency rules but this is good to focus on here. So for an emergency...so
14 under 202-16(h) and (i) for an emergency permit request that is the result of or that otherwise
15 involves coastal erosion still our Emergency SM3 Emergency Permit is limited to a 180 days.
16 And following the emergency permit issuance the applicant is provided with a 90-permit
17 compliance requirement. So within 90 days they gotta come back with information to the
18 Planning Department. This proposed process provides the applicant with early education
19 process about the path forward. Okay, it's...rather than coming back in 180 days say we need
20 an extension. We're pushing the envelope so that there's an educational process for a path
21 forward within three months after this happens. Did I skip one? No, okay.

22
23 So these are the change to the blue background here, so these are...these are the rules and
24 the proposed process embedded in the rules. So any such approval for an emergency permit in
25 addition to any project specific conditions shall include the following conditions. One, within
26 90 days the applicant shall provide the Department a description of potential long-term
27 alternatives designed to alleviate the emergency situation which shall include: a) relocation of
28 the threatened structures as an alternative; beach restoration as an alternative, and c) a
29 description of how each of these alternatives and any other alternatives complies with our
30 Shorelines Rules, Chapter 12-203 of the Commission's Shoreline Rules; d) a draft timeline of
31 plan, design and completion of each of these long-term alternatives; and e) a list of potential
32 Federal, State, and County permits required to achieve each long-term solution. So this
33 is...basically this is your due diligence that we are requesting. If you want an emergency permit
34 this is the quid pro quo. You guys gotta get on the ball and help us figure this out and don't
35 keep that burden on the Planning Department to push you in that direction.

36
37 So second, continuing with this process, within 90 days of the permit's approval the permit
38 holder shall consult with the Department about such long-term alternatives, to understand the
39 requirements, and restrictions for work permitted in the shoreline setback area as defined by the
40 Commission's Shoreline Rules. So you can do things in the shoreline but they're very limited
41 and there's a process for it. So this consultation at 90 days we can say...so what we do is we
42 begin the planning process and we advise this applicant about what you can and cannot do in
43 the shoreline area.

44
45 And then this third piece in the rules, again this is verbatim. The temporary measure must be
46 removed unless the permit holder submits an application by the date specified by the

1 emergency permit to allow the temporary measure to remain pursuant Subsection I which is the
2 next section. So still that removal is a little stronger.

3
4 So getting to I, I think this is my last slide. The permit holder may apply for a time extension
5 after 180-day permit or any permit provision on a form provided by the Department. Such
6 application shall include at minimum a description of the permit holder's preferred alternative,
7 evidence that the permit holder is making adequate progress towards completing permanent
8 measures but reasonably cannot do so within the time allotted by the time of this emergency
9 permit, this 180 days, and a plan and a time line for obtaining all required permits. That's it.
10 The Director may approve a time extension for no more than 180 days at a time.

11
12 So that's the process that we're trying to embed to push the applicant in an educational way to
13 move forward with finding a solution. So that's it. Just by way of introduction again, this
14 is...maybe the Director may have some comments, but we have our Coastal Zone Management
15 Team here. I think Tara Owens, most of you may know her, she is our Coastal Hazard
16 Specialist from UH Sea Grant. We have our new shoreline planner who has replaced
17 Keith Scott, Keanu Lau Hee. Great to have Keanu aboard. And Jeffrey Dack who's behind the
18 pillar over there who is our supervisor and myself. So that's it for the whole shoreline team and
19 lots of support from our Director and other planners in the Department. So Chair that's my
20 presentation, over to you for Q and A or Michele if you had any comments? So thank you very
21 much for this opportunity.

22
23 Mr. Hudson: Thank you Mr. Buika. Please remain in the audience we're gonna open it up to
24 public testimony for now. We didn't have a sign-up sheet when this thing was originally offered.
25 So I'm gonna open up to public testimony. Once again, you'll have three minutes. Speak to the
26 issue. Do not go off on a tangent and make sure what you say is relevant. As mentioned
27 before if you say you don't like blue cars, why? Because they make the Tookie Tookie Bird
28 crash. That's something. Okay. So once again, three minutes, speak to the issue and be
29 relevant. Is there anybody wishing to offer public testimony? Seeing none, public testimony is
30 closed. Mr. Buika if you would kindly return to the podium. Commissioners, discussion, Q and
31 A? Go ahead.

32
33 Mr. Carnicelli: Thank you Chair. Jim you know you bring something into this. You know I've
34 heard you use that Hemmingway quote before, but it kinda you brought something else in that
35 I...maybe you've said it before and I heard it for the first time and that is this opportunity with
36 which I see it coming, I see it coming, I can't do anything, I see it coming, I can't do anything
37 until I can do something. So you know, so now I'm in an emergency and I've got all these new
38 things that I've gotta do, but is there a way that we can address and I'm sure this is gonna have
39 to deal with the State and DLNR is how can I address my emergency before I don't have an
40 emergency? Because here are people that have contacted me directly about this and saying
41 like okay, listen we want to do something but we can't. So that's, you know if you could address
42 that and then I have another follow up after that.

43
44 Mr. Buika: Okay. I did address it in a bill that co-authored to the State Legislation 828 to create
45 what we need to do is...bottom line I think the bill died but...'cause we weren't lobbying for it
46 enough. But the idea is, I think it's two-pronged to solve the bigger picture. This emergency

1 permit is just a little tickler here you know. But the bigger issue is we know, I mean Tara Owens
2 sitting right here she can list off 1, 2, 3, 4, 5, 6, 7, 8 are beach cells at risk around Maui Island.
3 She knows which ones are and we all do. We know where our at-risk development is and
4 eroding coastlines. So what we need to do somehow is the EIS takes three years and a million
5 bucks to do a big project, offshore, onshore, we have archaeological, cultural, biological, water
6 monitoring, all kinds of sand surveys. When you deploy equipment offshore comes from
7 Honolulu, it costs a lot of money. So the idea, the proactive solution is really is to do these EISs
8 ahead of time through a state funded program so that when we have this rapid erosion in
9 Kahana Bay we have that EIS in our hip pocket, it's already done. We've saved...and we can
10 do it through my idea again just personally is to do it through a UH consortium of professors and
11 public private, with students, get them...we need a next generation coastal zone managers
12 program of bachelors, masters, PhDs, they could be out there doing these practicums on all of
13 these as part of the EIS and become part of our cadre of place based science cultural planning
14 experts here instead of having to farm out a project to North Carolina company that says oh,
15 we've done a hundred beach nourishment projects. You know well, you haven't done any in
16 Hawaii. So right, you get the gist. So part of it is we need proactive program through I would
17 say UH consortium so that we could do these EISs ahead of time. So that's an effort that I hope
18 all of you could promote.

19
20 The other, the two-prong...the other part of it is this multi-jurisdictional permit process. I didn't
21 talk, I didn't go into the permits but there are I think I mean there are 20...for the EIS there are
22 26 consulting agencies on that so we gotta go through 26 agencies and there are 18 typically for
23 an EIS County, State and Federal there are 18 permits, authorities, rights of entry that are
24 hurdles have to go through and they're all stove piped, some in Oahu, some here, some
25 Federal, it's people changed, time goes by, it's impossible and it costs so much money.

26
27 So the other, the second idea to overcome that is to create some...look at some sort of a
28 e-permit system, a multi-jurisdictional permit system where we can accelerate the permit
29 process. How we do that needs to be studied but it's the first step is to study how to do that so
30 we need I think that...so that we could have a transparent...right now the whole permit system
31 is okay. The consultants and the applicants take it one by one all these different permitters or
32 the permittees, the regulators tell their story rather we should have one kinda like
33 collegeboard.org if any of you know that website, you can apply to Princeton, Yale and Harvard
34 instantaneously with one application pressing three radio buttons. Right so we need some sort
35 of an e-permit system to overcome this. So a long road ahead but I have thought it out and to
36 answer your question, e-permit system and some sort of these EISs done upfront.

37
38 Mr. Hudson: Thank you. Mr. Carnicelli you want to ask your follow up question?

39
40 Mr. Carnicelli: Thank you. My follow up question, thank you Chair is kind of based in
41 this...okay do EISs, EAs ahead of time. And so you kinda did that, but the other piece of this is
42 we now have a tool, we meaning the County has a tool to do that community facilities district.
43 It's an ordinance that passed the December last year.

44
45 Mr. Buika: Yes, I'm familiar with it.

46

1 Mr. Carnicelli: Yeah, and because I think it was basically passed for Kahana Bay.

2

3 Mr. Buika: Yes.

4

5 Mr. Carnicelli: You know so it's like, so if we could kind of almost like proactively use those it
6 seems like now that these I don't know what you said 18 or eight, you know at-risk cells, it's just
7 like you know are we moving forward in that capacity?

8

9 Mr. Buika: Yes, we have people breathing, organizations breathing down our neck or throat or
10 whatever it is, yeah, the Halama area.

11

12 Mr. Carnicelli: Right.

13

14 Mr. Buika: Halama Street, Napili Bay is moving forward with that. Keanui Bay, they all want to.
15 And there is...so there's that...so it's a funding, it's like a special improvement district type of
16 thing where they would tax themselves and then we have this, we also did pass a special
17 management area revolving fund I think it's called through the Council last time so fees and
18 fines go into that. That's another pot of money and third thing I was gonna mention, I lost my
19 train of thought but those two are good direction. So we are working through the Kahana Bay
20 issue with this community facilities district. So that's coming up and the Director and our team
21 have been involved with Department of Finance and Council members and the Mayor to move
22 that forward for Kahana Bay and we can do that all over the island I think in a public/private
23 partnership. So those are good mechanism yes in place to solve this problem.

24

25 So for Kahana it took us, Kahana Bay we have a steering committee of ten condo parcels and it
26 took them I don't know about 14 or 15 months just to hui up, get all the boards of directors
27 together to create a steering committee, still not a formal body and what they did is they came
28 up with a cost share agreement legally back and forth to the board, et cetera to fund the EIS.
29 So they are funding the EIS for this beach nourishment project in Kahana Bay all on their own,
30 but it took a long time. Right, it took a long time.

31

32 Mr. Hudson: Thank you Mr. Buika. Kahu, you have any questions?

33

34 Kahu Hill: Mahalo Chair. I just wanted to know about notifying those that may not be aware of
35 what's happening or to be educated in any way that are homeowners or that own buildings,
36 condos,...(inaudible)...that you see things and you map the island and there's so much
37 research and sometimes you might be discovering things before people know that it's coming in
38 their own land, their properties or where they live. So just wondering if that's something that's
39 going to be able to go out too?

40

41 Mr. Buika: Thank you for that question. Yeah, education it's we peck away at it one
42 organization at a time, architects, American Institute of Architects, Realtors Association, condo
43 associations, Tara...Tara Owens she just had a booth last week over in Baldwin, Tara maybe
44 two or three times a month she's out there with all the nonprofit organizations. So we're getting
45 word out there. You can search us. We have YouTube videos of me and Tara out in Kahana
46 Bay. So we are doing as much outreach as we possibly can. You know we have a new Council

1 we're trying to educate them as much as possible now. Certainly annual training with you guys
2 here. We do the best we can with our small group, but we are getting the word out. And I mean
3 in Kahana Bay we've had many angels. We've had realtors step up with...there are thousand
4 units that the Mayor asked us to hui up. It's like herding cats obviously and some
5 timeshares...we have a realtor who snail mailed out to all thousand people a newsletter with
6 and then he spent his own money to do a video, professional video with a couple cameras and
7 et cetera of me and Tara speaking about the issues and then had the website on that newsletter
8 for you know all the people who are distant owners to reach out. So we've had tremendous
9 outreach in many, many different directions. Aha Moku we present to and we're meeting with
10 the Aha Moku on another project next Friday, et cetera.

11

12 Mr. Hudson: Thank you. Denise?

13

14 Ms. La Costa: Thank you Chair. So I notice that the time frame has a 180 days and then a
15 90-day and then an extension. What are you doing to have the State and the Federal agencies
16 that people need to also get permits from to fall within that time frame?

17

18 Mr. Buika: Just a correction that 90 days is within...you had said 180, then 90, then a 180, that
19 first 90 days is embedded within that first 180 days. So...

20

21 Ms. La Costa: So what are you doing for coordination?

22

23 Mr. Buika: We are working very closely with the State Office of Conservation Coastal Lands.
24 We are working very closely with the Corp of Engineers who is the umbrella Federal
25 organization who manages the Federal permits. We've been meeting with the Department of
26 Health who manages the water quality and we've been meeting with the various National
27 Oceanic and Atmospheric Administration organizations with all the essential fish habitat, the
28 endangered species. All of those. So we are meeting one on one dealing with these permits
29 trying to move these ideas forward, but as far as the permits with relative to the SMA
30 Emergency Permit that all occurs through an educational process and the slow grind of
31 permitting after. So usually prior to the permits you need these studies through the
32 environmental assessment.

33

34 Mr. Hudson: Go ahead Denise.

35

36 Ms. La Costa: Thank you but that didn't answer my question. My question was you have a
37 180-day window. You have the State DLNR. You have the Federal agencies with which to
38 deal. How do you coordinate everything so that the permit applicant doesn't reach the 170th day
39 and still not have anything and then have to go for an extension which again the accretion gets
40 worse and worse and worse and worse. So how are you spearheading that and what is the
41 determination as far as time frame for that. That's what I need.

42

43 Mr. Buika: Right. Through either myself and/or Tara Owens we coordinate right up front with
44 the State DLNR, Office of Conservation Coastal Lands. Usually the permit, the main permit is
45 usually authorized for any sandbags along the shoreline at the waters line it is a Conservation
46 Use Permit or an Emergency Permit by the State. So we work on a daily basis with the State

1 Office and not as much with the Feds until you get out into the water, until you're looking for a
2 more permanent solution. So it's mostly DLNR and the County to issue these emergency
3 permits. So that's what we do initially. So we work very closely back and forth with the State.
4

5 Ms. La Costa: And does that happen within that 180 days? I'm thinking about the applicants
6 spinning their wheels and waiting and waiting and still having to go ask for an extension.
7

8 Mr. Buika: Well, not yet. It's proposed under our rules. I mean we do...I mean this is an
9 evolving process that where we do work with the State especially very closely, but the
10 disconnect is the State authorizes them three years for their temporary sandbags in most cases.
11

12 Mr. Hudson: Go ahead Director.
13

14 Mr. Buika: Yeah, go ahead.
15

16 Ms. McLean: I think the answer to your question is for emergency permits. Yes, the State is
17 very responsive. It's kind of as Jim was describing until it's an emergency they aren't as
18 proactive as we're trying to be. So for an emergency permit they're very responsive. We work
19 with the cooperatively then what we're trying to achieve is here is a long-term plan we can
20 continue to extensions but we want to see a long-term plan and move toward enacting a long-
21 term plan not just relying on the emergency permits. So we'd like to keep the deadlines in there
22 to keep all of our feet to the fire, State as well as us, as well as the applicant, but they're
23 responsive in emergency situations, yes.
24

25 Ms. La Costa: Thank you Director.
26

27 Mr. Hudson: Thank you. Tara, now you've mentioned twice would you please take the
28 podium? Please identify yourself and what you represent.
29

30 Ms. Tara Owens: Hi, I'm Tara Owens. I'm a Coastal Processes Specialist with the University of
31 Hawaii, Sea Grant Program and supporting the County.
32

33 Mr. Hudson: Please explain to us your relationship with the County and how you guys work
34 together on this.
35

36 Ms. Owens: Absolutely. Thank you, good question. Actually I serve...so my program UH Sea
37 Grant is based at UH Manoa in Honolulu, but I live and work here. I serve in a cost share
38 position with the County. So it goes through the Planning Department's budget annually there's
39 money that ultimately goes to Sea Grant to keep a person here to serve as a technical liaison.
40 So I'm a coastal geologist by education. I'm part of the group that has developed the erosion
41 hazard maps for Maui over the years and now involved in the development of the new sea level
42 rise models that we have and we're making sure that all that information gets used through the
43 planning process and in your decision making.
44

45 Mr. Hudson: Excellent. Thank you. Stephen questions?
46

1 Mr. Castro: No.

2

3 Mr. Hudson: Chris?

4

5 Mr. Tackett: No Chair.

6

7 Mr. Hudson: I have a question Mr. Buika.

8

9 Mr. Buika: You know Tara can answer just about anything I can answer and a lot better than I
10 can but anyway, I'm sorry. Sorry, Vice-Chair, anyway...

11

12 Mr. Hudson: In order to do this as legislation where are we in the process? How long is it going
13 to be before this becomes enacted?

14

15 Mr. Buika: The emergency rules?

16

17 Mr. Hudson: Yes, these proposed changes.

18

19 Mr. Buika: I'll defer to the Director for that decision making process.

20

21 Ms. McLean: Thank you Chair. These are rules of the Commission. So these are the Maui
22 Planning Commission's SMA Rules and at the last meeting we presented a section of those,
23 those are the ones we called the categorical exemptions, the no needs. What we're trying to do
24 is present them to you piece and piece and then we will before too long bring the whole
25 package to you for adoption and once you adopt them they're adopted and they become your
26 new rules. On the SMA Rules we've done fair amount of outreach. We've gotten a lot of
27 positive feedback. We're pretty close to having those ready for you to adopt. But a companion
28 to those are the Shoreline Rules and that's where we're talking about putting in, incorporating
29 sea level rise into the shoreline setback and that's much more controversial, it's much more
30 complicated and we need to do some more outreach before those will be ready. And so we do
31 want to present them as companions and so what's slowing it down is the...are the Shoreline
32 Rules. But the...what will get them enacted is this Commission adopting them and we want that
33 to happen sometime this calendar year but we still need to do more outreach on the Shoreline
34 Rules before we get there.

35

36 Mr. Hudson: Thank you. Mr. Carnicelli? Kahu? Kellie?

37

38 Ms. La Costa: I have one more question please.

39

40 Mr. Hudson: Go ahead Denise.

41

42 Ms. La Costa: Thank you Chair. So pardon me for asking this question if it's already been
43 answered but why wait until your house is on fire before you get a fire extinguisher? You know
44 if I have...I don't have coastal property but if I had coastal property and we know that sea levels
45 are rising and I see the accretion happening and I know that pretty soon is gonna be half in the

1 ocean why can't I not be proactive and say, this is happening and then step in and start doing
2 something before it becomes an emergency?

3
4 Ms. McLean: I think Tara wants to take a stab at that one.

5
6 Ms. Owens: If you don't mind I was just thinking this earlier when Jim was answering
7 Mr. Carnicelli's question about what we need to do to be more proactive. And the one thing that
8 we cannot control is human nature and it is somewhat like human nature to wait until there's an
9 emergency largely because it's not that you can't do anything proactively. You can work with
10 the State and the County to come up with a plan and get the permits to do some sort of
11 adaptation whether it's beach nourishment or something else, but it carries a large cost and so
12 it's kinda like when your tire threads getting low on your car and you know you're gonna have
13 flat tire but you don't want to spend the rest of your family budget to get new tires and so you
14 wait until the tire blows out and then you go buy new tires and that's what we see a lot. It's
15 just...it's complicated and it's expensive to be proactive and so it's easier to avoid.

16
17 Ms. La Costa: Thank you.

18
19 Mr. Buika: One comment to add to that. Actually and to the third item I forgot about with
20 Commissioner Carnicelli is that the State is being very proactive and Tara Owens is very
21 involved in is they are creating a Categorical Environmental Assessment for what's called a
22 small scale beach nourishment project which actually can be pretty big scale beach
23 nourishment project that will be able to go forward without this complex Environmental Impact
24 Statement, two, three year, half a million, million dollar process. It will be a categorical
25 acceptance. If they get all the Department of Health and the Corp of Engineers and various
26 organizations on board. It's like a MOU with all the regulatory agencies. So that will be a
27 tremendous tool in our tool box to be able to renourish beaches and save time and cost for
28 applicants. So the one other piece yeah. Thank you.

29
30 Mr. Hudson: Thank you. Stephen?

31
32 Mr. Castro: Yeah just a quick question. As far as the beach nourishment to replenish the sand
33 is that being done with locally...local sand from here from this island or sand that has to be
34 shipped in from another island?

35
36 Mr. Buika: Good question it's...it would be...by the State it's required to be beach compatible
37 sand so there's composition and grain size, all those criteria and our main strategy right now is
38 to look for sand deposits offshore that once were on formerly on beaches. Tara takes me
39 through a tour of all of the UH aerial photos of all of our shorelines from 1949, 1975, 1993, I
40 think I got them right, right Tara. So we can see Kahana Bay had 100 feet of sand back in 1949
41 and it's all off of Papohaku or Pohaku Park, S Turns in 15 feet of water off there. Mostly likely
42 so the sand on the beach ends up often being close by. So our strategy is to do surveys for
43 sand that potentially can be moved in an environmentally mitigated way back onto the beach
44 where that sand once was there. So that's our main strategy. We're not taking inland dune
45 sand at this point anymore kind of because of the moratorium and the sensitivity of it. So that's
46 our main source. You know coastal sands that are proper to take as much as possible. So

1 that's our strategy. Good question. Thank you. So none shipped in from other islands or other
2 countries at this point.

3

4 Mr. Castro: Thank you.

5

6 Mr. Hudson: Chris.

7

8 Mr. Tackett: I have no questions.

9

10 Mr. Hudson: Commissioner Carnicelli.

11

12 Mr. Carnicelli: I'm good Chair. Thank you.

13

14 Mr. Hudson: Kahu.

15

16 Kahu Hill: Mahalo Chair. I just wanted when I asked my question and you shared the answer
17 and I thank you for that. Part of that too was just wondering what people could do that would
18 own their homes or their condos and being able to be more proactive knowing it's...the sea
19 levels are rising, knowing this that they can be aware and what can they do on you individual
20 properties or what they own? In advance, there is no EIS.

21

22 Mr. Buika: I mean it is an education process. It's a complex process right and we have been...I
23 mean we deal with it every day and we're still trying to figure it out. So individually it's through
24 education, but individuals pretty much...I mean we have like one individual that has headed up
25 the whole Halama Street project of I don't know how much homes there may be 15 homes on
26 the north end of Halama Street who is financed the initial studies all by himself. But you need a
27 hui of owners and you need to deal with these issues on a beach cell scale as you saw dealing
28 with one property only it has impacts on other properties. A good example is, and we need
29 good educated leaders, champions to move it down the line. Besides Halama Street, Napili Bay
30 is very active. They have a Napili Bay Shore and Beach Foundation. For three years they've
31 hui'd up all of the condos up there and they are getting money. They having...we do
32 presentations. They're following Kahana Bay. So Kahana is setting the example for these other
33 areas and Maui is leading examples for the state frankly. So thank you for that question.

34

35 Kahu Hill: Mahalo.

36

37 Mr. Hudson: Thank you. Kellie? Any further discussion? Seeing none, James, Tara, thank
38 you very much.

39

40 Mr. Buika: Thank you Vice-Chair.

41

42 Mr. Hudson: Move onto the Director's Report, Item Golf.

43

44

45 **G. DIRECTOR'S REPORT**

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1 **1. SMA Minor Permit Report**

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3 **2. SMA Exemptions Report**

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5 Ms. McLean: Thank you. You have in your packets the approved SMA Minor and Exemptions
6 Report. Do you have any questions on those?

7
8 **3. Discussion of Future Maui Planning Commission Agendas**

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10 **a. March 25, 2019 (MONDAY) agenda items**

11
12 Ms. McLean: And lastly is the memo for items for the next meeting agenda which is March 25th,
13 that's a Monday because Tuesday is the Prince Kuhio holiday. And is everyone available for
14 that meeting. I understand Commissioner Robinson is not, may not be available.
15 Commissioner La Costa.

16
17 Ms. La Costa: No I will be.

18
19 Ms. McLean: You are available. So maybe just two absent, Commissioner Robinson,
20 Commissioner Pali.

21
22 Kahu Hill: I would need to check my schedule on it.

23
24 Mr. Tackett: Yeah, I'm not sure as well.

25
26 Ms. McLean: Okay, we can have Carolyn contact everyone make sure that we'll have quorum.

27
28 Mr. Hudson: We will maintain from the past years and elections of the new Chair will be
29 conducted the first meeting in April. All right, any further discussion? Seeing none, thank you
30 all very much. We are adjourned.

31
32 **H. NEXT REGULAR MEETING DATE: MARCH 25, 2019 (MONDAY)**

33
34 **I. ADJOURNMENT**

35
36 The meeting was adjourned at 11:45 a.m.

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38 Respectfully Submitted by,

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41 CAROLYN TAKAYAMA-CORDEN
42 Secretary to Boards and Commissions II
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RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Kahu Alalani Hill (in attendance at 9:45 a.m.)
Larry Hudson, Vice-Chair
P Denise La Costa
Kellie Pali
Keaka Robinson, Chair (left at 10:45 a.m.)
Christian Tackett

Excused

Tina Gomes

Others

Michele McLean, Director, Department of Planning
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel