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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.2 AND C.2.a
APRIL 9, 2019**

Ms. McLean: Thank you Chair. The next item is a request from Mr. Allen T. Yap for Paynella Hawaii, LLC for a Special Management Area Use Permit for the proposed eighty-six lot single-family subdivision with an approximately three-acre park, seven-acre drainage retention area, and all associated improvements including landscaping, roadways, sidewalks and utilities, located at Welakahao Road in Kihei at TMK: 3-9-002:014, 116, 150 and 151.

Commission you also have in front of you a Petition to Intervene from Na Kahawai O Kula Kai, represented by its President Vernon Kanani O La`ie Kalanikau. And so Commission the way the proceedings would go for these items is for the Project Planner, Candace Thackerson to present the project and for the applicant to provide any additional presentation information and then for the Petition to Intervene to be presented and discussed. And then the Commission would take action on the Petition to Intervene. If the Petition to Intervene is granted, then you would not be taking action on the proposed permit today. If the Petition to Intervene is denied, then the Commission could consider taking action on the application and public testimony would then be accepted. Are there any questions on that proceeding? Okay, Candace Thackerson is the Project Planner.

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2. MR. ALLEN T. YAP for PAYNELLA HAWAII LLC requesting a Special Management Area Use Permit for the proposed eighty-six (86) lot single-family subdivision with an approximately three (3)-acre park, seven (7)-acre drainage retention area, and all associated improvements including landscaping, roadways, sidewalks and utilities, located at Welakahao Road, Kihei, Maui, Hawaii, TMK: (2) 3-9-002:014, 116, 150 & 151 (SM1 2018/0009) (C. Thackerson)

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Ms. Candace Thackerson: Aloha Commissioners. So the project is before you because it's located in the Special Management Area and Michele as our Director has already read into the record what the project is. I just wanted to state that the community plan, the Kihei Community Plan is Single Family, the County Zoning is R-3, Residential. So the only permit required by this body would be the Special Management Area. In an effort to not repeat ourselves I'll let the applicant go into the presentation so that we can then take up the intervention as well.

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Mr. Raymond Cabebe: Good morning Commissioners.

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Mr. Carnicelli: Good morning.

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Mr. Cabebe: Good morning Chair and Madame Director. My name is Raymond Cabebe, I'm with Chris Hart and Partners and I'm here representing the owner, Paul Boschetti and the Project Manager, Allen Yap and we have our team here that will be giving our presentation on the project. We have in addition to myself David Sereda from our office who is the landscape architect. We also have Peter Neiss from Maui Architectural Group, Stacy Otomo from Otomo Engineering, Tyler Fujiwara who is the traffic engineer from Austin Tsutsumi, Lisa Rotunno Hazuka from Archaeological Services Hawaii, Katherine Smith, Kama`ema`e Smith from Honu Media LLC and

1 we have Forest and Kim Starr from Starr Environmental and Michael Reyes from Maui
2 Environmental Consulting.

3
4 This shows the location of the property. It's in Kihei just about Central Kihei, Kalama Park to the
5 south. We have Azeka's Place to the north up here. This is the tax map key showing the four
6 parcels totaling 41.337 acres. This is an aerial map that shows the landmarks around the area.
7 We have two schools, Kihei Elementary and Lokelani Intermediate and the South Maui
8 Community Park on the east side. And you have Welakahao Road on the south side of it, of the
9 parcel of the project site with Hope Chapel on one end and Kihei Baptist Church at the other end
10 and South Kihei Road along the west side.

11
12 This shows that the parcel is within the Urban Growth Boundary and it's not designated a sensitive
13 area. It's designated Urban by the State. It's community planned Single-Family and it's also
14 zoned for R-3, Residential.

15
16 This is some of the photos of the property. Some views down Welakahao going...looking east
17 and west. This middle picture is a typical picture of the interior of the property with the kiawe tree
18 thicket and this is looking from the east side of the property, the mauka side looking across the
19 site. This first picture is a drainage ditch that's right at the corner of Welakahao and South Kihei
20 Road and this is one of the houses, there's like three houses on the property right now. There's
21 an entrance gate to a construction baseyard on the eastern side of the property and these two
22 photos are looking along the future Liloa Drive.

23
24 These are some of the photos like along South Kihei Road showing some wetland areas. And
25 the studies that we prepared, that were prepared for this project, you know botanical and fauna
26 report and archaeological inventory surveys there were two of them done. One was done in 2004
27 and one was done in 2016. Both were done by Archaeological Services. We had a Cultural
28 Impact Assessment done, even though this is not an environmental assessment we thought it
29 was important to have one done anyway. We did walk the site with ...(inaudible)...Oshiro who
30 was the...(inaudible)...at the time of...and there was possibilities that you know there might be
31 some kind of cultural significance to the site. We had a Preliminary Engineering Report done by
32 Otomo Engineering and Traffic Impact Analysis Report done by Austin Tsutsumi and a Wetland
33 Survey Report by Maui Environmental Consulting.

34
35 We met with the community, Kihei Community Association Design Review Committee last
36 November and they had some comments regarding the situating the houses and also some trees
37 along the roadways and also about considering to put a restriction on short-term rentals on the
38 project and the applicant is not opposed to that. Also at a community meeting in November last
39 year we notified all property owners within 500 feet or 164 of them and it was approximately 40
40 in attendance. What came out of that meeting was something that we didn't really look at first
41 was a possibility of having wetlands on the property. So we based our initial analysis looking at
42 the National Wetlands Inventory and the property is right here so we noted that well, there's no
43 designated wetlands on the property. However we did engage Michael Reyes to do a Wetland
44 Assessment for the property and this is some of his findings and at this point I'll bring up Michael
45 to talk about his study.

46
47 Mr. Michael Reyes: Hello everyone, I'm Michael Reyes with Maui Environmental Consulting. We
48 conducted a Wetland Survey on the property using the Army Corp of Engineers 1987 Wetlands
49 Delineation Manual and the 2012 Regional Supplement for Hawaii and the Pacific Islands Region.
50 The Army Corps of Engineer uses three indicators to determine whether or not something is a

1 wetland. Those indicators are hydrophytic vegetation. I should say a predominance of
2 hydrophytic vegetation and then indicators of hydrology...(inaudible)...lines, salt deposits on the
3 soil surface and then hydric soils. All three of those indicators have to be present for the Army
4 Corps to claim the wetlands and for it be protected under the Clean Water Act.

5
6 So during our survey we found two different wetland areas obviously Keokea Gulch and the fresh
7 water emergent wetland that's just mauka of South Kihei Road. I will show you here, these
8 pictures are within Keokea Gulch and I apologize they're kinda dark because there's a thick kiawe
9 canopy on either bank of the gulch. But as you can see you've got built up material during, you
10 know, flood events that have been deposited within Keokea Gulch. Those are indicators of
11 hydrology. And then within the fresh water emergent wetlands that's just mauka of South Kihei
12 Road you have things like surface soil cracks, you've got sparsely vegetated concave surfaces,
13 these are all very specific indicators within the Wetland Delineation Manual. You also have
14 obviously like salt deposits in these areas. And so I also wanted to speak most of the vegetation
15 within the wetland area is Batis or Pickleweed and the Army Corps of Engineers they actually
16 have a list of plants observed to commonly grow within Hawaii. They give each one a designation
17 of either being an upland plant, wetland plant or just a facultative plant which means they can kind
18 of occur in both areas, upland and wet.

19
20 In this area you can see kiawe which is considered an upland plant is dead. So what's happened
21 here is during a dry year kiawe tend to move into this like sunny area and establish themselves
22 but obviously because of the hydrology of the wetland were killed off during a wet year. And then
23 all of your groundcover vegetation is this Pickleweed, the genus is Batis but the Army Corps of
24 Engineer has designated it to be an obligate wetland species which means that it only grows in
25 wetland. And so when I speak to the three indicators of a wetland this is what I mean, we have a
26 predominance of hydric vegetation, we have indicators of hydrology and then obviously we also
27 dug soil pits and looked for hydric soil indicators. The soil indicators that were observed were
28 gleyed soils and a presence of muck within the soils. And so again, it ended up being just
29 approximately just over three acres of wetlands on the property. Going to turn it back over to
30 Raymond.

31
32 Mr. Cabebe: Thank you Michael. This is a FEMA map, it shows the property, most of the property
33 is within AE Zone which is a one percent, 100-year storm event zone and each of those lines
34 there are the base flood elevation. They all have different base flood elevations as you go up the
35 gulch. At this point I'll bring up Stacy Otomo to talk about how the project is gonna address the
36 flooding conditions here.

37
38 Mr. Stacy Otomo: Good morning Chair, Members of the Commission. My name is Stacy Otomo
39 from Otomo Engineering. To give you an overview of the drainage, there's a whole bunch of
40 things that's going on. Basically at Piilani Highway where Keokea Gulch crosses the highway
41 there's a bridge...(inaudible)...as you move further down it's an open channel. The Maui Electric
42 substation is right in this area. Right where the future North-South Collector Road crosses this
43 it's an open gulch. Maui Electric has a driveway going right across the gulch. There's two 54-
44 inch culverts that are in this gulch that Maui Electric uses to get across to their substation. Keokea
45 Gulch is fairly defined as you come into the property and right about here it just peters out to being
46 flat. So what the runoff does is it comes through here. It just peters out and just sheetflows here.
47 The bulk of that basically goes over South Kihei Road. Some of it does go in this direction toward
48 the adjacent property and toward the Kihei Franks Subdivision.

49

1 Our drainage plan is to basically channelize Keokea Gulch coming through the property and right
2 in this area where it peters out we're gonna allow it to continue doing that. However, on this half
3 of the bottom parcel we're gonna create a retention basin. The retention basin is gonna be partly
4 in a excavation mode and we're gonna create a little berm along South Kihei Road to provide
5 storage volume. There's a question about what the 100-year flow is in Keokea Gulch and I'll give
6 you three numbers. When Piilani Highway was built I believe the early 70's the engineers
7 calculated the 100-year flow at Keokea Bridge to be 8,008 cubic feet per second. There was a
8 drainage master plan done for the County of Maui in 1997. It was never adopted but kind of used
9 as a guideline. That same report computed the 100-year flow to be 9,035 cubic feet per second.
10 Most recently the Department of Public Works has retained another consultant doing an update
11 to the Kihei Drainage Master Plan and I believe it's in the pre-final stages of the report. Their
12 calculations show that the 100-year flow in Keokea Gulch is 5,753 cubic feet per second. So
13 there's quite a bit of difference between all three of the reports. For the purposes of our
14 preliminary work we use the worst case scenario which was the 9,055 cubic feet per second. In
15 discussions with the Department of Public Works, the Engineering Division we asked them what
16 number should we be using for this study and because none of these numbers are formally
17 adopted what they suggested was that we do our own evaluation of what's happening mauka of
18 Piilani Highway and do our independent calculation and present that to them for consideration.
19 We're not at that stage yet, but like I said for the purpose of this project we used the worst case
20 scenario.

21
22 Ultimately the goal here is to like I said, we're bringing a channel down here. We're allowing it to
23 do what it's doing. In the 1997 and the most current drainage master plan the ultimate solution
24 for Keokea Gulch is actually to come across here, get into the adjacent property and when they
25 built the Kihei Franks Subdivision they already included culverts across Pali Kai Street that
26 accommodates the 100-year flow and it's not shown on this picture but beyond this what happens
27 is it comes here, it makes a left turn down towards South Kihei Road and when the South Kihei
28 Road were improvements were installed in the I believe late 90's or early 2000's there was a
29 whole bunch of culverts that were actually put along South Kihei Road to allow this runoff to cross
30 there and get into what they call the regulation reservoir down at...adjacent to St. Theresa Church.
31 And our hopes here is to be able to build part of that so-called drainage master plan while
32 mitigating the drainage down in the retention basin.

33
34 I'd like to also say that if this project doe get approval to proceed there's a number of steps that
35 we would need to go through to get the drainage plan approved. Number one, FEMA comes into
36 play so we would have to basically come out with a design, submit calculations to FEMA and if
37 FEMA agrees, the objective would be to get all the single-family lots into a green color and at that
38 point it's gonna be called a conditional letter of map revision. If we get to that stage with FEMA
39 we do construction plans, the subdivision gets built out, then and we back and we do an as-built
40 survey and we run the same calculations again, present it to FEMA and if FEMA agrees that
41 everything was built per what was approved then it becomes a letter of map revision and what
42 you would end up seeing is basically where all the blue it would become green other than the
43 retention basin area. And this is similar to some of the other gulches that you've seen like
44 Kulanihakoi Gulch and Waipuilani Gulch.

45
46 Mr. Cabebe: Thank you Stacy. This shows an increase in runoff that is proposed to be captured
47 by the retention basin. The drain inlets will be filtered. The retention basin does provide some
48 natural filtering as well. As I mentioned before, two archaeological inventory surveys were
49 performed and I'm going to have Lisa Rotunno-Hazuka come up and speak to that.

50

1 Ms. Lisa Rotunno-Hazuka: Good morning Commissioners, Lisa Rotunno-Hazuka for
2 Archaeological Services Hawaii and we conducted two Inventory Surveys of the project area, one
3 around 2003, and one in 2016. The 2003 was performed in what we call like the upper 20 acres
4 and 2016 we performed the Inventory Survey of the lower 20 acres.
5

6 During an inventory survey we attempt to find the presence of surface sites and the potential for
7 buried cultural deposits and part of the process of the survey is doing background research
8 determining what's been done in the area, what's been found and then we do field work where
9 we go out to the site, we walk the acreage, we look for indications of any types of surface sites
10 and if there are no indications of surface sites then we do backhoe trenching to get idea of the
11 subsurface conditions, you know how much disturbance is there subsurface, are there cultural
12 deposits present? So we did a total of 30 trenches in the project area. We did not have any
13 subsurface findings, no cultural deposits in the trenches and we did not have any surface sites
14 indicated.
15

16 Some of the interesting things that's going on in the area, our project is in this band that
17 archaeologically a theory is it's called the barren zone so it's between two areas, the coast and
18 the uplands that would be more densely populated. However the barren zone would have trails
19 going from mauka-makai. You could have temporary habitation sites along the way, possible
20 fishing shrines, and the park parcel actually had probably the most archaeological features found
21 in this zone. They had agricultural terraces, there was a ceremonial site as well as a couple of
22 habitation sites. Just to the north of our project area an inventory survey was done and there
23 were no findings. They recently did...well actually 2009, 2010 they did the...as part of the park
24 development and they did not find any cultural deposits. They also focused their monitoring on
25 there as a remnant sand dune in the central portion and they did a very controlled grading of that
26 sand dune and did not have any findings during that time.
27

28 So after an inventory survey is done before you go into construction you have to develop an
29 archaeological monitoring plan and that will state you know, how construction will be monitored,
30 if there are any finds how they will be treated and if you have some sensitive areas that those
31 areas during construction may be able or may need to be treated in a more controlled manner.
32

33 Mr. Cabebe: Thank you Lisa. A Cultural Impact Assessment as a I stated before was done even
34 though it's really required for an SMA permit application. We'll bring up Katherine Kama`ema`e
35 Smith here to speak to her study.
36

37 Ms. Katherine Kama`ema`e Smith: Aloha Commissioners. Aloha Chair and Madam Director. It
38 was my pleasure to do a Cultural Impact Assessment Study.
39

40 Mr. Carnicelli: Excuse me, can you just state your name for the record please?
41

42 Ms. Kama`ema`e Smith: I'm sorry it's Katherine Kama`ema`e Smith and I live in Lahaina.
43

44 Mr. Carnicelli: Thank you.
45

46 Ms. Kama`ema`e Smith: It was my pleasure to do a Cultural Impact Assessment Study for this
47 property and my work started with my love of the Hawaiian culture and that I am an avid reader
48 of old literature. I think I can...I think I have...here's my process, that's not my process. Oh,
49 there's my process. Okay, my method. I go through all of the old literature, I go through a lot of
50 different steps. I do a thorough research for the parcel and I do a thorough for Keokea Ahupua`a

1 and that starts at SHPD with the archaeological records on all of the studies that have been done
2 in the past and all of the ancient maps and all of the most recent maps because it's important to
3 make sure that I am...I'm in the dark when I'm doing my study so it's important for me to
4 understand exactly what the locale is and I do that starting with you know tax key maps and I look
5 for previous owners through the Tax Assessment Record Office and then I look at the ancient
6 records that are the Palapala Mahele Aina O Ke Aupuni Hawaii because those were the earliest
7 land records that we have of the parcels and survey records that show where they may have been
8 habitation sites or shrines or ala or different things that would indicate that people were there. I
9 also read, I scan through and I huli the Na Nupepa Olelo Hawaii through Ulukau and I find out
10 exactly if there were any mentions of any of the ahupua`a or ili or mo`o that existed in Keokea
11 and what they may reveal about this particular property and the land use and the cultural practices
12 that may have gone on.

13
14 I do a primary and secondary histories. I read those...those that were left to us by David Malo
15 and John Papa I`i and others so that I can know what was captured in the early literary period
16 that might indicate some things that were known at that time and that would represent...that goes
17 back...the literary period goes back about seven generations and then...but the people...things
18 that were written down then might indicate things that happened two or three generations before
19 that and then of course, the mele that go back 25 generations.

20
21 So after my historical research then I come back to take a look at that property and I want to see
22 with my own eyes if it looks like the kind of property that the hale builders would select as a spot
23 to build something or that it might have some view lines or other cultural aspects of the land that
24 would cause it to be a ceremonial place. So I took four visits to this parcel to inspect for evidence
25 of cultural sites and also cultural resources such as materials that might be gathered in the
26 process of cultural practice.

27
28 I also put an ad in *The Maui Newspaper* to...asking for cultural informants to come forward and I
29 run that two weeks apart, two ads two weeks apart and then I request informants from the
30 Ahu Moku of the area and I also ask my friends if they know people who were active in this area
31 and know about this area and then I do follow up interviews or have meetings and in this case I
32 did tour the ceremonial site in the recreational park which is above this parcel to get an idea of
33 what was going on and get a feel for that place.

34
35 There were no records that I was able to find on cultural sites, historical home sites or actual
36 cultural practices on this particular parcel. And going back to what was recently said about the
37 barren area, that's not un...that's not unusual for this part of Maui where the Keokea Ahupua`a
38 was held as a crown...as crown lands and these particular ahupua`a that were chosen for that
39 purpose usually had some specific cultural or economic resource attached to them so actually the
40 resources of Keokea and Waiohuli which is next door are the fish ponds at the sea and the rich
41 grazing lands that were up on the slopes so there may have been...there's obviously traffic
42 through this area to get to and from the fish ponds and there may have been camp sites for the
43 those who were to care for the fish ponds but there was no...I could not find any documentation
44 or any person who knew of that.

45
46 There were no mentions of cultural sites or practices on this parcel in my conversations. The
47 area may have been used for kiawe gathering during the 1900's and one of the Mahiai Family
48 lineal descendants knows of this particular activity that was probably throughout all of Kihei area
49 in the kiawe zone where the kiawe was made into fuel, made in charcoal for fuel and the seeds

1 were collected and they were used for cattle fodder and they would sell them. That was an
2 industry. But I don't know of any of that being done recently.

3
4 The family mo`olelo of my informants indicated burials on the parcel, but no locations were found
5 and the informants did not know of specific locations of burials, only of the possibility of burials
6 and so I do recommend the archaeological monitoring for iwi and that is my final recommendation.
7 The people that were interviewed for this were Kimokeo Kapahulehua whom I worked with at the
8 Mookeha o Piilani launching, Wayne Chung who is a cultural practitioner at Ko`ie`ie Fish Pond.
9 Wilson Angel of Kihei Canoe Club, Lucienne De Naie, co-author of the Project Ka`eo and Kihei
10 wetlands historian, Joe Engledow, historical and author of Kau Haleakala, a History of the Maui
11 Mountain, Vernon Kalanikau Po`o O Ka`Ahu Moku O Kula Kai and Sandra Akina of Akina Aloha
12 Tours, I tried to get in touch with, I was not able. She did not answer any of my calls. I spoke to
13 Louise Alborano who is a Welakahao Street resident, Melanie Kehaunani King, who is an Akina
14 Family descendant and a voyager, and Cody Namet, who is a Kihei resident and cultural
15 informant, and Scott Meidell, who is the historian at Haleakala Ranch which is above this site.
16 And that concludes my report to you Commissioners on the study that I performed for this
17 property. Thank you.

18
19 Mr. Cabebe: Thank you Katherine. This slide shows that site that both Lisa and Katherine
20 referenced on the park. This is the park site and there's a...a site that was discovered during the
21 archaeological studies there and a preservation plan was prepared and accepted by SHPD in
22 2005 and the site is described as such, the presence of several small boulder large cobble size
23 pieces of unmodified branch coral at this site points towards ceremonial use. Its positioned on
24 one of the highest knolls in the surrounding area overlooking its largest drainage also suggests a
25 ceremonial function. It seems more likely that the site represents a single late occupation and
26 that it functioned as a ceremonial site. So that site is right here, it's right at the top, very close to
27 Piilani Highway maybe about 150 feet I estimated. This is looking up the site towards Haleakala.
28 You can see the orange buffer area, it's delineated and this is looking towards, towards the
29 recycling area. You can see the church buildings in the background here and anyway that slide
30 didn't come out right, but looking towards the ocean you can see just the top of the horizon line
31 right above tree line, this site is significantly higher than the project site. It sits about 80 to 90 feet
32 above sea level and the project site ranges from 10 to about 50 feet above sea level. It's a
33 residential subdivision so their heights are limited to 30 feet from existing grade so any filled grade
34 you have to calculate it from the existing grade for the heights of the buildings. So I can show
35 you the picture of those...looking from...looking towards the ocean from here but the tree line,
36 there's a tree line that you know obscures most of the ocean there so we don't anticipate that the
37 project itself is going to impact the sight lines for that shrine.

38
39 We had a botanical and flora survey done by the Starrs. I'll have Forest Starr come up and speak
40 to this.

41
42 Mr. Forest Starr: Forest Starr, Starr Environmental. So we surveyed site in March 2016 and our
43 approach is to go through the landscape noting all the plants, animals, insects, birds, and what
44 we found is that site is predominantly nonnative like much of Kihei. It's in the mauka reaches it's
45 buffel grass, open. You get into the kiawe canopy with a little buffel grass understory and then it
46 becomes a barren understory under the thicket kiawe and then by the wetland it becomes that
47 Pickleweed and Fleabane. All that's nonnative. Inside there's a little bit native plants scattered
48 Ilima, Uhaloa, Akulekule what you'd expect in Kihei. We observed one pueo, that's the Hawaiian
49 owl and a pinao, it's the Hawaiian dragonfly. So virtually all of the plants and animals are
50 nonnative and not a conservation concern on Maui. They're all pretty common. And there was

1 concern about the pueo that it could potentially breeding or nesting right at the time of construction
2 like a two-month window and also the Blackburn sphinx moth that nests on the tree tobacco we
3 did not witness either but they very likely could be there since we've surveyed it and so as a result
4 before construction we'll go in and survey both for nesting pueo and the Blackburn's sphinx moth
5 and the tree tobacco. If any are found, appropriate mitigation will be taken.
6

7 Mr. Cabebe: Thank you Forest. Okay, let's get to the project. It's 80 single-family lots. We
8 reduced it from 86. I think in your packets it shows 86. They average 11,000 square feet
9 approximately. They're six main dwelling models. They're one and two-stories, three, four and
10 five bedrooms and there's one ohana model. Bring Peter to describe the architectural.
11

12 Mr. Peter Neiss: Good morning Commission. My name is Peter Neiss. I'm an architect at Maui
13 Architectural Group and we've created these model homes for what was 86 but is now 80 lots.
14 Pretty straight forward. All the lots have covered lanais, outdoor space, pretty typical building
15 materials, board and batten lap siding. It's pretty early on in the project so we want to leave it
16 open to like the roofing types we're not sure if it's going to be standing seam metal or some sort
17 asphalt shingle or something else, but these are very...they're nice for Kihei but it's what you see
18 all around Kihei already. We're not going out of the box with any of the design and it will fit in well
19 and create a nice neighborhood once there is people living there. Some of the bigger models,
20 two stories is tricky. Yeah.
21

22 Mr. Cabebe: Thank you Peter. Let me just back up a little bit here, going back in the design. We
23 have common areas that include the drainage channel, about four and a half acres, passive park
24 which is three acres, open space of six acres. The wetlands is designated as designated by those
25 reports it's 1.83 acres. There's two vehicle entries from Welakahao Road, two access points with
26 left turn lanes and there's also pedestrian access points to Welakahao and also to South Kihei
27 Road.
28

29 This was I think was the original layout as submitted, and even before this we had a couple of
30 other layouts that we had originally done. The original project I believe had 91 lots. There was
31 access to the future Liloa Drive here, but then we went to visit Parks and the Parks wanted the
32 driveway to line up with the park driveway so that was relocated here to this area and then in
33 talking with Public Works their timetable for Liloa Drive was...they didn't really have a timetable
34 for it so we decided to construct a bridge and have the access all from Welakahao Road instead
35 and originally we could follow through with this design even though wetlands were discovered in
36 this area here, you know through permits with the Army Corps but ultimately we decided to just
37 go ahead and avoid the wetlands completely, eliminated six lots.
38

39 So the project itself is laid out around all the natural features of the property. Along the future
40 Liloa Drive there's also a 60-foot like no build line that if you see some of these lots are really
41 oversized. That one on the corner is like 20,000 square feet but that's because half of it is
42 unbuildable. And Peter went over some of the architectural features. And this is the landscape
43 plan and we'll have David Sereda come up and speak to this.
44

45 Mr. David Sereda: Good morning. I'm David Sereda, a landscape architect at Chris Hart and
46 Partners and I'd like to speak to you about the landscape features and the open space system.
47 So the open space system has...is comprised of four parts. So there's the gulch itself, the three-
48 acre neighborhood park, the detention area, the wetland and then the network of sidewalks and
49 pedestrian and bike paths throughout the neighborhood. The Keokea Gulch itself would be
50 replanted with native grasses and ...(inaudible)...appropriate for the area. The three-acre

1 neighborhood park would be publicly accessible and it would be well maintained and it would
2 feature barbeques, picnic tables, benches, and walking paths and that's this area here.

3
4 The detention area here what we'd like to do there is have it planted with Hawaiian shrubs and
5 groundcover and become a naturalized habitat. So it would be maintained to a less manicured
6 level than the neighborhood park and would be allowed to naturalize for more habitat purposes.
7 And then the wetland area here what we'd like to do is remove the invasive species and replant
8 it with native Hawaiian plants that are appropriate for wetland areas which would most likely be
9 include makaloa and akulekule.

10
11 There'd be one mile of bicycle and pedestrian paths and that doesn't include the sidewalks within
12 the neighborhood and the main bicycle path would...and pedestrian path will be a 10-foot multi-
13 use path. It would come down both sides of the gulch and would connect Welakahao Road with
14 South Kihei Road. So the path comes along here all the way through across the bridge and back
15 out onto Welakahao Road all the way up to the Maui Electric lot. Potentially this could connect
16 with the north-south collector pedestrian and bicycle access system for that. With the project itself
17 there's three connections between lots and the open space areas. There's one here between the
18 lots, another one here and the third one here that would connect directly to the neighborhood
19 park. There's two additional pedestrian walkways that would connect at the end of the cul de sac
20 here and here and this would allow access to Welakahao Road and to South Kihei Road.

21
22 Some of the plant material, I won't go through all of this but some of the plant material we'd like
23 to propose is for the street trees would be Pink Tecoma and the native Milo. Within the detention
24 area we'd have Hawaiian Kou, Monkey Pod and Hao, and Ali'i shrubs along the frontages of
25 South Kihei Road and Welakahao and again we'd have native plant species in the wetland area
26 and in the detention area.

27
28 Some of the typical sections for the project. This one here at the bottom shows a...the relationship
29 between some of the proposed housing lots and the park below so that was that one pedestrian
30 connection to get down to the neighborhood park that's this section here. This section here is a
31 typical street section which shows the width of the street and that there would be sidewalks on
32 both sides separated from traffic with a planter strip. And then this section here is the typical
33 Welakahao section which would show along the property line of the project, a fence and rock
34 columns. A six-foot planter buffer, five-foot sidewalk and a six-foot grass strip separating
35 pedestrian traffic from the traffic along Welakahao Road. Along South Kihei Road there would
36 also be a six-foot fence and rock column combination but that would end at the end of the houses
37 so then it would become a three-foot fence for the remainder going north. So on the site plan that
38 would be here. So this would be...this is the frontage here which would have fence, and then this
39 will be a low three-foot fence along here. And then this would also be low, three-foot fencing
40 within the project here and here. And I should also mention that along South Kihei Road there
41 would be a ten-foot landscape buffer. So along Welakahao there's a six-foot planter landscape
42 buffer and along South Kihei Road there would ten feet.

43
44 These are pictures of the typical tree species we'd like to use. We're including the native A`ali`i
45 on the bottom which would along the street frontages within those landscape buffers. Potentially
46 what the fence could look like with the rock columns. And I should also mention that the irrigation
47 for the project would be designed and constructed to be suitable to accept the reclaimed water
48 from the nearby Kihei facility so that would be the County reclaimed water that we'd be using for
49 the irrigation. Thank you.

50

1 Mr. Cabebe: Thanks David. Just wanted to point out on this landscape plan, the Department
2 asked for these connections to pedestrian and bikeway connections so we did provide them at
3 the last minute here. Also they wanted a connection or a future connection to probably to the
4 north so that's what this lot is right here. They also asked for a connection to Liloa Drive but
5 there's a drop of about 12 feet from Liloa Drive so we didn't think it would be feasible to put one
6 there. And also in your original plans it showed the project as a gated, gated project. We took
7 the gates out by request of the Planning Department.
8

9 Domestic demand of water is 120,000 gallons per day. The sewer demand is still within the
10 capacity of the Kihei wastewater reclamation facility. Your typical subdivision improvements of
11 your roadways will be constructed and we'll bring up Tyler Fujiwara for to discuss the traffic report
12 which I hope you all have.
13

14 Mr. Tyler Fujiwara: Good afternoon Commissioners. Tyler Fujiwara, traffic engineer with
15 Austin Tsutsumi and Associates. So we prepared the traffic impact analysis report for this project.
16 We conducted counts at various intersections in May of 2016, 2017 as well as November 2018.
17 We studied various intersections surrounding the project along Piilani Highway, South Kihei Road,
18 East Lipoa Street, East Welakahao Road and Liloa Drive.
19

20 You know last year there was number of different improvements that State DOT has done along
21 Piilani Highway. You know we did a recount at the Piilani-Lipoa intersection and also did some
22 reroutes to accommodate some of these DOT modifications and couple of them include new traffic
23 generated by the Kihei Charter School mauka of Lipoa Parkway. DOT implemented a restriction
24 of the east bound left-turn lane at the Piilani and East Welakahao Road intersection and they also
25 did some signal modifications at the Piilani and Lipoa Street intersection.
26

27 Based on observations most currently last week. I went out last week Tuesday and Thursday to
28 check on the surrounding intersections. There's no major queuing or congestion currently present
29 along South Kihei Road, Welakahao or Lipoa Street. There are some delays and congestion
30 issues at the Piilani Highway and Lipoa Street intersection during the A.M. peak period you know
31 in part due to the Kihei Charter School. The intersection is also provided with high fixed cycle
32 lengths and again, as I mentioned traffic generated by Kihei Charter and Kihei Elementary and
33 Lokelani on the makai side.
34

35 The project will provided with two new driveways along East Welakahao Road one of which will
36 align with the existing Akai Street intersection. Upon full development, so this would include
37 ohana homes on each of the 80...currently 80 lots it would generate 128 A.M. peak trips and 172
38 P.M. peak trips. The project's expected to increase traffic on Piilani Highway by about 10 to 60
39 vehicles. This is about a one to two percent increase and along South Kihei Road by 10 to 20
40 vehicles so this is a one to three percent increase.
41

42 Based on the level of service analysis at the majority of the intersections the delay increases are
43 relatively minimal. We're looking at increased about one to seven seconds with the project. Again
44 the project increases overall traffic on Piilani Highway by about 1.4 percent. We will be providing
45 exclusive left-turn lanes at both project accesses one of which will be a left-turn lane into the Akai
46 Street intersection to service the southern neighborhood just south of our project. I'll turn it over
47 to Raymond again.
48

49 Mr. Cabebe: Okay, thanks Tyler. Okay workforce housing is being addressed by there's four,
50 actually four ways to address workforce housing. One is to construct it onsite, one is...the other

1 way is to construct offsite, one is to pay in-lieu fee, and the forth way is to purchase credits. If it
2 was offsite...if offsite units are provided it would be 20, 20 units would be provided. Onsite would
3 be 16 units. The developer will enter into an agreement with the County prior to the issuance of
4 building permits.

5
6 To point out some of the sustainability features of the project. Water conservation, native and
7 climate adaptive plants will be used, automatic irrigation with rain sensors. There's a R1 line that
8 runs along Liloa Drive right now that can be used for R1 irrigation. Low flow fixtures of course will
9 be used and the storm water retention keeps all the water onsite. And some of the other features
10 there's community connectivity. This line around the project site is a half mile so it shows you
11 know, there's schools, churches, library, fire station, shopping malls at both ends, supermarket,
12 all within walking distance. This is an infill project so there's alternative modes of...opportunities
13 for alternative modes of transportation. There's buses, along South Kihei Road one stop is like
14 right in front of the property. There's also future stops that will be on Welakahao Road and as
15 shown before we have bicycle and pedestrian paths running through the property.

16
17 The Kihei-Makena Plan there's a implementing action and that says prepare an open space
18 master plan to provide unified system of non-motorized access and to establish standards for the
19 use of drainageways, wetlands, and easements. And this plan was adopted in 2004 and the
20 project site is right here and it shows a secondary access path going through the right the property
21 and our project complies with this plan.

22
23 So in conclusion is surrounding by similarly zoned properties. It has all major infrastructure in
24 place. It's in close proximities to public and basic services and you know it's a residential
25 subdivision project so it provides housing, needed housing units. At this point our presentation is
26 concluded. I believe Allen Yap wants to come up and say a few words before we end it.

27
28 Mr. Allen Yap: Good afternoon. My name is Allen Yap. I'm the project manager and my company
29 Paynella Hawaii represents the...is the applicant represents the owner in this development. We
30 have complied to everything for the Planning Department. However, I'd like to make a
31 consideration with the Planning Commission to remove the requirement...remove the
32 requirement for a roadway through the subdivision to provide access to the north lot. And one of
33 the...the reason is that by doing that it's going to severely impact the north section, on the north
34 side of the drain way for the development. That portion of the development was programed to be
35 some of the better homes in the higher price. It was going to make the project reasonably
36 profitable because of the additional privacy, security and serenity of that area which was going to
37 be only probably accessed by the residents there and no flow through traffic. However, if we do
38 install that roadway that's going to destroy that concept and will have a severe financial impact
39 on the developer.

40
41 I'm sure and I'm not to criticize the Planning Department, but I'm sure the Planning Department
42 has their reasons for requiring that condition for their approval. However, I'd like to point out that
43 this roadway, these roadways are going to be private and that, we're required to install and
44 maintain these roadways in the future along with utilities and insurance and a whole bunch of
45 other things providing access to the north lot. The developer believes that this an unfair and
46 overly burdensome requirement and not necessary because the north lot has full and reasonable
47 access to the north-south collector on its east bound better known as the Liloa which Liloa will
48 join into I believe it's Halekuai and they would have their own access. Access through here is not
49 necessary. I mean, we've done a lot of research and we can't find a reason that it's absolutely
50 necessary. A lot of complications become that you'll have traffic flow through there for the

1 subdivision which could possibly contain at least 50 lots. They could develop 50 lots that would
2 increase the traffic flow through that section by more than a 100 percent.

3

4 Mr. Carnicelli: Excuse me Allen?

5

6 Mr. Yap: Yes.

7

8 Mr. Carnicelli: So really kind of where we are right now. You're talking about a condition of the
9 SMA Permit and a change that you'd like to make. Really kind of where we are right now is we're
10 at the presentation stage and then you know, so if you want to make this part of your presentation
11 I guess we can accommodate, but I'm just trying to let you know you've been going on this awhile
12 and this a condition that we address later. We do have a petition to intervene that we need to
13 address before we even get back to the SMA Permit.

14

15 Mr. Yap: So if I have an opportunity to address this later then I'll concede.

16

17 Mr. Carnicelli: Okay.

18

19 Mr. Yap: Thank you.

20

21 Mr. Carnicelli: Thank you. So Mr. Cabebe are you done? Are you done with your presentation?
22 Okay, great. Thank you very much. Appreciate it. So Commission it is now 12:15 and we have
23 a couple of options. We can just power through. The next thing that we get to the intervention,
24 right. And we have to either approve or dispose of the intervention. In talking to Corporation
25 Counsel was we'll probably do is allow them 15 minutes. We'll allow the applicant 15 minutes to
26 rebut and they can kinda go back and forth so we got about a half hour say of that before we even
27 have to make a decision. So we can either power through it right now. We can eat and do it at
28 the same time if you guys are okay with that or we can go ahead and take the break now and
29 come back and do this after lunch. I'm gonna let you guys make that decision and then or at least
30 what you would like to do and then we'll ask the intervenor if you know they would be cool with
31 that as well. So what would you guys like to do at this time?

32

33 Mr. Kalanikau: I just gotta move my car.

34

35 Mr. Carnicelli: You gotta move your car.

36

37 Mr. Kalanikau: It's too late already though, up to you guys.

38

39 Mr. Carnicelli: Is there a new Taguma? Go ahead Commissioner La Costa.

40

41 Ms. La Costa: I would like to defer to the intervenor for his schedule because I don't know what
42 that is. I'm fine with anything that is discussed?

43

44 Mr. Carnicelli: Any other thoughts?

45

46 Mr. Hudson: I'll go with just proceed get the next half hour done.

47

48 Mr. Carnicelli: Okay.

49

50 Mr. Hudson: I don't eat lunch anyway, so...

1
2 Mr. Carnicelli: So, Vernon would you like five minutes to go move your car and then come back
3 and then do this or do you want to go to lunch and come back?
4

5 Mr. Kalanikau: I just gotta move my car.
6

7 Mr. Carnicelli: Okay, I tell you what, let's do this let's go ahead and take a five-minute break and
8 go take care of your car and then we'll come back and we'll just at least get the intervention taken
9 care of before we take lunch. Recess.
10

11 A recess was called at 12:18 p.m., and the meeting was reconvened at 12:26 p.m.
12

13 Mr. Carnicelli: Good afternoon, the Maui Planning Commission meeting of April 9th is now back
14 in session. So where we are right now is the intervention of Item C.2. So basically what this part
15 is guys is there is an intervention into the SMA request. So what we're gonna do is allow the
16 intervenor to do a presentation up to 15 minutes on the intervention itself not on the merits of the
17 SMA but on the merits of the intervention. The applicant will have a chance to rebut and then you
18 get the last word. Okay, so if you wanna reserve some of your time for that that's fine. So
19 basically what I would ask for you do is come forward and then give us the reasons why you
20 should be granted the intervention. And I'm gonna go ahead and defer to Corporation Counsel
21 to kinda spell out what it is that what we need to use, what we need to make that decision so you
22 know what to do.
23
24

25 **a. NA KAHAWAI O KULA KAI, represented by its President VERNON**
26 **KANANI O LA'IE KALANIKAU, submitting a Petition to Intervene**
27 **dated March 25, 2019 on the above mentioned application from**
28 **ALLAN T. YAP for PAYNELLA HAWAII LLC.**
29

- 30 **1) Action of the Petition to Intervene**
31 **2) If the Commission acts to grant the Petition to Intervene, then**
32 **the Commission may select a Hearing Body/Hearings Officer.**
33

34 **b. If the Commission denies the Petition to Intervene, then they may take**
35 **action on the application request.**
36

37 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT**
38 **WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S**
39 **POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION**
40 **92-5(a)(4), HAWAII REVISED STATUTES.**
41
42

43 Mr. Galazin: Thank you, Chair. Some of you may have been through an intervention before, not
44 personally I hope but as Commissioners although it did have a God bless you. So there are two
45 types of intervention that are permissible under your rules. We have mandatory intervention
46 which is for any agency or department of the State or County if they file a petition. The other
47 mandatory intervention applies to different categories of people. There are people who have a
48 property interest in the land subject to the action. People who lawfully reside on the land or can
49 demonstrate that they will be so directly and immediately affected by the matter before the
50 Commission that their interest in the proceeding is clearly distinguishable from that of the general
51 public. And that's mandatory intervention. So what they would have to show if somebody wants

1 to argue that they deserve mandatory intervention if they're not...if they don't live on the land,
2 they don't own the land they would have to show that they more than anyone else in the public is
3 somehow affected...are somehow affected by what is going on.
4

5 Apart from mandatory intervention there's permissive intervention which is a discretionary function
6 of this body. You start from the premise that intervention shall be freely granted. However, that's
7 with the caveat that in the Commission's discretion it appears that...three things, the position or
8 interest of the applicant for intervention is substantially the same as a party already admitted to
9 the proceeding which there aren't any intervenors already so that one doesn't apply. Two, the
10 admission of additional parties will render the proceedings inefficient and unmanageable or the
11 intervention will not aid in development of a full record and will overly broaden the issues. So you
12 have to make a couple of findings. You could either find that the criteria is satisfied from
13 mandatory intervention based on the intervenors arguments or you could find if they don't, you
14 don't even have to reach mandatory intervention if you think that permissive intervention is
15 grantable and you don't believe that it appears that any of these two things that I mentioned would
16 be basically making the proceedings inefficient or it wouldn't help the record and would only make
17 it too broad. Now you're dealing with an SMA permit which is...encompasses a lot of things so
18 I'll leave that to the petitioner to speak to. But those are the things that you have to, you do have
19 to make findings on those. So after you hear from everybody you can ask clarifying questions
20 and then discuss amongst yourselves. If you have any questions along the way certainly...Thank
21 you, Chair.
22

23 Mr. Carnicelli: Thank you Mr. Galazin. So Vernon if you would like to come forward. Please
24 identify yourself and you will have 15 minutes, up to, you don't have to take it—
25

26 Mr. Vernon Kalanikau: So maybe let me know when I get five.
27

28 Mr. Carnicelli: Okay.
29

30 Mr. Kalanikau: So I can add some of the...is that, is that okay? This is the first time, yeah so we
31 can try maybe.
32

33 Mr. Carnicelli: Yes, the separate petitioners...(inaudible)...speak.
34

35 Mr. Kalanikau: Same hui but they get their own mana`o.
36

37 Mr. Carnicelli: Got it.
38

39 Mr. Kalanikau: So if reach five minutes cut me off.
40

41 Mr. Carnicelli: Sounds good.
42

43 Mr. Kalanikau: Yeah, so...
44

45 Mr. Carnicelli: Say your name for the record.
46

47 Mr. Kalanikau: Yeah, again my name is Vernon Kanani O La`ie Kalanikauikaalaneoepuolani.
48 So after listening to the presentation today I can appreciate Mike Reyes and the Starr Ohana for
49 providing good information on their end to what I about to share. The only part that really missing
50 from what they shared the Starr Family and even Mike Reyes is coming from the kanaka point of

1 view of the lineal descendants or the cultural descendants to the area. So I'm just gonna read
2 you my kuleana to this area.

3
4 My tutu from the Big Island Mary Kauahipaula from Hamakua Moku O Keawe gave me the middle
5 name Kanani O La`ie which is the Beauty of La`ie. La`ie there's one La`ie on Oahu and there's
6 one La`ie next to St. Theresa Church, the La`ie Muliwai that name La`ie the full name to that is
7 La`ieikawai and La`ielohelohe two beautiful princess, twin sisters that was born in Oahu.
8 One...through time as they made their choices of where they want to be La`ieikawai went to the
9 Big Island and La`ielohelohe came to Kula Kai to the area we're talking about. Eventually she
10 married Chief Piilani and they had sons Kiha, Lono and Piikea. My connection to lineage is
11 through Kiha, Kekaulike, Kalola and Keopuolani. Keopuolani you most of you guys know that
12 that's Kamehameha's first wife and the most sacred of all the wives that he had. But her full name
13 is Kalanikauika`alaneoKeopuolani and that's my last name. So in relationship to La`ielohelohe
14 and the marriage to Piilani we do have lineal ties and connection culturally also as far as the
15 1500's. So `ie in the word la`ie, is a vine that is...that symbolize high royalty and not everyone
16 can have that. And it used to grow in different parts of Keokea and Waiohū may be no mo today
17 but maybe get tomorrow. So my part in this, you know, it's our family kuleana, we decide when
18 we wanna participate in restoration or preservation or cultural access or cultural use.

19
20 I also want to talk about the mo`o, the kuleana, the mo`o I cannot give you guys the name right
21 now, but maybe in the future if it vibes with me and the ohana but the kuleana of the mo`o is to
22 keep the waterways under the ground, the ground that we no see, the lava tube, the streams that
23 flow underneath, the ponds, the streams, the kuleana of the mo`o is to keep it clean, pretty much
24 maintain all that waterways and that water is the water of Kane, and the water of Kane gotta reach
25 the ocean, the kai. It's all part of the circle of life, water from the top, come down to the bottom,
26 goes to the ocean, the clouds do its thing, and then if we cut that circle of life by not allowing and
27 interrupting and moelepo the water then there's no chance of restoration in the shorelines like the
28 reefs, the opae, o`opu and so on. So we have to...so my kuleana is make sure that I prevent and
29 preserve especially the water because right now it's so important in the water test and all that
30 right now, so...and here we're talking about the water so we gotta focus on that. And cultural
31 practices you know the last time I've gone there was November. Yeah, I saw the tobacco plant
32 but as I look at the map it's kinda like on the border line of the project itself and Westco property.
33 It was about five feet tall. And there's moths, and Cody can explain some of that. The pueo, I
34 see the pueo all the time when I drive that road in the evening. . But then again...oh go ahead.

35
36 Mr. Carnicelli: Did you want five minutes remaining or your first five minutes? I'm just letting you
37 know about that's about five, sorry to interrupt.

38
39 Mr. Kalanikau: Oh it's about five, yeah, thanks for letting me know. So I like them add their part
40 too. I no like they be left out.

41
42 Mr. Carnicelli: Just one quick thing, please also state on the record who you're representing.

43
44 Mr. Kalanikau: Oh sorry. So I represent, I the President for Na Kahawai O Kula Kai.

45
46 Mr. Carnicelli: Awesome. Thanks Vernon.

47
48 Mr. Kalanikau: And we have three, two, yeah three members.

49
50 Mr. Carnicelli: Okay, thanks. Whoever's next go ahead and come forward, the next intervenor.

51

1 Mr. Cody Nemet Tuivaiti: Aloha mai kakou. My name is Cody Nemet Tuivaiti and I live my whole
2 live on Welakahao. I was hanai'd by the Akina Ohana and Kahalekai Ohana when I was very
3 young and I've been there on Welakahao Street since I was five years old. I've seen a lot of
4 changes. I live for six years at the bottom of Welakahao Street on the northern side right there
5 where the project area is beginning to start. I remember times where we'd have big rains and the
6 whole property was under water for like a week and this is after the rain stopped. I remember
7 one time my friend paddled his surf board into our driveway you know, and you know just to make
8 fun but it represents that even though a scientist my portray one small area as a wetland this
9 whole area functions as a wetland because the water sits and then the water filters yeah. It
10 doesn't mean the water is always gonna be there, it doesn't mean the water is...it's always gonna
11 be moist for kiawe trees to keep growing. It's always in this continuous stage of moving, water
12 moves and the water will always find its known source of path every single time. And how many
13 times do we have scientists and people who come up here talking about the best ways to manage
14 water but we're still dealing with the same flooding in my hometown, in my area you know.
15

16 As for cultural practice or a cultural active person I do a lot of active cultural works in my moku.
17 We have the heiaus that you guys were showing. I go there every week. I was there this morning,
18 you know. I do my pules, acknowledge them. I do hina`i fishing down makai. I've seen the effects
19 of what a lot of these big rains can bring because of our developments, because of the constant
20 diversion of water. One time at La`ie Pond there were over 500 pounds of dead fish, 40 dead
21 birds. So you can kinda feel my ...(inaudible)... when I hear more development when I hear more
22 development coming to this area that I constantly walk, that I'm constantly in. The bottom area
23 that I know of 'cause we kilo this these areas, yeah, that means we...you learn to understand
24 these areas because we're there all the time. You know kilo is to observe something on a daily
25 basis yeah. To acknowledge the patterns not to come in there one, two times a week and portray
26 something. So when we kilo these areas, we understand these areas a lot more. The bottom
27 area is all wetland, yeah. As you move up there's a lot of sand there. You know, there's a lot
28 of...that place used to have huge sand dunes when I was one young kid. Right above that is all
29 bedrock. You know. There's a lot of areas that when you walk inside you can feel the energy,
30 you know spiritual for me, but you can tell because there was a loko i`a right down at the bottom
31 just makai. But that means it had to be in a village. There wasn't a fish pond there for nothing.
32 And when you see the view planes you can tell that these had to have been some kind of
33 habitation, platform areas. I do a lot of my time when I'm not working I help do archaeological
34 work on my free time, you know to help learn more about these things so I can better understand
35 my area.
36

37 I seen a lot of impacts on traffic already in this area so that is a huge concern of mine, a major
38 concern of mine. I do a lot of cleaning of the La`ie pond on my own free time. I go there and I
39 clean the pond. I try to bring back a lot of the native la`au on my own free time as well and these
40 are things that I do in this area. So it's very personal to me when I hear people making decisions
41 that I neva see in this area for the benefit for our future in this area.
42

43 Mr. Carnicelli: Cody that was five minutes. If you want to keep going or I didn't know—
44

45 Mr. Tuivaiti: I just want to say one more thing.
46

47 Mr. Carnicelli: Sure you've got another five minutes. I'm just saying is I know Vernon had
48 mentioned he wanted –
49

50 Mr. Tuivaiti: Yeah, my biggest thing is trying to heal the area, yeah. So because of everything
51 that's happened in the past we're trying to heal the area and so when you're trying to heal the

1 area and all these things keep happening it makes it harder and harder for us to heal the area.
2 So I really do not want this project to go through. I'm not against pono development. I'm against
3 poho development, you know so they can do this somewhere else. Leave that area alone. Let
4 the aina do what it needs to do. Mahalo.

5
6 Mr. Rob Aldrich: Aloha Commission and Staff and especially Carolyn running around like a
7 chicken this morning and still had time to help me out. Thank you. My name's Rob Aldrich and
8 I've—

9
10 Mr. Carnicelli: Rob I just want to remind you that you're here to testify or you know your
11 presentation on the intervention, yeah, and not the SMA. Yeah.

12
13 Mr. Aldrich: Yeah. Okay, wanted to echo some of things that Vernon and Cody said and it really
14 relates to the La`ie wetland and the muliwai, the estuary. It is just a gem in Kihei. And so much
15 so that I wouldn't want to see anything happen to it, anything that degrades it, to any water that
16 comes down mauka that's contaminated or spoiled in any way. When you're in there, you can
17 listen to the birds, you can hear the ocean. It's serenity, it's beauty, it's calming. And it's a very,
18 very special place. With that being said, the wetland part of it has nene quite frequently. When I
19 drive by I see them. It also has Hawaiian stilt which is listed state and federally as endangered.
20 The estuary of course is a place where the fresh water from Keokea Gulch or Keokea Watershed
21 meets the ocean and it's a place that's a nursery for juvenile fish. It's a place where I've seen
22 papio, kaku and mullet and I know it fairly well because I have spent enough time there to fall in
23 love of it but on the outlet of that I've fished in other places as well in South Kihei, but that's one
24 of my favorite places. So the muliwai is among one of the most productive ecosystems in the
25 world. It helps to filter the flows of water before it empties into the ocean and threats to the muliwai
26 as well as the ocean ecosystem are real and diverse which includes developments and pollutants.

27
28 Water quality in the Keokea Ahupua`a can be adversely affected by the proposed development
29 due to urban runoff which carries pesticides, nutrients from lawns and gardens, pet waste, viruses,
30 heavy metals from roofs and oil, grease and toxic chemicals from motor vehicles all of which will
31 end up in the ocean. I was a hazardous waste investigator in California among other things and
32 I hope you all had a chance to read my declaration. I'm going to skip over it's nine pages and just
33 get to the salient points. But petroleum hydrocarbons even in very minor quantities and we're
34 talking about parts per million are deadly to fish.

35
36 The 2016 Kihei drainage master plan describes how the drainage works, "there are existing
37 wetlands mauka of South Kihei Road that act as a natural detention basin. A series of existing
38 underground pipes along South Kihei Road convey storm water from mauka lands to the natural
39 reservoir. Storm water not captured by the South Kihei Road drainage system seeks its natural
40 path and ends up in the reservoir or sheetflows to the ocean." HRS 226-106 encourages the
41 preservation and restoration of wetlands that, "have the inherent capacity to avoid, minimize or
42 mitigate the impacts of climate change."

43
44 So what happens mauka of La`ie that really special place in Kihei, the gem, the place that I love
45 and the place that I like to fish I don't want to see it affected by contamination coming down from
46 a development like the Welakahao Villages and in my experience and in dealing with a lot of
47 wetlands where construction has occurred and developments there are certain kinds of things
48 you can't mitigate. There's going to be pollution. There's going to be urban runoff. There's going
49 to be things that effect the wildlife, and the people, and the culture. So in my opinion the project
50 should not be approved or it should be placed on hold until we take into account the savvy and
51 inherent in the Kihei drainage master plan, Hawaii Revised Statutes regarding wetlands, the

1 scientifically proven benefits of wetlands, and most importantly the integration of the wisdom and
2 purposes of the Na Kaha Wai O Kula Kai into the plans. Otherwise there might be significant
3 adverse impacts on the natural and cultural resources of Keokea Ahupua`a and my ability to
4 continue my recreational use makai of this property. Thank you.

5
6 Mr. Carnicelli: Thanks Robert. Appreciate it. And just so you gentlemen know is you know, what
7 we're dealing with right now is the intervention. If it's not granted and we actually then go to the
8 SMA you can testify on that too. So just to let you know. Does the applicant have a rebuttal at
9 this point? Please identify yourself and you have up to 15 minutes.

10
11 Ms. Arsima Muller: Thank you. Good afternoon Commissioners. My name is Arsima Muller. I'm
12 with Carlsmith Ball, counsel or Paynella Hawaii. We did not file a formal opposition as it is really
13 up to the petitioners to demonstrate that they've met the requirements to intervene whether as a
14 matter of right or by permission. The tests were set out by Corp. Counsel. It's in the rules. What
15 we decided to do today though for the benefit of everyone including the petitioners was we tried
16 to focus on the issues and impacts that they outlined in their petition. We really wanted to show
17 and as you saw it took quite some time for our presentation today because we really wanted to
18 talk about the issues and impacts that they've raised.

19
20 The application and the supporting studies, everyone that spoke earlier you know they've shown
21 how much work the developer has done to try to resolve some of these issues. If the Commission
22 is inclined to grant the petition we ask that the issues really be specified as I heard more today
23 than what was in...set out in the petition and some of the stuff that was raised today are also
24 included in the SMA criteria which you are obliged to review anyway. So with that, we will remain
25 available for questions as needed. Thank you.

26
27 Mr. Carnicelli: Vernon, you get the last word. If you have anything else that you would like to add
28 we will grant you that. If you're good, that's fine too. Just go ahead and identify yourself again
29 for the record.

30
31 Mr. Kalanikau: Yeah, oh okay, yeah Vernon Kalanikau, short version. Yeah, so I don't know if I
32 can comment on this, but you know when they did the first presentation last year at St. Theresa
33 you know the community wasn't buying it. It was more concerns. And both Jordan Hart and Allen
34 Yap did offer to meet with us, Aha Moku Council for Kula Kai at that time that never happens. So
35 it would be nice you know whatever happen today, you know there's always ways and solutions
36 to move forward. But you know I just...that's still wetland. We still got water underneath. That
37 water needs to reach the kai and it needs to be protected and that comes from the very top,
38 Keokea and Waiohuli. I say this because you know if we going to back here dealing with the ones
39 behind Longs Drugs and the one with Sue ...(inaudible)...property and she trying wanna sell, the
40 Wellness Center, ...(inaudible)...waste our time. You know they just cover all the wetlands and
41 then we deal with what nature provides back to us. You know I mean as my...you know it's our
42 family kuleana. The thing about the mo`o whether you guys believe or not, you know we live in
43 this realm, there's multiple realms. They doing what they supposed to do. We gotta do what we
44 supposed to do here physically. You know so why we gotta prove that's one wetland, you know
45 why we gotta prove get the native plants and the species there. It's there, you know, maybe they
46 only come out to certain ones and present themselves. I get koko, that's my kuleana. They gave
47 one good argument, you know, for the species and the plants but they missing, they no more
48 connection, they no more koko. I get roots to that area from 1500's. If this goes through it affects
49 not only our ohana, it affects the whole entire line of Piilani. So that we gotta think about, it's a
50 broader scale of mana and energetic stuff that we gotta deal with spiritually. So that's my spiel.
51 Thank you.

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Mr. Carnicelli: Mahalo. Corporation Counsel.

Mr. Galazin: Thank you Chair. Also and just to remind the members the petitioners did submit a petition to intervene along with the declarations and so I hope you've read and considered those arguments as the oral arguments given today are supplemental to those for the petitioners interests just to clarify.

Mr. Carnicelli: At this point, Commissioners do you have questions? I'll go ahead and start with Commissioner Hudson. Do you have any questions at this point in time?

Mr. Hudson: Are we gonna...I'm gonna discuss this in executive session?

Mr. Carnicelli: If you would like to.

Mr. Hudson: I make a motion to go into executive session.

Ms. La Costa: Second.

Mr. Carnicelli: Motion by Commissioner Hudson to go to executive session, seconded by Commissioner La Costa. Discussion on the motion? All in favor, please raise your hand. That's seven. Motion passes.

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

VOTED: To Go into Executive Session.

(Assenting – L. Hudson, P. D. La Costa, A. Hill, K. Pali, K. Robinson, T. Gomes, C. Tackett, S. Castro)

Mr. Carnicelli: We will be going into executive session. I ask that all of you please step outside. We're not in executive session.

(The Planning Commission recessed the regular meeting at approximately 12:56 p.m. to enter into Executive Session and adjourned at 1:11 p.m. The Planning Commission reconvened the regular meeting at approximately 1:13 p.m.)

Mr. Carnicelli: The Maui Planning Commission meeting of April 9th is now back in session. So Commissioners I think maybe what we should do at this point in time is the Chair will entertain a motion and then we can have discussion on that motion. So does anyone want to put a motion on the floor? Kahu Hill.

Kahu Hill: Mahalo Chair. I would like to make a motion to grant the petition for intervention.

Mr. Carnicelli: Okay, that's a motion.

Mr. Hudson: Second.

Mr. Carnicelli: Okay, moved by Kahu Hill, seconded by Commissioner Hudson. As the movant, you can speak first.

1 Kahu Hill: Mahalo. I do want to mention, Corp. Counsel that the position of interest of the
2 applicant for intervention is substantially different than the party already admitted in the
3 proceeding and that the lineage of Vernon speaks very loud. That it's, you know, the kupuna
4 speak with him and with those that are here and I believe that it is different. There's so many
5 other reasons but that's what I'm basing my...basing it on.
6

7 Mr. Carnicelli: Thank you. Commissioner Hudson.
8

9 Mr. Hudson: I concur with my fellow Commissioner Kahu Hill. The only thing I really looked at is
10 did the petitioner demonstrate a difference from the general public in his ties to the land. Now,
11 I'm not a judge, but I think 1500 years of lineage shows that yeah, you might be attached to that
12 piece of land. Thank you.
13

14 Mr. Carnicelli: Anybody else would like to speak to the motion? Commissioner Gomes.
15

16 Ms. Gomes: I want to speak to the motion. I respect what my fellow colleagues and
17 commissioners have stated. I concur. Outside of that I do want to state that the land itself is an
18 entity of itself regardless and that we have the responsibility as commissioners to protect that
19 land. So I understand what we had discussed but with respect I also appreciate the information
20 that was provided by the intervenors so I do concur. But I do want to also acknowledge the fact
21 in the land itself has its own mana, it has its own state of that we are responsible for it as well
22 regardless if there were people who were intervening or not.
23

24 Mr. Carnicelli: Thank you Commissioner Gomes. Commissioner Robinson.
25

26 Mr. Robinson: I am not a...I am not a fan of intervention. The reason why I'm not a fan is I am
27 sure this Commission can do the job. That's what we're here for. I think we should be able to
28 decide what it is. I think intervention either delays the inevitable and it makes people draw apart
29 or it stalls the time on a developer. Having said that, I'm actually in favor of this intervention
30 because there wasn't a meeting between the two parties and I think that's something that we
31 always as commissioners don't want to step in front of somebody and with this intervention I'm
32 hoping that the step that was skipped will happen. Thank you.
33

34 Mr. Carnicelli: Thank you. Sure Corporation Counsel.
35

36 Mr. Galazin: Thank you Chair. I wanted to ask Commissioner Kahu Hill if she wished to perhaps
37 clarify her motion to also include the fact that the admission of this additional party would not
38 render the proceedings inefficient and unmanageable and that intervention will aid in development
39 of a full record and will not overly broaden the issues.
40

41 Kahu Hill: Mahalo Corp. Counsel. I don't believe that it will and I believe by allowing this it's
42 gonna allow communication. You know, the land speaks, the aina speaks, the waters of Kane
43 speak and I believe that listening to the culture here and listening to those that have that kuleana
44 even tending the ponds and praying...(inaudible)...today and gathering the lapa' au. I think it's
45 just an understanding and to be able to have them communicate not to make this more difficult.
46

47 Mr. Carnicelli: Thank you for that clarification. Would anybody else like to speak to the motion?
48 Okay, seeing none, all those in favor of the...or I guess maybe we should clarify the motion.
49 Director.
50

51 Ms. McLean: Thank you Chair. The motion is to grant the petition to intervene.

1
2 Mr. Carnicelli: All those in favor please raise your hand. That is eight ayes. The motion passes.

3
4 **It was moved by Kahu Hill, seconded by Mr. Hudson, then**

5
6 **VOTED: To Grant the Petition to Intervene.**

7
8 **(Assenting – A. Hill, L. Hudson, K. Pali, K. Robinson, T. Gomes,**
9 **C. Tackett, S. Castro, P D. La Costa)**

10
11 Mr. Carnicelli: So the intervention has happened, has occurred. Which means then the C.2, the
12 public hearing item will be deferred. However, Commissioners would you like to go ahead and
13 choose a hearings officer right now. Director.

14
15 Mr. Hudson: Chair when exactly do we choose a hearings officer?

16
17 Ms. McLean: That could be chosen today, we'd like to check with the applicant as well as the
18 intervenor on the three choices that our Department provided to both parties to see if there's
19 agreement and then if the Commission agrees to those then we'd be able to move forward without
20 any further action by the Commission at this time. The applicant or the intervenor do you have a
21 preference or any conflicts with either of the names that were provided or any of the three names
22 that were provided?

23
24 Mr. Kalanikau: The hearing officer for Ohigashi.

25
26 Ms. McLean: Were there mediator names provided separately.

27
28 Ms. Thackerson: Sorry, Candace Thackerson, Staff Planner. On the sheet that we hand out
29 it's...they're the same three people, except the mediation officer cannot serve as the hearing
30 officer.

31
32 Mr. Kalanikau: Need mediator first?

33
34 Ms. Thackerson: Yeah, we usually choose—

35
36 Mr. Kalanikau: Kosaka.

37
38 Ms. Thackerson: Okay, Glenn, Glenn Kosaka.

39
40 Mr. Kalanikau: Yeah, thank you.

41
42 Ms. McLean: Is that acceptable to the applicant?

43
44 Ms. Muller: Our preference is Ohigashi as mediator and McConnell for hearings officer. And also
45 can we get clarification on the issues that are gonna be the subject of the contested case. I
46 believe I asked that question when I...Corp. Counsel I don't know if that's something...

47
48 Mr. Carnicelli: Corporation Counsel.

49

1 Mr. Galazin: Yeah, thank you. Once intervention is granted that is going to be up to the hearing
2 officer to decide the scope pursuant to the rules they're gonna go ahead and be in charge of the
3 order in which discoveries happens, what evidence is going to be put in there,
4 ...(inaudible)...approved, so that's...we're gonna leave that...the body is going to leave that to
5 the discretion of the hearings officer whomever that may be.

6
7 Mr. Carnicelli: Vernon, come. No you can speak to the mic please.

8
9 Mr. Kalanikau: So we only like deal with Kosaka.

10
11 Mr. Carnicelli: Okay, thank you. Commissioner Robinson.

12
13 Mr. Robinson: Could I get the three names again please?

14
15 Ms. Thackerson: Yes, the three names were John McConnell, Glenn Kosaka, Lee Ohigashi.

16
17 Mr. Robinson: I make a motion that Mr. Kosaka is the mediator and Mr. Ohigashi is the hearings
18 officer.

19
20 Ms. La Costa: Second.

21
22 Mr. Carnicelli: Moved by Commissioner Robinson, seconded by Commissioner La Costa.
23 Discussion to the motion?

24
25 Mr. Robinson: I just feel that those two gentlemen would be fine. Thank you.

26
27 Mr. Carnicelli: Thank you. Any further discussion. Seeing none, all in favor what was the...state
28 them again, sorry.

29
30 Ms. McLean: The motion is to appoint Glenn Kosaka as the mediator and Lee Ohigashi as the
31 hearing officer.

32
33 Mr. Carnicelli: All in favor raise your hand. That's eight ayes.

34
35 **It was moved by Mr. Robinson, seconded by Ms. La Costa, then**

36
37 **VOTED: To Appoint Glenn Kosaka as the Mediator and Lee Ohigashi as the**
38 **Hearing Officer.**

39
40 **(Assenting – K. Robinson, P D. La Costa, L. Hudson, A. Hill, K. Pali,**
41 **T. Gomes, C. Tackett, S. Castro)**

42
43 **Action on the Special Management Area Use Permit is Deferred Until the Mediation and**
44 **Intervention is Completed.**

45
46
47 Respectfully Submitted by,

48
49 CAROLYN TAKAYAMA-CORDEN
50 Secretary to Boards and Commissions II