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**MAUI PLANNING COMMISSION
REGULAR MINUTES
JANUARY 9, 2018**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Sandy Duvauchelle at approximately 9:05 a.m., Tuesday, January 9, 2018, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Duvauchelle: Good morning everyone. Happy New Year, Commissioners, Director, Staff. Thank you everybody for being here today and the people in our audience. It's January 8, 2018, the time is 9:05. Maui Planning Commission is now in session. Director.

B. PUBLIC TESTIMONY - Public testimony will be taken when each agenda item is discussed. **Testimony will be limited to a maximum of three (3) minutes.**

Mr. Spence: Good morning Commissioners and Happy New Year. We have three public hearing items for you this morning. The first one is Mr. Gary Furuta on behalf of Catholic Charities Housing Development Corporation requesting an SMA Permit to construct a senior housing project and our Staff Planner this morning is Candace Thackerson.

Chair Duvauchelle: Good morning Candace. I wanted to add that public testimony on this item will be taken after the introduction, the applicant's presentation. Thank you.

C. PUBLIC HEARINGS (action to be taken after public hearing.)

1. **MR. GARY FURUTA on behalf of the CATHOLIC CHARITIES HOUSING DEVELOPMENT CORPORATION requesting a Special Management Area (SMA) Use Permit in order to construct the proposed Kahului Lani Affordable Senior Housing Project including two (2) six-story multi-family residential buildings, a 7,500 square-foot multi-purpose building, parking, and related improvements at 65 South Kane Street. TMK: 3-7-005:003, Kahului, Island of Maui. (SM1 2017/0001) (C. Thackerson)**

The project will provide 164 one-bedroom units for rent to seniors who earn 60 percent or less of the County's median income and one (1) two-bedroom resident manager's unit. Catholic Charities Hawaii will provide onsite social service case management for residents.

Ms. Candace Thackerson: Good morning Commissioners. So before you you have the Catholic Charities Housing Development Corporation requesting a Special Management Area Use Permit to construct the proposed Kahului Lani Affordable Senior Housing Project. It will be located at 65 South Kane Street, TMK: 3-7-005:003.

This application is before because it is located within the SMA, Special Management Area so that is what you are reviewing today. It also triggered compliance with getting an EA. However, the planning commission was not the approving body on that. So it already did the Draft EA and Final EA which has been published on the OEQC website. So I just wanted to let you know that

1 they've gone through that process. And so now they're just here for their SMA approval. And
2 the Final EA was issued a FONSI, a Finding of No Significant Impact.

3
4 I also passed out a sheet this morning in front of you. It should be the parking stall reduction
5 waiver. So since the writing of my staff report 'cause my staff report during the parking I say
6 that they will receive a parking stall waiver from Zoning and they have. So before you, you have
7 the reduction that allows them to have less spaces on their lots. Okay, I just wanted to pass
8 that out for your information. And I'm gonna turn it over to the applicant and let them give a brief
9 presentation of the project. Thank you.

10
11 Chair Duvauchelle: Thank you.

12
13 Ms. Marissa Fujimoto: Hi good morning Chair Duvauchelle and Commissioners. Thank you for
14 taking the time to be here today. My name is Marissa Fujimoto and I work for Munekiyo Hiraga
15 and I'm here today along with some other members of the Kahului Lani project team to share
16 some information with you about the Kahului Lani Affordable Senior Housing Project.

17
18 Joining me today is Thelma Akita Kealoha from Catholic Charities Hawaii, Maui Office
19 representing the applicant Catholic Charities Housing Development Corporation. Kahului Lani
20 Project Managers Jess and Andrew Furuta of GSS, LLC, architect Steve Wong, and civil
21 engineer Chad McDonald from MNA Hawaii, our traffic engineer Tyler Fujiwara from Austin
22 Tsutsumi and Associates, and Mike Munekiyo and myself from Munekiyo Hiraga.

23
24 At this time I'd like to invite Thelma to share some background on Catholic Charities and their
25 effort to serve our community.

26
27 Ms. Thelma Akita Kealoha: Aloha and good morning. My name is Thelma Akita Kealoha as
28 you have heard. Aloha Madam Chair and Planning Commissioners. Thank you for allowing me
29 to be here today and participate in this great opportunity. Oh, and the lights go out. I must be
30 impacting something.

31
32 I am here on behalf of Catholic Charities Hawaii on Maui which is a private nonprofit
33 organization with its own board of directors although we do share the same mission as the
34 Catholic Church. Our housing and development corporation was incorporated in 1999 as a
35 nonprofit corporation and subsidiary of Catholic Charities Hawaii. The organization established
36 this nonprofit development corporation in direct response to the challenges to our clients in
37 finding permanent supportive housing...not permanent, affordable housing. You guys already
38 know what kind of housing crisis we're in and the clients that we serve definitely have an issue
39 finding affordable housing 'cause these are the people in emergency situations, these are the
40 people who have been homeless, these are the people who are one paycheck away from being
41 homeless.

42
43 The intent is to provide affordable and special needs housing for the elderly or economically
44 disadvantaged people in the State of Hawaii as an affordable housing nonprofit developer. I
45 want to commend our Catholic Charities Housing Development Corporation not because they're
46 fulfilling a need but because they're here on Maui and helping us create affordable housing.
47 And it's not just Maui but it's across the state. So we are a statewide entity and I foresee that

1 they're gonna be on the neighbor islands soon doing the same thing and helping fill this need.
2 And I for one appreciate that 'cause this has been kind of a dream for us to be able to provide
3 this. And you know I know senior housing is important. I know family housing is important so
4 you know hopefully in the future we can start focusing on family housing which has a big need
5 here.

6
7 Okay, Housing Development Corporation is proposing to build affordable senior rental housing
8 in a project that's called Kahului Lani and it will house seniors 55 years and older within the 30
9 to 60 percent of the area median income. So this is our lower income folks and I know you guys
10 have gotten a lot of information on this. You know there was something that came out in the
11 paper also that spoke to these things and I'm sorry, if I'm you know chewing my cabbage twice,
12 but you know I think the point is important to make. So thank you for being patient with me.

13
14 As I said approval of the project will absolutely increase Maui's affordable rental inventory and in
15 turn help people on Maui get into affordable rental housing. Kahului Lani will remain affordable
16 for at least 60 years and if Catholic Charities has anything to do with it it will be in perpetuity
17 because that's what we want. So you know, I foresee Catholic Charities being on the island
18 working with this for many years to come.

19
20 Our project will come with case management for the seniors and this is to help them remain
21 independent and be sustainable because you know these are people who do have financial
22 issues so we want to help them and we want them to remain in the housing. And also utilities
23 will be included in the rent so there's not going to be a separate charge for utilities which is a big
24 plus for our seniors.

25
26 We are also fortunate to have secured financing for the first phase of this project which is 81
27 units and the manager's unit which is a two-bedroom apartment. I also want to point out that we
28 do have a past letter of support from Roy Katsuda who was with Hale Mahaolu and in his letter
29 he wrote that their Hale Mahaolu site in Kihei had a waiting list of over 800 seniors and that is
30 without any public or advertising. So even unadvertised people are signing up for that housing
31 because there's a need.

32
33 Working for Catholic Charities Hawaii I seen many people who cannot afford to keep with the
34 rising rental costs. You know, and you folks all know that's true. Rental house is a commodity
35 I...I live in Pukalani and one day I was coming downtown to testify at the County Council and I
36 saw a sign on the post that said, roommate wanted thousand dollars. Thousand dollars who
37 can afford a thousand dollars to share a room? You know, certainly our folks can't so any way.
38 Sorry I get sidetracked.

39
40 We work with people who are getting evicted, who are homeless. People trying to get into
41 housing, families who are behind in their rent some who live in overcrowded conditions and are
42 looking for ways to get out and lots of times affordability is a problem. Many of the people we
43 serve live on tight budgets and are at risk of losing their housing if any kind of emergency
44 comes up whether it's medical, whether it's family members, whether it's a death of a family
45 member. We also see folks who are fortunate to get HUD, Section 8 housing and we are gonna
46 be accepting Section 8 housing. The problem in the past is people lose their vouchers because
47 they cannot find a unit to rent. So you know just shows the lack of housing. While doing this

1 work I am always constantly and humbly reminded that housing is a right not a privilege. Thank
2 you for allowing me to come forward and talk about the agency. Thank you so much.

3
4 Chair Duvauchelle: Thank you.

5
6 Ms. Fujimoto: Thank you Thelma. So we mentioned earlier we're here today to share some
7 information about the proposed Kahului Lani Affordable Senior Housing Project. You may have
8 seen the article in Sunday's Maui News about the project. And as Candace mentioned, the
9 project is located within the special management area so an SMA Use Permit is required.

10
11 The SMA Use Permit application was filed with the Planning Department last June and the
12 project was reviewed by the Urban Design Review Board in August. I believe a copy of their
13 recommendation letter for approval is provided in the staff report. And the Final Environmental
14 Assessment was published on November 8th and the 30-day challenge period for that ended on
15 December 8th. Next slide please.

16
17 The Kahului Lani Project is an urban infill project in Kahului near the Kaahumanu Shopping
18 Center between Foodland and the Kahului Library. Also nearby at the intersection of Vivau and
19 School Avenue are the Waterfront Apartments which is another multi-story, multi-family
20 residential building and a little further down on the other side of Lono Avenue is the Kahului
21 Shopping Center with the multi-story Kahului Building.

22
23 Our project site is actually the site of the former A&B Kane Street Commercial Mixed Use
24 Project that was approved in 2005 which also included a multi-story commercial and residential
25 building. The project site is currently vacant and contains an old go-kart track which is no longer
26 in use.

27
28 The Kahului Lani Project includes two six-story residential buildings which will provide 164, one-
29 bedroom rental units for seniors owning 30, 50 and 60 percent or less of the County's median
30 income and it also includes one, two-bedroom manager's unit. A senior according to the U.S.
31 Department of Housing and Urban Development Guidelines is someone 55 years and older. To
32 give you a sense of what this project means in terms of affordability this slide shows the 2017
33 HUD specified income limits and maximum gross monthly rent which as Thelma mentioned
34 includes utilities. So for example looking at the 30 percent AMI level which in 2017 was an
35 individual earning \$18,090 or less per year they would only have paid \$484 per month.
36 Someone earning 50 percent or \$30,150 or less would have paid \$807 a month and someone
37 earning 60 percent or less would have paid \$969 a month.

38
39 Kahului Lani also includes a 7,500 square foot multi-purpose building which will provide
40 recreational space for Kahului Lani residents and office space for Catholic Charities Hawaii who
41 will provide social services to residents and other beneficiaries in the community. Also
42 proposed are related improvements including a total of 260 paved and grassed parking stalls,
43 landscaping and any required utility improvements.

44
45 Many of you are probably familiar with the site but just in case here is an aerial view of the
46 project site which gives you an idea of what's there now. You can see it's mostly vacant except
47 for the go-kart track and a few trees. We also have some photographs of the surround area that

1 we would like to share. The views are indicated by the numbers and arrows on the screen so
2 there's one looking across Kane Street, one looking across School Street and another looking
3 across Vevau. The first photo which was taken from the project site looking across Kane Street
4 is towards Foodland and the multi-level parking structure for Kaahumanu Shopping Center. The
5 next photo is from the project site looking across School Street towards the Kahului Library.
6 And the third photo was taken from the northeast corner from the project site looking makai
7 towards the Waterfront Apartments.

8
9 The project area is designated Urban by the State Land Commission and is within the Urban
10 Growth Boundary of the Maui Island Plan. It's designated Business Commercial by the
11 Wailuku-Kahului Community Plan and B-2, Community Business and R-3, Residential by Maui
12 County Zoning. All of the buildings are proposed within the B-2, Community Business zoned
13 area.

14
15 Here's the site plan for the project. The site design incorporates open space around the
16 perimeter with the residential buildings set back approximately 20 to 30 feet with landscaping to
17 enhance the views from the surround area. The buildings are sited so that the multi-purpose
18 building is closer to the commercial uses across Kane Street and the residential buildings are on
19 the School Street closer to the Waterfront Apartments and the Kahului Library. The buildings
20 were also sited to avoid any impacts to the nearby Coast Guard beacon.

21
22 Access to the site is planned from Kane, Vevau and School Street. The Kane Street access is
23 proposed to be right-in, right-out. All three surrounding streets will be improved along the
24 property boundaries and coordination will be undertaken with the Department of Public Works
25 regarding appropriate improvements to the roadways. Vevau Street which is included in the
26 project area will be improved to county standards and dedicated to the County along with a
27 small strip of land along School Street which is being subdivided and dedicated to the County to
28 widen School Street.

29
30 This is a rendering showing the elevations for the residential buildings shown from the parking
31 lot. The maximum building elevation is just under 53 feet high which is well under the 90-foot
32 maximum building height permitted by the B-2 zoning. The architect actually reduced the
33 building height from the typical affordable housing building which is usually seven stories or
34 more. The architectural style of the building is contemporary with a monumental type of design
35 with simple architectural details including variation in the façade of the building to avoid a
36 monolithic look. Here's a rendering of the residential building entrances from School Street.
37 You can see there's a glass curtain wall and entry canopy to highlight the building entrances.

38
39 There are a number of sustainability features incorporated into the project. The project will
40 incorporate renewable energy technology. You may have noticed the carports with PV panels
41 in the parking lot in the first rendering. PV is also being considered for the rooftops of the
42 buildings. The project will be Energy Star certified with low ... (inaudible) ... roofing products and
43 low VOC finishes. The building shell will be insulated and windows will be tinted to lower energy
44 and air conditioning costs. The project will include LED lighting that complies with Hawaii
45 Energy Standards for energy efficiency and longevity and outdoor lighting with have photo
46 sensors. The project also includes water conserving plumbing fixtures and landscaping will
47 utilize native trees and plants that are appropriate for the underlying soils and will be

1 micro-cultivated to minimize irrigation and high efficiency irrigation will be used where
2 appropriate.

3
4 For onsite drainage, a subsurface drainage system is proposed in the new parking and
5 landscaped areas. The system will be designed to accommodate the increase in runoff from the
6 project for a 50-year, one-hour storm and it will meet the requirements for County's Storm
7 Drainage Rules and Storm Water Treatment Best Management Practices. Catch basin inserts
8 will be utilized to remove sediment, trash debris and pollutants. No significant impacts on utility
9 systems are anticipated as a result of the project. There are existing water meters onsite that
10 can service the project and the project will connect to existing wastewater, electrical and
11 telephone systems.

12
13 No significant archaeological impacts are anticipated as a result of the project. The site has a
14 history of residential and commercial use and an Archaeological Inventory Survey was
15 completed in 2004 for the go-kart facility and archaeological monitoring was also conducted
16 during construction of that project. An updated Archaeological Monitoring Plan for the Kahului
17 Lani Project was accepted by SHPD in October.

18
19 Additionally no adverse impacts are anticipated on the shoreline or recreation areas or on
20 environmental or water quality. The biological survey noted that there are no endangered
21 species or critical habitats on site.

22
23 According to the traffic study no significant impacts are anticipated on traffic or roadways and no
24 significant secondary or cumulative impacts are anticipated as a result of the project. For
25 potential Kahului Lani residents who do not drive this map shows the pedestrian paths to three
26 nearby bus stops within five minutes walking distance of the project. The project site is outlined
27 in red and the bus stops are indicated by pink dots and the pedestrian paths are represented as
28 blue dash lines with existing crosswalks shown in yellow.

29
30 Regarding the project schedule construction is anticipated to start upon receipt of required
31 permits and approvals and is expected to take approximately 32 months. Construction will be
32 phased as Thelma mentioned with the first residential building in Phase 1 and the second
33 residential building and multi-purpose building in Phase 2.

34
35 In summary the proposed Kahului Lani Affordable Senior Housing Project will provide 164 rental
36 units for seniors earning 30, 50 and 60 percent or less of the County's median income. In 2017
37 the U.S. Housing and Urban Development specified gross rents for these income levels
38 between 484 and \$969 a month including utilities. The project is within the Maui Island Plan
39 Urban Growth Boundary and is consistent with the community plan and zoning designation. It's
40 an urban infill project located in close proximity to grocery stores and other shopping, Kahului
41 Library, churches and the county bus route with existing pedestrian linkages all of which we
42 hope will be of great convenience to the residents of the project. As part of the SMA Use Permit
43 application review process we respectfully request your approval of the SMA Use Permit for the
44 project. Thank you very much for your consideration.

45
46 Chair Duvauchelle: Thank you. At this time we'll open the floor up for public testimony. I have
47 some registered testifiers, but I'm not sure if it's on...we are taking testimony only on this

1 agenda item. So anyone...should I read then off... does anybody wishing to testify on this
2 agenda item please come forward. State your name and you'll have three minutes sir.

3
4 Mr. Brian Moto: Good morning Chair Duvauchelle and Members of the Maui Planning
5 Commission. My name is Brian Moto and I'm here in my capacity as a member of the Maui
6 Advisory Board of Catholic Charities Hawaii. I'm also the immediate past chair of the Maui
7 Advisory Board and a recently retired member of the Corporate Board of Director of Catholic
8 Charities Hawaii.

9
10 I speak in support of the Special Management Area Permit being sought by Catholic Charities
11 Housing Development Corporation for the proposed Kahului Lani Affordable Senior Housing
12 Project on South Kane Street. The story of Catholic Charities Hawaii begins in the 1940's when
13 three Maryknoll Sisters began an important mission of outreach and service to orphans,
14 immigrants, plantation workers and the poor. Today, Catholic Charities Hawaii is a statewide
15 nonprofit organization committed to serving all in need without regard to religion, creed or
16 background.

17
18 Kahului Lani is a 165-unit affordable rental project for low income and very low income seniors.
19 Kahului Lani will be Catholic Charities largest and most significant effort at addressing senior
20 rental housing needs on a neighbor island. Residents of Kahului Lani will live in modern safe
21 housing that they can afford and they will have access to onsite social services provided by
22 Catholic Charities Hawaii. Your approval of the SMA Permit will help make this project possible.
23 Thank you.

24
25 Chair Duvauchelle: Thank you. Any questions for testifier? Thank you very much. Good
26 morning, please state your name. You'll have three minutes.

27
28 Ms. Sandra Aki: Good morning. I guess I'm too short. Good morning Madam Chair and
29 Commissioners. My name is Sandra Aki. I come here this morning wearing a couple of hats.
30 One is I'm a member of Face Maui. I'm also a founding member and the president of Hale
31 Makana O Waiale Tenant Association in Wailuku. I'm also a resident of Hale Makana and a
32 senior citizen. When my husband Abraham Aki died a few months ago I was left worrying about
33 how I was going to continue paying my rent. It took both our incomes to pay for our rent, bills,
34 food, gas, et cetera. I knew without his income and living on my social security alone I could not
35 afford to live at Hale Makana which was a big concern because I had nowhere to go and that
36 meant that I could be evicted and become homeless again at any time. 'Cause you see I was
37 homeless many years ago but I thank God for the roof I have over my head. But not being able
38 to afford it means that I could be homeless again. There are many widows living at Hale
39 Makana who also struggle to pay for their rent. We really don't have and are in need of
40 affordable housing. I mean affordable for me and these other widows not what is out there on
41 the market now. The Kahului Lani Project is an answer to prayers for those of us senior citizen
42 whose income lies between the 30, 60 percent of the area median income. We have a shortage
43 of rentals and the Kahului Lani Project will bring 164 truly affordable units for struggling seniors
44 like me on Maui. I hope that you will approve this project. Thank you.

45
46 Chair Duvauchelle: Thank you. Any questions? Thank you very much Ms. Aki. Anyone else
47 wishing to testify?

1
2 Ms. Cecile Ballard: Good morning Madam Chair and Commissioners. My name is Cecile
3 Ballard and I am 86 years of age and this coming March I will be 87. I also live in Hale Makana.
4 I know of people struggling right now because of high rent or emergencies that cause them to
5 miss their rent payment and I know particularly one lady who was a nurse. She had a family of
6 three and her husband passed away. Since her husband passed she has been struggling. She
7 could not afford a three-bedroom apartment and she and her child are getting evicted from her
8 home forcing her to live with her other son and daughter-in-law. Just from knowing the people
9 around me are struggling I know that affordable housing is very needed on Maui. Catholic
10 Charities Hawaii's Kahului Lani is affordable units for lower income folks like me who want to be
11 independent as long as we can. They are providing...(inaudible)...management to help us
12 remain independent and sustainable. This is so important to people who are one paycheck
13 away from being homeless. I have been homeless at one point and I know what it I like and
14 when you live out with a tent you are exposed to all the elements and you are desperate, you
15 may move in some locations that are not safe. So being homeless is really living a very risky
16 lifestyle. And I hope that I am putting out enough feelings so that I would like to urge you to vote
17 for this project, for this very much needed affordable project. Thank you for your time.

18
19 Chair Duvauchelle: Thank you. Any questions? Thank you very much.

20
21 Ms. Charlene Sabagala: Good morning Madam Chair and Commissioners. My name is
22 Charlene Sabagala and I am a widow residing at Hale Makana. My husband just recently
23 passed and with my rent increasing it has made a life a struggle once again. You see I was
24 homeless years ago and even then between my husband and I both working we just made it. I
25 strongly urge you to approve the Catholic Charities Hawaii Kahului Lani Affordable Housing
26 Project so that I might be able to reside with others in a place that I can afford. Mahalo for your
27 time.

28
29 Chair Duvauchelle: Thank you. Any questions? Thank you very much.

30
31 Ms. Sabagala: You're welcome.

32
33 Mr. Tyrone Spellman: Good morning everyone on the Planning Commission. My name is
34 Tyrone Spellman. I'm here as a citizen of Maui and firstly I would like to respectfully thank you
35 for your astute awareness in acknowledging this absolute inescapable plan to build afford
36 affordable subsidized housing for our island senior citizens. This plan is entrenched in our
37 present. Again, it is inescapable. I ask this planning commission to please bring our
38 responsible present into the future in building without delay the housing to sustain our senior
39 citizens well-being. I'm a senior in my 60's. And Catholic Charities has listened intently to the
40 present and has taken the actual steps in bringing this plan before you. Let us all listen intently
41 to the present and take the actual steps in building this housing for our senior citizens. Thank
42 you.

43
44 Chair Duvauchelle: Thank you. Any questions? Thank you very much Mr. Spellman. I
45 apologize I could have read the names they were all for this agenda item.

46
47 Mr. Tom Blackburn Rodriguez: Thank you Madam Chair and I apologize for the status of my

1 handwriting. My name is Tom Blackburn Rodriguez and I'm representing Go Maui. Go Maui is
2 an organization, it's a nonprofit, non-partisan, advocacy organization focusing on affordable
3 housing, on water use, on good paying jobs and also a healthy environment and a healthy
4 economy. I want to thank you very much for your service this morning. I want to thank the
5 commissioners who are all volunteers. I want to thank the staff who have done a great job in
6 presenting to you and also the very professional presentation by the consultants very
7 educational and very much appreciated.

8
9 Go Maui is in very much in support of the Special Management Area Use Permit that is being
10 requested for this project. Although you will hear much about the value of the project the focus
11 this morning is on approval of the SMA. And with your due diligence I respectfully ask that you
12 approve that request. It goes without saying as we always say that the problem of affordable
13 housing is a not a problem it is a crisis. If this were a wildfire burning in Southern California you
14 would have an idea of what the crisis is in affordable housing. The increasing amount of
15 homeless people in Kihei where I live for example and the terrible stories we hear about seniors
16 and others whom life has forced into the streets after working hard all their lives and being
17 productive, contributing members of this community. It is unfortunate that we live in a society in
18 which you have to age into what every citizen should have which is the right to affordable
19 decent housing. It's like Medicare you don't get the medical care until you live to 65. Now you
20 don't get the housing until you live to be a senior. We need to approve this project. You should
21 approve it with joy in your hearts for what you're able to do and the service you're able to
22 provide and to remember outside of this room and all of us have jobs, all of us are paying our
23 rents, our mortgages, we're very blessed. Outside of this room there is a wildfire blazing which
24 we cannot put out with spitballs and good intentions. This is a great step forward. It is a small
25 step, but a necessary step. And I again I respectfully urge you to approve the application so this
26 project can go forward and I thank the professional presentation by the Staff, your work and also
27 by all the consultants. Thank you very much and again, thank you most gratefully for your
28 service. Aloha.

29
30 Chair Duvauchelle: Thank you Tom. Any questions? Thank you very much.

31
32 Mr. Blackburn Rodriguez: Thank you.

33
34 Chair Duvauchelle: Anybody else wishing to testify on this agenda item? Please come forward,
35 state your name and you'll have three minutes.

36
37 Mr. Kaneloa Kamaunu: Aloha mai kakou my name is Kaneloa Kamaunu from Waihee Valley.
38 My concern, I have nothing against the project but my concern is with...I'm with
39 Hui...(inaudible)...I'm also with Aha Moku O Wailuku as well as kuleana from Waihee and the
40 concern that we have since last year is the protection of the integrity of the sand dunes the
41 puone. We've been fighting for ten years on this subject matter of when permits are given for
42 construction to be done especially in these areas it hasn't failed that even though they come
43 forward with these beautiful presentations that they forget one important thing those people that
44 actually already are in those areas which happen to be our ancestors or they fail to address is
45 the rights of those people to remain there. As much as our living kupuna are struggling that is
46 really, that is really the concern of the society because it's the way this society is run that they
47 allow their senior citizens to grovel after all the years of service that they give in their

1 communities. They are put down to this part of groveling in front of you to get just a little
2 humanity. It is the way this society thinks that these people are in this predicament,
3 homelessness, lack of medical care. It happens not only to senior citizens, those that return
4 home for the service, I know, my brothers are like that too, military service. So the thing is why
5 I'm here for is I have nothing against the project. What I do have is the professionalism that is
6 behind me that continue to bring forward projects that do not clearly state that there are other
7 people in these areas that get imposed upon, that's historic sites and especially the burials. It
8 hasn't failed till today from the time they started digging in these areas that they have found the
9 iwi of our kupuna and the desecration that is done to them in these areas. They are put into a
10 hole saying that oh, we'll give them a place a burial so they take them from where they are, they
11 dump them in a hole all together unrespective of who they actually are, unrespective of their
12 rights that they were given when they were alive to be buried there and to remain there. An 1860
13 law which is part of the 6E law that is in front of you and being that this commission allows
14 permits to be given then after our battle for the last ten years having our own money to go and
15 fight Maui Lani to get this little where we have so I come to this commission to make sure that
16 you are accountable for your actions when you give such permits out to people. That you take
17 into consideration the moratorium, the actions that already been taken and the problems we're
18 having with Public Works as far as permitting in these areas.

19
20 Chair Duvauchelle: Thank you sir. Any other questions? Thank you. Anybody else wishing to
21 testify please come forward.

22
23 Mr. Bill Frampton: Good morning Chairwoman. My name is Bill Frampton and I'm here as
24 a...speaking as a Maui Advisory Board Member of Catholic Charities Hawaii. I'm also a
25 planning commission from a profession but I'm very pleased and grateful to be on this advisory
26 board that has been helping to work with the consultants and the team to push a project like this
27 forward. It's really exciting. The team that is doing this project from Oahu working with the
28 Hawaii Catholic Charities is extremely talented and capable of building projects. They've done
29 so on Oahu. They have multiple projects they've done that are really worthy. The elements that
30 they incorporate into the project make it something that's worthy to be proud of.

31
32 I just wanted to mention there's a couple elements of the project itself, the design elements and
33 construction elements that I think are worthy of noting. The parking, onsite parking that they are
34 proposing to do is really neat to see that they're doing...they're taking advantage of doing grass
35 parking that's allowable by law. I think that's very important especially the proximity to the
36 ocean and the Kahului Harbor in this area which also ties into the community gardens. There's
37 a lot, if you look at the landscaping plan, the site plan you'll see there are...there's a lot of green
38 space on this plan. If you look at what's allowable in terms of the development potential of the
39 site, the architects did a really neat job...they're staying well below the allowable development
40 standards in the area, floor area ratio, the height for example it's only 58 percent of the
41 maximum that's permitted. They were sensitive to the area and it seems to be that they did a
42 good job of understanding the sustainability elements as well by incorporating the photovoltaics.
43 But I do really like the community gardens and the grass parking, the green that's there. I think
44 that's something that's important we need to be pushing for again in protection of storm water
45 runoff and being in the SMA it's something that's important for you guys to look at. So I think
46 they did a nice job with that. And thank you for the opportunity to be here and for hearing this
47 project today and the team will be able to, I'm sure, answer any of the questions you have.

1 Mahalo.

2

3 Chair Duvauchelle: Commissioner Carnicelli.

4

5 Mr. Carnicelli: Good morning Bill. Just because I heard you testify on this before is the
6 improvements that the applicant is going to be doing to Vevau and School Street, I heard you
7 testify on this before, do you feel as though that would have been the perfect opportunity for the
8 County to come in and do off sites in that particular instance? I mean, I get that you know the
9 applicant's gonna be doing that but you think this would be one of those instances where we
10 have an affordable project where the County could have stepped up and done the off sites on
11 those two particular streets?

12

13 Mr. Frampton: Yeah, it's an interesting question. What is amazing is that the team, all the
14 improvements that they are doing and the exemptions they're not asking for that they maybe
15 could have asked for, what you're talking about the total cost of this project doing the roadway
16 improvements then dedicating the road to the County, not only doing the road but they're doing
17 a nice road with landscaping incorporated into it, curbs, gutters, their sidewalk, it be nice to have
18 had that but at the same time I think the team did a great job again of being very sensitive to the
19 amount of improvements they're doing to make it financially viable. I do think in the future, I
20 hope this isn't the one and only project they do here in Maui. I hope there's gonna be more and
21 that be something that I think once they establish and show they're capable of what they're
22 doing I think the County would be comfortable doing some kind of joint public/private partnering
23 with them maybe. That would be a great idea.

24

25 Chair Duvauchelle: Thank you. Commissioner Hill.

26

27 Kahu Hill: Aloha kakahiaka.

28

29 Mr. Frampton: Aloha.

30

31 Kahu Hill: We were given something this morning for a parking reduction and I just wanted to
32 see if you could tell us in the plan that we've seen how that will apply?

33

34 Mr. Frampton: I will leave that to the consultant team to address. They're much more capable
35 of doing it but I will note that I'm glad that it was given. If you look at the total parking that would
36 be required for this area, if there's a 164 units and providing two stalls per unit that would be
37 pretty outrageous and it would involve a lot of asphalt and impervious area in this site and you
38 wouldn't be able to have the community gardens for example as well as the large setbacks from
39 the landscape buffering that we have on the appropriate areas. So I think the parking reduction
40 I think was a creative way that the Planning Department worked with them to come up with as
41 well as the grass parking. But they also, given that this is gonna be for single units, senior
42 housing, I think it's an appropriate reduction to give. If this was gonna be for a different type of
43 a project maybe multiple units per two, three-bedroom type apartment units where they would
44 might be more cars per unit maybe you would have to look at that. But given that this is for
45 strictly a senior housing, the proximity of the pedestrian plans that they've taken into the
46 consideration. The proximity...they're very close to Foodland, close to the shopping center, the
47 bus route is close by, and I think we could actually even work with the County to get a bus stop

1 put right next to this project would be pretty cool as well. But they're also...they're still close by
2 within a five-minute walk for a pedestrian shed, that's within reason it seems. But I think the
3 parking waiver is very appropriate and I hope it's supported. Thank you.

4
5 Chair Duvauchelle: Okay, any other questions for Bill? We'll close public testimony and ask
6 questions of the project team after.

7
8 Mr. Carnicelli: Somebody else wants to testify.

9
10 Chair Duvauchelle: Oh okay. Thank you.

11
12 Mr. Steven Kealoha: Aloha Madam Chair and Members of the Planning Commission. I'm
13 Steven Kealoha. I'm not related to Thelma who testified earlier and I serve as the current
14 Chairman of the Maui Advisory Board that Mr. Moto talked about earlier as being the past chair.
15 And therefore, I also am the Maui representative on the Catholic Charities of Hawaii Board of
16 Directors. I testify in full support of the Special Management Area Use Permit application as it is
17 being presented before you for our proposed Kahului Lani affordable senior housing project. I
18 believe that there is general consensus among those who reside here some of whom you've
19 heard testify this morning that as a community we struggle to adequately meet our housing
20 demand on Maui and anything that we can do to enhance the availability of subsidized housing
21 in a major way helps immensely. Our proposed 164-unit development is one such project.

22
23 Here are some additional pertinent facts for you to consider. In the 2016 Census reports that
24 from 2010 to 2016 Maui County's average annual growth rate for the 65 and older category was
25 5.4 percent increase and 17 percent of Hawaii residents fall into this category. The State
26 Department of Business Economic Development and Tourism in its 2015 Housing Demand
27 Report indicates that Maui County will need to produce 13,949 affordable housing units by 2025
28 to keep up with the demand.

29
30 Lastly, according to Maui County's Housing and Human Concerns Department only 60
31 affordable housing units were added in 2017 and just 400 are projected to be completed in
32 2018. Recognizing its obligation to support this need the Maui County Council late last year
33 passed Bill 89 amending Chapter 2.96 relating to residential workforce housing policy signed
34 into law as an Ordinance No. 4780 by Mayor Alan Arakawa on November 7, 2017 it created
35 additional incentives to construct affordable rental housing by expanding the issuance of
36 housing credits to include development of rental units. This will help us greatly. Your approval
37 of our application takes this project one step closer to reducing potential homelessness by
38 providing much needed affordable rental housing for seniors.

39
40 Having served on numerous boards of directors of charitable nonprofit organizations for the past
41 17 years and hired specifically to administer MEO's Welfare to Work Program
42 ...(inaudible)...program for three and a half years I can attest to the fact that sustainable jobs
43 that pay a living wage and affordable housing are two of the most critical components for a
44 healthy and livable community. I urge you to voice approval of this project and I thank you very
45 much for your attention. Mahalo

46
47 Chair Duvauchelle: Any questions for Mr. Kealoha? Thank you very much. Anybody else

1 wishing to testimony on this agenda item please come forward. State your name, you'll have
2 three minutes.

3
4 Ms. Francine Aarona: Aloha, I'm a familiar face. I'm Francine Aarona, Aunty Mopsey from
5 Paia. Every time I come here I get educated and hear the testimonies of the people that come
6 here and I just came today to listen, but I am too with brother who came up who had a concern.
7 It is a concern of our people the desecration of land and...but we...I want to give food for
8 thought. This is a good project. I came to learn about it. Our kupunas are in need of this
9 affordable housing. Even though you say archaeological information has been provided from
10 go-kart whatever, as you prepare yourself to do this remember that ancestors did occupy and
11 that you go through the process and you contact people so that you can oki to make it right and
12 to make it livable because yes, we are in need of this. I, too, have graves in my yard that I have
13 to tend to, but it's a process. So it's food for thought that we need to do it and the sand mining
14 there's a lot of history, but we need to just walk carefully and I think if we do it properly and
15 show our people that we're dedicated and to malama our ancestors who once was rested there
16 I think we'll be okay. I think we'll be okay. So just a food for thought for all of you. This is very
17 heartwarming, so thank you. Thank you for allowing me to talk.

18
19 Chair Duvauchelle: Any questions? Thank you very much. Anyone else wishing to testify on
20 this agenda item? Okay, seeing none, we will close public testimony. I would like to give the
21 applicant an opportunity to address any of the questions or concerns brought up during public
22 testimony at this time. If not...and then we'll open the questions up for the commissioners.

23
24 Ms. Fujimoto: Sure, thank you. Again my name is Marissa Fujimoto. I'm with Munekiyo Hiraga.
25 Just really quickly wanted to respond to the question about the parking on the site. So in the
26 project team experience you know many seniors at this income target level have or don't have
27 cars although we know that some of them do. So the project provides more than one to one
28 parking. One stall per unit. And it also...the parking waiver was granted in accordance with the
29 Parking Code requirements. So a residential, mixed use project is eligible for a parking
30 reduction or waiver of up to 30 percent of the required stalls and then 25 percent of the required
31 parking can be provided on grassed or graveled areas. So that's how the design was done.
32 Does that answer your question?

33
34 Kahu Hill: It does. And I just was wondering also about visitor parking. Is that also included in
35 the reduction?

36
37 Ms. Fujimoto: It is. Well it's considered. There's also parking...parking was calculated and
38 accounted for, for the multi-purpose building as well as the residential building.

39
40 Chair Duvauchelle: Thank you. All right Commissioners, questions? Commissioner Hill.

41
42 Kahu Hill: A couple of questions. I'm wondering Vevau Street and that it's just...it's so narrow
43 how you're looking to accommodate the large equipment necessary for the construction project
44 on that street?

45
46 Mr. Chad McDonald: Good morning Madam Chairperson and Commissioners, Chad McDonald
47 M & A Hawaii, civil engineer. With regards to your question to Vevau Street, the developer does

1 plan to improve Vivau Street to dedicateable standards. With regards to the equipment, you're
2 asking about the equipment for construction? Well, in terms of easement and right of way, that
3 Vevau Street will be developed to two lanes so that's 24 feet. I think by Code 28 feet is
4 required. So the 28 feet is more than adequate enough space to get equipment in and out of
5 the project site.

6
7 Chair Duvauchelle: Thank you. Commissioner Carnicelli.

8
9 Mr. Carnicelli: The one question I had is are you guys going to improve Vevau all the way from
10 Kane to Lono or just to School Street?

11
12 Mr. McDonald: Kane to School Street.

13
14 Mr. Carnicelli: Kane to School, okay.

15
16 Mr. McDonald: That's correct.

17
18 Chair Duvauchelle: Director.

