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**MAUI PLANNING COMMISSION
REGULAR MINUTES
JANUARY 8, 2019**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:03 a.m., Tuesday, January 8, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Keaka Robinson: Good morning everyone. Happy New Year. Welcome to January 9th, 2019 Maui Planning Commission. January 8th. I apologize. January 8th, 2019, sorry. I'd like to introduce our Commissioners, Commissioner La Costa.

Ms. P. Denise La Costa: Aloha Chair. Happy New Year.

Mr. Robinson: Aloha. Happy New Year. Commissioner Castro.

Mr. Stephen Castro: Good morning Chair. Happy New Year.

Mr. Robinson: Commissioner Tackett.

Mr. Christian Tackett: Aloha Chair. Happy New Year.

Mr. Robinson: Filling in for the Director, we have Mr. Yoshida.

Mr. Clayton Yoshida: Good morning Chair.

Mr. Robinson: Happy New Year. We have Mr. Corp Counsel, Mr. Galazin. We have Vice-Chair Hudson.

Mr. Larry Hudson: Good morning Chair.

Mr. Robinson: Good morning. We have Commissioner Pali.

Ms. Kelly Pali: Good morning Chair.

Mr. Robinson: And just finishing up his snack is Mr. Carnicelli.

Mr. Lawrence Carnicelli: Happy New Year Chair.

Mr. Robinson: Mr. Yoshida, first on our agenda please.

1 **B. Workshop on the County's Planned MAPPS Permit Tracking System**
2 **Conducted by the County Information and Technology Services (ITS) Division,**
3 **Department of Management. (Postponed from the September 11, 2018,**
4 **September 25, 2018, and October 9, 2018 meetings.)**

5
6 **The workshop is for information purposes only. No action will be taken.**
7

8 Mr. Yoshida: Yes. Happy New Year to all. Clayton Yoshida, Administrator of the Current
9 Division. Acting Planning Director Michele McLean had to attend to a meeting currently but
10 will be joining you later this morning. Under Item B, we have a workshop on the County's
11 Planned MAPPS Permit tracking system conducted by the County Information and
12 Technology Services Division, Department of Management. We had this scheduled couple
13 of times before but had to reschedule for various reasons. We have the head of the
14 County's Information and Technology Services Division, Jacob Verkerke and he will be
15 conducting the workshop.
16

17 Mr. Jacob Verkerke: Good morning Chair, good morning members of the Commission. It's
18 my pleasure to be here. Happy New Year to you all. So what is the Chief Technology
19 Officer doing talking to the Planning Commission about a Planning and Permitting system?
20 The reason is that the funding for this project is in IT because it is an enterprise wide effort.
21 It doesn't involve just Planning Department, it doesn't just involve just DSA, it involves many
22 departments within the County. So as a coordinating agency for the technology, the IT
23 Services Division is the lead in managing this effort.
24

25 The presentation I'll be giving you today is similar to one I did for the Construction Industry
26 of Maui probably about six months ago, so if you were there it may look familiar but bear
27 with me on that.
28

29 MAPPS, it stands for Maui's Automated Planning and Permitting System, and it's quite
30 ambitious in its scope. It's trying to manage all aspects of that effort affecting and involving
31 all the department that are typically part of that effort. This start, the thinking about MAPPS
32 even though we didn't use a term at that time, started back in 2013. The IT Services
33 Division commissioned a strategic assessment of a number of aspects of the County's
34 operation that we are involved in. And part of that was the management of land information.
35 And that kind of extended to include geographic information system, GIS systems. We
36 wanted to have an idea how we could elevate the County's game and how we could
37 approach improving, expanding, evolving those capabilities to support a more efficient and
38 more effective way of approaching the whole land information management task that the
39 County has which includes dealing with planning permitting issues such as what you deal
40 with.
41

42 We tried to do this with the focus that is allowing the public to be more involved, to be more
43 informed, to have less questions, for there to be less confusion perhaps on what happens,
44 to have consistency throughout. In other words, to try and create an enterprise approach

1 rather than the departmental level approach that we have seen in how our current system
2 KIVA is being used.

3
4 So the goals of the MAPPS project are to enhance customer service through web based
5 self-service capabilities, automate work flow, enable electronic plan review capabilities,
6 introduce mobile technologies especially where it comes to the inspections in the field, but
7 also for people to be able to report the problems that they see that maybe related to the
8 services that MAPPS is trying to offer. Introduce capability and flexibility so that system will
9 grow with the organization, with the needs and expectation associated with this particular
10 area of the County's operation. Make sure we accurate and complete information for the
11 customers, geospatial information. We want to kind of standardize on this one single
12 version of the truth approach, you know, so that you don't get different answers depending
13 on who you ask. They all come to the same source and give you consistent information
14 because apparently that --. Enhance business intelligence capabilities so that we can also
15 kind of do a deep dive in the data that's being collected. I understand trans or problems
16 with how we manage.

17
18 So the desirable outcomes of the project are to have streamline processes for including
19 redesign of workflows across departments. So the situation we have with KIVA right now is
20 the Planning Department, Public Works Department, Fire Department, Water Department,
21 Environment Management Department all have their own workflows, their own ways of
22 doing things, and sometimes they line up. Most of the times, there is some disconnects
23 there. So we're trying to design workflows that cross those boundaries. We want to tear
24 down the boundaries between the departments a little bit at least from a process
25 perspective, from a work flow perspective.

26
27 Increase the automation so with the clear expectation that it will improve the
28 responsiveness and reduce the time associated with things, make sure people get notified
29 and aware of everything that happens as it happens. Notifications are a key part of that.
30 Information validation to tie integration with the GIS. Make sure that the land information
31 contained in GIS is always accurate and available in the decision making process that
32 underlies all of this. And to provide status updates so that, you know, there's no need to try
33 and track somebody down that can tell you where things are at and what's happening. We
34 should be able to go online and find out where things are at and who's holding the --.

35
36 Mr. Carnicelli: Is RPT going to be integrated with the design?

37
38 Mr. Verkerke: Yes. So it will probably come up on a slide, but we'll --. RPT is not really,
39 you know, doing a lot of issuing of permits, of course, but they have critical information. So
40 MAPPS will tap into the information contained in RPT to make sure, again, that they have . .
41 . (inaudible) . . .

42
43 Mr. Carnicelli: For enforcement as well?

44
45 Mr. Verkerke: Yes.

1
2 Mr. Carnicelli: Okay.

3
4 Mr. Verkerke: And at this point we're not looking to replace queue public that a lot of people
5 rely on for that kind of information. We want to make sure that it's all the same information
6 you may be able to get to.

7
8 Some more desirable outcomes, online self-service. So you should be able to submit most
9 of the applications online. And when there's follow up plans or documents that needs to be
10 submitted as part of the initial application, you can do that online. As I mentioned, check
11 status, pay fees, and communicate with County staff, through e-mails, and texting, or what
12 have you. Phones should be your last resort.

13
14 Electronic plans review is a key element of all this. We want to get away from paper
15 submittals. We want to get away from sending 20 sets around different places. We want
16 that to be all online so that people can share one version of the plans, make their
17 annotations, their comments, their corrections. We can collect that from all the various
18 reviewing agencies in one consolidated set of comments that then can be shared with the
19 applicants so that everybody knows what's going on. So, integration with Bluebeam is a
20 third party software that allows for collaborative sessions online so that people can actually
21 work together at the same time and discuss various options to include plans as needed.

22
23 And ultimately we want to make sure that everybody understand what's going on, that there
24 is transparency and accountability so that even people that are not directly applicants can
25 see what's happening in their neighborhood or in areas that they have a particular interest.
26 There will be different levels of access and different levels of information that's available.
27 Some of it is really needs to be restricted. But in general there will be much better
28 transparency of what's going on if this all plays out as we intend.

29
30 GIS integration, I mentioned that, so that the geospatial data, you should be able to go to
31 the map, click on a parcel and get information about that, about what's going on, what kind
32 of applications are active.

33
34 Request for Services. Those of you that have used that function of KIVA online, there's a
35 new product within the Tyler Technology's family of products. Tyler Technologies is the
36 company that has developed the software we're using for MAPPS. They call it Tyler 311. It
37 will replace the request for services, but it will be more than what we have with request for
38 services now. And it will have a mobile component so you can do it from your cell phone as
39 well.

40
41 What this all boils down to is a paradigm shift. We are really trying to change how this
42 organization thinks about these processes. We want to have the departments work
43 together, be familiar with each other's processes, be familiar with each other's concerns,
44 requirements so that there is collaboration rather than all these separate tracks that you're
45 dealing with someone. Now that is not an easy task we are learning. The project -- and

1 we'll get to that in a little bit -- the project is taking much longer than we thought. It's not the
2 only reason, but the key reason is the fact that this kind of organizational paradigm shift
3 takes time. People need to really...process a different way of thinking. They're comfortable
4 with thinking about things outside of their departmental boundaries. And we need to let that
5 happen. Otherwise we will fall short of our ambitions with this project. We want people to
6 understand that they're a part of one integrated service delivery system if you will and not
7 think of it just like, okay, what's in it, you know, what are we concerned with our department,
8 but understand the customer's perspective. You know, because the customer doesn't really
9 necessarily want to worry about, okay, how is it different in this department and another
10 department. We should clear that up and be consistent and more cohesive than we have.

11
12 So today my presentation to the construction industry of Maui is part of our effort to reach
13 out to the professional community, understand their needs, their expectations. We will, to
14 the degree possible, incorporate that in the design of the work flows, and in the design of
15 the online pieces.

16
17 I've mentioned some of these departments already, but these are the key departments that
18 are involved: Corporation Counsel, Fire, IT, Managing Director's Office, Planning, Public
19 Works, Real Property, Waste Water, Water Supply. They're all key players in this process.
20 They all have a role to play. Some of the department's role is larger than others. But
21 sooner or later it ends up, on somebody's desks within these departments, and we need to
22 make sure that the system recognizes it, understands it, and that we have designed a
23 workflow to facilitate that interaction and that movement of an application through the
24 department as much as possible.

25
26 Mr. Carnicelli: What about the State agencies? Like, I mean, if something has to go to
27 SHPD, or DOH, or something like that, are they going to have moving capabilities as well?

28
29 Mr. Verkerke: We believe so. It's our goal to do that. We haven't reached the state, the
30 stage in this project yet where we're reaching out to, collectively we call them external
31 agencies, for review. But the workflows are being designed to make sure that the
32 information that the plans go out there. We need to go --. Now that design is stabilizing a
33 little bit, that we have a better idea of what it is that we're going to present to them. We're
34 going to reach out to these different agencies and say, hey, you can go online, you can
35 receive your notifications, you can look at the plans online, you can be a part of that
36 collaborative session, review session. You can submit your comments. So that's definitely
37 we're looking to pull everybody in. We're not...expecting that we'll have 100% excitement
38 from all of the different agencies, but I think overtime this will prove itself to be a valuable
39 option and I think the adoption rate will increase as they see it being played out. But
40 definitely we do not want to send thick plans or applications around to anybody, within or
41 outside.

42
43 There are three vendors involved. Tyler Technologies are the vendor of the integral
44 software that makes up the bulk of the MAPPS system. SV is of course is our GIS vendor.
45 They're the biggest in the world. For this, it's a tied integration between . . . (inaudible) . . .

1 and Bluebeam, as I mentioned, provide the electronic review capability. And . . . (inaudible)
2 . . . has created the tied integration with that. So within . . . (inaudible) . . . you can
3 automatically get into the plans review and capture your status updates. So, it's going to be
4 pretty slick actually.

5
6 So what have we accomplished so far? There's definitely after 2 ½ years a market
7 improvement in how the collaborations between the departments are shaping up. How the
8 designs of the new workflows are being created as with inputs of all of the departments that
9 have a certain permit application don't necessarily affect every department. So we have a
10 core team of representatives in every department so our conversation is happening.

11
12 So the transformation that I'm talking about is taking shape. It's getting there. People are
13 interested in what other departments are doing and they are considering the needs of other
14 departments in their activities and their own design work flow. And that's really what we're
15 trying to accomplish.

16
17 Best practice and automation. We're taking more time than we had thought in the design of
18 the workflows because we recognized that a second or perhaps a third pass is necessary to
19 make sure that we can incorporate these best practices, incorporate what we're learning
20 from an enterprise perspective. You know, the first pass was still pretty focused on the
21 individual departments. We want to expand that, so we're taking the time to do it right
22 because this is, you know, this transformation is not something that happens overnight. We
23 want this system to stand for a long time. We've had KIVA for 25 years now. It's showing its
24 age, but it's still serving the purpose. We want this system to have a chance to be around
25 for something along those lines. Maybe not 25 years, but --.

26
27 The enterprise TS system has been created. Before we started this effort there were
28 pockets of GS capabilities in various departments. Now they all share and build a single
29 GIS information...environment is the best way to put it. So we have an enterprise with a
30 single version of the various layers and not the ones that have been modified within
31 departments and not shared. So we are approaching this goal of having that single version
32 of the truth when it comes to geospatial information.

33
34 I mentioned we did outreach and we still, we continue to do outreach. We have adjusted
35 policies. We needed to recognize that some of the policies in place, some of the practices
36 in place were not conducive to applying this enterprise perspective to this effort so we have
37 to change those. And one obvious of course is the policy to prefer or mandate electronic
38 submittals rather than rolls and rolls of plans. So at the highest level there's participation to
39 make sure we have the proper environment to implement.

40
41 What's happening now? As I mentioned, we're reexamining the initial design for adhere to
42 best practices. We're going through almost a third pass, but we're also building the new
43 workflows to configuration and build stage is going on. We're learning things from that and
44 we're going to make adjustments. We don't want to be stuck with perhaps some optimal

1 decisions that were made earlier in the design process. We want to make sure that we can
2 deliver the best possible product when we go live 2020.

3
4 . . . (inaudible) . . . review has been implemented, so little by little people can use that
5 already. If you're not familiar with Bluebeam, a lot of the local consulting engineering firms
6 are using it. It's kind of Adobe Acrobat on serious steroids, and its history is fantastic. It's
7 intimidating because it has so many capabilities so we're working with people that know this
8 product really well to present the user interface with the essential capabilities. And as they
9 get more comfortable we can add more capabilities that . . . (inaudible) . . . It's kind of
10 intimidating when you first see all things you can do.

11
12 What's next? We continue to work to make sure these quality objectives are met. That the
13 deliver the system that is the best system that we can provide. We're trying very hard not to
14 settle. The vendor is...reluctantly understanding our needs and assistance on the best
15 quality because this is a fixed bid contract so as it takes more time there is not more money
16 for them. So at some point they're going to go, like, what's happening here? But they
17 understand that the end result is, is what matters. The quality of the end result. And in the
18 process we're helping them to improve their products so it's a pretty good collaboration. But
19 sometimes they can of go like, okay, let's move on.

20
21 We continue to outreach the community for procedure and training. As everything goes on
22 live, even for the individual homeowners who want to apply for a certain permit, they have to
23 go online. So we need to reach out and teach people how to do that. It's no longer
24 possible to just kind of walk into the office and take care of things there from scratch. We
25 want people to really go online. So we will have to make sure that we publish a lot about
26 how to do that and provide online training on Akaku. And a lot more hard work lies ahead.

27
28 Okay, that's all that I have in a presentation. I don't know how we're doing on time, but I'd
29 be happy to answer questions at this time.

30
31 Mr. Robinson: I'm sure we'll have questions for you. Commissioner La Costa.

32
33 Ms. La Costa: Chair, I have a few questions, please. When you talk about streamlining the
34 process. Will there be simultaneous distribution of permits to all of the departments at one
35 time or is it going to be going through the sequential distribution as it does now?

36
37 Mr. Verkerke: No. One of the advantage of electronic plans submittal is that we can put it in
38 one place, within the application, online so that people can get to it. We will send
39 notifications to all the departments that have a role to play in the review of the application.
40 They can independently, but simultaneously add their comments to the plans. And then
41 when that process done, then we can kind of collect all of those comments out of the
42 Bluebeam application and submit it. If that's appropriate to the applicant there's one
43 consolidated set, so all of this can happen at the same time. And if there's even an -- I'm
44 not really an expert, but I can imagine that at some point Water and Fire want to talk to each
45 other about some of these clients that may affect whether or not they approve it or not. So

1 they could set up one of these collaborative sessions online and be in the application at the
2 same time and comment to each other like what do you think about this, how do you think
3 we should redo that? So that's the streamlining that we're after.

4
5 Ms. La Costa: Okay, thank you. Has there been any kind of -- this might be a departmental
6 question -- as far as when things are submitted, the return time for that, is there, is there
7 some central point that will kick those departments off? It will --. I'm just looking at a
8 stream line process, so I don't know if that's a County's function or if that is something that
9 is connected with this system.

10
11 Mr. Verkerke: Within the application and within the workflows the various tasks are
12 organized such that there is a natural flow, but also that it's, it's not designed that one must
13 be finished before the next one. Simultaneous can happen. And when a task is finished by
14 a particular department the status on the task in the system will change to complete. So
15 DSA will still be the central coordinating agency for a lot of these activities so they will be
16 able to track that. But some of the applications resides mostly within Planning. That all can
17 be viewed and be visible to everybody, and even to people online if some of these tasks
18 have been completed and how things are moving through the process.

19
20 Ms. La Costa: Okay. And my last question if I may please, Chair.

21
22 Mr. Robinson: Of course.

23
24 Ms. La Costa: Thank you. What if people don't have computers? I actually have several
25 friends who don't own one. Is there going to be some station, people can come in and do
26 that if it's strictly online?

27
28 Mr. Verkerke: Yeah, one of the aspects of the policy I mentioned earlier about online
29 submittals is we will have some form of a kiosk in, in strategic offices, in DSA and Planning
30 probably will be the most obvious one, where people that don't have that kind of access
31 come in and can be assisted by staff how to enter their application online. If they have
32 paper maps, we'll be able to scan that in and have those plans in the system so we don't
33 need to store the paper. It will be there, but we have recognize that there's people that
34 don't have full access, the digital device still exists so it will have . . . (inaudible) . . .

35
36 Ms. La Costa: Mahalo. I appreciate it.

37
38 Mr. Robinson: And libraries have internet now, right, yeah? Libraries have it, right?

39
40 Mr. Verkerke: Right. Right, so if somebody's comfortable with using the online application,
41 they can go to libraries if they live areas where connectivity is a problem or they just don't
42 have their own computer. But if they need assistance, if somebody is not familiar with
43 process so much or, you know, there's always some questions, we plan to have that
44 assistance available in some key offices.

45

1 Mr. Robinson: And Clayton, I think I was hearing the question too is on top of that website is
2 there going to be a timeline of when an applicant should expect to certain department to
3 respond to their comments?
4

5 Mr. Verkerke: If I may answer. We haven't really planned on having some kind of like a
6 scrolling bar where you . . . (inaudible) . . . But there are regulations, there are
7 requirements to respond within a certain time. We have the 30-day review, and 50-days
8 review, so those still will be in effect. So the work should take place.
9

10 Mr. Robinson: No, but is with that, is on the application, will the applicant will be able to see
11 that this department is supposed to respond by this time. It doesn't have to have a ticker,
12 but say, you know, it's on the application, it says this department should respond within 60-
13 days, this department should respond to 90-days, or do they have to keep on going to the
14 library and checking to see what their status is?
15

16 Mr. Verkerke: That's a good question I really don't have an answer for you on that on
17 whether that information is displayed, but I will found out.
18

19 Mr. Robinson: Okay. Any other questions? Commissioner Carnicelli.
20

21 Mr. Carnicelli: Thank you Chair. So along the same line, I guess, my question is, is,
22 because as I understand Bluebeam you're going to see every time somebody, quote on
23 quote, touches the file, right. You go in, you login, you look at it, you kind of leaves it. So is
24 there going to be additional transparency on whether the sticking points are? You know,
25 like, you're trying to go through the process and, you know, we're waiting on Water, or we're
26 waiting on Planning, or we're waiting on --? You know, is there going to be more
27 transparencies as far as who has done what they need to do and not, and then, you know,
28 as far as like -- because right now there's say accusations that some departments don't
29 take things first in, first out. You know that they sort of, things get moved around in the pile.
30 So is this going to create transparency in that regard?
31

32 Mr. Verkerke: You will be able to see how individual tasks assigned to various departments
33 are completed or, you know, what the time limits. Whether they are completed, whether
34 they are waiting for responses from the applicant because sometimes there's a back and
35 forth taking place, so those statuses will be visible to the applicant, and to some degree to
36 the public as well, perhaps with less detail than is relevant to the applicant. But will we be
37 able to pop up something like, oh, they're doing something out of sequence? I'm not really
38 sure about that. But for a particular application or for a set of application, you can see,
39 okay, is a department always lagging and holding everybody else. With a little bit of
40 snooping that should be quite visible.
41

42 Mr. Carnicelli: Yeah, thank you for that because it does seem like then --. I mean, I'm kind of
43 leaping way ahead, but you know, when we go to budget every year and if we actually see,
44 oh wow, this department is understaffed because they're completely over --. You know, like
45 this is the sticking point and suddenly when each department goes before the Council and

1 says okay I need more allocation, I need more people, I need more bodies, I need more
2 money, we'll be able to have some tangible...evidence.

3
4 Mr. Verkerke: So in one of the earlier slides I talked about the ability to do more data mining
5 and to create reports. So it would be relatively easy to create a report to see, you know,
6 how --

7
8 Mr. Verkerke: Excuse me? Excuse me? Yeah, sorry, we're having a planning session, can
9 you wait till the break or something? Thank you. I'm sorry, continue.

10
11 Mr. Verkerke: No problem. So it would be fairly easy for us to look at how the performance
12 of the different departments is and whether a department is really struggling to keep up with
13 the expectations, to feed in that like we're trying our best, but we don't have enough staff, or
14 something else is going on. So that increase, you know, data intelligence capability will be
15 able to support that. But whether that's necessarily available online, it's not something that I
16 can answer right now. But for transparency of the process for a management, yes, those
17 opportunities will exist.

18
19 Mr. Carnicelli: Great, thank you. And then last question is just if you can give us, I don't
20 know, the top two, three impediments to roll out, like, as of January 8th.

21
22 Mr. Verkerke: So I didn't stage this question but this is a very, very big question. We had
23 hoped originally to be live with the system now. As I mentioned the organization
24 transformation is taking a lot of time. But, beyond that the biggest impediment is staff
25 availability. At the start of the project, we went to Council, we asked for back fill positions
26 for the project. Instead we got a certain amount of funding for overtime. And overtime is
27 effective means of expanding your resources, your human resources only up to a certain
28 point. Nobody can work 80 hours a week for four years. It doesn't work. You can pick up
29 an extra 10 or 20 hours a week if you have to . . . (inaudible) . . . across the board that is not
30 good tool. So we are dealing, and especially the Planning Department, is dealing with
31 conflicting requirements.

32
33 The project, if you ask me, is the most important thing. If you ask the department, if you ask
34 you folks, Planning Commission is the most important thing. We have a conflict that the
35 same people needing to staff their proceedings for their Planning Commission need to help
36 out in developing and testing these workflows. So that is the single biggest impediment that
37 we're dealing with. And that is causing us to project the go live with the system to be late
38 2020.

39
40 We have about 144 different workflows. On the KIVA we have over 250, close to 300
41 different permits. Workflows don't necessarily equate one to one on permits but we have
42 consolidated permits, we have modified and combined things in the workflows. But still 140
43 different workflows is a lot of work. It needs to be designed. It needs to be tested. We
44 need to convert the data. This is a much bigger effort than we had anticipated, on top of
45 which this new thinking that we need to develop is something that is slow in coming. So we

1 are partially optimistic that the fall of 2020 is a reasonable and achievable deadline. And we
2 are putting a lot pressure on the vendor to make sure that they set up a schedule that we
3 can live with that. The biggest risk again is the availability of internal sources. If we can't
4 keep up with that we have two choices. Either we take more time or we sacrifice quality
5 over the product. And that's where everybody, the community as well as the various
6 departments need to understand the choices that we face.

7
8 Mr. Robinson: Thank you for that question Commissioner. Do I want to make comments on
9 budget? Commissioner Pali.

10
11 Ms. Pali: I just have a follow up question. Is this something that can be rolled out now and
12 then we make adjustments, maybe once a year, or maybe a couple years, as we see fit?
13 As we roll it out and we start to see bugs or things that need to be worked out? Or am I
14 hearing you say you're doing your best to kind of get that out of the way now because once
15 you launch there's not really a way to come back and change anything?

16
17 Mr. Verkerke: We do our best to have as few problems once we go live as possible. But it's
18 not possible in any human endeavor to be perfect. So we will be faced with a number of
19 things that we go, oh, we messed on that. What we struggle with is the tolerance of lesser
20 quality than we have set out to achieve because change. The human capacity to change is
21 limited. People don't like change. And what we are then faced with is a rejection of the new
22 system. People go, why are you doing this to us? There was nothing wrong with KIVA.
23 How are you putting us through this misery? So we want to make sure that there is enough
24 reason to be excited about the improvement that we delivery and the quality delivered.
25 Because if it's a small thing that is not working right, but you do that small thing 100 times a
26 day, you're going to get tired of that really fast. You not going to go, oh okay, in six months
27 they'll figure this. In those six month you still have to deal with that small frustration a 100
28 times. And that's kind of the struggle between are we ready to go live or not.

29
30 Ms. Pali: So to answer the first question. Once you roll it out, let's assume that it's very
31 clear that this fundamentally much better, more effective, time consuming, it increases the
32 communication as that is desired, are you still able to go in and do modifications and
33 updates as policies change, as thing change? Is that something that's able to happen?

34
35 Mr. Verkerke: Yeah. And if there's a new permit type or new policy or even something as
36 simple a new fee structures, this system needs to be adaptable to that. So a part of the
37 process is for the people in the department and people in IT to learn the administrative skills
38 for the system to be able make those changes.

39
40 Mr. Robinson: Any questions? Commissioner Castro.

41
42 Mr. Castro: In the permit process whether you're building a new home or as a homeowner
43 making an addition, versus the large projects, are they all put in the same pile?

44
45 Mr. Verkerke: No. They're all in the application, same software system, but that explains

1 partially why we have 144 different workflows. Because the workflow for building a hotel
2 versus the workflow for adding a porch to your house should not be the same. And so
3 that's why all the different types of applications, different types of things people want to do
4 with their property requires a different workflow. Some of it will involve many departments,
5 some of it can be handled within one department. So that's kind of why we have that many
6 different workflow.

7
8 Mr. Castro: So would that be a staffing issue to address that different permits?
9

10 Mr. Verkerke: No, they're kind of doing that now. We're hoping the system will allow them to
11 process that faster by allowing the applicant to be more involved in the process and more
12 directly aware of where things are at and when there's a need for, you know, explanation or
13 clarification or correction or something.

14
15 Staffing, I mean, I don't represent the Planning Department or Public Works. I think staffing
16 is always a challenge for most of the departments. We're hoping the system will allow the
17 existing staff to be more efficient in their work and to do more. I don't know if it's going to
18 solve the existing staffing shortages.

19
20 Mr. Castro: Thank you.

21
22 Mr. Robinson: I kind of have a question about transparency. So are people, besides the
23 applicant and the, and the County able to look on top of the site and see these notes going
24 back and forth between different departments?

25
26 Mr. Verkerke: To a limited degree.

27
28 Mr. Robinson: Okay.

29
30 Mr. Verkerke: So the applicant will be known to the system, and therefore will have ability to
31 see certain comments or certain notes.

32
33 Mr. Robinson: Just for that application. Not for any application. It's not a membership file.
34 And again, my concern is, is our County department people having to worry about
35 everything they write on this thing, and having comments from their neighbors and
36 everybody else.

37
38 Mr. Verkerke: Right. So, they should always have them worried about that. Sometimes it's
39 forgotten I know that.

40
41 Mr. Robinson: Worry about your boss and worry about your neighbors down the street
42 about what you wrote.

43
44 Mr. Verkerke: So, if you're not an applicant and not as such known within the system, you
45 can still see what's happening on a particular parcel.

1
2 Mr. Robinson: Status bar.

3
4 Mr. Verkerke: Status bar, but not all the notes. There's definitely tiers of information access
5 depending on what your role, what your status on the particular project. So if you're an
6 interested neighbor, or if you or your community organization wants to know what's
7 happening in a particular area, you'll be able to see things that are going on, but you won't
8 be able to dive as deep as if you're the applicant, or as if you're a County staff.

9
10 Mr. Robinson: Okay. Any other questions? Commissioner Pali.

11
12 Ms. Pali: So from banking and lending perspective, when we're talking about anybody
13 having access, say sort of a status bar, have you consulted with lenders and bankers to the
14 issues that should be a little bit more private to the applicant and owner themselves versus
15 public. Because I can just see this possibly being a nightmare for just a family who wants to
16 buy a home, and maybe that homeowner maybe 10 years ago put in this application to
17 possibly build a permit, there's an open permit, but then they decided not to follow through.
18 So I can see this slightly being a lending nightmare if there's too much information
19 disclosed.

20
21 Mr. Verkerke: I'll be honest with you --

22
23 Ms. Pali: Or not accurately disclosed to be more specific.

24
25 Mr. Verkerke: To be honest with you that hasn't come up, but I will make a note to make
26 sure we check on that. I wouldn't know necessarily, I don't know anything about the lending
27 industry to really know what the tipping points would be, but we'll follow up.

28
29 Ms. Pali: I can help you too if you ever have a questions.

30
31 Mr. Verkerke: Sure. Thank you.

32
33 Ms. Pali: But that would be a big one.

34
35 Mr. Verkerke: Yeah.

36
37 Mr. Robinson: Thank you. I guess the last comment is when I saw this on top of the
38 agenda, I thought it was about our new digital maps. And so I don't know if --. I mean the
39 name is a little misleading, but I understand what it stands for and it works. But just for me,
40 MAPPS, I thought it was something else.

41
42 Mr. Verkerke: The digital maps when they were approved, there was tier in the MAPPS
43 project. Because those digital zoning maps are a key element of the geospatial information
44 enterprise GIS that is so entwined with what we're trying to do. So the MAPPS project itself
45 is not creating maintaining those digital zoning maps.

1
2 Mr. Robinson: Maybe MOPPS, instead of MAPPS. MIPPS, you know, Maui Information.
3 Yeah, I'm just saying. If not other questions, thank you so much.

4
5 Mr. Verkerke: Thank you for your time.

6
7 Mr. Robinson: Appreciate your time. At this time, guys, we'll take a two minute recess and
8 get the next agenda item ready.

9
10 *(The Maui Planning Commission recessed at 9:45 a.m. and reconvened at 9:50 a.m.)*

11
12
13 **C. COMMUNICATIONS**

- 14
15 **1. MR. GALE NOTESTONE, Chair of the Hana Advisory Committee to the**
16 **Maui Planning Commission transmitting its recommendation on the**
17 **following application:**

18
19 **RICHARD LEE LOPEZ and DEVIN LOPEZ requesting a Bed and**
20 **Breakfast Home Permit in order to operate the Hana Aloha Hale, a two**
21 **(2)-bedroom bed and breakfast home located in the Interim District at**
22 **6820 Hana Highway, TMK: (2) 1-4-010: 018, Hana, Island of Maui.**
23 **(BBHA T2018/0001) (R. Quigless) (Public Hearing conducted on**
24 **October 29, 2018)**

25
26 **There is at least one permitted bed and breakfast home operation**
27 **located within 500 feet of the subject property**

28
29 **The Commission may take action on this request.**

30
31 Mr. Robinson: Mr. Yoshida.

32
33 Mr. Yoshida: Thank you Chair. Moving on under Communications, we have Mr. Gale
34 Notestone, Chair of the Hana Advisory Committee . . . *(Mr. Clayton Yoshida read the above*
35 *project description into the record)* . . . The staff planner on this is Ryan Quigless.

36
37 Mr. Robinson: Aloha Ryan.

38
39 Mr. Ryan Quigless: Aloha. Good morning Chair, Commissioners. This is the third time --.
40 My name is Ryan Quigless, staff planner and landscape architect with the County of Maui.
41 This is our third time presenting to you so the chronology on this is that we came to the
42 Maui Planning Commission to ask for the public hearing to be held with the Hana Advisory
43 Committee. And when we had the public hearing in Hana, Gale submitted a motion to
44 approve and was not able to get a second on the motion, so we're back here for final
45 authority with you for approval or denial.

1
2 Mr. Robinson: Ryan, was there any motion for denial?

3
4 Mr. Quigless: No. But I would also like to add two comments to that. One that the reasoning
5 behind not being able to get a second motion on the first motion from Gale was because
6 they would rather see the property in long-term rental. And I'd also like to note that when
7 every applicant comes to the Planning Department to submit an application for a short-term
8 rental or a bed and breakfast, a long-term option is always explored first, so I'd like to note
9 that.

10
11 Mr. Robinson: Thank you Commissioners, you have this packet. Were you guys all able to
12 read the packet and are we up to speed or do we, do we need to hear another
13 presentation? Seeing no need for a presentation, would we like to start with asking any
14 questions of Ryan? Commissioner La Costa.

15
16 Ms. La Costa: Thank you Chair. So when I read through the testimony it said that the
17 motion for approval to send it to the Planning Commission, failed to have a second. And
18 then someone else said, yes, I am going to do a second. By then the motion had died.

19
20 Mr. Quigless: No.

21
22 Ms. La Costa: So they brought it back.

23
24 Mr. Quigless: The way that I experienced it, it was a motion from Gale Notestone to
25 approve, and the second wasn't able to be reached by anybody.

26
27 Mr. Robinson: Yeah, is I believe that we do have a second for conditions, right? They had a
28 second for condition no. 5?

29
30 Mr. Quigless: It was actually a second to revise condition no. 5, and that will be in the final
31 permit if approved.

32
33 Mr. Robinson: That's correct. Okay. Anybody else have a question?

34
35 Mr. Quigless: Can I also interject?

36
37 Mr. Robinson: Sure Ryan.

38
39 Mr. Quigless: There's a letter of support that is from one of Richard's neighbors. His name
40 is Mr. Richard Bolden, and I'd like to read it if you guys don't mind.

41
42 Mr. Robinson: Was that the one that was in the testimony?

43
44 Mr. Quigless: It's the one that's in the packet that I handed out to you.

1
2 Mr. Robinson: Today's packet?

3
4 Mr. Quigless: Today packet, correct. It came in recently as a support for after the Hana
5 Advisory Committee.

6
7 Mr. Robinson: Can you read it under 30 seconds or less?

8
9 Mr. Quigless: I will.

10
11 Mr. Robinson: All right. Thank you.

12
13 Mr. Quigless: It says, Dear Mr. Ryan Quigless, I am writing this letter to show my support for
14 Mr. Richard Lee Lopez. I have been working with Mr. Lopez since 1996 and I have been
15 blessed by being a Hana resident for the last 30 years. Over the period of time spent
16 together we have become good friends and I feel he is an outstanding asset to the Hana
17 community. Our relationship began with my assistance in building his home, and I have
18 been doing yard service for him since. He has helped me to support my family and several
19 other workers in the Hana community. The property itself has improved every year with the
20 addition of fruit trees, gardens, and his expert hale building. I'm sure many generations of
21 people and his family will benefit from Mr. Lopez's hard work. I believe that Mr. Lopez will
22 be tremendous host in his proposed bed and breakfast and will continue to spread the aloha
23 spirit with everyone he meets. Mahalo, Richard Boldue.

24
25 Mr. Robinson: Thank you Ryan. Any questions? Commissioner Carnicelli?

26
27 Mr. Carnicelli: So it's funny anytime we get something from the Hana Advisory Committee
28 I'm just ready to just follow what they do, right? I mean, that's why we have them. They
29 know Hana. Hana is unlike any other place on this island and so I really want to defer to
30 them. So my question though is if you couldn't even get a second, then why was there not
31 a motion to deny? Like I mean, okay, how many people were present at the meeting
32 because I don't remember exactly how, you know? And then, okay, then maybe that
33 question is for Corporation Counsel then, is why could not get a second?

34
35 Mr. Robinson: Corporation Counsel was there at that meeting, so do you want to chime in?

36
37 Mr. David Galazin: Thank you Chair. Mr. Carnicelli, to speak to your question I was there
38 advising the Hana Advisory Committee at that meeting. I can describe to you the events
39 that happened. I won't go into details to what advice, you know, I provided them other than
40 what you read in the transcript. They were uncertain as to whether they felt comfortable
41 approving. However, they did not have anything that they could point in the record that
42 would support denial. The department's recommendation was approval. They felt as
43 though they wanted to -- they were split on the vote and they couldn't really make a
44 decision. And I tried to explain to them that the authority has been delegated by this body
45 to them to make that decision. That was their kuleana. And even if they decided they

1 couldn't figure out one way or the other, they just had the duty to advance it forward to you
2 folks. And this was just one where, for whatever reason, it was a split and they couldn't get
3 a consensus one way or the other. But it would rather than dragging it on and on, and didn't
4 seem like it was a split that would be rectified by the further length of time that they decided
5 that the best course of action would be to send it to this body for approval or denial as you
6 folks see fit, reviewing the record, reviewing the department's report and analysis. So that's
7 what, that is what you would base it on. And I think you made the fine point to say that
8 normally, yeah, you do want to rely heavily on the recommendation of the Hana community
9 and the Hana Advisory Committee, that's their -- it is what you have them for. But, you're
10 also here not to rubber stamp them either, you know. You critique what they've done, and
11 review it critically, and I think in the review in this case is they really didn't have a
12 consensus. They can -- not sure how to proceed, a couple of newer members and they
13 were just plain confused by the time they got to the point where they realized they weren't in
14 all agreement. Thank you Chair.

15
16 Mr. Robinson: And Commissioners, is I think this, you know, this is kind of thing to me, this
17 is the second time this has come up. I think it came up another time when I wasn't on this,
18 on this dais. And I think it was, if we can't, if something comes in front of us that we're
19 supposed to approve it because the Council said that there's 40 allowed or there's 80
20 allowed or whatever it is, and there's the, there's the legal advice that we have from our
21 Corporation Counsel that we're supposed to, if we don't have anything viable to stop it, we
22 don't stop it. You know the last time we had to vote, we had a lot absents and abstentions.
23 I think we only had two approvals when we went through with this. And I think that's where I
24 think even though I agree with a majority of the time with our Corporation Counsel that's
25 where I sort of disagree you know with that. When it comes in front of us, like it did for the
26 Hana Advisory, it was there because of a trigger. And to me a trigger is a way for them to
27 do it. Now, regardless if they use the trigger or not, regardless if they use that testimony or
28 not, when we get advice from our Corporation Counsel, we heavily, heavily, heavily take
29 that consideration because none of us want to be individually liable for anything. Which is a
30 concern, you know.

31
32 But at the same point it's still isn't open and it is sort of to me a little ambiguous area
33 because we don't have clarification because why would it be in front of us if it was an
34 automatic, you know, right for them to have it. Is 40 allowable a minimum? Do we have to
35 fill up to 40? You know, speed limits, you know, the speed limit is 55, do we have to drive
36 55 or can we drive 50? You know, there's minimums, there's maximums, and you know,
37 and there's that stuff in there. And if you guys have trepidation, I understand because
38 that's, that's kind of where I'm sort of at in this middle part is we have testimony to the Hana
39 Advisory Committee, you know, opposed to it. We now have a letter supporting it. But
40 when the read the transcripts it was sort of saying, yeah, but, you know, are we supposed to
41 take testimony to a certain degree. And I think that's the stuff that I don't know if we, if I
42 mean Corporation Counsel, you know I asked for clarification and not trying to, not trying to
43 put anybody on the spot, but I think that would help our Commission, it would help Hana
44 Advisory Commission for we get verdicts and we can vote more clearly on exactly where

1 our stance is. Because if it's an automatic, why would it come in front of us? You want to,
2 you want to follow up with that?

3
4 Mr. Galazin: Thank you Chair. And for your edification as well as for the other
5 Commissions, we are working on something that will be comprehensive for all of the, for all
6 of the Planning Commissions as well as the Advisory Committee that will speak to just that
7 question.

8
9 The short answer right now is if you look what the Code sets out for criteria, somebody
10 submits an application, if the Department reviews it and says, okay, they've met all the
11 criteria, if there are evidence submitted, you know, we have public testimony, if there's
12 reliable evidence from public testimony that one or more of the criteria are not met, that's a
13 basis for denial. If there's -- if the testimony from the public is, I just don't like these things,
14 that's not a criteria on within the Code. So that's the way you use public testimony is you,
15 you weight it against, okay, what factors does this apply to and what weight can I give it? If
16 it's just opinion, you give it different weight than if it's somebody's factual testimony that they
17 have evidence to support that, you know, okay, well my ancestral lands are here, I know
18 there's burials on this site, I was told by, you know, my tutu from days ago. Okay, those
19 kinds of things, that's a lot more than, you know, hey I don't like seeing people with their
20 drive -- with their cars driving around all the time around in Hana. That's sort of the
21 distinction and that's where you as --

22
23 Mr. Robinson: Let's keep the hypothetical a little more legitimate. But I hear what you're
24 saying. And so the question is, and I agree with you, but, but what is the criteria for, you
25 know, so first if it's within a cluster, last one is the criteria for, and that's why this Hana was
26 because a certain amount of foot. And then there's another one which I saw a nice poster
27 on top our wall today which is our mission statement is to manage growth in a sustainable
28 manner that balances economy, culture and environment. And one of the testifier says
29 culturally with 25% of the homes on that street being for visitors and not for local residents,
30 local residents having to leave. So I understand there's --. Is that a fact, is that an opinion
31 besides just not wanting to see cars around? I mean, where, where does that weight start?

32
33 Mr. Galazin: Sorry to say that's why you folks are here, and that's why you come here twice
34 a month to make those --

35
36 Mr. Robinson: So it's not an automatic is what I'm trying to get to.

37
38 Mr. Galazin: That's, that's correct. But you've got to weigh.

39
40 Mr. Robinson: But we do have things to weigh.

41
42 Mr. Galazin: You do have things to weigh, and you can point out what you're weighting it
43 against, and why you're weighting it the way that you are. And if you just explain that, then
44 that's -- or that's what you're here for and that's what we need.

1
2 Mr. Robinson: Got it. Commissioners, any comments or questions? Commissioner La
3 Costa?

4
5 Ms. La Costa: Thank you Chair. So I'm looking at page 7 of the testimony and it asks about
6 Mr. Lopez already having a B&B on the property and do you want another one? And he
7 says, no, no, this is the one I've been operating.

8
9 Mr. Quigless: Mr. Lopez submitted an application and was under the assumption that he
10 was approved prior to the B&B Permit even being established. So he was operating into
11 the start of the B&B Permit. So this is a second. He received a notice of warning for
12 operating. This took it back to a grandfathering issue, whether or not he would qualify for
13 that. And then he started the process again, so we're basically legitimizing.

14
15 Mr. Robinson: Yeah, Ryan, what I'm feeling is he got a letter, I'm assuming, from the
16 Planning Department says that in order to apply you have to be compliant first and he put in
17 the extra septic tank or he spent the money, and he assumed that, that was okay. You told
18 me I had to do this to comply and that's where he thought that since he did that he was
19 good to go and start going. Is that kind of what --?

20
21 Mr. Quigless: That's exactly right. Yeah, he had a list of things that he had to make
22 improvements to his property, he did those, and then moved forward into --

23
24 Mr. Robinson: Just assumed that was --

25
26 Mr. Quigless: Prior to the B&B being originated.

27
28 Mr. Robinson: Thank you. Commissioners, questions or motion? Commissioner La Costa.

29
30 Ms. La Costa: I, I, I wasn't here previously I don't think. I don't see a map of the overview of
31 the homes that are currently operating and permitted.

32
33 Mr. Quigless: There's one within 500 feet.

34
35 Ms. La Costa: Yeah, I saw that, but I don't know what proximity is, and it also talks about
36 percentages or other properties. Can you help me out with that please?

37
38 Mr. Quigless: If you look in relationship to the boundary of the 500 foot radius, the other
39 B&B lies just to the edge of the 500 foot boundary, and there are no others operating within
40 500 feet. So to answer that question.

41
42 Ms. La Costa: Thank you.

43
44 Mr. Robinson: So Ryan, how many operating in Hana right now?
45

1 Mr. Quigless: Give me one moment; it's in the report.

2

3 Mr. Robinson: I guess what I'm saying is the map that we've been getting have been a little
4 bit more expanded out, and we have sort of all of the dots of the area.

5

6 Mr. Quigless: Sorry, can you repeat that last question?

7

8 Mr. Robinson: Is the number of B&B's operating in the Hana district currently?

9

10 Ms. La Costa: There are 10, legal ones, anyway.

11

12 Mr. Quigless: 10 permitted.

13

14 Ms. La Costa: There are 10 permitted, on page 3 of the --. No. 5.

15

16 Mr. Robinson: The answer, we found that, it's 10. Thank you Ryan.

17

18 Mr. Quigless: Great. Thank you.

19

20 Mr. Robinson: Commissioners, any other questions or motions? Commissioner Pali.

21

22 Ms. Pali: One for clarification. So if there wasn't one within the 500 then it would be
23 automatic, and he would have gotten it. But because there is one within the 500 then it
24 does trigger for a review. We just make sure that the saturation is done in a sustainable
25 manner that balances the economy, culture, and environment. Is that an accurate
26 assessment?

27

28 Mr. Robinson: That's my understanding. Corp Counsel?

29

30 Mr. Quigless: That's correct.

31

32 Mr. Galazin: That's correct, yeah.

33

34 Ms. Pali: And so planner, would you say that although this person clearly started off on the
35 wrong foot has done and complied with all the items in the proper manner so that not
36 assume that he would automatically get it, but that there is an avenue for which if he did
37 these things he could put himself in a position to be approved.

38

39 Mr. Quigless: I absolutely think that he's done everything that was required to meet the
40 minimum requirements for approval. And I'd also like to note that I don't think that he was
41 starting in any sort of malicious kind of undermining . . . (inaudible) . . .

42

43 Ms. Pali: More like I never know.

44

45 Mr. Quigless: Well, I don't think that --

1
2 Ms. Pali: Or he didn't realize.
3
4 Mr. Quigless: Well, the B&B Permit hadn't been originated when he started process.
5
6 Ms. Pali: Oh, I see.
7
8 Mr. Quigless: So during that he was given a list of improvements to make to the property.
9 He did all of those and then immediately started renting. Then the B&B --
10
11 Ms. Pali: Okay, thank you for that. And did you have any, did Planning in that Hana
12 Advisory and since then, have you had any particular complaints against this that feels that
13 anything would be violated?
14
15 Mr. Quigless: Not one letter of opposition.
16
17 Ms. Pali: Not one letter of opposition for this particular guy.
18
19 Mr. Quigless: No, not one.
20
21 Ms. Pali: But now on record we have one for it.
22
23 Mr. Quigless: He has many letters of support.
24
25 Ms. Pali: Oh, many.
26
27 Mr. Quigless: Yes, and e-mails, and community testimony.
28
29 Ms. Pali: Okay.
30
31 Mr. Robinson: And in fact, you know, guys because we, we passed over review, I didn't ask
32 for public testimony. So if we don't have questions, we want to do that after, we can do that
33 public testimony, get the recommendation from the Department and then we can continue
34 on after if that might help as well. Sounds good? Okay.
35
36 At this time, if there's anybody here for public testimony that would like to testify at this time
37 please step forward.
38
39 Ms. (____): Are you talking about only on this agenda item?
40
41 Mr. Robinson: Yes, on this agenda item.
42
43 Ms. (____): Mahalo.
44
45 Mr. Robinson: Okay. Seeing none, could we hear the recommendation please, Ryan? So

1 he's going to do the recommendation and then after that we'll come back to discussion and
2 ask question. I bypassed review. I should have done the testimony, and then the
3 recommendation, and then then be at this junction. I skipped it. Sorry.

4
5 Mr. Quigless: With the recommendation of the Hana Advisory Committee to revise
6 Condition No. 5 to read from three guest bedrooms to two guest bedrooms. The
7 recommendation from the Planning Department is to approve with the 17 standard
8 conditions for approval. Would you like me to go over those at this time?

9
10 Mr. Robinson: I think we're fine. I think we've read that. And now we're at the proper
11 position to where we have recommendation from the Department, and now we can continue
12 with the questions or motions. Commissioner La Costa.

13
14 Ms. La Costa: I noticed on public testimony, page 8, there was an opposition by Ms. Gena
15 Sansone. There wasn't a written letter, but there was an opposition. And seems that her
16 opposition was because of short-term versus long-term availability of housing for residents.
17 And there were there any other oppositions that I saw in the testimony?

18
19 Mr. Quigless: Not that I'm aware of, no.

20
21 Ms. La Costa: Okay, thank you.

22
23 Mr. Robinson: Commissioners? Commissioner Carnicelli.

24
25 Mr. Carnicelli: Chair, I make a motion to approve as recommended by staff.

26
27 Mr. Robinson: We have a motion to approve as recommended by staff. Do we have a
28 second?

29
30 Ms. La Costa: Second.

31
32 Mr. Robinson: We have a second by Commissioner La Costa. Would you like to speak to
33 the motion?

34
35 Mr. Carnicelli: Yeah Chair, this is one of those ones again, I'll just go to...you know, I
36 wished the Hana Advisory Committee would have made a decision but they didn't, so then it
37 does fall on us. And this is one of those ones that it is a challenge because I think, you
38 know, in my heart I, I like the fact that we need. You know, I mean, it's this thing that we
39 talk about as far as long-term rentals versus short-term rentals, and what do we do with
40 that. One thing that I did delineate for myself is B&B's versus short-term rentals, this is
41 someone that lives on the property, it's their home. So, it is a local person, you know,
42 generating this income rather than, you know, a short-term rental. So that is one thing that I
43 looked at.

1 But the biggest piece of this is, you know, when we vote affirmatively on a denial, I have to
2 have a reason why, right? A concrete reason why I'm going to deny this person a permit.
3 It's not just, you know, a rubber stamp as you say, but I have to have a concrete reason
4 why. As I look at this, the Hana Advisory Committee didn't have a concrete reason why that
5 they could deny. So for me, I'm looking at it as going, like, yeah, would I rather see it as a
6 vacation rental -- I'm sorry, as a long-term rental, yeah. But if I look at what the law states,
7 whether I like the law, I don't like the law, like to ordinance, think that the cap should be
8 different, I look at this as the applicant has complied to the part to where I couldn't
9 affirmatively vote for a denial so then therefore I'm going to go ahead and support the
10 recommendation of the Department.

11
12 Mr. Robinson: Thank you. Any other discussion on the topic? And I'm with you, you know.
13 And the Planning Commission, we're tasked with following what the Council voted on, and
14 following what the rules is said as far as minimums, as far as criteria for denials. We do
15 have a new Council. I mean, they might take it up to add more clauses for chances for
16 denials, you know. There's always acceptance, there's always excuses, and limits might be
17 to say that it's not a minimum that has to be there, you know, or can that cap be expanded
18 in the future or not. I think like you said, as we've been worked, you know, wrestling back
19 and forth these past couple of years with all these things, and even though we know that it
20 may not, may not in our personal opinions be good for the local homeowner or the home
21 renter, we understand that, you know, is people that were voted into office, that was the law,
22 and that's what we're supposed to abide by. At this time we'll take a vote. All those in favor
23 of following the recommendation of the, of the Planning Department, please raise your right
24 hand. That's five. All those opposed? Oh, did you raise your hand, Christian? I'm sorry,
25 you hand blended into your shirt.

26
27 Mr. Tackett: It's a small hand.

28
29 Mr. Robinson: I apologize. That's six, motion passes. Congratulations. We'll take a five
30 minute recess.

31
32 **It was moved by Mr. Carnicelli, seconded by Ms. La Costa, then**

33
34 **VOTED: To Approve the Bed and Breakfast Permit, as Recommended by**
35 **the Department.**

36
37 **(Assenting – L. Carnicelli, P. D. La Costa, K. Pali, L. Hudson, C. Tackett,**
38 **S. Castro)**

39 **(Excused – A. Hill, T. Gomes)**
40

41 Mr. Quigless: Mahalo Commissioners.

42
43 *(The Maui Planning Commission recessed at 10:13 a.m., and reconvened at 10:18 a.m.)*
44
45

1 **D. REVIEW OF PROPOSED SETTLEMENT AGREEMENT FOR ALLEGED SPECIAL**
2 **MANAGEMENT AREA VIOLATION**

- 3
4 1. **Proposed Settlement Agreement between the COUNTY OF MAUI and the**
5 **KAPALUA RESORT ASSOCIATION for the partial demolition of a rock**
6 **wall within the Special Management Area (SMA) without first receiving**
7 **an SMA determination or permit for such improvements on property**
8 **adjacent to Lower Honoapiilani Road, TMK: 4-2-004:034, Kapalua,**
9 **Lahaina, Island of Maui. SMA Notice of Violation issued as follows: NOV**
10 **2017/0050.**

11
12 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE**
13 **COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND**
14 **ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES,**
15 **PRIVILEGES, IMMUNITIES, AND LIABILITIES PURSUANT TO SEC.**
16 **92-5(a)(4), HRS.**

17
18 **The Commission may take final action on the proposed Settlement**
19 **Agreement pursuant to the provisions of Section 12-202-23(d)(3) of the**
20 **Maui Planning Commission's Special Management Area Rules.**

21
22 Mr. Robinson: Aloha, thank you. The Planning Commission is back in session. Next on our
23 agenda, Director. Welcome Director. Happy New Year.

24
25 Ms. Michele McLean: Thank you Chair. Happy New Year to you too. Next on the agenda is
26 Item D.1 which is a proposed settlement agreement between the County of Maui and the
27 Kapalua Resort Association (KRA) for the partial demolition of a rock wall within the Special
28 Management Area without first receiving an SMA Determination or Permit for such
29 improvements on property adjacent to Lower Honoapiilani Road, TMK: 4-2-4 parcel 34 in
30 Kapalua.

31
32 I will be presenting the discussion on this because the staff member who was responsible
33 for it is no longer with the Department and so just briefly before we go into testimony. There
34 was an old rock wall that was partially demolished and we directly issued a Notice of
35 Violation (NOV). And that Notice of Violation came with only an initial fine because it wasn't
36 a protracted violation. It only occurred once, and only once. And the initial violation was for
37 \$50,000.

38
39 Your rules allow for a hearing with the Director to discuss an appeal of an SMA violation,
40 and so that hearing was conducted by one of our staff members, our Administrative
41 Planning Officer, David Raatz, who has since moved to Council Services. David conducted
42 the hearing. He received information from our zoning inspector, Kai Wright, who is here
43 today if you have questions for him, and discussed the matter with the violator and drafted
44 the agreement that is presented to you today.

1 What the agreement outlines is that the \$50,000 fine stands. They would be responsible for
2 paying \$15,000 with the remaining \$35,000 held in abeyance provided that no further
3 violations occur. So that is the gist of the settlement agreement. This would require your
4 approval. If you were to approve it, then I would be able to sign it and recommend that the
5 Mayor sign it. And if you do not approve it, we could continue discussions with the violator
6 or we could bring the matter to you folks to have the full discussion. Okay? Thank you
7 Chair.

8
9 Mr. Robinson: You want to hold until public testimony? I think it might help us with public
10 testimony. Commissioner Carnicelli.

11
12 Mr. Carnicelli: Thank you Chair. So, Director, just for clarification, I do believe that there is
13 now a special SMA fund that this violation will go into. The monies of this will not go into the
14 General Fund, but will go into a special SMA fund, is that correct?

15
16 Ms. McLean: I would have to double check when that special fund ordinance takes effect.
17 The ordinance was passed, so the ordinance was done, but I believe the effective date was
18 delayed. If the effective date is now, then yes, this would go into that fund. The effective
19 date it might be -- for some reason I have it in my mind that it's July 1st. I would have to
20 check, though, because I'm not certain. But the only reason it wouldn't go into the fund is if
21 that ordinance hasn't taken into effect yet.

22
23 Mr. Carnicelli: Thank you.

24
25 Ms. McLean: I can find that out pretty quickly.

26
27 Mr. Robinson: At this time we'll take public testimony. First, we have Tamara.

28
29 Council Member Tamara Paltin: Aloha Commissioners, Planning Director. Thank you for
30 taking my testimony. My name is Tamara Paltin, and I'm testifying as a member of the west
31 Maui community. I gotta kind of come clean. I was the one that noticed this violation and I
32 called the County to find out if there was a permit. I was working at the time on the 9-1-1
33 system, and so I called my friend Kai to come take care of it. And luckily cause I had a 9-1-
34 1 call like about five minutes after so I couldn't, couldn't address it.

35
36 So the situation for me, the reason why I was concerned about it was my personal safety
37 and the safety of my community and the visitors. I've seen walls built in the past, you know,
38 and if there's not proper drainage when there's a lot of rain, like how we've had a lot of rain,
39 sometimes the walls get pushed out into the road. And so my concern was that, you know,
40 without the permitting, is there an engineer's plan, and you know the safety of the public.
41 And when it came to light and got on the news, and all the rest, people were also concerned
42 of the historic value of the wall and other things to the point where I think it got a little bit of
43 hand where there were threats of violence and I don't support violence in any form. I'm
44 more about safety. But I think that reflects the passion that our community felt about this
45 being done without any kind of input from our community. And so, you know, I've worked in

1 that area for about 17 years, and this is not the first violation that I've seen. You know, I've
2 seen maybe not Kapalua Resort, but Maui Land & Pine operating helicopter tours out of that
3 back field, you know, right next to a preschool. Jet fuel, you know, within like a mile from
4 my kid's education.

5
6 So I'm kind of feel that, you know, as professionals with a lot of income that they should
7 know the rules and, you know, hold themselves to these professional standards. And I'm
8 not opposed to the settlement agreement, but I think, you know, the effect that it had on the
9 community, the outreach that it had on my community, I think that part of it should be a give
10 back to the community. Recently I requested if we could have a community's gathering in
11 the back field, and I was told that, no, because of the SMA requirements for a permit. And I
12 was like, now, now they know about their SMA permit requirements. And, you know, I
13 mean, it's good, but I think it would go a long way and be a good give back to the
14 community to include in the settlement agreement, you know, that you would allow for a
15 community's gatherings back there.

16
17 The organization that had requested through me was, is called Pua Aina Ulu Au Mo, and it's
18 a non-profit that gathers communities across the state to work on community functions.
19 And in the gathering us annually we learn from each other, each other's challenges, each
20 other's opportunities. We've held gatherings in Kipahulu, Anahola, Punaluu, Oahu, and I
21 just think it would be a nice addition to the settlement to include a community give back in
22 response to the community outreach. Thank you.

23
24 Mr. Robinson: Any questions for the testifier? I have a question. It's now the Ritz Carlton
25 has cultural advisors, and they have --. And I think they're on the -- since this has
26 happened -- they're on their third or fourth different general manager. So is there
27 somebody that is a liaison that would, that would be, you know, a flow through as
28 administrations, as the owner changed as well for that hotel? I mean, is in the community,
29 is there some type of --? I know Kaanapali has an association, but does the Ritz Carlton or
30 Kapalua have an association where somebody can make sure these things happen that
31 they have somebody, that they have a resource, instead of them just thinking they're on
32 their own?

33
34 Council Member Paltin: Yes, since this item got wide media coverage, Clifford Nae'ole, their
35 cultural advisor, has reached out to me, and I think to Kai as well, and said he would be
36 more on top of it. He --. And, and we were sad to lose the past general managers. They
37 were really receptive. Clifford Nae'ole also was in -- he was in favor of the community's
38 gathering when I had spoken to him. Just the process was to go through Dave Wagner and
39 Grant Nakama, and you know, I don't know if they know that it could be an SMA Minor
40 Permit. And, you know, in the past, like, all of our gatherings we provide the portable toilets,
41 we provide all the stuffs. We, generally speaking, leave the area better than it was. Our
42 last gathering was at Bello's. We helped the Waimanalo limu hui restore a big portion of
43 their rock wall for their local at Pahonu. So, you know, I mean there would be definitely a
44 community give back to help build our community.

1 There's not a lot of options, you know, in the upper west side to gather community groups of
2 that size. And in my time of being there, it seems like community or family camping is
3 becoming criminalized on the upper west side. You know, I've been around the beaches for
4 years, and I see people camping out and living in the bushes, and nobody really bothers
5 with them because they're kind of unseen. But they're living in the bushes, and they're not
6 making big impact. But if you try to get, like, you know, an extended family together for a
7 long weekend of camping like how families used to do, or did for generations, traditionally
8 now days it's like criminalized, like, you know, there's all these hoops you got to go through.
9 And it's kind of, to me, a little bit taking away the essence of how our lifestyle is out in those
10 rural areas. And if we can just hold a certain people accountable and make it easy for them
11 camp, and make sure that they clean up the area, leave it better than what is, I think that's a
12 big benefit to our community.

13
14 Mr. Robinson: Thank you so much.

15
16 Council Member Paltin: Thank you.

17
18 Mr. Robinson: Aloha. Next testifier, Kai.

19
20 Ms. Kai Nishiki: Good morning Chair, Commissioners. So the settlement agreement --

21
22 Mr. Robinson: Please introduce yourself.

23
24 Ms. Nishiki: I'm sorry. Kai Nishiki from the west Maui community. I am testifying against
25 the settlement agreement in its current form. I believe that it should be sent back for further
26 negotiation. I think that the Planning Department and the Planning Commission is charged
27 with protecting our shoreline. The shoreline doesn't goes anywhere else. It comes to this,
28 this body. And so I feel that, you know, you guys take your responsibility very...very, you
29 know, with a lot of importance and that you guys have a lot of power when it comes to the
30 shoreline. So I think that these settlement agreements, the SMA violations are \$50,000.
31 It's meant to be a deterrent so that people know that they can't just go into the shoreline or
32 into the SMA area and do whatever they want. But it seems, you know, from the news
33 media and stuff that, that they're not taking their responsibility seriously. And they -- it
34 seems like whenever it happens, everyone says, oh, I didn't know that I was supposed to
35 get an SMA Permit. Well resort executives are paid a lot of money. Resorts have lots of
36 attorneys on retainer. At any time someone with that kind of authority, a general manager
37 or whatever, can easily make a call to their lawyer and ask, hey, what do we need to do
38 here? So I just don't - I feel like it's not a, it's a not ignorance issue, it's an arrogance issue,
39 and where they just feel like this is our property, we can do whatever we want. And a lot of
40 the people who are general managers and in these executive positions are from the
41 continent. And I think that as a part of the settlement agreement there really needs to be a
42 component of education. Like when someone gets a fine, and you're going to get it
43 negotiated down, well, shouldn't there be some sort of community service, or community
44 benefit, and also an educational component to the settlement agreement? Not just, oh, it's
45 just, just about dollars and cents. It needs to be about addressing what the problem is. If

1 you're saying, you didn't know, well then what steps are you taking as an organization to
2 make sure that that doesn't happen again?

3
4 So I have spoken with Paul Brown over the past year. I mean, this is from summer 2017
5 that this happened, and relayed to him that, you know, Clifford Nae'ole has said that he
6 would be interested in being a part of an educational component, cultural as well as SMA.
7 I've talked to the Planning Department. They are willing to be included in some kind of
8 educational component. And so I just urge you to add that into the settlement agreement,
9 or I mean, I think that your body probably has to send this back to the Planning Department,
10 and they're the ones who would have to massage the agreement a little bit more.

11
12 But also, the component should also include a community benefit. This, this has taken
13 away from our community in a certain sense. And although they are saying like this is
14 supposed to be --. No, they're installing this wall and this is going to help our community.
15 Well, it is also impacted our community, and mitigation should be done as far as that. And I
16 don't think that SMA fines and should ever be negotiated down. In fact, I think that they
17 should be raised, and I'm hoping that I can work with the Planning Department to raise the
18 fines for SMA violations, and for us to not continue this. Like, this sets the precedent, and
19 we need to make sure --. I mean, there's a reason why it's \$50,000. It's \$50,000 because
20 the shoreline and the SMA area are that valuable to Maui, to our County. This is where --
21 this is how, I mean, I hate to say it, but this is how we make our money. So I understand
22 my three minutes are up, but thank you very much.

23
24 Mr. Robinson: Thank you Kai. Any questions for the testifier? Commissioner Carnicelli.

25
26 Mr. Carnicelli: Thank you Kai. As you know, we have the boundaries with which we have to
27 work between. I'm a little bit confused though because when you say that you would like to
28 have a community benefit, but then you're saying you want education. I think that, you
29 know, the people that are a part of this agreement, \$50,000, you know, to a huge
30 corporation isn't a lot of money, but \$50,000 is a lot of money. It wakes them up. And so
31 that I think that's great. So but when we say we need education, we're educating the
32 people that just got smacked. And I think they're not the ones that need the education
33 necessarily. They're the ones that, you know, I would think they're going to pay attention.
34 So are you saying that they need to be educated, or they then need to go out and educate
35 the community? I mean, where is it that you're --? I'm just trying to get clarity on what is the
36 public benefit that you're seeking. Because we have a carrot and stick. You know, this is
37 the stick and you want to add a carrot. What is that carrot?

38
39 Ms. Nishiki: Okay. Sorry about that. I'll clarify a little further. As far as -- thank you -- the
40 educational component that I was speaking to is that there would be some sort of program
41 implemented by resorts to educate the incoming executives as to what is, what is an SMA
42 area? Most of the resorts are on the shoreline area, and because there's such a high
43 turnover within resorts, we, we spoke about a long term educational program. So that when
44 someone comes in from the continent and they don't know what an SMA area is and they're
45 not familiar with cultural and environmental impacts which are what's looked at with SMA

1 permits, that they're given some sort of a one day class, or a few hour class on what SMA
2 regulations are, what cultural impacts, and what environmental impacts are possible in
3 these environmentally sensitive areas. So I'm not talking about just Paul Brown and his
4 position. I'm saying for when, you know, he's not at the hotel and there's somebody new
5 who has taken his place, or there's other resorts. So that's why I was saying Clifford
6 Nae'ole and I had spoken about there being a program that could be for all of west Maui
7 resort, not just this one.

8
9 And then the community benefit portion of it, what I'm speaking to about the community
10 benefit portion of it, is that usually if you commit a crime and you want to have your
11 sentence reduced, then you have to usually go and do some community service. So what
12 I'm saying is a part of the settlement agreement, if you're going to reduce it from \$50,000 to
13 \$15,000 and I don't agree with that. I think that should be flipped. We can discount it by
14 \$15,000 if they agree to do a long-term educational program, and a community benefit once
15 a year, that we would reduce the fine by \$15,000, and they would still pay the \$35,000.

16
17 Mr. Carnicelli: Thank you.

18
19 Mr. Robinson: All right, thank you.

20
21 Ms. Nishiki: Thank you.

22
23 Mr. Robinson: Next testifier is Paul Horikawa.

24
25 Mr. Paul Horikawa: My name is Paul Horikawa. I'm going to request that Paul Brown be
26 allowed to go first because he may need some of my three minutes.

27
28 Mr. Robinson: That's fine. That's fine. He's not handing over his time. He's going to. He
29 wants that he go first. Right, we're not giving you, we're not giving Paul your minutes, we're
30 just letting Paul go before you in case you want reiterate something that you missed. Aloha,
31 please introduce yourself, you have three minutes.

32
33 Mr. Paul Brown: Aloha. Good morning. I'm Paul Brown. I'm the Director of Kapalua Resort
34 Association. Before I start I would like to pass out a small packet of photos of the site, as
35 well as a copy of my testimony and a couple of letters of support.

36
37 The package of photos, the first three photos are photos of the wall before any work was
38 done, showing how it was fall down into the roadway. And then the rest of the photos are
39 after a tree came down a few months after we started work on it, and created a lot of
40 damage after we worked on it.

41
42 Again, good morning ladies and gentlemen of the Commission. Thank you for taking the
43 time to hear this matter. My name is Paul Brown. I'm the Association Manager for Kapalua
44 Resorts Association (KRA). KRA is the master property owner's association for the resort.
45 And all property owners within Kapalua are members and contribute funds to maintain the

1 common areas of the community as well as provide services. Those members include the
2 hotel, Maui Land & Pineapple, homeowners, condominium owners, vacant land owner, and
3 that kind of thing.

4
5 KRA owns Lower Honoapiilani Road from Highway 30 to D. T. Fleming Beach Park, and is
6 obligated to maintain that property. As the association's manager I'm responsible for
7 oversight of the common areas and making sure that they're kept in good shape.

8
9 Noting that a rock wall, about a 100 foot rock wall was deteriorating and falling into the
10 roadway, I requested funding from Board so that repairs could be done to the wall. Damage
11 to wall was a result of tree roots and erosion. The area is very dangerous due to rocks
12 falling into the roadway, on the pedestrian area as well.

13
14 We discussed two options for the repairs. One was just to repair small areas of the wall that
15 had been damaged, or two, to take the entire wall down knowing that it was probably going
16 to get pushed down by the tree roots in the future. The Board decided to go ahead and
17 complete the entire repair. They felt that was the safest for the community.

18
19 Principal factors in the decision were that there were many large and very invasive
20 Eucalyptus trees growing above the wall. The tree roofs were one of the principal factors
21 contributing to the damage. It appeared that most of the wall would eventually be knocked
22 over by the roots and erosion, and the trees would need to be removed prior to the repairs.
23 Otherwise it would be in danger of falling into the roadway. It was unlikely that the wall
24 would remain undamaged if the trees weren't taken down.

25
26 The planned repairs included removal of the existing wall, setting aside the rocks, removal
27 of the dangerous trees, installation of a CMU wall to protect against erosion, then rebuilding
28 the rock wall over the CMU wall with the original rocks. The goal was to finish with a
29 beautiful rock wall matching the original.

30
31 After funding was approved, the contractor was selected and worked commenced. As
32 worked began a community member called me to object to the removal of the wall and
33 asked if permits had been obtained. Noting this concern, I called the contractor and told
34 him to stop work immediately, to clear the roadway of rocks that had been removed from
35 the wall, and to install BMP to protect from erosion. I then called and contacted the
36 Planning Department to notify them of the situation. County personnel inspected the site,
37 and a Notice of Violation was issued. No work has been done by KRA since that initial
38 work.

39
40 A few months after the project was started a large Eucalyptus tree, one of those above it,
41 but not above the section that we had removed, fell across the roadway, took down the
42 power lines, telephone lines. We were very fortunate it happened in the early morning
43 hours. Otherwise, it could have been very tragic. Part of the reason why we wanted to
44 repair the wall.

1 Upon receipt of the Notice of Violation, we worked with an engineer to complete drawings
2 for the project, and these were submitted for an SMA review and permitting. To my
3 understanding, the reviews have been completed, and issuance of the permit to complete
4 the project is being held pending settlement of the violation.

5
6 We've researched the records of the prior property owner, which was Maui Land &
7 Pineapple, but have not been able to find any documentation related to the initial
8 construction of the wall. In speaking with former employees with ML&P who are familiar
9 with the history of the area, the consensus is that it's not of ancient origin or historical
10 significance. It is likely that the wall was built when the lower road was widened and paved as
11 part of the initial resort development. Rock wall of a similar design and built from the same
12 Kapalua blue rock which comes from a quarry within Kapalua, they are found throughout
13 the resort and likely built at the same time.

14
15 As the association manager for KRA I take complete responsibility for my failure to obtain
16 an SMA review and permits prior to the work commencing. When public outcry began I
17 publically took ownership of the mistake and apologized. Most community members who
18 were upset thought that this was an ancient wall, but when the circumstances were
19 explained and the desired end result provided, a refurbished, beautiful and safe rock wall,
20 the response was generally positive. There is no intent to circumvent the SMA process or
21 permitting process, and I aired in considering this a repair project rather than a development
22 project. Lesson learned.

23
24 I hope that the settlement can be approved so permits can be finalized and we can
25 complete the project which is a great benefit to the resident and visitor community to Maui.
26 It is a very unsafe condition as it is, and was prior to any work taken place.

27
28 If I have a little bit more time, I'd like to respond to a couple of things. One, Tamara had
29 requested use of a ball field that's in the area. That ball field is owned by ML&P. It is not a
30 part of Kapalua Resort. It's never been annexed into the resort, so I don't have any control
31 over it. I don't know about any SMA Use of using it for camping, but certainly I can help
32 facilitate as I have a relationship with ML&P and ask that if it is possible for them to use it.
33 And she's not here any longer, but Kai, you can pass it on. I live in three acres in Napili,
34 and if she wants to camp and bring the group up there I will provide my home site. It's a
35 beautiful site. It's big. She can bring the group up there, so that would be fine.

36
37 Mr. Robinson: Did I hear any time?

38
39 Mr. Brown: I don't know if you're related to the Robinson family on the west side.

40
41 Mr. Robinson: I'm not.

42
43 Mr. Brown: They're my neighbors.

44
45 Mr. Robinson: Okay. I don't. Thank you.

1
2 Mr. Brown: And one other response. I know that Kai had mentioned the fines are \$50,000.
3 I believe it is up to \$50,000, and I think that it's based on the egregiousness of the violation.
4 If we had gone and done something that wouldn't have been permitted in -- you know, if we
5 had gone through the process, if we had done something that had destroyed some natural
6 feature, then, yes, the maximum fine is appropriate. But I think if you look at this, this is
7 work that would have been approved if we had gone through the process. It's not
8 something that wouldn't have been approved. And I think it's --. I think that's why they
9 have that leeway of up to \$50,000, so that they can look at and see what is appropriate. I
10 think when the fine, the Notice of Violation was initially put forth, this thing was blowing up
11 on Facebook. It was actually the --. Remember when our FBI Director was fired by our
12 President, that was the same day that this went on the news, and I was the lead story on
13 the 10 o'clock news; Paul Brown destroys rock wall in Kapalua. And so there was a public
14 outcry because there wasn't an understanding of what the situation was. If this was an
15 ancient heiau, if it was an ancient wall, believe me I would be the first one, you know,
16 making a sacrifice at the site. This was a rock wall that was built as a part of the resort
17 development, built by most likely ML&P or Honolua Ranch employee.

18
19 So I just ask that we can get this settled, and certainly Kai's request for an educational
20 feature. And I can't commit to it because my Board would have to commit, but I would
21 certainly love to do that and bring all the managers within the resort together, bring the
22 Planning Department, a representative from them, and do some of that. To be honest I
23 would rather not kick the settlement back to the Planning Department because I want to get
24 this done. It's been over my head for a year and a half. And as Tamara mentioned there
25 were threats, there were threats to me, my family, my home. It was a tough time. So, I
26 would like to get it done, and believe me, I'm ready to put the construction crew right to work
27 and make this a safe place.

28
29 Mr. Robinson: Thank you Paul. Any questions for Mr. Brown? Commissioner Pali.

30
31 Ms. Pali: I'd like to try to summary back so I understand properly because I feel like this is
32 why it's so important to hear both sides and I just want to make sure. So this rock wall was
33 there already and it experienced some damage. And so you were just attempting to
34 continue to keep the area safe and repair the damage not realizing that there was an actual
35 County process.

36
37 Mr. Brown: Correct.

38
39 Ms. Pali: Okay, so you didn't go put some wall that wasn't originally there, and you didn't go
40 see somebody else's wall and tear it down.

41
42 Mr. Brown: No ma'am.

43
44 Ms. Pali: This is an existing wall, the property you manage. It experienced damage and you
45 wanted to fix it, and in doing so, you realized there were processes you failed to follow. And

1 while you were put on hold to follow the process, it sounds like further damage and unsafe
2 conditions with the tree falling happened because of the process.

3
4 Mr. Brown: Yes ma'am. That's right.

5
6 Ms. Pali: Okay. Thank you.

7
8 Mr. Robinson: Commissioner Carnicelli.

9
10 Mr. Carnicelli: Thank you for being here. Do you know where the SMA line is on your
11 property now?

12
13 Mr. Brown: Yes sir.

14
15 Mr. Carnicelli: You know exactly where it is, right?

16
17 Mr. Brown: Absolutely.

18
19 Mr. Carnicelli: Okay. So something that you can probably do, if you have not already and
20 do not need your Board approval, is to put best management practices into place that will
21 basically be here when we're all dead and gone. That they will be there for, you know, in
22 perpetuity. So I guess my question is, (a), have you done that already, or (b), would you
23 make the representation to us that will absolutely, 100% be something that you do to make
24 sure that, again, is you get a better job, you move on, they hire somebody else that that
25 person doesn't need to be educated, it's already a part of the system.

26
27 Mr. Brown: Absolutely. And I'm kind of a one man show. I don't have any employees. It's
28 literally I kind of run the whole thing with advice from my Board. So I guarantee it's not
29 going happen on my watch again, and will make every effort to make sure that both my
30 Board and any future directors are familiar with the SMA and make sure that doesn't
31 happen.

32
33 Mr. Carnicelli: Okay, thank you.

34
35 Mr. Robinson: Commissioner Castro.

36
37 Mr. Castro: I'm looking at this picture. So the damage is prior reaching the preschool?

38
39 Mr. Brown: Yes sir. The driveway to the preschool is about 40 feet past the end of the wall.
40 We started removing the wall. We took down about probably a 30 foot section of the wall,
41 and then that's when I stopped work. You can see where the silk screen is there, and that's
42 the section that we worked on. Where the tree fell is at the far north end of wall. That
43 picture is after the tree fell and after they had cleaned up the power lines and things like that
44 off the road.

45

1 Mr. Castro: Yeah, I look at this picture and I think Kapalua gets a lot of rain, you know.
2 Actually my kids went to Kapalua preschool back when it first opened up.

3
4 Mr. Brown: So did mine.

5
6 Mr. Castro: So my concern is looking at these Eucalyptus trees, how sound are they?

7
8 Mr. Brown: They're completely unsound.

9
10 Mr. Castro: Okay, because you're going to --. It looks like they're ready to fall again. And
11 the wall, how much further up --? I mean, is the entire wall going to have to be taken down?

12
13 Mr. Brown: That's the plan because there is, there are roots along the whole way, and
14 there's sections along the whole wall that have fallen out. Not the whole wall, but there are
15 pockets along the whole way. And when we looked at, looked at it with our masonry
16 contractor, you know, he recommended that the entire thing because more of it is going to
17 fall. It's better to just take it down, built a support wall behind it to support the embankment
18 there, and then rebuilt the rock wall over the top of it so that it is safe and secure for a long
19 period of time.

20
21 Mr. Castro: I guess, I mean, it's going to have to be replaced. But I'm looking at those
22 trees, they look like they're ready to go.

23
24 Mr. Brown: Well, my goal is to remove the trees. As soon as we get the wall down and out
25 of the way, and the rocks cleared away, then the trees would come down at least on our
26 property. And our property extends 10 to 20 feet beyond the rock wall. And I'm working
27 with MLP because they own the property beyond that to remove some of those. Again, the
28 Eucalyptus tree that came down was about 4 ½ feet in diameter loaded with Night Blooming
29 Cereus which is that cactus that's growing up in the trees and pulling them over. So my
30 goal is to clear it back there so nothing can fall on the power lines or on the roadway again.

31
32 Mr. Castro: The only other concern I have, I believe Maui Land & Pine had a dyke that was
33 by the preschool, which gave away one time, we had to evacuate all the kids and the water
34 was all the way up, almost four feet up entering the school.

35
36 Mr. Brown: During, I can't remember if it was during Lane or Olivia, this fall, the river
37 overflowed as well, and went right up to the floor boards of the school. We almost lost 30 to
38 40 canoes that were on the beach at Flemings waiting for the race to be in the next day. So,
39 yeah, it was a scary situation.

40
41 Mr. Castro: One of the Director's car got sweep into the river, under the bridge, and ended
42 up by the restrooms at D. T. Fleming.

43
44 Mr. Brown: We only lost the dumpster this time. And I won't go into the SMA violation. The
45 crew went out and got it out with a backhoe. It wasn't me.

1
2 Mr. Robinson: Thank you.

3
4 Mr. Brown: Thank you.

5
6 Mr. Robinson: Do you have a question?

7
8 Ms. La Costa: Yes, I do. Thank you. This question is mainly for the Director. When
9 Mr. Brown mentioned that it was up to \$50,000 as the discretion. The settlement says the
10 amount of \$50,000 so there's a little discrepancy in my mind as far as is it \$50,000 and then
11 you negotiated downward, or what the clarification should be there?

12
13 Ms. McLean: Thank you for the question. He was referring to what the rules allow for. So
14 when the Department issues an SMA violation and assess a fine, the Department can issue
15 a fine of up to \$50,000. So that's the, that's the leeway that the Department has. In this
16 particular case, the Department is issued a fine of \$50,000. So it's not --. He's correct that
17 the Department had the discretion of issuing a fine up to \$50,000, and the Department
18 chose the top of that range. And so with the settlement, the amount is \$50,000 because that
19 is what the Department assessed, so that's what is being negotiated as part of the
20 settlement.

21
22 Ms. La Costa: If I may?

23
24 Mr. Robinson: Commissioner.

25
26 Ms. La Costa: Thank you Chair. Then how did you ascertain the number, the \$15,000 and
27 the \$35,000 in reserve?

28
29 Ms. McLean: That was a part of the settlement discussion between our staff and, and the
30 Kapalua Resort Association. It's just part of the settlement and negotiation process.

31
32 Ms. La Costa: Thank you.

33
34 Mr. Robinson: Commissioner Hudson?

35
36 Mr. Brown: Could I respond to that question? Paul --.

37
38 Mr. Hudson: Per the Commissioner, it says the payment of the remainder of the fine of
39 \$35,000 shall be suspended of in abeyance, and that the Department of Planning or the
40 Planning Commission issues an exemption or an SMA permit for the rock wall. Okay. So
41 it's not disregarded. My question is, are we issuing an exemption? Is the SMA going to be
42 a Minor or a Major because if it's a Major, then we'll be seeing it again, right?

43
44 Ms. McLean: That's correct. The application has been submitted. It's been processed. I
45 don't believe it would be an exemption. It would likely be a minor permit. And depending

1 on the dollar value, the minor could be issued by staff or if the dollar value brings it to the
2 Commission, it would be a major for you.

3
4 Mr. Hudson: So, so if we approve this, then we won't see this again unless they screw up.

5
6 Ms. McLean: That's correct.

7
8 Mr. Hudson: I'd also like to speak to the fines. My experience with fines is that they're
9 supposed to educate and modify behavior. And so I'm naturally hesitant to lower any fine.
10 And then we also coupled that with state of mind. Did he act intentionally? I don't believe
11 so. Did he act knowingly? No, I don't even think he did that. I think he acted recklessly. So
12 while my initial response is not to lower fines in any way shape or form, I'm all right with
13 that. Thank you.

14
15 Mr. Robinson: Commissioner Pali.

16
17 Ms. Pali: I would like to just make a comment to the person, applicant. I just want to say
18 that, I feel based off your testimony that you were probably acting in process. Damaged
19 wall, process fix it, and you got carried away in your sort of job description. I think, my
20 comment is just that the beauty of Maui is we do have so many other aspects we have to be
21 aware of living in this community other than just a responsibility and a process to our jobs.
22 And so I feel like definitely you've, based off your humility that you've sort of shown here
23 today, I just want you to know that I really appreciate it.

24
25 I also want to apologize actually to you on behalf of at least my people, my family. I was
26 born and raised in Napilihau. Most of my family still resides in Lahaina, although I live in
27 Kihei. And I just want to let you know that violence does not reflect passion. I do not
28 believe that, I do not agree with that, and that is not a part of our community. I also want
29 you to know that violence comes from anger, and anger is when you don't get your way,
30 you take things into your own hands. And I just hope that that's not a future response for
31 our community. We have laws here in place protecting our people and each other. You're
32 a part of the community and I hope that as you start to learn to follow the rules that people
33 that find themselves in opposition of people that haven't done so can relate in a better way
34 and let the governing body take care of the people who are offending whether it's intentional
35 or not. And so I would like to apologize on behalf of Maui County.

36
37 Mr. Robinson: And just to let you guys know, because he is . . . (inaudible) . . . that's why I
38 waived the three minute testimony and . . . (inaudible) . . . allowed us to do that. Akaku, if
39 you guys want to see the picture I'll hold it up for you for a second. So Paul, is I, is I have
40 two quick questions. One, who is the contractor?

41
42 Mr. Brown: Tau Masonry.

43
44 Mr. Robinson: Tal? T, A, L?

1
2 Mr. Brown: T, A, U.

3
4 Mr. Robinson: He's a licensed contractor?

5
6 Mr. Brown: Yes.

7
8 Mr. Robinson: T, A, U, and he's a licensed contractor?

9
10 Mr. Brown: Yes, sir.

11
12 Mr. Robinson: Okay, you know what, we go back and forth about contractors doing the work
13 that they should know more, they should know better, they take tests, and we always, you
14 know, we always go after the higher end, not the person that's actually doing the work. I
15 think that is something that we should work with part of the education in getting permits is
16 they understand what SMA areas are to be a licensed contractor in Maui or the State of
17 Hawaii. I mean, so many of the violations we see the contractors doing it, you know.
18 Second of all, what does the KRA area encompass? What is that whole resort area?
19 Because I know there's different associations and there's different areas of things that. So,
20 so, with so much fatigue in this area, and these Eucalyptus trees is, you know, we don't
21 want to see you guys back. But what area that you're talking about before we decide on the
22 reduction of the fine?

23
24 Mr. Brown: You mean, what area is this?

25
26 Mr. Robinson: No, what area are you responsible for?

27
28 Mr. Brown: Well, I would say, if you think of anywhere where there's homes or commercial
29 property within a resort, I could probably --

30
31 Mr. Robinson: Montage, Villas, is that all yours?

32
33 Mr. Brown: Montage. And I'm the umbrella association over the entire resort. Each
34 neighborhood or property has their own association or management. So the Bay Villas has
35 their own HOA, and they have --

36
37 Mr. Robinson: So when Bay Villas has a problem with something on the shoreline or
38 construction, do they go to you or do they hire a contractor?

39
40 Mr. Brown: If it's new construction, then they come to us for a design review if they're
41 building something new. But otherwise, they manage everything within their own properties.

42
43 Mr. Robinson: So this wall, did the Ritz Carlton come to you, or did you already take
44 because it's a common area?

1
2 Mr. Brown: It didn't have anything to do with the Ritz Carlton.

3
4 Mr. Robinson: Okay.

5
6 Mr. Brown: The roadway is actually owned by the Kapalua Resort Association. It's a part of
7 the common area of the resort. So it's --. You know, I'm driving around, doing my
8 inspection, seeing things that need to be repaired and maintained. And, you know, I looked
9 at it and said, okay, we need to get this done.

10
11 Mr. Robinson: So, you know, is I agree with all the comments of our Commissioners. But I
12 also agree with Council woman saying that safety, right, and this not happening again are
13 the two most important factors. So, it's, it's, if you're a one man show, how do we make
14 sure that this doesn't happen again with you having such a large umbrella on your
15 properties. I mean, are we going to have an educational process? You know, I mean, if
16 you're an employee at a hotel, you have to go through a week course learning how to take
17 care of guests and stuff. So engineers of these resorts, are they going to learn what SMA
18 rules are in the areas? I mean, we need something. If I'm going to support a reduction of a
19 fine which I think is good, I want to be able to have something going forward where there's a
20 chief engineers getting paid a lot of money, but they are the ones that's going to be in
21 charge of protecting our shoreline, not you, right? And then they would answer to you. So
22 have you guys thought about any type of education or some type of criteria that you would
23 then roll out for your whole area that you're in charge of?

24
25 Mr. Brown: Yeah, I agree with that. I think it was a great suggestion by Kai. I can commit
26 to it personally. If it's going to require any funding or anything like that, I've got to get
27 permission from my Board, but I can't see why they wouldn't. It should be minimal. You
28 know, just getting a meeting space together and gathering the, gathering the troops so to
29 speak.

30
31 Mr. Robinson: Yeah, I think what's going to happen is if happens again in this area, and you
32 know, it's going to be a lot more than what it would cost to roll out, you know.

33
34 Mr. Brown: Absolutely.

35
36 Mr. Robinson: You know, and especially if you're asking for a reduction here. And that's all
37 I have, you know. Thank you. Any questions? Commissioner Tackett.

38
39 Mr. Tackett: So my question is I heard you say that it was in your future plans to make sure
40 that any Eucalyptus that could possibly fall on to the road was going to be cleared back.
41 And is that, is that you were saying?

42
43 Mr. Brown: Yes sir.

44
45 Mr. Tackett: And I think, I think more importantly than the wall is the Eucalyptus. And I like

1 the fact that you addressed that. And I like the fact because there are children in the
2 preschool there every day, and a Eucalyptus tree, a bus is not going to protect you, a car
3 not going to protect you. There's nothing that's going to help you from a four foot round
4 Eucalyptus tree. And so I think that, I think that I appreciate the fact that you recognized it.
5 That's really the key, the wall. If it were not for the Eucalyptus tree, the wall would probably
6 still be intact. The last thing is probably depending on how you build the wall, and
7 depending on how big the roots systems that go under the wall is that you're going to want
8 to make sure that your engineers are aware that when the top tree is gone, there's still quite
9 a bit of substance under the earth, and so you're going to get some settling and that type of
10 thing. But I, I appreciate the fact that you came here and you pledge to make it safer for
11 people on that road. Because right now, those trees, those trees, any of those trees falling
12 on the road would cause fatalities. And with the school right there, then the chances of the
13 fatalities of being children is pretty high. So I just wanted to say that I appreciated that.
14 Thank you.

15
16 Mr. Robinson: Thank you Mr. Brown.

17
18 Mr. Brown: Thank you.

19
20 Mr. Robinson: You're going to waive your testimony, yeah? No? Okay, I tried. I tried. All
21 right, Paul.

22
23 Mr. Horikawa: Good morning. My name is Paul Horikawa. I represent the KRA. I just
24 wanted to just go over a few matters. One, the fact behind -- and why we're here, it's pretty
25 much set forth in the settlement agreement that I'm assuming it has been circulated to
26 everyone.

27
28 I just wanted to point out a few things. One, I did speak to David Raatz. I mean, I spoke to
29 him last year a lot last year, trying to negotiate this out, and, I think it's fortunate for the
30 Planning Department that David is no longer with Planning because he's a tough negotiator.
31 It took a lot of work to reach the point where we're before you today.

32
33 I would note that when I -- one of the last communications that I received from David before
34 he went to Council Services is that the Planning Department supports the settlement
35 agreement. You also had before you the letters from Mr. Nae'ole as well as the Director of
36 the preschool who supports the adoption of the settlement agreement. We would hope that
37 the Commission would also join in those positions and adopt the settlement agreement. As
38 noted earlier this, the pending SMA Assessment that has to be done. And once that's done
39 we can, the KRA can move forward with the project. The KRA would appreciate your
40 support in this matter. Thank you very much.

41
42 Mr. Robinson: Thank you Paul. Questions for Paul? Seeing none --

43
44 Mr. Horikawa: Can I speak to Michele because there's some issues about the agreement.

1
2 Mr. Robinson: We'll take a 10 minute recess.

3
4 *(The Maui Planning Commission recessed at 11:06 a.m. and reconvened at 11:07 a.m.)*

5
6 Mr. Robinson: Closing public testimony on Item-D. At this time, Director, I'd like the
7 recommendation.

8
9 Ms. McLean: Thank you Chair. I did have staff check the question that Commissioner
10 Carnicelli asked. The SMA fund ordinance takes effect on July 1st. So any violations
11 between now -- that are collected -- up into the end of June would continue to go into the
12 general fund. After July 1st --

13
14 Mr. Carnicelli: Thank you Director.

15
16 Mr. Robinson: And as a commission, we have a couple of typos that we want to get
17 corrected here if you'll pull your copies out.

18
19 Ms. McLean: Yes. We did forward a revised document. That's what the applicant's
20 attorney, Mr. Horikawa, wanted to check and see. There were a couple of, a couple of
21 sections that needed to be rephrased accurately so the Commission was provided the most
22 recent version. On the first page the Notice of Violation is referenced in two places, and the
23 wrong number is noted there. It should be NOV 20170059, not 0050. And that's noted in
24 two places on page-1 of the agreement. And with that minor correction, the Department
25 would recommend that the Commission approve the agreement and allow the Mayor to sign
26 it on the Department's behalf.

27
28 Mr. Robinson: Commissioners, at this time, do we have any questions or motions?
29 Commissioner Hudson.

30
31 Mr. Hudson: I'll make the motion to approve.

32
33 Mr. Robinson: I have a motion to approve as recommended by the Planning Department.

34
35 Mr. Castro: Second.

36
37 Mr. Robinson: We have a second by Commissioner Castro. Would you like to speak to the
38 motion?

39
40 Mr. Hudson: I spoke to it earlier.

41
42 Mr. Robinson: Okay, good. Any discussion on the motion? Commissioner La Costa.

43
44 Ms. La Costa: Thank you Chair. As asked for, I would like to see some reference to an
45 education program that is put as part of this agreement, and we would remove the trees to

1 protect the wall and their property so that we don't have to come back and do this again if
2 that's all possible.

3
4 Mr. Robinson: Director.

5
6 Ms. McLean: Commissioner you could make a motion to amend the motion to add another
7 section. We would presumably want to get KRA's concurrence with that to ensure that if
8 that change is adopted that they would still sign the agreement. Because right now we have
9 a document that we know that they would sign. So we could add something to the effect
10 that the KRA shall develop an educational program for its employees and management on
11 Special Management Area requirements. I don't know if you want to go further than that. I
12 don't want to put words in your mouth, but a section could be added that says something
13 like that.

14
15 Mr. Robinson: Commissioner La Costa.

16
17 Ms. La Costa: Thank you. The only other thing I would add is a timeframe. So within XYZ
18 days of someone being hired, or within XYZ days of the signing of this that the education
19 program would be started.

20
21 Mr. Robinson: So as we, as I asked earlier, KRA encompasses a large amount of areas and
22 a lot of properties, and Mr. Castro can attest to this that people come in and out. So, is are
23 we looking at each individual area or are we just looking at KRA because Mr. Brown did say
24 he is KRA?

25
26 Ms. La Costa: I'm talking about KRA --

27
28 Mr. Robinson: Just himself.

29
30 Ms. La Costa: -- the association.

31
32 Mr. Robinson: And Mr. Brown, you are KRA but you have board, is that correct?

33
34 Mr. Brown: Yes sir.

35
36 Mr. Robinson: So you hear what we're trying to accomplish here. We want to try to get
37 something here where this is education. And we want to prevent this from happening again.
38 Can you help us out on something that you might think is manageable for you?

39
40 Mr. Brown: Yes sir.

41
42 Mr. Robinson: It's not a motion.

43

- 1 Mr. Brown: Yeah, I think that we can put in some kind of an educational program to, you
2 know, a regular basis to meet with the property managers and the engineers and things like
3 that around the resort to help educate them and try to ensure that it doesn't happen again.
4
- 5 Mr. Robinson: And what type of timeframe you think that you can get that accomplished by?
6 Six months?
7
- 8 Mr. Brown: Well, I think it would probably be more up to the Planning Department when they
9 could have somebody come out and help us.
10
- 11 Mr. Robinson: Well, I mean, I think it would you be folks, maybe one person to go on the
12 side and educate yourself on the SMA, maybe work with the planner, then you educating
13 the rest of your people because I doubt the Department's going to be the one going out
14 teaching everybody.
15
- 16 Mr. Brown: Yeah, I can personally commit to six months.
17
- 18 Mr. Robinson: Okay. Commissioner La Costa, is that something that you would like to make
19 a motion towards?
20
- 21 Ms. La Costa: Yes.
22
- 23 Mr. Robinson: Okay. We're going to temporary shelf your motion of Commission Hudson.
24 We're going to consider a motion by Commissioner La Costa. Do you have a motion
25 please?
26
- 27 Ms. La Costa: I can also amend.
28
- 29 Mr. Robinson: Yeah, you'd like it amended to the motion?
30
- 31 Ms. La Costa: Yes please. Please, Director.
32
- 33 Ms. McLean: So just suggested language for your consideration, within six months of the
34 date of the agreement, KRA -- the settlement agreement -- the KRA shall provide...or KRA
35 shall develop an educational program for its employee, property managers, contractors, and
36 management on Special Management Area requirements.
37
- 38 Ms. La Costa: Acceptable. Thank you.
39
- 40 Mr. Robinson: Paul, are you okay with that one?
41
- 42 Mr. Horikawa: Yes.
43
- 44 Mr. Robinson: Okay. Commissioner Hudson.
45

1 Mr. Hudson: I think we have a second . . . (inaudible) . . . and then we can vote on.

2

3 Ms. La Costa: Or discussion.

4

5 Mr. Carnicelli: I'll second the amendment.

6

7 Mr. Robinson: Second. We'd like discussion on the amendment? Commissioner Pali.

8

9 Ms. Pali: So I see some flaws in the amendment because he's already testified he's actually
10 the only employee and he has one board. And it sounds like P. Denise, you're,
11 Commissioner P. Denise, you're hoping that he can maybe provide a means for people
12 within his umbrella which he has absolutely no control over, he has no rights for authority
13 over them, to try to participate in something that he might development for himself. And so I
14 feel like that's not a really tangible thing. He's versed now in it. So may I recommend
15 maybe another option?

16

17 Mr. Robinson: Well, let's go for this one, and then let's vote on it.

18

19 Ms. Pali: Okay. Well, I see a flaw because he can create whatever he wants but getting all
20 the people in the different properties to sign up and actually attend the training. If they don't
21 attend, it sort of falls flat anyway.

22

23 Mr. Robinson: Commissioner Carnicelli.

24

25 Mr. Carnicelli: Don't let the perfect be the enemy of good. I mean I get what you're saying.
26 He's one employee at KRA. But it's like the intent is there. I think, like, he's shown from
27 day one and this whole . . . (inaudible) . . . that we're talking about right now. A rock wall
28 falls down, he does some work, the next thing you know, we're having an hour and half
29 conversation about it, you know, a year and half later. He's done the right thing all the way
30 along except for just being ignorant at the beginning. So the fact that he said, okay, this is
31 his intent. He has agreed that, you know, to the language. He affirmatively agreed that this
32 language is okay with him. So, for the sake of moving this forward, I think -- nobody wants
33 to kick this thing back and be back here in another six months or whatever it is. You know,
34 we've got the preschool safe, we've got --. There's a lot of different things that this needs to
35 move forward. So if he's okay with that language, I'm okay with that language, so then
36 therefore I will be supporting this amendment to the main motion.

37

38 Mr. Robinson: All those in favor of the amendment please raise your right hand. That's five.

39

40 Ms. McLean: Five ayes.

41

42 Mr. Robinson: All opposed? One opposed. All those in favor the motion to, to --

43

44 Mr. Carnicelli: I'd like to speak to the motion.

45

1 Mr. Robinson: Yes you may.

2

3 Mr. Carnicelli: Okay, thank you. I'm just going to speak to the motion. You know, again,
4 just we want to make sure this moves forward. That's the reason why I want to go ahead
5 and support the motion. We did hear what the testifiers had to say. Hopefully we mitigated
6 some of those things. As far as the camping and all that, that's something that, you know,
7 we found out is out of our purview. So, anyway, I'll be supporting the motion. Thank you
8 Mayor. Not Mayor. You're Chair.

9

10 Ms. La Costa: I'd like to speak also on the motion. Because the amendment is tied to the
11 other stipulations, if the educational program is not developed then the \$35,000 fine kicks in
12 also?

13

14 Mr. Robinson: Yeah, so . . . (inaudible) . . .

15

16 Ms. La Costa: . . . (inaudible) . . .

17

18 Mr. Robinson: Yeah, in the agreement it would be considered as one of the conditions.

19

20 Ms. La Costa: Thank you.

21

22 Ms. McLean: Chair, I -- it can be phrased that way. As it is right now, that is not how I saw
23 it. But right now the \$35,000 would be waived completely if they get their permits and they
24 have no further violations. If they don't get their permit or they have further violations then
25 the \$35,000 has to be paid. So you're saying that you want to add that language that you
26 just talked about as a third criteria.

27

28 Mr. Robinson: So Director if it's a part of the condition of the SMA that would be another
29 violation of the SMA so therefore it would then kick in the \$35,000? No?

30

31 Ms. McLean: Well, I can't say right now what the SMA permit for the repairs is going to be.
32 That could, could be a condition. I mean, that is something that would be taken cared of on
33 the staff level in issuing the SMA Minor for the repairs. This is an agreement. This isn't,
34 this doesn't necessarily have conditions. It spells out the responsibilities of each party. And
35 it's easy enough to do. I just want to make clear that that's what the condition is intending
36 that there are two circumstances now, you want to add a third circumstance that would
37 trigger the \$35,000 payment.

38

39 Mr. Robinson: You know, and Denise, is we did not vote on that stipulation. I think we'll be
40 fine. I think our intention is there, and I think the care there is raised. I don't think it's
41 something that's a wiggle room area. And I think, you know, as many SMA's that are going
42 to come through . . . (inaudible) . . . for this Planning Commission, I think they're going to
43 want to follow through. Okay, it's fine the way it is? Is that good? Comfortable?

44

45 Ms. La Costa: Okay.

1
2 Ms. McLean: The final motion that's on the floor is to approve settlement agreement with
3 the corrected notice of violation number, and with the additional term about KRA having to
4 develop an education program.

5
6 Mr. Robinson: All those in favor please raise your right hand. That's six. Thank you. We'll
7 take a five minute recess.

8
9 **It was moved by Mr. Hudson, seconded by Mr. Castro, then**

10
11 **VOTED: To Approve the Settlement Agreement with the Corrected Notice**
12 **of Violation Number and with the additional term that KRA having**
13 **to develop an education program as discussed.**

14
15 (Assenting – L. Hudson, S. Castro, L. Carnicelli, K. Pali, C. Tackett,
16 P D. La Costa)
17 (Excused – A. Hill, T. Gomes)

18
19 *(The Maui Planning Commission recessed at 11:19 a.m. and reconvened at 11:24 a.m.)*
20
21

22 Ms. McLean: Thank you Chair, Item E is Rejection of the Hearing Officer's Report and
23 Denial of the County Special Use Permit by action taken at the December 11, 2018 Maui
24 Planning Commission on the following: Hearing Officer's Report dated July 13, 2018 from
25 E. John McConnell, Retired Judge, Hearing Officer, containing his proposed Findings of
26 Fact, Conclusions of Law, and recommendation regarding the following remanded
27 application: A County Special Use Permit application from Seashore Properties, LLC for
28 the proposed nine-room transient vacation rental on the property referenced as the Paia Inn
29 located at 93 Hana Highway, TMK: (2) 2-6-002: 027 in Paia. The Commission may take
30 action to adopt, adopt with modifications, or take some other action regarding the proposed
31 Findings of Fact, Conclusions of Law, Decision and Order and this I would pass over to
32 Deputy Corporation Counsel, David Galazin.

33
34
35 **E. ADOPTION OF WRITTEN DECISION AND ORDER**
36

- 37 1. **Rejection of the Hearings Officer's Report and Denial of the County**
38 **Special Use Permit by action taken at the December 11, 2018 Maui**
39 **Planning Commission meeting on the following: (Tom Kolbe, Deputy**
40 **Corporation Counsel)**

41
42 **Hearing Officer's Report dated July 13, 2018 from**
43 **E. JOHN MCCONNELL, Retired Judge, Hearing Officer, containing his**
44 **proposed Findings of Fact, Conclusions of Law, and recommendation**
45 **regarding the following remanded application:**

1
2 **County Special Use Permit application from SEASHORE PROPERTIES,**
3 **LLC for the proposed nine (9) room transient vacation rental on the**
4 **property referenced as the Paia Inn located at 93 Hana Highway,**
5 **TMK: (2) 2-6-002: 027, Paia, Island of Maui. (CUP 2015/0006) (CTB**
6 **2015/0009) (SMX 2015/0522) (K. Wollenhaupt)**

7
8 **The Commission may take action to adopt, adopt with modifications, or**
9 **take some other action regarding the proposed Findings of Fact,**
10 **Conclusions of Law, Decision and Order.**

11
12 Mr. Robinson: And one second. And David before you do that, Commission I'd like to
13 recommend that we go into executive session. This is something that hasn't come in front
14 of before and I'd like to get some clarification but I need a motion from one of you to go into
15 executive session.

16
17 Mr. Hudson: So move.

18
19 Ms. La Costa: Second.

20
21 Mr. Robinson: All right, thank you. All in favor of executive session, please raise your right
22 hand. We're in executive session. Thank you.

23
24 **It was moved by Mr. Hudson, seconded by Ms. La Costa, then**

25
26 **VOTED: To Go Into Executive Session to discuss the Commission's**
27 **powers, duties, privileges, immunities, and liabilities with**
28 **Corporation Counsel.**

29
30 **(Assenting – L. Hudson, P. D. La Costa, L. Carnicelli, K. Pali, C. Tackett,**
31 **S. Castro)**

32 **(Excused – A. Hill, T. Gomes)**

33
34 *(The Planning Commission recessed the regular meeting at approximately 11:26 a.m. to*
35 *enter into Executive Session and adjourned at 11:42 a.m. The Planning Commission*
36 *reconvened the regular meeting at approximately 11:44 a.m.) (The item was then tabled*
37 *and Item F. 1 was taken it up.) (A recess was called at approximately 11:55 a.m., and the*
38 *meeting was reconvened at approximately 12:04 p.m. at which time the Commission then*
39 *took the matter up for discussion.)*

40
41
42 **F. UNFINISHED BUSINESS**

43
44 **1. R.D. OLSON II INVESTMENTS, LLC requesting a Special Management**
45 **Area Use Permit for the Keolani Triangle Retail Center, a 4-unit**

1 **commercial retail space in two structures, with supporting**
2 **infrastructure, onsite parking, and loading zones, located on 0.779 acres**
3 **in the M-2 Heavy Industrial District at 520 Keolani Place, Kahului, Island**
4 **of Maui, TMK: (2) 3-8-079:015. (SM1 2017/0005) (J. Dack) (Public hearing**
5 **conducted at the November 27, 2018 meeting.).**
6

7 **The Commission may take action on the permit application.**
8

9 Mr. Jeffrey Dack: Yes, good morning, I'm Jeff Dack.

10 Mr. Robinson: Akaku, I'm sorry, Akaku are you ready? Jeff, one second.

11 Mr. Dack: No problem.

12 Mr. Robinson: We're back in session. Is we're labeling E.1., and we're skipping over to
13 Item F.1. Director.

14 Ms. McLean: Thank you Chair. This is an item under unfinished business, a request from
15 R. D. Olson II Investments, LLC, for a Special Management Area Use Permit for the Keolani
16 Triangle Retail Center . . . *(Ms. McLean read the above project description into the record.)* .
17 . . Jeff Dack is the project planner.

18 Mr. Dack: Yeah, this is Jeff Dack. I'm the current planning supervisor. This project was
19 considered at the November 27th meeting with Keith Scott as the staff planner. He has
20 since retired. That's why I'm standing here instead of him. I'm informed by the applicant's
21 representative that the applicant is not here at the moment so that might be a question to
22 the Commission. Do you wish to proceed now or do you wish to wait for the applicant. I'll
23 go ahead and make few comments, but let you know that least for the moment.

24 Mr. Robinson: Jeff, does the applicant not know that they're on the agenda?

25 Mr. Dack: I believe the applicant knew that they were on the agenda.

26 Mr. Robinson: Let's find out why the applicant is not here.

27 Mr. Dack: I do not know the answer. If you'd be willing to ask that question to the
28 applicant's representative.

29 Mr. Robinson: Please.

30 Mr. Brent Davis: Hello Commissioners. My name is Brent Davis. I'm a planner at Chris
31 Hart and Partner. The applicant is here at my office with our team. We didn't think that the
32 presentation would be occurring before lunch today based on the agenda.
33
34
35
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44

1 Mr. Robinson: We don't have a lunch today.

2

3 Mr. Davis: Okay, well, I apologize for that. I can have the team ready probably in 30
4 minutes or less.

5

6 Mr. Robinson: We'll be gone in 30 minutes. I mean, you're on the agenda. You guys should
7 have talked to us earlier. There's no time that we're ever going to think you guys are going
8 to be done at one o'clock. You guys might have been at 9:00 a.m., so in the future I
9 suggest you guys talk to, to me. But if you guys think you guys don't want to come before.
10 And I'm not sure what we're going to do yet, but I'll hear what my commissioners want to
11 do. Okay?

12

13 Mr. Davis: Okay.

14

15 Mr. Robinson: Thank you.

16

17 Mr. Dack: Again, I was not the planner, but I understand there was a good discussion. You
18 had some concerns. Commissioners had some concerns. You got close to a vote, but
19 were not able to achieve one. But after your meeting, Keith Scott before he did leave the
20 Department at the end of October, I mean, the end of November, did draft a letter which
21 was e-mailed to you yesterday. You should also have at your places on the table, a letter to
22 Robert Olson dated December 6th of 2018 which shows the conditions of approval as they
23 had originally been in the recommendation report with a few additions that Keith put
24 together trying to incorporate and, or respond to concerns that you had. Or I shouldn't say
25 you, but the concerns expressed by various Commissioners, in an attempt to try to get to
26 conditions that there was a hope would be acceptable to the Commission as a whole. You'll
27 see those are highlighted.

28

29 In Condition No. 4 there's a referenced added -- you can see in yellow -- to include in the
30 properties direct access to Old Haleakala Highway shall be restricted to right-turn in, right-
31 out only. And then there is suggested by staff a new Condition No. 10. That the
32 Department, DLNR, Historic Preservation has accepted a monitoring plan and that should
33 be --. Satisfaction of that condition should be evidence in compliance, the compliance
34 report. And new Condition 12, that the Department of Public Works should . . . (inaudible) . .
35 . low impact development concepts within the site to assist in cultural pollutants. And again,
36 that's another item for the compliance report.

37

38 Again with those, at least, you know, planner Scott thought that the project might be better
39 suited to your approval, and the Department recommends that those minor -- recommends
40 still approvals of the project with those minor modifications to the conditions. Thank you.

41

42 Mr. Robinson: Thank you. At this time we're going to take public testimony. Anybody here
43 would like to speak on this item please step to the mic. Seeing none, public testimony is
44 closed. Commissioner Carnicelli, questions?

1
2 Mr. Carnicelli: I'll just go over the statement Chair. This was the meeting that --. This item
3 first came up in a meeting that I was pro-tem and we had bare quorum. There was a couple
4 of different radicals that we went down, and we kind of got ourselves lost a couple of times,
5 and then pulled ourselves out again. Shocking, I know. I feel as though that the amended
6 recommendation presented to us -- I've gone through that -- I believe that it represents all of
7 the concerns that we had that day. Should someone want to make a motion to approve this
8 particular amended recommendation, I would personally be comfortable moving forward on
9 that even without a presentation from, you know, the applicant just because of the
10 participation that I had personally that day. Those that maybe had to review the minutes,
11 you know, separately might feel differently. Anyway, I am comfortable with the
12 amendments that Mr. Scott put forth before his retirement so thank you.

13
14 Mr. Robinson: Thank you. And Commissioners, there were two that were opposed to at the
15 first round, but it was a bare quorum. Would any of the two opposed, were any of you two
16 here? It was Denise and it was yourself? Having review the new documents, is that, is that
17 more clarification? Does that make you comfortable or do you still have concerns regarding
18 this project?

19
20 Ms. La Costa: With the corrections, I am comfortable with this.

21
22 Mr. Robinson: Commissioner, do you feel the same?

23
24 Mr. Tackett: I'm also comfortable with the corrections, the right-in, the right-out, yeah.

25
26 Mr. Robinson: Okay. Thank you. Then I think are we --? Do we need a recommendation?
27 We don't a recommendation do we? Because it's just back up for review right? Yeah,
28 recommended as a . . . (inaudible) . . ., right? Why don't you read the recommendation,
29 then we'll go for the motion.

30
31 Ms. McLean: Thank you Chair. The recommendation is to approve the Special
32 Management Area Use Permit subject to the, let's see, 11 conditions originally listed in the
33 staff report that was presented on November 27th. With the subsequent modifications to
34 Condition 4 that specifies that the property's direct access to Old Haleakala Highway shall
35 be restricted to right turn-in and right turn-out only. With a modification to Condition No. 10,
36 that the State Department of Land and Natural Resources, State Historic Preservation
37 Division, shall have accepted as final an archaeological monitoring plan prior to the
38 issuance of a grading, grubbing or building permit. Satisfaction of this condition shall be
39 evidence with the submission of the preliminary compliance report. And an additional
40 Condition No. 12 that to the satisfaction of the Department and the Department of Public
41 Works the applicant shall utilize low impact development concepts within the site to assist in
42 filtering pollutants and reducing surface runoffs. Acceptance by the Department and the
43 Department of Public Works of said designs shall be granted to prior to issuance of grading,

1 foundation and building permits, and prior to any ground altering activities. Evidence and
2 fulfillment of this condition shall be submitted as part of the preliminary compliance report.

3
4 Mr. Robinson: All those in favor, please raise your right hand. That's six. Oh, I apologize.

5
6 Mr. Hudson: I'll make a motion.

7
8 Mr. Robinson: Motion.

9
10 Mr. Tackett: Second.

11
12 Mr. Robinson: Second by Commissioner Tackett. All those in favor please raise your right
13 hand. All right, motion passes. Congratulations, you got your permit without being here.
14 But we have another item. Director, Item G.1..

15
16 **It was moved by Mr. Hudson, seconded by Mr. Tackett, then**

17
18 **VOTED: To Approve the Special Management Area Use Permit as**
19 **Recommended by the Department.**

20
21 (Assenting – L. Hudson, C. Tackett, K. Pali, L. Carnicelli, S. Castro,
22 P D. La Costa)

23 (Excused – A. Hill, T. Gomes)

24
25
26 **G. DIRECTOR'S REPORT**

- 27
28 **1. MICHELE MCLEAN, Planning Director transmitting the following**
29 **application to the Maui Planning Commission pursuant to the**
30 **provisions of Section 19.32.020.C, Planned Development, of the Maui**
31 **County Code:**

32
33 **RD OLSON INVESTMENTS II, LLC requesting a Step III Planned**
34 **Development Approval in order to construct Hotel Ike, a 110-unit hotel**
35 **in two (2) buildings with pool, spa, fitness center, lounge and on-site**
36 **parking located in the A-2 Apartment and H-M Hotel Districts at 55**
37 **Gateway Place, TMK: (2) 2 1-028:004, Wailea, Island of Maui. (PD3**
38 **2018/0003) (C. Thackerson)**

39
40 **The Commission may act to waive or not waive its review.**

41
42 Ms. McLean: Thank you Chair. This is a, again, a request from R. D. Olson Investments II,
43 LLC, requesting a Step III Planned Development Approval in order to construct Hotel Ike . . .
44 *(Ms. McLean read the above project description into the record)* . . . Candace Thackerson is
45 the staff planner, and she had e-mailed previously that she's on her way. I do see the

1 applicant's representatives here. They might be able to come and at least begin the
2 presentation. I can say that this – excuse me – this application did receive a Special
3 Management Area Use Permit approval from you, as well as well as the Planned II and
4 Step II approvals, and this is the next step of the Planned Development process. So you
5 have seen this project before. This is just refining it further. I don't know if Jeff wants to give
6 it a crack or Brett or someone from the applicant wants to make an initial presentation
7 before Candace arrives.

8
9 Mr. Dack: I'm not qualified to do that. I don't know the project well enough. But, yes, we do
10 have the applicants here so that would make sense. Candace should be on her way right
11 now. Thank you.

12
13 Mr. Robinson: At this time we'll take a five minute recess. Thank you.

14
15 *(The Maui Planning Commission recessed at 11:55 a.m., and reconvened at 12:04 p.m.)*

16
17 ***(Item G.1 was then tabled as the Planner was not in attendance and Item E.1 was then***
18 ***taken up.)***

19
20 Mr. Robinson: Planning Commission back in session. Commissioners, I need to apologize
21 of juggling you guys around, but we're going to, we're going to go back to Item E, yeah Item
22 E. Director.

23
24
25 **E. ADOPTION OF WRITTEN DECISION AND ORDER**

- 26
27 **1. Rejection of the Hearings Officer's Report and Denial of the County**
28 **Special Use Permit by action taken at the December 11, 2018 Maui**
29 **Planning Commission meeting on the following: (Tom Kolbe, Deputy**
30 **Corporation Counsel)**

31
32 **Hearing Officer's Report dated July 13, 2018 from**
33 **E. JOHN MCCONNELL, Retired Judge, Hearing Officer, containing his**
34 **proposed Findings of Fact, Conclusions of Law, and recommendation**
35 **regarding the following remanded application:**

36
37 **County Special Use Permit application from SEASHORE PROPERTIES,**
38 **LLC for the proposed nine (9) room transient vacation rental on the**
39 **property referenced as the Paia Inn located at 93 Hana Highway,**
40 **TMK: (2) 2-6-002: 027, Paia, Island of Maui. (CUP 2015/0006) (CTB**
41 **2015/0009) (SMX 2015/0522) (K. Wollenhaupt)**

42
43 **The Commission may take action to adopt, adopt with modifications, or**
44 **take some other action regarding the proposed Findings of Fact,**
45 **Conclusions of Law, Decision and Order.**

1
2 Ms. McLean: Thank you Chair this is back to the discussion of the rejection of the hearing
3 officer's report and denial of the County Special Use Permit by action taken at the
4 December 11, 2018 Maui Planning Commission and I would like to pass this over to Deputy
5 Corporation David Galazin.

6
7 Mr. Carnicelli: Chair?

8
9 Mr. Robinson: Corp. Counsel.

10
11 Mr. Carnicelli: Chair? Before you start I would just like to let you all know that I will be
12 recusing myself from this item. I recused myself on this item on December 11th and so then
13 therefore I will also be recusing myself of this item here today.

14
15 Mr. Robinson: Complete item no discussion?

16
17 Mr. Carnicelli: Just gonna completely recuse myself.

18
19 Mr. Robinson: Thank you Commissioner Carnicelli. Corporation Counsel.

20
21 Mr. Galazin: Thank you Chair and Members. So what you have before you today are a
22 couple of things. The first is the draft Decision and Order which memorializes the decision
23 made at the December 11th meeting of the Maui Planning Commission to deny Special Use
24 Permit requested by Seashore Properties, LLC to operate a nine-bedroom TVR at 93 Hana
25 Highway in Paia. You also received from the applicant's attorney a document entitled,
26 Applicant Seashore Properties, LLC Objections to the Maui Planning Commission's
27 Findings of Fact, Conclusions of Law and Decision. So pursuant to your rules you have
28 the...you have a Draft D&O, Findings of Fact, Conclusion of Law and Decision. We refer to
29 it as the D&O. And to the extent that there are relevant objections that are made by the
30 applicant's attorney they need to be addressed within the D&O so I might be able discuss
31 and I can make suggestions. There are certain points where if you look through the
32 document there are items to which there are no objections, those you need not address and
33 there are others so we'll just kinda go through point by point as it's listed in the applicant's
34 objection document. So if you have that and the Draft Findings of Fact, Conclusions of Law
35 for the Maui Planning Commission side by side we'll just look at them together.

36
37 And so before we start I just want to make sure for the record that everybody here today
38 was either present at the December 11th meeting or has reviewed the record from the
39 December 11th meeting, correct?

40
41 Commission Members: Correct.

42
43 Mr. Galazin: All right. Thank you. So Chair continuing on the first procedural, the general
44 objection the first one is that the procedure's moot due a 60-day lapse of time period. I'll

1 address that a little bit later and then there's procedural background objections that speak to
2 being one of the commissioners coming in late. However, you know nobody on that, on that
3 date I know that they were asked if they've reviewed everything before voting and so we
4 could ignore that. There were vague allusions to something stated by the Deputy Planning
5 Director purportedly referring to the applicant but just they were general comments so those
6 don't pertain to the actual Findings of Facts.

7
8 So if you get to Page 4 of the document submitted by the applicant so in Finding of Fact,
9 Number 1, the objection and so you'll just track it by the same thing on the Planning
10 Commission's document. So it's Page 3 of the Planning Commission's document, Page 4
11 of the objection. So Finding of Fact Number 1, the objection is that it the matter is not
12 properly before the Commission because it was deemed automatically approved because it
13 was first submitted for an application in November of 2015 and more than 60 days have
14 passed. Well, this has gone back and forth, it's gone to litigation, it's gone to Circuit Court,
15 it's come back, it's gone to a hearings officer, it's come back, it's come before this body,
16 none of that has divested this body of jurisdiction. It's still an application for a Special Use
17 Permit. So the only thing, the only suggestion I would make would be to revise Finding
18 Number 1 to state that application for a Special Use Permit was not automatically approved
19 and is properly before the Commission. So that's the first change I would make.

20
21 Number 2, there is no objection to Finding of Fact Number 2.

22
23 Moving to Conclusions of Law, Finding Conclusion of Law Number 1 there are no
24 objections. Conclusions of Law Number 2 there are no objections. Conclusions of Law
25 Number 3 is where there are more objections begin.

26
27 And Number 3 it says the Commission concludes the application will adversely interfere
28 with public or private schools, parks, playgrounds, water systems, sewage and solid waste
29 disposal, drainage, roadway and transportation systems or other public requirements,
30 conveniences and improvements, does not meet the requirements of Criterion 4 and that no
31 conditions could be added to adequately mitigate that. So as far as I understand the
32 objections it's a little difficult to parse but the applicant's attorney seems to say that there
33 are already bathrooms and so therefore there won't be any alleged strain on the sewer
34 system and also that on the same day on December 11th you as a body "merrily approved a
35 request to extend the completion of construction for seven years of a condominium
36 timeshare structure in Kihei" which as far as relevance goes is completely out the window
37 and has no basis. Again, objection based on the toilets and the other objection saying that
38 if the Commission were truly worried about toilets they wouldn't have approved the Kihei
39 project. So I don't think you need to change Finding of Fact Number 3 because I don't find
40 any of the objection to be relevant.

41
42 Finding of Fact Number 4, sorry Conclusion of Law Number 4, said that the Commission
43 concludes the application would adversely impact the social, cultural, economic,
44 environmental and ecological character and quality of the area thus not meeting the

1 requirements of Criterion 5, the Commission cited the great disruption of the social fabric of
2 the community caused by the application and criticized the Hearing Officer's report for not
3 considering the public testimony that was included in the record. The appellant's objection
4 to Conclusion of Law Number 4 is saying that the hearing...the Hearing Officer did include
5 or did consider the public testimony of the record. Second objection is that the Commission
6 did not allow for cross-examination which...because at point that the contested case
7 hearing had been closed of course there wouldn't be cross-examination because you were
8 just considering the hearing officer's report. There was no hearing, it was just a
9 consideration. And so according what I would suggest for a change to that is actually back
10 in the procedural section of your own D&O back on Page 2, on the bottom of Page 2 it talks
11 about Judge McConnell's hearing. It says, the following testimony received from the public
12 and Seashore representatives the Commission voted to approve Judge E. John McConnell,
13 Retire as Hearing Officer. The contested case hearing was held on April 11, 17, 23, and
14 May 9, 2018. My suggested change would be to say it was held on April 11, 17, 23, and
15 concluded on May 9, 2018. Just recognizing the fact that the hearing was actually
16 concluded back in May. No cross-examination would have been possible at any point
17 unless this Commission voted to reopen the record for some compelling reason none of
18 which was provided.

19
20 The next exception is that the Commissioners cited to things they read, heard or saw on
21 television as a basis for Conclusion of Law Number 4. I'm not quite certain what television
22 testimony this refers to.

23
24 Mr. Tackett: I would, I would like to clarify that.

25
26 Mr. Galazin: Okay.

27
28 Mr. Tackett: That was, that was AKAKU watching these particular meetings. It was not
29 social media that I was referring to.

30
31 Mr. Galazin: Thank you for that clarification Commissioner Tackett. That was, that was my
32 assumption but I appreciate the clarification. So that having been said that also is not
33 relevant. And that their social disruption to the community is nonexistent and that the...it
34 was clearly erroneous to state that the Hearing Officer did not consider public testimony.
35 He argues that that was patently false because the Hearing Officer Report clearly states
36 that he read the testimony ...(inaudible)...the applicant including but not limited to Martin
37 Brass and Mopsy Aarona. In a footnote he notes that at the contested case hearing all
38 parties were afforded the opportunity the opportunity to call witnesses and a total of five
39 witnesses testified.

40
41 So I think in Number 4 and 5 because those arguments are basically somewhat
42 together...so with Number 4 I think what the Commission objected to wasn't, wasn't the fact
43 the Hearing Officer didn't consider public testimony but that it was the way in which the
44 Hearing Officer gave consideration not considering as far as taking into evidence but giving

1 consideration to the fact that discounting certain public testimony over others and I recall
2 from one of the earlier meetings that was a concern that this body had raised. And so if you
3 feel it would be a more appropriate reflection of the decision made on the 11th, I would
4 change the last sentence in Finding...Conclusion of Law Number 4 to say that the
5 Commission cited the great disruption to the social fabric of the community caused by the
6 application, and criticized the Hearing Officer's report for not giving due consideration to all
7 public testimony that was included in the record. And you could also I suppose say you
8 know, or mischaracterized but I don't know if that was exactly what you meant, if
9 giving...without giving due consideration captures what your intent was better than
10 saying...'cause the Hearing Officer did consider in some way, shape or form I think the
11 objection was the way in which it was considered.

12
13 So then back to the objection for Conclusion of Law Number 5. This is kind of technical
14 because it says in the Proposed Finding of Fact...Proposed Conclusion of Law that you
15 have...that the Commission noted that 51 percent of the testimony in the record was in
16 opposition to the application, and the objection is that nowhere in the record is there a
17 citation to 51 percent of the testimony. I personally didn't find anything in the record that
18 spoke to 51 percent of the testimony but I think the intent was probably more than 50
19 percent meaning the majority. So if what was intended was to say the Commission noted
20 that instead of 51 percent more than 50 percent of the testimony in the record was in
21 opposition to the application that would clarify that objection which I think is important
22 because I don't see anywhere unless somebody has a basis for saying 51 percent exactly.
23 Okay.

24
25 And then Portion B of the objection to Conclusion of Law Number 5 says that as to clearly
26 erroneous statement the Hearing Officer only considered testimony in support is patently
27 untrue. So that would be the second half of that last sentence in Conclusion of Law
28 Number 5. So if it's changed to first half says now the Commission noted that more than 50
29 percent of the community...over 50 percent of the testimony in the record was in opposition
30 to the application. And this is where I'd probably change it, add in the most significant
31 change of language. Right now it says, and that the Hearing Officer's report only included
32 testimony in support of the application. Well, hearing officer's obviously has exhibits had
33 the entire record. So I think what was intended would be to say but that the Hearing
34 Officer's report stated that the only witnesses who were called to testified during the
35 contested case hearing provided testimony in support of the application which is supported
36 in the appellant's own footnote that you know, five people were called testified and they
37 were indeed all of favor. They were called by the applicant and so of course we're in
38 support. I think this Commission noted that the voluminous record because this is such a
39 long and has long complex history that the contested case hearing held by
40 Judge McConnell only included live testimony of witnesses who were in support.

41
42 And the last conclusion which should be numbered 6 but apparently is numbered 3, let's
43 see three, four, five. So if we just change that to 6 that would be fine. Therefore, I wouldn't
44 recommend any other changes if you have...because of the rest of the objections as I said

1 go back to the fact that there's a 60-day time limit that expired years ago which is patently
2 absurd and that you folks do not have authority. So I would say you did take action on
3 December 11th. You had the authority to take action on December 11th. So if you would
4 like to approve the Findings of Fact, Conclusion of Law and D&O with my suggested
5 revisions we can do that. If you have any questions about other objections or if you want to
6 make further changes to the wording or anything or have any general questions, I'm happy
7 to field them. Thank you Chair.

8
9 Mr. Robinson: Thank you. Commissioners do we have any questions for Corporation
10 Counsel at this time? Is everybody comfortable with the changes that was proposed or
11 we'd like to change any of those proposed changes? I have...you know, the where we're
12 talking over 50 percent, couldn't we just state majority? I mean, do we have to keep over
13 50, you know, because 51...majority is 51. I mean I think a simpler word instead of trying to
14 convolute what a percentage is. I think you know when you're numbers instead of more
15 volume.

16
17 Mr. Galazin: Yeah, and thank you Chair you could...and there's certain portions of in the
18 Code and some of the other context where it talks about more than 50 percent or less than
19 50 percent. In some cases it talks about a majority. I think it's—

20
21 Mr. Robinson: You think it's safer--

22
23 Mr. Galazin: It's—

24
25 Mr. Robinson: --safer clarification to say over 50 percent?

26
27 Mr. Galazin: I think it's, I think it's safer to say over 50 percent and would have no legal
28 distinction.

29
30 Mr. Robinson: Okay, thank you. So, so next step going this forward Director, do we vote
31 on the changes? Would that be procedural?

32
33 Ms. McLean: What's before you today is the Commission may take action to adopt, adopt
34 with modifications or take some other action regarding the Proposed Findings of Fact,
35 Conclusions of Law, Decision and Order. So if you wanted to go along with the
36 recommended changes then you would adopt with modifications per Corporation Counsel.

37
38 Mr. Robinson: Do I have a motion to adopt with modifications? You have a question
39 Commission Tackett?

40
41 Mr. Tackett: No I was going to motion.

42
43 Mr. Robinson: Okay.

44

1 Mr. Tackett: So I move to adopt the modification as stated.

2
3 Ms. La Costa: Second.

4
5 Mr. Robinson: I have a motion to adopt with modifications. I have a second from
6 Commissioner La Costa. Discussion on the motion? I do wanna, I do wanna clarify again
7 that everybody's I know this is...like you said this is a large file, lot of meetings but we've all
8 definitely read all the minutes and have followed up, some of us on AKAKU some other
9 areas to make sure that we are comfortable in voting for this. Okay, thank you. All in favor
10 of adoption please raise your right hand. That's five, and I will, I'll chime mine in as well
11 with the adoption. Thank you.

12
13 **It was moved by Mr. Tackett, seconded by Ms. La Costa, then**

14
15 **VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law,**
16 **and Decision and Order with Modifications.**

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

20 (Recused – L. Carnicelli)

21 (Excused – A. Hill, T. Gomes)

22
23 Mr. Robinson: You'll get those, get those changes to us Corp. Counsel?

24
25 Mr. Galazin: Yes, I will and then you can all sign today.

26
27 Mr. Robinson: Thank you so much. Moving on.

28
29
30 **G. DIRECTOR'S REPORT**

- 31
32 1. **MICHELE MCLEAN, Planning Director transmitting the following**
33 **application to the Maui Planning Commission pursuant to the**
34 **provisions of Section 19.32.020.C, Planned Development, of the Maui**
35 **County Code:**

36
37 **RD OLSON INVESTMENTS II, LLC requesting a Step III Planned**
38 **Development Approval in order to construct Hotel Ike, a 110-unit hotel**
39 **in two (2) buildings with pool, spa, fitness center, lounge and on-site**
40 **parking located in the A-2 Apartment and H-M Hotel Districts at 55**
41 **Gateway Place, TMK: (2) 2 1-028:004, Wailea, Island of Maui. (PD3**
42 **2018/0003) (C. Thackerson)**

43
44 **The Commission may act to waive or not waive its review.**
45

1 Mr. Robinson: Good morning. Welcome.

2

3 Ms. McLean: Chair, we are back to Item G, the request from R. D. Olson Investments II,
4 LLC for Step III Planned Development Approval in order to construct Hotel Ike. And
5 Candace Thackerson is the project planner.

6

7 Ms. Candace Thackerson: Good afternoon. Is it afternoon? Yes, just barely afternoon.
8 The item is before you for a Step III Planned Development which just means that you guys
9 have already reviewed the SMA application. The SM1 Major was before this body along
10 with the Planned Development Step I, as well as the Planned Development Step II. So Step
11 III and this is just to waive or not to waive review today to allow the Department to approve
12 them. It's really just the construction level drawings to make sure that everything looks the
13 way it should look, that it's matching the SM1 that they applied for and upon the
14 Department's review it does all of that. So we're asking you to waive your review and allow
15 the Department to go ahead and approve the Step III.

16

17 Mr. Robinson: Commissioners, do we have any questions at this time?

18

19 Ms. La Costa: I have a question.

20

21 Mr. Robinson: In fact, one question, is there public testimony for this item? Let me get
22 public testimony first.

23

24 Ms. La Costa: Absolutely.

25

26 Mr. Robinson: Would anybody like to testify on this item please step forward. You have
27 three minutes. Seeing none, public testimony is closed. Commissioner La Costa.

28

29 Ms. La Costa: Thank you. The drawings that we received and the information we received,
30 you said that they were construction drawings?

31

32 Ms. Thackerson: Yes.

33

34 Ms. La Costa: Does that mean that as they are presented that is what the final will be?

35

36 Ms. Thackerson: Yes. Yes, until actually building. There may be some tweaks with building
37 permits when they go in for those. But these are, at this point, they're about 90% of, I'm
38 going to say, what they're going to look like. You never know at the time of building permit
39 when they go in what building code might require, but this is it. And we've already seen the
40 elevations previously in the SM1 when you guys approved that and had that discussion, as
41 well as the Step I and the Step II. This is just the final step.

42

43 Ms. La Costa: I noticed that the handicap parking that we brought to the attention of the
44 developer has remained where it was. It's making very difficult for people of handicap to be

- 1 able to get into the property. And that was brought up to them and had quite a discussion
2 about that, and it's still in the lower left hand side.
3
- 4 Ms. Thackerson: Would you like the applicant to address their reasoning behind that?
5
- 6 Ms. La Costa: I will. Yes, please. Thank you.
7
- 8 Mr. Tony Rosa: Good afternoon Commissioners. My name is Tony Rosa, Vice-President
9 with R.D. Olson Development.
10
- 11 Mr. Robinson: So Tony, we're talking about the handicap parking right closer to the street. I
12 believe that was the topic that we discussed earlier.
13
- 14 Ms. La Costa: Correct.
15
- 16 Mr. Rosa: Correct.
17
- 18 Mr. Robinson: Thank you.
19
- 20 Mr. Rosa: Yes, and in looking at the date and the version of this plan I will apologize that we
21 did add ADA parking per your request. We shifted spaces from the lower left up to the
22 northwest corner of the property.
23
- 24 Mr. Robinson: So Tony, you have two parking stalls currently there. Are you saying you
25 added more than two? Is that the area by the swimming pool?
26
- 27 Mr. Rosa: Yes. So the three spaces that are at the lower left, we actually reduced those to
28 two, and shifted spaces to the northwest. And I'd be happy to redline an initial, with that
29 change, on these documents.
30
- 31 Ms. La Costa: There's also a handicap that is shown farther away from the porte cochere,
32 and it's by itself.
33
- 34 Mr. Rosa: The one at the upper right, near the porte cochere?
35
- 36 Ms. La Costa: Yes.
37
- 38 Mr. Robinson: Correct, the shaded area.
39
- 40 Ms. La Costa: And --
41
- 42 Mr. Robinson: And there's another one next to the shaded area.
43
- 44 Ms. La Costa: It looks like a parking structure, by a parking structure.

1
2 Mr. Rosa: Yes the Commissioner the highlighted space that you show to the right that's an
3 existing space within the neighboring Marriott Residence Inn parking lot.
4
5 Ms. La Costa: So that is not your property.
6
7 Mr. Rosa: Correct.
8
9 Ms. La Costa: Okay, thank you. I appreciate that clarification.
10
11 Mr. Robinson: Commissioner, you're satisfied with the . . . (inaudible) . . . the parking stall
12 for access?
13
14 Ms. La Costa: I would like to see where it is.
15
16 Mr. Robinson: Is, can you please step down and redline it to her? Thanks Tony.
17
18 *(Discussion between Mr. Rosa and Ms. La Costa regarding the handicap stalls.)*
19
20 Mr. Robinson: All right Commissioner, can you please explain to us what just happened?
21
22 Ms. La Costa: Surely. Thank you. So if you look at L-00 which shows key plan landscape
23 architect sheet list, the handicap parking places that are on the lower left, the three, have
24 been moved up by the swimming pool and across from the other two current handicap.
25
26 Mr. Robinson: So, so there's five handicap located all in one area, and none by Wailea Ike?
27
28 Ms. La Costa: No.
29
30 Mr. Robinson: Just one was moved?
31
32 Ms. La Costa: Two were moved across from the already shown two by the pool.
33
34 Mr. Robinson: Okay.
35
36 Ms. La Costa: And then if you go by the porte cochere, then there is another one that will be
37 directly opposite the one that is shown on your map with strippings. So there would be one,
38 two, three, four, five, six, seven, eight – eight handicap parking places.
39
40 Mr. Robinson: And there's one handicap stall that has been retained next to the roadside?
41 Because there was three. She said two has been moved, so there is one being
42 maintained?
43
44 Ms. La Costa: Yeah.

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Mr. Rosa: We could maintain one. Yes.

Mr. Robinson: Commissioners, do you have any questions on what has just transpired? Tony, can you reconfirm?

Mr. Rosa: Confirmed. Yes.

Mr. Robinson: Okay. All right, thank you so much. Commissioners, are there any other, any other questions we have for the applicant? Commissioner La Costa.

Ms. La Costa: Thank you Chair. I brought this up previously and I will ring my bell again. Maui is supposed to be energy efficient by 2030 and I don't see solar in here. So is it -- what are you going to do for that aspect of what is required by State law by 2030?

Mr. Rosa: So the components that we are implementing are solar sensor lighting, all exterior lighting in solar sensor which contributes to the energy efficiency of the building and the electrical demands as well as the demand it makes it more efficient that 100% is being implemented. We are also contemplating solar powered parking lights where the solar panel is also on the parking lot itself, parking lot light itself. And at the moment, electrical and plumbing is studying a solar water heating component for a swimming pool and spa.

Ms. La Costa: And when will those determinations be made?

Mr. Rosa: Prior to submitting for the building permit. Our building permit application, it will hopefully be submitted by the end of the month.

Ms. La Costa: Can I ask the Director a question? How do you ascertain that these criteria are implemented in the building permit?

Mr. Robinson: Well, it's not a requirement criteria. It's request and an acceptance criteria. Is that correct?

Ms. McLean: There isn't a requirement right now. When building permits come in we review them for zoning and land use compliance, and so we will look at the SMA conditions to see if there are SMA conditions. And if there are any questions at all with our building plan examiners, they'll check with the planner, they'll check with Candace and say, is this what was presented? Is this --?

Ms. La Costa: Okay.

Ms. McLean: Does this match up? So if that's not a requirement, if it's not clearly stated, then they wouldn't make that requirement. But if it is, then Candace would let them know.

1 Ms. Thackerson: Staff planner Candace Thackerson. So that was not a requirement of the
2 SMA Permit. This body did not say that they had to. It said that the applicant shall seek
3 ways to reduce and be better at being green energy. It didn't say that you are required to
4 do solar panels. Should they want at a later time that would actually amend the SMA
5 Permit which we could do administratively if we considered that not to be significant change.
6 But right now the PD3 is not time to make changes to the plans. These are more of a do
7 these look like what you've previously approved? If we're making changes now, it's almost
8 like we're changing what you had previously --
9

10 Mr. Robinson: Yeah, and going back to that, it's, you know, when we talk developer,
11 especially a developer that has three different properties and they come in front in us, and
12 like you saw earlier we granted an SMA without them even being present. We'd like them
13 to work with us, and we don't want to hold things down, and like Commissioner La Costa
14 says when you say you're going to work and try to implement some solar, well, instead of us
15 having do the three and wanting to review, we're hoping that when it came to us it's going to
16 have it. So I understand both sides. So we don't want to slow things down either, but if, if,
17 if you're going to hold us to everything that we approved then we won't pass anything over
18 here until we get exactly that we want. And that's not what we want to do as a Commission.
19 So I understand. All we have to do is work together and all we have to do is when a
20 developer says something that he's going to try to do it, hopefully when it comes over here,
21 we're not going to have to review everything. We want to waive this review but we also
22 want to listen to the Commission and make sure that what they testify to us during their
23 SMA hearing they're going to follow through and to the best of their ability. It's not a
24 requirement but they are consistently doing it. And that's all it is.
25

26 Ms. Thackerson: And at this time if you waive review, though, these plans will move
27 forward.
28

29 Mr. Robinson: Right, we understand that.
30

31 Ms. Thackerson: So if you make changes to them then you're welcome not waive and you
32 can have them make . . . (inaudible) . . .
33

34 Mr. Robinson: That's why we're asking the questions and we're trying to pass this along.
35 We got it. Okay. Commissioners, any other questions? Is I have a question is I see these
36 plans, but I don't see the site views with these plans. Is there a plan that shows the
37 topography site view that --?
38

39 Ms. Thackerson: Topography site view?
40

41 Mr. Robinson: Is we want to keep the site views, and the buildings, and the trees, and I see
42 all of this as being on top of them, not on the bottom to taper that.
43

44 Ms. Thackerson: You mean view plan analysis from the road?

1
2 Mr. Robinson: Yeah, that's the word I'm looking for.
3
4 Ms. Thackerson: That was approved during the SM1 and it is not a required submittal for
5 the PD3.
6
7 Mr. Robinson: Okay.
8
9 Ms. Thackerson: That was given during that. View plan analysis was discussed and given
10 during the SM1 from the road and that was approved -- discussed and approved by this
11 body.
12
13 Mr. Robinson: So if I don't see it in front of me, I can then ask for a review now is what
14 you're saying because, because isn't this what waiving review is, is we're seeing what was
15 approved?
16
17 Ms. Thackerson: For PD3, PD3 is construction level drawings only for that time. But if you
18 feel you need more information --
19
20 Mr. Robinson: Landcaping is not considered, landscaping is not construction drawings?
21
22 Ms. Thackerson: There's some landscaping for the landscaping plan, but there's no
23 requirement for them to give it to you in a 3-D elevation with the landscape.
24
25 Mr. Robinson: With the view plan.
26
27 Ms. Thackerson: Yes.
28
29 Mr. Robinson: So then I need to ask for a review of this whole project --
30
31 Ms. Thackerson: If you would like to review --
32
33 Mr. Robinson: -- is this being that?
34
35 Ms. Thackerson: It doesn't review the whole project. It reviews the PD3 where you can ask
36 for more information to see what you would like to have.
37
38 Mr. Robinson: If I ask to review everything . . . (inaudible) . . . again.
39
40 Ms. Thackerson: Step One again?
41
42 Mr. Robinson: If that's how you guys want to work it, that's up to you Candace. You guys
43 want to come late and you guys want to be this way. Hi Tony, could I ask you a question

1 please? Before we waive review, I apologize, but could you reconfirm for me the view
2 planes and the adjustments that was made on the tree lines inside of your property?

3
4 Mr. Rosa: So the request from the PD Step I and PD Step II approval was to clean out the
5 landscape at the southwest corner of our property to open up views towards the ocean.
6 And if you look at sheet L-20.0.

7
8 Mr. Robinson: 20.0?

9
10 Mr. Rosa: Yes. This reflects the reduction of trees in the southwest corner in which the
11 views would be more open. As you can in the southwest corner, we only have one, two,
12 three tall palms, and one short palm, and two medium height, 10-foot high, ornamental
13 trees. So the view corridors will open up and the ocean will be more visible as you drive, as
14 you drive down Wailea Ike Drive.

15
16 Mr. Robinson: So on your plan here it says that the palm tree is 35 feet high.

17
18 Mr. Rosa: The tree palms that anchor that major corner, yes.

19
20 Mr. Robinson: So what was it reduced to if it's at 35 high?

21
22 Mr. Rosa: The number, the quantity. So the quantity of the trees were reduced.

23
24 Mr. Robinson: And so, and so is I'm not opposing the reduction or the trees, I'm concerned
25 about the location. So . . . (inaudible) . . .10 trees is where those 10 trees were located.
26 And I'm trying to find out how does this affect the view planes of where these 30 foot trees
27 are. Ask me for your help to help me see something that's I don't have a view of.

28
29 Mr. Rosa: Our landscape architect was comfortable in analyzing corner. CHP and David
30 Sereda was comfortable is redesigning the southwest corner as its shown currently. And he
31 assured us that the view corridors would open up more than had previously been designed.
32 So just in looking at the quantity of trees and what's important is the fact that at the main
33 corner we only have three very tall palms. And at the main corner, the only other landscape
34 is the shrubs which are only three to five feet tall.

35
36 Mr. Robinson: Okay. Thank you Tony.

37
38 Mr. Rosa: Okay.

39
40 Mr. Robinson: Commissioners, any other questions? Seeing none. Recommendation of
41 the --. Is there a recommendation on this Director?

42
43 Ms. McLean: The -- what's before you today Chair is the Commission can waive or not
44 waive its review.

1
2 Mr. Robinson: Commissioners, do we have a motion to waive or not waive?

3
4 Ms. La Costa: I waive that we do not -- or I would make a motion that we do not waive
5 review.

6
7 Mr. Robinson: We have a motion to do not waive review. Do I have second? Seeing none,
8 motion not second. Do we have another motion? You're not recusing yourself from this
9 one are you?

10
11 **A motion made by Ms. La Costa to not waive review, FAILED for lack of a second.**

12
13 Mr. Carnicelli: I go ahead and move that the Commission waive its review of the Step 3.

14
15 Mr. Robinson: I have a motion to waive review. Do we have a second?

16
17 Ms. Pali: Aye.

18
19 Mr. Robinson: We have a second Commissioner Pali. Would you like to speak to the
20 motion or go to discussion?

21
22 Mr. Carnicelli: Sure I'll speak to the motion, Chair, thank you. As a Commissioner, I feel like
23 it's hard sometimes to say, yes. You know, you feel like okay, gosh, you know, we're here
24 for a reason, we've got to stick our fingers in stuff. This is one of those once for me
25 personally, and I don't speak on behalf of the Commission at all. I'm going to trust the
26 Planning Department and staff, and just say, you know what is this, is Step III going to
27 match what it is that we saw previously? That's basically what we're trying to decide, like,
28 okay are we going to trust staff to review it and say it's going to be the same? Or are we
29 going to do it? This is one of those ones that I would choose not to, and I'm going to go
30 ahead and trust staff and the Director to make sure that everything is copasetic. Thank you
31 Chair.

32
33 Mr. Robinson: Thank you. Commissioners, any discussion? Seeing none. Director.

34
35 Ms. McLean: Thank you Chair. The motion is to waive the review.

36
37 Mr. Robinson: All those is raise, please raise your right hand. Five. Opposed? One. All
38 right, waived review has been passed. Moving on.

39
40 **It was moved by Mr. Carnicelli, seconded by Ms. Pali, then**

41
42 **VOTED: To Waive Review of the Step III Planned Development.**

43
44 **(Assenting – L. Carnicelli, C. Tackett, K. Pali, L. Hudson, S. Castro)**
45 **(Dissenting – P. D. La Costa)**

1 (Excused – A. Hill, T. Gomes)
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4 **2. SMA Minor Permit Report**

5
6 **This is for notification and review purposes. No action is anticipated.**
7

8 **3. SMA Exemptions Report**

9
10 **This is for notification and review purposes. No action is anticipated.**
11

12 Ms. McLean: Thank you Chair. The next two items under Director's report are the SMA
13 Minor report and the SMA Exemption report.

14
15 Mr. Carnicelli: Chair, I have a question about those.

16
17 Mr. Robinson: Yes?
18

19 Mr. Carnicelli: This is just for education only, right? Because I guess it's just kind of funny
20 when I'm looking at the Minors how there are a couple of these that are events that have
21 already happened. So it's like, I mean, if we have the ability to go, well, wait a second we
22 don't think it's a Minor. I mean, I've been doing this almost three years, I should probably
23 know the answer to this, but anyway if you could address the fact that we're reviewing
24 something that's already happened.
25

26 Ms. McLean: Your rules require that the Commission be notified of Minors and Exemptions
27 that are issued at the first, at the next meeting after which the permit was issued. And in
28 some cases that can start the clock for an appeal so that there is a public notification
29 process. There is a public process for permits that get issued. Otherwise this information
30 we would have it available to the public if they ask for it. But this is an opportunity to issue,
31 to put together a report or a document for the Commission and for the public to see what
32 gets issued and your rules require it.
33

34 Mr. Robinson: And Director as part of the, part of the online agenda are these projects
35 posted as a part of the agenda or are they not?
36

37 Ms. McLean: The report is available for the public as soon as the packets are put together.
38

39 Mr. Robinson: And I think it's for the Commission but it's also for the public to see. And to
40 say --. We can ask for questions after the fact.
41

42 Mr. Carnicelli: Right. No, but what I'm saying though is like here's a fireworks display, right,
43 that you got a Minor. But what if somebody wanted to object to it and today is the day they
44 can object to it when the fireworks display happened in December.
45

1 Mr. Robinson: No, it's actually online, though.

2

3 Mr. Carnicelli: No, I get it, but this was posted six days ago.

4

5 Mr. Robinson: Yeah.

6

7 Ms. McLean: So --

8

9 Mr. Carnicelli: So that's what --

10

11 Ms. McLean: Say for example we issued a permit for an event that happened and a
12 member of the public felt that that should have been a Major Permit or it shouldn't have
13 been an Exemption, that can still be appealed and we would follow the process. And let's
14 say it turns out ultimately the Department was wrong then we would know for the future
15 what the issue was. Or the member of the public who was somehow harmed by it, you
16 know, would have an understanding of how the process went. Even though the event has
17 passed doesn't mean that there still shouldn't be a process for the Commissioners or for the
18 public to learn about it or understand it.

19

20 Mr. Carnicelli: Okay. It just seems a little in reverse but that's fine.

21

22 Mr. Robinson: Can we go home?

23

24 Mr. Carnicelli: Yes.

25

26 Mr. Robinson: Any other questions? Director?

27

28

29 **4. Discussion of Future Maui Planning Commission Agendas**

30

31 **a. January 22, 2019 agenda items**

32

33 Ms. McLean: Last on the agenda is the future Commission agendas. You have your
34 memorandum for items currently scheduled for January 22nd. There are three public
35 hearing items and two SMA time extension so far.

36

37 Mr. Robinson: Questions, Commissioner Hudson?

38

39 Mr. Hudson: In . . . (inaudible) . . .

40

41 Ms. McLean: 1(B)? One, A, B, and C are all together. That's the Hui Noeau in Makawao.
42 They're requesting three Land Use changes, Community Plan Amendment, State Land Use
43 District Boundary Amendment, and Change in Zoning.

44

45 Mr. Hudson: Are we splitting up the changes because if you . . . (inaudible) . . . the State?

1
2 Ms. McLean: I do not know if that's why it's 14.775. You'll see the acreage on --. The
3 others are different. Sometimes it's just how the land use maps are that the entire property
4 might not have one designation. It might be split designated so only a portion is proposed to
5 be changed.

6
7 Mr. Hudson: Yeah, because if you look at the TMK, 2-4-002-006 portion, it's the same on
8 alpha and bravo. I don't know if that -- is that copasetic? I mean, because we know that if
9 you have 15 acres or more it goes to the State, not to the County which is an entirely
10 different animal.

11
12 Ms. McLean: That's correct. For State Land Use District Boundary Amendment, if it's 15
13 acres or more it goes to the State. But again, I don't know off of the top of head how these
14 properties are currently zoned. It could be that only portions. You know, if this is the entire
15 property maybe the whole thing is community planned one designation, and only a portion
16 is zoned ag and portion is zoned public quasi-public. It could have split designations so the
17 acreage may not total up.

18
19 Mr. Robinson: We will find out.

20
21 Mr. Hudson: Exactly. We will be figuring this one out at the next meeting.

22
23 Ms. McLean: Yeah.

24
25 Mr. Robinson: And Commissioners and Corp Counsel, do you have the modified one for us
26 to sign today?

27
28 Mr. Galazin: Yes Chair I do so just make sure -- I'll have everybody sign a couple of
29 originals so that we have those.

30
31 Mr. Robinson: Okay. Everybody but Commissioner Carnicelli. All right, seeing none,
32 meeting is adjourned.

33
34
35 **H. NEXT REGULAR MEETING DATE: JANUARY 22, 2019**

36
37 **I. ADJOURNMENT**

38
39 The meeting was adjourned at 12:49 p.m.

40
41 Respectfully Submitted by,

42
43
44 LEILANI A. RAMORAN-QUEMADO
45 Secretary to Boards and Commissions II

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RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Larry Hudson, Vice-Chair
P Denise La Costa
Kellie Pali
Keaka Robinson, Chair
Christian Tackett

Excused

Kahu Alalani Hill
Tina Gomes

Others

Michele McLean, Acting Director, Department of Planning (in attendance at 10:13 a.m.)
Clayton Yoshida, Planning Program Administrator, Current Division, Department of Planning (9:00 a.m. - 12:04 p.m.)
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel