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

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:02 a.m., Tuesday, February 12, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Keaka Robinson: . . . February 12th Maui Planning Commission. We have a short agenda today which is great because somebody forgot snacks. But let's not berate him. We'll make sure he makes it up on the next one. Yes, because of that I'm just going to jump right into it, and Livit if you're ready. Director?

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. **MR. STEVEN GATCHELL** requesting an amendment to the Short-Term Rental Home Permit for the Summit Residence at Kaanapali Vista to allow for the addition of one bedroom to an existing four-bedroom STRH permit on property situated at 41 Holomakani Place, TMK: (2) 4-4-009:030, Lahaina, Island of Maui. (STWM 2017/0009) (L. Callentine)

The amendment is being decided on by the Maui Planning Commission because the original permit was decided on by the Maui Planning Commission.

Ms. Michele McLean: Thank you Chair. This is one public hearing item on the agenda today, and that's a request from Mr. Steven Gatchell for an amendment to the short-term rental home permit for the Summit Residence at Kaanapali Vista to allow for the addition of one bedroom to an existing four bedroom STRH permit on property situated at 41 Holomakani Place, TMK: 4-4-9 parcel 30 in Lahaina. And Livit Callentine, as you mentioned, is the project planner.

Ms. Livit Callentine: Good morning.

Ms. P. Denise La Costa: Excuse Chair, if I might? I am friends with Mr. Gatchell, but I do believe I can be impartial on this. I just wanted to disclose that.

Mr. Robinson: Okay.

Ms. La Costa: Thank you.

Mr. Robinson: Does any Commissioners have any problems with that? Seeing none, please continue.

1 Ms. Callentine: Good morning. Is this on? Good morning. Yes? Hi, I'm Livit Callentine, staff
2 planner. Having review this application request, the Department finds that on the property
3 with the additional bedroom the property will still meet the parking code. They have plenty
4 of parking. There have been -- they have been very, very good with their compliance and
5 are in compliance with all conditions of approval. And we have no record of complaints on
6 the property since the permit was issued in 2017. And with those brief comments I'd like to
7 turn the podium over to the applicant's consultant, Debbie Mitchell, who has a slide
8 presentation for you, and she will go through the project in detail. Thank you.

9
10 Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell, and I am
11 a consultant for Mr. Steven Gatchell who is the owner of 41 Holomakani. This is a five
12 bedroom home located just on the six tee box of the Kaanapali Kai Golf Course. Steven is
13 applying for an additional bedroom. His original permit was granted in 2017, and at the time
14 his daughter was living in the downstairs, and she has now finished her college, her school,
15 and has moved out and so that is why Mr. Gatchell is adding this, is requesting to add this
16 bedroom to his permit.

17
18 Again, taking you through the location. He's at 41 Holomakani Place. This is reached by
19 the Kaanapali Parkway, turning right and going up the hill to Holomakani. It runs diagonal
20 to Halelo. Coming in further, you can see it as at the beginning of the resort area at
21 Kaanapali. And the pink dot represents the location of the home. It's in a small
22 neighborhood in that, just mauka of the resort area of Kaanapali. Moving down, you'll see
23 the yellow dot again shows his location as well as the proximity to the golf course. And
24 again the same.

25
26 This is a beautiful home. The lot size is about 14,225 square feet. And this application is to
27 add the fifth bedroom to his permit. As you can see there's a gentleman teeing off at the six
28 tee, and there's the location of Mr. Gatchell's home.

29
30 This is the entrance to the neighborhood. This is the cross street, is Halelo Street, and
31 Highway 30. If you continue straight ahead it takes you down to the resort area. This is the
32 streets located at Holomakani and Halelo. And showing the proximity of the golf course to
33 the property. This is the street itself. As we mentioned before, Mr. Gatchell has significant
34 parking on property so he has six spots which is two more than are required. So there is no
35 street parking required at all which is prohibited by the ordinance. An overhead view of the
36 property. And as you can see to the, in the red box, to the very top right, you'll see the
37 ability of six cars to fit into the, into the parking area. The home is a lovely home. Some
38 views of the exterior, and the views from all four sides of the property.

39
40 Here's the first or the second floor plan, which is the main home which was permitted at the
41 first granting. This is where all of the activity has been settled since he was granted his
42 permit. He is adding the second floor. Or this is actually the first floor -- that was the
43 second floor -- to add an additional bedroom as you can see.

1 Some views of the house, the entry way, kitchen, dining and living rooms, media room, and
2 downstairs the billiard room, the five bedrooms. The bedroom on the center, bottom, is the
3 one that's being added. The bathrooms and the pool.

4
5 As we mentioned this is the addition of the bedroom to a currently existing permit. All of the
6 neighbors within 500 feet were notified twice. Once of the application, and once again of
7 the public hearing. The Department placed an ad in The Maui News about the hearing. He
8 did receive two letters of support for this addition, and no other letters of protest were
9 received. Yes, received, right. There are four other permitted short-term rental homes
10 within 500 feet, and there is one other permitted B&B home.

11
12 We thank you very much for listening today, and hope you will approve our request. Thank
13 you so much.

14
15 Mr. Robinson: Thank you.

16
17 Ms. Mitchell: Mr. Gatchell is also here if you have any questions for him.

18
19 Mr. Robinson: Thank you. At this time we'll open the floor for public testimony. Anybody
20 would like to testify on this subject? Seeing none, public testimony is closed. Can we get
21 the recommendation from the Department, the Planning Department?

22
23 Ms. Callentine: Mr. Chair and Commissioners, the subject application to amend the Summit
24 Residence at Kaanapali Vista short-term rental home permit complies with the applicable
25 standards for the short-term rental home in accordance with Chapter 19.65.030,
26 Restrictions and Standard, Maui County Code, as referenced within the applicable
27 regulation section of the Maui County Planning Department's report and recommendation to
28 the Commission for the February 12th meeting regarding this docket number STWM
29 20170001. The Maui County Planning Department recommends approval of this
30 amendment for the prior short-term rental home permit to allow the addition of one bedroom
31 to an existing four bedroom short-term rental home subject to the conditions that were in
32 place, set in place by the Commission in 2017. So those have not been amended. So that
33 concludes our recommendation. Thank you very much.

34
35 Mr. Robinson: Thank you. Commissioners, any questions for Livit or for the applicant?
36 Commissioner Kahu Hill.

37
38 Kahu Alalani Hill: Mahalo. I'm noticing on here on the parking plan and what you showed
39 that about parking. I do also see I think a couple of golf carts. I don't know if that's what
40 that is. But was the six, is that's under the permit that's been in place? Now that there was
41 six parking places for the rooms that were there?

42
43 Ms. Callentine: There were --. Actually when I went to the site, there was . . . (inaudible) . . .
44 sitting in the garage? Yeah, wasn't there at one time? That's a different one? Sorry, sorry.

1 Okay, so I'm going to ask the applicant to address what was going on in the garage prior to
2 the establishment of two additional stalls.

3
4 Mr. Steven Gatchell: Aloha Commissioners. Thank you for seeing this.

5
6 Mr. Robinson: Can you please introduce yourself?

7
8 Mr. Gatchell: Yes. Hi, my name is Steven Gatchell. I'm the applicant. Thank you. Thank
9 you for seeing me today. There might have been two golf carts at the very top of the
10 driveway. That's when I was living there, and so that wasn't -- it had nothing to do with
11 rentals. Those were all of the cars that we used when we lived there. I had quite a big
12 family. So there's plenty of room for a car there. We can actually fit eight cars in my
13 driveway. We don't allow anybody to park in the garage because we have our family's
14 belongings in the garage so we just use the driveway. I've been renting to eight people, or
15 a total of eight people. And the most vehicles, the most vehicles that I've ever had in the
16 year that I have been operating has been three.

17
18 Kahu Hill: One other question. I noticed that in the diagrams, in the photos that the
19 additional parking it said on the -- that I read on the internet was, was just outside of your
20 driveway and it looks like that's a cul-de-sac. But then I was just informed that it's -- parking
21 is not allowed on the street. So is your additional parking right in front of you, in the cul-de-
22 sac, on the street?

23
24 Mr. Gatchell: All of my parking is on the property. I have, I have enough parking for eight
25 cars, six comfortably. And that wouldn't be possible because my neighbors have eight cars.
26 Like they actually, they actually --. They actually take up the entire cul-de-sac. They're long
27 term rental, long term tenants.

28
29 Kahu Hill: Okay. There's only one entrance into this? So if like a car comes in, another car
30 comes behind it, another car parks behind that. They have to move for anyone else?

31
32 Mr. Gatchell: Yes, that's very typical vacation rentals. Not too many people have a situation
33 where there's a roundabout where all six cars can get in and out where ingress and egress
34 is unique. So, yeah, in answer to your question, people do have to move for others to get
35 out. But my next door neighbors directly next to me, the Arnds, Greg and Janet Arnds, they
36 had written a letter. When I came to you in 2017, their primary concern was parking. And I
37 had a talk with them. And they said, you know Steve, we'll support your application as long
38 as you really abide by the parking. And in that letter in 2017 while they did support me, they
39 said specifically to the Commission, they said as long as the applicant abides by the
40 parking. And they just wrote another recommendation for me indicating to you that we've
41 been very considerate with our parking for last past year.

42
43 Kahu Hill: Mahalo. And one last Chair if I can for him or Livit. And I just want to know that I
44 saw a couple of opposition letters from before. Are there any recent letters about this issue?

1
2 Mr. Gatchell: There were no oppositions letter for me, none. In fact, there's eight homes on
3 my street, and out of the eight home I had, in 2017, I had seven letters of support on my
4 road. The only person who didn't support me was a fellow who lives on the mainland and is
5 not very reachable.

6
7 Kahu Hill: Thank you.

8
9 Mr. Gatchell: Thank you Commissioner.

10
11 Mr. Robinson: Commissioner Hill. I mean, Commissioner Pali.

12
13 Ms. Kellie Pali: Hi. This is for you, the applicant.

14
15 Mr. Gatchell: Hi. Sure.

16
17 Ms. Pali: And so I'm going to assume -- and so just help me out a little bit -- when you got it
18 approved, you had a family member living on the premises.

19
20 Mr. Gatchell: Yes, correct.

21
22 Ms. Pali: And now you're coming again because that person no longer lives there and so
23 you would like to turn that into a vacation rental also. That now makes the property 100
24 percent non-occupant. And so what are you adjusting in your procedures to make sure that
25 you are still maintaining the atmosphere in the neighborhood, the noise level, respect for the
26 other residences? Because it really is different. I really believe it is different when someone
27 lives on the property and can manage people above, and then that person is no longer
28 being there.

29
30 Mr. Gatchell: Okay, so we were not a bed and breakfast, and so my daughter, my daughter
31 was not a manager of the people above. So my daughter never had interaction with the
32 people above. My daughter is only 21 years old. And actually she was directed never to
33 have conversations with my tenants or with my guests. My guests have been very
34 respectful because we run a very tight operation, not because I had 20 year daughter living
35 downstairs. The, the --

36
37 Ms. Pali: If you don't mind. If you don't mind just to stick to the question. It's okay that she
38 may have not managed it, but for us as a Commission if there were some problems with
39 noise, I'm sure you would have gotten a personal phone call from you daughter because
40 she was there. So there is a personal responsibility whether she had the managing
41 responsibility. So what have you done to adjust your procedures now that you're not going
42 to have someone on site? Are you planning on just keeping the existing procedures?

43
44 Mr. Gatchell: Yes. My neighbors, my neighbors expect me to be a good neighbor, and I've

1 been a good neighbor. And so my neighbors, they know me personally. I've been up there
2 for eight years. And if I have a problem they can call me directly.

3
4 Ms. Pali: Okay. So the answer to the question, you're just going to keep the current
5 managing system in place. Are you using a local management company or --?

6
7 Mr. Gatchell: That's not my phone. I thought that was my phone. I'm sorry.

8
9 Ms. Pali: Are you using a local management company or --?

10
11 Mr. Gatchell: I've been a real estate. I've been a licensed real estate broker and sales
12 person for 33 years here, and I have a management company.

13
14 Ms. Pali: You have a management company. Okay. All right.

15
16 Mr. Gatchell: And I manage it myself but I have a management company.

17
18 Ms. Pali: Okay, that was my question. Thank you.

19
20 Mr. Gatchell: Thank you.

21
22 Mr. Robinson: Commissioners, any other questions? Seeing none, do we have a -- does
23 anybody like to put a motion on the floor?

24
25 Ms. Callentine: Chair, if possible, could I have a moment to just clarify the parking situation?
26 Would that be all right?

27
28 Mr. Robinson: I don't --

29
30 Ms. Callentine: Okay. You don't need any more information?

31
32 Mr. Robinson: Yeah, I think the pictures and what he's --. I think we're okay.

33
34 Ms. Callentine: Okay.

35
36 Mr. Robinson: Kahu Hill, do you need clarification?

37
38 Kahu Hill: I feel we're okay unless she feels things are pertinent we haven't been told.

39
40 Ms. Callentine: Well the only thing is just the only -- the required parking is three stalls just
41 so you know. So they're in excess of that.

42
43 Kahu Hill: Mahalo.

44
45 Mr. Robinson: Commissioner Carnicelli.

1
2 Mr. Carnicelli: I move to approve as recommended by staff.

3
4 Mr. Robinson: We have a motion to approve. Do we have a second? Second by Kahu Hill.
5 Would you like to speak to the motion?

6
7 Mr. Carnicelli: Thank you Chair. Basically, you know, I mean, I think that Mr. Gatchell is
8 doing this the right way. He knew his neighbors before. He applied, reached out to his
9 entire neighborhood before he applied. He's been an outstanding neighbor. My first thing
10 is parking as well, you know, like the two of you. He's done that. No oppositions, no
11 complaints, no anything like that, sure. You know, and I mean this is good until 2020, so,
12 you know, he's got a year to see if he's still a good guy and so not a problem. Thanks
13 Chair.

14
15 Mr. Robinson: Commissioners, any discussion on the topic? I actually, you know, I'm
16 actually thankful that he actually came and put the extra room on it. I don't think most
17 people would have done that. They might have went from three to four, four to five, without
18 even saying anything, so, you know, kudos for that and think hopefully more people will
19 follow lead and realize that is the way it should be done, you know. Director.

20
21 Ms. McLean: The motion on the floor is to approve the amendment to expand this STRH
22 permit from four rooms to five rooms.

23
24 Mr. Robinson: All those in favor, please raise your right hand. That's six; motion passes.
25 Congratulations.

26
27 **It was moved by Mr. Carnicelli, seconded by Kahu Hill, then**

28
29 **VOTED: To Approve the Amendment to Increase the Short-Term Rental**
30 **Home Permit from Four Rooms to Five Rooms as Recommended**
31 **by the Department.**

32
33 **(Assenting – L. Carnicelli, A. Hill, K. Pali, C. Tackett, S. Castro,**
34 **P. D. La Costa)**
35 **(Excused – L. Hudson, T. Gomes)**

36
37 Mr. Gatchell: Thank you Chair.

38
39 Mr. Robinson: Thank you.

40
41
42 **C. Workshop on the Planning Department's proposed amendments to the Maui**
43 **Planning Commission's Special Management Area Rules and Shoreline Area**
44 **Rules conducted by Planning Department Staff. (M. McLean)**
45

1 **This workshop is for information purposes; no action is anticipated.**

2
3 Mr. Robinson: Commissioner, next on the agenda, and just to let you know because our,
4 because our docket was a little small today, I asked to try to get some other things out of
5 the way which includes some workshops as well as some status reports and we'll try to get
6 that out today instead of at a later date. Director.

7
8 Ms. McLean: Thank you Chair. The next item is agendized as a workshop on the
9 Department's proposed amendments to this Commission's SMA Rules and Shoreline Area
10 Rules. And what I just passed out and also what's available on the desk for the folks who
11 are here are, are two sheets of paper. One is the excerpt from the state law from Hawaii
12 Revised Statutes Section 205A-22 that relates to definitions. And then the other is the
13 proposed, just one proposed subsection of the amendments that we will, at some point, will
14 bring forward to you for consideration and adoption. And that section of the rule
15 amendments deals with these definitions.

16
17 So first looking at HRS 205A-22, Definitions, State law defines what is and what is not a
18 development. So in that first section that say development means any of these uses, and
19 there are five use listed there and those are pretty broad. That's basically anything that
20 you're doing, moving materials, disturbing land, changing the density or intensity of use of
21 land, a construction of any structure. So that is what a development is, and that's an
22 appropriate definition.

23
24 But then it goes on to say development does not include the following, and it lists 17 uses
25 that says these are not developments. However, at the end of that list of 17 uses, it says
26 provided that whenever the authority -- that's this Commission -- finds that any excluded
27 use, activity or operation, meaning that list above, if it may have a cumulative impact or a
28 significant environmental or ecological effect on the SMA that it actually is a development.
29 So it says this is a development, these things aren't a development unless they could have
30 impacts. And so the idea is that these 17 listed things really in general don't have impacts,
31 but they could have impacts. The reason the definition of development is important is
32 because developments require an SMA permit. So this section of State law is what does
33 and does not require an SMA Permit.

34
35 So you folks review SMA majors. The Department has the authority to administratively
36 issue SMA minors. The Department also issues exemptions because if there's one of those
37 uses on that list of 17 we have to fulfill that final paragraph and determine if it's going to
38 have an impact. If it is going to have an impact, then it's either going to be a minor or a
39 major permit. If it doesn't have an impact, then we issue an exemption. So even though
40 State law says these things are exempted, we still have to assess them before we can
41 exempt them. And the example that we always use is if someone calls our office and say, I
42 want to put a mailbox post at the end of my driveway and I live in the SMA, do I need a
43 permit for it? And we have say, yes. We have to assess it first and issue you an exemption.
44 And we do literally hundreds of these a year. So these are all these small things that we
45 have to assess because of this language.

1
2 So what we are proposing to do in your rules is to describe in greater detail what those uses
3 are and by putting them in the rules, you would -- this Commission will decide these are
4 categorical exemptions. Meaning that this Commission is going to review these
5 descriptions and say if any of these things are going to happen, you don't even have to
6 come in and have us review it to issue an exemption. So these are much smaller in scale
7 and scope than the 17 listed in the Code because obviously the 17 listed in the Code could
8 have impacts so we scaled it down. So that's what the idea is. And these are actually the
9 bulk of the proposed changes that we want to put forward at some point.

10
11 So if we could look at the Section 12-202-11.5 of the proposed rules, those two introductory
12 paragraphs just say, the Commission hereby determines that these listed things are
13 categorical exemptions and therefore you don't even need to come in for Department
14 review. So we can just walk through those one by one, and if you have questions or
15 comments, those would be helpful for us as we continue to refine the Rules.

16
17 So the first one is transfer of land title, creation or termination of easements, covenants, or
18 other rights. So that's -- there's no physical activity going on there, so that one is simple
19 enough.

20
21 Next, normal and customary ag activities on land currently or historically used for such
22 activities.

23
24 Mr. Robinson: Director?

25
26 Ms. McLean: Yeah?

27
28 Mr. Robinson: Is Commissioners, if we could read these all off or if you guys want to go by
29 one and make a comment. I guess what it is is we want to get the conversation going now
30 so that when we do come to a vote there will be public testimony, we can hear it, but we've
31 already kind of hopefully moved a little bit closer from one way or another to these things.
32 And we do have a lot of different opinions on probably every single one of these. And I'd
33 like to just try to chip away instead of go through it and you know, it's, it's --. I'd just like to
34 just go with just (a). Does anybody have a feeling on (a) on any means? Kahu Hill.

35
36 Kahu Hill: It may not apply. I'm just wondering when it's about something about transfer of
37 land title. We've had some on the Commission where residential has gone to another level
38 for building, or for ag, or for business, for different things. So I'm just wondering about
39 transfer of title, if it goes from residence into industrial, it goes into another level does this
40 apply?

41
42 Mr. Robinson: Yeah, I think, Director, I think what Commissioner is getting at is selling it
43 family is one thing. If developer who has a --. You know, in SMA, there's all our, all of our
44 hotels are all on SMA areas. So if one happens to transfer to another, does it have an
45 effect with transferring an SMA, you know? Me personally, that's a risk of development.

1 You know, it's -- you usually try to see if you're in an SMA area, and land can be transferred
2 back and forth, and hotels are sold every day. And if an SMA permit had to be pulled for
3 every time a hotel was to sell, it might not be sold, you know. If we restrict people from
4 selling their property because the other person buying needs to get an SMA, that's the kind
5 of stuff that do we -- is that, is that the purpose of the SMA? Because that means to protect
6 the land. So does transfer of ownership hurt or not hurt? Commissioner Pali.

7
8 Ms. Pali: Can I jump in? I think what you're talking about -- and correct me if I'm wrong -- is
9 zoning changes. This is not talking about zoning changes, just ownership of who owns the
10 land as it is now. So this, there's title of who owns it, who's the owner listed, and then if it's
11 a zoning change, this is not applied. This is not talking zoning.

12
13 Mr. Robinson: Yeah. Okay. Commissioner La Costa.

14
15 Ms. La Costa: Thank you. As long as the transfer of land does not include any kind of
16 updates, like, leasee property is sold all time and they say the, oh, the kitchen needs to be
17 redone, etcetera, etcetera, even though it's in an SMA. So people don't always come and
18 get permits like they should. So how does that transfer of land title in that, how does that
19 affect it if it's codified?

20
21 Mr. Robinson: Director?

22
23 Ms. McLean: Right. It is, it is purely the change in ownership. If there's any related work
24 that has to be done that may fall under another one of these or that might have to get a
25 permit.

26
27 Ms. La Costa: Okay.

28
29 Mr. Robinson: I really think that the real estate agents being as, you know, as educated as
30 they are in the County of Maui would make sure that was in the DROA. Purchase contract.
31 It would be in the purchase contract. It would be in the purchase contract.

32
33 Ms. La Costa: They should, let's put it that way. They should.

34
35 Mr. Robinson: They should. They should in a purchase contract.

36
37 Ms. Pali: So just so I understand it clearly, if it's okay, Chair. So let's say I want to deed my
38 home to then my adult son, which we're doing all day long, and you've hired an attorney,
39 they draft the deed, and they just go to the courthouse. You're saying that this is kind of an
40 automatic exemption. It's not going to trigger a use for permit.

41
42 Ms. McLean: Correct.

43
44 Ms. Pali: Okay.

45

1 Ms. McLean: Correct.

2

3 Mr. Robinson: But all SMA, it's a Commission could pull up the exemption and ask for a
4 hearing on it to hold it up as well, you know. And that's the --. And so, I guess, the question
5 is do we want to have land ownership as part of our preview of this Commission compared
6 to what they do once they own it, you know. Who owns it is I don't think has anything to
7 protecting it.

8

9 Ms. Pali: That's a big monster. We would have thousands of applicants. That's a big
10 monster.

11

12 Mr. Robinson: Yeah. Commissioner Castro.

13

14 Mr. Stephen Castro: Chair, so does that mean Fire would have to do their due diligence
15 whether or not an SMA would be required?

16

17 Mr. Robinson: It's required right now, right, and that's why you have professional agents
18 helping you. You know, people who go on their own, you know that's the risk that the take.
19 But what we're saying is should ownership be considered as part of SMA, you know,
20 transfers and all of that to get or should we automatically exempt? If it's automatic exempt -
21 -. See, for now, it's an exempted and goes to the Director, and she has to put an
22 exemption, but it has to be filed. But if we take this out in the criteria, we wouldn't even have
23 that process anymore. Correct?

24

25 Ms. McLean: Correct. Looking back at the HRS definitions at the bottom of the front page,
26 number nine, transfer of title to land, so that's, in State law saying that's exempted. The
27 uses listed under State law, many of those don't come in to us. We really don't get many
28 SMA applications for transfer of title to land. If someone calls and said, do I have to
29 submit? We would say, oh man, technically you do. And we would issue the exemption
30 because we could not make a determination that there would be a significant effect from
31 that simple transfer of ownership. So a number of these uses don't come in, we don't know
32 about. Technically we could cite them for not having SMA review first. But, oh my gosh, like
33 you said, we'd have --

34

35 Ms. Pali: Hundreds.

36

37 Ms. McLean: Who knows how many we'd have. But the ones that do ask, like the mailbox
38 post, those are the ones we're like, oh, why did you even ask, you know? We wouldn't --
39 chances are we wouldn't have come after you for that. So those are the ones that we're
40 trying to define here that really there's, we really don't think we ever need to see these.
41 State law says they're exempted, and we're not going quite as broad as State law because
42 some of these could have impacts. Those we still do need to assess, but we're trying to
43 narrow it down and we do think transfer of land isn't something that's going to have a
44 potential significant effect.

45

1 Mr. Robinson: Moving on to (b), normal and customary agriculture activities on land
2 currently or historically used for such as activities.

3
4 Mr. Carnicelli: Chair?

5
6 Mr. Robinson: Commissioner Carnicelli.

7
8 Mr. Carnicelli: As per defined by. You know, I mean, because, is we have a definition. I
9 can't remember if it's in 205, you know, HRS or if it's in our ordinances. But there is a
10 definition of what agriculture uses are, permitted agricultural uses. Do we want to just --
11 rather than just saying, you know, what's here and it's this broad thing that's saying do we
12 want to define it as . . . (inaudible) . . .

13
14 Mr. Robinson: Corporation Counsel?

15
16 Mr. David Galazin: Thank you Chair. And Commissioner Carnicelli, I think that's one of the
17 reasons why Director also passed out that section of the State law, the 205A-22 definitions.
18 If you look at number eight there, this is what development does not include. In here, it's
19 use of any land for the purposes of cultivating, planting, growing, harvesting plants, crops,
20 trees, other agricultural, horticultural, or forestry products or animal husbandry, etcetera,
21 etcetera. So I think what the Director is saying is for you folks, since it's already considered
22 not a development unless it has an impact, if it's property that's already is used for
23 agriculture, knowing that everything that you do is under this statute first. So you can't
24 make any rules that are broader than the statute is. So if you're talking about agricultural
25 activity, it's still limited to just what's in number eight there. So as you go through the list
26 that's proposed for the rules and look at what does not constitute as a development in HRS,
27 that might give you some indication of what, I think, the Planning Department would like to
28 present to you for consideration. If that helps.

29
30 Mr. Carnicelli: It seems redundant.

31
32 Ms. Pali: I feel like, I feel like Michele said, Director said that we're just adopted the State on
33 a County level because County didn't really have it specific. If we ask County, County said
34 SMA for everybody first and then let Planning decide if it's exempted. And I think what
35 you're trying to do is to reduce the work first, reduce the number of permits because you're
36 automatically going to exempted a bunch of stuff. So instead of going through the process,
37 let's save the constituent some money, let's save money, time, and staffing, and let's just go
38 ahead adopt some of these State ones into a County policy. Is that my good summary?

39
40 Ms. McLean: Yes. That is a good summary. Because State law says these things are
41 exempted, but says you have to assess it. And so these rules in effect assess the items that
42 are listed here saying that, yeah, these, these you don't have to come in. It's also where we
43 have ag lands throughout the County that have been fallowed for a while. We would like to
44 see those be put back into ag production and people are asking, oh, do I need an SMA
45 permit? And if they have to do an SMA permit, they need to really detail out what they're

1 going to do, you know, what those --? And it could be a disincentive to get those lands back
2 into ag production if they need to go through SMA review in order to do it.

3
4 Ms. Pali: Okay, just one more thing Chair.

5
6 Mr. Robinson: Commissioner Pali.

7
8 Ms. Pali: One more thing. So we are all talking about how we're over micromanaging and
9 we're putting all of these policies and people can't do anything because they have policy
10 after policy after policy. I'm really excited that this sounds like this is one point when we can
11 honestly say we want to let go some of those policy, and so I'm in. That's it.

12
13 Mr. Robinson: Commissioner Kahu Hill.

14
15 Kahu Hill: Corp Counsel could you just share one thing. You had mentioned, when we were
16 looking at (b) and referencing (8) and everything that's there. On (b) also, it talks about
17 historically . . . (inaudible) . . . for Hawaiian cultural historic areas. Where is that part since
18 historic is in there?

19
20 Mr. Galazin: Chair?

21
22 Mr. Robinson: Yes.

23
24 Mr. Galazin: Thank you Commissioner. So are speaking to within the proposed rules where
25 cultural, historical and cultural uses is, or where within the statutes it is?

26
27 Kahu Hill: Yes, within this the category of exemption, the normally and customary
28 agricultural activities on land currently or historically used for activity. And so I'm just
29 wondering if there's any cultural activities regarded to this culture.

30
31 Mr. Galazin: Well, I'll let the Director speak to that, you know, in a little more detail. The one
32 comment that I would have is as you go through all of these because you're looking at
33 blanket exemptions for these activities, just picture, okay what's the most pristine piece of
34 land I can conceive of in my mind in the SMA, and here's the activity that happens on that
35 piece of land. If that happens, is there any possibility that there can be an impact? So if
36 you've got a pristine piece of land, you own it, and then you transfer it to the person next to
37 you, ownership changes, that doesn't change anything. So that piece of land stays the
38 same. If been farmed in the past, it's been farmed currently, somebody wants to keep
39 farming or somebody wants to reintroduce it into ag use, then that would be nothing
40 different than what it is. But you can look out and say, well, maybe you don't want to
41 include historical one, but the Director has explained why she thinks you should. So what
42 you're here to do is to figure out, okay, what are the things that no matter where they
43 happen are not going to have an impact. And if you think that something is, then you give
44 them that feedback because they're going to ultimately come back to you for public hearing.

1 And then people are going to give their comments, and you've got to respond to all of those
2 comments you received whether you adopt it as proposed or whether you amend it.

3
4 Kahu Hill: Mahalo.

5
6 Mr. Robinson: Anybody have a comment on (b)? I have a comment on (b), and to me it's,
7 you know, it's kind of why we're here. It's, you know, it's soil movement. You know, so
8 agriculture, soil movement, the landscape or just the erosion that's happened these years,
9 traditional historical uses might not be applicable now and to exempt them completely
10 without an assessment that's where my concern is. So how, how hard is it for somebody in
11 agriculture to get an SMA assessment or exemption from your office? What's involved in
12 that?

13
14 Ms. McLean: They would have to submit an SMA assessment application that goes through
15 the criteria of your rules and of State law that just assess various potential impacts and what
16 mitigation --

17
18 Mr. Robinson: Is it a two-pager, a five-pager, or is it a --? Are they able to, to hand draw a
19 map or do they have to get an engineer? I mean, how intense is the application?

20
21 Ms. McLean: It really does vary based on the project. And depending if we're talking about
22 this particular category, if, if it's a relatively small parcel of land, then a hand drawn, you
23 know, something hand drawn and just a simple description would suffice. But if it's on a
24 much bigger scale then we would probably want more detail. So, yeah, I mean that's why
25 we're bringing it forward because we did have those discussions too about, well, we could
26 require best management practices but then, then we end up having to assess it to make
27 sure that it fits the standard so it's a --. Yeah, that's a difficult one. The question has come
28 up before with, with lands on the west side, with lands in central Maui, what's it going to
29 take get these back in to production. And oh, do they need an SMA permit? We're like,
30 wow, no one has ever come in for an SMA permit just to start ag back up or to change ag
31 activities. So that's why we put it forward as a possible exemption because we've just
32 never seen them before.

33
34 Mr. Robinson: And, you know, Commission, my concern is when a development outside
35 of the SMA is affecting the SMA areas, and the plane and rain flows and all those things
36 that --. You know because we're supposed to be the ones protecting the shoreline, it's
37 that's where it's letting agriculture which is moving earth, you know, to be automatic
38 exempted without an assessment. I think, I think there is maybe we could find some, some
39 verbiage. Director, to where it's, I don't know, at a certain size, you know. Like I said, I
40 think, I'm like, like all of us that we see on the news we see the brown water, and some of it
41 natural and some of it, it can be prevented. And every time we see that brown water we
42 know that, you know, something is being covered or something, you know, something's not
43 right. Commissioner Carnicelli.

44
45 Mr. Carnicelli: Thank you Chair. So bring up something that, I think, is going to make this

1 not as straightforward and not as simple as, as we think. And this it's going to be a public
2 conversation because you just brought up things outside the SMA affecting the SMA.
3 Because if we start considering that, we might as well put the entire island in the SMA, you
4 know. So it's like, there's a line for a reason, and we can move the line. That's our purview.
5 That's what we can do. We can move the line. But if we say, hey, listen something's
6 outside of the line that's going to affect the line, inside the line, this is like shoreline
7 management. So I'm not saying you're wrong because you're absolutely right. If we get
8 brown water coming from Kula in Kihei, you know, that's something that, how do we
9 address that, how does the SMA address that, is that something that the SMA should
10 address or not? But I just think that as we go down this rabbit hole, we need to understand
11 that, yes, I guess, in the Hawaiian way, you know, the ahupua'a right, mauka to makai. And
12 so it's not as simple as just, okay, these exemptions in this particular area. So I just want to
13 bring that in because, you know, like you said you brought that part of it...where do we draw
14 the line? And I don't have the answer. I'm just saying, I think, that should be a part of the
15 conversation as we, as we continue this further. Thank you Chair.

16
17 Mr. Robinson: And I'll get to you Commissioner Pali. And that's what I'm saying if we take
18 away the assessment which is what the Planning Department can say isn't an affect from,
19 from mauka, then we're good. But to say that's not a categorical I'm concerned because
20 historically people used to raise cattle. A lot of people have overgrown and have done
21 different things, and if we automatically can go back to cattle, the land then goes fallow, or
22 goats, and then we might have that runoff again, you know, because it was historically
23 used, but they might have changed use temporarily and so therefore we don't see the
24 effects of it until after it transfers back. And so the assessment, we just normally say, you
25 know, just ayes, right? Commissioner Pali.

26
27 Ms. Pali: Director, GOC, typically right now as it is that if somebody, like, for instance was
28 farming or doing cattle, and they actually stopped, does that trigger them to have to come
29 into SMA? I was understanding that it was opposite. If they had barren land and if they
30 wanted to continue activities from like decades ago, they want to come back. I just want to
31 clarify that before I make my next comment.

32
33 Ms. McLean: Right. Stopping wouldn't trigger. However, just in general, talking about
34 ground water runoff and other potential impacts, there are other laws that also govern that.
35 That could be a clean water violation, State Department of Health. So there are other things
36 that do control that. That's not to say we should just wash our hands of it, but this wouldn't
37 be the only way to protect from those things happening.

38
39 Ms. Pali: Because I like, I like your suggestion Chair about size. Or I'm almost saying that it
40 sounds like we may not want it to be in there which could be something that --

41
42 Ms. McLean: It's possible.

43
44 Ms. Pali: -- if that's where you guys are at. But I think the happy medium is the size of the

1 land matters. And so maybe the bigger portions maybe then get the trigger, and maybe the
2 smaller ones don't.

3
4 Mr. Robinson: Anybody else on (b)? Commissioner La Costa?

5
6 Ms. La Costa: Thank you Chair. Along the ahupua'a idea. Where I live I get sheet flow
7 from my neighbor, Launiopoko. We're not in the SMA. It is an ag zoned area, and my yard
8 is covered with stuff from up above. I have channeled mine so it goes down the flood plane,
9 but he has not. That water from his land also goes in there and then goes down to the
10 ocean, so it's the whole picture as you brought up, Chair, that I'm concerned about too.

11
12 Mr. Robinson: Did I hear you say someone is doing ag in Launiopoko?

13
14 Ms. La Costa: Yeah.

15
16 Mr. Robinson: Awesome.

17
18 Ms. La Costa: Several.

19
20 Mr. Robinson: . . . (Inaudible) . . . Okay, Commissioners, moving onto (c). Director.

21
22 Ms. McLean: Okay. Changes in uses, activities or operations including changes between
23 short-term and long-term occupancy of dwelling units that do not increase the density or
24 intensity of use. Increases in the density or intensity of use can be demonstrated by
25 increased off street parking requirements or storage needs or other effects as determined
26 by the Director.

27
28 This also includes if we have commercial buildings in the SMA that change from restaurant
29 to retail, or retail to office. There are probably building permit requirements to go along with
30 that, certificate of occupancy, but typically not SMA for simply the change in use.

31
32 Mr. Robinson: Commissioner La Costa.

33
34 Ms. La Costa: Thank you Chair. On this aspect when it says changes in uses or activities,
35 does that include your commercial diving, kayak, swimming companies? Because they do
36 affect the density of the area that they are, where they're operating.

37
38 Ms. McLean: Well, this says that do not increase the density or intensity of use. So if there
39 is an increase in density or intensity of use, then this exemption would not apply.

40
41 Ms. La Costa: Okay, so that means that the folks who do all the commercial along the
42 shoreline should be getting SMA Permits?

43
44 Ms. McLean: I don't necessarily want to comment on that because I'm not familiar enough.

1 There are also -- there are different permits that are required for that, the commercial ocean
2 recreation activity.

3
4 Mr. Robinson: State. Yeah, that's State.

5
6 Ms. La Costa: Okay.

7
8 Ms. McLean: Well some are State, but there's also a County permit if it's in a County beach
9 park. There are different permits for that. But that's a good point. We hadn't, hadn't talked
10 about --. We were thinking of this more in structures, not necessarily in the beach parks,
11 but that's, that is something we should think about so thank you for that.

12
13 Mr. Robinson: Commissioners, anything else? Yeah, I think this is one that could be taken
14 out if we get the wording as far as uses and activities. You know, maybe just take activities
15 out and put structures or something, you know. We have the, we have the volume of use
16 with parking stalls, right. We kind of control that and uses, and so that kind of will control
17 how much they can grow or not grow, and then come back in front. And if they want to get
18 more parking stalls, then they gotta go through the process. Correct?

19
20 Ms. McLean: Correct.

21
22 Mr. Robinson: Yeah. Okay, moving onto (d).

23
24 Ms. McLean: One temporary event and its signage, such as a fundraiser, community event,
25 festival, fair, luau and family celebration occurring not more than once in a 30-day period,
26 and limited to 96-hours including set-up and take down, and involving no ground
27 construction work, provided that if the event is on the shoreline, then shoreline setback
28 approval is required.

29
30 This is geared towards like the First Friday event in Kihei, the Food and Wine Festivals, and
31 things like that, that --. Charity Walk. I don't know that Charity Walk has ever come in and
32 asked. But things like that where...or the --

33
34 Mr. Robinson: Yeah, so the question is, is a sport's team has a fundraiser, it takes over
35 Launiopoko Beach Park.

36
37 Ms. McLean: Right.

38
39 Mr. Robinson: Or there's weddings, commercial weddings that are doing that, and we know
40 commercial activities. And I think, I think that's the thing is how do we see us, you know,
41 exempting something like this because we want to get it assessed, you know, and so how
42 do you shut down something? The only way you can shut it down is if it's not permitted, you
43 know. And like I said, I know we had somebody testified, I think it was last year, says how
44 did you get the party there? Oh, I had a friend who said no big deal or, you know, and that's
45 how it's always been done because people haven't had abuses but that's not saying that

1 somebody might not. Instead of taking over one-third of the beach park, take over half of it
2 for a larger event. And people are, you know, people are getting a little more courageous
3 I've seen lately with beach events just getting instead of having a little 10 by 20 tent, I've
4 seen, you know, commercial tents on the beaches now. I've seen tables for a 100 people,
5 you know. And if it's permitted, then that's fine. We're getting the tax dollar, and the County
6 assessed that it's going to be done during this time. But I don't think they all are and so I
7 think SMAs is, I think, might be more of a tool for the County to say you didn't get an SMA
8 to help enforcement, or to help the police enforcement instead of us trying to get away from
9 that. And, I think Corporation Counsel has a comment on this.

10
11 Mr. Galazin: Thank you Mr. Chair. I wanted to just like to zoom out a little bit for everybody.
12 If you go back to the handout that you have which has HRS 205A-22, and don't look at the
13 17 categories of what doesn't constitute a development, but look at the five categories that
14 do constitute a development. It's at the very beginning.

15
16 So it's either (1), you know, the placement of solid material or liquid material. (2) is grading,
17 dredging. (3) is change in density or intensity of use of land including division or
18 subdivision. (4) is change in the intensity of use of water. (5) construction, reconstruction,
19 demolition or alteration of any structure. So that's the mailbox to which the Director alluded.

20
21 So these five things are broadly speaking. These are what constitute a development. If
22 something is a development, it needs to be assessed unless it is exempted. Right now there
23 is nothing that is categorically exempted from an assessment as the Director pointed out.
24 There are things that are exempted from getting, you know, a permit if they don't have that
25 significant intensity of use. But you want to look at first, okay, is something a development
26 to begin with? If something isn't even a development, so if it's a bunch of people getting
27 together, you know, on a lawn, I don't see that's even a development to begin with. So you
28 don't even need to get into the . . . (inaudible) . . . of well, okay, then can we exempt it, or
29 what's the impact. It's not a development. It's flat out not even in your realm of
30 responsibilities. And so I just wanted to make sure everybody takes a step back and
31 calibrate everything that you're thinking about through that lens. I think some of the things
32 that I've heard mentioned in this discussion would not even be a development in the first
33 place, so that's a useful thing to keep in mind as you go through this.

34
35 Mr. Robinson: So Corporation Counsel, is a structure considered a development?

36
37 Mr. Galazin: Yes it is Chair.

38
39 Mr. Robinson: So is a temporary structure still a structure?

40
41 Mr. Galazin: Yes it is.

42
43 Mr. Robinson: So therefore a temporary structure or a tent is considered a development.

44
45 Mr. Galazin: It is. But something that is --

1
2 Mr. Robinson: I mean, and again, it's the temporary. So, and, and, that's why we're here.
3 You know, and I get you. You know, it should be a development but then we have these
4 temporary developments and we have to have some way to control a temporary because
5 temporary could be 90 days, right? It could be the whole summer. People could put up
6 tents as a temporary structure on the beach and camp the whole summer.

7
8 Mr. Galazin: That is correct. And I would let the Director speak to how they assess
9 temporary events currently. . . (inaudible) . . .

10
11 Ms. McLean: They're spelled out in the definition: occurring not more than once in a 30-day
12 period, limited to 96-hours including set up and take down. And that was geared around
13 toward our experience with these festivals and things like that where we end up being the
14 bad guy saying, oh, no, you have to do SMA review. Tents, actually, just FYI, need building
15 permits depending on the size of the tent. So we don't necessarily make it easy especially
16 for the, you know, for the little league teams and things like that wanting to do fundraisers.
17 But, yes, I mean, this is why we're bringing this forward is as Corporation Counsel pointed
18 out, do we considered these kinds of things to be a change in the density or intensity of use
19 of land? Even if it's a three-day event or a two-day event, you know, that's the
20 Commission's call to say, no we still want the Department to assess these.

21
22 Mr. Robinson: Director, is do you think the Commission might think about having a size of
23 an event as being a, as being assessed or completely exempted assessment as far as, you
24 know, compared to a tent, 10 by 30, or an event that's 50 persons or less. I mean, can we -
25 -? Instead of either or, can we, can you guys maybe curtail it to where it says here's what
26 we see a lot of and here's where our concerns are and maybe even look at it that way
27 Commissioners, you know. I mean, I don't think we want to, want to give carte blanche for
28 our parks and beaches to have temporary events all over the place. But at some place, we
29 don't want to have, I want to take the kids and the family down to the beach and I gotta go
30 get a permit for a tent either so. Commissioner Pali.

31
32 Ms. Pali: So in my opinion most people walking around that live here, born and raised,
33 probably have very little ideas of what really the laws are. Let's just be really frank. So no
34 matter what we do administratively which I think is a very good direction, I feel like people
35 are still going to call in and say hey this is what's going down, what do I need to do to make
36 sure I'm legitimately following Maui County and State law. And then at that time aren't you
37 going to be able to then share. Because what I think what I'm hearing is the worry that we
38 don't just want to give this blank wild wild west go for it because we do want to protect our
39 County and our citizens and safety. But also there is a balance of letting go some of the
40 control because clearly the way the current laws are written is way extreme. So I know that
41 we're trying to find a balance.

42
43 And so, I guess my question to you is people are still going to be calling, and then at that
44 time, you could assess, you would assess, like, hey it sounds like this is bigger than normal,
45 why don't you come in, let's talk about it, and see if you would exempt or not. And the cap

1 is also a good idea. Let's say 50 or below, or I'm thinking even like 100 or below. Because
2 the other challenge is parks are created for us, for us to use in the community. So the use
3 is for us to gather and to celebrate, and for fellowship, and enjoy. And so to micromanage
4 that is also difficult. And so just for me, I'd like to find the balance because I think we're
5 going at the right direction.

6
7 Ms. McLean: To answer your question. If someone were to call in and say, oh, I want to do
8 a family reunion at the beach, do I need any permits? We would read this out to them and
9 say if you fit in these parameters, then you do not. But if you have more people on that, if
10 we add a cap on the number of people, if you're going to be more than 96 hours, if you're
11 going to be doing ground altering work, then yes you do need a permit. So we would just
12 read out whatever ultimately gets adopted and say if you fit within those confines, then no
13 need. But if you don't, then you have to come in and we have to assess it.

14
15 Mr. Robinson: And Commissioner Pali I like the fact that you mentioned, and I think is why
16 are we even looking at parks and beaches? Can we push that off to DLNR? Can we push
17 that off to Parks and Recreation to monitor instead of SMA? Well, you know, as far as
18 these tents and these special events. No, I mean, if Parks and Recreation is supposed to
19 police the parks, then why is the Planning Department having to get involved with permits
20 for that? It should be, it should be a Parks and Recreation permit. Let's, let's try to minimize
21 our zoning and our purview, and say maybe to move that on to them. And for the size, it's,
22 it's, I'm even more worried about the 50 because I see the commercial people, but I don't
23 know. Yeah, that's a hard one because you see commercial people, you know, having a
24 commercial wedding on the beach.

25
26 Ms. Pali: Could we exclude, could we exclude commercial activities from this section?
27

28 Mr. Robinson: It's about structures. It's not about --
29

30 Ms. Pali: I got it.
31

32 Mr. Robinson: But the Parks and Recreation could have their own things. They could have
33 their signs. They could have, you know. I mean, hey, there's different fees at golf courses
34 in Hawaii, there could be different fees at parks too.

35
36 Ms. Pali: But couldn't we agree that commercial use brings a different type of activity that
37 could impact the surrounding and the land versus personal use? No?
38

39 Mr. Robinson: I think one could argue that commercial, commercial will have a port-a-potty
40 will take away their stuff. People that are non-commercial will not have room in their car.
41 We'll have array of beach towels left behind. Commissioner Kahu Hill.
42

43 Kahu Hill: I just wanted to chime in on this. There's such a big gap sometimes between
44 what the park and county does. And like if I have to pull . . . (inaudible) . . . entry permits
45 with the DLNR and my additional insured for beaches, and that there's like five pages we

1 have to sign and there are no props. So you're not allowed to have the tents or anything on
2 the beaches. But if something happens like say there's a park, like Kam III or something,
3 where there's canoes coming up on the beach. And there's going to be a ceremony, let's
4 say, to say aloha to someone to scatter. They'll have that. They'll come down to the beach.
5 They'll scatter out the ashes and then come back, and then all the people, 100 people, 50
6 people, will gather in the park. And so I'm just looking at that, and also that weddings, or
7 vow renewals or other things that aren't on here, because there are certain things that we
8 are not allowed to do, have amplified sound. And even, even they have said you could
9 have a small tent, but you can't put it in the sand. You'd have to have someone hold each
10 side just for that or a hoop or a little, yeah, or a little ties so there's no actually anything
11 propped. So there is kind of a difference. Some of parks says it's so much money to get a
12 permit. Others say you don't need it and they don't always have rules about what's allowed,
13 you know, if you have 100 people. Because at one point, two years ago, I think it was, it
14 says no more jumping castles for the kids. If you want to have a jumping castles you've got
15 to get a permit. So I think these need to be clear between the parks or ocean front grass
16 and beaches because there's different level when it comes to the DLNR.

17
18 Mr. Robinson: And I, and I think, you know, like Director, so we talk about Parks and
19 Recreation taking care of the beaches not SMA. If you have, you know, development zones
20 like Kaanapali, right, they have their own association, you know, they're responsible for
21 making sure SMAs. I understand, you know, we don't want to be having to be all into
22 everything. So I assume that if an event is going to happen in Kaanapali or it's going to
23 happen in the Wailea area, you know, in a development where they have an association,
24 that they should be able to control that instead of maybe your, your department always
25 having to be involved, you know, one way to look at that.

26
27 Ms. McLean: Well we still, the Commission and the Department, still have the responsibility
28 to protect the coastal zone. That's what this is all about, potential effects to the coastal
29 zone. We weren't thinking so much about beach parks with this, and it does have that if the
30 event is on the shoreline, then shoreline setback approval is required. So that is a higher
31 level of review. We're looking again, like at Kihei First Friday, at the Food and Wine
32 Festival events that are on the golf course. We weren't thinking so much about beach
33 parks. But, again, like the one up above, we'll go back and find out more information, how
34 does Parks give permits for their bouncing castles and larger events, the canoe regatta,
35 things like that, because those must get permit. I'm assuming they get some type of permit
36 from the County or from the State so we can find out more from them.

37
38 Kahu Hill: And just once again, we will not need that then for weddings. Let's say there's a
39 100 people in a certain gathering, we won't need to have a permit for that.

40
41 Ms. McLean: If this is adopted as it is, or if the Commission puts in a limit on the number of
42 people, then that's right, if this gets adopted, whatever the event maybe. But we will get
43 some more information on the beach parks and how those are regulated.

44
45 Ms. Pali: They won't need an SMA. This is an exemption for SMA.

1
2 Ms. McLean: Correct.
3
4 Ms. Pali: Only SMA.
5
6 Ms. McLean: Correct.
7
8 Ms. Pali: Any other permits, any other things that you need to do to conduct business, use
9 parks, that's all separate, right? Just specifically for SMA.
10
11 Ms. McLean: Right. But this could be, this could be tweaked to say provided that if a Parks
12 Department permit is required you shall get it. So that you say okay for SMA purposes it's
13 okay, but you still need to make sure you get the okay from Parks.
14
15 Ms. Pali: Okay.
16
17 Mr. Robinson: Okay moving on to (e).
18
19 Ms. McLean: (e) archaeological, geophysical, percolation, engineering, soils and other
20 scientific testing conducted by a licensed archaeological or scientific professional involving
21 temporary excavation limited to the minimum extent determine necessary and appropriate,
22 and employ best management practices protective of the environment.
23
24 So this actually goes back to an actual event where a land owner had an archaeologist
25 doing archaeological testing on their property and our zoning inspector cited them for not
26 getting SMA Permit. And they were doing the archaeological testing so that they could put
27 together their SMA application for their project. So it was sort of and chicken and egg.
28 They knew they needed to get an SMA Permit for what they wanted to do, but they needed
29 to do the testing so that they could put their plans together. So the archaeologist was doing
30 trenching and wanting to do their inventory survey. Or we have soil tests and other things
31 like that where you go out and you transfer take soil samples because you're putting
32 together an SMA application at some point. But those preliminary tests we're saying don't
33 need to get undergo SMA review.
34
35 Mr. Robinson: So Commissioners, if somebody's going to purchase land, transfer land,
36 they're going to take soil test and stuff like that, is there a tonnage or volume where we think
37 of earth or soil that would be move that could be, you know, under doesn't need it, and over
38 does, you know, a dump truck load. I mean we see where people are going to have to do a
39 trench to find the water, right. They have to do a trench for soil, they do a couple of drags.
40 You know, it couple be maybe, you know, half a metric ton or something, you know. I mean,
41 I think it's, I think -- and director if there may be some volume that the Department is
42 comfortable with, that we think that this is just no more testing, it's not actually a
43 development, or moving, I think that is something that might be applicable. Yeah,
44 Commissioners? Yeah, Commissioner Carnicelli.
45

1 Mr. Carnicelli: Limit to the minimum extent determined necessary and appropriate is the
2 language in there. If we start getting into, you know, trying to --. This is, again, is this
3 development. We've got an archaeological, a geophysical, you know, percolation engineer
4 soils or other scientific testing by a licensed archaeologist or scientific professional. So I get
5 what you're saying. But it's just like, you know, we're looking at things, like, okay these are
6 just things that don't, you know, that are exempted. Is it -- we can get as specific as we
7 want. Anyway, I'm just putting that out there that I get what you're saying Chair that you
8 want to have a tonnage or something to that effect. But when we're looking at this particular
9 thing, what's the intent of this is this is a licensed professional going out there doing some
10 testing or looking for, for park sites. I'm personally okay with how it's written.

11
12 Mr. Robinson: Well, but we're looking at taking it out is what we're looking at. We're looking
13 at --

14
15 Mr. Carnicelli: This is an exemption. This would be exempted.

16
17 Mr. Robinson: But would it need to be assessed? Is the question, right? Or no?

18
19 Ms. McLean: We're saying that that we don't think these need to come in for any.

20
21 Mr. Robinson: For an assessment.

22
23 Ms. McLean: Right. They don't need to come.

24
25 Mr. Robinson: Okay, so the person that go the, that got the violation, you know, it, it's --.
26 And I agree, you know, I think that this is something that we should get off, but the word
27 limited is inflexible depends on who your attorney is. And that's why --. And I mean, make
28 the qualifications larger. I mean, but let's just do it where there is a word isn't interpreted,
29 you know, by the person who wants to interpret it a certain way. And I think, I think that's
30 the easiest way. I mean a dump truck is a pretty big --

31
32 Ms. McLean: Yeah, that's way --

33
34 Mr. Robinson: Yeah, it's a pretty big load. So this wasn't a dump truck.

35
36 Ms. McLean: Yeah, it's way, way bigger than we'd be looking at for this. So we can, we can
37 put a cubic yard on it. We can propose a cubic yard on it.

38
39 Ms. Pali: Comment. If I may Chair.

40
41 Mr. Robinson: Commissioner Pali.

42
43 Ms. Pali: Going back to Corp Counsel, if you look at the State's definition of development,
44 number two says grading, removing, dredging, mining, or extraction of any materials. So I
45 think what I'm hearing is that at least if I'm interpreting this correctly Chair, if you can help

1 me with this, if this is already deemed development, then if someone is extracting, let's say,
2 the dump truck, then they would not fall into what we're trying to say is exempted because
3 they're already here, number two, they would not be exempted. We're talking about other
4 types of activities because it didn't fall on number two. Is that correct? Am I hearing
5 correctly?

6
7 Mr. Robinson: So, is, I think, we're talking about testing. And, and I'm not talking about a
8 taking a dump truck away. I'm just saying maybe the size of a dump truck where they could
9 dig earth, move it to the side, and then do their test and replace it. But that's --

10
11 Ms. Pali: Would that be dredging?

12
13 Mr. Robinson: It, it --

14
15 Ms. La Costa: No.

16
17 Mr. Robinson: Not by my definition of dredging, and I think, you know, public works but --

18
19 Ms. Pali: Mining.

20
21 Ms. McLean: What we're trying to spell out here are activities that would not fall under
22 number two.

23
24 Ms. Pali: Well, that's what I'm saying. I'm saying that number two is protecting our
25 concerns. In my opinion, number two on the State law is protecting all of our concerns
26 we're having. Because if they were doing any of these things, then it wouldn't fall into the
27 exemptions. That's why we're trying to -- all the minor, minor things that don't fall here,
28 we're saying let those people get exempted. But if there's any question that they might fall
29 in number two, they would not be exempted. They're not applicable.

30
31 Ms. McLean: Right. The only material extraction -- so looking at number two like you're
32 saying -- the only material that would be extracted under letter (e) could be soil samples.
33 And those are typically pretty small. I mean, those are in cylindrical containers that aren't
34 very big. Archaeological testing can include a back hoe that's trenching, but that material
35 gets put back. So, I --

36
37 Ms. Pali: So maybe the question is how do you manage it? Let's say we think someone
38 falls in the exempted because you guys have determined that they're not going to grade,
39 remove, dredge, mine, extract. How, what, how are we going to manage this that ends up
40 being the case?

41
42 Ms. McLean: So the same answering the question the same way that you would ask the
43 question before. If someone calls up and says I need to go do these tests, we would say,
44 what does it involve? And it's, oh, we're going to do trenching, we're going to put all of the
45 material back. Or we're going to take three soil samples of, you know, less than a cubic

1 foot each. Then we would say, okay, yeah, no need. But if they say, oh, we need to do,
2 you know, we think it could be ground field site and we're going to have to remove all this
3 materials, we'll say we should assess that.

4
5 Ms. La Costa: Excuse me Chair?

6
7 Mr. Robinson: Commissioner La Costa.

8
9 Ms. La Costa: Thank you. When you brought up the limited that also would be a ratio to the
10 size of the property. So limited for a backyard could be two cubic yards. Limited to a 15
11 acre parcel could be two dump trucks full. So I think that I'm in concurrence that limited
12 needs to be defined by a quantity number, how many cubic yards or whatever.

13
14 Mr. Robinson: And is there, is there a shoreline setback for testing? I mean, can people
15 can go and test on their 50 foot marker line, can they test on their property that's on a hill? I
16 mean, we all want to protect the shoreline, so is there testing, is there testing not allowed at
17 a certain distance to the shoreline of any kind?

18
19 Ms. McLean: I would have to look at your shoreline rules and see. The shoreline rules are
20 very specific for the activities that can be conducted in the shoreline setback. And if it
21 doesn't list this or it's not clear then we would say no, it needs a shoreline assessment.

22
23 Mr. Robinson: Okay. Alright guys moving to --. Commissioner Kahu Hill.

24
25 Kahu Hill: Mahalo Chair. I do see under two where it talks about extraction of any materials
26 and as well in (e) where it talks about soils. I'm just wondering where sand is...or extracting
27 sands especially with things with Iwi Kupuna.

28
29 Mr. Robinson: Materials.

30
31 Ms. Pali: Any materials right here.

32
33 Kahu Hill: Because soil, you don't see soil necessarily as sand, correct?

34
35 Ms. McLean: Yeah. I wouldn't --. Gosh. That would just be limited to testing. You can have
36 sandy soil say if someone is just wanting to build a house somewhere in central Maui. They
37 might want to do soil samples to see, okay, are we going to --. Do we have to do a concrete
38 slab because of the soil stability? But it wouldn't be removing sand. It would be removing
39 samples, but not large quantities of sand or any material for that matter. Yeah, this is just
40 for testing purposes.

41
42 Kahu Hill: Yeah, I'm just thinking of Maui Lani and other places. So I just want to make sure
43 that that's included in here, at least, under any materials. I don't know what all that includes
44 or that it would say soils and sands, possibly.

1
2 Mr. Robinson: Or materials. I mean, yeah, I think that it should be everything. Okay. Letter
3 (f).

4
5 Ms. McLean: (f). The next few should be relatively easy. Interior maintenance, repairs, and
6 renovations to existing lawfully established structures that involve no expansion, no ground
7 disturbance, and that are non-structural such as paints, floors, carpets, cabinets, and
8 material walls and doors.

9
10 Mr. Robinson: Okay, moving on to (g).

11
12 Ms. McLean: Okay. Exterior maintenance, repairs and renovations to existing lawfully
13 established structures that involve no ground disturbance and that are non-structural such
14 as doors, windows, shutters, sidings or roofs, and for structures erected in 1981 or after
15 painting with related preparatory work. And 1981 is chosen because that was the year after
16 which lead based paints were no longer available. And so it is the prep work that we want
17 to see. So if your repainting an older structure, we want to see if you're blasting off the
18 paint, how you're going to collect it and remove it, and make sure that that's done
19 responsibly.

20
21 Mr. Robinson: I have concern about that. You know, just the painting, you know, and again
22 it's the abatement that you just talked about. I used to paint and we have a lot of shoreline,
23 a lot of shoreline home where properties, and I see these guys and they're just pressure
24 washing and air blasting and there's no reclamation of any of that. And if they're exempted,
25 you know, I'm with all the windows and the shutters, but I have a concern about painting,
26 painting and abatement. Commissioners, you guys have any comments on that?

27
28 Ms. Pali: Chair, does this mean if they have a home that is within the SMA and they want to
29 paint their home, right now, currently they have to come in and tell you they're going to paint
30 their home whether it's inside or outside?

31
32 Mr. Robinson: If they call, yes.

33
34 Ms. Pali: If they call. Okay.

35
36 Mr. Robinson: But it's homes, it's hotels, it's whoever.

37
38 Ms. Pali: Well, okay.

39
40 Ms. McLean: Yeah, this is one size fits all, so this is a single-family home. It could be a
41 hotel.

42
43 Mr. Robinson: Now could we --? And this is another thing with size, can we also categorize
44 this as far as homes of a certain square footage compared to a larger property?

1
2 Ms. McLean: Yes you can. But again the, the idea here is assessing impacts on the coastal
3 zone.

4
5 Mr. Robinson: Period.

6
7 Ms. McLean: So if they're changing doors, windows, shutters, they're going to be an impact
8 to the coastal. The painting and the prep work I, I --

9
10 Mr. Robinson: So does anybody have any, any feelings regarding the windows, sidings, or
11 roofing or anything like that? Does anybody besides me have any feelings towards the
12 paint and the abatement? This is a Commission so.

13
14 Mr. Galazin: Chair?

15
16 Mr. Robinson: Corporation Counsel.

17
18 Mr. Galazin: Thank you Chair. I would just point out. One of the things that is not a
19 development under the Statute is if look you look at number seven, the demolition or
20 removal of structures except those structures located on the historic site as designated in a
21 National or State Register. So currently State law says, okay, it's not a historic site, you just
22 want to demo it, you can demo it. That's an exempted activity. So, you couldn't as a body
23 decide that something that State law says is not a development is a development. You can
24 say, okay, State law says this isn't a development, and we're going to go even further and
25 say this needs to be looked at because 10 times out of 10 the Planning Department did an
26 assessment, they would find it is exempted, 10 times out of 10. But right now if you look,
27 you know, again to say if something is already exempted under Statute, you can't go ahead
28 and try to claw it back in so just for reference.

29
30 Mr. Robinson: Are you saying that we can't add restrictions to the SMA? I thought we
31 could.

32
33 Mr. Galazin: Chair, anything that this body does is going to be underneath the Statutes
34 under which the authority is granted to you. Now you are, as a body, the SMA authority for
35 this entire County. So, yeah, you don't want to go all wild calling different things exempted.
36 But at the same token, that authority is only granted to you by State statutes so it's limited to
37 what the statutes provides. So you can any have any roles that are permissible under
38 statutes. But if something is conflicting with the statutes, then it would be preemptive by the
39 statute.

40
41 Mr. Robinson: Thank you. Anymore discussion on (g) or are we moving on? Moving on.

42
43 Ms. McLean: (h), driveway and parking lot patching and repairs, but not resurfacing.

44
45 Mr. Robinson: Any comments? Seeing none, moving on.

1
2 Ms. McLean: Okay. (i) is exterior installation on and maintenance, repairs, and renovations
3 to existing lawfully established structures that involves no ground disturbance, that are non-
4 structural such as signage, wireless transmission antennae, satellite dishes, and roof
5 mounted equipment such as photo voltaic and solar panels.

6
7 Mr. Robinson: Okay. Moving on.

8
9 Ms. McLean: (j) is structural or non-structural single-story enclosures of existing lawfully
10 established structures such as decks, lanais, and carports that are accessory to dwellings
11 and multi-family structures provided that those enclosures will not result in the total floor
12 area of a single-family residence exceeding 7,500 square feet. And that 7,500 square feet
13 is critical because that under 205A-22 says development does not include construction or
14 reconstruction of a single-family residence that is less than 7,500 square feet. And so the
15 construction of a home is something we do want to continue to asses so that's not on this
16 list. Any home that comes in we want to assess it. And we issue a lot exemptions for
17 homes. We make sure that there are BMP's and other things are taken care of, but we
18 have to keep to that 7,500 square foot limit. So if someone were to get an SMA exemption
19 from us, from the Department for a 7,500 square foot home and that 7,500 square feet
20 didn't count the enclosed lanai, and then they come in later to enclose the lanai, then we
21 would have to do a permit for it because they already got their exemption. So you can't
22 have an exemption on top of an exemption. So that's why 7,500 square feet is, is noted in
23 here. So this just says you can enclose your decks or your carports if you don't exceed
24 7,500 square feet.

25
26 Mr. Robinson: 7,500 is not small.

27
28 Ms. McLean: It's not small.

29
30 Mr. Robinson: Single family. Like 750, yeah.

31
32 Mr. Carnicelli: Seven houses.

33
34 Mr. Robinson: That's a Launiopoko house, yeah.

35
36 Ms. La Costa: Not mine baby. Mines 1,350.

37
38 Mr. Robinson: Any comments on that or are we moving on? Moving on.

39
40 Ms. McLean: Okay, letter (k) site improvements, except in coastal dunes involving limited
41 ground disturbance such as minor surface, grading, and grubbing; installation of turf;
42 shallow landscaping and irrigation; and installation of asphalt or concrete slabs and
43 driveways up to six inches deep and up to 300 square feet. So --

44
45 Mr. Robinson: Carnicelli.

1
2 Mr. Carnicelli: Go ahead. Go ahead, you were going to say?

3
4 Ms. McLean: So we do get calls about this. Someone wants to -- you know they have a
5 gravel driveway, they want to put in a concrete driveway. They want to redo their, their
6 landscaping in their property so these questions do come up and so this is what we crafted
7 to respond to those to try to keep the scale small.

8
9 Mr. Robinson: Commissioner.

10
11 Mr. Carnicelli: Thank you Chair. So just to be clear, it's a driveway that's not more than 300
12 square feet or slab not that's not --

13
14 Ms. McLean: Correct.

15
16 Mr. Carnicelli: Okay, just, just being clear. Thank you.

17
18 Mr. Robinson: Any comments? Moving on. (j), no (l).

19
20 Ms. McLean: (l) site improvements, except in coastal dunes involving limited ground
21 disturbance more than six inches deep and up to 16 square feet for holes or trenching such
22 as the installation, removal or maintenance of trees and shrubs, utility pedestals, ground
23 signs, water and sewer conduit lines, walls and fences up to four feet in height, telephone
24 and light poles, mailbox posts, and solar panels provided that the improvements may be
25 subject to shoreline setback approval and provided that this does not include wireless
26 telecommunication towers, windmills, and wind turbines.

27
28 Mr. Robinson: Commissioner Carnicelli.

29
30 Mr. Carnicelli: Thank you. How did we come up with telecommunication towers, windmills
31 and wind turbines? I mean why those three specifically?

32
33 Ms. McLean: Because they could have potential impacts beyond just the physical ground
34 disturbance that could impact views. There could be other environmental concerns related
35 to them. And they were coming more and more common place, but they're not nearly as
36 common as telephone and light poles in terms of utility infrastructure. And it's also unlikely
37 that they'd be able to meet the 16 square feet, I think, you know. A four by four pole sounds
38 big, but you need a much bigger footing for those typically.

39
40 Mr. Robinson: Commissioner Kahu Hill.

41
42 Kahu Hill: Mahalo Chair. I don't know if this applies so this is actually the question about
43 mailbox posts. If you're in a community and that community and their association rules has
44 four mailboxes across the street from where you live, and they can -- you have the right to

1 move that mailbox over to your property and have your own there. Is that something that's
2 in this at all?

3
4 Ms. McLean: We don't enforce or administer homeowner's association requirements. So we
5 would just be looking at what the physical improvements are so this would allow that.

6
7 Mr. Robinson: Anyone? You sure threw a lot in their Director. But I guess what we need,
8 we need to focus on is the, is the 16 square feet, correct? So if somebody would like to
9 build a mausoleum as a mailbox, they wouldn't be allowed to do that because it's not 16
10 square feet. Is that correct?

11
12 Ms. McLean: Correct.

13
14 Kahu Hill: I have one last question.

15
16 Mr. Robinson: Okay. Commissioner Kahu Hill.

17
18 Kahu Hill: Looking at like wind turbines, is there a horizontal? If it's bunched around, I mean
19 like wind turbines or things like, as far as the height.

20
21 Mr. Robinson: Non-exempted. They're not exempted.

22
23 Ms. McLean: Not exempted.

24
25 Mr. Robinson: Yeah, so they would have to come in. View planes. Yes, Commissioner La
26 Costa.

27
28 Ms. La Costa: On the way from the west side to here, there is a home that has a small wind
29 turbine that's probably two and half feet tall and maybe a foot and a half wide. So would
30 something like that require at an SMA?

31
32 Ms. McLean: If it's a standalone we would assess it.

33
34 Ms. La Costa: Okay. But if it's attached to the building?

35
36 Ms. McLean: If it's attached to the building then it would fall under letter (i).

37
38 Ms. La Costa: Okay. Thank you.

39
40 Mr. Robinson: Or an associations, right? Usually the associations and the building code will
41 have anything.

42
43 Ms. La Costa: No, it's not.

44

1 Mr. Robinson: Yeah, like a disk or something, you know, solar panels, you know, they
2 disturb the view planes. Okay. Moving on from (I).

3
4 Ms. McLean: Letter (m) operation and maintenance activities for public roadways and
5 drainage systems such as vegetation management activities including tree trimming and
6 cutting and vegetation removal and clearing obstructions provided that beach sand is
7 placed on an adjacent beach and dunes.

8
9 Mr. Robinson: Commissioner Carnicelli.

10
11 Mr. Carnicelli: So as I read through these that was the one thing that I circled is that last,
12 "provided that beach sand is placed on adjacent beach and dunes." Help me out because
13 I'm not -- two things. One is I'm not understanding how that fits in because it says, okay,
14 operation and maintenance activities for public roadways and drainage system. But then
15 we're moving sand onto adjacent beaches and dunes. So that's -- I don't understand how
16 that ties in.

17
18 And then the second thing is what if the nearest adjacent beach is a mile away? You know
19 because I mean, just like minor actions like with the DLNR's you do not take sand from this
20 beach and put it on this beach. I mean, even in the, you know, Hawaiian traditional
21 systems, you don't mix and matchy. So I guess those are the two, two questions I have
22 about that.

23
24 Mr. Robinson: Kahu, is that a proper terminology, mix and matchy? Let me write that down.
25 Director.

26
27 Ms. McLean: We need to fit that term in here somewhere. Drainage ways that go into the
28 ocean can often get clogged with sand, and so that's relating to be able to clear those
29 drainage ways. And typically there's beach on either side. We could be specific that beach
30 sand is placed on its adjacent beach and dunes, if there is an adjacent beach and dunes. If
31 there isn't then it could be removed. That would make sense if, you know, in the event that
32 there is a drainage channel that's distant from a beach that somehow gets clogged with
33 sand and that sand could be removed altogether. But that's the, that's the reasoning for it
34 because we have gotten input from the past that those get cleared and the sand just gets
35 removed altogether. And the scientists are telling us that that sand should be put back on
36 the beach.

37
38 Mr. Robinson: Alright, so Director, who's this exemption geared towards? Is it towards
39 County crews? Is it towards commercial people doing the clearing? I mean is it -- because
40 again when we take this away, anybody can start doing this type of work when usually only
41 County people are allowed or private.

42
43 Ms. McLean: Well it's for public roadways and drainage systems so it is geared toward
44 government agencies. I think State DOT also has -- would fall under this. They may

1 contract that out to a private firm rather than having the crews do it. So it could be a private
2 firm, but it wouldn't be a private facility. It would only be a public facility.

3
4 Mr. Robinson: Well and I mean, that's my concern is if, you know, our government is doing
5 it and we're following, you know, BMP's but once this gets subcontracted out and they're
6 actually going to an RFP or if they're going to have a certain type of contract where it's
7 going to be reviewed by somebody. I mean, again that's the, that's the concern is when it
8 leaves a second hand and we have this shoreline maintenance going on and the mix and
9 matchy from up the hill. Because we could have soil, you know, being thrown to the side.
10 Commissioner Pali.

11
12 Ms. Pali: I think just to help link it. I would be comfortable on the third line, and says, and
13 clearing obstructions caused by sand. That might tie it in a little bit. I don't know.

14
15 Ms. McLean: Well there could be other obstructions. I mean, vegetation can --

16
17 Ms. Pali: Well because then follow, provide it with the beach sand is placed. So this kind of,
18 it just seems kind of funky but it's --

19
20 Ms. McLean: Okay, we can word it better to say that --

21
22 Ms. Pali: Connecting, connecting that last thought to the beginning.

23
24 Ms. McLean: Okay.

25
26 Ms. Pali: It sounds balanced.

27
28 Mr. Carnicelli: If I could Chair. I mean, see this is also just an exemption though right?
29 Because maybe the work needs to be done and then it's just not exempted, you know. So,
30 but we also have a situation where like my brother-in-law is a contractor on Kauai, and he
31 has to do this work for the County especially like after all of the flooding and things like that,
32 right? He's going around with his excavator literally unblocking a river. So I get, you know,
33 where, okay we have to come in and blah, blah, blah. So it doesn't necessarily have to just
34 be sand, in my, just for my thing. But it was just the place on the adjacent beach and dunes
35 that kind of sort of threw me. But it makes sense if it's just like, okay, listen we're just going
36 like this to create a very cleary for the matchy matchy.

37
38 Mr. Robinson: But again, is when we're clearing these things that's -- it's flow, it's flowed
39 somewhere to where it's clogged, and we're clearing it, how we're clearing it, and when do
40 clear a part of it, is there BMP's once we lift half of it, and the other half starts to slide back
41 down? And this is where we come in is where we have to protect the, you know, the
42 shorelines. And that's where my concern between having a government agency do it that,
43 you know, that control its own things compared to a subcontractor out and not even having
44 the Planning Department have an opinion on it as an assessment you know, and that's just

1 the concern that I have. It's not the work being down, it's just to make sure it's done, it's
2 done correctly towards the, towards the third party.

3
4 Mr. Carnicelli: So who do you trust more, the government or the private worker?

5
6 Mr. Robinson: The government.

7
8 Mr. Carnicelli: Okay. I'm just curious.

9
10 Mr. Robinson: Because, because the government will self report quicker than a private
11 contractor would.

12
13 Mr. Carnicelli: Got you.

14
15 Ms. McLean: We can work on the language to address the comments. And last but not
16 least with the application of best management practices to protect the marine and land
17 environment, emergency protection of eminently threatened Department of Environmental
18 Management Wastewater infrastructure or Department of Water Supply infrastructure at
19 eminent risk of failure which would substantially affect public, health, or safety including
20 significant water loss or contamination of surface water land or water supply.

21
22 So this is when we have the kind of coastal erosion that we see and our water lines and
23 sewer lines are exposed and need to be protected that they can just go ahead and protect
24 them because this has come up. And we're like, no, you need to do an SMA assessment,
25 and everyone looks at us and --

26
27 Mr. Robinson: Is, is -- aren't they allowed a phone call the emergency exemption from the
28 Department?

29
30 Ms. McLean: Yes, there is a provision for emergency permits and that's another component
31 of the rules that we are also working on. Right now the rules only allow emergency permits
32 for habitable structures. And these aren't habitable structures, at least we hope they're not.
33 And --

34
35 Mr. Robinson: So we're saying just the Department of Environmental Management and
36 Department of Supply, not everybody.

37
38 Ms. McLean: Correct.

39
40 Mr. Robinson: Just the, just the people I said we trust. Okay.

41
42 Ms. McLean: And the emergency permitting is again the way it's worded now and these
43 would be looked at as a whole package so correcting in one area might mean we don't have
44 to include this in the other. But it's more geared towards if something gets taken out, then

1 you can do these emergency measures to prevent further damage rather than being
2 preemptive, and this is more of a preemptive.

3
4 Mr. Robinson: Any comments? Commissioner Carnicelli?

5
6 Mr. Carnicelli: Well, is, is -- if we're done with the letters, I don't know if anybody still have
7 anything on hand. I just had some questions or clarifications on procedures now. So my
8 first question is does the, on our reports, does the SMA exemption report now go away?

9
10 Ms. McLean: You would still --. We would still do an exemption report for all the things that
11 aren't covered by this that we would issue exemptions for. You would still get reports of
12 this.

13
14 Mr. Carnicelli: Okay. And then my next question is kind of piggy backing on the question
15 that I brought up the last time we met and that is when we get these reports often times
16 they're in -- they're behind, right. Like we got all of the ones from all of the fireworks in the
17 middle of January for New Year's Eve. The purview to which we would have to determine
18 cumulative effect is now gone, you know. So let's just say if we just said okay every hotel in
19 Wailea wants to have a firework show and you know, they're all exempted, and we're like
20 okay fine. But we as a body go wait a second, no, one cool. But 16 of them, suddenly
21 there is an impact and, you know, we don't want to give an exemption. How, how is that
22 going to be addressed in this new way in with which we're kind of trying to do this?

23
24 Ms. McLean: We are not, in this round of rule changes that we'll be presenting, we are not
25 addressing that honestly. The exemptions are your rules allow for those to be issued by the
26 Department so the Commission doesn't see them anyway. So for you to have a sense of
27 cumulative impacts, you don't see that, the Department would. So if something like that
28 were to happen, that's a failing on the Department's side to not look at all of those
29 collectively. And the, the reports are issued because the rules call for it. But also for you to
30 see what we are doing. And you can call us out if you find that things have been permitted
31 or exempted that you don't think should be. And also noting those, the date of the meeting
32 where this report comes out triggers an appeal deadline so that's another reason to provide
33 these reports is that of appeals are triggered at the date that the Commission is notified of
34 those actions. But the rules will be coming to you to review and ultimately adopt. So if you
35 don't like how some of those things are being done now, then now is the time to let us know
36 so that we can address them in language changes.

37
38 Mr. Carnicelli: Yes, thank you, and I do understand that, you know. And the other part too
39 is...time is an issue for everybody, you know. So to sort of sit there and slow down the
40 process again so we can sit here and talk about something for an hour and 15 minutes like
41 we have this one sheet of paper, two sheets of paper, I get it, you know. I mean, I'm not
42 trying to say I want to slow the process down, or that I, you know, want more power or
43 anything like that. It just seems to be a little bit -- I don't know what the answer is. You
44 know, I don't know if I have a solution. It's just something that just kind of has popped into
45 my mind if we're going like, okay, how --? I guess maybe the answer then is just what you

1 said where the cumulative impact threshold lies on you, not on us. So I mean I guess that
2 maybe is where we'll all just go ahead and rationalize it out in my mind. So, thank you.

3
4 Mr. Robinson: So how do we convince more hotels to do fireworks is the question. Not
5 what if, yeah. Alright, we'll take a five minute break.

6
7 Ms. McLean: Is there testimony on this?

8
9 Mr. Robinson: Is it a public hearing? No, this is an agenda item.

10
11 Ms. McLean: . . . (inaudible) . . .

12
13 Mr. Robinson: No, because there's no action. We'll take a five minute break. Thanks.

14
15 *(The Maui Planning Commission recessed at 10:40 a.m. and reconvened at 10:45 a.m.)*

16
17
18 **D. Status update on Seashore Properties appeal and litigation (Paia Inn).**
19 **(D. Galazin)**

20
21 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION**
22 **TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES**
23 **PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES,**
24 **IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION 92-5(a)(4), HAWAII**
25 **REVISED STATUTES.**

26
27 **This update is for information purposes; no action is anticipated.**

28
29 Mr. Robinson: Planning Commission is back in session. Director, Item D.

30
31 Ms. McLean: Thank you Chair. The next item is a status update on the Seashore
32 Properties appeal and litigation. This relates to the Paia Inn matter.

33
34 Mr. Robinson: Corporation Counsel.

35
36 Mr. Galazin: Thank you Chair. I want to give the body an update on where we are in
37 litigation. And then if you have questions about what that might mean, we would have to go
38 into Executive Session to answer them. If you only have any questions, that's fine.

39
40 On Friday, February 8th, we had a hearing before Judge Cahill. The appellants, Seashore
41 Properties submitted a motion determining Commission proceedings, approved the
42 application, and declared the appeal moot. I was representing you folks there. Mr. Tom
43 Colby from our Department was representing the Department in the appeal. And during
44 oral argument the Judge made a number of comments, which I think did provide some
45 sense of where he may be going with this. He did state on the record he had read through

1 the entire record on this case, but as I said my interpretation of what he stated and I've got
2 the transcript here. I can go through it if you want to dive into it a little bit. It might be useful
3 to sort of figure out where we are.

4
5 Right now the Judge ultimately denied the motion to automatically grant the permit which is
6 basically what the appellant was seeking. But did allow that same argument to be rolled
7 forward into the hearing itself which is going to be currently set for March 15th. And that
8 would be Circuit Court appeal of this body's decision to deny the permit to Seashore
9 Properties. That was the one where Judge McConnell who was the hearings officer for that
10 prepared that report that was brought back to you folks. So, that's all I can say during open
11 session. If there's a desire to go into Executive Session to discuss it in more detail
12 especially as it pertains to your liabilities and responsibilities, we can do that.

13
14 Mr. Robinson: Do we have any desire to go into Executive Session? So we need a motion.
15 Seeing none, we will, we will jump ahead. We'll jump ahead to Director's Report and the
16 SMA as we get the person that's going to present E to us. Director.

17 18 **F. DIRECTOR'S REPORT**

- 19
20 **1. MICHELE MCLEAN, AICP, Acting Planning Director, transmitting the**
21 **following application to the Maui Planning Commission pursuant to the**
22 **provisions of the Maui Planning Commission's Special Management**
23 **Area Rules that the following permit transfer has occurred by approval**
24 **letter dated January 14, 2019.**

25
26 **MPV Holding Company LLC requesting Transfer of permit holder from**
27 **MPV Holding Company LLC to AmperSand Venture 2 LLC of the Special**
28 **Management Area Use Permit for the Maui Pagoda project (formerly**
29 **known as the Maui Palms Redevelopment project) located on**
30 **Kaahumanu Avenue, at Kahului, Island of Maui. (C. Thackerson)**

31
32 Ms. McLean: Thank you Chair. Under Director's Report, the first item is transmitting to you
33 information that a permit transfer occurred. This is for the Maui Pagoda Special
34 Management Area Use Permit. Maui Pagoda is formerly known as the Maui Palms. It was
35 transferred from, from MPV Holding Company LLC to AmperSand Venture 2 LLC. And I
36 believe that transfer letter is in your packet. And if you have any questions, I'd be happy to
37 respond to them if I can.

38
39 Mr. Robinson: Seeing none.

- 40
41
42 **2. SMA Minor Permit Report**

43
44 **This is for notification and review purposes. No action is anticipated.**
45

1 **3. SMA Exemptions Report**

2
3 **This is for notification and review purposes. No action is anticipated.**

4
5 Ms. McLean: And you have the SMA Minor and SMA Exemptions report. Any questions on
6 those?

7
8 Mr. Robinson: Commissioners, any questions? Seeing --. I'm sorry. Okay, thank you.
9

10
11 **4. Discussion of Future Maui Planning Commission Agendas**

12
13 **a. February 26, 2019 agenda items**

14
15 Ms. McLean: And lastly you have your memo with next meeting's items listed on it. Do you
16 have any questions on the next agenda?
17

18
19 **E. Briefing on the Settlement Agreement with D&S Ventures (Camp Maui Zipline).**
20 **(J. Holiona and M. McLean)**

21
22 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION**
23 **TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES**
24 **PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES,**
25 **IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION 92-5(a)(4), HAWAII**
26 **REVISED STATUTES.**

27
28 **This briefing is for information purposes; no action is anticipated.**

29
30 Mr. Robinson: Okay, at this time is we would like to discuss the D&S. Does anybody have a
31 desire to go into Executive Session? If so, I need a motion. Corporation Counsel.
32

33 Mr. Galazin: Thank you Chair. This is just information. It doesn't pertain anything that's
34 currently before the body. I wanted to, we had -- as the Chair mentioned, not a heavy
35 agenda today, so I wanted to put this on there just to provide the same kind of update that
36 was provided to the public. But you may have read something and wondered why the
37 contested case that was for the Special Use Permit that was pending before this body -- we
38 already had a couple of days of hearing on that -- why it is not coming back to you. So I'll
39 let the Director go into it, and then if it starts to dive into something that I think is, you know,
40 a legal issue for you folks, then I'll chime in at that point.
41

42 We also have Deputy Corporation Koa Holiona who can be a resource for us also.
43

44 Ms. McLean: Thank you. This, the application for D&S Venture's Camp Maui Zipline had
45 previously come to the Commission, and was denied, and the applicant appealed that to

1 Court predominately on procedural grounds. And the Court ruled in favor of the applicant,
2 and so that application came back to the Commission. The applicant put forward a motion
3 for the Commission to appoint a hearings officer, and the Commission granted that motion,
4 and then voted for the Commission as a body to be the hearings officer. And so the
5 Commission proceeded to begin the contested case proceeding. And that was the hearing
6 where the applicant had put on the first of what appeared to be quite a number of
7 witnesses. They had a UH law professor. They had a senior planner. And then that
8 contested case proceeding was deferred to be continued at a later date.

9
10 At the same time, the Department had issued notices of violation against the operator for
11 operating without a permit, and the applicant had appealed that violation to our Board of
12 Variances and Appeals (BVA). And the Board of Variances and Appeals had appointed
13 retired Judge John McConnell to be the hearing officer of that proceeding. So we had the
14 proceeding pending with you folks, and we had the proceeding pending with BVA.

15
16 And the Department, and Corporation Counsel, and the Deputy representing us in that
17 matter is here, entered into some settlement discussions with the applicant. And for a
18 variety of reasons that we could go into further in Executive Session if you choose, the
19 Department felt that the long term prospect of the matter being resolved in an appropriate
20 way was unlikely. And so the Department proceeded to settle with the applicant and enter
21 into a settlement agreement. And among the details of that settlement agreement, most of
22 which have been made available, are certain restrictions on the operation and other
23 improvements that must be made to the property within a certain amount of time. And
24 those terms are enforceable by the Department. And the zipline can operate under those
25 restrictions. And I don't know if Koa has anything he wants to add.

26
27 Mr. Koa Holiona: Under the settlement agreement. Koa Holiona, Deputy Corporation
28 Counsel, County of Maui. I was the deputy responsible in trying to get this matter resolved
29 between the Ventures and the BVA matter. The only thing I want to add is just understand
30 the agreement that we have D&S Ventures, the BVA matter essentially we can, it's an
31 enforceable agreement such that if they do not within the certain time frames put in the
32 agreement comply with what we require them to do, we can again go and enforce that
33 against them in court, as opposed to going to issuing the notice of violation and proceeding
34 with for the variances. Because there is a separate settlement with the parties, and so all of
35 the parties understand that any violations or if they don't comply with those conditions, we
36 can, it can be enforced by the court of law. So I just wanted to make that clear as the
37 settlement agreement on that matter. If you don't have any questions?

38
39 Mr. Robinson: Koa, I have a question. I think our whole Commission wants to know is when
40 did the Commission lose its power to grant the permit and be overruled by the, by the
41 County?

42
43 Mr. Holiona: I don't know if the Commission ever lost their power. Part of the whole parallel
44 workings of going through BVA and the Maui Planning Commission was the notice of

1 violation was issued by the Department of Planning. Under the Administrative Rules, they
2 can appeal those violations through the Board of Variances and Appeal, which they did.

3
4 My understanding before I became involved that BVA matter was being handled by another
5 deputy. A part of what they're trying to maybe resolve the issue without having to go further
6 with the BVA is the D&S Venture applying or submitting an application in front of the Maui
7 Planning Commission for a Special Use Permit. When it went to that route, they put the
8 BVA matter on hold hoping that the Maui Planning Commission approved their application
9 for a Special Use Permit and issue whether or not the violations have been resolved. The
10 question is Michele had mentioned when the application was denied, the appellant, excuse
11 me, the applicant, D&S Ventures filed an appeal with the Circuit Court. The judge then
12 ruled against the Maui Planning Commission saying under procedural grounds that they
13 were not provided their due process.

14
15 Mr. Robinson: Yeah, Colby, . . . (inaudible) . . . happened. I guess the question is do they
16 have an operational permit now? And what type of permit is it? Because we assumed that
17 we're the only one that can grant the Special Use Permit, or has, or has that vehicle been
18 taken from us?

19
20 Mr. Holiona: They're --. Well, as far as them having an operational permit, under the
21 settlement agreement, they do not have -- they're operating without the required permit for
22 under the conditions. Now as to obtaining the application through the Maui Planning
23 Commission because of this settlement my understanding is D&S Ventures then withdrew
24 the application before the Planning Commission for their Special Use Permit. So in that
25 case, the power wasn't taken away from you to override this. They decided to withdraw their
26 petition. In which case this Commission no longer was required to hear and determine
27 whether or not the application for the Special Use Permit was required.

28
29 Mr. Robinson: Okay, I got that. So how are they --? Is they didn't meet the criteria before in
30 front of us, so what are they operating under now? Are they just a regular business that's
31 operating and they're --? And what has changed in the last, in the last two months?

32
33 Mr. Holiona: They are operating as a business. And what has changed is like I said, under
34 the settlement agreement we had with the Department along with D&S Ventures and the
35 BVA matter, we did set certain criteria and conditions that D&S must address within a
36 certain time frame for them to operate without obtaining the appropriate permit. So that's
37 what the agreement is about. Now they have, as far as I understand it, and maybe Michele
38 can clarify this, but since the agreement has gone into effect, I believe they've been in
39 compliance because they've been given time periods to get certain conditions satisfied. So
40 that's what they're working under that basis.

41
42 Mr. Robinson: And, and I just want to try and clarify my question. My question is how are
43 they allowed? What, what are doing that now that they're allowed to operate? And, and if
44 the criteria -- you know because we heard testimony of when they were here that their

1 criteria and our criteria we had a difference of opinion. So has the, has the County change
2 on what the criteria is for operation in that area?

3
4 Mr. Galazin: Chair, thank you. So let me just clarify. The applicant always maintained that
5 they did not need a permit to operate and that was the basis of their appeal basically. Their
6 operation was already in compliance with code. They didn't need to have any kind of permit
7 in order to do what they were doing. As that's was what they were contesting before the
8 Board of Variances and Appeals. And so as a matter of settling that appeal that they filed,
9 the Department has determined -- and Director, please correct me if I'm wrong -- so long as
10 they maintain compliance with the agreement, then they are permitted or they're allowed
11 under the zoning to conduct their operation. They do not need a Special Use Permit to do
12 so. If they do anything that's out of the bounds of that, then they would be in violation.
13 They would possibly may need to come in for a Special Use Permit if they wanted to
14 continue that use that's apart from the scope of what they agreed to.

15
16 So, the other thing to consider too you all received the letter from Anthony Rankin. Is there
17 a new appeal filed by some of the neighbors appealing the settlement itself if you will. If that
18 goes anywhere there's a possibility that as a result of that it, it could be back here before
19 you folks, the Special Use Permit, again. Which is why, you know, two reasons I bring it
20 before you. One is to answer your fundamental question of why isn't this before the
21 Commission anymore. And then two, under what circumstances might it come back? So
22 that would be the only circumstances, if you wanted to go into Executive Session to
23 discussion, that would be the only circumstance that would be, appropriate for that would be
24 that what if it came back scenario. But for right now, so long as they do maintain
25 compliance and as Koa mentioned they are so far, then they can operate without a permit
26 as the terms of the agreement.

27
28 Mr. Robinson: Commissioners, I ask that you ask questions to the Director and to the
29 Corporation Counsel. But do not form opinions on the, on the --

30
31 Ms. La Costa: . . . (inaudible) . . .

32
33 Mr. Robinson: Yeah. But for clarification I'm all for you. Commissioner La Costa.

34
35 Ms. La Costa: Thank you. Are we allowed to know what procedural deficiencies there
36 were?

37
38 Mr. Galazin: Thank you Chair. Yeah, absolutely, and you sort of came in, Commissioner, at
39 the time where we were implementing some of those changes. That's why we now have
40 public testifiers swear in when there's a contested cases. Even if it's a single applicant, and
41 there's nobody filed a petition for review. We do that process. That was one of the things
42 that came out of that appeal. The procedural issue before the judge was whether or not this
43 body could properly consider testimony that was unsworn and had not be subject to cross
44 examination. And the Courts ruled, rightfully or wrong, the Court ruled that this body could
45 not. So in order to consider public testimony as evidence in a contested case hearing we

1 need the procedural protections of sworn testimony and the possibility of cross examination
2 or the allowance of cross examination. So that's the change that has been evolved by that
3 appeal. These are the procedural issues.

4
5 Ms. La Costa: Thank you.

6
7 Mr. Robinson: Commissioner Castro.

8
9 Mr. Stephen Castro: This is for the Director. So now the fines that were levied against them
10 are not collectable?

11
12 Ms. McLean: The settlement agreement did include the payment of fines.

13
14 Mr. Castro: Thank you.

15
16
17 **G. NEXT REGULAR MEETING DATE: FEBRUARY 26, 2019**

18
19 **H. ADJOURNMENT**

20
21 Mr. Robinson: Okay, seeing no further questions, we're moving on. Apologize again for the
22 refreshments. See you guys in two weeks.

23
24 The meeting was adjourned at 11:03 a.m.

25
26 Respectfully Submitted by,

27
28
29
30 LEILANI A. RAMORAN-QUEMADO
31 Secretary to Boards and Commissions II

32
33 **RECORD OF ATTENDANCE**

34 **Present**

35 Lawrence Carnicelli

36 Stephen Castro

37 Kahu Alalani Hill

38 P Denise La Costa

39 Kellie Pali

40 Keaka Robinson, Chair

41 Christian Tackett

42
43 **Excused**

44 Tina Gomes

45 Larry Hudson, Vice-Chair

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2
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4
5
6
7

Others

Michele McLean, Acting Director, Department of Planning
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Acting Deputy Director, Department of Public Works (on-call)