19
20 Mr. Spence: Also for the Commissioner's information. The State is looking at a...doing a
21 project, an affordable project, actually mixed use project on the makai side of Vivau and they will
22 be doing, also doing improvements on that street and they'll come in for an SMA Permit as well.
23 We are currently looking at relocating the bus, the hub, there you go, I was going terminal and
24 that's not the right word, the bus hub on Vivau right there at that State property. So that will also
25 require improvements. Some of that will be funded by the County because it's the County bus
26 line. And so you're gonna see a lot of action on Vevau and it will be improved to County
27 standards. I would also note that there's a number accesses to this particular property. Vevau
28 is not the only access for heavy equipment. So there's plenty of places that you can bring
29 equipment onto the site.

30
31 Mr. McDonald: That's correct Director. Access is going to be off of Kane Street, right-in,
32 right-out as well as School Street. So access those three perimeter streets.

33
34 Chair Duvauchelle: Thank you. Commissioner Higashi.

35
36 Mr. Higashi: I have a...I think this is a great project and it's sorely needed. When I look at the
37 plan itself though if I was a senior citizen I would like to have my room close to the shopping
38 center although it's surrounded by...but looking at the plan itself is it possible to have those
39 buildings on the corner of Kane and Vevau vertical so that your beautiful garden can be enjoyed
40 by both buildings. When the residents get out they'll have access to the grounds itself. The
41 way it is situated now Building B it's a pretty long distance for them to enjoy that garden or
42 whatever that is there. Whereas if you had it parallel where the garden would be in the middle
43 then both sides of the residents would be able to get out and enjoy the area. That's just a
44 suggestion as far as looking at alternatives for the residents there.

45
46 The other in the future I think looking at Kane, Kane is a very busy street and I think the idea
47 about having the bus route going through Kane with an in road so that bus would be actually

1 away from the traffic itself and give the residents time to get in and out of the bus. So if you look
2 at Kane where the corner is, if you have a drive in area where the residents can get in and out
3 of the bus and away from the traffic, that would provide an area for the residents itself...looking
4 at the plan itself.

5
6 Mr. McDonald: Thank you. Thank you for your comment Commissioner. With regards to your
7 comment on the garden. You know the project team did look at site in terms of vehicular
8 circulation. What made most sense in terms of parking efficiency and the second part about
9 that is addressing storm water. So that corner of the site is actually the low point of the project
10 and storm water...the storm water detention system is actually beneath the community gardens.
11 So that green area made perfect sense in terms of engineering efficiency to locate it in that
12 area. Just to give idea as to the thought process that was involved in selecting that area as the
13 community garden and green space.

14
15 Mr. Higashi: Thank you.

16
17 Chair Duvauchelle: Thank you. Any other questions? Commissioner Robinson.

18
19 Mr. Robinson: Aloha.

20
21 Mr. McDonald: Aloha.

22
23 Mr. Robinson: This is sort of new for me. I'm not used to looking at a SMA of his size without a
24 EA. My concern is the, is the drainage. I've heard from your report that you guys are gonna
25 have underground drainage capacity to help fulfill that. I don't know if there's any data of the
26 displacement from the current water rainfall catchment compared to what you're displacing and
27 then how much water is...I traverse this area almost daily. I have...my business is on Wakea.
28 Couple weeks ago this was part of the problems we had in Kahului with water. I also remember
29 when we had the high tides and had the May tsunami this was also an area of concern with the
30 water.

31
32 And my concern isn't the flooding 'cause floods are gonna flood just like Kihei home. My
33 concern is the senior citizens being in an area that needs to be evacuated that I saw on
34 Houston and having this very...these type of residents in a susceptible area. And going further
35 with that what of our...if there's going to be elevators, elevators usually have to have a reset of
36 a elevator to go down and it's not floor level. And so if there is an evacuation, so this is where
37 I'm going, I'm not going with, I'm going with in the floods, in the tsunamis and we have
38 160 people in rooms that might need to be evacuated and have you guys thought about that?

39
40 Mr. McDonald: I imagine, I can't speak for the property manager but I expect the developer in
41 his discussion with the property manager will develop some type of evacuation route or
42 evacuation procedure for their tenants. I mean—

43
44 Mr. Robinson: We have a topography map...I apologize 'cause this was EA exempt from us we
45 don't have the site lines of where this building is sitting from what the street level is. You know, I
46 so I mean it might all be in it and you guys all might be fine but from the information that I have I
47 don't. I don't know if that's—

1
2 Mr. McDonald: So the property is actually identified as Zone X which is outside the flood
3 inundation zone. I believe the elevations of the site is between speaking in terms of mean sea
4 level between 10 and 12 for elevations.

5
6 Mr. Robinson: Okay. And then as far as the street level is there elevated or is this going to be a
7 zero lot or it is going to be elevated lot off of Kane and Vevau?

8
9 Mr. McDonald: Well, we're gonna have slight elevation just to address flooding, everyday
10 flooding, storm runoff looking in the magnitude maybe a couple of feet in relation to the
11 surrounding perimeter Kane Street, School Street, and Vevau. Yeah, we're not planning to
12 really elevate the building footprints per se. Just to provide adequate drainage away from the
13 building.

14
15 In response to your question on the additional storm runoff quantities the project will be
16 increasing the storm water flow by about 6.38 cfs and that equates to about 12,000 cubic foot of
17 storage that's gonna be required and we're gonna be providing 18,000 and this is for a 50-year.
18 So in terms of I know...(inaudible)...but in terms of pollution usually the first flush is where you
19 get a lot of pollutants kind of running off into the storm drainage system. Since the storm
20 drainage system is being designed for a larger storm that's essentially going to be retained on
21 site.

22
23 Mr. Robinson: And is...was there any storm information that was any water flowing onto the lot
24 'cause I've seen puddles on that lot before. So is, is, would that be a abated as well with your
25 increase in the ...(inaudible)...level?

26
27 Mr. McDonald: That will. Actually, yes Commissioner. Actually because we're improving the
28 streets, Kane Street, School Street, and Vevau with curbs and gutters that's gonna address the
29 runoff coming off from the streets onto the project site.

30
31 Mr. Robinson: Okay, thank you Chair.

32
33 Chair Duvauchelle: Thank you. Commissioner Tackett.

34
35 Mr. Tackett: Mr. Kealoha he referenced sustainable wages and living wages could you,
36 somebody please touch on the socio economic impacts of this project for our community?

37
38 Mr. McDonald: Give us one minute to get the appropriate consultant.

39
40 Mr. Tackett: Thank you.

41
42 Ms. Thackerson: Candace Thackerson, Staff Planner. By socio economic impacts would you
43 like to know both short term and long term as in...

44
45 Mr. Tackett: Yes please.

46
47 Ms. Thackerson: Okay, so on Page 20 of your staff report under the heading, Socio Economic

1 Impacts, it just briefly goes into what's gonna be provided after the project. So for long term
2 obviously the socio economic impact is going to be providing the housing units for our senior
3 housing and then it says in short term the project will generate construction phase economic
4 impacts and so that's employment income and expenditure impacts that are created by onsite
5 and offsite construction employment and manufacturing employment in support of the
6 construction. So that's the short term will be the construction jobs.

7
8 Mr. Tackett: Is there anything in place to make sure that the short term wages match the
9 community?

10
11 Ms. Thackerson: Are you talking about that the construction...can you be more specific on
12 that?

13
14 Mr. Tackett: Just to whether they'll have benefits that allow you to survive in the community,
15 medical, dental like those types of things.

16
17 Ms. Thackerson: For...you mean for the construction jobs?

18
19 Mr. Tackett: Yeah for the phases.

20
21 Ms. Thackerson: All the phases that are being provided. I'll let the project team answer that.
22 They'll know the specifics of that.

23
24 Mr. Jeff Furuta: Hi Commissioner, Jeff Furuta with the project management team. For your
25 question I'm not quite sure but as far as the construction workers with benefits they're all gonna
26 be union workers so I'm again, I'm not part of that but I'm sure they're all gonna be, you know
27 have their full benefits.

28
29 Mr. Tackett: Thank you.

30
31 Mr. Furuta: Okay, thanks.

32
33 Chair Duvauchelle: Commissioner Robinson.

34
35 Mr. Robinson: Can I speak to the traffic study please?

36
37 Mr. Tyler Fujiwara: Good morning Commission.

38
39 Chair Duvauchelle: State your name please.

40
41 Mr. Fujiwara: Tyler Fujiwara with Austin Tsutsumi and Associates.

42
43 Mr. Robinson: Tyler I apologize again, I don't have your report because we don't have the EA.
44 So my question is, is first when was your report done and what was the date of it?

45
46 Mr. Fujiwara: Our report's dated May 5, 2017.

47

1 Mr. Robinson: 2017, okay thank you. As part of your report what are the hours of your, of your
2 study?

3
4 Mr. Fujiwara: So we studied the A.M. and P.M. peak hours. So the A.M. was from 7:15 to 8:15
5 and the P.M. was 3:45 to 4:45.

6
7 Mr. Robinson: Okay, and in those reports, and again I apologize I don't have that but
8 is...there's a new produce warehousing facility on the corner and as well there's another one
9 that's being built right now that's gonna also be with big trucks and heavy trucks did you guys
10 decipher between any type of vehicle or just any vehicle?

11
12 Mr. Fujiwara: For that we, you know we do assume an ambient growth rate. So in the area we
13 included a growth between a half percent and 4.7 percent growth. So this would be an ambient
14 annual growth rate based on the DOT's MRTDM model. We do include heavy vehicle trucks
15 but that particular project, yeah we did not include any in this report.

16
17 Mr. Robinson: Was there any notation of any...you know it's...again it's because I'm familiar
18 with this area and because with the trucks...all my kupuna wake up early. They don't wait till
19 7:15 or eight o'clock to start doing something, they're crack of the dawn and you know walking
20 the mall and doing things and my concern is we have two crosswalks right now one on each
21 side of the driveway in and out of Kaahumanu. It's kind of...you know this project is good, my
22 concern is I want to make sure that it's safe for the kupuna. And have you guys looked at
23 maybe having some type of is have there been a stop light looked at for the safety of the
24 crosswalk. Has there been just a lighted you know reflective crosswalk where they press it and
25 the crosswalk would light up as they're crossing the street to help the safety of that because
26 again there's a lot of trucks come at different speed. Kane with a proliferation of traffic on
27 Wakea every things being pushed to the side. We have now that yellow going into Kane
28 instead of red light you know coming off of Kamehameha. And so my concern is as we grow
29 and in a few years from now the traffic is gonna be even larger besides the normal growth rate
30 that you guys have there. So you have any studies of what it would take for a stop light or for a
31 crosswalk light?

32
33 Mr. Fujiwara: Well currently at the Kamehameha Avenue intersections with Lono and Kane
34 Street there are traffic signals with crosswalks so those are protected for pedestrians. There is
35 two crosswalks across Kane Street at its intersection with Vevau currently that is not signalized
36 for pedestrians, but you know we have been in contact with the County Department of Public
37 Works so we are gonna be working with them to determine the appropriate measure for any
38 type of improvements there.

39
40 Mr. Robinson: So is and part of this report it's from the Department of Transportation is there a
41 way to look at the Final EA to make a comment and I see that they didn't have a chance to
42 make a comment. Has there been a comment from the DOT regarding the crosswalks and the
43 senior.

44
45 Ms. Thackerson: No, Candace Thackerson...(inaudible)... Candace Thackerson, Staff Planner.
46 DOT has not given us any comments. I know they have some plans to do some complete
47 streets in that area but they don't have it in their grand plan. But Public Works I think can

1 address some of the County roadways a little bit better.

2

3 Chair Duvauchelle: Deputy Director would you like to—

4

5 Ms. Dagdag-Andaya: Thank you Chair. For Kane Street and Vevau Street the study that was
6 provided and our existing data don't support a traffic signal at this time you know given the
7 growth rate and you know existing conditions. There is however, there are however,
8 opportunities to create a more safer intersection there and that could be done through just you
9 know small projects where we can work with the applicant in turning radius, turning radii,
10 flashing signals and other type of enhancements. Lighting is also a big issue in this area as well
11 so what we're currently looking at Public Works is improving the lighting with the existing street
12 lights there. So there are opportunities to create a safer intersection without having to do a
13 traffic signal over there.

14

15 Chair Duvauchelle: Commissioner Robinson.

16

17 Mr. Robinson: And I think you're probably right. I was thinking...you know, I'm also thinking as
18 far as the lighted crosswalks you know where the...as they walk they have those lights up as
19 they're going there to alert drivers not necessarily stop it. But is I thought I read in this report
20 where the lighting has to be a dim level because of the area and so it counteracts what we want
21 to do with the crosswalk or is that exempt from it?

22

23 Ms. Dagdag-Andaya: We would have to abide by the lighting standards for the area. You're
24 correct in that, but there are different treatments that can be done in the area that could possibly
25 enhance visibility so that both pedestrians and motorists can see each other.

26

27 Mr. Robinson: So if there was a lighted sidewalk would that be a County issue or would that be
28 a DOT issue?

29

30 Ms. Dagdag-Andaya: The lighted...well, Kane Street is basically a county roadway. So
31 Kamehameha Avenue...or I'm sorry, Kaahumanu Avenue however is a State, under State
32 jurisdiction but everything Kane, Vevau, Lono, and Kamehameha that's all County of Maui.

33

34 Mr. Robinson: Thank you.

35

36 Chair Duvauchelle: Commissioner Carnicelli.

37

38 Mr. Carnicelli: So I think Commissioner Robinson brings up a great point here and I guess my
39 question is, you know if we're looking at the walkability of this project which is phenomenal, but
40 if they're gonna be...if our kupunas gonna be crossing Kane over to Kaahumanu Center then
41 you know Kane...you know my father is 87 he doesn't walk quite as spritely as he used to so
42 you know just saying okay, there's a crosswalk may not be enough. I don't want to necessarily
43 condition you know the project to have to put in lights but I think that what Commissioner
44 Robinson brings up is very valid. I think that we need to have some sort of lighted crosswalk,
45 blinky lights, whatever it might be on Kane for them to go back and forth. Whether you talk
46 about bus lines, I mean, food, shopping, everything like that, you know, so I mean I just think
47 that that might be something that...again, I don't want to put it on the petitioner necessarily but

1 is that something that the County can work, coordinate it with?
2

3 Ms. Dagdag-Andaya: Chair, yes so noted Commissioner Carnicelli. And also wanted to point
4 back to Director Spence's statement earlier that there will also be another project across the
5 street so at that time...I think incremental improvements can be made to that intersection
6 without having to pinpoint it on the subject applicant today.
7

8 Mr. Carnicelli: Thank you.
9

10 Chair Duvauchelle: Thank you. Any other questions? Commissioner Hill?
11

12 Kahu Hill: I don't know who to address this to. Just looking at the assessments were done in
13 2004 and it's been with go karts and pavement there, it's a big project and I do support that for
14 the kupuna and the elders. I just wanted to know how can we could be assured that the
15 archaeological monitoring plan can be implemented and adhered to during this project?
16

17 Ms. Thackerson: Candace Thackerson, Staff Planner. So on Page, let's see here, on Page 16
18 of your staff report under the heading, Archaeological, Historical and Cultural Resources it does
19 reference that they updated the archaeological monitoring plan since that time. You know that's
20 necessary to do, technology changes as well from different types of archaeological monitoring.
21 So the plan was updated and submitted to SHPD after they had said we would like to see an
22 updated plan, they updated it, they submitted, and SHPD has accepted the plan as of such. So
23 on my recommendation I believe there are several conditions that reference that. One
24 that...Number 19, that development of the site shall proceed subject to the approved
25 archaeological monitoring plan as accepted as complete by DLNR, SHPD. The other letter
26 dated November 30, 2017, Number 10 says that DLNR, SHPD will be notified at the onset and
27 at the completion of the project. 11 says that in the event that any historic resources including
28 human skeletal remains, structural remains, cultural deposits or lava tubes are...if anything
29 unexpected happens that all work shall cease in the immediate vicinity of the find. The find shall
30 be protected from additional disturbance and that they will contact DLNR, SHPD immediately.
31

32 Kahu Hill: So the beginning and end of the project and as you're saying during. So there will be
33 monitoring?
34

35 Ms. Thackerson: Yes, yes there will be monitoring during construction of the project.
36

37 Kahu Hill: Mahalo.
38

39 Chair Duvauchelle: Thank you. Any other questions? Deputy Director?
40

41 Ms. Dagdag-Andaya: You know may I also add as well with respect to the archaeological
42 monitoring that that is the enforcement of HAR, Hawaii Administrative Rules 13-279-4 relating to
43 SHPD is a SHPD matter. So in their October 30, 2017 letter SHPD to the applicant they have a
44 number of stipulations including you know having a preconstruction briefing prior to any
45 construction activities. These are things that SHPD has put into place and that's between the
46 applicant and the SHPD.
47

1 Now when you have the grading permit come in, you know submit or we obtain comments from
2 SHPD and then they provide us with the comments, but I mean, they have their rules that they
3 need to enforce as well. So if we hear about any issues then we notify SHPD and SHPD needs
4 to take action. So I think the conditions that the Staff had provided in the...in your report, you
5 know I hope those are clear because I mean it is the responsibility of the applicant to inform
6 SHPD of any findings that they on site. And also, I mean I just wanted to add if SHPD that's
7 responsible for enforcing their rules.

8
9 Kahu Hill: Mahalo.

10
11 Chair Duvauchelle: Thank you. Any other questions from the Commissioners? Commissioner
12 Hudson?

13
14 Mr. Hudson: Hi. I don't know who would be answering this. How is this project being funded?
15 Is it all through the Charities or is there government funding or are there grants?

16
17 Ms. Thackerson: I'll let the applicant explain the funding for the project.

18
19 Mr. Furuta: Hi, Jeff Furuta again. The project is going to be funded with government money
20 and some small equity from the nonprofit itself.

21
22 Mr. Hudson: So if it's gonna be funded with government money you have to comply with certain
23 government regulations?

24
25 Mr. Furuta: Right.

26
27 Mr. Hudson: And that includes evacuation plans?

28
29 Mr. Furuta: Yes, that's all part of the project management.

30
31 Mr. Hudson: That includes policies to make sure that the kupuna are watched over?

32
33 Mr. Furuta: Yes.

34
35 Mr. Hudson: Thank you.

36
37 Chair Duvauchelle: Thank you. Any other questions from the Commissioners? Okay, can we
38 have the Department's recommendation?

39
40 Ms. Thackerson: Just prior to the recommendation just a brief analysis for the...on Page 13
41 under Coastal Hazards I do address that therefore emergency and civil defense procedures to
42 organize and direct operations at the Kahului Lani facility in event of emergency or civil defense
43 actions such as a tsunami will be established. So briefly, I know it's hard when you guys are
44 going through these staff reports to catch that one sentence or two sentences that briefly, briefly
45 address it.

46
47 Also, because an EA was done prior to this the Staff is moving toward being with less paper for

1 you guys. I know previously at a commission had discussed having iPads and everything
2 electronic so when you say that you know Commissioner Robinson had mentioned that there
3 was no traffic report or there was no drainage report, the links are provided after my analysis.
4 So I go into the drainage and then I say, if you'd like to see further detail it's listed at the OEQC
5 website and here's the complete drainage report as well as the traffic report. And we're gonna
6 be moving towards that in effort to not include a 100-page document times how where many
7 people. So just so you know if an EA has been done previously on this project and you guys
8 were not the approving agency or even if you were and you've seen it before, there's no reason
9 for us to reprint so we include a link to it online where it's in its entirety.

10
11 On that note, I can move to the recommendation and I would like to strike one of the conditions
12 because they're a repeat. Number 4 and Number 8 say the same thing. So I'd like to strike
13 Number 8 and just leave in Number 4. They both just state that to the satisfaction of the
14 Commission or the Department the applicant will develop the property in substantial
15 compliance. That's a standard condition on all of our projects obviously that they will build what
16 they presented here, but I also put it under the project specific so there's really just no need to
17 have that twice.

18
19 On that note, in consideration of the foregoing the Planning Department recommends that the
20 Maui Planning Commission adopt the Planning Department's report and recommendation
21 prepared for the January 9, 2018 meeting as its findings of fact, conclusions of law, decision
22 and order and authorize the Director of Planning to transmit said decision and order on behalf of
23 the Planning Commission.

24
25 Chair Duvauchelle: Thank you. Commissioner Higashi.

26
27 Mr. Higashi: I move to approve.

28
29 Mr. Castro: Second.

30
31 Chair Duvauchelle: Okay, moved by Commissioner Higashi, seconded by Commissioner
32 Tackett. Discussion on the motion?

33
34 Mr. Tackett: I believe it was Mr. Castro.

35
36 Chair Duvauchelle: Oh, I'm sorry, Mr. Castro seconded the motion. Any discussion?
37 Commissioner Carnicelli.

38
39 Mr. Carnicelli: Just to state the obvious and that is I don't think there's anyone that is in
40 opposition to this particular project in and of itself. However, we're here to talk about the SMA
41 and even though I'm saying however, doesn't mean I'm...I'm still going to support the motion I'm
42 just speaking that you know going into it obviously there's concerns 'cause it's an SMA even
43 though this is needed, the community needs it, it's a great project, it's infill, it's everything that
44 we would want, you know, the concerns, you know Commissioner Robinson brought up a few
45 very good points. You know, obviously the very first one is always gonna be drainage for me
46 with an SMA, the tsunami zone, things of that nature. The fact that we've got the 50-year flood,
47 one-hour retention on site, you know that covers that so I just...anyways in support of the

1 motion, great project, thank you very much Catholic Charities and everyone that supported this
2 and everybody that came out and testified in favor of it. Appreciate all of your time and
3 anyways, thanks.

4
5 Chair Duvauchelle: Commissioner Robinson.

6
7 Mr. Robinson: I'm still concerned about the crosswalk not that I want to stop this project. I don't
8 know, I don't want to condition the applicant for making sure that the crosswalk is safe, but it's
9 their tenants. Foodland is right across the street. Senior living they don't go to Costco, they
10 don't buy two weeks' worth. They'll buy a one or two days' worth. I mean, you know it's just the
11 reality of it and really I see the trucks that go back and forth, my trucks, the other companies'
12 trucks and it's a concern. I mean we got a 150 people, you know, so maybe at least 75 to 80 is
13 gonna be there. We also have the church that's across the street with their services, the Life
14 Center, they're constantly going back and forth. I know we're gonna improve it with the next
15 phase, but I don't know how we, I mean I don't need a stop light but we need some kind of
16 lighted safety there, please.

17
18 Ms. Dagdag-Andaya: Chair, yeah and I understand your concerns Commissioner Robinson
19 because I mean, I feel the same way as well. This is an intersection and an area that is such a
20 great infill area. You have the library, you have shopping, you have housing and churches. So
21 you know speaking for the department, you know we will...we'll take a look at this, we're work
22 with the Planning Department and maybe come up with some recommendations for this area
23 and perhaps a pilot project for the future and again, I mean not to pinpoint it on the applicant but
24 it's a good opportunity for the County too...and I'm not gonna, I don't wanna commit ourselves
25 to it but definitely a good area for us to come up with some solutions for pedestrian safety.

26
27 Chair Duvauchelle: Commissioner Carnicelli.

28
29 Mr. Carnicelli: To that note, I know that recently the Council I believe approved that we can use
30 workforce housing funds for off sites now. And so that might be a thing that you know maybe I
31 don't know maybe Thelma you can you know approach one of the Council members about this
32 potentially to see if we can or go to Housing and Human Concerns maybe to Carol or Buddy
33 and see if we can use workforce housing funds to actually do the off sites that Commissioner
34 Robinson's talking about.

35
36 Ms. Dagdag-Andaya: We'll look at different funding options and opportunities for partnerships
37 so, so noted.

38
39 Chair Duvauchelle: Any other discussion on the motion? All right, Director would you repeat
40 the motion?

41
42 Mr. Spence: Thank you Madam Chair and before I do repeat the motion I want to thank
43 Catholic Charities for coming forward with this project. We discussed this with them, I think it's
44 over a year ago now and all I can say is I wish we had a dozen other sites like this to build
45 more. I recently had opportunity to talk to the Council or make comments to the Council anyway
46 on another project. You know we are in dire need of affordable housing but in particular you
47 know the needs of the different generations are different. I look around the room you know

1 some of us are, you know getting to that point where we need to have particular needs meet in
2 our housing. This need is only going to grow as the baby boom generation gets older and we
3 are going to have to seriously take stock of our land use policies in order to provide this
4 generation and others. So with that thank you again. The motion is to approve as
5 recommended by Staff.

6
7 Chair Duvauchelle: All those in favor please raise your hand. That is seven ayes.

8
9 Mr. Spence: Seven ayes. Thank you.

10
11 Chair Duvauchelle: Motion carries.

12
13 **It was moved by Mr. Higashi, seconded by Mr. Castro, then**

14
15 **VOTED: To Approve the Special Management Area Use Permit as**
16 **Recommended by the Department.**
17 **(Assenting – R. Higashi, S. Castro, L. Carnicelli, A. Hill, K. Robinson,**
18 **L. Hudson, C. Tackett)**
19 **(Excused – T. Gomes)**

20
21 Chair Duvauchelle: Thank you. We'll take a ten-minute break.

22
23 A recess was called at 10:32 a.m., and the meeting was reconvened at 10:46 a.m.

24
25 Chair Duvauchelle: Planning Commission is now back in session. Director our next item?

26
27 Mr. Spence: Commissioners we're on Public Hearing Item No. 2. This is in regards to a
28 Council Resolution No. 17-140 amending Title 19 to have a new definition of resource extraction
29 and with us this morning is our Administrative Officer, David Raatz. So take it away David.

30
31
32 **2. MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution**
33 **No. 17-140 to the Lanai, Maui, and Molokai Planning Commissions**
34 **containing a proposed bill to amend the definition of "resource extraction"**
35 **in the Comprehensive Zoning Ordinance. (D. Raatz)**

36
37 Mr. David Raatz: Thank you Mr. Director and good morning Chair and Members of the Planning
38 Commission. For the record, I'm David Raatz, Administrative Planning Office of the Department
39 of Planning. I have a brief verbal presentation on this item. I do apologize for sending you a
40 153 pages for your packet but I'll try to break it down quickly. And I'll start with an overview of
41 the Planning Director's memo dated today which you might wanna reference if you have it
42 handy.

43
44 So as the Director mentioned, the Council adopted Resolution 17-140, and that was on
45 October 6, 2017. So your role today at the request of the Council is to review a proposed bill
46 and provide commentary back to the Council. So the bill which is attached to the memo is titled,
47 "A bill for an ordinance amending Chapter 19, Maui County Code, relating to resource extraction

1 or processing.” The bill's stated purpose is to “preserve, protect, and regulate the use of the
2 County's finite natural resources by clarifying the definition of resource extraction.” So this is a
3 proposal for a land use ordinance. So the planning commissions pursuant to the Charter must
4 be afforded an opportunity to review the bill before the Council can take action. So we'll be
5 going to the Molokai Planning Commission tomorrow and then Lanai Planning Commission next
6 week. And the commission's findings and recommendations are due to the Council by
7 February 10th.

8
9 So again, the action was taken at the October 6, 2017 Council meeting. It was done on the
10 floor. We don't have the benefit of a committee report that will sometimes provide background
11 to proposed legislation, but if you had a chance to browse through the meeting minutes, the
12 pages that we reference in our report, you can see the general background and impetus for this
13 legislation. It stemmed from the Maui Lani sand issue which has resulted in various legislative
14 proposals throughout the last year.

15
16 October 24th of 2017 we requested comments on the proposal from various agencies. As noted
17 in the memo, we did receive comments from the Department of Public Works, the Zoning
18 Administration and Enforcement Division of the Planning Department and the Maui County
19 Cultural Resources Commission. We also received commentary from the Department of the
20 Corporation Counsel which was emailed to you separately.

21
22 The State Historic Preservation Division declined to comment. We haven't yet heard from the
23 Office of Hawaiian Affairs although they indicated that they did want to provide comments at
24 some point. And we haven't heard back from the Natural Resources Conservation Service of
25 the United States Department of Agriculture.

26
27 So as far as the Department's recommendation, we do suggest that you carefully consider the
28 comments that we've received and I'll go over those momentarily. We do have a couple of
29 points of constructive criticism in the style or formatting of the bill. The substantive effect is not
30 accurately characterized as merely clarifying the definition of resource extraction. It rather
31 establishes a new definition of resource extraction and processing and we'll take a look at that
32 when we get into the actual bill.

33
34 Also we note that this proposed definition includes several new elements that could be
35 considered to be of substance or regulatory nature and other principles in the Hawaii Legislative
36 Drafting Manual, a definition should not contain substantive provisions of law, i.e., provisions
37 that authorize, require or prohibit certain actions. So some of the language you see in the
38 definition might be more appropriately placed within the chapters of Title 19 that actually
39 describe permitted uses and special uses instead of having a lengthy definition that includes
40 regulatory elements and exceptions. I do concede that principle is not always followed in the
41 current version of the Maui County Code including the Comprehensive Zoning Ordinance. We
42 do have some lengthy, sometimes convoluted definitions, but ideally definitions are supposed to
43 be clear and concise and not, again, get into regulatory content.

44
45 So today the Commission has four basic options. Number one, you could advise the Council to
46 pass the bill as drafted. Number two, you could advise the Council to pass the bill with
47 amendments. Number three, you could advise the Council to not pass the bill or to file the bill.

1 And Number four, you could defer the decision to gather more information, although I would
2 again point to the February 10th deadline. It was interesting to see how long it took to get this to
3 you frankly and I apologize that time is a little bit short. But factoring the time for agency
4 comments and the public hearing requirements we weren't able to get this on your agenda until
5 today.

6
7 So with that, Madam Chair, if you'd like I can run the Commission through the actual bill, go
8 through each page of the bill. It's a fairly brief bill.

9
10 Chair Duvauchelle: I think that would be good. Yes, thank you.

11
12 Mr. Raatz: So again it's attached Resolution 17-140. It's titled, A Bill for an Ordinance
13 Amending Title 19, Maui County Code Relating to Resource Extraction or Processing. Section
14 1 is the Purpose clause which we already discussed in the memo. Section 2 is the revised
15 definition in Section 19.04.040 of the Maui County Code. So if you look at that first paragraph in
16 the quoted part of Section 2 in the bill and you don't take into account the underlining which is
17 new wording or the bracketing which is text that's proposed to be deleted, you can see what the
18 current definition of resource extraction is and that's resource extraction means activities
19 engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand, and
20 top soil. And that term, resource extraction is currently referenced in Chapter 19.07 relating to
21 Open Space Districts where resource extraction is identified as a permitted use and Chapter
22 19.30A, the Agricultural Zoning District where resource extraction is identified as a special use.

23
24 So we have this new proposed definition which now would be not just resource extraction but
25 resource extraction or processing and it would mean three different things that are enumerated,
26 and again, the underlining is proposed new content for the County Code. The first enumerated
27 paragraph is activities related to the mining or extraction of minerals, ores, soils, and other solid
28 matter including rock, gravel, sand, and top soil from their natural subsurface location primarily
29 for purposes other than those directly related to preparation of the land for onsite construction.

30
31 Number two, processing and preparation, cleaning

32
33 In excess of 100,000 cubic yards for a duration of more than 18 months so as to make such
34 material suitable for commercial, industrial or construction use.

35
36 And three, uses of land subject to the Federal Mine Safety and Health Act and then a citation to
37 that statute in the United States Code. So again, that's really the heart of the bill is that
38 proposed new definition and then you go into the various chapters relating to zoning districts
39 with this new definition would be placed.

40
41 So we start with Section 3, and again that's Chapter 19.07 relating to Open Space District
42 where we have a current definition of resource extraction. And you go down, there's a chart
43 here that lists all the permitted uses and you see No. 5, resource extracting or processing would
44 be added. So that would be in addition to the Open Space Zoning District. And I apologize I
45 think I said earlier that resource extraction is a permitted use in Open Space. I see here it's
46 under special uses. So is everyone able to see that under Chapter 19.07 where this bill is
47 proposed just to add in the full term for this new definition, resource extraction or processing.

1
2 And then we continue down to Section 4, under 19.25 of the Maui Code which is the M-3
3 Restricted Industrial District. And you see on the chart on the left under uses which are in
4 alphabetical order there's a proposal to delete the existing use of rock, sand, gravel or earth
5 excavation crushing or distribution and to add in its place the new definition, resource extraction
6 or processing or the new defined term, resource extraction or processing. That was on Page 6
7 of the bill.

8
9 Continuing onto Page 7 of the bill in Chapter 19.26, the M-2, Heavy Industrial District, a similar
10 change is being proposed where the existing term, rock, sand, gravel or earth excavation,
11 crushing or distribution would be deleted and in its place would be put the newly defined term,
12 resource extraction or processing.

13
14 And then finally Section 6, the Agricultural Zoning District chapter which is 19.30A, where again
15 we already have resource extraction referenced under Item 10, now that item would have the
16 newly defined term, resource extraction or processing.

17
18 So that's the bill and again in summary it's changing the definition of resource extraction that
19 currently exist to resource extraction or processing with three enumerated paragraphs defining
20 that term and then placing that term in four different chapters, four different zoning districts
21 within the Maui County Code two relating Industrial Districts, one for Open Space, and one for
22 Agriculture.

23
24 So before I move onto the agency comments are there any questions about those basic
25 elements of the bill?

26
27 Chair Duvauchelle: Well, I think we are gonna do public testimony right? So we'll take
28 questions from the Commissioners after public testimony.

29
30 Mr. Raatz: Okay, great. So I'll just finish up with a brief summary of the agency comments we
31 did receive. The Director of Public Works memo dated November 20th is towards the end of
32 your packet for this item it's Page 148. And in the Director's memo he has four comments. He
33 notes under the proposed definition it seems that you can extract any amount of sand rock
34 gravel, et cetera, even greater than 100,000 cubic yards if it is related to the preparation of the
35 land for onsite construction. So in theory, a place like Maui Lani Phase 9 for example, could still
36 process, sell, and export sand if it is tied to the subdivision related roadway and small lot
37 construction.

38
39 The second paragraph from the Director's commentary he says for Item 2 there's a few
40 concerns. Do any one or all of the listed activities have to occur? What is "preparation"? What
41 is "other treatment"? Is it resource extraction when activity is longer than 18 months and over
42 100,000 cubic yards? What if the project grading permit is for over 100,000 cubic yards and it
43 is anticipated to only last 12 month, it goes on to actually be over 18 months?

44
45 Third he says, Item 2 or the second paragraph in the definition only makes reference to
46 construction, but Item 1 exempts on site construction. Seems like they need to better define
47 construction use. Even commercial and industrial uses could be better defined.

1
2 Finally the Director of Public Works states in his fourth paragraph, the Department of Public
3 Works should discuss with the Planning Department which grading permits should be routed to
4 Planning for its review and approval to enforce resource extraction or processing and how the
5 grading permit application may have to be amended in order to enforce any Title 19 revisions.

6
7 The on Page 150 of your packet there's a memo from John Rapacz who's the Planning
8 Program Administrator in charge of the Zoning Administration and Enforcement Division of the
9 Planning Department. That's an email to me dated November 17th. He starts off by saying it
10 might be clearer if there were two definitions, one for resource extraction and one for resource
11 processing. They are very different activities.

12
13 He suggests deleting "from their natural subsurface location" as written it means you can get the
14 resource out of the ground undetected then that sand no longer fits the definition even if it's still
15 located or stockpiled where it was extracted.

16
17 He also suggests deleting the phrase, "primarily for purposes other than those directly related to
18 preparation of the land for onsite construction". He characterizes this as a loophole that it's
19 overly broad. He suggests instead better language for this type of exception already exists in
20 Section 20.08.031 of the Maui County Code.

21
22 He also wants to or suggests that there be a clarification on 100,000 cubic yards. Does that
23 mean per month? If that's what it's intended to mean that's a very large total quantity. Finally,
24 he suggests deleting the phrase, "so as to make such material suitable for commercial,
25 industrial or construction use." This language is unnecessary. If the material is handled as
26 processed as defined above then it is processed, that's all we need to know.

27
28 Then the comments from the Cultural Resources Commission who did hold a public meeting on
29 this matter on December 7th and this is at Page 152 of your packet material. The CRC offered
30 four comments. Number one, consider adding language to the proposed bill to clarify that the
31 regulations pertain to terrestrial resources as opposed to marine or other types of natural
32 resources. Two, the quantity provision of 100,000 cubic yards is problematic. Three,
33 Subsection 2.2 of the proposed bill should be amended to read, and as you can see here it's
34 recommending taking out the reference to 100,000 cubic yards for a duration of more than 18
35 months, and adding in the phrase, "offsite" in front of "construction use". And the final
36 suggestion from the CRC, your final note, any quantity of grubbing or grading so long as it
37 requires a permit from the County requires historic preservation review by the State Historic
38 Preservation Division pursuant to Chapter 6E of Hawaii Revised Statutes.

39
40 And final agency comments from the Corporation Counsel. This is from Deputy Corporation
41 Counsel, Richelle Thomson she has three bullet point suggestions you can see in her memo to
42 me. She references, "their natural subsurface location". She's suggesting that that be revised
43 to below the natural grade which is already defined in Title 19. She references the term, "onsite
44 construction". She says although the terms construction and development are not defined in
45 Title 19, the term development may encompass a broader spectrum of land disturbing activity
46 than onsite construction. And finally she recommends amending the phrase, "uses of land
47 subject to the Federal Mine Safety and Health Act to land uses subject to the Act. This would

1 clarify that the Act applies to the activities and uses and not the land upon which they occur.

2
3 So thank you for your time and that's a summary of the bill and the agency comments this far.

4
5 Chair Duvauchelle: Thank you.

6
7 Mr. Carnicelli: I have a relevant question before testimony.

8
9 Chair Duvauchelle: Okay, Commissioner Carnicelli?

10
11 Mr. Carnicelli: Thank you Chair for allowing me. So David just for the sake clarity here, what's
12 expected of us today is comment, correct? Just as though, you know, Public Works,
13 Corporation Counsel, you know everybody made comments. That's what we're asked to do
14 here as well? We're not asked to rewrite the bill or make comment on the other comments but
15 just come up with our own comments for the Council to consider is that correct?

16
17 Mr. Raatz: Thank you Chair and Commissioner. That's correct. Under your role under the
18 Charter as an advisory to the County Council on land use ordinances. The Council is seeking
19 your review and comment and that can take almost any form you would like and you can
20 address the comments from other bodies, you can disregard those, you can propose
21 amendments with specific language. You can provide general commentary. You have a wide
22 degree of discretion on that.

23
24 Mr. Carnicelli: Thank you, Chair.

25
26 Chair Duvauchelle: Thank you.

27
28 **a) Public Hearing**

29
30 Chair Duvauchelle: All right at this time, before we take questions we'll open the floor for public
31 testimony. Anyone wishing to testify on this agenda item please come forward. Okay, seeing
32 none, we will close public testimony and we'll take the questions and recommendations from the
33 Commissioners. Commissioner Carnicelli?

34
35 Mr. Carnicelli: So as I read this David and I don't know who I'm supposed to address here the
36 Chair or David or the Director but a couple of things pop up for me and one is the comment of
37 the definition of extraction and/or processing. I think that there is a comment somewhere is is
38 there a need to separate out those two definitions? Is it necessary is sort of my question to the
39 Staff? And if it is...I mean, does it matter? But it just...it sort of jumped out at me going they do
40 seem to be two different things and do we need to treat them differently?

41
42 Mr. Raatz: Thank you Commissioner and Chair, and for the record that was a recommendation
43 from the ZAED Administrator, John Rapacz that the definitions be separated, one for resource
44 extraction and one for resource processing as much for clarity as anything else because the
45 ZAED Division does regard those as different activities.

46
47 Mr. Spence: I would tend to agree with that. I can name any number of instances where you

1 know the quarry over by the landfill extracting the rock is much different than crushing it and
2 sizing it and filing and washing it, et cetera. Same with, I mean just because Maui Lani is at the
3 forefront of everybody's thought you know actually moving the dunes, extracting the resource
4 versus screening it. I'm not saying anything positive or minor...negative about it, I'm just
5 making the observation extracting the sand from the dunes is very different from processing it
6 and doing whatever they're going to do with it from their washing, screening, et cetera. Those
7 to me are two different activities. They don't necessarily have to be at the same site.

8
9 Mr. Carnicelli: Right, right.

10
11 Mr. Spence: I think that's a crucial element.

12
13 Mr. Carnicelli: Right.

14
15 Chair Duvauchelle: Commissioner Hill?

16
17 Kahu Hill: I agree with that as well that the extraction and processing is very different and I'm
18 wanting to know and seeing the Cultural Resource Commission their suggestions about
19 possibly rewording this amendment in its present form of...as proposed amendment do we need
20 to take it back and redefine it or retool it?

21
22 Chair Duvauchelle: Director?

23
24 Mr. Spence: So you're saying that the Council should retool this or...?

25
26 Kahu Hill: Just looking at that because I think it really is very different extraction and
27 processing. We need to look at this.

28
29 Mr. Spence: Well, that can certainly go as part of our recommendation. We are just...FYI for all
30 the Commissioners when we are sent a resolution like this we have a 120 days to take it to...I
31 think it's by ordinance or is it by Charter?

32
33 Mr. Raatz: It's a Charter requirement.

34
35 Mr. Spence: Okay, it's a Charter requirement that once this resolution comes down or any
36 resolution from the Council regarding changes to our Zoning Code, we have a 120 days to turn
37 it around that means taking it to the different agencies, to all three planning commissions and
38 getting your comments and feedback and then sending it back up to the County Council for their
39 consideration. And as David said or(inaudible)...said, this was not discussed in Committee
40 therefore we don't have the benefit of the normally a committee report that would explain a little
41 bit more of what they were thinking and why they were thinking it. It was done at a Council
42 meeting and they waived the committee review and sent it directly to us. This is a...they felt it
43 was important enough to get this done in a more urgent manner. So here we are, we have a
44 120 days and the deadline is you said February...

45
46 Mr. Raatz: February 10th.

47

1 Mr. Spence: So that's pretty quick.

2

3 Chair Duvauchelle: I have a comment or a question. Do we know where the logic came from
4 for a 100,000 yards?

5

6 Mr. Raatz: I don't have any direct information on that unfortunately.

7

8 Chair Duvauchelle: Because I just...that's a large quantity. I mean, it's more quantity than you
9 see in most construction developments. You know it's more...so one of my recommendations
10 would be to possibly go back and base it on a quantity of some amount, maybe lesser, I'm
11 looking at her as we speak. And then also, based on that quantity what does...you know we
12 apply to our grading permits under Title 19, does that revise process? Will there be more
13 information required for the grading permit application? Deputy Director Please?

14

15 Ms. Dagdag-Andaya: So the proposed bill in front of you is with respect to Title 19. It's
16 not...with respect to grading, you know, as my Director had mentioned in his email, that's
17 something that we would need to discuss with Planning. I don't think the language in here right
18 now, at least what I see doesn't tie it together, but you know, when this does or eventually if this
19 does get passed, you know it forces us to take a look at the use in a different way and it
20 possibly affecting how we oversee or have oversight on our grading permits. So it's the
21 process, our grading permit process that we would need to review and potentially any changes
22 to Chapter 20 as well.

23

24 Chair Duvauchelle: Thank you. Commissioner Higashi?

25

26 Vice-Chair Higashi: As a Commissioner I feel very uncomfortable about making a decision on
27 this based upon the fact that the only information that I basically have is what was given to us
28 and what I read in the paper and the way it came about as I understand it was there was an
29 injunction on the sand that was being extracted from Maui Lani and sent to Honolulu. And
30 apparently the amount of sand that was taken out was quite large and these people were not
31 respecting the archaeological burial sites of that particular area as well. And so, it came about
32 that the Council, I don't know which Council Member brought a proposal to put a moratorium on
33 also on how sand is gonna be extracted from this particular area. So the question comes in
34 now as I understanding is the definition of extraction versus processing. And right now I don't
35 even know how much sand we're talking about and to make a determination to say yes, we
36 should put a moratorium or what, I think there should be a deeper study on what is happening
37 with the sand as it is on Maui now and where is it going and how are we being affected whether
38 it's five years from now, ten years from now because it's been happening as I understand it for
39 quite some time with our local concrete companies extracting sand and processing it and selling
40 it. So I feel very uncomfortable about making any kind of decision on this or recommendation
41 on this particular issue.

42

43 Chair Duvauchelle: Yeah, they're just...we're asking for the recommendation on the rewording
44 of the ordinance. Trying to address some of those situations. Commissioner Robinson?

45

46 Mr. Robinson: Chair, can you quantify what a 100,000 yards is in truckloads?

47

1 Chair Duvauchelle: Well, in semi load there's about 27 yards. So that's a lot of trucks.

2

3 Mr. Robinson: Twenty-seven yards one truckload guys, and we're talking 100,000.

4

5 Unidentified Speaker: 300 truckloads.

6

7 Mr. Robinson: Yeah this is a major. And you know I've read most of this and everybody has
8 great points but I think the biggest one is what we consider mining, what we consider extraction
9 and 100,000

10

11 Chair Duvauchelle: 3,700 truckloads.

12

13 Mr. Robinson: 3,700 truckloads.

14

15 Chair Duvauchelle: Or, three, am I off one? Anyway go ahead. Yeah, 370.

16

17 Mr. Robinson: 370 truckloads. So I mean if we don't change this this is gonna be kinda moot
18 thing unless were actually extracting. And Commissioner this topic has come up 10 years ago,
19 in fact in the Planning Commission they were talking about this before with the sand extraction
20 going from Maui Lani so this isn't a new thing. It's great that we finally have somebody inside
21 the Council that is trying to address it because this has been an ongoing problem and Ameron
22 and Hawaiian Cement has been mining Maui sand for Honolulu cement for over a decade. You
23 know, it's ...(inaudible)...

24

25 Chair Duvauchelle: Yeah.

26

27 Mr. Robinson: Okay, anyway so in my recommendation if we can hopefully give a strong
28 recommendation on the amount of what a classification is of mining and extraction is. I think
29 that number needs to come down from a 100,000.

30

31 Chair Duvauchelle: Director?

32

33 Mr. Spence: David, and ask because in the Ag District is where you find most of our quarries.
34 The Ameron quarry is over there. The Hawaiian Cement quarry is in the State Ag District as
35 well. So when we say 100,000 cubic yards would need a special use permit. If we applied this
36 definition in this manner does it mean that under a 100,000 cubic yards would not need a
37 special use permit and they could just do it by right?

38

39 Mr. Raatz: I think that's how we've been reading it yes. Okay, that to me that's a problem.

40

41 Mr. Carnicelli: Chair?

42

43 Chair Duvauchelle: Commissioner Carnicelli?

44

45 Mr. Carnicelli: Yeah, I almost want to just take the number out because mining isn't necessarily
46 defined as an amount.

47

1 Chair Duvauchelle: Correct.

2

3 Mr. Carnicelli: Right? I mean there's a balance here too because I think what we've sort of
4 bumped up against and what happened with the Maui Lani issue and the moratorium is
5 enforcement versus law and interpretation thereof. So we suddenly, you know, there's a couple
6 people that got one over and they, you know, they didn't really do what they were supposed to.
7 And so now we're trying to catch everybody, but what we're talking about is enforcement and so
8 we're trying to define what we're trying to enforce. I don't think mining or extraction is in my
9 opinion isn't defined by an amount. Right, it's not okay, at 370 truckloads it's now mining or it's
10 you know...so I think and even what Public Works talked about is it monthly amount? Is it not
11 the total amount? Is it so much per month? Is it so much per week? And then when we start
12 talking about timeline, it doesn't necessarily have to be a timeline either. And when I said, I'm
13 sorry interrupted you but the sand that was taken off of our beaches for decades to make lime I
14 mean that was...I mean, that's horrific what we looked back at what happened in that particular
15 way. So for me I guess the comment I would make to the Council is, it's not necessarily an
16 amount, but it's intent and I know you can't really enforce intent but I think that that's something
17 that we really need to consider and is it instead of overall, is it more of a timeline thing when we
18 start looking at that.

19

20 Chair Duvauchelle: Commissioner Hudson?

21

22 Mr. Hudson: I agree with the Commission. I also take note of the passage from the CRC,
23 "process and preparation, cleaning and other treatment of minerals" and they remove the
24 100,000 cubic yards and they remove the time. So they're removing the amount and the time
25 and they're just stating to make such materials suitable for commercial, industrial or offsite
26 construction use which I think would also address Director Goode's concerns under 1 and 2. I
27 think serious consideration should be given to amending the passage to the one recommended
28 by the CRC.

29

30 Mr. Spence: And just for the Commissioner's reference and for the minutes here, that's on
31 Exhibit 5 of this staff report and it's No. 3 for the recommendations by the Cultural Resources
32 Commission.

33

34 Chair Duvauchelle: Thank you. Commissioner Robinson?

35

36 Mr. Robinson: I agree with Commissioner Carnicelli, it's an act, right? Its mining is an act.
37 Clearing is...and grading sort of is a need for construction. Mining is selling, you know, it's
38 unearthing something and then selling it. You know, so there's grading and there's mining. And
39 I don't know how you quantify it in a legal sense. But for profit, you know, like I say, you know,
40 it's some people they extract certain things out of certain area when they grade it, but then they
41 go ahead and they push it in a different area to have it built up. Now is that...some people do it
42 for free, right? Some people do it for sale. It happens all the time in Maui so you don't have to
43 ship things. And contractors work with each other. Last thing we want to do is give barriers to
44 contractors to try to build and say that something becomes mining instead of extraction and
45 grading, and I know there's a variance. And everybody's talking about the sand well, Maui Lani
46 already a moratorium from this right? This whole thing we're talking about sand and then now
47 there's supposed to be grandfathered in but we still have a lot of gravel, we have a lot of rock,

1 we have a lot of mountains that we're gonna look at. And so I think that's what the Council
2 needs to look at is what is the definition of the word, mining. And it can't be, you know, even
3 100,000...let's say 100,000 cubic yards is still 370 truckloads. So a number has to come down
4 and for profit or something has to be done and hopefully they do it with construction. You know,
5 the construction companies or the associations that deal with this every day. It's not a political
6 thing, it's a usage thing and hopefully it's not as easy I think we're trying to make it here.

7
8 Chair Duvauchelle: Commissioner Carnicelli?

9
10 Mr. Carnicelli: I'd like to change, just go to another topic unless somebody else has something
11 on the amount or the timeline? Is something that's not addressed in here which I believe the
12 Mayor has put a moratorium on anything going off island. But I think that that's something that
13 needs to be addressed in here. To me it changes not only just extraction and mining but there's
14 you know we've got an opportunity right now to say Maui sand is staying on Maui and with this
15 definition do we put some kind of a...if we're gonna rewrite the law and we're gonna define this
16 stuff can we say that selling it off island is a whole nother deal and again, as Commissioner
17 Robinson said, I don't want to step on the toes of the cement companies and things of that
18 nature and contractors 'cause we need that, and yet there's another level of how far is
19 something moved. 'Cause all of a sudden if we say, oh if we take Hana is that now you know
20 like taking it to Honolulu or if we stop in Nahiku, we stop in Haiku, anyways...just my thought in
21 comment for the Council is do we address that in this as well?

22
23 Chair Duvauchelle: Corp. Counsel?

24
25 Mr. Galazin: Thank you Chair. For all the Commissioners, you're generally here to provide any
26 sort of comments that you want. Just to provide a little bit of context for you. The moratorium
27 that was passed by the Council on Friday, six-month moratorium only pertains to a certain
28 number of parcels within Central Maui. The issue that Commissioner Carnicelli raised about the
29 exportation or prohibiting the exportation of sand off island from one island to another, you can
30 make whatever recommendations you want. I will just say that there are legal issues that
31 surround the idea of stating that sand that is mined here cannot ever leave the island. You can
32 make whatever recommendations you want, that's something that's gonna have be considered
33 by the Council and Corporation Counsel before the bill is finally passed. And third, the whole
34 impetus behind getting a moratorium done for Central Maui was in part due to getting this bill
35 through these commissions and getting comments from everybody as soon as possible.
36 Because after six months this expires, everybody knows that Budget is going to take up
37 beginning of March, pretty much most of Council's time so just keep that in mind. You can as I
38 said, I'm not really going to direct you one way or the other. You can make all sorts of
39 comments. Council will take it or leave it as they see fit. But I would say that issue with
40 exportation has a lot of legal ramifications. So you can bring it up, but I wouldn't spend a lot of
41 time on it because that's something that has been discussed at length.

42
43 Chair Duvauchelle: Thank you. Any other comments? Commissioner Higashi?

44
45 Vice-Chair Higashi: I'd like to have information about this deadline that we're talking about from
46 the moratorium. Is it because of the court order that was put in and if it's not...a decision is not
47 reached at a certain time that the mining can continue based upon the definition of what's there

1 in the law?

2

3 Mr. Raatz: Thank you. My understanding is the court case doesn't really correspond to either
4 the sanding mining moratorium bill that passed second reading on Friday or any other
5 deadlines. They're kinda separate tracks. The County wasn't actually party to that lawsuit.

6

7 Vice-Chair Higashi: The reason why I ask was it seemed like we need more information on
8 making a recommendation, whatever based upon the fact that right now it sounds like we're
9 talking about sand but we also have in our community right now soil being moved and hauled
10 from one place to another and that has not been addressed. It sounds like we need more
11 information on a comprehensive basis on whether it's sand or any other material and where is it
12 located and where is it moved and et cetera instead of just taking one issue right now and trying
13 to address it based on definition. Consequently, I'd like to make a motion to defer the decision
14 in order to gather more information on this particular topic.

15

16 Chair Duvauchelle: Thank you. We're not entertaining motions, right?

17

18 Mr. Galazin: Well Chair it's your discretion if you want to call for a motion at this point. I think
19 we're still at a discussion phase and I would point out the time constraint that's imposed on you
20 folks is something that's pursuant to Charter. And you know a proposed bill was generated, a
21 resolution was passed by the Council. It's been sent out as the Director noted to you as well as
22 the other planning commissions and by Charter you if you have any comments to give back to
23 the County Council, you have a time limit within which to do that and I believe according to
24 Mr. Raatz, it's February 10th. So I would just say, asking to defer this it probably means that
25 you're not saying anything to the Council at all. So I would consider, you know, there's a
26 pending motion on the floor, if you want to withdraw it, you can withdraw it. The Chair can direct
27 you on that.

28

29 Mr. Carnicelli: It hasn't received a second yet.

30

31 Mr. Galazin: It hasn't received a second yet, so you know...so I would just hop in there.

32

33 Chair Duvauchelle: So the motion has not been seconded so the motion will die or would you
34 like to remove it? Okay, we'll let the motion die then. All right further discussion?
35 Commissioner Hill?

36

37 Kahu Hill: I just wanted to share, you know, the purpose of the ordinance is to preserve,
38 protect, and regulate the island's finite natural resources. I was looking at the amendment,
39 revised definition of the resource and extraction processing encompasses enough to protect our
40 natural resources and just wanted to share that we need to be mindful of the resource
41 extraction, processing and mining really goes also far beyond top soil and gravel and rocks and
42 our island is deeply rooted Hawaiian culture, history, ancestry, legend, spirituality and extracting
43 or moving, the aina, the pohaku, the lepo, the sands, it contains more than we know and the
44 mana of our ancestors and the ancient stones they have stories to tell us if we listen. So
45 my...(inaudible)...intent is to preserve and just protect the people of Hawaii to preserve our
46 culture, retain the richest of our ancient history and the environment what we can to honor the
47 iwi kupuna and the ancestors that walked before us. And I'd also like to say that what Higashi

1 said about the soil I don't know where it is if it's in here somewhere but moving the indigenous
2 and endemic plants, moving things and changing the land environmentally as well as moving
3 invasive species that can affect other parts of Hawaii and I don't see where this is discussed or
4 if it's a part of this. So I just wanted to share that today.

5
6 Chair Duvauchelle: Thank you. Any other discussion? Okay, Director are we reading back our
7 recommendations, amendments, well I guess recommendations, discussion, comments or are
8 we good?

9
10 Mr. Raatz: I would say it's to the will of the body. If you want us to formally express your
11 comments to the Council, we would suggest probably some sort of formal motion so that we
12 know that we are accurately representing the body.

13
14 Chair Duvauchelle: Okay, Commissioner Carnicelli?

15
16 Mr. Carnicelli: Could you read your notes to us then?

17
18 Mr. Raatz: Where would you like me to begin?

19
20 Mr. Carnicelli: Cut me out 'cause I talk too much. No, anyways. If it were going to be a formal
21 motion, you can kind of...you don't have to give us the actual, you know, word for word, but give
22 us the general consensus of okay, this is what you heard and we would sort of transmit to the
23 Council please?

24
25 Chair Duvauchelle: Or can we do that by transmitting the minutes of this meeting?

26
27 Mr. Spence: We will do that anyway. We will transmit the minutes, but you know, I don't know
28 how much time the Council members are gonna put into reading the minutes. Certainly they
29 would appreciate a summary.

30
31 Chair Duvauchelle: Some bullet points.

32
33 Mr. Spence: The thing that I hear from the...the primary thing I hear from the Commission is the
34 quantity and the time. Those things are pretty undefined. Their concern about...and I look at
35 some of the...the comment letters they're not addressing...this bill does not address the cultural
36 aspects of resource extraction. I don't think it was intended to but I appreciate Kahu Hill's
37 comments along those lines, but it seems to me the most important one is the quantity. I also
38 think personally the omission for allowing that quantity, the unintended consequence would be
39 that you could move 99,000 cubic yards within the Ag District and not require a special use
40 permit. I personally had 16,000 cubic yards moved right next to me next door and it's a huge
41 quantity and there's no review or anything. So that's 100,000 you know, that's a lot.

42
43 Chair Duvauchelle: I think you heard everyone one of them.

44
45 Mr. Spence: Yes.

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47 Mr. Robinson: Chair I have a question?

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Chair Duvauchelle: Commissioner Robinson?

Mr. Robinson: I apologize if I missed this. Is there a list of the exact minerals that we're talking about for this resolution?

Mr. Raatz: No there's not.

Mr. Robinson: So we haven't really defined what we're gonna consider what a mineral is, sand, rock, water? I mean can people drill a well and start selling Maui water? What is, you know, we gotta...

Mr. Spence: The proposed ordinance does say rock, gravel, sand, and top soil. I'm not sure if we have other minerals.

Mr. Robinson: Water.

Mr. Spence: Water is covered under other regulations, state and county.

Chair Duvauchelle: Okay.

Mr. Spence: And also, just before there's a motion I don't know if you want to consider Deputy Corp. Counsel, Richelle Thomson's memo dated January 5th to suggest three primary amendments to this that would seem like it would clarify the intent of...the intent or the language of the proposed ordinance.

Mr. Robinson: Is that going to us or is that already going to the Council?

Mr. Spence: This is going to the Council. If you would like to consider her proposed amendments and make a recommendation.

Mr. Robinson: But hers is not going to Council. It's only coming here.

Mr. Spence: No, it will go to the Council. We'll make it a part of the packet. But if you wanted to comment on it that would be appropriate.

Mr. Robinson: Chair?

Chair Duvauchelle: Commissioner Robinson?

Mr. Robinson: I'd like to just start with the notes again, and I'd like to put the amount of 5,000 cubic yards as a recommendation. I don't know about the rest of the commission feels. But that equals 160 truckloads more or less, you know 170.

Chair Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: I'm okay with what the Commission decides. But I'll just go back to kinda what

1 we said before where I'd like to leave an amount out personally. I mean it's hard to regulate
2 intent, right? But you know, it's okay what if it's 5,000 cubic yards on this TMK and then all of a
3 sudden I go to the next TMK and I do another 5,000 and another 5,000. I don't know is the
4 more defined or the most strict it gets, the more loopholes there's going to be is almost where
5 I'm going with this. It's like if we keep it without an amount and I'm okay with it either way I
6 just... that's my thought.

7
8 Mr. Robinson: I understand that but somebody who wants to just do a batch of concrete for
9 their sidewalk at their house that's an amount. So there has to be...we have to start
10 somewhere and I understand we don't want to lock ourselves into something, but I guess mine
11 is well, I think that's where they have to get a permit or you have to go through the process and
12 if there's that many TMKs where they're gonna move that much, you know, they're probably
13 going have to go for the permits as well or you could look it as saying it can be as a aggregate.
14 You know, anything over aggregate of that for any type of project.

15
16 Chair Duvauchelle: Corp. Counsel.

17
18 Mr. Galazin: Yes, thank you Chair. And I would look at I think one of the problems that may be,
19 that's been raised in a couple of the exhibit letters which one of your motions could be to agree
20 with say Exhibits 3, 4, and 5 and then add anything on top of that. But I would note that
21 because this definition contains three separate sections, the 100,000 cubic yard, the amount
22 and duration just pertains to the processing, preparation, cleaning or treatment. The extraction
23 under No. 1, that doesn't have any kind of temporal or amount limitation to it. So if you're
24 extracting anything for purposes other than those directly related to preparation of onsite
25 development or construction or development as proposed. If you're extracting any amount just
26 for extraction purposes that would be resource extraction. And then processing if you're
27 processing 10,000 cubic yards it wouldn't fall within this definition. If you're processing you
28 know, 99,000 cubic yards it still wouldn't fall within. You would have to be processing an
29 amount in excess of 100,000 cubic yards again for that durational time which may be a reason
30 why you would want to bifurcate those two things because I think there's some confusion about
31 the extraction part and the processing part and I think the intent is that they are to be separate
32 but because the definition teams them both it can lead to some of the confusion that you seem
33 to be struggling with.

34
35 Chair Duvauchelle: Commissioner Carnicelli?

36
37 Mr. Carnicelli: So along just with what you said if my fellow commissioners are in agreement I
38 think that David I would like to say that at least I'm personally in agreement with Exhibit 3, 4,
39 and 5, and I don't know if this is Exhibit 6, but the letter from Corporation Counsel dated January
40 5th from Richelle Thomson. So I don't know we'll call that Exhibit 6 I guess? So 3, 4, 5, and 6
41 I'm personally in agreement with. I don't know if my fellow commissioners are?

42
43 Chair Duvauchelle: Yes? Okay, Commissioner Castro?

44
45 Mr. Castro: Thank you, Chair. I have a question. Do you know if there's an alternative way of
46 making concrete without the sand?

47

1 Mr. Raatz: I'm not sure. I have to say I'm not expert on that. I haven't heard of any in the
2 various Council discussions on the sand issues over the past year. But that's not to say that it
3 doesn't exist.

4
5 Mr. Castro: So if they're unable to get the sand that they need here that means they would
6 have to import it from somewhere else?

7
8 Mr. Raatz: More than likely. And that issue of sand importation has come up occasionally in
9 the Council discussions and we understand that is happening in some cases.

10
11 Chair Duvauchelle: Okay, Commissioner Robinson?

12
13 Mr. Robinson: But we're not talking about...we're talking about having to get a permit to extract
14 not saying they can't extract, right? This is what this resolution is? They have to apply for a
15 permit instead of just doing it. But the question with no quantification I'm worried about a person
16 who has a quarter acre lot that wants to grade and start planting some vegetables. Is that
17 considered conditioning? Right, you're screening the soil, you're taking the rocks out. So you
18 know, so...

19
20 Mr. Carnicelli: ...(inaudible)...

21
22 Mr. Robinson: Well, if we put zero compared to what the quantity is and they could move the
23 rocks offsite. They could give it somebody who wants to have an imu or different things. And
24 so we could minimize it or we could say over a certain area and again, this is only
25 recommendation, the Council is going to decide, but I think I want to be able to look at...always
26 look at the smallest guy, you know, to protect him instead of him have
27 to...(inaudible)...regulations. People who are going to do contracts and developments they're
28 gonna have their team, they're gonna have their people that know how to get through all these
29 ropes but somebody that's just as simple as a neighbor...don't like a neighbor and he saw him
30 screening some rock, well cannot do that. I don't us to becoming that police type of county.

31
32 Chair Duvauchelle: Thank you. Okay. So we have a discussion on the floor that we're good
33 with Exhibits 3, 4, 5, and 6, and we've added a few concerns. Do we want to make a motion?

34
35 Mr. Robinson: I think the concern for quantity. I guess we have a concern with quantity.
36 ...(inaudible)...number on it, but we have a concern for quantity.

37
38 Mr. Spence: The quantity and also for clarification bifurcating the extraction from the
39 processing.

40
41 Mr. Carnicelli: Right.

42
43 Chair Duvauchelle: Okay, do I hear a motion?

44
45 Mr. Hudson: So move.

46
47 Chair Duvauchelle: Moved by Commissioner Hudson.

1
2 Vice-Chair Higashi: Second.

3
4 Chair Duvauchelle: Seconded by Commissioner Higashi that we are...Director?

5
6 Mr. Spence: The main thing that I heard was quantity, bifurcating the extraction from the
7 processing, and one other main thing.

8
9 Mr. Carnicelli: Timing.

10
11 Kahu Hill: Quantity.

12
13 Mr. Carnicelli: Quantity and timing.

14
15 Mr. Spence: Quantity and timing. And then also just confirming that this Commission reviewed
16 the last three exhibits as well as Richelle Thomson's exhibit and concur with those comments.

17
18 Chair Duvauchelle: Okay, are we good? All right, all those in favor of the motion to relay to
19 County Council raise your hand? That's seven ayes. Okay, thank you very much.

20
21 **It was moved by Mr. Hudson, seconded by Mr. Higashi, then**

22
23 **VOTED: To Recommend Approval to the County Council the Council**
24 **Resolution as Recommended by the Department and with**
25 **Comments as Recommended by the Commission.**
26 **(Assenting – L. Hudson, R. Higashi, L. Carnicelli, A. Hill,**
27 **K. Robinson, C. Tackett, S. Castro)**
28 **(Excused – T. Gomes)**

29
30
31 Mr. Raatz: Thank you very much. Appreciate it.

32
33 Chair Duvauchelle: All right, shall we power through the next agenda item?

34
35 Mr. Hudson: I have to leave in 15 minutes.

36
37 Chair Duvauchelle: Okay, or do we take lunch and come back? What time are you?

38
39 Mr. Carnicelli: 2:30.

40
41 Chair Duvauchelle: You know what let's try to power through the next agenda time. Director?

42
43 Mr. Spence: Commissioners, this is your last Public Hearing Item for this morning. It's Peter
44 Lord and Lisa Lord requesting a State Land Use Commission Special Permit in order to operate
45 the Aloha Spirit Maui Short-Term Rental Home in...and this is in Lahaina and the Staff Planner
46 is Kim Willenbrink.

47

1 **3. PETER LORD and LISA LORD requesting a State Land Use Commission**
2 **Special Permit in order to operate the Aloha Spirit Maui Short-Term Rental**
3 **Home, a two (2)-bedroom short-term rental home located in the State**
4 **Agricultural District at 915 Kai Hele Ku Street #B, TMK: 4-7-010: 026-0002,**
5 **Launiupoko, Lahaina, Island of Maui. (SUP2 2017/0015) (K. Willenbrink)**
6

7 Ms. Kim Willenbrink: Good morning Madam Chair and Members of the Commission. I hope the
8 New Year finds you well. This item is scheduled for your review and recommendation today
9 because the owner/applicants Mr. Peter and Mrs. Lisa Lord are seeking approval of a State
10 Land Use Commission Special Permit to operate a short-term rental home in West Maui in the
11 State Agricultural District on approximately 2.42 acres of land located at 915 Kai Hele Ku Place,
12 Launiupoko.
13

14 Ordinance No. 4315 was enacted in May 2016 permitting STRHs in the State Ag Zone District
15 with a State Special Permit. In this particular instance there were no comments from the State
16 related to the proposed STRH and there have been no reports filed with the Police Department.
17 There were also no requests for service. I would like to point out that the first time I checked for
18 B&Bs and STRHs within the 500-foot radius the program showed one permitted, two pending
19 STRHs and one permitted B&B. That's Exhibit 10 of the staff report. However, I double
20 checked this fact and that is not the case. I have provided you I believe with an update radius
21 check showing that there are none within that particular radius.
22

23 There are three letters in support of the proposed STRH where received by the Department, two
24 letters of opposition were received. One letter is generically opposed to any STRHs in
25 Launiupoko.
26

27 The Department notes that there is an approved and implemented farm plan for the property
28 that is not anticipated to be negatively impacted. The farm plan consists of tropical flowers, a
29 fruit orchard and a bamboo orchard occupying 53 percent of the land. The properties to the
30 north, south, east and west are all at least approximately two acres. The subject property is
31 currently serviced by the Launiupoko Water Company LLC which has a large easement on the
32 property with a tank to provide water service to the area. In addition, the 2002 subdivision plat
33 map delineates a topographical feature running through the property as part of a 100-year flow
34 flood inundation limits. However, the dwelling and the agricultural features are not located in
35 that area. If you approve the Special Permit the STRH Permit will be approved administratively.
36

37 Ms. Debbie Mitchell is the consultant for this application. She is here today to deliver a
38 presentation and to answer any questions you may have. The owner/applicants, Mr. and
39 Mrs. Lord are also here today to answer any questions you may have. After the presentation
40 and public testimony I will provide the Department's recommendation. If there are no
41 objections, I will invite Ms. Mitchell to come to the podium.
42

43 Chair Duvauchelle: That will be fine. Thank you. We'll take public testimony after your
44 presentation.
45

46 Ms. Debbie Mitchell: Good morning Commissioners, Madam Chairman, Mr. Spence, and
47 Counselor. My name is Debbie Mitchell and I am a consultant for Pete and Lisa Lord who are

1 owners of a property at 195 Kai Hele Ku in Launiupoko. This is a two-bedroom unit and they
2 are applying for a Special Use Permit due to the agricultural nature of the property.

3
4 The property is located south of Lahaina in the Launiupoko main developed area. Moving in
5 you'll see its proximity to Lahaina. And in the...it is at the northern end of the Launiupoko main
6 development. The property as Kim mentioned is heavily occupied by the community water tank
7 for the entire area. So the area of usable property for the home and agricultural is limited by
8 that tank. As we move in you can see the amount that that water tank takes up. Just to show
9 here Kai Hele Ku is this street and the driveway goes along here and all the way down. So it is,
10 the house is quite setback from the roadway.

11
12 Again, it is a small house of about 1,000 square feet. It is asking for a permit for two bedrooms.
13 The lot size is 3.318 acres.

14
15 Okay, this is standing at the driveway and looking down Kai Hele Ku Street and then across the
16 roadway is the entrance of the driveway to the property. You can see it's surrounded by quite
17 mature bamboo plants. So it provides quite a buffer for sound abatement and privacy for the
18 residents.

19
20 Again you can see it's an extremely long driveway. It takes you past that water catchment tank
21 and continues onto the residence. There's ample parking space, far more than required for a
22 two-bedroom short-term rental home permit. There are two stalls in the garage and two stalls
23 outside that meets the requirements for parking space. And also, turn around is possible
24 without backing into the street.

25
26 The views of the property. This is facing west, the top two are facing west and the pool and the
27 outside lanai areas are located on this side which is the far side of the rest of the houses in the
28 area. The views from all four sides, as you can see it has quite mature landscaping. At the top
29 left, the lot in front that we're looking at is a owner that has provided a letter of support for this.
30 And this is probably the lot that is most affected by this particular application.

31
32 It is again a small house of about 1,000 square feet. It has a large garage, office and laundry,
33 and two bedrooms. And it has two bathrooms as well as two outdoor showers. This is the entry
34 to the house, interior kitchen, the living area, and the two bedrooms. And here's a little look at
35 the outdoor showers as well as the main bathrooms. The office and the laundry. And then the
36 outdoor amenities there is a large koi pond with some very mature koi which is really quite nice.
37 And then barbeque and a large front lanai which faces west, and of course the pool.

38
39 I wanted to show you the farm plan as filed. Again we're dealing with quite not a lot of useable
40 land but the owners have made a great use of what they could. And as Kim mentioned it's
41 7 percent tropical flowers. There's 41 percent of the fruit orchard and 5 percent of a bamboo
42 orchard and that does account to 53 percent of the usable land. This is a photo of the water
43 catchment system so you can see that this area is just not usable for anything other than the
44 community water tank. And this is to the south of the property on the south edge of the property
45 is 100-year flood plain as Kim mentioned. So they have planted...the product is in the ground
46 and growing. And again, as the fruit orchards comprised of those particular fruit.

1 All the neighbors of course were notified about the permit application and the public hearing.
2 Due to the nature of requiring that Special Use Permit we were required to come to public
3 hearing. We did receive two protest letters one of which was from a neighbor who's within the
4 500-foot radius and one that was as Kim mentioned a general one who does not wish to have
5 any short-term rentals in Launiupoko. We did contact out, we did reach out to those neighbors
6 and tried to assuage their questions, answer any questions that they might have was
7 unsuccessful in that. There are no other permitted short-term rental homes within 500 feet and
8 other than there being the requirement for the Special Use Permit this would normally have
9 been just approved administratively. We did meet, get a letter of support from the neighbor
10 directly in front. He is an adjacent neighbor and that was the picture I showed you earlier. It
11 looks directly in front on the west side of the home. That neighbor provide us with support. And
12 then there were three others letters of support that were received outside of the 500-foot radius
13 but within the property. And this is just a little diagram showing you. You should have a copy in
14 your packet that show you where the subject property and then where the support and protests
15 are located.

16
17 The one closest protestor, this gentleman here, Mr. Woods I wanted to...they're of course
18 concerned about traffic and noise which is very understandable. I had made...I'm not sure if
19 this is going to work or not. I had made a little video so I am not sure if it's going to work, but I
20 took you along the drive to show how long it was from the...apparently this laptop won't bring it
21 up, but it is a lengthy drive from the house itself out to the street and then all the way up to the
22 owner's house who complained. So there's a substantial amount of foliage and bamboo in
23 between. There we go...I wanted to go back...well, that's not going to play, but anyway it is a
24 long distance away, probably half a mile to the gentleman's home that did have one close
25 protest. So we did also again reach out to him and try to let him know that we are taking care,
26 we have house rules in place, we have a 24/7 manager who is able to be contacted.

27
28 This is a new application. This property has never been rented. The owners are very
29 concerned about doing the right thing for Maui County. They are here to answer any questions
30 you might have and they also have a brief statement if that would be appropriate.

31
32 Chair Duvauchelle: That will be fine, and then we'll hold public testimony.

33
34 Ms. Mitchell: Okay, very good. Thank you.

35
36 Mr. Pete Lord: Thank you. Thank you very much. My name is Pete Lord. This is my wife Lisa.
37 We were married in Kauai about six years ago. That was our first trip for either one of us to
38 come to Hawaii and just fell in love with it. We rented a house for 10 days. We actually were
39 like a lot of people we prefer to have some space and privacy for longer visits. And then the
40 next year we decided we were gonna come back so we came back, spent 10 days on the Big
41 Island, 10 days in Maui. Again, we rented houses for most of the time and decided that you
42 know as we're looking at retirement in warm weather places this is where we wanted to be. So
43 to kind of do a trial, a couple years after that we came out for a month, stayed and decided this
44 was it so we looked around and found Launiupoko and decided that's where we wanted to be.
45 So we looked for houses for two or three years at least and finally found you know sort of our
46 dream house. And so we have a couple of personal and business commitments so we can't be
47 here full-time now but we fortunately have flexibility to come out every six weeks, every couple

1 months for a week or two, 10 days, a month in the summer, and so...so we decided to go ahead
2 and buy the house and also started looking to the requirements for the vacation rental. I think
3 when we first came to Hawaii there were no requirements on the islands or just starting or
4 something and so this whole thing was kinda new.

5
6 But we learned about the agricultural requirements of Launiupoko and although the house had
7 an approved farm plan, we felt it was kind of inadequate even though the storage tank really
8 does take the best land of the property for, you know, which you could use for plants and its use
9 for that. So we decided to go ahead and rather than jump into the process to clear more land
10 what we could and planted over 30 more fruit trees like which kinda delayed the whole thing.
11 We also looked into the homeowner association requirements for rental properties and found
12 out there weren't any requirements or any rules in respect to that. And then about the time we
13 started to apply which was about a year ago once we got the farm plan implemented.

14
15 We were trying to figure out what to call the house and we were talking to a friend here about
16 this great feeling we have every time we come back to the island. It takes us about four minutes
17 after you get off of the plane and into the fresh air it just feels good. And he said, oh you have
18 the aloha spirit. So we decided to name the house Aloha Spirit Maui and so that's what the
19 name of the house is.

20
21 In closing, I would say we have done our absolute best to try to comply with the neighborhood
22 requirements, with every aspect of the short-term requirements. We've never rented the house.
23 We've had two sets of people from friends, one's in Kansas City and one's in Seattle that have
24 used the house. We took no compensation. We didn't even get a bottle of wine, a little
25 disappointing but anyway, we do feel our house is the perfect place to share the aloha spirit with
26 you know with newlyweds, with couples or really small families 'cause it is a small house. So
27 thank you very much.

28
29 Chair Duvauchelle: Thank you. Thank you very much.

30
31 **a) Public Hearing**

32
33 Chair Duvauchelle: Okay, before we entertain questions from the Commissioners we'll open the
34 floor for public hearing. Anyone wishing to testify on this agenda item please come forward?
35 Okay, seeing none, we'll close public hearing and we will take questions from the
36 Commissioners and we'll acknowledge Commissioner Hudson has to leave. Thank you.
37 Questions? Commissioner Carnicelli?

38
39 Mr. Carnicelli: Actually this might be for Kim. I'm just curious about the farm plan. Is...I get that
40 we have 42 percent fruit trees and 5 percent bamboo and then 6 percent or something like that.
41 I'm just concerned that we've got a bamboo hedge along a driveway that we're calling farming.
42 And we all know Launiupoko has been, you know, it is what it is, let's call a duck, a duck, but the
43 way with which we can actually enforce farming is this permit specifically. So this permit
44 specifically is about farming and it has to be that. So I guess my question is when you went and
45 did your inspection is the hedge along the driveway part of their farm plan?

46
47 Ms. Willenbrink: Thank you for the question Commissioner. Yes, when I did the site plan the

1 bamboo hedge is substantial. It's been there. It's quite tall and thick and as Debbie mentioned
2 it will provide quite a sound barrier for except when the wind's blowing. So it is part of the
3 site...part of the farm plan. I wanted to direct your attention to...let's see where is it in here.

4
5 Mr. Carnicelli: The farm plan?

6
7 Ms. Willenbrink: Not the farm plan. In the report itself, Page 11 under Agriculture. This
8 particular property when I looked it up it's extremely stony. The depth to the restrictive feature
9 that's the flood inundation is more than 80 inches. The slope 7 to 15 percent, well drained.
10 Annual rainfall 10 to 20 inches, elevation 0 to 1,000 feet, brown clay, soil series Wainee, I'm not
11 sure what that means in Lahaina. So given that, when I...I did this before I took the site visit. I
12 do feel they're doing as good as they possibly can with that large water tank taking up and the
13 flood inundation zone being the two features that are very difficult to work with in that particular
14 property.

15
16 Mr. Carnicelli: Okay, thank you.

17
18 Ms. Willenbrink: You're very welcome.

19
20 Mr. Spence: Comment?

21
22 Chair Duvauchelle: Director?

23
24 Mr. Spence: So Commissioners, you know I will say that while our preference would certainly
25 be that there's...I mean they have an approved farm plan so that's number one. The Zoning
26 and Enforcement Division has gone ahead and approved...reviewed it, approved it, it's recorded
27 against their deed. The second thing is that their ability to farm this, the property is
28 extraordinarily limited anyway because of the tank and that tank under a principle use for the
29 Agricultural District is considered a minor utility facility so and that's one of the principle uses
30 you can have in the Ag District and that is taking up most of what would normally be considered
31 the farmable part of the property like what Mr. Lord was explaining.

32
33 Mr. Carnicelli: Chair? So the tank is actually included say 48 percent that's not being farmed or
34 is that taken out and then we're saying okay 53 percent with the—

35
36 Mr. Spence: It's taken out.

37
38 Mr. Carnicelli: It is.

39
40 Mr. Spence: So we require 51 percent of the usable area of the property. Where this tank is
41 located and looking at the aerial from Exhibit 5 there is not a whole lot left over.

42
43 Mr. Carnicelli: Right.

44
45 Mr. Spence: So they have extensively planted what is left over.

46
47 Mr. Carnicelli: Okay, thank you.

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Chair Duvauchelle: Thank you. Questions, Commissioners? Commissioner Castro?

Mr. Castro: Looking at the driveway going in, how wide is that driveway?

Ms. Willenbrink: Oh, I would have to defer that.

Mr. Castro: And the only reason I'm asking is access for a fire engine.

Ms. Willenbrink: Very good question. Could I ask Mr. Lord to answer that for you?

Mr. Lord: Sorry, I don't know the exact...this is Pete Lord...I don't know the exact width. What I would say is that the water storage tank is serviced by large trucks at times which is half or three-quarters of the driveway, three-quarters of the way down and then it kind of Y's off into the tank and into our property and the width is ...(inaudible)...is maintained into our property. So I don't see there be an issue with getting fire truck down there.

Mr. Castro: If I'm not mistaken I think it's gotta be at least 20 feet the width?

Mr. Spence: Twenty feet would be a County standard for a road, a two-lane road not necessarily a driveway. You would have to...it would have to be as Commissioner Robinson noted it would have to be enough room for a fire truck to get up. It sounds like from what Mr. Lord is saying that since heavy equipment already gets up to do maintenance on the tank that there's sufficient access for a fire truck.

Chair Duvauchelle: Commissioner Robinson?

Mr. Robinson: That's not what I was saying. I didn't agree that there was enough distance. I believe it's 16 feet not 20 because you don't have two lanes, but the one lane to get through that. Fire trucks are a little bit wider than the normal service trucks that go up there. I have a question regarding is there two homes on this lot or is just one 'cause I see a red line with two, but I see different things with one and...

Ms. Willenbrink: The land is condominiumized and this is Lot No. 2.

Mr. Robinson: Is there two residents on this one lot?

Ms. Willenbrink: No.

Mr. Robinson: No. So the lots have been...there's different TMKs?

Ms. Willenbrink: Yes.

Mr. Robinson: Okay, thank you. On the water tank, who has...I know there's an easement.

Ms. Willenbrink: Yes.

1 Mr. Robinson: So is there any rent being paid to the landowner for this easement?

2

3 Ms. Willenbrink: I do not know the answer to that question. Perhaps the owner knows.

4

5 Mr. Robinson: Yeah.

6

7 Mr. Lord: Hi Pete Lord again. No, we haven't received any compensation or know anything
8 about that. It's just...it's sort of...to me it's kinda like a utility easement
9 where...(inaudible)...somebody owns some part of your property. It's fenced off. We don't get
10 any money for it. It's just not usable space even though it is on our lot.

11

12 Mr. Robinson: Most utility easements are access not actual taking the whole land for...so your
13 property is just everything outside of that?

14

15 Mr. Lord: Right yes.

16

17 Mr. Robinson: So does that include the 2.2 or is it the 2.2 including the water tank which is
18 unaccessible to you?

19

20 Mr. Lord: The 2....

21

22 Mr. Robinson: 42 whatever...

23

24 Mr. Lord: ...is including the water tank.

25

26 Mr. Robinson: So not including the water tank what is your square footage?

27

28 Mr. Lord: Well, that's probably...between that and the ditch, I mean, we're down to a third or
29 less of the property.

30

31 Mr. Robinson: Three-quarters of an acre.

32

33 Mr. Lord: It's probably, probably, something like that, a least have an acre. I was trying to think
34 of...I used to have an acre lot somewhere else.

35

36 Mr. Robinson: All right. Thank you.

37

38 Chair Duvauchelle: Any other questions? Okay, may I have the Department's
39 recommendation?

40

41 **b) Action**

42

43 Ms. Willenbrink: Thank you Madam Chair. The Department's full analysis is included in the
44 staff report. The Department has no additional analysis or comments to add. The application
45 complies with the applicable standards for a State Special Permit. Madam Chair, may I briefly
46 summarize those seven conditions for the record and for the newest member of the
47 Commission?

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Chair Duvauchelle: Yes, please

Ms. Willenbrink: Thank you very much. That the special permit shall be valid until December 31, 2020 subject to extension by the Planning Director. That the permit shall not be transferred without the prior written approval by the Director. That the applicant shall exercise reasonable due care as to third parties and shall maintain a comprehensive liability insurance in the minimum amount of \$1 million naming the County and State as additional insured. That there be full compliance with all applicable government requirements. That the applicant shall submit a detailed compliance report with a request for a time extension. That the applicant shall develop the property in substantial compliance with the representations made to you today. And that the farm plan shall remain implemented throughout the duration of the special permit. Thank you Madam Chair.

Chair Duvauchelle: Thank you.

Ms. Willenbrink: In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the January 9, 2018 meeting as its findings of fact, conclusion of law, and decision and order and to authorize the Planning Director to transmit said written decision and order on behalf of the Planning Commission.

Chair Duvauchelle: Thank you.

Mr. Carnicelli: So move.

Mr. Castro: Second.

Chair Duvauchelle: Moved by Commissioner Carnicelli, seconded by Commissioner Castro. Any discussion on the motion? Commissioner Robinson?

Mr. Robinson: I am not in support of this motion. There is somebody that is within 500 feet that is opposed to this. I think the applicant like many people that move here from the mainland come with the aloha spirit but unfortunately they get taken by the greed. Aloha spirit and the old Hawaiian ways is Hawaiians will let anybody stay at their home, fed them and let them carry on. They wouldn't say, okay I got a home, I'm so lucky to live here but gee, I'm not here all the time let me see if I can turn it into a little hotel and make some money. And luckily I have consultants that are abundant in Maui that are able to convince these people that it's a legal way to make money. And unfortunately this is a law that we did for a moratorium.

We just had testifiers of elderly people one after another saying there's no place for them to live and to think that one short-term rental doesn't affect something else is just not true. Everything affects everything. Having a home being built takes resources from the construction company to build the more expensive home than for affordable housing. Everything is everything. And this may not be the applicant's doing or their responsibility but it's just the fact of here on Maui and without a moratorium, without trying to find something to slow this down or take a pause.

1 We're trying to put a 163 senior living affordable units and it takes us five years. We're taking
2 two-bedrooms, four-bedrooms, eight-bedrooms every two weeks and we're throwing it off the
3 rental market and that's what's happening here in Maui. And it's tough coming here every two
4 weeks, and yes it has a right, but aloha spirit is I'm so fortunate that I have a house to live in, I'm
5 so fortunate to come to Maui and be able to travel back and forth for business, and I'm so
6 fortunate to have it that I don't want to take up another rental of somebody else. I don't want it
7 to be a different way.

8
9 There's no security at this location. This is a water resource for the whole Launiupoko area. If
10 you had a bad tenant that had some people that accidently did something to this water resource
11 you know that would affect all the residents here. This isn't just another regular home. It's a
12 small long driveway like the applicant talked about and if there is some type of fire 'cause as it
13 said there's little rainfall there, I'm not sure ...(inaudible)...if that fire truck can get down that
14 lane and save the people that we legally said here's a permit, you can come stay at this home
15 as a visitor from the mainland to Hawaii but you're at your own risk because we can't go ahead
16 and put out a fire if this house comes in. I don't think it has fire sprinklers in the home. I've
17 seen anything to say for it. And for these many reasons I'm opposed to this. Thank you.

18
19 Chair Duvauchelle: Thank you, Commissioner Robinson. Further discussion on the motion?
20 Okay, Director would you repeat the motion?

21
22 Mr. Spence: The motion is to approve as recommended by Staff.

23
24 Chair Duvauchelle: All those in favor please raise your hand?

25
26 Mr. Spence: That's two ayes.

27
28 Chair Duvauchelle: Two ayes. Opposed?

29
30 Mr. Spence: One, two, three. Motion fails.

31
32 Chair Duvauchelle: Motion fails.

33
34 **It was moved by Mr. Carnicelli, seconded by Mr. Castro, and**

35
36 **The Motion to Approve the State Land Use Commission Special Permit as Recommended**
37 **by the Department, FAILED.**

38 **(Assenting – L. Carnicelli, S. Castro, C. Tackett - abstained)**

39 **(Dissenting - K. Robinson, A. Hill, R. Higashi)**

40 **(Excused – T. Gomes, L. Hudson)**

41
42 Mr. Robinson: I'd like to make a motion to deny this.

43
44 Chair Duvauchelle: Move by Commissioner Robinson.

45
46 Vice-Chair Higashi: Second.

47

1 Chair Duvauchelle: Seconded by Commissioner Higashi. Discussion on the motion? No
2 discussion. Director?
3

4 Mr. Spence: The motion is to deny the permit.
5

6 Chair Duvauchelle: All those in favor please raise your hand.
7

8 Mr. Spence: That's two ayes.
9

10 Chair Duvauchelle: Opposed.
11

12 Mr. Robinson: Three ayes.
13

14 Mr. Spence: Three ayes.
15

16 Chair Duvauchelle: Three ayes. Opposed?
17

18 Mr. Spence: One, two opposed. So that would four in favor and two opposed. Motion still fails.
19

20 Mr. Robinson: Chair gets to vote.
21

22 Chair Duvauchelle: I thought if I sat in the chair I wouldn't have to vote. I have to tell you this is
23 extremely difficult and I wish that they would finally take it off our plates, but unfortunately it has
24 not happened at this point. I agree that they should have reached out further to the neighbors. I
25 agree that there's a horrible shortage, but I really feel like the applicant has done all of their due
26 diligence and I'm going to vote in favor.
27

28 Mr. Carnicelli: Wait in favor of the motion?
29

30 Chair Duvauchelle: I'm sorry. I'm going to vote against the motion to deny. Thank you.
31

32 Mr. Carnicelli: Just clarity.
33

34 Chair Duvauchelle: Yeah, thank you. No, thank you.
35

36 Mr. Spence: So that's four to three motion fails.
37

38 Chair Duvauchelle: Motion fails.
39

40 **It was then moved by Mr. Robinson, seconded by Mr. Higashi, and**
41

42 **The Motion to Deny the State Land Use Commission Special Permit, FAILED.**

43 **(Assenting - K. Robinson, R. Higashi, A. Hill, C. Tackett - abstained)**

44 **(Dissenting – L. Carnicelli, S. Castro, S. Duvauchelle)**

45 **(Excused – T. Gomes, L. Hudson)**
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- 1 Mr. Carnicelli: I move to defer to the next meeting or actually, wait, wait, wait. What are we
2 gonna do to...what we're gonna do the whole like gun to our head thing again?
3
- 4 Mr. Robinson: When is the application date, when is the 120 days?
5
- 6 Mr. Carnicelli: Yeah, when's the 120 days?
7
- 8 Chair Duvauchelle: Corp. Counsel.
9
- 10 Mr. Galazin: Yeah, so it would 120 days from the date of the public hearing which is today.
11
- 12 Mr. Carnicelli: Oh that's today. So today's the up or down day?
13
- 14 Mr. Galazin: No, 120 days, the clock starts running.
15
- 16 Chair Duvauchelle: A 120 days from today.
17
- 18 Mr. Carnicelli: From today.
19
- 20 Mr. Galazin: So you can defer up to 120 days from now.
21
- 22 Mr. Carnicelli: So I move to defer this to the meeting prior to 120 days. The last meeting prior
23 to 120-day mark whenever that is.
24
- 25 Mr. Robinson: Second.
26
- 27 Chair Duvauchelle: Okay, we have a motion—
28
- 29 Mr. Spence: No, I'm not going to calculate it.
30
- 31 Chair Duvauchelle: Okay, you want to repeat the motion?
32
- 33 Mr. Spence: The motion is to defer this until the last meeting just prior to the expiration of 120
34 days.
35
- 36 Chair Duvauchelle: All those in favor please raise your hands to defer?
37
- 38 Mr. Robinson: Wait, I have a question.
39
- 40 Chair Duvauchelle: Oh, Commissioner—
41
- 42 Mr. Robinson: I'm sorry. Is...what if we don't have a quorum for that day?
43
- 44 Mr. Carnicelli: ...(inaudible-not speaking into mic)...
45
- 46 Mr. Robinson: So, I know, can we do 100 days? Because that way it would be two meetings in
47 case we don't...that would be two meetings if no quorum.

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Mr. Carnicelli: Sure, I will accept the friendly amendment to the motion.

Chair Duvauchelle: So shall we repeat the motion with the amendment?

Mr. Spence: So this is...so we're deferring to two meetings prior to the expiration of 120 days.

Mr. Robinson: Thank you Director.

Mr. Carnicelli: Thank you Director.

Chair Duvauchelle: Okay, all those in favor of the deferral, please raise your hand?

Mr. Spence: That's five ayes.

Chair Duvauchelle: Five ayes. Okay, motion carries. Thank you.

It was then moved by Mr. Carnicelli, seconded by Mr. Robinson, then

**VOTED: To Defer the State Land Use Commission Special Permit to the Meeting Before 100 days (two meetings from 120 days) from the Public Hearing Date (1/9/18).
(Assenting – L. Carnicelli, K. Robinson, A. Hill, C. Tackett, S. Castro, R. Higashi)
(Excused – T. Gomes, L. Hudson)**

Chair Duvauchelle: Thank you. We are going to break for lunch. We'll be back in session at 1:20.

A recess was called at 12:20 p.m., and the meeting was reconvened at 1:26 p.m.

Chair Duvauchelle: Hi, good afternoon, 1:26 Maui Planning Commission is now back in session. Director, would you like to read our coming agenda item?

Mr. Spence: Commissioners, we are finished with your public hearings and we are going on to Unfinished Business. The first one is Mr. Chris Bolte and Gary Bolte requesting a Short-Term Rental Home in Lahaina and our Staff Planner this afternoon is Livi Callentine.

D. UNFINISHED BUSINESS

- 1. MR. CHRIS BOLTE and MR. GARY BOLTE requesting a Short-Term Rental Home Permit in order to operate the Huaka Mahina STRH, a four (4)-bedroom short-term rental home located in the Urban District at 2773 Kolepa Place, TMK: 4-4-006:039, Lahaina, Island of Maui, Hawaii (STWM T2017/0010) (L. Callentine) (deferred at the October 24, 2017 meeting.)**

The 120-day deadline to make a decision is February 21, 2018.

The Commission may take action on this request.

1
2
3
4 Ms. Livit Callentine: Good afternoon Commissioners. It's lovely to see you again. On
5 October 24th of 2017 my Supervisor, Jeff Dack presented this staff report and analysis and the
6 recommendation to the Commission and at that time, the decision was made by the
7 Commission to defer the item. The notes that I have been given from that meeting were the
8 concern that maybe all the owners on the street hadn't had an opportunity to comment and
9 question about whether anyone else could be found to support the application that would yield
10 some level of comfort with this for some of the Commissioners.

11
12 Also, the Department offered to obtain the mailing addresses for all the other owners on the
13 street so the Commissioners could see, so that we could illustrate what the composition of the
14 neighborhood is as far as property ownership and tenancy. So if you...this afternoon I handed
15 out to you related to this item a packet like this and this came from the Department and this is
16 the full record of all the testimony that has been submitted. There are three columns on this
17 sheet. Do you have it? Anybody missing one? The Corporation Counsel seems to be looking
18 for it. I know I...

19
20 Mr. Robinson: There are a lot of last-minute things.

21
22 Ms. Callentine: Yes, yes, that's how it is. So the first column these were items that were
23 presented in the staff report already, but they're here again for you just for your convenience.
24 The second column is letters that came in and were compiled and sent to you with the mail out
25 last week. And the third column are letters that came in and were compiled after that mail out
26 happened.

27
28 So again, there's a separation page between each of the sections so that might help you find
29 the letters. The other thing that's included are two responses from the applicant's consultant
30 for...in response to the protests from Merrill and the protest from Klein, so those are at the back
31 of this packet. One of them looks like this on the back page.

32
33 But if you go ahead and look at the second page of this handout there's a map. Everyone see
34 the map? So this map shows...it's a little confusing but let me walk you through it. There's a
35 legend down in the lower right-hand corner and that shows you that anything in that kind of
36 pinkish colored box is a nonresident and anyone that's a homeowner is shown in green. So
37 their names are on the map with their denomination. So as you'll note only two full-time
38 homeowners actually live on this street.

39
40 There was...as far as what I have up on the board right now are the protest, the list of the
41 protest and support letters. I just wanted to make sure I captured them all. So right next door
42 are the Losbergs and originally they were not in favor of this application. They have been vocal
43 in opposing short-term rentals on this street for as long as I've been here. As long as we've had
44 short-term rentals. But they also submitted a new letter, January 2nd which is in this packet in
45 support. So I wanted you to know that they had protested but they've now changed their mind
46 and they support. Just above them the Pelayos are full-time homeowners and residents and

1 they have not withdrawn their protest. The other two protests were across the street, Mr. Klein
2 and the Connors also both protested and then we got a protest from Merrill who lives in Masters
3 Kaanapali Hillside really quite a bit removed from this neighborhood, but still it was the corner of
4 the overall Masters Association is in the 500-foot so therefore anyone that owns a unit in that
5 entire large TMK can comment. They'll all get noticed. But they're pretty far away from the
6 property.

7
8 The other thing that's shown on this map is...for example, look at the top of the map where you
9 see the words, "McNeill and there's a red, I'm sorry a pink square under his name, that indicates
10 that he holds a Short-Term Rental Permit. So does the man to his, just below him Tenkoff. You
11 approved both of these applications actually last fall. Going clockwise around the circle, you
12 see Bolte that's the subject one so that's shown as a pink triangle under his name, going
13 around, Chambers also has a Short-Term Rental Permit and they've offered a letter of support.
14 Mason offered...no, Mason didn't comment at all, but he also has a Short-Term Rental Home
15 Permit and McNeill didn't comment. So that is a breakdown of the ratio of residents to
16 nonresidents and the protests and the support letters, the source of the protest and support
17 letters. Hopefully that will give you a lot of information to go on to make your decision about
18 whether this application does meet the criteria of 19.65.

19
20 The other thing that was handed out is a document that looks like this. And this is a letter I just
21 got today. This was written by Chris Bolte and he sent this independently I think by Certified
22 Mail to all of his neighbors telling them kind of a little bit about himself and what he would like to
23 see happen in the neighborhood and what his goals are and some of the things he plans to do
24 to improve the neighborhood. And he also asks for feedback on his idea about having a short-
25 term rental here. So there's an email attached which was submitted yesterday to me as a letter
26 of support for the short-term rental, but the email writer Monika Nemenz, she actually clarified
27 later and that's again, this is the first time I've seen this, but I have her clarification which is
28 shown in the packet I provided you today which just says I was merely commenting on getting
29 the street redone. I asked her specifically were you commenting that you're in support of this
30 short-term rental application and she clarified that she was only commenting on about the street
31 being redone. That's why she's not shown on the map as being in support or in protest because
32 it was neither.

33
34 So with that, the applicant does have a power point she would like to show and this is the
35 handout that she gave you of the power point but she's also going to go through that now. With
36 no objections, I will turn the podium over to Debbie Mitchell.

37
38 Ms. Debbie Mitchell: Hello again Commissioners. I am Debbie Mitchell and I'm the consultant
39 for Mr. Chris Bolte and Mr. Gary Bolte in a short-term rental home application for their home at
40 2773 Kolepa Place in Lahaina or Kaanapali area.

41
42 As most of all of you with the exception of Ms. Hill I believe were present at the last presentation
43 that we made but I'm going to take you through it so you can see it from beginning to end. This
44 is the area involved. In directly above the main resort area of Kaanapali. It is kind of a little
45 island that sits out there in the middle of the golf course, the Royal Kaanapali Golf Course and
46 the golf course wraps around it. And it is located on the west side, yes exactly...and then here's

1 an aerial view of it so you can see how the golf course just surrounds it. And moving in over the
2 top there are 16 homes in this particular development and this particular home has not been
3 used previously as a vacation rental. Moving in along you can see its proximity to the golf
4 course and that it is quite a buffer between this particular development and the surrounding
5 homes and businesses.

6
7 The house itself is four bedrooms. The lot size is 13,790 square feet. And this is bringing you
8 into the area on the street itself right off of Highway 30. It is Puukoolii Street which is where the
9 sugar cane train terminus was located. And the road takes you up to Kaanapali Hillside. These
10 are private roads that are maintained through the area. Taking Kalapu off to the right and
11 continuing up the hill where you meet Kolepa Place. And this is on Kolepa Place looking south
12 and north.

13
14 The home itself is set down in the topography of the land so that the only visible portions are the
15 upper floors which are the bedroom and it is set down so that the activity centers via the lanai,
16 the pool, that sort of thing face out to the golf course which again helps with noise abatement.

17
18 There's ample parking. There are room for four parking places that met the requirements of the
19 ordinance, two inside the garage and two in the driveway.

20
21 The exterior of the house, this house was built in 1975 and it has a...it's very reminiscent of the
22 Sea House Restaurant. It has a lot of rock work and a lot of wood work.

23
24 The views out to the west, north, south, and east. The steps there lead up to the hill so you can
25 really see how the topography drops off there to get to the house itself.

26
27 The floor plan, it's a two-story house and has the ability to be locked off. The upper floor can be
28 locked off and just the lower floor rented if that's desired. Inside the house take you through,
29 very fine chef's kitchen, dining room and kitchen nook, living room, upstairs media room, and
30 the four bedrooms. They are ensuite bathrooms. These are the baths. It is actually a four and a
31 half bath home. The pool and lanai area faces out to the 11th hole of the Royal Kaanapali Golf
32 Course, we fish a lot of golf balls out of the pool.

33
34 And just a little bit more about I had mentioned this last time there was a famous Irish tenor
35 named Dennis Day back in the 40s used to be on the Jack Benny Show and he built the house
36 in 1975 and he and his wife lived there until his death and she lived there on and off for about
37 17 years. So it has quite a history. It's very interesting. Had a lot of notable celebrities stay
38 there. It's a very interesting house.

39
40 In terms of the ordinance, we did of course notify all the neighbors within 500 feet and we
41 received three support letters which Livit had showed you one of which was from his adjacent
42 next door neighbor. And on the other side of him, the adjacent neighbor on the other side stood
43 mute and but he also holds a short-term rental home permit in International Colony Club so it's
44 not unfamiliar with how that works.

1 When we presented this last time Mr. Robinson you tasked us to go to talk to everyone on the
2 street and get the people that weren't involved with the short-term rentals, get their opinion to
3 get their take on it what they thought. And this owner has been the most involved of any owner
4 I've worked with in these. He went door to door. He knocked on doors. He got...you know,
5 listened to people's concerns and shared them you know with what they were concerned about.
6 One in particular Mrs. Losberg who had not...the original mailing she did not protest but after
7 Planning made a call then then she did protest. So Mr. Bolte went back to her and was able to
8 solve all of her issues with the situation and so she then turned to support him. We also wanted
9 to do the same with Mr. Pelayo, they're two residents, full-time residents, but we unfortunately
10 didn't receive the letters until much later after they had arrived at Planning so Mr. Pelayo was ill
11 and we didn't want to go knocking on his door will you support us, you know that kind of thing.
12 So we weren't able to really get to speak to him like we wanted to.

13
14 So, and as Livit mentioned the owner did send out his own letter to all of the people in the
15 neighborhood telling them about his plans and then also trying to organize
16 road...(inaudible)...and neighborhood watch that sort of thing and we received a couple of
17 emails saying that's great, I'm on board. Unfortunately one of those was given as a support
18 letter but Livit was able to correct that for us. So we just moved that to where it was
19 appropriate. So as I mentioned there were two protest letters originally received and then the
20 one from Ms. Losberg came in after the call was made. Then there were a couple that came
21 in...pardon me...yeah, and there was one that came in that we never received. I saw it for the
22 first time today so we had no chance to respond to it. But Mr. Bolte went around and knocked
23 on every door he could unfortunately there are only two local people that live there so it was
24 hard to make connection, but he did...he was here for a month and a half or so and made
25 connection with everyone he could to listen to their problems and try to correct them. So again
26 there are five other short-term permitted homes within the 500 feet and one bed and breakfast
27 and of course the International Colony Club is on the very entrance to Kalapu Drive and Kalepa
28 Place where there are 22 permits.

29
30 So this gives you a little bit more, Livit gave you this sort of thing, but this would give you a little
31 bit more idea of the blue are the permitted dwellings, the green are the support letters and the
32 beige are the protest letters. So that's what we had because we didn't have the ones that were
33 not given. So that is that graphic.

34
35 So anyway we have the owner here Mr. Chris Bolte was here who is a co-applicant and who
36 was here last time and his father, Mr. Gary Bolte is here today to say a few words to you as
37 well. Okay, thanks so much for your attention.

38 Chair Duvauchelle: Thank you.

39
40 Mr. Gary Bolte: Thank you. My name is Gary Bolte, excuse me I don't speak much in front of
41 people, so I don't want to be too nervous, but again my name is Gary Bolte. Back in the early
42 40s my father was stationed here in Hawaii with the Army ...(inaudible)... He was fortunately
43 enough to spend two years here and he loved—

44
45 Vice-Chair Higashi: It's okay. Take your time, no rush.
46

1 Mr. Bolte: --and he loved the islands very much. He came back to Cincinnati, Ohio where we
2 live and started business. That was in 1946. That's when he started business on my birthday.
3 I'm sorry.

4
5 Chair Duvauchelle: That's no problem.

6
7 Mr. Bolte: Anyhow, I became part of that business in 1970, my son and
8 daughter...(inaudible)...generation did business. Back in early...the middle 70s my father
9 talked to me, well came over and started vacation here for about two to three months when he
10 was at retirement age. In 1986, he twisted my arm into going with him in a single bedroom
11 condo at the Maui El Dorado down in Kaanapali and got it for a really good price and Dad
12 enjoyed it up until he was 92 years age and Mom the same way, both Mom passed last year,
13 and Dad passed two years ago. We brought a lot of my aunts came with Mom and Dad, my
14 cousins have come over. My brothers and sisters have come over. Had a great time in the
15 islands. Unfortunately, the one-bedroom condo got to the point where nobody fit in it any more
16 so we decided okay, let's start looking for a home and my son actually found this property. We
17 decided to put an offer in and we bought the property. Part of the times when we were renting
18 the other condo because Dad was there for about six months a year. We didn't rent it at first
19 actually and we found out that if a unit wasn't opened up and people moving through it we had
20 mold and mildew all over the walls and everything else. So even though it was in a
21 condominium area they would shut the air-conditioning off, shut everything down and you'd
22 have a mess. So we were forced to go back into a small rental pool at the El Dorado. Again,
23 got too small, we moved into the new house. I plan on semi-retiring there for between four and
24 six months a year. My son and daughter because they have children that have to go to school
25 they're gonna have to use it around Christmas time or during summer time. So there's gonna
26 probably be a two-month period in the late spring and maybe two months in the late fall where
27 the unit's gonna sit and we're just so afraid that it's gonna turn into a mold and mildew situation
28 again. We don't really want to make a lot of money out of it. We want to keep open. We're
29 gonna have people coming...unfortunately most of our friends, it's a nine to twelve-hour flight
30 from Cincinnati and we've talked a lot of them into saying hey come on over with us. They don't
31 even want come here for free. That is a too long a flight. If we ever got them over here they'd
32 realize how beautiful the place is and they might come more often. But that's my whole key
33 right now, my son is an amazing young man, he went out and touched with all the neighbors,
34 tried to get them involved, tried to tell them that hey, listen we're willing to start the
35 neighborhood watch, he got everybody's emails, everybody's phone number so if anybody is
36 there, 'cause everybody's got a list, you see something going on let everybody know, a simple
37 click on an email everybody gets an email what's going on. If it's something serious start calling
38 phone numbers. We're trying to be good neighbors in the area. We're not trying to just turn this
39 into rental...(inaudible)...like I say, we're only gonna probably rent this thing maybe eight to ten
40 weeks a year just to keep it open so the ventilation goes through. The rest of the time I plan on
41 enjoying and my kids plan on enjoying it. I think that's really all I had to say. If you have any
42 questions of me.

43
44 Chair Duvauchelle: Thank you. We'll have questions after public testimony. Thank you.

45
46 Mr. Bolte: Okay, alright great thank you.

1
2 Chair Duvauchelle: Is that the end of the presentation? All right, so at this time we'll open the
3 floor for public testimony. Anyone wishing to testify on this agenda item please come forward.
4 Okay, seeing none we will close public testimony and we will entertain questions from the
5 Commissioners. Do we have no questions or discussion?
6
7 Mr. Robinson: I have one question.
8
9 Chair Duvauchelle: Commissioner Robinson?
10
11 Mr. Robinson: This is for the Director. Director, in one of the letters Mrs. Losberg, she said in
12 her letter that she got assurances that the place will not be rented for shorter than a week and
13 that there would be no parking on the street. I thought we can't put conditions on time on these
14 permits and as well as public parking areas? So are these guarantees valid?
15
16 Chair Duvauchelle: Director?
17
18 Mr. Spence: Well, the public parking, the intent of the Short-Term Rental Home Ordinance is
19 that all the parking be on the specific property not...that was a big concern during the Council
20 deliberations was that guests would park just anywhere and take up you know the residential
21 parking. So the parking has to be on the site anyways.
22
23 As far as renting shorter than a week if that was a representation made by Mr. Bolte—
24
25 Unidentified Speaker: Oh no.
26
27 Mr. Spence: No.
28
29 Unidentified Speaker: ...(inaudible-speaking from audience)...
30
31 Mr. Spence: Okay, so his indication was that they would rent two weeks minimum. So if that's
32 something that they would like to do I don't see a problem with putting a condition on if that's his
33 agreement anyway.
34
35 Chair Duvauchelle: Commissioner Robinson?
36
37 Mr. Robinson: We're not allowed to put the conditions but they're allowed to put conditions
38 themselves?
39
40 Mr. Spence: When you put conditions on a permit you need to have a rational nexus. You have
41 to be able to identify an impact first and then your condition is supposed to mitigate that
42 particular—that particular impact it's supposed to be roughly proportional. So—
43
44 Mr. Robinson: I guess what I'm getting to Director—
45

1 Mr. Spence: If this is something that he's offering I would have a...I mean if I could identify an
2 impact that would say, hey two weeks is you know, is necessary for this particular permit that
3 would be one thing but if this is something he's offering and to provide the assurances for the
4 neighbors and everything I don't see a problem with putting it on.

5
6 Mr. Robinson: Chair?

7
8 Chair Duvauchelle: Commissioner Robinson?

9
10 Mr. Robinson: I'm delving into this because we just had this where we had conditions that a
11 applicant agreed to a certain conditions and then they came two times back asking to change
12 the conditions. You don't recall this at Launiupoko?

13
14 Mr. Spence: Oh, I do recall that and that they said they would come back and they would
15 request it to be changed.

16
17 Mr. Robinson: At the time of accepting our vote? And I guess, I mean we get to the slippery
18 slope of what it is and when we vote and when they can change and what we're voting for and
19 what the Commissioners at that time, you know, and that's the thing. It's at this day and time
20 that this is what the application is for and then with them with the ability to say okay, I want you
21 to take this condition off and now that the Commission's changed, you know so for the next
22 three years any time the condition that we agreed upon first is gonna change 'cause there's no
23 strict adherence to it. And so I'm just trying to say it be helpful just to have it or not instead of,
24 you know, like if he proposes it, you know, it can be where it can be changed or there's nowhere
25 this doesn't mean that you know it cannot be moved later on. I mean some kind of
26 ...(inaudible)...on top of this because I don't wanna a support letter to read something and then
27 being understanding something they supported a project and then they found out later that the
28 applicant changed it.

29
30 Mr. Spence: Okay, okay, I understand. Certainly I would say any applicant for a permit, their
31 discretionary permit whether it be SMA or Special Use or Short-Term Rental Home, everybody
32 as the right to come in and apply to amend the conditions of their permit. And what we do is
33 when...if that happens, we go back in the minutes and we review what was said to the
34 commission and why a certain condition was put on it. And then we will make a
35 recommendation to the commission to remove it or to not or modify it in any case. Since this is
36 something that the applicant has volunteered, you know, I would certain think if a year from now
37 or two years from now they wanted to change that condition they would go back to that
38 particular neighbor and say, hey we would like to lift this is this okay with you? I mean, we
39 would look back in the minutes and go, okay this was the issue with that neighbor that the
40 rentals were too short and the applicant voluntarily did this. I mean, we wouldn't do...we
41 wouldn't just bring a permit, a condition amendment to this commission in a vacuum just blindly.
42 We would do the research and find out why is that condition there.

43
44 Mr. Robinson: Okay.

45
46 Chair Duvauchelle: Commissioner Carnicelli?

1
2 Mr. Carnicelli: To that same line of thought I think that the one that Commissioner Robinson is
3 bringing up you know from Launiupoko I think that in hindsight, I wish what I would have done is
4 said this additional condition that were putting in there is changing my vote. Because then when
5 it came back it wasn't like okay this is what the prior commission did or not, it's not in the
6 minutes it's just it was in my head. So I didn't put it on the record that this is the reason why I'm
7 voting for this. So if the two-week thing right now is the reason why someone might or might not
8 vote for it let's put it on the record and that way when that guy comes back it's not like okay,
9 we're gonna trust that he's gonna go to his neighbor. It's like no we go back to the minutes and
10 it says, oh you know, Commissioner Carnicelli voted for this because of this condition so if he
11 wants to come back and amend it it's a bigger deal.
12
13 Mr. Spence: Yes. That's the purpose of building a record.
14
15 Mr. Robinson: Except our minutes are now summarized and not verbatim.
16
17 Chair Duvauchelle: In your microphone please.
18
19 Mr. Robinson: Sorry.
20
21 Chair Duvauchelle: Any other...Director?
22
23 Mr. Spence: Just a comment on the minutes. There will be summary minutes about whatever
24 the vote is taken, but the full minutes are, by State law...I think it's starting next fiscal year.
25
26 Ms. Takayama-Corden: July 1st.
27
28 Mr. Spence: July 1st they will be just the audio recording, so for right now they will be fully
29 transcribed. July 1st, they'll start being audio. So...
30
31 Chair Duvauchelle: Corp. Counsel?
32
33 Mr. Galazin: Thank you Chair. And for the benefit of our new member and for the benefit of the
34 public as well to echo Commissioner Carnicelli's comments in terms of building a record it is
35 very important to articulate based on the criteria through which you evaluate a permit articulate
36 your reasons for voting it or for opposing it. That way it really helps produce the findings of fact,
37 decision and order that come out and then helps down the road if there is any kind of argument
38 or litigation, hopefully not you know involving it but the more that is put on the record, the more
39 that you as commissioners can point to exactly the issue that you have and how it pertains to
40 the standards through which you are evaluating the permit that makes it a lot easier for both you
41 and the applicants and my colleagues if we get sued.
42
43 Chair Duvauchelle: Okay, I mirror the same feelings about Launiupoko. Commissioner Hill?
44
45 Kahu Hill: This question is for Livit or who can answer. Just looking at how many have already
46 been approved on this street and the amount of nonresidents that are living here and the

1 maintaining of this, could you share about how they're maintaining this street, the homeowners
2 what's in place and what they're planning to do as far as maintenance of this area? Who's
3 taking responsibility if there's so many nonresidents and bed and breakfast or vacation rentals?
4

5 Ms. Callentine: As far as the maintenance of the street I do not know how they're maintaining it
6 but we probably have a couple people here, the applicant would know and probably Ms. Mitchell
7 would know as well the answer to that. Let's see was there another part to the question? You
8 were wondering about the maintenance of the street?
9

10 Kahu Hill: Basically looking at, yeah as far as so many nonresidents and...was just looking at it
11 if people were to come in the future and where local residents buying into this as well property
12 that this is becoming that there's so many had been permitted already. So I was just looking at
13 this and who's maintaining it. So my main question was about the maintenance but I'm just
14 looking at the overall picture.
15

16 Ms. Callentine: Yeah, I did a little calculation. Of the 16 units within the subdivision, 32 percent
17 of them are currently holding short-term rental permits and 88 percent of the 16 units are owned
18 by nonresidents just so you get a sense. And did you want to hear from the applicant for the
19 road?
20

21 Kahu Hill: Yes.
22

23 Ms. Callentine: Okay.
24

25 Mr. Bolte: My name is Gary Bolte. What was the question?
26

27 Kahu Hill: Just wanted to know about the...there's so many nonresidents in the area and
28 looking at that if most of the people are not living on the street as far as maintaining this area,
29 the maintenance or the homeowners. Do you have a homeowners association?
30

31 Mr. Bolte: From what I understand there's no homeowners association. So that's part of what
32 my son is trying to get involved everybody to try to find out because he lives on a street that is a
33 private area and he's responsible along with the neighbors to do it and he said gee, is there any
34 plan set up for this? Nobody knows anything. That's one of the things he's reached out to the
35 people. We've just been here for about year now and we're still learning all the ropes. But
36 yeah, the road is a private road. Somebody is gonna have to pay for it and that's not taxpayers,
37 that's gonna be us but at what point do we do it? That's when everybody in the neighborhood
38 decides, yep we gotta get it done now or a consensus of the people that are living there and
39 then it's got to be split up I would assume by either frontage or property acreage. I'm not sure
40 how that works. Right now there's nothing set up. The roads are not falling apart yet, but
41 maybe five, ten years from now that could happen. So yeah, that's one of the reasons he's
42 setting up this neighborhood program trying to get it going from there.
43

44 Kahu Hill: And do you have neighbors involved in that that's he's setting up already too have—
45

1 Mr. Bolte: Right now he's got...I wanna say he's talked to about 10 to 12, some of them aren't
2 responding even to his email. So he'll keep trying. Some way or another even don't have a
3 neighborhood association there's gotta be something where people get together to find out what
4 we're gonna do. Yeah, I don't have answer complete other than the fact that we're trying to
5 work on it. We've just been here a little over a year.

6
7 Kahu Hill: Mahalo.

8
9 Mr. Bolte: Thank you.

10

11 Chair Duvauchelle: Any other questions? Okay, can we get the Department's recommendation
12 please or do we have more? You're good? Department's Recommendation.

13

14 Ms. Callentine: If you'll recall in your recommendation in the staff report and recommendation,
15 for this one we did not actually make a recommendation. We...what we've said is, regarding
16 this short-term rental home permit application should the planning commission favor approval of
17 the short-term rental home permit the commission should conclude that the application for a
18 short-term rental home permit complies with the applicable standards for a short-term rental
19 home in accordance with Chapter 19.65.030, Restrictions and Standards, Maui County Code
20 which were fully listed in the applicable standards section...applicable regulations section of the
21 Planning Department report on October 24, 2017. And conversely, should the commission
22 favor denial of the permit, the commission should conclude that the application for short-term
23 rental home permit does not comply with all of the applicable standards for a short-term rental
24 home listed in 19.65.030 and identify which standards, with which standards it does not comply.

25

26 Chair Duvauchelle: Thank you. Any questions? Director?

27

28 Mr. Spence: Commissioners when this...this application was first being processed and Livit
29 brought the staff report to me and it was difficult because of...the first thing I saw was, wow
30 there's a whole bunch of other vacation rentals in this area. However, this is Kaanapali, it's a
31 resort area and however, if you look at the map here that Livit put together you know these are
32 mostly second homes for people and so you know part of the...the reason for the ordinance or
33 the form of the ordinance for short-term rental homes is to preserve the character of the
34 neighborhood. I think in everybody's mind when they were doing this they were thinking a
35 neighborhood in you know, whatever Wailuku Heights, Kahului, Pukalani, Makawao and they
36 weren't thinking neighborhoods where almost all of them are second homes. So it made it hard
37 to go wow it's really clear to me that this...we can recommend approval. This is a very different
38 kind of neighborhood than your traditional single family residential neighborhood because it is,
39 it's a resort area and these are second homes for so many people. So any way that's pretty
40 much why we didn't make a strong recommendation. We made no recommendation one way or
41 another. It appears to me that Mr. Bolte and his family will be quite responsible should there be
42 a permit granted and I'll just leave it at that.

43

44 Chair Duvauchelle: Commissioner Carnicelli?

45

1 Mr. Carnicelli: Director I'm not recalling 'cause I mean we got our standard conditions but
2 oftentimes we also have site specific conditions and so without a recommendation we're kind of
3 without site specific conditions.

4
5 Ms. Callentine: Well, we do have a recommendation, I was gonna continue on this—

6
7 Mr. Carnicelli: Okay, sorry.

8
9 Ms. Callentine: -- and then we kind of stopped with that. So here's what our recommendation is
10 and this is in the...in the recommendation report. The Maui County Planning Department has
11 no recommendation regarding the requested short-term rental home permit. However, should
12 the commission choose to approve it the Department would recommend that it be approved
13 subject to the following 22 common conditions, and we haven't prepared any project specific
14 conditions but there's nothing that at all to prevent you from adding a condition or more than one
15 condition if you like. But it's the standard 22 that should you vote to approve would become
16 effective unless you want to suggest other ones.

17
18 Mr. Spence: That is correct.

19
20 Chair Duvauchelle: Thank you. Commissioners?

21
22 Mr. Robinson: I move to deny.

23
24 Vice-Chair Higashi: Second the motion.

25
26 Chair Duvauchelle: Moved by Commissioner Robinson, seconded by Commissioner Higashi?
27 Discussion on the motion please?

28
29 Mr. Robinson: I'd like to speak to the motion?

30
31 Chair Duvauchelle: Yes.

32
33 Mr. Robinson: Thank you. You know it's...I was talking with a fellow commissioner, you know
34 about its hard. It's hard when people come and they're good decent people and you know they
35 have a situation and you know, they want to have their open and things like that. But what's
36 harder is is the intent of what the bill is which I think is a flawed bill that we're dealing with in this
37 commission and the Council passed a while ago. We have a Planning Department with dozens
38 and dozens of planners that spends hundreds of hours deciding what areas we're gonna have
39 residential areas or where we're gonna have hotel areas, where we're gonna transient vacation
40 rentals. And this applicant used to be in the transient vacation rentals at El Dorado in that area
41 and we have street with five neighbors that are protesting. We can even say four.

42
43 So the question is when does a residential neighbor, a long-time resident actually get a say
44 about what happens in his neighborhood that he's lived there. We have short-term people that
45 have these short-term permits. We have one that is speculative and has a permit for short-term
46 rental right next door on the Colony Club where we gave 20 something short-term permits, right.

1 And of course, the saying then was oh these are just...this is a resort area as our Director said.
2 But that's not true. It's becoming ...(inaudible)...area. I know the Chairperson and myself, are
3 putting homes in Kaanapali that are affordable housing and the reason why they're resort is
4 because people aren't turning it to affordable. People aren't turning it to residential, they're
5 falling for the saying that oh this is all resort. There are resort rooms, Honua Kai has rooms that
6 you can buy that has three bedrooms and two baths and all that type of stuff. There is things
7 and areas for people who want to live here as a transient. That's why it's called transient
8 vacation rentals.

9
10 But in a residential area our challenge is trying to have people who are residents and this
11 doesn't follow it. And to me it's, when I have this many people on the street and we ask them to
12 please go and talk to your neighbors 'cause there wasn't that much feedback, we got the
13 feedback. We got five protest letters, and then one protest letter said okay, well as long as you
14 keep the parking off and you don't do the short-term rental then I'm okay with it, but that's
15 something that can be changed later and we know that for a fact 'cause we just did the
16 Launiupoko where they agreed to not rent one out and they came back two, three times, twice
17 with us till they finally got the right commission and they got the vote passed. You know they
18 expanded that 120 days.

19
20 So it's not these people who apply are not good people, it's not that they're not deserving
21 people, it's just that I don't want to choose between people. I want to follow the plan. I want to
22 follow what the planning map says and I want to be residents and residential first. I don't want
23 to be anti-short-term rental. I want to be residential first and then when our residential are
24 taken cared of then we can look at auxiliary uses. Our hotels are not full. Our short-term rentals
25 and our transient vacation rentals in the things that we developed are not full. There is not a
26 need for this, there's a want for this. People want to stay in homes and I don't blame them, but
27 it has a auxiliary effect on what happens with the rest of the area.

28
29 So I don't want to buy the fact that Kaanapali is not a residential area. It can be a residential
30 area. Royal Lahaina had all the employees living on Royal Lahaina in all those cottages that
31 used to be residential. This was born a residential area and it's turned into it and we have to,
32 we have to help the people that are supporting our tourism industry have a place to live instead
33 of having them to drive an hour and fifteen minutes every day from the Central side. And
34 Kaanapali side and the Lahaina side is the worst being hit and like I said, we have 20 something
35 units just a quarter of a mile away. There's enough short-term rentals in this area. There's four
36 protestors on this street and there's short-term rentals on this street. At some point enough is
37 gonna have to be enough. A cluster is gonna have to be called a cluster. Thank you.

38
39 Chair Duvauchelle: Thank you. Commissioner Higashi?

40
41 Vice-Chair Higashi: I seconded Commissioner Robinson's motion based upon the fact that this
42 particular residence is a classic of having people buy a second home and then use it later on as
43 a short-term rental. And this particular community is heading toward that direction because if
44 you look at the number of part-time residents it's 80 percent of them, 80 percent. And there's
45 only two that are basically permanent. And I think part of our job is to make sure that those who
46 are planning to buy and own and live there is protected from future rentals that are coming in.

1 This one shows definitely that there's possibility of instead of five you're gonna have ten that's
2 gonna come in because if you have a part-time home tendency is you're not gonna oppose
3 somebody who's coming in and want to do short-term rental because in the future they might
4 want to do it themselves. A classic example is in the Kapalua. There's a cul de sac area where
5 there were only one or two but then the ones that were neighbors were also part-time residents
6 and eventually they also applied for short-term rental and I think this is the trend. I'm sorry for
7 Mr. Bolte to be coming in at this particular juncture but this particular area I think is automatically
8 creating traffic problems, other people coming in and out and it's an enclosed neighborhood.
9 And so I support Commissioner Robinson in looking at this and it's part of our job to make sure
10 that we don't end up where we have a semi hotel in a residential area.

11

12 Chair Duvauchelle: Thank you Commissioner Higashi. Any further discussion? Commissioner
13 Carnicelli?

14

15 Mr. Carnicelli: So I'm going to speak in opposition of the motion. While I understand and
16 appreciate and agree with much of the sentiments of my fellow commissioners the part that I
17 look at is there are specific criteria with which I need to make my decision on and I go to that
18 criteria. And when I look at that criteria and I look at what Mr. Bolte has done and presented
19 there's some objectivity and there's some subjectivity. I believe that he has met the criteria with
20 which he needs to in order to get this particular permit and the criteria with which we need to get
21 this permit. I'm also a bit concerned in that I'm not sure and I believe that if Mr. Bolte were to
22 appeal this, and I'm sorry I'm gonna do this Corp. Counsel, but I'm sorry if Mr. Bolte were to
23 appeal this I think that he has grounds to show that this is not a fair and impartial tribunal when
24 we look at what we have put on the record in regards to short-term rentals over the course of
25 this particular commission and what we talk about and what we find to be important and not
26 important and why we're making our decisions and not and so I do believe that if he were to go
27 in front of a judge and try to appeal this he would have grounds of it not being fair tribunal. And
28 so, I'll just go back to you know, I won't support the motion and I feel that he has met the
29 criteria. Thank you.

30

31 Chair Duvauchelle: Thank you. Any further discussion?

32

33 Ms. Callentine: Could I add a little something based upon the discussion just a couple of
34 points?

35

36 Chair Duvauchelle: ...(inaudible)...

37

38 Ms. Callentine: Just a couple of points. Just as a reminder the Planning Department is no
39 longer accepting applications for short-term rentals in West Maui because the number of
40 applications we have if they were all approved that would exceed the cap in West Maui. So we
41 won't, obviously we won't approve beyond the cap, but ones you're gonna be seeing are kind of
42 the last of the permits for West Maui.

43

44 And the second thing is of the existing short-term rentals that are on the street, I did check in
45 our data base and no one has complained since they've been operating as short-term rentals.
46 So if someone had complained to the County we would have a record of that and that would

1 help us understand what the impacts of the short-terms would have been on the neighborhood
2 and we don't have any records of complaints.

3
4 Chair Duvauchelle: Thank you. Commissioner Robinson?

5
6 Mr. Robinson: I'd like to speak as far as not thinking that this is a fair tribunal. We have the
7 Planning Department with a paid planner speaking on behalf of the applicant. We have the
8 Director sending his opinions on what he thinks is residential and what is resort and then to
9 think that my one person opposing three other people speaking is somehow an unfair tribunal
10 because I'm speaking on behalf of the five protestors who in criteria they had to send the letters
11 to and part of our criteria is to vote on clusters which is in the law or protest letters which is in
12 the law. I don't see how that is unfair to somebody. I see this as a commission that
13 everybody's able to speak what they feel. I can add on different feelings but that doesn't deter
14 from the law of what my vote is gonna be about. And so I'm pretty confident that in a court of
15 law I think our process that we do here as a commission is just fine.

16
17 Chair Duvauchelle: Okay, Director? Any other discussion, questions? Do we feel a need for
18 executive session? No? Okay, Director would you repeat the motion?

19
20 Mr. Spence: The motion is to deny the permit.

21
22 Chair Duvauchelle: All those in favor please raise your hand?

23
24 Mr. Spence: That's three ayes.

25
26 Chair Duvauchelle: Opposed?

27
28 Mr. Spence: That's two opposed.

29
30 Mr. Spence: That's three, so it would be four ayes. It would be four ayes because
31 Commissioner Tackett did not raise his hand.

32
33 Chair Duvauchelle: Oh, I'm glad there's only three meeting left, maybe four. So on both sides
34 of the coin, part of me likes the idea of keeping them all in one area. The other part, definitely,
35 definitely sympathizes with what Commissioner Robinson is saying. I do feel like we do need to
36 listen to the neighbors. I find it interesting that out of so many non-residents that there would be
37 any letters and that there's been no requests for service in that neighborhood. Where I'm going
38 I'm killing time 'cause I'm not sure what I'm going to do here. But I do, I do feel like also there is
39 a certain criteria so I would not support the motion to deny.

40
41 Mr. Spence: The motion fails.

42
43 **It was moved by Mr. Robinson, seconded by Mr. Higashi, and**

44
45 **The Motion to Deny the Short-Term Rental Home Permit, FAILED.**

46 **(Assenting – K. Robinson, R. Higashi, A. Hill, C. Tackett-Abstain)**

1
2 Mr. Spence: No, the way that the ordinance reads is a 120 days from the first public hearing. If
3 no decision is made then it's deemed approved. There's nothing in the ordinance about
4 whether the Department makes a recommendation or not.

5
6 Chair Duvauchelle: Commissioner Carnicelli?

7
8 Mr. Carnicelli: And I know we've gone over this before but I can't remember. Deemed
9 approved with the conditions or without?

10
11 Mr. Spence: Pretty silent.

12
13 Mr. Carnicelli: So basically if we don't act by February 21st this gets approved with no
14 conditions?

15
16 Mr. Spence: Well, they would still have to follow the ordinance. So as far as parking off street,
17 as far as the house rules, the various things like that, renting to one party those are...regardless
18 of conditions or not those are still requirements of the ordinance in order to operate.

19
20 Chair Duvauchelle: I would like to make a motion that we go into executive session.

21
22 Kahu Hill: I second.

23
24 Chair Duvauchelle: And seconded by Commissioner Hill. All those in favor please raise your
25 hand. How many is that?

26
27 Mr. Spence: Four.

28
29 Chair Duvauchelle: Five.

30
31 Mr. Spence: Looks like we're in executive session.

32
33 Chair Duvauchelle: Okay, thank you. If you could please clear the room for a few minutes.

34
35 **It was then moved by Ms. Duvauchelle, seconded by Ms. Hill, then**

36
37 **VOTED: To Go Into Executive Session.**
38 **(Assenting – S. Duvauchelle, A. Hill, L. Carnicelli, C. Tackett,**
39 **S. Castro, K. Robinson, R. Higashi)**
40 **(Excused – T. Gomes, L. Hudson)**

41
42 The Commission went into Executive Session from 2:22 p.m. to 2:30 p.m., and then went back
43 into Regular Session at 2:32 p.m.

44
45 Chair Duvauchelle: Back in regular session. Thank you, Corp. Counsel. All right,
46 Commissioner Carnicelli?

1
2 Mr. Carnicelli: So Chair, I'm gonna throw everybody a curve ball right now. Imagine that.

3
4 Chair Duvauchelle: Why am I not surprised?

5
6 Mr. Carnicelli: I'm gonna make a motion to deny.

7
8 Mr. Robinson: Second.

9
10 Mr. Carnicelli: If I could speak to the motion?

11
12 Chair Duvauchelle: Please.

13
14 Mr. Carnicelli: Okay so for the record, this is nothing that was discussed in executive session,
15 nothing that was happened. I just happened to go back through the application and look at
16 some other things and as I said, there are objective things and there are subjective things to the
17 criteria with which we make. And as I look at this and I sink into it a little bit more, I think that it
18 is the right action for me to change my vote from in favor of the application to denial of the
19 application. And I think one of the biggest pieces to this is not the clustering 'cause like you
20 talked about Chair, I think that actually clustering sometimes is good. I think we want these in
21 specific areas especially when we talk about Lahaina. However, when we look at the specific
22 opposition to the neighbors, you know, from the neighbors is really what I reconsidered and is
23 the reason for me changing my vote and the reason for me to vote in denial of this application.

24
25 Chair Duvauchelle: Anybody else wish to discuss? No other discussion? Director?

26
27 Mr. Spence: The motion is to deny the permit.

28
29 Chair Duvauchelle: All those in favor please raise your hand?

30
31 Mr. Spence: One, two, three, that's six ayes.

32
33 Chair Duvauchelle: Motion carries. Application is denied. Thank you.

34
35 **It was moved by Mr. Carnicelli, seconded by Mr. Robinson, then**

36
37 **VOTED: To Deny the Short-Term Rental Home Permit.**
38 **(Assenting – L. Carnicelli, K. Robinson, A. Hill, C. Tackett, S. Castro,**
39 **R. Higashi)**
40 **(Excused – T. Gomes, L. Hudson)**

41
42 Ms. Callentine: Now when we have a denial it's important that...well, what happens now is that
43 I write a decision and order which then gets approved. I want to make sure that I understand
44 the criteria. What I've heard today, what I just heard was that this denial was based on the
45 criteria in 19.65.030 and No. 7 which reads the number and substance of protests to the short-
46 term rental home application and protests relative to the cumulative short-term rental homes in

1 the neighborhood or area. Is that the one you're referring to? Do you also want me to address
2 the two criteria above that which is No. 5, potential adverse impacts? I know that was included
3 in some of the protests. You didn't really discuss it much in your discussion but that would be
4 one possible one I would see would apply here and then the third one would be No. 6, which is
5 the number of permitted short-term rental homes surrounding the proposed short-term rental
6 home property. Now you just said you were not opposed to the clustering, the number of them
7 within the neighborhood.

8
9 Unidentified Speaker: ...(inaudible-not speaking into mic)...

10
11 Ms. Callentine: But I'm just...so the Commission if you could help me help you by helping me
12 understand which criteria you want me to cite in your decision and order that would be helpful.

13
14 Chair Duvauchelle: Corp. Counsel?

15
16 Mr. Galazin: Yeah, thank you Chair. And that's...I think the motion's been made and it's been
17 voted on. I think it's final. At this point, we can't really go back to a discussion on it. So I think
18 we're gonna have to delve through what everyone has said, and take those comments and
19 ...(inaudible)... the decision and order from that which makes it a little more difficult for you and
20 I, but so be it. I think there's...there was enough that was clearly articulated that I think we can
21 build off of that. But again, I think what the Planner is stated is very good to make sure to all
22 commissioners it does help to point to these specific sections and say, you know, this is...in the
23 discussion before the vote's taken, this is what I'm looking at, this is why I am going to vote in
24 favor of or why I'm not just for future reference.

25
26 Chair Duvauchelle: Thank you very much. All right, thank you Livit. Thank you
27 Commissioner Carnicelli. See you next meeting. Director, our next agenda item unless
28 anybody needs to take a break? Oh, okay, we are going to take a five-minute recess.

29
30 (A recess was called at approximately 2:35 p.m., and the meeting was reconvened at
31 approximately 2:40 p.m.)

32
33 Mr. Higashi: The Commission is back in regular session. We'll have the Director read the next
34 item on the agenda.

35
36 Mr. Spence: So Commissioner just so you know our Chair had to...was called away hopefully
37 for a short while but we'll see, so we have Mr. Higashi, Vice-Chair acting as Chair at this
38 particular time.

39
40 So Commissioners we are on Unfinished Business Number 2, Ms. Kanza Stott requesting a
41 Land Use Commission Special Permit in order to operate a bed and breakfast on Apuwai Street
42 in Haiku on the Island of Maui, and Kim Willenbrink is our Staff Planner.

- 43
44 **2. MS. KANZA STOTT requesting a State Land Use Commission Special**
45 **Permit in order to operate the Stott B&B, a three (3)-bedroom bed and**
46 **breakfast located in the State Agricultural District at 195 Apuwai Street,**

1 **TMK: 2-7-036: 016, Haiku, Island of Maui. (SUP2 2017/0014) (K. Willenbrink)**
2 **(deferred at the November 14, 2017 meeting.)**

3
4 **The 120-day deadline to make a decision is March 14, 2018.**

5
6 **The Commission may take action on this request.**

7
8 Ms. Kim Willenbrink: Yes, good afternoon. It seems like I was just here a little while ago. Good
9 afternoon Mr. Chair and Members of the Commission. This item is rescheduled for your further
10 review and recommendation today. You may recall the owner/applicant Ms. Kanza Stott is
11 seeking approval of a State Land Use Commission Special Permit to operate a three-bedroom
12 bed and breakfast on her farm at 195 Apuwai Street in Haiku. This sits on approximately 2.033
13 acres. The MPC conducted a public hearing on the Special Permit on November 14, 2017. The
14 Commission deferred action on the matter to allow the owner/applicant 45 days to meet with the
15 few neighbors opposed to the B&B and to fully vet their concerns. As I understand Ms. Stott
16 has met with almost all of her neighbors within and without 500-foot radius of her farm and she
17 is going to go into further discussion on that for your clarification.

18
19 The proposed B&B is only one of a few working farms in the area. The farm plan has been fully
20 implemented for over 20 years. A full listing of crops and animals on the farms begins at the
21 bottom of Page 2 of the original staff report. As of September 30, 2017 there were 42 permitted
22 B&Bs in the Paia-Haiku Community Plan District. The cap is 88. There have been no reports
23 filed with the Police Department. The Department is in receipt of at least 20 letters in support of
24 and three letters in opposition to the State Special Permit for the B&B use. However, two of the
25 letters in opposition are from the same property. One neighbor who previously opposed the
26 B&B is no longer in opposition. All letters are attached as exhibits to the addendum report
27 dated January 9, 2018 along with the responses from Ms. Stott. Ms. Stott is here today to
28 deliver presentation and to answer any additional questions that you may have. After the
29 presentation and public testimony I will provide the Department's recommendations. If there are
30 no objections I will ask Ms. Stott to come to the podium. Ms. Stott.

31
32 Ms. Kanza Stott: Thank you. Do you mind hitting the lights for the power point? Thank you.
33 Aloha Commission Members and Director Spence. Firstly I would like to thank you again for
34 giving me your time to be here today. As a brief refresher and introduction for the new member
35 Ms. Hill of the Commission my name is Kanza Stott and I am here before you in hopes of
36 getting my Special Land Use Permit application approved for my small scale farm in Haiku.

37
38 I have lived on Maui almost my entire life. I was raised in Haiku and attended Haiku School. I
39 now have a Bachelors of Environmental Design with a Major in Architecture and am pursuing
40 my Masters in Architecture online which has been great because it has allowed to me to here in
41 my home on Maui. I value the Haiku community highly and I'm so very grateful to have had the
42 opportunity to not only grow up here but also continue living on this beautiful island.

43
44 I have submitted the application for a bed and breakfast for our home to not only allow for the
45 growth of our farm but to also address the fact that my parents who are currently living in

1 Australia do come to Maui at least two to three times a year and therefore we cannot rent the
2 house long-term, but can also not afford to keep the house empty while they are away.

3
4 Again, just as a little refresher the property is located in the Haiku Makai Subdivision which you
5 can see here. It is adjacent to the Hana Highway and bordering Maliko Gulch. It is an
6 agriculturally zoned subdivision and the majority of parcels are large two-acre lots. My property
7 as Kim stated is 2.033 acres. Here's a map showing some support and also another visual
8 representation of where we are. I have letters of support from three abutting neighbors, 13 total
9 properties within the 500-foot radius of my property and an additional ten properties within the
10 Haiku Makai neighborhood.

11
12 In my previous hearing I made the mistake of presenting more exclusively my info regarding the
13 farm and agricultural uses and I believe I misunderstood the full scope of the Special Land Use
14 Permit. Today, I would like to again just refresh you on the agricultural endeavors that we are
15 doing on my farm but also talk more about the contact that I have made with people in my
16 neighborhood.

17
18 Just with this map you can see the proximity to Hana Highway again in the top right corner. And
19 then please note that my property can be accessed from both the mauka and makai sides of
20 Apuwai Street.

21
22 Alright, as a brief introduction to the property specifics, again, the lot is over two acres. Onsite,
23 the proposed bed and breakfast farm dwelling is a three bedroom, two and half bedroom, just
24 located next to the taro plant image. And the owner's cottage which is where I live will not be for
25 guest use, and is on the top right hand corner. And there is an additional private garage which
26 is also not for guest use. And then there's a 20,000 gallon water tank. This tank is used
27 exclusively for agricultural purposes. Both dwellings are linked to County water.

28
29 There is a separate goat pasture which is fully fenced, and will not be guest use unless
30 accompanied by myself and my boyfriend, Spencer. The citrus orchard is located at the bottom
31 portion of the property and the additional produce is spread throughout the land. Onsite there's
32 also free range chickens and their coop is located within the goat pasture.

33
34 Regarding parking, due to the size of the lot, there's ample parking allocated with a lot of
35 maneuvering space. No street parking would ever be allowed or needed. I know that the bed
36 and breakfast ordinance requires three guest parking spots, which I do have space for. But to
37 address any neighborhood concerns I am more than happy to limit the maximum cars allowed
38 for guests should the bed and breakfast to be two instead of three. This is hoping to address
39 some of the traffic concerns as it would be no more cars than any long term rental within the
40 neighborhood.

41
42 This is just an aerial view of the parking so you can see the relation of the parking spaces. You
43 can also see that we do have a photo voltaic system. We were actually the ninth house on Maui
44 to implement the system, and we also have solar hot water systems and we continue the water
45 catchment tank next to the free standing garage.

1 This is an exterior image of the proposed B&B. And then this is an exterior image of the house
2 that I live in on the property, and then our tractor garage is located below the owner's cottage.
3

4 Alright, so as I briefly mentioned a few times, the 20,000 gallon agricultural water catchment
5 tank is on property. My family actually set this up when they first purchased the property
6 because they wanted to be able to water all of the produce that we would further establish with
7 water that was caught off of our roof. So there is a gravity feed catchment system that is linked
8 to the main house which is the proposed B&B dwelling.
9

10 Alright, so as a brief history recap, I did mentioned this in the last hearing, but for you there, I
11 just wanted to talk about the initial purchase of the property. My family purchased the land in
12 1998 from Chubby Vicens, and we are the original owners. When we purchased from
13 Mr. Vicens he had a big value placed on agricultural uses of the land. Because it was
14 previously pineapple land, my family decided to take three years to begin reestablishing the
15 chemical ridden and hard pack soil for future use. To do those we lent the land to a friend of
16 ours who was a dry land taro farmer, and she began reworking the soil and farmed taro for three
17 years prior to us beginning to build.
18

19 So since the purchase of the property today my family has always implemented an approved
20 farm plan. The farm plans have been approved as way more than 50% agriculture use, and for
21 today the most updated plan is from within a year. It includes a bunch of produce which I'll list
22 shortly, but also please note that all of these trees are very well established and were not
23 planted exclusively to obtain this bed and breakfast permit. We have always had the farm up
24 and running. There is citrus including oranges, tangerines, lemons, limes, and grapefruit.
25 There's ulu or otherwise commonly known as breadfruit. We have fig, star fruit, mangoes,
26 Sernium cherries, custard pear, lychee, purple star apple, Glyercidia, tomatoes, kale, chili, a
27 wide variety of herbs, papaya, edible prickly pear cactus, ti, all spice, sour sop, coffee, avocado,
28 taro, aloe vera, coconut, lilikoi, bananas, and a whole lot more. We also have the goats on our
29 property which we use for milking and lawn maintenance, and free range chickens which are for
30 eggs and of course centipede control.
31

32 Now I'll just flip through some photos very briefly to recap on everything. You can see in the
33 image on the top left, that's my family when they were here last. That was just one harvest that
34 we did in a day. There's the tangerines, we have orange juice in the jars, and our free range
35 chicken eggs. The Sernium cherries which are great to make jam. They're really high on
36 vitamin C. The Hayden mangoes, and then some of our flowers that we do donate to local
37 events and friends and families.
38

39 This is also some of our taro. One of the two veggie gardens that we have. The breadfruits, the
40 star fruits, more star fruit in the basket, my mother with the mangoes which she's very
41 impressed with, and then aloe which we use as a ground cover wherever possible.
42

43 This one is kind of one of my favorites. We originally planted our property hedging as
44 Glyercidia. As mentioned earlier the large majority of it is to, is the Glyercidia is all on the east,
45 west, and north of the property. In case you are not familiar with the plant, it's a very fast
46 growing, high in nitrogen hedge. I harvest usually once a year and we use the wood chips to

1 surround all of produce trees with nutritional mulch. This, again, further establishing the soil
2 each year. The wood chips have proven to yield a much larger harvest of all of our citrus and
3 such throughout the years that we have used it. And the plant is also very high in protein levels
4 that compliments the lower quality soils, eliminating the need for any chemical fertilizers. Our
5 goats also benefit from the leaves of the Glyercidia as they are much higher in protein and
6 nutrients than any other greenery on the property.

7
8 These are our goats. We do have four. The male goats are used as lawn mowers and manure
9 providers. And then the females actually produces milk, and we just had a new baby this last
10 August. The females are Nigerian Dwarf goat and they're known to have a much higher milk
11 yield and also more manageable in size which is nice.

12
13 And here's the images of our hen chicken coop. I used my architectural degree for that one.
14 We have had a variety of chickens, and some produces brown, and some produces blue eggs
15 which is always interesting to know.

16
17 This is also one of my other favorite slides. Recently I just created coffee from the ground up
18 basically. It's kind of more of a hands on process. There are several coffee trees in the shaded
19 areas of our property and to harvest is quite of a drawn out but fascinating process. First you
20 start with the coffee cherries as you can see on the left. You must soak the cherries for an easy
21 bean extraction. Once the beans are removed they must be dried and roasted. I sundry them
22 and then roast them in the oven and again in a large pan to complete the stage. They are then
23 ground and used as you would traditionally. We also put the coffee grinds back into our veggie
24 gardens and soils as long -- sorry -- as well as egg shells from our free range eggs to further
25 enhance the soil onsite. Just kind of an idea if there was a B&B I would sort of share these
26 processes of living off of the land with people and with visitors.

27
28 Also I would like to talk about what I do with a lot of the produce from the property. Firstly, we
29 try to eat as much as possible. We freeze it, we juice it, we cook with it. We then share it with
30 friends and neighbors in the Haiku community. And if there's ever a large abundance of any
31 particular fruit or vegetable we have in the past sold to Mana so we have receipts for that. We
32 trade with local vendors and restaurants, and then we have donated to the Maui Food Bank and
33 John Cadman with Pono Pies.

34
35 Now I would like to talk about my discussions with other properties within my neighborhood. At
36 the time of the November 14th hearing, I believe I made the mistake of not spending enough
37 time to clarify my discussions with these neighbors. Following the first hearing, you requested
38 that I try my very best to resolve concerns with my neighbors and I have tried everything that I
39 believe is within my power. I have successfully met and discussed concerns with one neighbor
40 who was previously in opposition and they have officially retracted their opposition. With this I
41 was able to address their concerns and we reached an understanding and mutuality. They are
42 located just at the blue square on the bottom portion of the 500-foot radius.

43
44 Along with this I spent a lot of time talking with as many neighbors I could get a hold of. I have
45 reconfirmed all of my support that I previously had and I've also discussed my permit with new
46 neighbors and have received more support from them too. I spent a lot of time reaching out to

1 these additional neighbors, and chatting with them about any questions that may have had.
2 There are now 20 --. I'm sorry. There are 28 properties within my 500-foot radius. One is a
3 roadway lot, and one is my lot, and then one is A&B. At the time of the last hearing, I had seven
4 neighbors within my 500-feet that submitted letters of support. As of today I now have 13 letters
5 of support, and I have spoken with five additional neighbors that would like to remain neutral
6 including the one original property own that was in opposition. And this is all just within my 500-
7 feet. I have handed out all of the letters of support attached to that map with the stars that you
8 have in front of you.

9
10 Outside of my 500-feet but within the neighborhood I have taken even more time to meet with
11 and discuss all of my permit application to additional neighbors. In the entire Haiku Makai
12 neighborhood there are 37 properties. As of now I have 23 properties that support my permit,
13 and five neutral owners in addition to that. There is one letter of opposition within my 500-feet
14 and that still remains, and there is one -- sorry -- one property in opposition within my 500-feet
15 and then one outside of my 500-foot range. I would discuss what I have offered to attempt to
16 mitigate their concerns shortly. Please note that the green stars are the properties which have
17 registered their support of my permit. The blue square are properties which I have personally
18 discussed with and can confirm that they want to remain neutral. And the two red dots are the
19 two remaining properties in opposition. And just to re-clarify, one is outside my 500-foot.

20
21 Here's another representation of sort of the change from the original November 14th hearing to
22 today, and just how those numbers have adjusted. Within all of the support letters and
23 discussions I have had with these neighbors, there have been a few comments that stand out.
24 A lot of the neighbors see the bed and breakfast as being a very low impact option and they
25 have had no issues with other short-term rentals in the past within our neighborhood. I just want
26 to clarify too there is no other bed and breakfast within my 500-feet in the neighborhood and
27 there is one short-term rental. They all understand that I will be residing on the property and
28 that I have told them all that I can be contacted at any time if they have any questions, issues,
29 or anything that they want to mention to me. They have discussed with me that the following
30 aspects of the property are inspirational and they all appreciate my responsibility. They also
31 enjoy the idea that I will be sharing that lifestyle of farm to table with any visitors that do come.
32 And some have raised the idea that they appreciate that I have talked with them personally and
33 most see that each -- sorry -- and most see each of their own properties to be a place where
34 they should be able to do what they want as well.

35
36 Alright so to address the remaining concerns, as a general improvement to the property I have
37 planted additional hedging to create a second visual and sound barrier. This can be seen here.
38 Please note that I do already have the well-established property hedging in addition to this.
39 Along with this and apologizes to the text, it is in my best attempts to resolve the concerns with
40 the two properties in opposition, and I have followed these several steps. I reached out to both
41 properties numerous times throughout the entire permit application, and even before the
42 November 14th hearing. I spent extra time within the past 45-days continuing to reach out to
43 these neighbors including the neighbor has now since retracted their opposition. And I've had
44 several face to face meetings with the two remaining properties.

1 As I fully understand their concerns of traffic and noise, and these are the ideas that I have
2 raised to help mitigate their concerns as best as I can. Just some of these ideas I am either
3 permitted to add as conditions or I know your previous discussion on condition was a little
4 confusing, so I'm also happy to write out a very specific house policy and include these to
5 anyone that would in the future rent the property.

6
7 For noise specifically I am prepared to strictly enforce quiet hours from 9:00 p.m. to 8 a.m., or
8 even 8 p.m. to 8:00 a.m. if desired by the neighbors. I have planted additional noise barrier
9 hedges to match the neighborhood character and I am also prepared to plant even more to . . .
10 (inaudible) . . . visual barriers for the neighborhood dog as well as noise. I am prepared to not
11 rent to any known guests of the Haiku Mill or Baldwin Estate which are wedding venues as
12 suggested, and as well as any groups known to be affiliated with anybody or larger events here
13 on Maui. I am prepared to add specifics to the permit, limiting use of the bed and breakfast
14 dwelling to only registered guests with no visitors.

15
16 To address the traffic specifically, I am prepared to limit the cars allowed for the bed and
17 breakfast to only two cars instead of three. This being much less than any long term rental in
18 the neighborhood who often have friends, family and multiple cars visiting. Again, I am
19 prepared to limit the bed and breakfast to only registered guests eliminating any additional
20 visitors for the use of the B&B. I have spent time chatting with the County Engineering
21 Department as an idea and have opened a dialogue regarding potential speed bumps if the
22 neighborhood seems that that might help. I'm also prepared to give directions to enter the
23 property via the mauka side of Apuwai or whatever the neighborhood is in preference of. This
24 entrance, mauka, would not sort of direct people pass through any barking dogs.

25
26 In addition to these specifics, I am also open to agreeing to have a maximum of six guests
27 including children, instead of the B&B ordinance that allows two adults and two children per
28 room. I can also require a minimum seven-night's stay like the similar permit just before me,
29 and only allow one group at a time, not individual groups for each room in the bed and breakfast
30 dwelling. I will always make renters sign a strict rental agreement, and I will always share these
31 house policies with them even before they even arrive on the property. I'm also happy to
32 contact potential renters to confirm that they are aware of the neighborhood character and
33 respect. I will make the point to be in touch with every guest before they come discussing
34 things like quiet hours and neighborhood respect as well. If they are not comfortable with the
35 house policies, I will obviously ask them to find somewhere to rent elsewhere. I am also happy
36 to call any neighbor needed at the end of each rental to see what impacts there were, if any,
37 and if there is anything I can address or improve.

38
39 Just finally on a positive future note, if granted the bed and breakfast I hope to be able to share
40 all of these farming values and experiences with visitors that want to seek out a different view of
41 Maui. I would really like to share the farm to table living, as I mentioned, that my boyfriend and I
42 are so fortunate to have. Along with this I'd like to further establish my farm and this would
43 really help with it. I would like to introduce a small collection bee hives and plant even more fruit
44 producing trees. As well as a farm specific improvements, I would also start attending more
45 farmer's markets such as the Kula Saturday markets and the new Thursday's wellness markets
46 that are here in Wailuku. I have also been discussing with other local Haiku farmers about the

1 option of combining our produce to create CSA boxes for the community which are Community
2 Supported Agriculture boxes. These are usually created on a bi-weekly or monthly schedule
3 and they showcase the seasonal produce of what Haiku farmers can cultivate. So this would be
4 a shared endeavor, but it also would sort of be right in the eyes of anyone that's visiting on the
5 property which is really beneficializing. And with that being said I'll finish up and let me know if
6 you have any questions.

7
8 Ms. Duvauchelle: Thank you. We'll open the floor. Are you done with your presentation?
9 Excuse me. I'm sorry. I had a little emergency. They couldn't find my granddaughter in
10 Wailuku Elementary School. She's at tutoring after my heart stopped so I'm back. Better they
11 call than they don't call. Anyway, thank you very much. So before we entertain questions we'll
12 open the floor to public testimony. Anybody wishing to testify please come forward. State your
13 name please and you'll have three minutes.

14
15 Ms. Kate Griffiths: Aloha my name is Kate Griffiths. I have lived in Haiku for 20 years. I have a
16 degree in environmental geography and I am the publisher of the Maui Mama, a conscience
17 resource guide for families that live here in Maui. I live within a mile radius of the property and
18 spend a lot of time here this summer with my children. It was an amazing opportunity for me
19 and my children. They learned how to feed goats. They learned how to look after chickens and
20 collect the eggs. We helped Kanza and Spencer harvest the fruit. We helped in the garden,
21 plant seeds, and what we learned over the summer was just an amazing opportunity.

22
23 So as I published the Maui Mama I also have a website, and I know that many people from
24 around the world they check out the website because of the way we live out here. It's a
25 conscience resource guide. And they way that these guys have created their property and the
26 opportunity they're going to give the residents on that property to learn how to live consciously,
27 to learn how to farm, to learn basically how to plant seeds on how we can live in harmony with
28 our nature. I think it's a fantastic opportunity that will give the rest of the people around the
29 world to come to Maui, experience our beauty, experience our culture, and will experience how
30 we live here sustainably and consciously with our environment. So I fully support of the B&B. I
31 think it's a great opportunity not only to our community because in them being successful in
32 what they do, they will hopefully encourage other communities and families to farm. And also
33 encourage when people come here to realize how easy it is, they will then go back to their
34 community and show their community how easy it is to live off the land, to live organically, and
35 to live in harmony with their surroundings. And I'm very proud of Kanza and what they've
36 achieved. Thank you so much.

37
38 Ms. Duvauchelle: Any questions for the testifier? Thank you very much.

39
40 Ms. Griffiths: Thank you for your time.

41
42 Ms. Duvauchelle: Anyone else wishing to testify please come forward. Please state your name,
43 you'll have three minutes.

44
45 Mr. Bart Smarts: My name is Bart Smarts. Good afternoon Commissioners. I'm a resident
46 here for 20 years and originally from Holland as you can hear. We own and operate a windsurf

1 shop in Kanaha, close to Kanaha. And there we realize that own and operate it's one of the
2 most important things that I think for a bed and breakfast or for a shop like we do. It's very
3 different if you're there yourself, if you can help your own customers. I think it's very different
4 from a normal vacation rental property. And the way they do it I think it's one of the best ways,
5 most responsible ways you can do it especially with the farm connected to it. And that's why I'm
6 here to support them. If you have any questions.

7

8 Ms. Duvauchelle: Thank you. Any questions for the testifier? Thank you very much.

9

10 Ms. Sharon Wright: Hello. Hello, my name is Sharon Wright. Commissioner Hill, I didn't get a
11 chance to meet you last time I testified. I'm that neighbor in opposition, directly across the
12 street from the Stotts. And we were one of the original people in first before the Stotts so we
13 watched Kanza grow up. Kanza's a great girl. We have no issue with her and what she's doing
14 on the farming. We have an issue with the traffic and the noise, and as I testified the last time,
15 the trade winds were directly across the street. We have a long term tenant. We have a
16 business. We work 40 to 60 hours a week, support three families. My tenant owns a restaurant
17 in Haiku, has 38 tenants. We come home we want quiet, comfort neighborhood. I don't want 27
18 people, 30 people across the street from me every week or every month, transients coming and
19 going.

20

21 I gave you a handout on some traffic that I didn't get to last time, and I wanted to show you the
22 impacts. We have a blind corner in our subdivision, and it's an existing condition. And you can't
23 compare our subdivision to other subdivisions.

24

25 Ms. Duvauchelle: One moment. Make sure we all have it.

26

27 Ms. Wright: Yes, that's fine. And there's a bunch of maps, right. But what I did was I wanted to
28 show you the topography as you come down the street. We have two very steep streets. There
29 you go. Two very steep streets. We live on one. Our driveway is directly across the street, 50-
30 feet, so we're directly impacted by everybody that goes in and out of Kanza's driveway, daily,
31 nightly. You come down, you approach, there's no stop signs. Nothing. It's a blind corner.
32 And mind you, we have no lights in our neighborhood, so at night it's very dark. So we have a
33 lot of traffic concerns because people walk through the neighborhood. When you've got tourists
34 and locals, or tourists who are not familiar with the topography of the road, they pick up speed,
35 they hit the corner, they don't know where they're going, they're looking at their phones. We
36 have walkers at night. We have children who play. You'll notice the very last picture, one of the
37 neighbors directly next to Kanza put up a "slow down children at play" sign. You're not --.

38

39 You can't even see the site distance until you're actually at the corner, if you look at picture (D),
40 until you turn the corner. And that's coming down from our property. So (A), (B), (C), (D) are
41 coming down from our property, down Apuwai, which is where Kanza wants all of the traffic to
42 come down from in the proposal. (E), (F), (G), and (H) are approaching the other direction,
43 coming down Apuwai the other way. And I know that Kanza is really intent on trying to help the
44 proposed guests learn which way to come in and out of traffic, but you can't, you can't direct
45 people. They're lookie-loos. They're going to come. They're going to get lost at night when
46 their plane is lost. So we have a traffic concern.

1
2 As I mentioned last time, we have a neighbor who has nine dogs. Anything sets them off.
3 They're protection. But cars slowing down, approaching, it all impacts us. And, and I know, like
4 I said, Kanza is great. She's doing a great job with the farm. But we don't understand why she
5 can't long term it. She can still keep her farming operation. She pays ag property tax right now,
6 two grand a year. We all pay six or seven. She has ag lot rates. She could get a long term
7 tenant in there, still farm her property, still do her educational thing, and we have a neighbor that
8 we can depend on instead of people that we don't know. Someone who becomes a part of our
9 community.

10
11 Ms. Duvauchelle: Thank you Sharon. Any questions for the testifier? Thank you very much.
12 Anyone else wishing to testify at this time please come forward. Great, seeing none. Oh one
13 moment.

14
15 Mr. Tom Croly: I'm going to be very brief. My name is Tom Croly and I did testify on this one
16 before. And you know I've been involved in the bed and breakfast thing since the very
17 beginning of it. And someone like Kanza and what she's doing there, it's really what this whole
18 thing was about. You know, helping out people who are residence of Maui, to be able to use
19 the resources on their property. In her case, a home that her parents use on occasion to help
20 them make a go of it. She's doing more farming than almost anyone that you see and that's the
21 main thing that's before you. I just don't see how you can deny this girl, so please I support this,
22 and I ask you to support it.

23
24 Just a matter of disclosure, I have nothing to do with Kanza's application. I sit on the board of
25 the Maui Vacation Rental Association. I don't believe Kanza is even a member of the Maui
26 Vacation Rental Association. She stands to be a competitor of mine if you grant her this permit,
27 but I hope that you do. Thank you.

28
29 Ms. Duvauchelle: Thank you. Any questions? Alright, thank you.

30
31 Ms. Lydia Brumblay: Good afternoon Commissioners, Director. My name Lydia Brumblay and -
32 -

33
34 Ms. Duvauchelle: Can you?

35
36 Ms. Brumblay: Good afternoon. My name is Lydia Brumblay, and I reside across the street
37 from Kanza. I'm a little nervous so bear with me. Anyway, my husband and I, Ron Brumblay,
38 we were the first to build in that subdivision. Maybe not the first to move in, but from 1998, we
39 were the first to begin construction. Our property is located directly across from the Stott
40 property. Her driveway and parking area is not visible to us because her landscaping and our
41 neighbor's landscaping therefore the issue of seeing vehicles come and go for us and our dogs
42 are not a big issue. For the past 18 years I have known the Stott's to be good neighbors and
43 accommodating to any issues that have risen over the years. I believe that Kanza Stott has the
44 displayed responsible compassion for all her neighbors and will continue if granted the permit
45 for the bed and breakfast. After several meetings with Kanza and concerns that I had, I am in
46 favor of the bed and breakfast. Here are some of my reasons why.

1
2 Short-term renters are more appealing to me over long-term renters. If there is an unpleasant
3 renter it is only for a short time. When hotels are full, it provides an additional outlet for visitors
4 who need a place to stay. The Stott's property is well taken care of agriculturally and I was very
5 impressed on what she showed today, landscaped with many fruit trees and small farm animals.
6 Any visitor would surely love to the peaceful farm atmosphere.

7
8 I do not believe it will create any more noise or traffic in our neighborhood that we already deal
9 with. Long term renters seems to have more in and out traffic, road side parking, and late night
10 parties. Ms. Stott who resides on the property will be there to manage and take care of any
11 problems that may arise. The people of this neighborhood can benefit from having a nearby
12 bed and breakfast for family and friends, like my family and friends coming from the mainland
13 and having a place to stay if it is vacant. Most of the properties in the subdivision have a rental
14 cottage on them. This is to bring in extra income, no different than a bed and breakfast. I
15 personally prefer the option of a short-term renter. Ms. Stott has also shared with me that when
16 her family comes into town, the bed and breakfast will be vacant. I have known Kanza since
17 she was nine years old. As a young adult today, she has displayed responsibility,
18 accountability, great communication skills, and compassion for her neighbors. She has always
19 make things right without confrontation. Kanza is blessed with a property that she can turn into
20 a business for income like many other renters in the neighborhood. Her excitement and goals
21 are to share her beautiful property and a piece of Maui with all others. I do hope the
22 Commission and Director will consider granting the Stott a permit.

23
24 There's one more thing I'd like to say and I wasn't going to bring this up. I have seven dogs, not
25 nine dogs, okay. These dogs are my family and my companions which is used for protection.
26 They mainly bark when protecting our property or feeling threaten. If we leave our property,
27 they get locked up. We have dogs on our property for the past --. We've had dogs on our
28 property for the past 18 years. My dogs should not have an impact on the proposed bed and
29 breakfast. I thank you so much and hope you can consider Ms. Stott's bed and breakfast.
30 Thank you.

31
32 Ms. Duvauchelle: One moment please. Commissioners Robinson?

33
34 Mr. Robinson: Hi. I have a question for you.

35
36 Ms. Brumblay: Sure.

37
38 Mr. Robinson: Do you have any concerns with Mrs. Wright's long term renters?

39
40 Ms. Brumblay: Do I have concerns?

41
42 Mr. Robinson: Yeah.

43
44 Ms. Brumblay: With the Wright's?

45
46 Mr. Robinson: Wright's long term renters?

1
2 Ms. Brumblay: Not with the renter, but with her boyfriend. If that's what you mean.

3
4 Mr. Robinson: Noise? Parties? Driving? Safety? Traffic?

5
6 Ms. Brumblay: No, I mean, I think, I think, Colleen who lives next door and her cottage is
7 adjacent. We have a hedge, and I have dogs. If they have a --. To give you a better picture, a
8 deck, and she has visitors or --. But you know, Colleen and I have always tried to work things
9 out or call each other to how I feel. The only problem I've ever had is with her boyfriend who
10 became very confrontational where I literally was thinking of --

11
12 Mr. Robinson: But he's not the long term renter?

13
14 Ms. Brumblay: No. That's, that's --

15
16 Mr. Robinson: Okay, thank you so much.

17
18 Ms. Brumblay: Okay, thank you.

19
20 Ms. Duvauchelle: Anybody else wishing to testify at this time?

21
22 Mr. Spencer Engler: Hello, my name is Spencer Engler. I'm going to read a letter of support
23 from one of our neighbors. I live in the Haiku Makai neighborhood, and this letter is from Suzy
24 Allegra. She lives within 500 feet radius of the proposed bed and breakfast.

25
26 To whom it may concern. I live in Haiku Makai neighborhood and was one of the recipients of
27 Kanza Stott's letter regarding her plans to have a farm stay B&B in her home. I wanted to come
28 and present this in person, but a family situation came up at the last minute and I am unable to
29 attend. Our neighborhood is quiet with a few cars, and having a farm stay B&B in Kanza's
30 home will add very little traffic to the area. Since she's only planning on renting to only one
31 family at a time, this is even more true. One or two additional cars on the road will add nothing
32 to our quiet lanes. That amount of cars is the same as any long term renter, if not, less. I have
33 spent time with Kanza and find her to be honest, hard-working, respectful, warm and caring.
34 She and her partner have helped us with issues relating to our own farm and have on more than
35 one occasions been real neighbors with their time and energy. I am completely in support of
36 her farm stay initiative and hope that you will see the value and having people see the real Maui
37 by staying in a farm rather than a fancy hotel. Warm aloha, Suzy Allegra.

38
39 Ms. Duvauchelle: Thank you.

40
41 Mr. Engler: Thank you.

42
43 Ms. Duvauchelle: Any questions? Thank you very much.

44
45 Mr. Michael Wright: Good afternoon Commissioners. My name is Michael Wright. I'm the
46 neighbor directly across the street from Kanza Stott. Our driveways line up. I've known Kanza

1 for quite a long time. Our kids went to school together, car pools, etcetera. She left Maui for six
2 years, has been back on Maui for about three years. Our -- we are down, completely downwind
3 of the Stott residence so the noise carries. We hear everything from that property. I think
4 Sharon, my wife, may have explained that in the last meeting. So we are opposing the B&B
5 project due to the commercial nature of the B&B business and its location with respect to our
6 house. We are the neighbor that is most negatively affected in that subdivision clearly
7 specifically the noise from the traffic and the noise from other people on the property will, will
8 continue to affect us.

9
10 Lydia Brumblay is a good friend of ours. She lives next door. She has seven dogs. Those
11 dogs go off whenever anybody passes the road. An additional car, a pedestrian, a bike,
12 whatever it is, those dogs go off. We have been good friends for a long time. We work
13 together. We cooperate. We tolerate the dogs. We live with them. If you are on the lanai on
14 our cottage and you're speaking in a normal voice those dogs would go off. So any additional
15 activity, what we feel is a commercial activity, we believe is going to disrupt our lives, so we
16 don't think that should happen.

17
18 So as a result of the last Commission meeting we agreed to meet with Kanza Stott. We met
19 with her twice. We met her on the 16th of December. We met on January 7th, just last Sunday.
20 At that meeting, Kanza and I did agree that our property was most impacted by the B&B
21 application more than any other neighbors in the subdivision. We also agreed that there were
22 no real benefits to us, there was no benefits to the neighborhood or the community. All this
23 farming is great. A lot of people farm. I can't --. I farm myself. We work 50 to 60 hours a week
24 ourselves plus we manage our farm, plus we work on the whole cocqui frog effort in Maliko
25 Gulch. We do a lot. But in an effort to find a compromise and reach some kind of an agreement
26 we re-read Kanza's original application. And in that original application she said I would be
27 unable to make the house available for long-term rentals as we periodically enjoy the home with
28 our family as my mother and father live in it half of the year when not living in Australia. Also the
29 property --. So truthfully after our meeting with Kanza, I was more confused than ever. When
30 asked about the six --. When we met with her originally, we said would you consider reducing
31 your application to six months out of the year. She said no, but I'll ask my mother. So when we
32 met her last Sunday I asked her again. I'll just close up real quick.

33
34 Ms. Duvauchelle: Yeah, you gotta wrap it up.

35
36 Mr. Wright: I asked her again would you consider that? She said the real reason for the B&B
37 was to make money to survive and give my mom the option to come. Option to come does not
38 really sound like she's coming for six months. I think it's more to --

39
40 Ms. Duvauchelle: Thank you. Thank you Mr. Wright. Mr. Robinson?

41
42 Mr. Robinson: Mr. Wright, and she'll have a second to respond so just to let you know. Was
43 there anything else in that conversation that you'd like to share with us that you think is pertinent
44 to this permit?

45

- 1 Mr. Wright: Yeah, we also, we also discussed compromises. Things that could be done to
2 mitigate noise, traffic, things of that nature. So following that meeting, Kanza did come back
3 with a list of compromises which were very reasonable and she read those to you previously.
4 That was, that was the other, the one thing we talked about specifically was how could we
5 mitigate the situation. So she came back with nine months, we could rent it for nine months in
6 lieu of the six months, but you know, she --. I just want to make sure that it's very clear, we are
7 the property that's affected the most in the subdivision. And you know I said Lydia is a friend,
8 been a good neighbor, but when you have seven dogs next door, and you're sort of at --
9
- 10 Mr. Galazin: Excuse me, I think you answered the Commissioner's question so I would ask you
11 --
12
- 13 Mr. Wright: Okay.
14
- 15 Ms. Duvauchelle: Commissioner Robinson?
16
- 17 Mr. Robinson: And, and it's important that we do stay on top of it because this is an extension of
18 your testimony. No, that's fine. I understand. And actually you are the second most affected
19 property. Mrs. Stott is the first because she's the applicant. And this is, this is our challenge.
20 Our challenge is two people want different things, and we always hope, and that's why we sent
21 you folks back for what was the compromise. Now did you offer any compromise to, to your
22 neighbor as far as what you think you would accept?
23
- 24 Mr. Wright: When you, when you look at her original application.
25
- 26 Mr. Robinson: No, no, I'm not saying, but, but it's not so much what is she willing to change.
27 Did you ever offer a compromise back?
28
- 29 Mr. Wright: I suggested six months. She came back with nine months. I suggested one year
30 permit in lieu of three years.
31
- 32 Mr. Robinson: Okay, thank you so much. Thank you.
33
- 34 Ms. Duvauchelle: Commissioner Higashi.
35
- 36 Mr. Higashi: I noticed that there's one red dot across of the Stott's. Your property is located
37 where? I don't see any other red dots.
38
- 39 Ms. Duvauchelle: You have to talk into the mic.
40
- 41 Mr. Wright: I believe that is the property. Yeah, that's our property.
42
- 43 Mr. Higashi: That's your property?
44
- 45 Mr. Wright: Yes it is. So, yeah, that's my wife, Sharon.

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Mr. Higashi: That's your wife.

Mr. Wright: That's my wife.

Mr. Higashi: Excuse me. I thought that was another property. The other question I have was --

Ms. Duvauchelle: Speak into the mic, please.

Mr. Higashi: The other question I have is that this is agricultural zoning area.

Mr. Wright: Correct.

Mr. Higashi: How many vehicles pass by your home at any given day?

Mr. Wright: Well, you know, I'm usually not there because I'm in Wailuku working to be honest during the day so I don't really know, but we have a great subdivision. It has a loop and lots of people travel through our subdivision to use that loop. There was a --. And it's --. Yeah, so quite a few, more than you would expect.

Mr. Higashi: So you're not basically specifically talking about the bed and breakfast. You're saying you live in the loop so it could be other vehicles traveling through that area. Is that right?

Mr. Wright: Any vehicles that travel through the area will disrupt the dogs. The dogs will disrupt us and our tenant who lives about 25 feet away from the property line where the dogs are fenced in.

Mr. Higashi: I'm specifically talking about the Stott's. These vehicles that are traveling is not directly related to the Stott's. It could be other vehicles coming and going.

Mr. Wright: It could be others, correct.

Mr. Higashi: Thank you.

Ms. Duvauchelle: Commissioner Hill.

Ms. Hill: Is most of the noise issue that you have coming, besides the dogs, the owner property, just the lanai area when there are winds or certain winds that you may hear voices or people there?

Mr. Wright: You can hear voice on the lanai, yeah, basically from the lanai. Simple conversations it just carries whether it's on the cottage lanai that Kanza lives on or if it's on the main residence lanai. They both face our house. They're up wind. We're down wind. And they're slightly elevated from where we are. So it's just the lay of the land. There's, you know, Kanza has offered to put in hedges and things like that. I'm not sure. You know, it's in her offer

1 as a suggestion and, you know, we welcome that as a suggestion. Truthfully I'm not sure how
2 that's going to, you know, buffer the noise. You know, it probably helps a little bit.

3
4 Ms. Hill: I saw a suggestion about from, and I don't know if that was from you or Mrs. Wright,
5 about them possibly taking the main house and renting, having the cottage. Was that you
6 suggested that?

7
8 Mr. Wright: It was some -- I think it was my wife.

9
10 Ms. Hill: Okay.

11
12 Mr. Wright: I think that's an option. It would certainly.

13
14 Mr. Galazin: Excuse me. That was kind of a yes or no question.

15
16 Mr. Wright: Sorry.

17
18 Ms. Hill: Yeah, the reason I asked is it doesn't sound like the actual voices is necessarily from
19 them affect you. It would possibly others that would be renting short term.

20
21 Mr. Wright: Well, I think, I think it's whoever, whoever is there. People come and go. And I
22 think that with a technically it may not be a commercial activity, but there is more activity we feel
23 that's going to be occurring there. And you know animals, neighbor's dogs, etcetera, when they
24 learn a particular vehicle they don't bark at that vehicle. But when it's a new vehicle, they do
25 bark. It's interesting.

26
27 Ms. Duvauchelle: Thank you. Commissioner Tackett.

28
29 Mr. Tackett: So your primary concern is the noise.

30
31 Mr. Wright: Noise, yeah. Yeah.

32
33 Mr. Tackett: That's your only concern.

34
35 Mr. Wright: Noise and traffic.

36
37 Mr. Tackett: And the traffic because of the noise. Because the traffic causes the noise.

38
39 Mr. Wright: Unfortunately with the dogs as silly as it sounds, I believe there were more than
40 seven dogs there. I'm a 100 percent sure of that. They come and go. But, yeah, it's a problem.

41
42 Mr. Tackett: Thank you.

43
44 Ms. Duvauchelle: Thank you very much.

45
46 Mr. Wright: Okay, thank you.

1
2 Ms. Duvauchelle: Okay, at this time before we start questions from the Commissioners, would
3 the --. Oh, I'm sorry. You caught me there.

4
5 Ms. Colleen Nicholas: I'm Colleen Nicholas, and I live next door. I live across the street from
6 the Stott's, next door to the barking dogs. I'm not in support of the B&B, and I think we keep
7 going back to the dogs, but it is for me, the biggest factor. It's called nuisance barking and
8 because we are zoned ag there's nothing we can do about the dogs. There was a lawsuit some
9 time ago, I think we covered that last time. Dogs are farm animals, so we're stuck with it.
10 That's the zoning that we live with. That's the facts of life. But now we're being asked to add
11 additional zoning which is the B&B, which is going to bring a whole new list of, I think, noise
12 problems. Visitors like to party, they like to get up at four in the morning and go --. You know,
13 maybe they're going to do a Haleakala bike tour. They're going to load their car at four in the
14 morning, the dogs are going to bark. A lot of mainland flights get in at, like 8:45 at night
15 because the flights from LA, they have to pick up their rental car, load it, they're not going to get
16 to Haiku until 10 o'clock. Just a simple car door shutting, and I'm not even saying slamming, the
17 dogs bark. And while it is only seven, there used to be more, it sounds like 27 when they all go
18 off at once. So they arrive at 10 p.m., dogs barking. They have jet lag maybe, the visitors, they
19 want to get up and run, go for a run at 5:30 in the morning, the dogs bark. So B&B's, whatever,
20 only there's 42 so far permitted and 88 allowed. This particular instance I think it's different than
21 most and that's because of the barking dogs.

22
23 I think Kanza's property, she indicated it was paid for already so I don't think that there's a grave
24 financial hardship. She could move into the main house and have a room for her mother still
25 available, and long-term rent the cottage. I live in a 1,000 square foot cottage with two
26 bedrooms, and when my parents come, they stay in the extra bedroom. It's perfectly fine.

27
28 I just think of it as a noise footprint that's already been taken up by Lydia's dogs. She said she
29 wouldn't rent to brides. I don't know how you can with booking online these days, I don't know
30 how you keep a bride from getting in the mix especially with the wedding that goes on, you
31 know, up the street up the road. And once the bride is in there, I mean, she might have a make-
32 up artist come to the house, a limo pick her up, photographers there in the yard, again, the dogs
33 are going to be barking. So that's 4:30 in the afternoon. I don't see how you can enforce quiet
34 hours. And it kind of ruins my life, the barking dogs. The nuisance barking, it can make you go
35 crazy. I don't think I have anything else to say. Oh, no, that's it. I don't want to draw on.

36
37 Ms. Duvauchelle: Thank you. Any questions? Thank you very much.

38
39 Ms. Nicholas: You're welcome.

40
41 Ms. Duvauchelle: Okay, I'm sorry. Is anyone else wishing to testify please come forward?

42
43 Ms. Catherine Clark: Aloha Commissioners. She's a lot taller than me. I've known Kanza since
44 she was a chubby little six month old baby on the beach. Oh, Catherine Clark. She grew up
45 together with my daughter. She did leave the island to pursue her undergrad degree in
46 architecture. She paid her own way through college, finished debt free. I don't know many kids

1 that can do that. Within our County government we always talk about our bright and skilled
2 young adults leaving the island, being unable to return for lack of job or housing. But isn't this a
3 really great use of the B&B legislation? It allows her to finish her education, maintain her farm,
4 and keep space for her family all at the same time. I did want to point out one thing about the
5 dogs. I did just ask Lydia, and she said that the dogs are locked up until 8:00 a.m., and they're
6 put to bed at 8:00 p.m., sometimes a little bit earlier. But I also think when people hear B&B
7 many think that it's a one night stay with different guests in every room. And although that might
8 be true if you're taking a road trip on the mainland, stop to stop to stop to stop, that's not what
9 really happens here. Kanza's guests will most likely be a small family or two couples staying for
10 anywhere from seven to 30 nights. Keep in mind anybody talking out on the lanai be it a short-
11 term renter, a long-term tenant, or an owner will have that same noise impact of a conversation
12 being heard at another property.

13
14 So, you know, we frequently hear about how intense this process is, and many people hire
15 consultants as did your last two applicants. Kanza did this entirely on her own. She's
16 determined, she is bright, and I have every confidence that she will run that B&B operation
17 smoothly. She reached out well beyond her 500-foot radius to her entire neighborhood and was
18 able to make contact with almost every home in Haiku Makai. I haven't seen many applications
19 with so many neighbors submitting letters of support. This is a property that has never vacation
20 rented in the past. I know in my neighborhood, there are four legal rentals and three illegal
21 ones. And even though a couple of them are very large homes, we see the minivan arrive with
22 the guests, we see the minivan drive out in the morning, we the minivan come back at the end
23 of the day. There's really no impact from them. If a larger family lived in that home, we might
24 see three or four cars come and go all the time all day. So I don't really think that there's
25 increased traffic. At least we've not experienced that in our own neighborhood. But I am asking
26 you to please support her Special Use application. I think she has done an amazing job, and I
27 think her heart is just really in the right place. Thank you so much.

28
29 Ms. Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to
30 testify? Okay, seeing none, we will close public testimony. I would like to give the applicant the
31 opportunity to address any of the concerns briefly if you would like to before we start questions
32 from the Commissioners.

33
34 Ms. Stott: Thank you. So just to clarify, there are the only two properties in opposition, and the
35 only testimony from one of those properties today. Also just regarding the actual dwelling, I'm
36 going to show you my map. I will try and zoom in to show the actual relation but I sit in my
37 owner's cottage between the main house, which is proposed B&B and the neighbors in
38 oppositions. So I will hear any noise at all before it ever even crosses out of my property. Let
39 me just find it one moment.

40
41 This is the proposed property -- mouse is moving -- and my cottage is here. And they're on the
42 corner of my cottage. Lydia shares the front property abutting with me which is from basically
43 the bottom corner of the main house down to the very bottom. I think that is it unless you have
44 any other questions.

45
46 Ms. Duvauchelle: Okay Commissioners, questions? Commissioner Hill.

1
2 Kahu Hill: First of all I really want to acknowledge you for what you have done on your farm and
3 being self-sustainable.

4
5 Ms. Stott: Thank you.

6
7 Kahu Hill: A very magical place. I see that you had some letters of opposition and letters of
8 support, a lot of them, and I noticed that you have a beautiful letter from your mom.

9
10 Ms. Stott: Thank you.

11
12 Kahu Hill: And your boyfriend, and from outside neighbors too, like, in Paia and even one from
13 Colorado. It seems like some of the letters too are personal support for you, acknowledging
14 you. I can see why. Character references and some that would actually be connected to maybe
15 to your farm or reviews to your farm.

16
17 Ms. Stott: Yes, thank you.

18
19 Kahu Hill: So I was wondering and looking at it, it appears that most of the letters are --. That
20 I've seen some letters of opposition are from your neighbors that actually live on your street, in
21 that area. I'm wondering how many of the support letters are from people on your street.
22 Because some of the letters did not have their address or where they're located, and some of
23 them were not exactly where you live.

24
25 Ms. Stott: Okay, I can clarify that. So in the pamphlet with the map and the stars that I handed
26 out to you, the page behind it shows my 500 foot radius and then the number of the additional
27 neighbors that also have written letters of support. You can then flip through those letters of
28 support and correlate the number to the actual name on my 500 foot radius. So within the
29 neighborhood and on Apuwai Street, Apuwai Street I could say --. I mean I can count for you
30 now if you'd like. But there's, probably I want to say at least 16 on Apuwai Street, and then the
31 rest are within the close confines of Haiku Makai.

32
33 Kahu Hill: Mahalo.

34
35 Ms. Stott: Thank you.

36
37 Ms. Duvauchelle: Any other questions? Questions? Discussions? Okay, thanks.
38 Commissioner Robinson?

39
40 Mr. Robinson: Hi.

41
42 Ms. Stott: Hi.

43
44 Mr. Robinson: First of all congratulations. Everybody spoke very, very admirable of you.

45
46 Ms. Stott: Thank you.

1
2 Mr. Robinson: And that's not easy for a whole neighborhood. So I think we're here. I think we
3 gave you the task of going back and speaking to your neighbors and see if we could come to a
4 compromise. It seems that compromise hasn't happened.

5
6 Ms. Stott: Okay.

7
8 Mr. Robinson: And, and we want everybody to get along. We don't want to choose one
9 neighbor from another, we don't want to have anybody suffer from anything, and we don't want
10 to have to not benefit from something that they're going to do good. And me personally I like
11 B&B's because it helps supplement your income, it helps keep your farm, and you're there,
12 you're a residence, not a short-term rental. But in the same sense, I like long term rentals
13 better. But, having said that, it's a neighbor has to --. When you have a neighbor, you have to
14 compromise. And if you want something special, that is a Special Use Permit, sometimes you
15 have to, you have to agree to less than you would want to try and prove that you are going to be
16 a valid neighbor that all their concerns will be taken care of. And I think that's where you might
17 still have an opportunity to where prove yourself before you want the whole thing.

18
19 Ms. Stott: Okay.

20
21 Mr. Robinson: And that's just coming just from me, and my commissioner and what my vote was
22 the last time.

23
24 Ms. Stott: Okay.

25
26 Mr. Robinson: Okay. Thank you.

27
28 Ms. Stott: Can I make a comment on that?

29
30 Mr. Robinson: Please do.

31
32 Ms. Stott: Alright. So speaking about the compromises, I did list that whole list of the things like
33 the house policy, or I'm prepared to put on my permit as a condition that there is only two cars
34 instead of three, or six guests instead of potentially more. Also the seven night rental so there
35 isn't a new person each day. Also in the last case scenario we'd be willing to agree to have a
36 condition that I only rent it out of nine months out of the year. Six months is hard because my
37 mom, I do not know exactly when she comes. I don't know when my sister comes or my dad,
38 but I do know in confidence that they will be at least three months out of the year. And in a
39 perfect world it would be even more and I hope for that. And then if they are, it won't. So I can
40 give my word that whenever my mom is here it will definitely not be rented. So I am happy to
41 compromise on the nine months too if that is even an option of a condition. And then all the,
42 just all of the other additional ones that I did sort of express and I'm happy to read them out
43 again if that helps. Otherwise --.

44
45 Ms. Duvauchelle: Commissioner Robinson.

1
2 Mr. Robinson: Before I cast my vote, I want to make sure that you understood my meaning of
3 compromise. 75 percent is not fifty-fifty, it's not going above and beyond and being you giving
4 75, then accepting 25. This is an all or nothing deal, and it could be. And when we sent you
5 the first time is we wanted you --. And as like most of these permits, a lot of people want to
6 prove themselves.

7
8 Ms. Stott: Yeah.

9
10 Mr. Robinson: But we have to decide now if your 75 percent is going to out weight their 25
11 percent. You understand, it's everybody has equal rights here.

12
13 Ms. Stott: Yeah.

14
15 Mr. Robinson: And so --. I hear --. I want you to hear what you're saying. I want you to
16 understand what you think a compromise is compared from zero and then work your way up.
17 Instead of I have eight people in one year and working your way down. That's all. That's just
18 for me and for my vote. Again, there's more commissioners than me.

19
20 Ms. Stott: Yeah, now I understand. Thank you.

21
22 Ms. Duvauchelle: Any other questions Commissioners? Okay, thank you. May we have the
23 Department's recommendation?

24
25 Ms. Willenbrink: Thank you Madame Chair and Commissioners. I wanted also to clarify the
26 testifier that read, the other testifier, he is Kanza's partner and also resides on the farm. The
27 Department's full analysis is included in the original staff report handed out at the November
28 14th, 2017 meeting. The Department continues to recommend approval of the State Land Use
29 Commission Special Permit. The application complies with the applicable standards for the
30 State Special Permit. Approval is based upon the seven standard conditions for a B&B related
31 State Special Permit. Madame Chair, current B&B house rules require quiet hours from 9:00
32 p.m. to 8:00 a.m., nightly. In Ms. Stott's original application, the house rules require quiet hours
33 from 8:00 p.m. to 8:00 a.m. After speaking to Ms. Stott, she is willing to make the quiet hours a
34 condition of approval.

35
36 Therefore the Department is proposing the following additional condition number eight, quote,
37 eight period, as represented by the owner applicant, comma, quiet hours for the bed and
38 breakfast use shall be from 8:00 p.m. to 8:00 a.m. nightly, period, end quote.

39
40 In consideration of the foregoing, the Planning Department recommends that the Maui Planning
41 Commission adopts the Planning Department's report and amended recommendation prepared
42 for the November 14, 2017 meeting, and the addendum report prepared for the January 9th,
43 2018 meeting as its Findings of Fact, Conclusions of Law, and Decision and Order, and to
44 authorize the Planning Director to transmit said written Decision and Order on behalf of the
45 Planning Commission. Thank you very much.

46

1 Ms. Duvauchelle: Commissioners? Commissioner Tackett.

2
3 Mr. Tackett: So it's pretty complicated. I see both sides of it. I'm weighing in on the side that
4 what you have is ag land, not really a gentlemen estate, not really a, not really a gated
5 neighborhood. It's supposed to be ag. With ag uses there's a whole huge amount of things that
6 generate noise that go with ag uses -- tractors, machinery, all kinds of things that goes with ag
7 uses. The voices coming off of the deck, no matter who's on the deck you're going to hear it.
8 As I understand the deck, the deck voices that I understand from what was described to me is
9 her on her deck so that's not going to go away no matter what. Because it's what she's talking
10 about ranting is that deck. My take on it is, is that noise doesn't constitute what was the, what
11 was the --. To me noise doesn't constitute an adverse effect in ag land where, where just the
12 actual act of farming a lot of times requires mulching, sawing, tractors, all these kinds of things.
13 So if you --. If noise is a problem, then I don't see where that fits into denying this particular, this
14 particular application, so I would be in favor of it. And I'm going to, I'm going to weigh in favor of
15 it because of that because it is ag land. Because, everybody, this is working land, you know,
16 and you working the land, you know. It takes a little bit of noise so that's just on want I, on what
17 I got from the conversations that's, that's kind of what I, what I feel. So I would be in support of
18 this.

19
20 Ms. Duvauchelle: So we're just in discussion, you're not making a motion.

21
22 Mr. Tackett: I would move to approve if discussions are finished. I would move to approve with
23 just standard conditions.

24
25 Ms. Duvauchelle: Thank you. Second or more discussion?

26
27 Mr. Higashi: Second the motion.

28
29 Ms. Duvauchelle: Okay. Moved by Commissioner Tackett, seconded by Commissioner Higashi.
30 Discussion on the motion. Commissioner Robinson.

31
32 Mr. Robinson: Sorry, my throat is getting sore from talking so much. I'm with you, rural, dogs,
33 animals, tractors, but people aren't usually running tractors after nightfall.

34
35 Mr. Tackett: They're not supposed to do anything.

36
37 Mr. Robinson: Yeah, yeah. And but, you know, and you know, that's the dilemma. I think the
38 neighbors are accepting the animals, I think. But then again, ag land isn't a hotel either. And,
39 and I actually like B&B's. I like this spot for B&B except for the fact that we have two neighbors
40 who say it's going to impact their life. And, and I wished that they would have compromised
41 more. To me a compromise is at least 50, 50. It's not I come down three months instead of six
42 months to where the person is validating, you know, what their promise is. And I always try to
43 look at, one, if it was my neighbor and I was opposed to it, or one if there's two neighbors, and
44 this is a tough one. And I think, I think the original time there was maybe four, four opposition
45 letters and it came down to two. There was three, it came, it came down -- three properties and
46 you were able to talk with them and I think that's good. And I think that's where we're at the

1 deadlock here, and you know, that's where I could, I could possibly support you, Commissioner,
2 with this but not with the standard conditions. I would be in favor of, of, you know, more
3 stringent conditions as far as them, her volunteering to, to only rent it for a certain time as well
4 as her quiet hours. I think the standard condition is something that opens up to a lot more of
5 what her opposition was against. That's just me.

6
7 Mr. Spence: And Commissioners, since we are in discussion, she, the applicant did offer a
8 number of things in her, in her e-mail dated one, eight regarding minimum stay, seven nights. I
9 think -- I don't know if the quiet hours are in there. No unregistered guests. Not renting to a
10 group affiliated with weddings or large scale events. And I do believe you can, you can tell. And
11 she, as the applicant can certainly inquire about those things and just say, sorry, no wait, we
12 can't do that. So there's a list of things that she has offered them, and it could be made a part
13 of her house rules or otherwise added on to the permit.

14
15 Ms. Duvauchelle: Corp Counsel.

16
17 Mr. Galazin: Yeah, thank you and so just to piggy back on that. You know, Commissioner
18 Robinson, if you wanted to move to amend to add these conditions and use this as a reference
19 point for it as represented by the applicant today, and as written down on this particular
20 document that can be made as part of the conditions. And you could move to amend the
21 original motion.

22
23 Ms. Duvauchelle: Commissioner Higashi.

24
25 Mr. Higashi: I second the approval on this application. First of all I think the Stott's farm is one
26 of the very top agricultural farms that we've seen come across us. And I think looking at her
27 work ethics and her reputation, I believe that she would do anything that would help or assist in
28 making things flow properly. And I commend her for her, for her wonderful work and the things
29 that she's trying to do to compromise with, with whatever problems that might occur.

30
31 Ms. Duvauchelle: Thank you. Commissioner Hill.

32
33 Kahu Hill: I see that she has really done so much to reach out to the neighbors. And it's very
34 difficult because some are in opposition and it seems some of it is in regards to the dogs
35 barking and other noise. But I feel that she would do everything she can to work with the
36 neighbors and work with the neighborhood. I think her sustainable living is quite an inspiration.
37 It doesn't sound like she's looking to have a very big place, or a place for wedding venues or
38 other things where it could really have a high impact. And I think so we could look at the
39 possibilities of her having this whether there's --. I see her list of the things she's willing to do. If
40 there are other things we have to propose I think it would be good to look at because it seems
41 like she's doing everything she can and it's commendable.

42
43 Ms. Duvauchelle: Commissioner Robinson.

44
45 Mr. Robinson: I'd like to propose an amendment. And again I want us to not move away from
46 the fact that this is a rental for profit. This isn't a, you know, charity. There's not people coming

1 to stay for free and doing some holistic thing. This is for profit and people are allowed to make
2 profits, you know. Is, is I would like to make an amendment that this would be a, this would be a
3 one year license, and the applicant be ready to rent 20 times for that year. So minimum is
4 seven days, maximum is 30, they can have 20 rentals. And that's the maximum amount of
5 reservations and things that they can take. We did this same SUP up at the, at a couple of
6 other projects where we limited the number of rentals, not the number of months or days. And
7 that way it gives, I think, Ms. Stott the flexibility of parents coming and going instead of certain
8 months of it being a blackout season. And I think it gives you the flexibility of doing it more. I
9 mean, you know, it's seven days, that's, that's you. That's not --. I'm thinking this amount of 20.
10 I think you can decide on how you want to maximize your profit in that. And I think with that first
11 year you'll be able to either prove or fail to your neighbors that whatever you state is going to be
12 true. Thank you.

13

14 Ms. Duvauchelle: Possibly 26 would be half.

15

16 Mr. Robinson: Mines was 20.

17

18 Ms. Duvauchelle: Yeah.

19

20 Mr. Robinson: Could be longer. Could be longer than seven days. 20 reservations.

21

22 Ms. Duvauchelle: Alright, any discussion on the amendment?

23

24 Kahu Hill: Is there a second?

25

26 Ms. Duvauchelle: I'm sorry.

27

28 Mr. Tackett: I believe, I believe mine had a second. Was there no vote associated with mine?

29

30 Ms. Duvauchelle: Not yet. Not yet.

31

32 Mr. Spence: We're amending it.

33

34 Ms. Duvauchelle: So do I have a second?

35

36 Mr. Tackett: Okay, I understand.

37

38 Ms. Duvauchelle: Go ahead Director.

39

40 Mr. Spence: No, I was just going to say Commissioner Robinson is amending your --

41

42 Mr. Tackett: I understand.

43

44 Mr. Spence: Attempting to.

45

1 Kahu Hill: So question just so I'm clear. So it can be 20 times, but that one could be for a month
2 or two months. It could be taking up that year. Okay. I'll second that.

3
4 Ms. Duvauchelle: Thank you. Seconded by Commissioner Hill. Any discussion on the
5 amendment? Commissioner Higashi.

6
7 Mr. Higashi: Question. How many days are we talking about in this particular incident, on the
8 amendment?

9
10 Ms. Duvauchelle: Commissioner Robinson.

11
12 Mr. Robinson: Is Commissioner in my amendment and the reason why I used 20 is because it
13 will, it would induce the, the renter to try to rent longer periods of time because she only has 20
14 which will decrease the amount of people coming and going, and different cars, and different
15 things. So it would behoove them to try to get two week rentals, three week rentals because
16 they have a maximum of 20. So we want to, we want to take away -- my philosophy is try to
17 take away from the couple of days and if she eats those up and that's going to be, you know, for
18 her own detriment. So I think the number is easier than a certain month.

19
20 Ms. Duvauchelle: Okay. Alright, Director, you want to repeat the motions?

21
22 Mr. Spence: The motion is to limit the number of rentals -- this is an amendment -- to limit the
23 number of rentals to 20 a year, and only an approval for the permit for a year.

24
25 Ms. Duvauchelle: Alright, all those in favor of the amendment please raise your hands.

26
27 Mr. Spence: That's four, that's five ayes. Motion carries.

28
29 Ms. Duvauchelle: Motion carries. Okay back to the original motion on the table. Director?

30
31 Mr. Spence: Okay, the motion is to approve as recommended by staff, and as amended. And if
32 I could clarify...is the intent of this motion to come back to the Commission in a year or is it just,
33 this is --?

34
35 Mr. Robinson: It's regular practice. Then it will be on the Director's. You'll have notices if
36 there's a problem I'm sure.

37
38 Mr. Spence: Okay.

39
40 Kahu Hill: Madame Chair, I have a point of clarification. In my notes, Mr. Tackett's motion was
41 to approve with the standard conditions, not the eighth condition that we proposed.

42
43 Mr. Spence: And then that was amended to include, to make it only for one year.

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45 Kahu Hill: Right.

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Mr. Spence: And to include the provision that there will only be 20 rentals per year.

Kahu Hill: So the 8:00 p.m. to 8:00 a.m. is not going to be a condition?

Mr. Spence: That was not a part of the motion.

Kahu Hill: Thank you very much.

Mr. Robinson: But she's allowed to do that.

Kahu Hill: Yes sir.

Mr. Spence: Yes, she can do anything she want in her house rules.

Ms. Duvauchelle: Alright, so I guess it's time to vote on the original motion, to approve as recommended with the approved amendment. All those in favor?

Mr. Spence: That's five ayes.

Ms. Duvauchelle: Five ayes, motion carries. Thank you. Yeah, we're going to take, we're going to take a 10 minute break. Thank you.

It was moved by Mr. Tackett, seconded by Mr. Higashi, then

VOTED: To Approve the State Land Use Commission Special Permit as Recommended by the Department as Amended with a Time Period of One Year and Twenty (20) Rentals Per Year. (Assenting – C. Tackett, R. Higashi, A. Hill, C. Tackett, R. Higashi) (Excused – T. Gomes, L. Hudson, L. Carnicelli)

(The Maui Planning Commission recessed at 4:00 p.m., and reconvened at 4:10 p.m.)

3. October 26, 2017 e-mail from KATHY DAVEY withdrawing her State Land Use Commission and Bed and Breakfast Home applications:

a. MS. KATHY DAVEY requesting a State Land Use Commission Special Permit and a Bed and Breakfast Home Permit in order to operate the Kaanapali Coffee Cottage, a 2-bedroom bed and breakfast home in the State Agricultural District at 2950 Aina Mahiai Place, TMK: 4-4-020: 052, Kaanapali, Lahaina, Island of Maui. (SUP2 2017/0006) (BBWM T2017/0002) (T. Furukawa) (Public hearing was conducted on the applications at the June 27, 2017 meeting)

- 1 **b. ISAAC HALL, attorney on behalf of JACK and LYNN MUEGGE,**
2 **MENEHUNE VENTURES, LLC, WORTHY CLAY SCOTT, and**
3 **MARY JACQUELINE SCHEIBEL intervening on the above mentioned**
4 **applications by MS. KATHY DAVEY. (Intervention was granted at**
5 **the June 27, 2017 meeting.)**
- 6
- 7 **c. The Commission selected RAY WIMBERLEY as the Mediator and**
8 **E. JOHN MCCONNELL (Retired Judge) as the Hearings Officer at its**
9 **July 25, 2017 meeting.**

10

11 Ms. Duvauchelle: Director, our next agenda item.

12

13 Mr. Spence: Okay, so Commissioners, number three in your unfinished business is in regards to
14 Ms. Kathy Davey. She is withdrawing her application for a State Land Use Commission Special
15 Use Permit for a bed and breakfast home. I'll let Tara Furukawa go ahead and explain what's
16 going on. It's been a long day already. And I see the intervener's representative, Isaac Hall, is
17 also here.

18

19 Ms. Tara Furukawa: So the Kaanapali Coffee Cottage B&B went forward to mediation and
20 mediation was unsuccessful. And I guess after that we received an e-mail from Kathy Davey
21 stating that she wanted to withdraw her State Land Use Commission Special Permit and B&B
22 Permit applications.

23

24 Ms. Duvauchelle: Okay at this time if there's anyone wishing to we'll open the floor to public
25 testimony. Anybody wishing to speak please come forward.

26

27 Mr. Isaac Hall: Good afternoon, Chairperson Duvauchelle and members of the Maui Planning
28 Commission. I'm Isaac Hall for the intervener. I'm not actually -- this isn't public testimony. I'm
29 a party, we're parties to a contested case.

30

31 Ms. Duvauchelle: Shall we have --? Alright, go ahead.

32

33 Mr. Hall: Yeah, we agree that both applications should be withdrawn and we've submitted a
34 position statement on, on what's happened. The Planning Director has given me a copy of
35 Mrs. Davey's response. She didn't send it to us. You have a busy day. You've had a busy day
36 so I'm going to be a very brief.

37

38 This is a contested case, and the contested case really can't be terminated until you terminate
39 it. It can't be unilaterally terminated by Ms. Davey. You folks have to terminate it, and we, we
40 propose some conditions for terminating it. But we --. Because you've had a busy day, we
41 agree that they, both applications, and there are some ambiguity with regard to what she was
42 withdrawing. But both applications should be withdrawn with prejudice. Thank you.

43

44 Ms. Duvauchelle: Thank you. Any, any, anybody else wishing to speak on this matter? Okay,
45 we'll close public testimony. Director?

46

47 Mr. Spence: Madame Chairman, now I can't speak to the unilateral closing of a contested case.

1 But I will say when, when an applicant withdraws their applications, and we have --. I'll just say
2 both of their applications are closed. The bed and breakfast permit application is closed as well
3 as the one for a State Land Use Commission Special Permit. Those cannot be resurrected.
4 Once, once an application is closed we would --. If somebody would like to apply again,
5 whether it's Ms. Davey or whether --. I understand their, their house is for sale. A future
6 property owner would wish to apply for permits, we would require an entirely new applications.
7 That's not something that --. There's no magically resurrecting what was there before. It's, it's
8 closed, and we would require new permits.

9
10 Mr. Robinson: No suspense accounts?

11
12 Mr. Spence: No suspense accounts. So, anyway that's our position on that. And with, with if,
13 I'm just saying if, there was another application for B&B or Special Use Permit, you know, there
14 would be regular notification of neighbors including that would be to Mr. Hall's clients etcetera
15 so there's, you know, there's nothing magical, nothing can get passed without notifying
16 everybody.

17
18 Ms. Duvauchelle: And this is just for informational for us. There's no action to take.

19
20 Mr. Spence: Okay. So Corporation Counsel has confirmed there's no action required.

21
22 **The notification to the Commission of the receipt of the applicant's withdrawal e-mail is**
23 **for information purposes.**

24
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26 **E. COMMUNICATIONS**

- 27
28 **1. MR. FRED "PUNAHELE" KRAUSS of HALAU KEALAKAMALIE requesting**
29 **a Use Determination in order to operate a halau and cultural facility in the**
30 **State Agricultural District and the County Agricultural District at 186 Piiholo**
31 **Road, TMK: 2-4-012: 005 (por.), Makawao, Island of Maui. (UD 2017/0002) (P.**
32 **Fasi)**

33
34 **The Commission may take action on this request.**

35
36 Ms. Duvauchelle: Alright. Okay, on to our next agenda item. Thank you Mr. Hall.

37
38 Mr. Spence: Okay, Commissioners, we're buzzing right through it.

39
40 Ms. Duvauchelle: Good.

41
42 Mr. Spence: We are on Item E.1., Communications, Mr. Fred Punahale Krauss of Halau
43 Keolakamalie. Okay, I know I butchered that. My apologies to, to everyone of Hawaiian
44 descent. They're requesting a use determination in order to operate a halau and cultural facility
45 in the State Ag District, and with us this afternoon is Mr. Paul Fasi and he'll explain what we're
46 doing here.

1
2 Mr. Paul Fasi: Good afternoon Commissioners. In order to use our time efficiently I'm just going
3 to go over how the use, the proposed use relates to governmental requirements. The
4 applicant's representative, Mr. Rory Frampton is here. He will go over the details and the
5 specifics of the project. Also in the audience are various members of the halau.

6
7 The applicant is Mr. Fred Punahale Krauss on behalf of Halau Kealaokamalie. Mr. Krauss is
8 requesting a use determination to establish and operate a halau and cultural facility within the
9 State and County Ag District on approximately 3.7 acres of a larger 59 acre parcel. Hula halau
10 and cultural facility do not fit neatly into the list of accessory uses under the County's Ag Zoning
11 ordinance and therefore the halau is requesting a use determination from the Maui Planning
12 Commission that the facility is a permissible use as an accessory use in the Ag District, the
13 State Ag District pursuant to Chapter 205, Hawaii Revised Statutes, and Section 19.30A of the
14 Maui County Code Ag District. The State Land Use Districts are described in Chapter 205,
15 HRS, which establishes four major land use districts. One of those districts is the Ag District in
16 which the proposed use and facility will be located. The primary permissible use is traditional
17 native Hawaiian planning which is further defined by Chapter 205, 4.5 HRS, permissible uses
18 within the Ag District as item number one which is the cultivation of crops and flowers.

19
20 The Department has determined that the halau is considered an accessory use according to
21 Section 205, HRS, which also states, quote, accessory agricultural uses and services including
22 farm dwellings, etcetera, etcetera, etcetera, and cultivation of crops which maybe further defined
23 by each county by zoning ordinance. The property, as far as County zoning, the property is
24 located in County's Ag District which is regulated by Chapter 19.30A which is our Ag ordinance.
25 And the Ag ordinance finds a list, provides a list of permitted and accessory uses in such in
26 19.30.050. Accessory uses are intended to be incidental or subordinate to or customarily used
27 in conjunction with a permitted principle use. Section 19.30.050B allows for, quote, other uses
28 that primarily support a permitted principle use. However, such uses shall be approved by the
29 appropriate Planning Commission -- this body -- as conforming to the intent of this chapter. The
30 Chapter is 19.30, Ag Ordinance.

31
32 The Department has determined that the proposed halau does support the principle use and is
33 considered to be an accessory use and therefore conforms to the intent of the Ag ordinance. In
34 relations to the Community Plan, the property is designated Ag, P1 Quasi-Public, is located
35 within the Makawao-Pukalani-Kula Community Plan District. The proposed use supports the
36 land use and cultural resource goals of the Makawao-Pukalani-Kula Community Plan by
37 preserving the character of the existing land use patterns and the preservation and promotion of
38 the cultural heritage and practices of the region.

39
40 In summary, the Department has determined that the proposed use and facility meets the
41 criteria as an accessory use in the Ag District and therefore the proposed use and request is
42 entirely supported by all three levels of governmental ordinance. If there are no further
43 questions, I'm going to turn this over to Rory, Mr. Rory Frampton. He can give you the details of
44 the project. Thank you.

45
46 Ms. Duvauchelle: Thank you.
47

1 Mr. Rory Frampton: Thank you Paul, and thank you Commissioners. I'll try to be as quick as I
2 can and not be repetitive. I'm sorry, Rory Frampton. I'm here representing Halau
3 Kealaokamalie. I'm going to ask you to turn the lights off and I'll try to zip through this power
4 point presentation.

5
6 So the applicant, again, is Fred Punahale Krauss. He's the executive director of Halau
7 Kealaokamalie. He's here today with us, and of course, their kumu hula is Kealii Reichel. And
8 he's here today as well as some of the other board members from the halau. The architect for
9 the facility is Hunton Conrad. Kealii has been, as you all know, very well-known and a
10 successful entertainer in Hawaii. He is first and foremost probably a kumu hula who's been
11 around for many years and is very successful in what they've done.

12
13 Paul went over the use determination request. That's what we have before you today. What
14 they plan on doing with the property, in terms of the agricultural components and the habitat
15 restoration are listed as permitted uses. And then in order to be considered an accessory use,
16 you have to fall under one of the -- they list actually 14 accessory uses in the ag district
17 including farm dwellings are accessory uses, processing of agricultural products, the majority of
18 which are grown in the County of Maui are, is an accessory use. In my opinion, the halau's use
19 of the native Hawaiian plants is processing and consumption. It's just not in the traditional
20 western way, and we're going to have Kealii talk about that a little bit. But what we're coming to
21 you requesting is under this number 15, which says if you don't fall under one of these 14 uses,
22 and I've only included some of them, not all of them, but there's -- and other uses that primarily
23 support a principle use. However these uses have to be approved by the Commission. So
24 that's why we're today before you is to ask that request. And again, our rationale is that they
25 are permitted uses in terms of the native Hawaiian planting and habitat restoration. And the
26 accessory use of the halau and cultural facility is going to be used to support the native
27 Hawaiian planting and habitat restoration program by providing space for the processing and
28 use of the plant materials. And the facility, it will also support the planting program by providing
29 an opportunity to establish a land based education program that brings to life the connection
30 between sustainable native habitats and field systems, and arts, belief, dance and language.

31
32 Paul went over the background information. One of the key things is that they're a portion of a
33 larger parcel. They will end up owning their portion through a condominiumization. There will
34 about 3.7 acres, plus or minus. The larger parcel that they're on is parcel five which is a 59 acre
35 parcel, and about 42 acres of that parcel will be in various types of ag. And the other big thing
36 is that they've already started their planting program. It's not something that's proposed. They
37 got a grant from OHA to plant six acres into native plant habitat. And they're doing this in
38 conjunction or in partnership with Hokunui Maui, the larger land owner. They got this. It's a two
39 year grant. Every, every month they go out and they plant a quarter acre at a time. So after 24
40 months, they're going to have six acres planted. So I'll show you some pictures of that and we
41 have some people here who can talk about that briefly.

42
43 The Hokunui project I mentioned is a larger project that basically surrounds this project area.
44 The relevant information on this slide is that they did publish a Draft EA in 2016. It included an
45 analysis of the halau use in relation to archaeology, traffic, infrastructure, biological resources.
46 That EA was published. It was reviewed by agencies. But they ended up pulling the EA
47 because Hokunui Maui, the EA was because they were going to come in and ask for variances

1 from Zoning and stuff, and they're not going to be asking for that anymore. They're going to go
2 with everything that's allowed in the Ag District. So there was no need for them to pursue the
3 EA, but there was an EA done. I relied on it heavily in looking at archeology, traffic,
4 infrastructure, biological resources when I did my assessment report.

5
6 So the location is just at the lower part of Piiholo Road. Here's Makawao; Makawao Avenue and
7 Baldwin Avenue. Here's another slide. Here's Makawao. Well, Makawao and Baldwin Avenue,
8 the center of Makawao town. If you go out of that St. Joseph's Church, up Piiholo Road, here's
9 parcel five. And then the access to the property is from Piiholo Road, it's well in the inside or
10 the southern part of the property. It's that blue triangle, that's the halau's site.

11
12 The native Hawaiian planting area is on a neighboring parcel, and then as well as the halau's
13 site. So some of these six acres are on an abutting property, and at least two plus acres is
14 going to be on the halau's site.

15
16 This is kind of hard to see, but it's the parcel five. It shows all of the various ag uses, most of
17 which is pasture as well as the halau site and some native Hawaiian plant corridors and the like.
18 This is the halau site plan. Here's where the facility will be located and the parking areas. And
19 then basically the remaining portion of the site will be in all kinds of different native Hawaiian
20 plants for the halau's use and consumption.

21
22 This is the floor plan. Again, from my angle, it's kind of hard to see because of that light, but
23 you have the main processing area, kind of an open air processing area on the bottom for
24 processing of the plants. There will be a multiple-purpose room which will have a kitchen that
25 will hopefully be a commercial kitchen at some point when funds are available. There will also
26 be classrooms and office space. Upstairs will be where they actually practice, the halau
27 practice, the halau practice area as well as another classroom meeting space. There's an
28 elevation from two sides. Kind of a 3D rendering of the halau. You can see the open air area
29 down below where there will be a lot of the processing of the plants will occur. There's another
30 rendering.

31
32 The site is former pineapple fields. It used to be owned by Maui Land and Pine a while ago.
33 Now it's just in pasture. Where the halau is going to be is just in pasture. That's looking back
34 up at the site.

35
36 This is the native planting area. It stretches from the far corner down here, all the way up to this
37 upper area, and they're working their way up this ravine planting, like I said, a quarter acre at a
38 time. They started in September. They've done three, three plantings with group plantings.
39 The Hokunui Maui people are working out there constantly. But the halau and the community
40 come out there and work once a month. It's --. I think Koa. Yeah, Koa's here, and he talk
41 about the planting techniques that they use. But it's real interesting. It's a successional planting
42 where you have crops of different ages providing wind breaks to the other crops. And rather
43 than having just one crop, they mix it up so you can see sugar cane, banana, there's koa, kalo,
44 and nitrogen fixing rows in between. There's the keiki planting that were fairly recently planted.
45 This is the nursery, the existing Hokunui Maui nursery that's providing the plants for the planting
46 area. There's Koa Hewahewa. Koa and his ohana are Hokunui employees that are working
47 together with the halau for this six acre planting plan. The halau will actually -- they will have, or

1 they either do or they will have a lease on the area that's outside of their property. So they're
2 going to end up owning their property and they'll have a lease for this property so that they'll be
3 maintaining the six acres of the planting plan. That's a picture of a halau community work day.
4 There's some keiki.

5
6 And so again, the summary is to request a determination from the Commission that the halau
7 and cultural facility is permissible as an accessory use in the Ag district. And the justification is
8 that the uses of the halau, facility and cultural center will be deeply integrated with and will
9 support the native Hawaiian planting program by providing a facility for processing and use of
10 the plant materials in the art of hula, as well as through educational and cultural programs. So,
11 I'm sorry I went through that pretty quickly but we're going to ask kumu hula Kealii Reichel to
12 speak a little then we're going to have public testimony and then questions and answers. Thank
13 you.

14
15 Ms. Duvauchelle: Thank you Rory.

16
17 Kumu Hula Kealii Reichel: Aloha. This universe so different from what I'm accustomed to
18 walking in. I'm a little bit nervous.

19
20 Ms. Duvauchelle: And I, and I have to ask you to say your name.

21
22 Kumu Hula Reichel: Okay. My name, my name is Kealii Reichel. Mahalo for your time. I know
23 it's been a long day and there's lots of stuff to talk about. So I wasn't sure what I had to do and I
24 wanted to make sure that whatever time I did impose upon that I had my thoughts all in order so
25 that I wouldn't be rambling like I am right now. But, I wanted to start off by saying that, you
26 know, the late Uncle Harry Mitchell often times said to visitors and to local families that if you
27 want to learn about Hawaiian culture and be immersed in Hawaiian culture, then join one halau.
28 Yeah. And because Uncle Harry knew that within the halau, or within the hula universe, within
29 the halau universe that hula itself encompassed every aspect of our culture from language
30 acquisition to not only hula, but re-establishing relationships between the forest, and the land,
31 and the dancer themselves. He knew that we do ritual, we do ceremony, we make our
32 implements, we grow our certain kinds of plants. Some of the plants we prefer to grow because
33 we don't want to impact the forest. And so this particular project allows us to do those kinds of
34 things, you know, from a cultural context, and not just through hula, but the hula itself cannot
35 survive without all of the other art forms to support it. The other art forms such as implement
36 making, kapa making, dye making, ipu making, all of those kinds of resources and practices can
37 exist by themselves, but the hula itself cannot. Yeah, we are dependent on those kinds of
38 things. And so this particular project will allow us to be able to encompass those practices in
39 real time because those crops will be right there. And it's not just for our halau, but we, we've
40 already invited in many of these planting days we've had other halau come and participate so
41 that they have something to look forward to and maybe even to set as a goal for themselves.
42 Can you imagine if every district had a piko, a center of, of Hawaiian practitioners that can meet
43 at in one place?

44
45 And so with that said I want to read you few things before I'm pau and I can move on, you can
46 move on to the next speaker. But really, halau is the physical space that affords a reconnection.
47 A halau means many breathes, yeah. And what that means is a simple gathering of people in

1 one space who share the same hao or breathe. Also meaning to have the same goals,
2 aspirations and eventual outcomes, whether that be through hula, language acquisition,
3 weaving, basketry, dyeing, kapa processing, halau is the proverbial pond where a pebble is
4 dropped into it and we're all the concentric circles, flowing out of it affects everybody
5 exponentially. There is not one halau today that stands outside of the cyclical process of
6 transmitting knowledge and the re-connectivity to the land, air and sea.

7
8 Unfortunately, you know, halaus throughout these islands we've, we've become nomadic. Yeah.
9 We -- this profound transmission that occurs often times we're regulated to hunting for and
10 utilizing warehouses, garages, yoga studios, pole dancing studios, school classrooms, parks
11 and community centers. And given all of these odds and exasperating challenges, we still have
12 been able to affect change and reconnect in the best that we can culturally. We brought much
13 pride to our island through our work and accomplishments, and given the limited spaces and
14 resources available, I'm shocked that we are able to do so over these past two decades.

15
16 So, my point is that if we are allowed to set our roots into a place that we can, we can further
17 develop these reconnected practices, you know, how much more can we affect our community
18 at large? Yeah. How much, how, how deep can we get? I don't know. But I know that what
19 we've done thus far within the Hawaiian community and the local community at large through
20 our work can only be expounded upon by having a land base upon which we can work out of.
21 And so we -- I want to close with this -- there's a saying . . . (Inaudible. Spoke in Hawaiian) . . . I
22 am interdependent on you, and you are interdependent on me. As people who live on an island
23 we know that this is true by the way how we interact with each other, our families, and our
24 community. We sometimes we forget to include our natural environment as our family
25 community. So, halau teaches us that through cultural practices and environmental kinship, we
26 learn how to express aloha for the potential of this project as well as for our community at large.
27 So, mahalo.

28
29 Ms. Duvauchelle: Thank you. Thank you very much. At this point we will open --. The
30 presentation is complete. We'll open the floor for public testimony. Anyone wishing to testify,
31 please come forward. If you will state your name and then you'll have three minutes.

32
33 Mr. Joshua Chavez: Joshua Chavez with the Hokunui project. Maybe what I could do is just
34 give a little bit of an overview of the project in general because there's a lot of different layers
35 with the project. So as Rory mentioned it's 260 acres overall, but we're using probably 20 acres,
36 less than 10 percent for homes, and the remaining 90 percent will be a permanent farm
37 operation that we're going to run ourselves under the Hokunui entity. And in general we're
38 calling it a farm community because part of the main goal is to produce food. So we have
39 livestock already on the property, cattle, sheep, chickens, all the forestry, food crops that you
40 saw is underway. The plans is about 30-something acres for the forestry and the crops and
41 things like that, along with the pasture. And we are going to have homes, but part of the goal
42 also is to have homes for the people working at the farm so they can live and work in the same
43 place. All the homes will be off grid with water and power, so we have a private well. We'll be
44 developing our water system. All the homes will be on PV and PV energy, battery storage and
45 generator backup. Also how we're developing the roads and the access for the farm and
46 everything, it's going to be, we're doing the roads on contour so we can catch any surface water
47 when it rains, catch it on the roads, and it takes it to the ponds. And so that will be our ag water

1 for the project. But, I guess one of the, you know, awesome things that we're able to do also is
2 to have the halau on the project, and so it only makes sense for a halau to be on land like this
3 rather in town where you don't have any land around you to do anything. So, it's really...we
4 thank you guys for considering this because it's, you know, going to be a change for what
5 halaus can do and hopefully other landowners will look at it as an example too. When they do a
6 project they can, you know, make use of land like this for their culture, for the community, for
7 agriculture and things like that. So, mahalo for your consideration.
8

9 Ms. Duvauchelle: Thank you. Any questions for the testifier? Thank you very much. Please
10 state your name and you'll have three minutes.
11

12 Mr. Koa Hewahewa: Aloha Commission. Aloha. My name is Koa Hewahewa. I'm currently the
13 director of forestry operations of the Hokunui Maui. I also work alongside Halau Kealaokamalie
14 to help organize and facilitate the six acre reforestation oasis. Before I get into what I do for the
15 project I would like to share and elaborate on the necessity of this halau site and reforestation in
16 our community. And the community I speak of is not just of human, but of plants, animals,
17 microbes, elements and culture. Having a facility to practice culture is critical and a vital
18 necessity to not just perpetuate Hawaiian culture, but to regenerate and normalize multi-
19 generational knowledge for us from our ancestors to our descendants. This site and project will
20 be able to provide many of the key elements needed to practice our culture and provide for ever
21 growing Hawaiian practitioners in our community. Hawaii is home to the most unique and rare
22 native forest with the most endemic species on Earth. Species found nowhere else in the world.
23 But being so isolated, it also introduces the most invasive species on Earth too. That being said
24 this project would allow not just the site to gather and consume plant material, but it would be a
25 site to gather and consume important education and knowledge of how to properly plant, how to
26 properly gather. It would also be a site to educate why, how, and what to harvest the proper
27 way so that there's always left for future gathers. It's required in certain ceremonies for plant
28 materials to be harvested from the . . . (Inaudible. Spoke in Hawaiian) . . . or the native uplands.
29 But there are many other activities and events when there's a need for certain hula plants and
30 are not required to harvest in the uplands. So this site, this site would serve those needs as a
31 place to gather the proper plant materials without going to our native forest.
32

33 I work together with my family, my dad, my brother, my wahine, sometimes my whole family
34 come up, and we are in charge of the reforestation onsite. With our native trees we plant some
35 of native Hawaiian canoe crops like kalo, banana and sugar cane. Because our native trees
36 grow so slow they're susceptible to different pests' diseases. So what we do is we bring the
37 canoe crops in, they grow a little bit faster, and they have a function. Their function is to provide
38 wind break, irrigation, shade, and at the end it yields some food to help feed our community
39 while we're planting. So like some other said earlier, we plant a quarter acre ever month and
40 invite sometimes over 100 individuals from our hula community to come and plant with us. And
41 on planting days we provide half an hour of curriculum with education on the importance of our
42 native forest and the protection of native watershed. This project is good in the community,
43 relationship, and mostly important to us is there will be a connection. So on behalf of my family
44 who I am here to represent and the rest of the crew I ask for your guys support and mahalo for
45 having this opportunity for me to speak.
46

47 Ms. Duvauchelle: Thank you.

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Mr. Hewahewa: Mahalo.

Ms. Duvauchelle: Any questions? Thank you very much. Please state your name. You'll have three minutes.

Ms. Henohea Kane: Aloha, I'm Henohea Kane. I am an alakai or a lead dancer of Halau Kealaokamalie. Mahalo, aloha. So part of my kuleana today is to kind of offer you a little bit of insight as to what we've been able to do so far through our grant with OHA. Part of what we do when the community members come up is first and foremost we set a rapport and respect with protocol. And this is protocol that's not new or not necessarily particular with our halau, but this is a common protocol that you see throughout our culture. So to save time and respect your time, I'm going to read what I've prepared for you folks.

Part of our exchange happens when we take the group up to the tent. And in this space is where we talk about the land and the elements in which they're about to work in. In our culture acknowledging our elements and all of our surroundings is very important for several reasons. It dictates a lot of dos and don'ts, and it can be very influential on an individual. When we introduce them to the area we always start by telling the name of the moku, which the district. And from there we continue on with the smaller land division which is the ahupuaa. After we talk about the ahupuaa we start to point out certain land features like pu'u or hills. We also talk about nearby fresh water ponds and so on and so forth. And then once we're done with that we introduce them to the names and the characteristics of certain elements that are there like rains and winds. And this type of information is important because as we mentioned before it has the ability to influence an individual or even a collective group of people. It also give us clues as to how to move about in that area and it really gives us a great insight. We share this knowledge with anyone who volunteers and hopes that it will make their planting experience a more personal one. We take it is past the realm of physical and we move it to one which is more of an intellectual and then emotional. We try to turn it into a much more in-depth experience for everybody. These are the types of connections that we have been able to provide to the community and hope that we continue to do so and then add so much more to that. For many people working the land provides mental and spiritual grounding that proves to be beneficial to both person and to place. As we put positive intent and energy into this space it helps fulfil the person and it connects them to the area. This type of connection is an integral part of our culture, and it serves both land, community and our culture. Mahalo.

Ms. Duvauchelle: Thank you. Any questions? Commissioner Hill.

Kahu Hill: Aloha.

Ms. Kane: Aloha.

Kahu Hill: I just wanted to know, you mentioned the ponds, do you have fresh water ponds actually on the property or water running through it?

Ms. Kane: No, we don't have fresh water ponds on the property.

1 Kahu Hill: Mahalo.

2

3 Ms. Kane: Aloha.

4

5 Ms. Duvauchelle: Anyone else wishing to testify please come forward. And I have to ask you to
6 state your name...even though we see you often.

7

8 Ms. Francine Aarona: I know. I've been here since this morning with different avenues. But
9 yes, I'm Auntie Mopsey from Paia. Mahalo, Madame Chairman and Commissioners. We wear
10 a lot of hat in our lives. And you know me as wearing one hat to speak up for the people of
11 Maui. Today I come with a different hat. I am the legacy of Auntie Mai Keale Lake. I . . .
12 (inaudible) . . . in 1974 as a kumu hula. But I come here today to support my ohana, Kamalie.

13

14 Halau as everyone looks at it they see the dancers, the smiles, the pretty faces. But the halau
15 needs more than that. Auntie Mai has shared with me that hula is life, and we connect to the
16 earth. And through your presentation today regarding the aina, the use of the plants, in halau
17 we have many rituals that we utilize these processes. And this is so meaningful for them to start
18 this so that many of the halau here on Maui can take advantage of it. So I, I ask that you say
19 yes to the use of their determination to start this process and eventually move on to a cultural
20 center which we probably are all waiting for. So mahalo for your time.

21

22 Ms. Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to
23 testify at this time? Okay, seeing none we will close public testimony, and open the floor to
24 questions from the Commissioners. Commissioner Robinson.

25

26 Mr. Robinson: Do we need a farm plan for this or are we just having a use and it's all good?

27

28 Mr. Fasi: No, I don't think we need farm plan.

29

30 Mr. Robinson: Okay.

31

32 Ms. Duvauchelle: That's the easiest question we had all day. Commissioner Hill.

33

34 Kahu Hill: I would really like to know what kind of . . . (Inaudible. Spoke Hawaiian) . . . has been
35 planted, being planted on the aina?

36

37 Ms. Duvauchelle: Wait. Excuse me, you have to come to the microphone and state your name
38 again please.

39

40 Mr. Hewahewa: Aloha. Mike Koa Hewahewa. Currently some of the planting that we do
41 besides from the halau is olena and mamake so, and . . . (inaudible) . . .

42

43 Kahu Hill: Upland or low land mamake?

44

45 Mr. Hewahewa: Mamake, all of them. We have three different varieties, and to me a lot of the
46 plants are la'ao, lapa'o.

47

1 Kahu Hill: Aloha.

2

3 Ms. Duvauchelle: Thank you. Any other questions? Okay, seeing none, can we have the
4 department's recommendation?

5

6 Mr. Fasi: The Planning Department recommends that the Maui Planning Commission find the
7 proposed use as a halau hula and cultural facility to be an allowed accessory use in the State
8 Ag District and in conformance with Title 19.38 of the Maui County Code. Further the Planning
9 Department recommends that the Maui Planning Commission adopts the Planning
10 Department's report and recommendation prepared for the January 9th, 2018 meeting as its
11 Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director of
12 Planning to transmit said written decision and order on behalf of the Planning Commission.
13 Thank you.

14

15 Ms. Duvauchelle: Thank you. Commissioners? Discussion? Motion? Commissioner Hill.

16

17 Kahu Hill: I just wanted to say that Uncle Harry Mitchell was a beautiful kupuna, and close to my
18 kupuna, Papa David Kaalakea. And he said when he was alive that if the . . . (inaudible. Spoke
19 in Hawaiian) . . . wasn't taught and it wasn't passed, it was going go with them if they leave.
20 And he spoke of things like this into the future and it's so important for the halau and for the
21 indigenous endemic plants and the ways of life, the ritual, everything it regards. And I think that
22 it's absolutely beautiful that Kealii would move his ha'a into this land and it would become a piko
23 and possible blueprint for other islands and I'm in full support.

24

25 Ms. Duvauchelle: Thank you. Commissioner Higashi?

26

27 Mr. Higashi: I move to recommend the Planning Commission, Planning Department's proposed
28 use of the halau hula and cultural facility to be allowed accessory use in the State Agricultural
29 District and in conformance with Title 19.38.050.B.15 of the County of Maui Code.

30

31 Kahu Hill: I second.

32

33 Ms. Duvauchelle: Moved by Commissioner Higashi, and seconded by Commissioner Hill.
34 Commissioner Robinson, discussion on the motion?

35

36 Mr. Robinson: Yes, I think we've been having this on our agenda, a halau having to be added as
37 a use I think it gives credit to Kealii and Koa and whole group of about the resurgents. Halaus
38 are the easiest way to get into Hawaiian culture as stated. Anybody can come and they can
39 dance and they can enjoy and learn at the same time. Halaus fight for spaces to find. There's
40 soccer parks, there's basketball parks, there's basketball courts. But halau have to fundraise,
41 they have to pay rent, they have to ask the landlords I'm going to have 40 parking stalls that I
42 need. This is something that needs and hopefully it's something that grows and I hope this, this
43 example here will then spread out and OHA will then fund more and we can have more of these
44 because this is really something that I think it can really bring the people back as well as bring
45 people in, you know. We have all of these people wanting special this, special that, right. But
46 something like this is giving, and all they're asking is to just be recognized. It's just simple. So,
47 congratulations you guys. Thank you.

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Ms. Duvauchelle: Any other discussion on the motion? Commissioner Higashi.

Mr. Higashi: I propose to have this particular facility and area approved because this is the beginning of a group to get together united. I remember Kealii Reichel when he first started a halau in Lihikai School as a halau and they had to work themselves up. And there's a lot of halaus like that that do that, but now they have a home base that, that all of the different halaus from Maui can come and unite and teach the younger generation the cultural tradition and ways of how Hawaii was built. And I think I commend the group for putting this together.

Ms. Duvauchelle: Thank you. Any other discussion? Okay, seeing none, Director, would you repeat the motion?

Mr. Spence: The motion --. Before I repeat the motion, I just want to say, Commissioners, it really pleases me to be able to bring this to the Commission for this kind of determination. I understand how hard it is to have facilities and how that grounds the culture, the religion. It gives you -- Kealii expresses that it's like a piko. It provides a center. It provides a focal point. As Commissioner Robinson said it, it's hard to go look for space, so to me, this was an easy call. This is processing. It's processing, but it's cultural. You're processing the --. I know how much plants, and planting it's so integral with the culture and it's necessary to have a facility like this. So to me, it's an easy call, it's an easy recommendation to bring to the Commission, and that --. The motion is to say that this is an accessory use pursuant to our zoning code.

Ms. Duvauchelle: Okay. And I want to thank you for bringing a very sweet end to the day because I think this an amazing project. Oh, yeah. And I can't wait to hear about the rest of the project. Alright, so all those of favor the motion please raise your hand. That's five ayes, motion carries. Thank you very much.

It was moved by Mr. Higashi, seconded by Ms. Hill, then

**VOTED: To Approve the Use Determination as Recommended by the Department.
(Assenting – R. Higashi, A. Hill, K. Robinson, C. Tackett, S. Castro)
(Excused – T. Gomes, L. Hudson, L. Carnicelli)**

Mr. Fasi: Thank you.

Kahu Hill: Congratulations.

Ms. Duvauchelle: Okay, Commissioners, let's power through this.

2. HOWARD BENSON and MICHAELYN STURGEON BENSON requesting an amendment to their State Land Use Commission Special Permit to operate the Holomakai to allow for 5 bedrooms to be used for bed and breakfast use instead of 2 bedrooms for

1 **property situated in the State Agricultural District and County**
2 **Agricultural District at 165 N. Holokai Road, TMK: 2- 8-004: 027,**
3 **Haiku, Island of Maui. (SUP2 2015/0002) (T. Furukawa)**

4
5 **The Commission may take action on this request.**

6
7 Mr. Spence: Second Communication item, Mr. Howard Benson and Michaelyn Sturgeon
8 Benson requesting an amendment to their Special Use Permit for their bed and breakfast to
9 allow five rooms instead of two bedrooms. And Tara Furukawa is also the staff planner for this.

10
11 Ms. Duvauchelle: Thank you everyone. Sorry we don't have time to break but congratulations.
12 Thank you. Thanks Rory.

13
14 Ms. Furukawa: Good afternoon Commissioners. This item is under your review because the
15 applicant is requesting an amendment to the State Land Use Commission Special Permit for the
16 Holomakai B&B. The applicant Maxine Sturgeon wishes to add three more bedrooms in the
17 main farm dwelling to their B&B located at 165 North Holokai Road, in Haiku. Currently two
18 bedrooms are permitted in the second farm dwelling. The applicant is also requesting to
19 transfer the SUP2 Permit to her daughter, Michaelyn and her son-in-law, Howard Benson as
20 well as the five-year time extension of the SUP2 permit which the Director can approve. The
21 applicant holds a B&B Permit that can be approved administratively for the same duration as the
22 SUP. The applicants were issued farm plan approval in 2014, and an updated approval was
23 granted on November 8th, 2017. Agriculture on their property includes coconut, citrus, banana,
24 guava, Hawaiian flowers, papaya, macadamia nuts, avocado, construction bamboo, and free
25 range hens. The applicant's daughter, Micky, is here to discuss the amendment request in
26 more detail. Howard Benson is here to speak.

27
28 Mr. Howard Benson: Hi. My name is Howard Benson. I'm one of four owners of the property.
29 My wife, my mother-in-law, and my daughter, we all own the property. We've been in business
30 for the last two years running the cottage as a vacation rental, as a bed and breakfast vacation
31 rental. Now my daughter is going to school in Oregon, and my mother-in-law is only kind of the
32 --. I mean, she lives here still, but she spends a lot of time on the mainland with family and
33 friends so we wanted to open up the house to do some additional rentals there. We've become
34 rather good at it, and we like the business. And we've had no complaints from our neighbors.
35 We try to be good stewards or good relation in the neighborhood, and that's, that's where we
36 are right now.

37
38 Ms. Duvauchelle: Okay, thank you. Are you -- are we doing a presentation or is that it?

39
40 Mr. Benson: Okay, so there's the outside of the house. It's a four-bedroom, four-bath house.
41 It's a flag lot and it's rather an unusual shaped lot. And due to its location you can see we have
42 very few neighbors. The one neighbor to the east of us, Doug Bishop, he has written a letter to
43 the Planning Commission or to our planner that he supports the project, supports our vacation
44 rental.

45

1 Yeah, so it's a long flag lot. We have nobody's near us of any kind of --. These are the three
2 bedrooms. The one in the upper right is where -- it was my daughter's room, but she's only
3 going to be coming back probably in the summers to use it. That's kind of why we don't want to
4 do it as a full-time. That's the bathroom on her side.

5
6 The one, the downstairs one or the bottom one is my mother-in-law's unit, and she's only part-
7 time here, so we wanted to rent that. And the other one is a guest room. This is the bathroom
8 for my mother-in-law's unit. This is the spare guest room that we will also be including as a
9 rental. And this is the kitchen, living room area, and part of the lanai there.

10
11 It's 2.4-some acres. There's plenty of parking. We have gravel strips out there where the truck
12 is for parking out there. We've got parking down in the driveway area, and then additional
13 parking along the side.

14
15 This is the views of the front. We have maybe about 40 coconuts. We very few ornamental.
16 Almost everything is either citrus, coconut, or banana, and then a few of the other stuff, avocado
17 and macadamia nuts. And more the -- more of a drawing.

18
19 Ms. Duvauchelle: Okay, thank you. If that concludes the presentation, at this point we'll open
20 the floor for public testimony. Anybody wishing to testify please come forward. Seeing none,
21 we'll close public testimony and we'll take any questions from the Commissioners. No
22 questions. Commissioner Robinson.

23
24 Mr. Robinson: Can I have help understanding? It's three B&B you have to have to be a resident
25 so if we're putting both homes into the rental pool, are we doing an either or, or are you trying to
26 rent out both at the same time which becomes an STRH?

27
28 Ms. Furukawa: They're going to reside in the main house, and you can rent per bedroom for
29 B&B's.

30
31 Mr. Robinson: So you would rent some beds in one house and cottage in another? Is that
32 what's being proposed?

33
34 Ms. Furukawa: Yeah.

35
36 Ms. Duvauchelle: Thank you. Any other questions? Alright, seeing none, can we have the
37 Department's recommendations?

38
39 Ms. Furukawa: So there are two requests for service which are both filed before the granting of
40 the initial permit. One of them was just for review of the file, and the other was for a copy of the
41 certificate of occupancy that Howard Benson actually filed for. There have been no reports filed
42 with MPD. The applicant did a mail out of a notice of filing of bed and breakfast home permit
43 application to all neighbors within 500 feet of the property on July 26, 2017. The Department
44 has not received any public testimony on the project. There are no other B&B's or STRH's
45 within 500-feet. As of September 30th, there are 42 permitted B&B's in the Paia-Haiku

1 Community Plan region, and the cap was 88. There are 45 permitted STHR's within the
2 community plan region and the cap is also 88.

3
4 It should be noted that the bed and breakfast is in keeping with the Paia-Haiku Community Plan.
5 In the Paia-Haiku Community Plan under land use it says limit visitor accommodations to owner
6 occupied bed and breakfast establishments that are residential in both scale and character.
7 Any proposed bed and breakfast should not be situated near the shoreline. And in this case,
8 the bed and breakfast is located about 0.675 miles away from the shoreline.

9
10 So the Planning Department recommends to the Maui Planning Commission approval of the
11 amendment request to include three more bedrooms in the primary farm dwelling. The existing
12 conditions would remain with the exception that the Director would approve the transfer and
13 time extension as provided for in the SUP2 condition. The Department would also recommend
14 that the Maui Planning Commission adopts the Planning Department's report and
15 recommendation prepared for the January 9th, 2018 meeting as its Findings of Fact,
16 Conclusions of Law, and Decision Order, and to authorize the Director Planning to transmit said
17 written decision and order on behalf of the Planning Commission.

18
19 Ms. Duvauchelle: Thank you. Any discussion, motion? Commissioner Tackett.

20
21 Mr. Tackett: I move to accept the, the recommendation.

22
23 Mr. Castro: Second.

24
25 Ms. Duvauchelle: Thank you. Moved by Commissioner Tackett and seconded by
26 Commissioner Castro. Is there any discussion on the motion? Okay, Director, would you like to
27 repeat the motion?

28
29 Mr. Spence: The motion is to approve as recommended by staff.

30
31 Ms. Duvauchelle: Thank you. All those in favor, please --

32
33 Mr. Robinson: I apologize. I'm just trying, I'm just trying to wrap my head around these, these
34 rooms. Is what is being proposed is I saw a letter in here that says they're asking for five years,
35 is that, is that what we're dealing with that now? Or are we dealing with extension? What are
36 we doing?

37
38 Ms. Furukawa: The five year time extension can be approved administratively by the Director,
39 so you guys are just approving the permit request for the three additional bedrooms.

40
41 Mr. Robinson: But if we do the three additional bedrooms that automatically goes into the five
42 years, and then, and we don't have no say on how long it is? Is that what, is that what we're --?
43 That's what I'm saying it's a, it's a catch, right? If we approve the three then it's five years. Is
44 that what you're say --? I'm just trying to get some clarifications.

45
46 Mr. Spence: I'm not entirely following you.

1
2 Mr. Robinson: Okay.
3
4 Ms. Furukawa: The condition states that the Director can approve the time extension.
5
6 Mr. Robinson: If we add these three. Either with the three or the two, but the two is one thing,
7 but we're talking the additional three, right?
8
9 Mr. Spence: Okay, so additional rooms --
10
11 Mr. Robinson: Okay, so the question is I understand that it's, it's, it's five years. But this is also
12 a change of ownership, or an additional ownership. So how does --? Am I not reading
13 something correctly? So how do that kick automatically to a five year? Did we agree on that?
14
15 Ms. Furukawa: Well, that's something that they're requesting, and the Director can determine
16 how many years.
17
18 Mr. Tackett: No, is this language in here?
19
20 Mr. Robinson: The additional. You're adding on, you're adding on --
21
22 Ms. Duvauchelle: Speak in your mic.
23
24 Mr. Spence: There are some conditions that the Director can deal with including the time
25 extension. But then there's other conditions that need to come to the Commission, and so the
26 additional, additional bedrooms is, would be one of those conditions for you.
27
28 Mr. Robinson: I thought on the permit requires it comes to the Commission for change of
29 ownership or is that something the Director has the, has the privity to do?
30
31 Ms. Furukawa: In this case, it, the level of approval has said that the Director can approve it...on
32 the last letter of approval.
33
34 Mr. Robinson: But what is the law? What is, I mean --?
35
36 Mr. Spence: I'm sorry, I don't have that in front of me right now.
37
38 Mr. Carnicelli: Chair, I gave you mine. Is this the one? Where they have -- they're requesting
39 the change in ownership along with . . . (inaudible) . . . Because I don't know what I did with my
40 copy.
41
42 Mr. Spence: Okay, we are --. Okay, so what they're asking for --. Okay, so the Department
43 can administratively extend. That's that. Okay, they're asking to use five bedrooms. That's
44 one, one issue. They're also asking to transfer the permit to include their daughter. I wouldn't
45 say that they're transferring. I'd say they're, they're also putting it in their daughter's name. Is
46 that accurate?

1
2 Ms. Furukawa: She's transferring so that it includes Howard and Micky in the audience.
3
4 Mr. Spence: So it includes them.
5
6 Ms. Furukawa: Yeah.
7
8 Mr. Spence: It's not a --. They're adding names on to the permit. It's not --
9
10 Ms. Furukawa: Yes.
11
12 Mr. Spence: They're not transferring like from one entirely new, one entity to an entirely new
13 entity. They're adding names onto it.
14
15 Ms. Duvauchelle: Commissioner Carnicelli.
16
17 Mr. Carnicelli: Okay, so we ran up against this before which to me I'm uncomfortable with that. I
18 have to say as adding names to a permit, even though they're owners, because we had the one
19 lady here recently that came and she's like, oh, they've got the new guy that's now 50 percent
20 owner so I'm transferring the name to his. And then all of sudden, you know, it's a way with
21 which to transfer and sell a permit, that's a work around. As I look at this, it's like one thing if it's
22 your daughter because she has heir rights. You can actually, if they die, it actually it can go to
23 her. But if you're saying there's a Howard -- I don't know, if there's somebody else in this mix
24 that doesn't have heir rights, I'm not okay with that.
25
26 Mr. Spence: Hang on. Please let's --. I'm sorry, it's just at the end of the day, that's part of the
27 problem. Okay, I want to read out of the staff, the thing. The applicant is also seeking to
28 transfer of the permit to include her daughter and son-in-law.
29
30 Ms. Michaelyn Sturgeon Benson: I'm Michaelyn Sturgeon Benson. I'm the daughter.
31
32 Ms. Duvauchelle: Oh wait.
33
34 Ms. Benson: And that was my husband speaking. My husband, Howard Benson.
35
36 Mr. Spence: So this is still within the family.
37
38 Ms. Benson: Yeah, we're --. I'm the daughter.
39
40 Ms. Duvauchelle: Commissioner Robinson.
41
42 Mr. Robinson: Director, you have two words, transfer and include. Which one is it? Transfer or
43 include?
44
45 Mr. Spence: I think it's more include than it is transfer.
46

- 1 Mr. Robinson: Okay and then it's heir rights. So if you're transferring a commercial property
2 then that's different ownership. Transfer is a different ownership. Include the daughter if the
3 daughter can be included, but once you go to the husband too, that's something different.
4
- 5 Ms. Benson: But my --
6
- 7 Mr. Robinson: It's, it's, it's not heir rights. I guess this is something that maybe a little, but we
8 got to fix this legally because this is, people are taking these permits and it becomes a, it, it, it
9 increases the value of the land, and if they are able to do the permits, and they can, you know,
10 do transfers. So if we have, if we have permits that says ownership cannot be transferred, but
11 yet we're now we're granting transferring an automatic five year. So, so I'd like to have a
12 determination.
13
- 14 Mr. Spence: I don't --. Okay, I'm sorry I'm struggling with this. I don't understand what the issue
15 is here. You're including family members' names onto the permit.
16
- 17 Mr. Robinson: What happens when the mom pulls her name off?
18
- 19 Mr. Spence: And they were requesting -- what they're requesting is an amendment to the permit
20 that says it shall not be transferred. That they're asking can I include family members' names
21 onto this permit instead of just the one applicant.
22
- 23 Mr. Robinson: But Tara was saying that you're doing that administratively instead of coming to
24 us. It's part of a subject.
25
- 26 Mr. Spence: No, it's a part of the request.
27
- 28 Mr. Robinson: That's what she's saying.
29
- 30 Mr. Spence: No, this is a part of the request.
31
- 32 Mr. Robinson: Okay.
33
- 34 Mr. Spence: It's on page two of the staff report. The extension is with the Department, but
35 adding the names, adding rooms, that's with the Commission.
36
- 37 Ms. Duvauchelle: Commissioner Hill.
38
- 39 Kahu Hill: We already see this, but just also seeing that they are on the lease and they're co-
40 owners. You're also on the lease and co-owners.
41
- 42 Ms. Furukawa: Yes they are.
43
- 44 Ms. Duvauchelle: Any other discussion on the motion? Commissioner --? Okay, Commissioner
45 Carnicelli?

1
2 Mr. Carnicelli: Does the son-in-law have heir rights or is it just the daughter have heir rights?

3
4 Ms. Duvauchelle: Corp Counsel?

5
6 Mr. Galazin: Thank you Chair. That would depend on whether they're -- somebody has a will or
7 somebody has revocable trust, an irrevocable trust, whether somebody dies and . . . (inaudible)
8 . . . for the permit. So whether if somebody has -- can inherit the permit is that what you're
9 asking?

10
11 Mr. Carnicelli: As I understand it is a B&B Permit can be passed down. That's one of the ways
12 of which you can transfer titles is it can be passed down to your heirs. My question is does that
13 include the son-in-law or just the daughter?

14
15 Mr. Galazin: That is not a question that I have been asked to look at before so I will need to look
16 it up. I don't know at the top of my head.

17
18 Ms. Furukawa: You know, I actually just want to clarify because condition number two on exhibit
19 13, condition number two for the State Land Use Commission Special Use Permit says the
20 subject SUP shall not be transferred without the prior written approval of the Director. So
21 actually that's not subject to MPC approval and the report was really just for adding to the scope
22 of the permit.

23
24 Mr. Carnicelli: That solves that.

25
26 Ms. Duvauchelle: Okay, so we have a motion on the table and any further discussion? Director,
27 would you like to repeat the motion?

28
29 Mr. Spence: The motion is to approve as, to approve the amendment as recommended by staff.

30
31 Ms. Duvauchelle: Thank you. All those in favor raise your hand.

32
33 Mr. Spence: Five ayes.

34
35 Ms. Duvauchelle: That's five ayes. Opposed? One opposed. Motion carries. Thank you. We
36 have to rush through this.

37
38 **It was moved by Mr. Tackett, seconded by Mr. Castro, then**

39
40 **VOTED: To Approve the Amendment to the State Land Use Commission**
41 **Special Permit as Recommended by the Department.**
42 **(Assenting – C. Tackett, S. Castro, L. Carnicelli, A. Hill, R. Higashi)**
43 **(Dissenting – K. Robinson)**
44 **(Excused – T. Gomes, L. Hudson)**

45
46

1 **F. DIRECTOR'S REPORT**

- 2
3 1. **Designation of the Hana Advisory Committee to conduct the public hearing**
4 **and provide their recommendation on the following request:**

5
6 **ROBERT HOREN and WENDY HOREN requesting a State Land Use**
7 **Commission Special Permit in order to operate Hale Nanea, a 2-bedroom**
8 **Short-Term Rental Home located in the State Agricultural District at 5440**
9 **Hana Highway, TMK: 1-4-003: 051, Hana, Island of Maui. (SUP2 2017/0017)**
10 **(R. Quigless)**

11
12 **The Commission may designate the Hana Advisory Committee to the Maui**
13 **Planning Commission to conduct a public hearing and provide its**
14 **recommendations on the request.**

15
16 Mr. Spence: Yes, we're rushing. Commissioners, we're into the Director's Report. The first one
17 is to, if you so choose to designate the Hana Advisory Committee to conduct the public hearing
18 for Robert Horen and Wendy Horen requesting Land Use Commission Special Permit to
19 operate a two-bedroom short-term rental in Hana.

20
21 Mr. Carnicelli: So move.

22
23 Kahu Hill: Second.

24
25 Ms. Duvauchelle: Second. All those in favor? Okay, moved to move it to the Hana Advisory.

26
27 Mr. Robinson: I abstain.

28
29 Ms. Duvauchelle: You abstain? You abstain? I'm sorry, I missed that. Okay, moving on.

30
31 **It was moved by Mr. Carnicelli, seconded by Ms. Hill, then**

32
33 **VOTED: To Designate the Hana Advisory Committee to Conduct the Public**
34 **Hearing and Provide their Recommendation on State Land Use**
35 **Commission Special Permit by Robert Horen and Wendy Horen.**
36 **(Assenting – L. Carnicelli, A. Hill, K. Robinson-Abstain, C. Tackett,**
37 **S. Castro, R. Higashi)**
38 **(Excused – T. Gomes, L. Hudson)**

- 39
40
41 2. **MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning**
42 **Commission pursuant to Commission's SMA Rules of the following Special**
43 **Management Area (SMA) Emergency Permit:**

44
45 **MR. BILL KUGLER, Director of the KULAKANE AOA and MS. GERI R.**
46 **BRAY, Director of the MAKANI SANDS AOA requesting a Special**
47 **Management Area Emergency Permit in order to repair damage due to the**

1 **creation of sinkholes at 3741 Lower Honoapiilani Road and 3765 Lower**
2 **Honoapiilani Road, TMK: (2) 4-3-006: 001 and (2) 4-3-006: 012 (SM3**
3 **2017/0010) (K. Scott)**

4
5 **This is for notification and review purposes only.**

6
7 Mr. Spence: Okay, the number two, it's just a notification that we have issued an SMA
8 emergency permit for the Makani Sands AOA on 3765 Lower Honoapiilani Road, and I believe
9 there was a two page handout with some photos for you. And Keith Scott, staff planner, could
10 not be here to explain it. But it's for your information and they will come back to the Department
11 with, with an application. I can't say if it's a major or minor.

12
13 Ms. Duvauchelle: Okay.

14
15
16 **3. SMA Minor Permit Report**

17
18 **4. SMA Exemptions Report**

19
20 Mr. Spence: Three and four are you've received copies of the SMA Minor Permit and SMA
21 Exemption reports. Are there --?

22
23 Mr. Higashi: So move.

24
25 Ms. Duvauchelle: Moved by Commissioner Higashi, seconded by Commissioner Robinson. All
26 those in favor? Aye.

27
28 **It was moved by Mr. Higashi, seconded by Mr. Robinson, then**

29
30 **VOTED: To Accept the SMA Minor and SMA Exemption Reports.**
31 **(Assenting – R. Higashi, K. Robinson, L. Carnicelli, A. Hill,**
32 **C. Tackett, S. Castro)**
33 **(Excused – T. Gomes, L. Hudson)**

34
35 **5. Discussion of Future Maui Planning Commission Agendas**

- 36
37 **a. January 23, 2018 agenda items – Hoomoana Campgrounds State**
38 **Special Use Permit and Conditional Permit applications. Unfinished**
39 **Business. Meeting at the Cameron Center Auditorium in Wailuku.**

40
41 Mr. Spence: Okay, number five is what Ms. Deborah Wright has been sitting here all day for.

42
43 Ms. Duvauchelle: Bless your heart.

44
45 Mr. Spence: The, the January 23rd Planning Commission meeting, the unfinished business
46 we're going to have one item, one primary item on your agenda, and that's for the Hoomoana
47 Foundation requesting a Land Use Commission Special Permit for the, for the camp grounds.

1 And it's scheduled to be held at the Cameron Center Conference Room. So it will not be --.
2 We're expecting quite a few people so this is an agenda item and I believe Ms. Wright would
3 like to speak to this.

4
5 Ms. Deborah Wright: Thank you Chair and Council Members. What I'm here to say is that
6 everyone understands why it's being taken up on January 23rd and that I believe it should be
7 deferred. And the reason for this is that after the first hearing which was quite some time ago
8 where there was public testimony, Puunoa filed a request for a declaratory order from the Land
9 Use Commission concerning the jurisdictional aspect about whether the Maui Planning
10 Commission could do these Special Use Permit application or whether a District Boundary
11 Amendment was required for this particular application. The Land Use Commission issued a
12 declaratory order that a District Boundary Amendment was needed for this particular
13 application. Hoomoana then appealed that decision to the local courts and the court ruled that
14 reversing the Land Use Commission saying, no, it should go to the Maui Planning Commission.
15 However that decision is on appeal currently and has been briefed and is pending before the
16 intermediate court of appeals. So the whole issue that is up there is a jurisdictional issue. Who
17 should hear it? Should it be the Maui Planning Commission or should it be the Land Use
18 Commission under the District Boundary Amendment requirement?

19
20 So my, my belief is that it isn't appropriate for this to be on the agenda and to be heard at this
21 time because the whole issue is whether you're the proper party to hear it to start with. And
22 secondarily, I think it's going to be a great waste or a potential great waste of resources and
23 everyone's time because you can go forward, you can have this, and then if the court says, no,
24 we agree with the Land Use Commission that it should be a District Boundary Amendment
25 application, that would all have been for not because it has to start over as a District Boundary
26 Amendment before the Land Use Commission. So it seems to me that it would be putting the
27 cart before the horse and getting, spending potentially a tremendous amount of everyone's time
28 and money including all of the people who are going to take off work and come over from the
29 west side and everything to testify before the Planning Commission on the 23rd. And even if you
30 make a determination at that time that determination maybe for not because of the fact that
31 whatever the appelland court says is where the situation is going to be. And even if the
32 appelland court agreed with Hoomoana it would be better to do it at one time where there's no
33 doubt about what the outcome is going to be. So when I saw that this was on for today and
34 there was going to be some sort of discussion about, I guess, procedurally what would happen
35 on the 23rd or something of that nature, I thought it best to raise this with the Commission at this
36 time. So that's all I wanted to bring up is that I just don't understand why we would be
37 proceeding when the whole issue of jurisdiction is pending, and where this could result in a
38 great loss of money and resources and time for everyone.

39
40 Mr. Duvauchelle: Thank you. Corp Counsel, do you want to comment at this time? No?

41
42 Mr. Galazin: No thank you Chair.

43
44 Ms. Duvauchelle: Okay. Don't say I didn't ask. Alright, any other discussion?

45
46 Mr. Robinson: I would like to discuss what we just heard.

1
2 Ms. Duvauchelle: You may have to discuss this alone. I may need to ask Richard to take my
3 seat.

4
5 Mr. Robinson: Okay, I'll be quick. Chair, I was here the last time we discussed this and it was a
6 full day, and I would hate to think that we are not the, we had not have been appointed the
7 proper Commission to hear it at this point. Any comment Director?

8
9 Mr. Spence: Well, that's why there's only this single item on the agenda.

10
11 Mr. Robinson: Okay.

12
13 Mr. Spence: The applicant --. Just to be honest we told the applicant that, you know, there's a --
14 . I mean, they're well aware there's this pending court case and they would like to proceed
15 anyway, so we said okay.

16
17 Ms. Duvauchelle: Commissioner Carnicelli.

18
19 Mr. Carnicelli: I think the question before us isn't whether the applicant wants to proceed, it's
20 whether or not this body wants to proceed. I mean, I think that's really --. And I'm just going,
21 I'm sorry you're on your way out the door, but I'm going to defer to the Chair. This is your
22 committee, and it's just like you feel as though we should hear this knowing that there's
23 something in the intermediate court of appeals.

24
25 Ms. Duvauchelle: Okay, this late in the day you're going to ask me that. I, I think, I honestly
26 think at this point that we'll leave it on the agenda, and I think it's up to the Planning Department
27 to keep us abreast of the situation.

28
29 Mr. Carnicelli: Thank you Chair.

30
31 Ms. Duvauchelle: Thank you.

32
33 Mr. Higashi: Question.

34
35 Ms. Duvauchelle: Commissioner Higashi?

36
37 Mr. Higashi: Although it's kind of late it seems like we're putting the cart before the horse again,
38 and that is if go to the 23rd hearing and the courts decide that we need to start over again,
39 etcetera, we're wasting a whole period of time coming to the meeting at Cameron Center. I
40 would rather postpone it until we get this thing definitely cleared from the courts so that we know
41 exactly where we need to go.

42
43 Ms. Duvauchelle: Do we --? I mean, I'm assuming here are applications deadline and --. I
44 mean --.

45
46 Mr. Spence: Not at this particular . . . (inaudible) . . .

1
2 Ms. Duvauchelle: Yeah, I would like to know if we're jeopardizing a deadline or an opportunity
3 that because this is something that might happen. Commissioner Robinson.

4
5 Mr. Robinson: The question is are jeopardizing other people being able to have this 23rd
6 meeting where we could hear other topics instead not putting it on the agenda until the final day
7 that we find out that it's, that it's fruitless. I mean, we all work. We're all professionals. We all
8 time. Last thing I want to do is listen to eight hours of testimony that I'm not supposed to listen
9 to. I'd rather it be clarified and I think it's better for everybody. You know people are going to,
10 people are going to miss work to come and testify. And for us not to have a clear, I think that's
11 an injustice to them as well. I plead with the Chair to reconsider you, you hearing this on the
12 23rd.

13
14 Ms. Duvauchelle: We need to have direction. Mr. Frampton.

15
16 Mr. Frampton: Hi, I'm Rory Frampton, and because I was up here all day I was asked to listen in
17 on this conversation and to just offer a statement on behalf of the applicant. That they thought
18 this was just discussing the venue, that the item as posted and as communicated to them by
19 staff was just a question of whether or not to go to the Cameron Center or not. They had no
20 idea that the question of whether or not it was going to be scheduled was even going to be
21 discussed, or there was going to be any sustentative discussions. So without them here to
22 present their case we think there are concerns on their behalf. So that's all I have to say.

23
24 Mr. Carnicelli: But you're here.

25
26 Mr. Frampton: I'm here.

27
28 Ms. Duvauchelle: Thank you.

29
30 Mr. Robinson: Is it, is it Robert's Rules that we can defer agendas that we're going before we
31 approve it before the next meeting? I mean do we have to always have the applicants or can
32 we defer as a body to move anything back?

33
34 Ms. Duvauchelle: And I don't know that answer.

35
36 Mr. Galazin: Thank you Chair. I'm not even sure where we are at this point. So are you asking
37 --?

38
39 Mr. Robinson: What are we allowed to do?

40
41 Ms. Duvauchelle: So I honestly I think we should leave it on the agenda unless we hear the
42 logic or reasoning between Corp Counsel and the Planning Department that we shouldn't hear it
43 on the 23rd.

44
45 Mr. Galazin: Yeah, and Chair, if I may? So Planning Department as staff supporting you as a
46 body of the Commission helps with the preparation of the agenda, has notified you that this is
47 going to be coming up on the agenda. And, you know, as discussed, we're talking about the

1 venue for it. If the Department wants to remove an item off the agenda, it hasn't even been
2 posted yet, the Department may do that. I will say not knowing anything about the underlying
3 case, if an applicant wishes to proceed with an application even knowing that there is a
4 possibility of some court determination down the road that is an applicant's choice. I'm not sure
5 that as a body you could simply refuse to hear it. But you could, you could probably vote to
6 amend the agenda and remove it if that was something that you wanted to do, although that
7 would be kind of an odd way of dealing with it.

8
9 Mr. Spence: Normally we're just --. This part of the meeting we're just telling you this is what
10 we're going to be doing at the next meeting.

11
12 Mr. Robinson: I mean, but we're moving venues. This is the only thing on the agenda. This
13 isn't just one of ten. This is a whole day. This is, I mean, this is kind of a big, big agenda item.
14 . . . (inaudible) . . . clarification if the courts have decided for the party to hear it. It just seems
15 the cart before the horse. It's not that we don't want to hear it, we don't think the decision has
16 been made that we should we hear it. It's an appeal.

17
18 Mr. Spence: Well, I guess if the applicant wants to proceed and they, they understand the risk
19 that they're taking.

20
21 Mr. Robinson: It's not risk. I mean, the Planning Department -- doesn't the Planning
22 Department able to --? I mean is there any criteria that they have to hear it within a certain
23 amount of days of when they apply? I mean, doesn't the Department decide if it's got a valid
24 time to hear it or not with all the resources that's involved in the meeting? I mean, this isn't a
25 zero, zero cost event just because the applicant wants to hear it is what I'm saying.

26
27 Mr. Spence: Well, we agreed to hear it.

28
29 Mr. Robinson: We did. Okay that's the Department.

30
31 Mr. Spence: Yes.

32
33 Mr. Robinson: Not the applicant, but the Department agrees.

34
35 Mr. Spence: Well, the applicant approached us and we said, hey do you understand the risk of
36 this, and they said, yes.

37
38 Mr. Robinson: Okay.

39
40 Ms. Duvauchelle: Commissioner Tackett? I think that's it. Okay, alright, thank you all very
41 much. Maui Planning Commission is now adjourned.

42
43 **Mr. Spence went over the item scheduled for the January 23, 2018.**

44
45 **G. NEXT REGULAR MEETING DATE: JANUARY 23, 2018**

46
47 **H. ADJOURNMENT**

1
2 The meeting was adjourned at approximately 5:25 p.m.

3
4 Submitted by,

5
6
7 Carolyn Takayama-Corden
8 Secretary to Boards & Commissions II
9

10 **RECORD OF ATTENDANCE**

11
12 **Present**

13 Lawrence Carnicelli (excused at 2:35 p.m. and back in attendance at 4:55 p.m.)
14 Steven Castro
15 Sandy Duvauchelle, Chairperson
16 Kahu Alalani Hill
17 Richard Higashi, Vice Chairperson
18 Larry Hudson (excused at 12:15 p.m.)
19 Keaka Robinson
20 Christian Tackett

21
22 **Excused**

23 Tina Gomes

24
25 **Others**

26 William Spence, Director, Planning Department
27 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
28 Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (9:00 a.m.-10:35 a.m.)