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**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 13, 2018**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:11 a.m., Tuesday, November 13, 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.)

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

Mr. Robinson: Good morning everyone. Welcome to the Maui Planning Commission, November 13th. We have Commissioners present today Vice-Chair Larry Hudson.

Mr. Hudson: Good morning Chair.

Mr. Robinson: Good morning. Commissioner Kellie Pali.

Ms. Pali: Good morning Chair.

Mr. Robinson: Good morning. Commissioner Kahu Hill.

Kahu Hill: Aloha Kakahiaka Chair.

Mr. Robinson: Good morning. Commissioner Lawrence Carnicelli.

Mr. Carnicelli: Good morning Chair.

Mr. Robinson: Good morning. Commissioner P Denise La Costa.

Ms. La Costa: Aloha Chair.

Mr. Robinson: Aloha. Commissioner Stephen Castro.

Mr. Castro: Good morning Chair.

Mr. Robinson: Good morning. Commissioner Christian Tackett.

Mr. Tackett: Good morning Chair.

Mr. Robinson: I think we are expecting Mrs. Gomes to hopefully come by sometime later today and...(inaudible)...hopefully she'll make it by lunch. We have Deputy Director with us today and we have Corporation Counsel with us today. Having said that, Deputy.

1 Mr. Alueta: Thank you Mr. Chair. We have several public hearing items as well as some other
2 items on your agenda today. Your first public hearing item is Planning Director Michele McLean
3 transmitting Council Resolution No. 18-24 referring to the Maui Planning Commission proposed
4 bills to amend the Wailuku-Kahului Community Plan, land use map and to the change the
5 zoning for St. Anthony Church and School property located on Lower Main Street,
6 TMK: 3-4-019: 003, 3-4-018: 106 in Wailuku, Island of Maui.

7
8 The first item is a Community Plan Amendment for Single Family to Public/Quasi-Public for
9 approximately 0.3 acres and then there's a Change in Zoning for an R-1, Residential to P-2,
10 Quasi-Public Quasi District for 0.3 acres and for the remaining 14 acres of the parcel. Paul Fasi
11 is our Staff Planner today.

12
13 **B. PUBLIC HEARINGS** (Action to be taken after each public hearing.)

14
15 **1. MS. MICHELE MCLEAN, Planning Director, transmitting Council Resolution**
16 **No. 18-24 referring to the Maui Planning Commission proposed bills to**
17 **amend the Wailuku-Kahului Community Plan and land use map and to**
18 **change the zoning for the Saint Anthony Church and Schools property**
19 **located on Lower Main Street, TMK: (2) 3-4-019: 003 and 3-4-018: 106,**
20 **Wailuku, Island of Maui. (CPA 2018/0003) (CIZ 2018/0003) (P. Fasi)**

21
22 **a. Community Plan Amendment Single-Family to Public/Quasi-Public**
23 **for TMK: (2) 3-4-018: 106 (approximately 0.3 acre)**

24
25 **b. Zoning change from R-1 Residential District to P-2 Public/Quasi-**
26 **Public District for TMKs: (2) 3-4-019: 003 (approximately 0.3 acres)**
27 **and (2) 3-4-018: 106 (approximately 14 acres)**

28
29 *(Item B 1 begins at 0:01:10 of the audio recording.)*

30
31 Mr. Paul Fasi: Good morning Commissioners, good morning members of the public. This
32 matter arises from a County Council initiated land use entitlement change for the St. Anthony
33 Church and School properties in Wailuku. There's a Council Resolution which consists of two
34 proposed draft bills. They are number one, a bill for an ordinance to amend the Wailuku-
35 Kahului Community and land use map from Single-Family to Public/Quasi-Public for property
36 situated at Lower Main Wailuku, Maui, Hawaii TMK: (2) 3-4-018: 106. The second draft bill
37 ordinance is a bill for an ordinance to change the zoning from R-1, Residential District to P-2,
38 Public/Quasi-Public District for property situated at Lower Main Street, Wailuku, Maui, Hawaii,
39 TMK: (2) 3-4-019: 0003 and 106.

40
41 Before I get into the government regulatory requirements I'm gonna be very brief. Jordan Hart
42 is here from Chris Hart and Partners he's got a short five or ten-minute presentation. Hopefully I
43 won't be too repetitive. I have a feeling that what he says basically is going to be what I'm going
44 to be saying right now.

45
46 So we've got two proposed draft bill ordinances. If approved, these changes would result in
47 proposed land use designations being consistent with the existing and traditional uses of the

1 property and allow for future expansion and development of the school. This is a simple change
2 in zoning and community plan amendment. There is no development being proposed. The
3 purpose of this today is to make recommendations and then it will move onto the County
4 Council. The school cannot do any modifications or improvements unless these zoning
5 requirements are in alignment.

6
7 The school is comprised of two parcels. One's 14 acres, 14.6 and the other one is 0.3. It's got
8 some funny zoning in here. Parcel 0003 which is 14 acres the Wailuku-Kahului Community
9 Plan is Public/Quasi-Public so there's no change to that. However, on Parcel 106, the 0.3, the
10 smaller parcel, the community plan designation is Single-Family and so we want to move that in
11 the Public/Quasi-Public. On the County Zoning, Parcel 003, the 14-acre parcel is R-1
12 Residential. We want to move that into P2, Public/Quasi-Public. Parcel 106, the 0.3 has a
13 community plan amendment and a change in zoning. The County Zoning, R-1 Residential we
14 want to move that into P2, Public Quasi-Public.

15
16 As far as land use regulations, on the State Countywide Policy Plan, Maui Island Plan, Wailuku-
17 Kahului Community Plan should you make the recommendations without changes everything
18 will be in alignment? We can send it up to the Council and the school can move on with their
19 business for future improvements.

20
21 So the proposed action today will result in the zoning designations being consistent with the
22 community land use map and current uses of the property. So basically we want to get rid of
23 the residential component on the two parcels and move it into Public/Quasi-Public.

24
25 That will conclude the Department's presentation. Do you have any questions for the
26 Department? If not, I'm gonna turn it over to Jordan and he can make a small presentation.
27 Thank you.

28
29 Mr. Robinson: Thank you Paul.

30
31 Mr. Jordan Hart: Thank you very much Paul. Good morning Chair and Members. My name is
32 Jordan Hart of Chris Hart and Partners.

33
34 Mr. Robinson: Good morning Jordan.

35
36 Mr. Hart: We're land use planners assisting St. Anthony's in this process. This is Council
37 initiated community plan amendment and change in zoning but we're just here to provide
38 background information to facilitate.

39
40 The project site I believe everyone's familiar with where St. Anthony's is on Lower Main Street.
41 These are the TMK maps. So there's the primary parcel, Parcel 003, it's 14 acres in size and
42 then there's a...the corner right here, these are on two different TMK maps but they abut each
43 other, is Parcel 106 which 0.3 acres. This is an aerial photograph of the church and school.
44 Church buildings are primarily on the north end and then the school buildings are in the central
45 area, football field and then this is the additional parcel.

1 Some significant buildings. The church was built in 1980. The previous church was built in
2 1873. The church was destroyed in 1977 in a fire. Damien Hall was built in 1925. Chaminade
3 Hall was built in 1925. Maryknoll Hall in 1940, and the convent here was built in 1949.

4
5 Community plan map, so the church parcel is Public/Quasi-Public...the primary parcel is
6 Public/Quasi-Public, but one parcel is community planned Single-Family. Public/Quasi-Public
7 are uses that are consistent with churches and schools. This is the zoning map...one thing I
8 want to say about community plans as well is community plans are generally treated as future
9 proposed zoning so it would have been anticipated that this parcel ultimately become
10 Public/Quasi-Public but the zoning for both parcels is Single-Family, R-1. Both parcels are
11 outside of the flood zone. Well, they're in Flood Zone X which is the area minimal flooding
12 hazard. Paul went through the parcels and the designation changes. Basically both parcels are
13 going to P-2 Public/Quasi-Public zoning and the small parcel is going to Public/Quasi-Public
14 community plan designation. These are consistent with the uses that have been occurring at
15 the site since 1848.

16
17 In 2016, St. Anthony's completed a master plan for the redevelopment and enhancement of the
18 church and school, primarily the school. As part of the recommendations in that master plan it
19 was advised that the community plan...that the land use designations be cleaned up in order to
20 facilitate renovation and enhancement of any church buildings as well as school buildings that
21 are proposed. One critical item that the school is lacking is a gym. They'll require the height
22 that is permitted under P-2, Public/Quasi-Public in order to do that gym. And so that's a critical
23 need of the school.

24
25 So in summary, you know this church and school had been in this community since the 1800's,
26 1840 and you know, it's no change of anything except bringing the land use designations
27 consistent with the actual use. Thank you.

28
29 Mr. Robinson: Thank you Jordan. At this time, we'd like to open the floor for public testimony.
30 And if anybody was there during the construction please step forward. First, Mr. Frampton.

31
32 Mr. Rory Frampton: Good morning Chair. I wasn't there during the construction although it
33 seems like a long time ago. My name is Rory Frampton. Seems like a long time ago, but I did
34 graduate from St. Anthony High School. I'm currently on the Board of Directors. Yeah, Trojans
35 and Joe Alueta too was a proud alumni and there's probably other people in the room or
36 possibly on the commission.

37
38 Mr. Robinson: You have two minutes left sir.

39
40 Mr. Frampton: Thank you. I can conclude in two minutes. I just want to thank the Commission
41 for hearing this matter. Thank the Department for moving this matter along. Historically you
42 know when the church and school were established there was no zoning on Maui. In the 1950's
43 when they adopted zoning for Maui there was no Public/Quasi-Public District. It was just
44 residential in which you allowed schools, churches and preschools were considered special
45 uses. But of course, because the school and the preschool and the church were preexisting
46 they were considered nonconforming uses...or well, the church and the preschool are
47 nonconforming uses. The school is an allowed use in Residential. In the mid-80s they adopted

1 Public/Quasi-Public Districts which would allow for schools and churches and preschools and
2 that type of stuff. So this is really just bringing the current zoning up to date with the way we
3 have our zoning on the books for Maui County now. So we humbly ask for your support to
4 move this along.

5
6 Mr. Robinson: Thank you. Any questions from the Commission? Seeing none, thank you.
7 Next we have Tim, I'm sorry...

8
9 Mr. Tim Cullen: I was a left-hander in Catholic School so my writing's never been great.

10
11 Mr. Robinson: Aloha, please introduce yourself. You have three minutes Tim.

12
13 Mr. Cullen: Aloha, my name's Tim Cullen. I'm the head of the school for St. Anthony School. I
14 graduated the same year as Rory just different school miles away. But I've been here over a
15 year and I need to share with you thank yous from both the parish and the school. The last
16 couple years a lot of people have put love, effort and money into the school system. We're now
17 K-12 school system. We reconfigured. This is our second year as that. But internally
18 everything that could be done has been done from every classroom being air-conditioned to
19 new doors to technology infrastructure. The master plan that has been shared, the overview of
20 it, that plan is a long range plan but as you know you can have a long range plan but then you
21 have to put the work and effort into it to make it happen. So this is a step that allows us to move
22 forward with more external things. Things that fit St. Anthony and obviously help our students,
23 help the parish. So I also want to echo that I thank you for your time. I understand this is a
24 volunteer group and so I appreciate that from communities I grew up in I understand that and I
25 know that's giving back to the community and that's what we want each of our St. Anthony
26 grads to do also. So thank you for your time. This does allow us to take future steps to kind of
27 build a future for our students and our staff and the parish by having on site access to things
28 that right now they have to travel throughout the community and fight for treasured valued space
29 with gyms and other things. So your support is again appreciated and thank you.

30
31 Mr. Robinson: Thank you Tim. Any questions? Thank you. Next Gary Passon. Is it Passon?

32
33 Mr. Gary Passon: Passon. But we take Passon, all sorts of kinds. Good morning
34 Commissioners. These will be very brief comments. Hi my name is Gary Passon. I'm on the
35 board of St. Anthony School and on the Facilities Committee and we just wanted to express our
36 great appreciation to the Maui Planning Department for their effort to promptly move through
37 this process and help us be able to move onto the next phase of expanding the school. So we
38 just wanted to say thank you them and to the Council for their, for their making this opportunity
39 available to us and to our partners, Chris Hart and Partners and all the folks that have worked
40 so diligently to make this thing happen. So thank you and we're hopeful for a positive result
41 today. Thank you.

42
43 Mr. Robinson: Thank you Gary. Any questions? Seeing none, can we have the Department's
44 recommendation please?

45
46 Mr. Fasi: The Community Plan Amendment is to reclassify the project's area community plan
47 designation from Single-Family to Public/Quasi-Public. The change in zoning is to reclassify the

1 zoning district from R-1, Residential to P-2, Public/Quasi-Public. The applicant's proposed
2 actions are consistent and supported by both the change in zoning and community plan
3 amendment criteria. Therefore, the Maui Planning Department recommend to the Maui
4 Planning Commission that it recommends to the Maui County Council approval of both bills
5 without modification. Thank you.

6
7 Mr. Robinson: Thank you. Commissioners at this time we have any questions for Jordan?
8 Seeing none, I have one question Jordan just about the gym is when the construction for the
9 gym does the permit come out and then notice comes out or is there no notice needed for the
10 height of the gym?

11
12 Mr. Hart: Hypothetically if we didn't get these change in zoning and community plan
13 amendment we'd have to do a variance in order to do the gym and the Department hasn't been
14 very supportive of proactive variances. You know, proposing to do something that needs a
15 variance you know the preferred alternative is to actually get your land use designations
16 corrected. So after we go through these noticed hearings at the Planning Commission and we
17 had one meeting already at the Council, we're gonna have more meetings at the Council
18 provided we receive a recommendation for approval here. Those would be the notices to
19 members of the community that this is happening and then after we have proper zoning you
20 would just get building permits just like any other landowner who has correct zoning.

21
22 Mr. Robinson: Okay, thank you. So Commissioners in front of us is we have recommendations
23 for approval or denial. We have two topics. We have one that's an amendment and one that's
24 it's a ordinance are changed. Does anybody see a problem with handling both at the same
25 time? Okay, any discussion or a motion for recommendation for the Council?
26 Commissioner Kahu Hill.

27
28 Kahu Hill: Mahalo Chair. I just want to say it's really nice, it's just beautiful to have such a
29 historic church and school coming before this Commission this morning and for people to go to
30 pray and learn. Just wanted to say that's really nice coming before us. Mahalo. Honored.

31
32 Mr. Robinson: Do you have a motion in that?

33
34 Kahu Hill: Sure. I guess I'd like to make a motion that we approve both of these for the 14.33
35 acres and the 3.133 the change in zoning for R-1 to P-2 Public/Quasi-Public. Is that enough,
36 Chair?

37
38 Mr. Robinson: Yes. Corporation Counsel.

39
40 Mr. Galazin: Yes, thank you Chair. And my suggestion would be while it's...makes a lot of
41 logistical and practical sense to deliberate on these matters together I think the final vote should
42 at least be done you know, one after the other so that we have a clean record for each vote.
43 That way one could be challenged without the other having to be challenged if there is...if that
44 ever does come up but it certainly makes sense to talk about it in your deliberations before you
45 get to a motion to go ahead and discuss everything in total because they are, they are
46 intertwined and that makes sense. You don't want to waste time rehashing something about the
47 change in zoning that you already talked about in the community plan amendment. So I would

1 encourage discussion on the them ...(inaudible)...but the motion at the very end should be first
2 motion for the community plan amendment and then if that's approved, second motion for the
3 change in zoning.

4
5 Kahu Hill: Chair may I restate that?

6
7 Mr. Robinson: You're fine.

8
9 Kahu Hill: Okay, good.

10
11 Mr. Robinson: Do we have a second?

12
13 Ms. La Costa: Second.

14
15 Mr. Robinson: We have a motion from P D. La Costa, P Denise La Costa. Sorry. Any
16 discussion on the motions? Commissioner Carnicelli.

17
18 Mr. Carnicelli: Chair just as a x-altar boy and someone whose family members attended
19 ...(inaudible)...school I'm in full support of the motion so thank you.

20
21 Mr. Robinson: Thank you. Commissioner La Costa.

22
23 Ms. La Costa: I too, am in support of the motion. It's basically housekeeping more than
24 anything else. There will be no changes except they'll add a much needed recreation facility for
25 our kids so mahalo.

26
27 Mr. Robinson: Anyone else? I also had two kids that went there so, it's a great place. Joe, if
28 you'd like to read number one please for the vote?

29
30 Mr. Alueta: Thank you Mr. Chair. The first motion was to recommend adoption of the
31 community plan amendment from Single-Family to Public/Quasi-Public for TMK: 3-4-018: 106
32 of approximately 0.3 acres.

33
34 Mr. Robinson: All those in favor approval of recommendation please raise your right hand.
35 That is seven. Thank you.

36
37
38 **Community Plan Amendment**

39
40 **It was moved by Kahu Hill, seconded by Ms. La Costa, then**

41
42 **VOTED: To Recommend Approval of the Community Plan Amendment to the**
43 **County Council as Recommended by the Department.**

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

47 **(Excused – T. Gomes)**

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Mr. Robinson: Joe, number two.

Mr. Alueta: There haven't been a motion.

Mr. Robinson: I thought it was combined. I apologize, but let's go ahead.

Mr. Carnicelli: She did combine it.

Mr. Robinson: That's okay.

Mr. Alueta: Oh you did.

Kahu Hill: We did.

Mr. Alueta: Okay, so the same people who made the same motion so the next one is for a change in zoning from R-1, Residential District to P-2, Public/Quasi-Public for TMK: 3-4-019: 003 and for 3-4-018: 106 for 14 acres for recommend the change in zoning to the Maui County Council.

Mr. Robinson: All those in favor please raise your right hand. That's seven. Thank you.

Zoning Change

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

VOTED: To Recommend Approval of the Zoning Change to the County Council as Recommended by the Department.
(Assenting – A. Hill, P. D. La Costa, L. Carnicelli, K. Pali, L. Hudson, C. Tackett, S. Castro)
(Excused – T. Gomes)

Mr. Fasi: Thank you.

Mr. Robinson: You're welcome. We'll take a five-minute recess before our next item. Thank you.

A recess was called at approximately 9:33 a.m., and the meeting was reconvened at 9:40 a.m.

Mr. Robinson: Next we have Item B.2, Deputy Director.

Mr. Alueta: Thank you Mr. Chair. Your next public hearing item is RD Olson Investments II, LLC requesting a Step I Planned Development Approval and a Step II Planned Development Approval and a Special Management Area Permit in order to construct Hotel Ike, a 110-unit

1 hotel in two buildings with a pool, spa, fitness center, lounge and onsite parking located in the
2 A-2 Apartment and H-M Hotel Districts at 55 Gateway Place in Wailea, I won't read you the
3 TMK, but this...and is noticed as PD1 2018/0001, PD2 2018/0002, SM1 2017/0004.
4 Candace Thackerson is your Staff Planner.
5
6

7 **2. RD OLSON INVESTMENTS II, LLC requesting a Step I Planned Development**
8 **Approval, a Step II Planned Development Approval, and Special**
9 **Management Area Use Permit in order to construct Hotel Ike, a 110-unit**
10 **hotel in two (2) buildings with pool, spa, fitness center, lounge and on-site**
11 **parking located in the A-2 Apartment and H-M Hotel Districts at 55 Gateway**
12 **Place, TMK: (2) 2 1-028:004, Wailea, Island of Maui.(PD1 2018/0001) (PD2**
13 **2018/0002) (SM1 2017/0004) (C. Thackerson)**
14

15 Ms. Candace Thackerson: Before you is the Hotel Ike proposing development for the project
16 and it's before you because it's located in the Special Management Area so it comes before the
17 Commission.
18

19 Mr. Robinson: Good morning.
20

21 Ms. Thackerson: Oh, good morning Commissioners. Okay, the item before you is the Hotel Ike
22 proposing a 110-unit hotel and it's before you because it's located in the Special Management
23 Area. It also has an overlay district it's in the Wailea Planned Development so it requires a
24 Step I Planned Development which is required whenever you're changing or doing any zoning
25 swaps and it also requires a Step II which is the preliminary drawings that you guys will be
26 looking at that are included. It will later come before you again for a Step III when they finalize
27 construction drawings. In an effort to not repeat ourselves I'll turn it over to the applicant and he
28 will present the presentation on the project.
29

30 Mr. Robinson: Thank you Candace.
31

32 Mr. Jordan Hart: Good morning Chair and Members. My name is Jordan Hart of Chris Hart and
33 Partners.
34

35 Mr. Robinson: Good morning Jordan, long time no see.
36

37 Mr. Hart: Thank you. As Candace mentioned we're doing an SMA Major Permit with a Step I
38 and Step II Planned Development.
39

40 Ms. La Costa: Excuse me Chair, it's hard to hear him.
41

42 Mr. Robinson: I know you haven't been here before so, the microphone's a little tricky.
43

44 Mr. Hart: Okay, so our project team the owner and developer is RD Olson Development.
45 Mr. Anthony Wrzosek, Vice-President is here today representing the project. Land Use
46 Planners, myself and Brett Davis from Chris Hart and Partners. Landscape Architect
47 David Sereda from Chris Hart and Partners, architects Architects Hawaii Limited,

1 Neu-Wa O'Neill as well as AXIS GFA, Shawn Alexander are here. Civil engineering,
2 DCI Engineering, Mr. Manny Smith or I'm sorry Manny Nuno is here and our traffic engineer is
3 Austin Tsutsumi and Associates Mr. Tyler Fujiwara is here.

4
5 So the project is located in Wailea on Wailea Ike Drive and Wailea Ike Place here in red. This is
6 Wailea Alanui. Just off the map is the Piilani Highway that ends at the 90 degree turn above the
7 Wailea Gateway Center. These are some character photographs of the area on Wailea Ike
8 Drive and Wailea Ike Place suffice to say the project is currently undeveloped. It's basically
9 brown grass and kiawe trees with Monkey Pods fronting Wailea Ike Drive. Below us is the
10 Wailea Blue Golf Course, above us is the Wailea Residence Inn.

11
12 The project's access is off of Wailea Ike Place. The project size is 3.04 acres. There's four
13 TMKs involved in this project. There's a consolidation and resubdivision that has preliminary
14 subdivision approval and I'll go through those things as we get into this process. Maui Island
15 Plan we're in the Urban Growth Boundaries. We're in the State Urban District. We are located
16 in the Special Management Area.

17
18 The project description is 110-unit hotel with on and off site infrastructure improvements. It
19 consists of one, two and three...one, two, three, and four-story structures with an elevator
20 tower. Amenities include swimming pool, dining area, sundry shop, laundry, business center
21 and other typical or similar incidental support services that are accessory to hotel operations.
22 The project proposes to provide 78 parking stalls with ADA spaces, two off-street loading zones
23 that's a ratio of .7 stalls per guest room. The County Code is .5 stalls per room. This exceeds
24 the parking ordinance by approximately 40 percent. I'm gonna bring up David Sereda just
25 briefly to discuss some of the landscape architecture.

26
27 Mr. David Sereda: Thank you, good morning.

28
29 Mr. Robinson: Good morning.

30
31 Mr. Sereda: I'll just take you through some of the highlights of the landscape design.

32
33 Mr. Robinson: David can you please introduce yourself?

34
35 Mr. Sereda: David Sereda, landscape architect with Chris Hart and Partners.

36
37 Mr. Robinson: Thank you.

38
39 Mr. Sereda: So one of the things we'd like to accomplish with the landscape design is to keep
40 the Wailea Ike Drive as green a corridor as possible and so to that end we're proposing a lush
41 and layered planting plan between Wailea Ike Drive and the hotel which rises above Wailea Ike
42 Drive. So between the two we're gonna have at maturity it will be thickened layered edge so
43 there will be a significant landscape buffer between the road and the hotel and there is...you'll
44 see from the renderings later in the presentation how that will look in the future. So this will be
45 in keeping with what's already been accomplished in the neighboring Wailea Residence Inn
46 property. So along that frontage if you drive down there there's already a fairly mature
47 landscape planting that acts as a buffer between the street and the Wailea Residence Inn. So

1 we're keeping that same consistent theme going all the way down in front of both properties.
2 What you'll also notice in front of the Wailea Residence Inn is a meandering sidewalk in the
3 county right-of-way and we'd like to complete that connection from Wailea Residence Inn down
4 to the corner of Wailea Ike Place so we'll continue the meandering sidewalk all the way along
5 for pedestrian access and the reason it meanders is because of the mature Monkey Pod trees
6 along Wailea Ike Drive. So we're meandering the sidewalk away from them to give them room
7 for their root zone to keep them healthy and looking good.

8
9 So one of the other things we'd like to do is use Native Hawaiian plants so a lot of the square
10 footage of the property will have Native Hawaiian plants and we don't have a wide, a huge
11 range of plant types but we do have a large square footage of them. So what we're proposing
12 to use are the Lawai fern, Ilima, and Kupukupu fern for this planting palette. The irrigation
13 system will be ready for reclaimed water so when the connection eventually gets to Wailea in
14 the future they'll be ready to go in that all of the constructed pipes will be purple and everything
15 will be in place just the signs would need to go up when it...if it's connected to reclaimed water.
16 And we will also have water conservation measures in most of the shrub beds will be in drip
17 irrigation so that will help to conserve some of the irrigation water. Thank you.

18
19 Mr. Hart: Thank you. So proceeding onto the first application that we have pending. There's a
20 Planned Development Step I. For some context the entire Wailea Resort area is a planned
21 development and so any time you see any sort of development in Wailea you'll see a PD Step I,
22 Step II, and Step III. Step I is basically just the general layout of the project development which
23 I'll be going through shortly. Step II is very close to an SMA Major Permit and so...well, at least
24 the content of the SMA Major Permit so those we would normally process at the same time and
25 then Step III we do after the end of the SMA Major Permit process basically right at the time of
26 building permit submittals so that it confirms that the construction plans are consistent with the
27 representations we made for you here on PD Step II.

28
29 So the purpose of the Planned Development Ordinance is to encourage desirable design and
30 land use pattern, protect natural environment, minimize traffic congestion and enhance the living
31 and working conditions, it is deemed desirable to provide for tract development of land in a
32 planned development. Unfortunately, I'm just gonna go through all of this so we understand
33 what this is. But for a PD Step I basically the applicant first applies to the Commission in writing
34 for a Step I Approval stating location, size, and a brief description of the planned development
35 and so that's what I'll be going through next. With the overall project, you know presuming the
36 Commission supports the PD Step I that's being requested the owner shall submit a Step II
37 preliminary plan for development showing among other things, preliminary proposal for
38 drainage, streets, utilities, grading, landscaping, open space, lots, land uses, recreational and
39 community facilities, buildings and structures, and programming. And then the final is the PD
40 Step III, I'm not going to read all this to you right now. We'll be presuming we prevail here we'll
41 be back before you for a PD Step III in some months and we can go over in detail what that is,
42 but suffice to say it's confirming that the construction level documents are the same as these
43 representations we're making for you here today.

44
45 The critical design feature that is required for compliance with the planned development is that
46 at least 20 percent of the project site be in park like open space. This project...the dark green

1 here shows our contiguous landscaped areas and we're in excess, well in excess of our
2 20 percent requirement.

3
4 Now I'm going to talk about the PD Step I and what this basically consists of is a reorganization
5 of the zoning designations within the project site which is permitted by PD Step I and is
6 necessary in order to develop this project. And so under existing conditions these are the land
7 use designations that we have. I apologize that the colors are so similar but you know that's the
8 way they were colored prior. Planning now uses patterns on their digital zoning maps, but we're
9 don't...we're not...we don't have those yet. So anyway, to get right--

10
11 Unidentified Speaker: ...(inaudible)...under the bus.

12
13 Mr. Hart: What was that? No, what I meant to say is, we at our company don't have all of the
14 patterns that they have and so we couldn't copy them, but that would help. Unfortunately,
15 brown, dark brown and different colors of orange is not ideal but those are the zoning colors
16 prior to the new...we're gonna get there, we're gonna get there. Okay, so basically the...as I
17 said previously this project includes a consolidation and resubdivision and the major reason for
18 that is because this here is a well parcel. That well irrigates the golf courses in Wailea and so
19 R.D. Olson reached an agreement with the Wailea Golf in order to allow them to move the well
20 parcel and the well, the well has been moved already under a separate permit and it's
21 going...the parcel is going to be added onto their...to Wailea Golf's existing parking lot that
22 serves their tennis center. Another issue is there was some open space at the makai end of the
23 Wailea Residence Inn that would help this project tuck itself further into the slope in order to try
24 and mitigate visual impacts and so we're realigning that property line in order to be able to cut
25 into that elevation.

26
27 At the end of the day, there will be no change in the acreages of land it's just a reorganization to
28 number one, move the well parcel and the well out of the location of the hotel and to provide an
29 ability to tuck into the slope on the mauka end. So basically there's four parcels involved,
30 Parcel 004 which is the proposed hotel site here, Parcel 141 which is the Tennis Center's
31 parking lot, and Parcel 155 which is the well site, and then the existing Residence Inn which is
32 mauka, Parcel 003.

33
34 And so the land use designations that exist within the existing...within the proposed hotel site,
35 there's approximately 94,192 square feet of H-1 zoned land, 19,558 square feet of H-M zoned
36 land, 18,687 of A-1 Apartment zoned. Within the Tennis Center parking lot there is
37 approximately 24,060 square feet of A-1 zoned land. The existing well site is approximately
38 4,879 square feet of A-2 Apartment and the Residence Inn consists of approximately 277,782
39 square feet of H-M zoned hotel land.

40
41 So this is the proposed PD Step I that adjusts the land use designations to facilitate the
42 development of this project. So basically what we're gonna be doing is we're moving the A-2
43 which belongs to Wailea Golf over abutting or over to their parcel. As I said earlier, there's a
44 consolidation and resubdivision so we're gonna be extending this parcel, deleting this well
45 parcel and realigning this property line. So we're moving their A-2 Apartment zone over to the
46 edge of their A-1 Apartment which is in their parking lot. We're reallocating our H-M zoned land
47 in order to facilitate the development of our hotel. And we're moving the Apartment zoned land

1 here into the parking lot area which is a use that's consistent with that proposed use. So this is
2 basically moving the land use designations because we can't get final subdivision approval until
3 we have all these SMA Major Permit approvals and the PD Step II and so on. So first we get
4 approval to reallocate the zoning designations, after that's approved we can receive final
5 subdivision approval.

6
7 The next map is all of the lot lines adjusted after we have SMA Major approval and we can
8 finalize our subdivision and so what that does is it consolidates the entire Wailea Golf parking lot
9 that they have that supports their Tennis Center and it reallocates our H-M zoned lands as well
10 as H-1 and then our Apartment zoned lands. So anyway I apologize it's overly complex but this
11 is what it is. Be available to answer any questions on this in detail afterwards.

12
13 The next thing I'd like to move into we begin talking about again about the PD Step II and the
14 SMA Major Permit so that will be a specific discussion of what this development is. I'd like to
15 bring Neu-Wa O'Neill to discuss the architecture.

16
17 Mr. Neu-Wa O'Neill: Good morning Chair and Commission.

18
19 Mr. Robinson: Good morning.

20
21 Mr. O'Neill: Neu-Wa O'Neill with Architects Hawaii Limited.

22
23 Mr. Robinson: I'm sorry, what's your first name sir?

24
25 Mr. O'Neill: Neu-Wa.

26
27 Mr. Robinson: Neu-Wa, aloha.

28
29 Mr. O'Neill: Aloha. So we're starting by looking at a bird's eye view of the proposed project.
30 Along the bottom here is the Wailea Ike Place and this is Wailea Ike Drive coming down here.
31 The building is sited to be follow the slope of Wailea Ike Drive so at the upper end or the eastern
32 end of the site we have a four-story building with tower and then it slopes down to two, stepped
33 three-story buildings which open up onto a lawn and then the parking. The entry is located off
34 Wailea Ike Place and it enters, the entry is in a one-story gabled building that opens out onto a
35 pool deck which is sited to look out to the views and over the parking lot. The parking is located
36 here along the perimeter of Wailea Ike Place and up from the tennis lot parking. As you can see
37 and as David mentioned it is screened from the street view by landscaping.

38
39 The roof is double hipped tile roof. It comes up to form a mansard so that the HAC equipment is
40 concealed from street view. The building tones while not totally apparent from this view are soft
41 neutrals, beiges, wood tones with neutral accents. This is a view of the entry and the porte
42 cochere. This building is a one-story building with a projecting gable roof, exposed cantilevered
43 rafters. There are open roof rafters that are visible from the edge. These exposed rafter ends,
44 the wood tones give the building a modern and contemporary island look and feel as well as the
45 natural building materials including lava, basalt, coral, wood, and other natural materials those
46 really ground the building in its native setting. Landscaping as David mentioned is primarily per
47 by square footage native landscaping. The towers clad in wood tone shiplap siding with

1 aluminum screening elements and that siding is continued along the vertical bays of the
2 guestrooms to give it a more neutral and natural look.

3
4 This is the view looking down Wailea Ike Place and up Wailea Ike Drive. The property is
5 located behind this landscaping. As you can see there is an extensive buffer of layered
6 landscaping along this drive that is screening the building from the street view. Views to the
7 West Maui Mountains are maintained along Wailea Ike Place. This landscape is...much
8 different from what is there now as Jordan mentioned it's currently dry grass and kiawe
9 primarily. And this is the view looking down Wailea Ike Drive. This is the meandering sidewalk
10 that David mentioned earlier which is connecting the property to the east, the Residence Inn
11 and going down to the corner of Wailea Ike Place and Wailea Ike Drive. The view corridor is
12 maintained to the ocean views beyond. These are the existing monkey pods so the landscaping
13 is working within that existing layer of monkey pods and layered back up to the building with
14 naupaka and other plants as well as palms. So the building is located behind this buffer of
15 landscape screening. Thank you.

16
17 Mr. Hart: I'd like to bring Manuel Nuno to discuss infrastructure.

18
19 Mr. Manuel Nuno: Good morning Commissioners.

20
21 Mr. Robinson: Good morning.

22
23 Mr. Nuno: My name is Manny Nuno with DCI Engineers and I'm the civil engineer for the
24 project. Going to talk to you guys a little bit about the infrastructure in place. Beginning with
25 domestic water we are placing this hotel right there on Wailea Ike Drive. The County of Maui
26 does have an existing water system that's in place and available for us to use. As David
27 mentioned earlier there is no current recycled water available to the property. However
28 everything will be in place to connect to that in the future should that become available. Our
29 estimated demand for domestic water is 51,680 gallons per day and for irrigation it's
30 approximately 8,000 per day that's consistent with other hotel uses in Wailea and it comes
31 directly from the Department of Water Supply.

32
33 One thing we wanted to mention is we've been working for the last several months with the
34 Department of Water Supply, working with the demand, working with them on the supply and we
35 do expect the water lateral and meter to be in place by mid-December.

36
37 In terms of drainage for the property as we mentioned this property right now is currently
38 undeveloped. We are obviously planning on placing a hotel and parking lot, et cetera, so we do
39 anticipate an increase in runoff and that's approximately 6 cfs and what we're anticipating from
40 that is we're mitigating that with underground detention and that's all pursuant to the County of
41 Maui standards for drainage and so we'll have an underground detention that's gonna regulate
42 the flows to match the predeveloped conditions.

43
44 For wastewater on the project once again the County of Maui has an existing system in place.
45 There's an 8-inch sewer on Wailea Ike Drive that has sufficient capacity for this project. We
46 anticipate a generation of 16,500 gallons per day which again is consistent with other hotels
47 within the Wailea area and the County of Maui standards. And then just for your reference the

1 wastewater is planning to be conveyed into that existing sewer lateral on Wailea Ike Drive and
2 going down to the Kihei wastewater reclamation facility which is in place and has current
3 infrastructure available to this project. And with that in mind, I'd like to touch it onto Tyler, ATA
4 to talk about the transportation.

5
6 Mr. Tyler Fujiwara: Good morning Commissioners. Tyler Fujiwara with Austin Tsutsumi and
7 Associates.

8
9 Mr. Robinson: Good morning Tyler.

10
11 Mr. Fujiwara: We prepared the traffic study for this project. As part of the TIAR we analyzed
12 various intersections along Wailea Ike Drive. We also looked at the Piilani Highway, Okulani
13 Drive, Mikioi Place intersection and the Wailea Alanui Drive and Okulani Drive intersection.
14 Based on our report we found that the majority of the study intersections that we analyzed are
15 forecast to operate with similar levels of service with or without the project. The TIAR assumes
16 that other developments will be installing a traffic signal at the Piilani Highway-Okulani Drive
17 intersection as well as the Wailea Ike Drive-Kalaiwaa Street intersection. So this is potentially a
18 signal based on the development of the Wailea Parcel B1 development.

19
20 Our traffic counts were conducted in May of 2017 and August of 2018. We looked at the
21 weekday A.M. and P.M. peak hours and the methodologies were consistent with the county,
22 state and national standards. Based on trip generation we're estimating that the project would
23 generate about 35 trips during the morning A.M. peak and 46 trips during the weekday P.M.
24 peak. As part of the project's mitigation measures we'll be constructing sidewalks to enhance
25 the complete pedestrian facility along Wailea Ike Drive. We'll also be providing striped
26 crosswalks across Wailea Ike Place as well as Wailea Ike Drive and this will include a median
27 pedestrian refuge for these pedestrians crossing Wailea Ike Drive. Lastly we'll be providing
28 courtesy shuttle service within the Wailea Resort area, and I'll pass it onto Jordan.

29
30 Mr. Hart: Based on agency comment we're anticipating that the project is not...the project is not
31 anticipated to impact public services, recreational facilities, schools, police and fire protection.
32 The project will enter a Workforce...Residential Workforce Housing Agreement prior to the
33 issuance of building permit for the completion of subdivision.

34
35 There was an archaeological assessment done for the property. The project site has been
36 disturbed significantly at different times through the development of Wailea, development of
37 surrounding roadways. In July of 2000, the Department of Land and Natural Resources, State
38 Historic Preservation Division concluded that no further work was warranted for the project site.
39 However, as a precautionary measure R.D. Olson moved forward with a updated archaeological
40 inventory survey in 2018. No cultural resources were identified during that analysis. However,
41 the applicant's consultant is recommending archaeological monitoring being conducted
42 throughout construction as an additional precautionary measure.

43
44 That concludes our presentation. In summary we feel that the project is consistent with the
45 Wailea Planned Development requirements and as well as meeting the criteria, the assessment
46 for the Special Management Area Use Permit. Thank you.

- 1 Mr. Robinson: Thank you. I apologize guys. You know is my question to Corporation Counsel
2 was you know procedural rules is we take Step I before we take Step II and it's been kind of
3 squished together. So I was you know...but at this time for public testimony I will take testimony
4 for one and two if that's what warranted. Anybody here would like to speak for public
5 testimony? Seeing none, the Department would you like to give your recommendation please?
6
- 7 Ms. Thackerson: Okay, Staff Planner Candace Thackerson. Just for point of clarification when
8 you mean one and two, we're just talking about the PD part, we're not moving onto the SMA or
9 you want the recommendation for all three permits?
- 10
- 11 Mr. Robinson: I'd like to go with Rules of Procedure first and do that way.
- 12
- 13 Ms. Thackerson: Sure.
- 14
- 15 Mr. Robinson: I think that's the cleanest way.
- 16
- 17 Ms. Thackerson: So we'll just go with Step I and...okay.
- 18
- 19 Mr. Robinson: Thank you.
- 20
- 21 Ms. Thackerson: So the Department recommends approval of the Planned Development,
22 Step I for the application and that's just to kinda clean up the zoning and call out where it's
23 gonna go on the parcel after and this has to get done prior to as Jordan was saying, the
24 subdivision. So the Department recommends approval of the Step I.
- 25
- 26 Mr. Robinson: Thank you.
- 27
- 28 Mr. Carnicelli: Chair?
- 29
- 30 Mr. Robinson: Commissioner Carnicelli.
- 31
- 32 Mr. Carnicelli: Could I ask the Department a question before we have a motion on the floor?
- 33
- 34 Mr. Robinson: Of course.
- 35
- 36 Mr. Carnicelli: Okay, hi Candace. Or maybe this is actually maybe more for Jordan, in
37 realigning the Residence portion you had stated that the reason for doing that is it was all open
38 space anyways, you're just kinda reconfiguring it. The one part that I'm unclear on is are
39 we...what's the net result of the open space? Is the open space all still staying the same or are
40 we losing open space by moving the building closer to the Residence Inn?
- 41
- 42 Mr. Hart: No, there's not a loss. It's being reorganized. Like all parcels end up the same size.
43 And so we're basically trading and a different part...really what we're trying to get is into the
44 topography and so we're trading...
- 45
- 46 Mr. Carnicelli: Yeah, the old back and forth between those two that's what I was just trying to
47 look we're, okay, we're squishing a little piece up there, but—

1
2 Mr. Hart: Yeah, so do you see—

3
4 Mr. Carnicelli: I get that the numbers still the same but I didn't know if the open space stays the
5 same. The acreage stays the same but does the open space stay the same?

6
7 Mr. Hart: I believe it stays generally consistent. We're meeting our requirement on both
8 properties for the 20 percent open space for development.

9
10 Mr. Robinson: Jordan, let me ask it another way. So the open space that was prior wasn't that
11 Wailea Golf Course parking lot in between the Residence Inn and isn't that what you're
12 switching, taking that property and then moving their parking lot to a different spot?

13
14 Mr. Hart: No, their parking lot remains in the same spot, but they also own the well parcel.

15
16 Mr. Robinson: The well parcel.

17
18 Mr. Hart: And the well parcel is there right on Wailea Ike Drive which is basically right in the
19 location of part of our hotel. And so what's happened is that the...let me just say this the well is
20 already moved and that's just done because—

21
22 Mr. Robinson: Well's decommissioned then. It's not a well anymore.

23
24 Mr. Hart: It's been moved to this location on R.D. Olson's property and so the relocation of the
25 well that would have been necessary who is proposing to develop this site. Like just having an
26 island of another person's property in the middle of your parcel is unpractical and so that item
27 was moved forward with prior to this project. But the deleting that parcel and making their
28 other...their parking lot parcel larger in order to encompass their well property is part of the
29 subdivision action.

30
31 Mr. Robinson: Okay. Thank you. Commissioners, and you can have questions before even
32 there's a motion. You have any questions for Jordan? Commissioner Kahu Hill.

33
34 Kahu Hill: Mahalo. I see that there's an AIS that was done in 2000 and 2014 as well as the
35 archaeological assessment in 2018 and I wasn't provided materials. I wanted to see if there
36 was a way to have access to those reports?

37
38 Mr. Hart: Yeah, definitely. I think that we can provide that or that would come from the
39 Department.

40
41 Ms. Thackerson: Staff Planner Candace Thackerson. So usually when we sent the AIS to the
42 State Historic Preservation Division and they come back with a letter like they do in Exhibit I
43 think it's 27, where they say that they've accepted it, I usually don't include the entire report in
44 the staff report. What you have in front of you is our report, what I think is necessary in
45 summary of it. If not, it can be quite lengthy. It can be...the size of some of the EAs that we
46 send to you guys and because we're still doing hard copies, you know I usually...unless there's
47 something significant in it, if SHPD came back with comments where they had discussed

1 something in detail I'll usually include that. When they come back with comments that just say
2 we've accepted it, that there's no historic properties affected and that they've closed the review
3 period for it, I usually just include their letter. They're the experts. You know, I rely on them, but
4 we do have those, they're included right here in this file, the Department gets them. So if you'd
5 like to view that at any time as just a member of the public you're always welcome to view files.

6
7 Kahu Hill: Mahalo. And I wanted to know when will the archaeological monitoring plan be
8 submitted to the SHPD?

9
10 Ms. Thackerson: I can answer that. I'm sorry, Staff Planner Candace Thackerson. On Project
11 Condition Number 7 it says that the archaeological monitoring plan has to be accepted by DLNR
12 prior to issuance of any grading, foundation, and building permits and that they have to give me
13 evidence in that in the preliminary compliance report.

14
15 Kahu Hill: Okay. Two more if I may. I just wanted to make a statement for me and with
16 ...(inaudible)...for the SHPD said that there was no historic properties in the archaeological
17 assessment report and it said that there was no medicinal plants. And though there may not be
18 things significant, there is la`au lapa`au they grow in some of these areas and they were just
19 gathered and the la`au pau...(inaudible)..., like uhaloa and others so just to be aware as we
20 move forward that there is sometimes plants that look like weeds but they're some of Hawaii's
21 ...(inaudible)...kahuna's most strongest la`au lapa`au or medicinal plants, so just wanted to
22 make that note.

23
24 And one last thing I'd like to ask I thought a project over 500,000 triggered an EIS and this
25 proposed development hadn't, you know it's estimated over 17 million and why doesn't this
26 project trigger an EIS.

27
28 Ms. Thackerson: Staff Planner Candace Thackerson I can answer that. So over \$500,000
29 triggers the need for an SMA Major. So if projects were under that amount we could approve
30 them, we as the Department could approve them administratively. So this is the review process
31 that it's come before you for the SMA. An EA is something a little bit different. An
32 Environmental Assessment there are separate triggers for that. I can gladly share with you
33 what those triggers are. I can send that to the Commission as a body. It's usually things like
34 use of a shoreline area, like right on the shoreline, use of county lands or funds, an energy
35 facility, those are just a few. Even if you trigger one there are exemptions after that, but this did
36 not trigger an EA. It did trigger the need to come before this body for the full SMA Major
37 process.

38
39 Kahu Hill: Mahalo.

40
41 Mr. Robinson: Commissioner I had the same question before the meeting. I asked it in private,
42 but yes, a EA but it didn't trigger it so that's why we're here. And in fact, Commissioners I'd like
43 to go with procedures and kinda clear this up. I'd like to go with...if you go to Page 9 of the
44 handout that Candace gave us, of Chris Hart's. And on that handout is I want you to look at
45 Rules of Procedure, I would like to clear A if we could and attack that first before we start
46 delving into B. Please take a second and read it guys. Jordan can you put that up please?

47

1 Mr. Hart: Oh I'm sorry.

2

3 Mr. Robinson: Just so people know what we're doing. So this is concept guys. This is a first
4 step to make sure we want to keep it clean. Do we have any questions or conversations just on
5 the concept? Seeing none, do we have a motion on the concept? Commissioner Carnicelli.

6

7 Mr. Carnicelli: Well, here's my question before I make a motion Chair is rather than
8 just... 'cause I don't want to say, okay I make a motion just to approve the Step I because we do
9 have conditions as well. So is it Step I as Condition 5, the Department is that how I can phrase
10 this?

11

12 Ms. Thackerson: Staff Planner Candace Thackerson. We don't really have conditions on the
13 PD I or the PD 2. The conditions are placed on the SM1 Permit, the project for that one. For
14 the PD I the Department just recommends approval of the proposed zoning layout and that will
15 be that final third graphic. We recommend approval of the way that they are gonna lay out the
16 property and they're calling out now where everything's gonna go and right now it's not, the
17 parcel's kind of a mixed bag and so we as the Department actually prefer for the applicant to tell
18 us where everything is going to go.

19

20 Mr. Carnicelli: Move to approve the PD I.

21

22 Mr. Robinson: Motion to approve. Do we have a second?

23

24 Mr. Castro: Second.

25

26 Mr. Robinson: Second by Commissioner Castro. Discussion on the motion. Okay, seeing
27 none, and guys it's concept, it's the first step and we're just making it clean. We used to always
28 before do the I and II, you know but let's do the I and then the II we get into it,
29 ...(inaudible)...and I think that way you know it's just the procedure so we should follow that
30 anyway. So Deputy Director.

31

32 Mr. Alueta: Thank you Mr. Chair. Currently you have a motion on the floor to approve the
33 Step I Approval as presented.

34

35 Mr. Robinson: All those in favor please raise your right hand. That's seven. Thank you.

36

37 **Step I Planned Development Approval**

38

39 **It was moved by Mr. Carnicelli, seconded by Mr. Castro, then**

40

41

42 **VOTED: To Approve the Step I Planned Development Approval, as**
43 **Recommended by the Department.**

44

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

47

(Excused – T. Gomes)

1
2 Mr. Robinson: Discussion on Planned Development Step II. Any questions here for our
3 applicant or for the Department? Commissioner La Costa.

4
5 Ms. La Costa: Thank you Chair. I don't know if this for you, Jordan or for the architect. In the
6 rendering I see no solar. How are you going to address that please?

7
8 Mr. Tony Wrzosek: Good morning, Planning Commissioners.

9
10 Mr. Robinson: Good morning.

11
12 Mr. Wrzosek: My name's Tony Wrzosek, Vice-President with R.D. Olson Development, the
13 applicant. We analyze solar feasibility during our design, development and construction
14 document phases so that would be consistent with your Step III phase and for past projects we
15 found that in some municipalities and regions that solar panel heating would be appropriate for
16 swimming pool hot water systems and if this is the direction you'd like us to take the project to
17 offer some solar component this has been proven feasible with projects of this type.

18
19 Mr. Robinson: Commissioner.

20
21 Ms. La Costa: Thank you Chair. In Hawaii as you well know it is sunny and my concern is the
22 component of electricity you have several HVAC units but you have no way to offset the use of
23 fossil fuels for electricity or heat the swimming pool or heat the water for people so it's not...I
24 think it's more what we expect what we would like to have happen.

25
26 Mr. Wrzosek: Yes, point well taken. And if I can add, the choice of our HVAC system, our
27 mechanical system is a VRF dominated system. A VRF system along with it being the most
28 quiet unit you can have within a guest room it is also in our opinion the most electrically efficient
29 unit. It's not the least costly system. It goes cost us a bit more for the initial installation but I
30 100 percent agree that here in Hawaii, the utility cost for electricity are at ...(inaudible)...three
31 times what we experience on the mainland so we are very conscious of trying to implement
32 systems that would be efficient on electrical use. So our VRF system does respond to your
33 concern.

34
35 Ms. La Costa: Chair?

36
37 Mr. Robinson: Commissioner, yes.

38
39 Ms. La Costa: Thank you. Let me ask the question please because it wasn't answered
40 satisfactorily. Are you going to incorporate solar in the project, I do not see it in your plan?

41
42 Mr. Wrzosek: We will.

43
44 Ms. La Costa: And will that information be shown to us in Phase III or—

45
46 Mr. Wrzosek: Yes, Phase III.

47

1 Ms. La Costa: Okay, thank you.

2

3 Mr. Wrzosek: Okay, thank you.

4

5 Mr. Robinson: Thank you Anthony. Commissioners any other questions?
6 Commissioner Carnicelli.

7

8 Mr. Carnicelli: Thank you Chair. Jordan I don't know if this is for you or Manuel, but I want to
9 talk about runoff. So I know historically and maybe this I'm getting into the you know, the SMA
10 portion but Step II also deals with drainage, so you know you talked about the amount of runoff
11 that's going to be created by building this particular property. I didn't see anywhere in the
12 documents and maybe I'm just missing them is addressing say the 50-year flood or you know
13 retention of runoff.

14

15 Mr. Nuno: Once again, Manny Nuno with DCI Engineers. That's a great question and we are
16 actually addressing it. You would see it in the construction documents but we are planning on
17 having an underground detention system. It is sized for the 50-year flows, so 50-year, one-hour
18 flows system with Maui County standards and the idea is it will detain the excess runoff and
19 control the flows in such a way that the drainage leaving the site would match what's leaving the
20 site right now. So that's all proposed underground underneath the existing parking lot or
21 underneath the proposed parking lot.

22

23 Mr. Carnicelli: Okay, thank you.

24

25 Mr. Robinson: You want to talk to civil? Just for clarification on that? They're here so...

26

27 Ms. Dagdag-Andaya: I'm here. For the record, Rowena Dagdag-Andaya, Department of Public
28 Works and the department didn't have any comments with respect to their preliminary plans for
29 drainage. They are following the...they're gonna be following the current rules that we have in
30 place for drainage and they didn't ask for any exemptions or any deviations from it so at this
31 point, you know, we're just concerned about them meeting the requirements of our Code in our
32 Drainage Rules as well as our Storm Water Quality Rules.

33

34 Mr. Robinson: Commissioners any other questions? Commissioner Castro.

35

36 Mr. Castro: This is for Jordan. Jordan, I'm looking at the site plan and the parking space
37 there's only...I can only see one, two, three, four ADA parking stalls and I guess my concern is
38 if that is enough parking stalls and the last parking stalls is there a way to access to come
39 across the property or do they...this far end one has to go all the way around maybe that could
40 be adjusted, I don't know.

41

42 Mr. Wrzosek: Hello, Tony Wrzosek, R.D. Olson Development, the applicant. Yes, with the strict
43 Federal ADA laws that have come into effect we scatter and distribute our ADA parking to
44 accommodate each potential building entry. So the two spaces that you see at the lower left
45 portion of the site, the southwest corner of the site those would accommodate the midpoint entry
46 of the building along Wailea Ike Drive. The two handicapped spaces they're at the northwest
47 corner of our parking lots would accommodate the northwest entrance of the building that is

1 adjacent to our swimming pool and hot tub, and then the ADA spaces near the porte cochere
2 would obviously accommodate the main entrance of the building.

3
4 Mr. Castro: It just seems when I look at this is they're rather quite a distance compared to the
5 rest of them.

6
7 Mr. Wrzosek: Correct, but we are trying to accommodate that one entrance that is along
8 Wailea Ike Drive at the midpoint of the building.

9
10 Mr. Castro: Thank you.

11
12 Mr. Robinson: Mr. Wrzosek, while you're on there is how many ADA rooms do you have in your
13 project?

14
15 Mr. Wrzosek: Eleven.

16
17 Mr. Robinson: But we have only four ADA parking stalls?

18
19 Mr. Wrzosek: We're complying with the ...(inaudible-not speaking into a mic)...We are in
20 compliant with ADA Ordinance.

21
22 Mr. Robinson: I know you guys are in compliant, but there's having 11 rooms ADA and having
23 only four parking stalls, but you guys we do have excess parking on this property do we not?

24
25 Mr. Wrzosek: Correct, 40 percent more than Code required.

26
27 Mr. Robinson: Yeah, so you guys might have the ability to add a stall or two considering people
28 who aren't ADA could walk further from the entrance.

29
30 Mr. Wrzosek: Sure, absolutely.

31
32 Mr. Robinson: And I think on most projects, you know this is a small amount that we're used to
33 'cause it is spread out. So if you have two people going through the main entrance, you know
34 that other parking stall I see is on the other ends and I get your reasoning for that, but I think
35 that's what Commissioner Castro concern was. Commissioner Castro.

36
37 Mr. Castro: Okay, I stand corrected. It's been pointed out there's a sidewalk.

38
39 Mr. Wrzosek: Yes, that's correct.

40
41 Mr. Castro: It was camouflaged. Thank you.

42
43 Mr. Robinson: Commissioner La Costa.

44
45 Ms. La Costa: Thank you Chair. So my 92-year-old mother lives with me and she has
46 difficulties walking and I preface my question with that. Will you please show me if we were to
47 stay at the project and were down at the lower left corner what is the most expeditious way to be

1 able to get into the building?
2

3 Mr. Wrzosek: If you chose to park at this lower corner—
4

5 Ms. La Costa: Correct.
6

7 Mr. Wrzosek: Then you'd have a choice of two paths one being out to Wailea Ike Drive and
8 back up into this midsection of the building or to come up this ADA sloped sidewalk and into this
9 entrance of the building. So there'll be a choice of two.
10

11 Ms. La Costa: And there would be a bellman to carry my mom because she couldn't walk that
12 far? Sorry for that...
13

14 Mr. Wrzosek: At request absolutely. But if you park here, obviously you have a choice of this
15 entrance or coming back up to the main entrance or if you park in our porte cochere and come
16 straight over here.
17

18 Ms. La Costa: Again, my concern is if those four parking places are already taken then it's
19 gonna be a really long hele. So that's...and that's my concern because I always take that into
20 consideration and we do have a lot of people who vacation here in wheelchairs and walkers so
21 that might be something to look at.
22

23 Mr. Wrzosek: Absolutely. Yes, thank you.
24

25 Mr. Robinson: Thank you.
26

27 Mr. Castro: Just one more thing.
28

29 Mr. Robinson: Commissioner Castro.
30

31 Mr. Castro: For clarification, so that these last two stalls the sidewalk, so it there...is that
32 another sidewalk?
33

34 Ms. La Costa: No, it's not.
35

36 Mr. Wrzosek: No, the sidewalk actually ramps up, outside the perimeter of this lawn into this
37 entrance to the lower floor or out to Wailea Ike Drive sidewalk and into the main level. So
38 depending on what floor you prefer to enter in on, this entrance will bring you up onto our main
39 level and this entrance will bring you into the lower level. There's a ten-foot grade difference
40 between this point and this lower level in addition to the lower level to our main floor which will
41 be ten and a half feet.
42

43 Mr. Castro: Okay, so the...the last two stalls the parking lot there is no sidewalk that goes up to
44 those units?
45

46 Mr. Wrzosek: Straight to these units?
47

1 Mr. Castro: Yes.

2

3 Mr. Wrzosek: No. Directly to them, no.

4

5 Mr. Castro: Okay, so they either have to go around or they have to come out in front.

6

7 Mr. Wrzosek: Correct. Yeah, there's a...from this point to the, the suites patio is a ten-foot drop
8 and our goal is to maintain clear views from the guest rooms out to the beautiful ocean and thus
9 the ten-foot difference so that we look above the parking lot towers in addition to having
10 landscaping that would screen the cars but not obstruct the views. If, if tenants of these
11 guestrooms choose to walk up along the lawn they can for convenience. But as far as ADA
12 access, yeah, the sidewalk is sloping at the required maximum slope to allow handicap
13 accessibility.

14

15 Mr. Castro: Okay, thank you.

16

17 Mr. Robinson: Commissioners any other questions? Commissioner Pali.

18

19 Ms. Pali: I have a question for Corp. Counsel, I apologize for my question but I just want to
20 make sure I understand what I'm supposed to be doing. Am I allowed to come here with my
21 own ideas of what a project should have or should I be just looking at the evidence and stating
22 well, if it's not legally required then I can't impose that correct? I just want direction please.

23

24 Mr. Galazin: Chair if I may?

25

26 Mr. Robinson: Corporation Counsel.

27

28 Mr. Galazin: Yes, thank you for that question. So applicant comes forward and has worked
29 with Planning to come up with you know, typically you get a Step I and then you go to a Step II,
30 right now they're doing the Step I and Step II kind of concurrently and if Planning's fine with that
31 you know what you want to look at is these are just conceptual drawings and Planning, you
32 know, the Planning Department has looked through and worked through to come up with their
33 recommendations as to whether they think this is sufficient or not. You know as support staff to
34 this body, you know you can rely on them to some extent that's what they're here for. You can
35 certainly suggest different conditions if you think there is something that...a need that is not
36 being met. Every condition that you might suggest though you've got to recognize what is the
37 nexus between what you might request and what mitigating factor, what it's designed to address
38 for any kind of conditions, for any kind of permits not just Step I, Step II Approvals but when you
39 get down to any kind of permit approvals, putting conditions on and this applies maybe more so
40 in the SMA context then perhaps the Step I...Planned Development Step I, Step II process. I
41 think with the SMA you'll have a lot more flexibility to identify the impacts and then put
42 conditions on through the SMA process is probably the better way to do it.

43

44 Ms. Pali: I'm gonna try just, try ask another question.

45

46 Mr. Robinson: Sure.

47

1 Ms. Pali: I like that P. Denise La Costa recommend solar. Is that a requirement for the permit
2 that's before us today, Step I, II, and III? I like that Commissioner Stephen Castro and even
3 Chair Keaka Robinson considers them, you know, putting additional spots of the ADA regulated
4 parking lots. Those are really good ideas, but are they...so we have the ability to recommend
5 something that may not be required currently by Code?
6

7 Mr. Galazin: So if they meet the minimum Code requirements then you...you know, if there's
8 nothing to indicate disapproval then you gotta look through those standards. You're certainly
9 allowed to bring up issues and pose them to the applicant and the applicant can take those into
10 consideration. If they voluntarily agree to do more than is required based on the comments
11 they've received that's certainly a fair question to raise. You know, can you unilaterally impose
12 something to which they're not agreeing? There you get into more of an issue of, you know,
13 okay what is your basis for requiring more than what the Code says you need to do. So...
14

15 Ms. Pali: Thank you.
16

17 Mr. Hart: Chair if I might, maybe I could assist as far as the applicant's position on the
18 question?
19

20 Mr. Robinson: Jordan.
21

22 Mr. Hart: Thank you Chair. Jordan Hart. So basically what would be happening is after the
23 PD Step II, we'll go into the SMA Major Permit where there are conditions that can be applied by
24 the Commission. In addition to that there's a standard condition in every SMA Major Permit
25 where the project will be developed in substantial compliance with the representations made to
26 the commission. So that...what that would do is that covers let's say there's something that we
27 say we're gonna do as an example, SMA Major Permits may be two pages long but our
28 application document is hundreds of pages long as well as the minutes of this meeting. So all of
29 our submittals, all of our letters, everything we say today is part of our representations so there's
30 either the option to make it an actual condition on the SMA Major Permit or just stand on us
31 saying it into the record now.
32

33 Mr. Robinson: Okay, Commissioners any other questions? Any other educational questions?
34

35 Kahu Hill: I just wanted to comment on Commissioner Castro and what that was brought up. It
36 doesn't make sense to me that and this ADA, this parking in the lower left side here and
37 Wailea Ike that a guest especially a handicapped guest or someone that would need to park
38 here would have to go outside of Hotel Ike to Wailea Ike Drive to go to that path to get back into
39 your...into the hotel.
40

41 Mr. Robinson: And Jordan, and Kahu is and hopefully in Step III we'll get more to this parking
42 and the ADA. They are following the minimum requirements and they're following 'cause the
43 different entrances and so you know, they have some things to follow but hopefully they'll
44 comeback with maybe some more options when they look at it. I think they've heard us.
45

46 Mr. Hart: The applicant did agree to do that.
47

1 Kahu Hill: Mahalo.

2

3 Mr. Robinson: And you know, it's SMA is we actually...we don't have carte blanche onto putting
4 conditions on, but conditions that affect the whole area that affect economics, social, all those
5 things, all those things with ADA parking accessibility, view plains, those are all within our
6 purview and even though people may meet the minimum amount that doesn't mean that we as
7 a Commission have to accept it. That's why we have a commission, otherwise we just have
8 guidelines and people would put in applications and they go through. We're a commission to
9 use our experience and to use our mana`o and our education to help get a better project for
10 Maui and so everything is always good to be talked about, good to be brought out, whether we
11 approve or deny we then go to the guidelines. But most developers are very open minded,
12 most developers want to have a project and get it done and make most people happy so they
13 can get it approved and this is the part of this process where we want to do the Planned I, the
14 Planned II and then the Planned III. So even though sometimes it may be a bit long-winded to
15 hear our commissioners, I think that's it's you know, in the wrong sense it is heard and hopefully
16 the project becomes better with that. Any more questions? Commissioner La Costa.

17

18 Ms. La Costa: Thank you Chair. I have a question about the public services. I don't know to
19 whom it should be addressed.

20

21 Mr. Hart: I can begin it. Jordan Hart.

22

23 Ms. La Costa: Thank you Jordan. On Page 23 you talk about the project will enter into the
24 Workforce Housing Agreement prior to the issuance of a building permit. Could you please give
25 me some of the particulars as far as if you have ascertained a parcel on which to build
26 workforce or if you're just going to pay off the workforce requirement? Thank you.

27

28 Mr. Hart: The applicant's still evaluating at this time. There's a series of methods that you can
29 do to satisfy the Residential Workforce Housing Agreement. There's the construction of units,
30 co-development I believe as well as credits and then there's a fee, and so it's not determined at
31 this point what that would be.

32

33 Ms. La Costa: At what point will the applicant have that information for us please?

34

35 Mr. Hart: Well, that process is normally done with the Department of Housing and Human
36 Concerns and it's done...for this project I assume the first trigger will be completion of the
37 subdivision that's being discussed. Normally it's either subdivision or building permits, one of
38 those two items.

39

40 Ms. Thackerson: Staff Planner Candace Thackerson. I might be able to expand upon that.

41

42 Mr. Robinson: Staff Planner Candace.

43

44 Ms. Thackerson: Yeah, thank you. In your recommendation Condition 10 says that a
45 Residential Workforce Housing Agreement for the subject property will be fully executed and
46 recorded at the Bureau of Conveyances between the applicant and the County of Maui,
47 Department of Housing and Human Concerns prior to the final subdivision or building permit

1 approval whichever comes first and then a copy of that agreement shall be filed with the
2 Maui County Planning Department and they have submit evidence of such in the Final
3 Compliance Report.

4
5 Mr. Robinson: Commissioner La Costa, and that's kinda the thing that we talked about with this
6 SMA as far as impacts. What they choose sometimes can be considered as impacts if they are
7 doing workforce housing that's a positive, if they're doing credits or a fee, you know, if
8 credits...you know, so that's something that we look at, that we may not have...we may not be
9 able to tell them what to do or instruct them what to do but it can be also an impact on what our
10 decision making is at the end. And usually by the third process they usually have a clear
11 understanding but the Plan II, I don't think they did it yet. But Jordan, correct me if I'm mistaken,
12 the last two projects that we did with this developer were they both fees?

13
14 Mr. Hart: I believe those were credits.

15
16 Mr. Robinson: Credits, used credits.

17
18 Mr. Hart: Yes. And let me just say a little bit that credits are units that have already been built.

19
20 Mr. Robinson: Yeah.

21
22 Mr. Hart: So when a developer has no requirement and they just go ahead and build a unit that
23 creates a credit and so, you know some people think that credits are not good but they're
24 actually units that are already in use now and the developer will be compensating that developer
25 who went forward and built unrequired units. So anyway...

26
27 Mr. Robinson: And I think everybody thinks everything's good. I think the fees are good. It's
28 just there's different perception on which is better.

29
30 Mr. Hart: Sure.

31
32 Mr. Robinson: So they're all good, but some less...but homes are better you know, but again,
33 credits are already homes already built and that's good.

34
35 Mr. Hart: It's understood. Thank you.

36
37 Mr. Robinson: It all works. Okay, thank you. Commissioners any other questions?

38
39 Ms. Pali: Just for the record I don't agree that all credits are good. I think that they're...and this
40 is not going to be done on this governing body but we need to limit and put expiration dates on
41 credits because existing housing is not enough for what we have in Maui County. We have a
42 housing shortage. So credits that were done 40 years ago does not help us today, but that's the
43 law and so I'll respect that and go on, but I just want to disagree on record. Thank you.

44
45 Mr. Robinson: Okay. All right. So we had education and opinions that is not part of this
46 agreement. Awesome.

47

1 Ms. Pali: Since everyone's throwing them around.

2

3 Mr. Robinson: Awesome. Yeah, let's keep order please.

4

5 Ms. Pali: Okay.

6

7 Mr. Robinson: I try to be lenient. So I have a question and the question is for the applicant.
8 Why are we, why is the building on the street side of the property instead of towards the other
9 side where the pool is and I'm looking at view plains, at heights and things like that and is it
10 because we have the villas and we got the Andaz and is that...Marriott, and is that a view plain
11 that you got to hit for the ocean is that why we looked at that location.

12

13 Mr. Wrzosek: Yeah, this is the preferred location for the tower to preserve views as best as
14 possible for our neighboring hotel and we're looking at the two hotels to be a master plan and
15 different uses that complement each other. So the Residence Inn, our existing Residence Inn
16 will be marketed to families. We prefer not to impact what we've already accomplished with
17 having a well-positioned building with incredible view corridors. The new hotel, Hotel Ike will be
18 more or less an adults oriented hotel both complimenting each other. In the Residence Inn we
19 have 28, two-bedrooms. For Hotel Ike we don't have any two-bedrooms. This also helps us out
20 with the parking efficiency and again, so circling back we did not want to...we wanted to
21 complement our neighboring hotel and not obstruct or cause any negative impacts to it.

22

23 Mr. Robinson: Okay, thank you. Commissioners any other. Okay, seeing none, does anybody
24 have a motion on the floor? Commissioner Carnicelli.

25

26 Mr. Carnicelli: I move to approve the PD II.

27

28 Mr. Robinson: We have a motion to approve. Do we have a second?

29

30 Ms. Pali: I second the motion.

31

32 Mr. Robinson: We have a second from Commissioner Pali. Discussion on the motion? Seeing
33 none, Deputy Director.

34

35 Mr. Alueta: Thank you Mr. Chair, you currently have a motion to approve the Step II Approval
36 for the hotel project as presented.

37

38 Mr. Robinson: All those in favor please raise your right hand. And that's seven.

39

40

41 **Step II Planned Development Approval**

42

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

44

45 **VOTED: To Approve the Step II Planned Development Approval, as**
46 **Recommended by the Department.**

47

1 Mr. Robinson: My concern is and I heard you state earlier that we're using the monkey pod
2 trees that are long the main road those are not from your development it's preplanned is that
3 correct?
4

5 Mr. Sereda: Yes, David Sereda, Chris Hart and Partners. That's correct, yes. So the monkey
6 pods we show on the plan are existing going down both sides of Wailea Ike Drive.
7

8 Mr. Robinson: And are any of those monkey pods on top of your property that you are able to
9 maintain yourselves or is that all part of the association?
10

11 Mr. Sereda: That's part of the Wailea Community Association. It's within the right-of-way. The
12 monkey pods are very close to the right-of-way line with this property, but they're in the right-of-
13 way.
14

15 Mr. Robinson: Is as part of SMA is we're always concerned about view plains and from the
16 main highway which is you know SMA of course is one thing, but once we're on top of
17 Wailea Ike isn't, but it is, you know, my challenge is actually is the monkey pods, but I guess my
18 comment is I hope that you guys try to refrain from adding any type of palm trees or anything
19 like that to help...to further inhibit the view of the ocean and the site view. I know we want to
20 mask the hotel, I know we want to try to blend it in, but the farther you have those types of
21 palms which I saw on top of your landscaping report, that height everything grows up and that
22 will take away that little view plain that we do have.
23

24 Mr. Sereda: Thank you, yes certainly that wouldn't be one of our intentions to impact the views
25 coming down Wailea Ike Drive from the right-of-way so we'll look at that and we'll make sure
26 that any palms that are sort of creeping into the view plain that we move back towards the hotel.
27

28 Mr. Robinson: Thank you. Commissioners? Commissioner Carnicelli.
29

30 Mr. Carnicelli: So my questions are gonna be I guess a little bit similar 'cause when you look at
31 the SMA 'cause then we have different things that we're responsible for and that you know, one
32 of the things in an SMA that we always talk about is going to be view plains and when
33 Commissioner Robinson, Chair Robinson asked earlier about why was you know the hotel
34 pushed to the Wailea Ike Drive side and not the other side it was to preserve the view plains of
35 the Residence Inn which potentially is the opposite effect from Wailea Ike Drive. If I go to
36 Figure 3 in the report it does show current existing conditions. Now, these are really small
37 photos and I can't really tell, you know I don't think that there's a view of the ocean here. I don't
38 think that we're you know, taking away ocean views or anything like that along Wailea Ike Drive,
39 but I think in the future I think that being something that we're tasked with is preserving view
40 plains for the public and not for the Residence Inn that would just be something that you know I
41 don't know if you have more clear pictures, but that just seems to be something that's a little
42 counter intuitive.
43

44 Ms. Thackerson: Actually, can I touch on that really quickly first?
45

46 Mr. Robinson: Planner Candace.
47

1 Ms. Thackerson: Thank you. When I writing this, the staff report, and I have to go into view
2 plain analysis that was actually one of my own concerns as well as well as my supervisor,
3 Jeffrey Dack. So we drove it and we went on Google Maps and we actually...first went to
4 Google Maps and we kinda went down it and then we drove it. So at the top, you know above
5 Monkey Pod there's...you see the openness and then as you kinda go down you see the
6 Residence Inn and then when you get to this parcel in particular the ground actually kinda
7 comes up. So you do see straight ahead the ocean and it does feel nice because there's an
8 empty lot there which gives you the feeling of openness and now there will be something there.
9 But there really isn't an ocean view when you turn your head and you look that way, okay,
10 where the building is gonna go. There's nothing over the top of that until you get down to the
11 bottom part that when you coming up along that little intersection then that's gonna lead to that
12 road by Wailea Ike Place and Wailea Ike Drive and so that's why I crafted that last condition on
13 the...not the last one, Number 12 I believe where I said, that to the satisfaction of the
14 Department of Planning, and this might touch on Robinson's, Commissioner Robinson's thing
15 as well, I wanted them to start stepping down the landscaping right there because when you
16 kinda get even the topography with that area the views do open up again in that area. And
17 they're not carrying the façade of the building all the way to the end of their parcel where that
18 parking area is. So right there when you get down to the intersection it does open up again, so
19 while we did want them to add landscaping to buffer some of the building, we wanted them to
20 start stepping it down where there's no building and not just continue a wall of landscaping
21 because we did want to preserve 'cause it kinda opens up. That street's interesting you get little
22 peekaboo views and they kinda go away and then they kinda come back. So we did our best to
23 kind of mitigate that impact.

24
25 Mr. Carnicelli: Thank you for that Candace. I mean I appreciate that. I mean and that does
26 make sense but again like you're saying is, is if we're talking about open spaces...anyways I
27 don't know if at this juncture I'm saying, hey listen I want to say no to an...you know the SMA on
28 the project solely because I would like for that hotel to be flipped the other way. Like you said,
29 as you're driving it just...it feels nicer. If that thing was flipped the other way and the parking lot
30 was on the Wailea Ike Drive side it would feel like more open space. I don't know if planning
31 wise it makes more sense to have a parking lot on top and the parking lot on the bottom 'cause
32 the top parking lot for you know the tennis courts not going away.

33
34 Ms. Thackerson: Yeah.

35
36 Mr. Carnicelli: You know that's staying there so but there is something just in that particular
37 manner with which it just...it does, there's just...it's a field thing and I don't know as far as
38 conditions. The other part that I do have a question and maybe this is more for you Joe is we
39 have talked about it in the past exactly what Commissioner Robinson brought up which is you
40 know when we're talking about view plains and we talked about this especially like say when we
41 did the Makena project, okay we can look at the buildings and go like, okay here's the view
42 plain, not...but that other part, you can plant out a view. You know, so is there a way with which
43 this Condition 12...in your mind does that help say that they can't plant out the view? Like even
44 though it's this little sliver there at the end, you know obviously the building is not going away,
45 but you know if they put up something else is that gonna take away that little sliver?

46
47 Mr. Robinson: Deputy Director.

1
2 Mr. Alueta: Thank you Commissioner. Ideally if you know the view corridor that you want to
3 preserve then you would just say to preserve this view corridor from this point looking this
4 direction would be the easiest way.

5
6 Mr. Carnicelli: In perpetuity.

7
8 Mr. Alueta: Yeah, I mean if it's a condition it's there, they would have to then maintain that view
9 corridor for that purposes. Again, I haven't gone over this with the staff at all. They obviously
10 did a pretty good analysis. I don't believe that the Maui Coastal View Corridor Study that was,
11 that's from the 80's had a...along this drive, it was mostly from Piilani Highway.

12
13 Mr. Carnicelli: Right.

14
15 Mr. Alueta: So, and we are...for future reference we are planning to update that study to bring
16 it...so that would probably give you some better analysis later on, but for now if you feel that
17 there is such a unique view corridor that you wish to preserve for the public from that public
18 right-of-way then I would go ahead and identify it and make it noted in the conditions.

19
20 Mr. Robinson: So Commissioner Carnicelli so we did preserve that view corridor at Makena.

21
22 Mr. Carnicelli: Right.

23
24 Mr. Robinson: The renderings that we had they had to maintain that. Now we don't have
25 enforcement of that, but we did put that as one of the conditions.

26
27 Mr. Carnicelli: Right, right. So if I could Chair? Jordan would you like to speak?

28
29 Mr. Hart: Sure.

30
31 Mr. Carnicelli: I saw you whispering to some people over there so I just want to give you an
32 opportunity to also speak to the views and the open space.

33
34 Mr. Hart: Sure so part of what we were trying to do in order to preserve views...let me say it's a
35 balance. So basically here are going to be impacts to views in general just because we're
36 developing a hotel, the property is zoned for hotel development.

37
38 Ms. La Costa: Excuse me Jordan, could you please speak into the microphone.

39
40 Mr. Hart: So part of the consolidation and resubdivision is in order to move the parcel farther
41 away mauka from the area where there is views. We were relying on Wailea Ike Place but the
42 Planning Department recommended that we rework our landscape here at the makai corner
43 which we're totally open to. We did as far as site planning try to limit view impacts as much as
44 we could. We did think that moving the project closer to the roadway because there are not
45 views in this area was appropriate and what we did was we went heavy on landscaping to
46 separate the impacts of the structure to the general public on that area. But as far as potential
47 views towards the West Maui Mountains we're open to thinning out the landscape planting on

1 the makai corner in order facilitate that.

2

3 Mr. Carnicelli: Thank you.

4

5 Mr. Robinson: Commissioners any other questions? Another question. What is going to be the
6 available amount of water for Wailea area after we start using this water for this hotel?

7

8 Mr. Hart: I'm not sure if I can answer that. That would come from the Department of Water
9 Supply. We are actually...as part of...anyway we're in the process of installing our water meter
10 at this time. I don't know the balance of water availability on behalf of the Department of Water
11 Supply to answer that for you. I'm sorry.

12

13 Mr. Robinson: Okay, thank you. Commissioner La Costa.

14

15 Ms. La Costa: Thank you Chair. Jordan, I don't know again if this is for you or for your
16 engineer. During the presentation you talked about gray water, reclaimed water and is that
17 something that you were looking at for the project or is it because Maui County doesn't have
18 any kind of plan for that you are not considering it?

19

20 Mr. Hart: So what we were saying and this is basically a standard for all SMA applications is
21 that because we're in an area where the lines don't currently reach all of our irrigation systems
22 will be fitted to serve R1 when that line is available in our area and we will connect to it when it's
23 there but the currently the County doesn't provide to our location yet, but we'll be ready when
24 they are there.

25

26 Mr. Robinson: Commissioners any other questions? Commissioner Kahu Hill.

27

28 Kahu Hill: Just one more question, just had an idea, wanted to know the idea of your timing
29 'cause there's so much development in the area and others that have been approved that will
30 be building and constructing. What are you looking as your timing for your development moving
31 through the process?

32

33 Mr. Wrzosek: Tony Wrzosek, R.D. Olson Development. We hope to start mass grading in mid
34 to end of January 2019 and we hope to obtain a building permit to continue on with that work in
35 May of 2019.

36

37 Mr. Robinson: Commissioner La Costa.

38

39 Ms. La Costa: Thank you Chair. This is regarding the traffic so to whom should this be
40 addressed?

41

42 Mr. Tyler Fujiwara: Hi, Tyler Fujiwara, Austin Tsutsumi and Associates.

43

44 Ms. La Costa: Mahalo Tyler. In the report it says that there is minimal traffic congestion and
45 that you did a study from the A.M. and the P.M. If there are gonna be a 110 units right there at
46 Wailea Ike Drive and Wailea Ike Place how did you ascertain that there was not gonna be a
47 issue there when it hasn't been built and we don't have all of the cars for a 110 units.

1
2 Mr. Fujiwara: Well, in our traffic study we forecast the amount of traffic that would be generated
3 by the project. So we're estimating that in the morning it would be 35 A.M. peak hour vehicle
4 trips and in the afternoon it would 46 afternoon vehicle trips. So in essence we're adding maybe
5 five to fifteen vehicles per direction along Wailea Ike Drive.

6
7 Ms. La Costa: Per?

8
9 Mr. Fujiwara: Per direction.

10
11 Ms. La Costa: And what is the time increment please?

12
13 Mr. Fujiwara: This would be per peak hour. So it would be about an increase of five to fifteen
14 vehicles during A.M. peak hour and five to fifteen vehicles during the P.M. peak hour.

15
16 Ms. La Costa: Based on a 110 units.

17
18 Mr. Fujiwara: Based on 110 hotel units.

19
20 Ms. La Costa: Okay, thank you.

21
22 Mr. Robinson: Commissioners? Commissioners I have a concern about this project not for the
23 developer. I think Residence Inn was done well. I think the airport was a much needed and it
24 was done well. My concern is if we don't have the information of what water is left over. You
25 know we're talking about balance, we're talking about what's being built first. You know, if talk
26 about affordable housing. This area has a lot of different things and we've been going towards
27 one direction and unfortunately construction hasn't been balanced to catch up for it and I'm not
28 against this project or this developer or that this hotel would be very successful and be needed
29 but without knowing what the water balance is that's gonna be used there, you know that is
30 something. I'll talk you Jordan, don't worry about that. You know it's that along with not really
31 seeing the sight lines yet and having an actual photo. Usually when we go to an SMA because
32 this is not an EA we usually get a lot more data of visuals seen to us. I wasn't happy with the
33 piecemeal of just this lot, just that lot instead of larger five lots and a bigger sense of view, you
34 know bigger sense of meaning of this hotel's gonna do. I thought it was very
35 compartmentalized and just showing what that area is I've had challenges. Trying to look at it
36 and go down this every street, I'm trying to...I'm still in my head trying to picture where this is
37 and the turn and so there's...it's again, it's not that this won't be a good project but I still have
38 concerns about it and Jordan if you...more than happy to help me with any of those?

39
40 Mr. Hart: I want to clarify, you know we do explain how much water this project is using. With
41 regard to the outstanding balance of water that the Department of Water Supply has you know
42 that would come directly from them almost on a daily basis rather than from a outside party. But
43 they do have sufficient water to provide us with the meter that we're installing.

44
45 With regard to the site orientation, you know we do provide site photographs, obviously you
46 know I understand you're saying that you would like them to be larger. As far as the contextual
47 configuration of the project we're on Wailea Ike Drive, Wailea Ike Place is a existing Wailea

1 commercial development to our northeast, there's Wailea Tennis Center directly to our north,
2 the existing Wailea Residence Inn development is directly mauka, makai of us is the Wailea
3 Blue Golf Course. Across from us is a existing Wailea apartment development and southwest
4 of us is the shoot I'm forgetting the name of the development that Manoli's is in...the Village
5 Center, thanks. You know this is...Wailea is a resort destination area, it's a planned
6 development in the County of Maui. This is definitely infill development. It's within the State
7 Urban Growth...or the Urban District, Maui Island Plan Urban Growth Boundary it's Hotel zoned
8 land.

9
10 With regard to significant views over the project site you know I don't think that there are
11 significant views over the site, however we are offering to lighten our landscape planting on the
12 makai end at the Department's request. We started out by trying to screen out the building
13 just...okay, just to back up even further so the SMA requirements pertain to the highway nearest
14 the ocean, the state highway nearest the ocean looking makai as well as the shoreline looking
15 mauka, you know in the context of that this project doesn't impact those issues. You know the
16 Piilani Highway is the nearest highway and you're not seeing this project site from the shoreline
17 looking at Haleakala. There is a potential to look towards the West Maui Mountains on
18 Wailea Ike Place and we are agreeing to peel back our landscaping that is one the parking lot
19 side in order to open that up to the satisfaction of the Planning Department. We'll obviously
20 present it back to the Commission, well a communication item comes to the Commission to
21 show the Commission our design documents and the Commission has the opportunity to decide
22 whether or not it wants to review further. But as far as visual impacts I do think that the
23 significant issue is screening the building itself rather than opening up public views because of
24 the situation of the site there isn't significant public views especially on the mauka end which is
25 where our development is. But there is a potential to look towards the West Maui Mountains
26 and we're proposing to open that up.

27
28 Mr. Robinson: Commissioners any further questions? Have a motion anyone?
29 Commissioner Carnicelli.

30
31 Mr. Carnicelli: Chair I would like to make a motion to approve as recommended by Staff with
32 the 14 conditions.

33
34 Mr. Robinson: Okay, we a motion to approve with the conditions. Do I have a second?

35
36 Mr. Castro: Second.

37
38 Mr. Robinson: Second by Commissioner Castro. Would you like to speak to the motion?

39
40 Mr. Carnicelli: Thank you Chair. I understand your concerns. It does feel a little bit like oh my
41 gosh, we just approved three big things, you know a PD I, a PD II, and now an SMA. However
42 for me personally I don't feel as though, you know I did express my concerns I am looking at site
43 photographs that are up on there and I'm also going to take the Department and Candace's
44 word for saying, you know they went out there, they checked it out so as far as the site you
45 know view plains, even though it is a concern I'm going to go ahead and defer to you know,
46 what Staff has said. As far as the water, I do understand your concerns there, however, I don't
47 know if suddenly trying to say like okay, well how much water is left if we do "X", if we do this.

1 You know when I look at the response from DWS it says that they have enough water for this
2 project. So anyways, I don't know if there's anything further that I'm going to need to say oh
3 let's not make a decision today and so then that's why I made the motion and why I'm going to
4 go ahead and support the motion. So thank you Chair.

5
6 Mr. Robinson: Thank you. Any discussion on the motion? It's...Jordan I'll give you an
7 opportunity if you'd like to speak to the motion if you have something you wanted to add before
8 we do any more deliberations?

9
10 Mr. Hart: I was just going to say that this project's meter is being installed based on existing
11 Hotel zoning and so, you know, as far as just for consideration.

12
13 Mr. Robinson: Yeah, thank you. And you know, and Commissioners I want to you know
14 quantify my concern. I've actually had some experience with being rejected in different areas of
15 the island because of certain amounts having to be promised or being flowed to a certain other
16 part of the island and it does affect housing, it affects everything. We only have so much water
17 until we increase more. So you know the old verbiage everything affects everything and I'm not
18 saying that there's not enough water here. But on the data provided to me, I have the amount
19 of sewage that we have in there. I have a quantity of sewage that it's able to handle and the
20 facility handle and it's not that they don't have enough water, but I don't know how much water it
21 does have. I know it's the resorts and the TVRs are building faster than affordable housing and
22 we do have show me the water. So water is a very large concern, and again, this is just
23 something that out of all of this, you know, the developer they've done well a couple times, I
24 trust them, it's that's my concern. Thank you. Any other comments? Having seen none, Joe?

25
26 Mr. Alueta: Thank you Mr. Chair. Currently you have a motion on the floor to recommend
27 approval of the Special Management Area for the project subject to 14 conditions and as
28 presented on November 13, 2018 staff report.

29
30 Mr. Robinson: All those in favor please raise your right hand. We have one, two, three, four,
31 five. All those opposed? Two opposed. The SMA has been approved.

32
33

34 **Special Management Area Use Permit**

35

36 **It was moved by Mr. Carnicelli, seconded by Mr. Castro, then**

37

38 **VOTED: To Approve the Special Management Area Use Permit, as**
39 **Recommended by the Department with Recommended Conditions.**

40

41 **(Assenting – L. Carnicelli, S. Castro, A. Hill, K. Pali, C. Tackett)**

42 **(Dissenting – L. Hudson, P D. La Costa)**

43 **(Excused – T. Gomes)**

44

45 Mr. Robinson: We will take a five-minute recess. Thank you.

46

47 Mr. Hart: Thank you very much Commissioners.

1
2 A recess was called at 11:18 a.m., and the meeting was reconvened at 11:26 a.m.

3
4 Mr. Robinson: Deputy Director.

5
6 Mr. Alueta: Thank you Mr. Chair. Your next item is Director Michele McLean transmitting the
7 Council Resolution No. 18-149 to the Lanai, Maui, and Molokai Planning Commissions
8 containing a proposed bill to establish a zoning district to be known as the Wellhead Protection
9 Overlay District. I believe you have a memorandum. David Raatz is here as well as other
10 resource people to go over that item. Thank you.

11
12 Mr. Robinson: Aloha David.

13
14 **3. MS. MICHELE McLEAN, Planning Director, transmitting Council Resolution**
15 **No. 18-149 to the Lanai, Maui, and Molokai Planning Commissions**
16 **containing a proposed bill to establish a zoning district to be known as the**
17 **Wellhead Protection Overlay District. (D. Raatz)**
18

19 Mr. David Raatz: Good morning Chair and Commissioners. David Raatz, Administrative
20 Planning Officer appearing on behalf of the Planning Director. We are here for this item
21 because the Council has adopted Resolution 18-149 which seeks the Planning Commission's
22 review and comments on a bill titled, A Bill for an Ordinance Amending Title 19, Maui County
23 Code to Establish a Wellhead Protection Overlay District.

24
25 I have a brief procedural overview and then our colleagues with the Department of Water
26 Supply are available to provide a 20 to 30 minute overview on the substance of the legislation at
27 the Chair's discretion.

28
29 So the bill's purpose and intent clause says, "Maui County recognizes that many residents rely
30 on ground water for their safe drinking water supply and that certain land uses may contaminate
31 ground water sources. To ensure the protection of these drinking water sources this ordinance
32 establishes a zoning overlay district to be known as the Wellhead Protection Overlay District or
33 WPOD."
34

35 The bill is a proposal for a land use ordinance so accordingly the planning commissions must be
36 afforded an opportunity to review and comment on the bill prior to the Council's enactment of
37 the ordinance pursuant to Section 8-8.4 of the Revised Charter of the County of Maui. The
38 planning commission's findings and recommendations are due to the Council by
39 January 7, 2019.

40
41 The committee report that recommended adoption of Resolution 18-149 was Land Use
42 Committee Report 18-144. The committee report includes the following passage that provides
43 an overview of this matter. The Department of Water Supply said the proposed bill could
44 reduce the department's expenses for treating contaminated drinking water by preventing
45 potential contamination events around county wellheads. While State and Federal governments
46 provide regulations for wellhead protection the department said enforcement of these
47 regulations is left to the counties who can enforce through land use regulations. The

1 department explained the bill establishes a wellhead protection overlay district consisting of
2 three zones around county-owned wellheads. Zone A is a 50-foot zone immediately around
3 wellheads in which only wellhead related activities are allowed. Zone B and Zone C are larger
4 zones surrounding wellheads and are designated based on travel times and various
5 contaminants as determined by the University of Hawaii, Department of Geology and
6 Geophysics and that ends our quote from the Committee Report.

7
8 We note the bill does not define wellhead. The Merriam Webster Dictionary defines wellhead as
9 the source of a spring or a stream. Also the bill doesn't specifically define what an overlay
10 district is. The American Planning Association advises that an overlay zone is a zoning district
11 which is applied over one or more previously established zoning districts establishing additional
12 or stricter standards and criteria for covered properties in addition to those of the underlying
13 zoning district sometimes called the base zone.

14
15 The Department of Planning has not taken a position on the bill thus far. We did advise the
16 Council Committee on August 1, 2018, that several general plan ordinances do support the
17 concept of a wellhead protection ordinance. Notably the Maui Island Plan at Page 6-25 states
18 as an objective, Complete and implement the Department of Water Supply Wellhead Protection
19 Program to protect the water quality of public and private wells. And it was the Council's Water
20 Resources Committee that pushed this matter out. I apologize I mentioned the Land Use
21 Committee erroneously earlier. This proposal has been pending before various Council
22 committees for several years and it was finally this term when the Water Resources Committee
23 took the time to schedule four different meetings and ultimately recommended adoption of the
24 resolution that's before you today.

25
26 So as with other Council initiated land use ordinances the Commission has several options on
27 what you can do. One, you can recommend to the Maui County Council that the bill be passed
28 with no revisions. You could also recommend to the Maui County Council that the bill be
29 passed with certain specified revisions. You could also recommend to the Council not pass the
30 bill. And additionally you could defer action to another Maui Planning Commission meeting date
31 in order to obtain additional information.

32
33 So I thank you Chair that's my brief procedural overview. If you'd like to proceed with the
34 Department of Water Supply getting into the substance we would defer to your judgment on
35 that.

36
37 Mr. Robinson: It's...I'd like to see who can tell me about this map and actually what we're
38 looking at and what these circles and half circles mean.

39
40 Mr. Raatz: Thank you. That would be the Department of Water Supply.

41
42 Mr. Robinson: Okay.

43
44 Mr. Raatz: I think it probably be more relevant if you allowed them to do their presentation
45 before you get into their handout I would think.

46
47 Mr. Robinson: Please.

1
2 Ms. Eva Blumenstein: Good morning Chair, Commissioners.

3
4 Mr. Robinson: Good morning.

5
6 M. Blumenstein: I'm Eva Blumenstein, Planning Program Manager for Department of Water
7 Supply. I want to clarify that the resolution was supposed to include the maps and two lists that
8 are not going to be codified but they belong with the bill. So we were asked by Corp. Counsel to
9 bring them to you this morning. So those maps I'm gonna get into the details of how, what they
10 mean and so on, but those are the actual overlay zoning maps and there's two lists, they're
11 called Appendix A and B that goes with the bill as well.

12
13 So it's a pretty broad and complex topic and if you think it's going on too
14 long...(inaudible)...make it as brief as I can but it's a lot of detail that goes into this bill. So this
15 is, it goes back about a decade it's been a collaborative process between the University of
16 Hawaii, the Water Resources Research Center and the Department of Geology and
17 Geophysics, the State Department of Health, Safe Drinking Water Branch and the County
18 Planning and Water Departments.

19
20 What the Wellhead Protection Program is this is specifically a process where we, we the County
21 came up with a strategy how to protect our potable wells, and it applies to the department's
22 municipal wells only not the private wells at this point. The reason we want to do this is to
23 protect the infrastructure and the aquifers that provide municipal water to the community and to
24 avoid costly treatments in years to come.

25
26 Mr. Robinson: I have a question. The state wells included in this or just county?

27
28 Ms. Blumenstein: This bill addresses only the County's owned wells. So that's the Department
29 of Water Supply potable wells.

30
31 Mr. Robinson: Okay, thank you.

32
33 Ms. Blumenstein: And the wellhead protection area which is the base of what we're going to
34 talk about it's the surface and the subsurface area surrounding a well through which
35 contaminants are reasonably likely to reach the wellhead. So the graphic you see there on the
36 right typically groundwater flow with the gradient mauka to makai towards the ocean. As you
37 start pumping a well you're gonna impact that, you're gonna draw water and associated
38 contaminants towards the well. So the model well protection area could be something as simple
39 as a fixed radius around the well and some municipalities have chosen to do that. In this case
40 it's modeled based on ground water flow and the time of travel it takes contaminants and water
41 to reach the well.

42
43 Why do we do well protection? About 70 percent of Maui's drinking water supply comes from
44 groundwater sources. Because of the slow hydro geologic processes it's many years between
45 when you have a contaminating event and when you detect contaminant in your well. There's
46 been an assessment of...a vulnerability assessment of the aquifers and our wells done by the

1 State Department of Health and all the aquifers that the department withdraws potable from are
2 ranked as vulnerable.

3
4 We also know that there are organic compounds detected in the majority of public water supply
5 wells on Oahu where they face more urban pressure but as Maui grows we sort of see into the
6 future what Honolulu Board of Water Supply deals with today. We also know that there are
7 gaps in regulations that put our drinking water wells at risk. And finally as mentioned there were
8 support and had called for that we do a wellhead protection program and address this ordinance
9 both through the Maui Island Plan and to multiple community plans as well.

10
11 So prevention or treatment. We could just do nothing and expect to have to treat water if we
12 have contaminants showing up in the well. If you have a contaminating event you...normally if
13 you're exceeding allowed legal levels you're gonna have to put in some kind of treatment.
14 You're gonna have to monitor those contaminants over a period of time. You may have to find
15 alternate water supplies and you may have to remediate the site of contamination and in some
16 cases it ends up in litigation which the department did about two decades ago where there were
17 pesticides in drinking water wells that had to be cleaned or filtered using GAC which is granular
18 activated carbon which is one of the typical treatment processes that municipal utilities have to
19 use.

20
21 So granular activated carbon and reversed osmosis are the two typical treatment methods and
22 this just gives you some idea of what it cost per thousand gallons of water to treat. We know
23 Honolulu Board of Water Supply their annual operation and maintenance cost for GAC is about
24 two and a half million dollars a year. So cost to clean up ground water after the fact always
25 exceeds preventing it in the first place.

26
27 So how do we do, how do we go about having a well checks and strategy? We delineate those
28 wellhead protection areas first using a ground water model and we inventory what types of
29 uses, land uses are here already, existing land uses would be grandfathered in if there's a
30 zoning change. And we develop the wellhead protection strategy with public participation and
31 as I said this has been a going on. It's about a decade now and it's a strategy that includes the
32 bill that you have in front of you is just one of the components of this overall strategy. It includes
33 public education and siting of new wells, other pieces.

34
35 So currently how is wellhead protection regulated? The UCPA through the Safe Drinking Water
36 Act mandates the states to conduct a Source Water Assessment. It's really just assessing what
37 are those land uses and what are the potential threats to drinking water wells within those
38 assessed capture zones. The capture zone is the same as the wellhead protection area. They
39 also mandate the states to adopt drinking water rules. Drinking water rules will tell you if you
40 have a contaminating event and you exceed the legal limit now you're gonna have to treat to
41 bring it back to a safe level. It doesn't prevent contamination or tell you what you can do to
42 avoid having that contaminant in your well in the first place.

43
44 So the State's Safe Drinking Branch went through...they did the Source Water Assessment for
45 all public water systems throughout the states and they also developed well protection program
46 guidelines to provide technical and financial assistance to the local municipalities so that we can
47 adopt...develop and adopt protection measures on the local level. That is how the federal well

1 protection program was envisioned to work. So they don't...it's the state is not going to come in
2 and mandate us this is what you have to do in your well protection area. They leave that to the
3 local level. So therefore the Maui County Water Department and Planning Department and with
4 the Advisory Committee going back about 10 years we reviewed the regulatory framework, what
5 are those federal, state and county regulations that are already in place that do provide some
6 protection for ground water and what...are there gaps. We don't want to have new regulations
7 that duplicate what we already have in place. So the protection strategy and ordinance is
8 supposed to really just fill in those gaps where there are no adequate regulations to specifically
9 address ground water.

10
11 So this is an overview of the 12 or so maps that you have. The well protection areas were
12 modeled by the State Department of Health contract using MODFLOW which is the most widely
13 used ground water flow model used by the US Geological Survey. So it's...it defines what the
14 ground water flow is, it defines how long it will take a water molecule or contaminants to reach
15 the well within that spatial area. So there's three zones that are defined. The first one is just a
16 fixed 50-foot radius around the well. That's pretty much the fenced area around the
17 department's well where you shouldn't do anything more than just maintaining the well itself.
18 Then the two-year time of travel, Zone B is where it would take the water molecule two years or
19 less to reach the well. And that's specifically to address microbial contamination based on their
20 typical survival time in soil and water. And then Zone C is same thing but ten-year time of
21 travel. It would take a chemical or a water molecule about ten years or less to reach the well.
22 And these were not discretionary. These were used in the Statewide Source Water
23 Assessment so the protection strategy and the bill is based on that Statewide Source Water
24 Assessment and the criteria they used. So the blue on the maps you see is the two-year time of
25 travel and the red is the ten-year time of travel. And these are the only areas that this bill
26 applies to. So generally you can see they're pretty skinny and long with exception being for
27 Central Maui. I'm gonna address that more specifically.

28
29 So why are we coming to you for this zoning overlay district? Because zoning is the only
30 vehicle to prohibit certain land uses that are compatible with ground water protection and this is
31 the first time we're trying to do a collaborative bill so to say with Planning Department where
32 now the Water Director has an active role in protecting ground water through land use
33 restrictions. We proposing an administrative permit so anything that is compatible with ground
34 water protection should be allowed as long as you have those best management practices in
35 place. Existing uses of course will be grandfathered in. The intent is to supplement and not to
36 duplicate regulations that are already in place. The bill is modeled upon EPA overlay zoning
37 standard with the community input, Department of Planning and Zoning Administration review
38 as well.

39
40 So there's a column on the right there, that list all uses that some are the in the bill are
41 prohibited and that would only new uses. The ones that are in red requires underlying Heavy
42 Industrial zoning. So the existing well protection areas with our wells in place there are no
43 Heavy Industrial zoning. We're really fortunate for Maui most of our wells are in rural areas.
44 There is some in urban but most of the underlying land use and zoning is Residential or Ag. So
45 even though they are included in the bill they are there because they're high risk uses and they
46 are associated with ground water contamination historically and the type of contaminants that

1 are associated with those use, but so just know that those are not...they wouldn't be applicable
2 in capture zones right now.

3
4 So how does an overlay zoning work? Well, you have a...in the example of the right you have a
5 piece of property that's some is zoned Industrial and some is zoned Residential and then you
6 have your well in the middle of those. The wellhead protection overlay is going to span both the
7 zones and it will supersede they underlying zoning. So then the example on the left that's
8 Pookela Well Upcountry. Underlying zoning is Agriculture. And new landfills that are a
9 permitted use in Agriculture zoned areas would be prohibited by the overlay zoning so that
10 would be superseded by the underlying Agriculture zoning. In the case of new Agricultural
11 supply storage, yes that will be permitted but in this case because it's near drinking water well,
12 best management practices will be required such as a secondary containment if you're gonna
13 store pesticides near the well.

14
15 Mr. Robinson: Question. Question. Did I just hear you say on agricultural lands that that would
16 might then become prohibited?

17
18 Ms. Blumenstein: A new landfill would be outright prohibited on Agricultural land.

19
20 Mr. Robinson: Landfill but not agriculture? I'm sorry—

21
22 Ms. Blumenstein: No agriculture.

23
24 Mr. Robinson: --yeah okay, I'm sorry, I'm sorry.

25
26 Ms. Blumenstein: No, no, a landfill.

27
28 Mr. Robinson: Thank you so much. Thank you.

29
30 Ms. Blumenstein: I show this an example because this is our messiest area if you will. As I said
31 most of our wells are in agricultural rural areas except central where most of our water supply
32 comes from the Iao and Waihee aquifer. Most of the underlying zoning here is Residential,
33 Commercial or Project District. We also have three wells used in the Kahului aquifer, the Maui
34 Lani wells. So still the impact on new uses, residential development, the intent of the bill is
35 really not to make it more burdensome or to impact every time you have a residential building
36 permit process. Therefore, you will see the content of the bill has...it only applies to
37 subdivisions of four lots or more. So any building permit coming in for an individual residential
38 dwelling would not...the bill would not apply to that. In this area where you have the most land
39 and existing residential commercial uses there is less than one percent of that land is zoned
40 Light Industrial and Light Industrial is really where you have some uses that will have to be
41 looked at coming in for new Light Industrial use there will be some best management practices
42 required.

43
44 And one of the most important BMP that is part of several proposed land uses in the bill is
45 secondary containment. It applies to a multitude of commercial uses and it's a fairly simple
46 straightforward requirement to have some impervious surface. You have a secondary
47 containment instead of a say an aboveground storage tank sitting right on dirt. The example

1 here are two facilities that we use to grant funds to retrofit because they were close to our
2 drinking water wells and they were you know petroleum, other chemicals sitting on bare dirt. All
3 it needs is a cement slab with a berm so you have a leak or spill it's not going to reach your
4 drinking water well. Or the example on the right for a small storage it doesn't have to be that
5 complex. It really just have to be something to contain the spill or the leak.
6

7 So as I said this is not one thing fits all. The well protection overlay zoning that we propose one
8 component to and that's the only vehicle to really address land uses that are high risk, that are
9 not compatible with drinking water supply and where you have what uses that are...that can be
10 compatible ground water protection as long as you have some mitigating measures in place
11 then there's no need to restrict those instead best management practices such as secondary
12 containment is proposed. And the third component is really important of course as the
13 department sites new wells that these are not sited in an area where underlying zoning is Heavy
14 Industrial. So there is an in-house policy and memo so that new wells that come on are
15 considered the same land use restrictions and the same criteria have to still pass in order to
16 prevent that new wells are site in appropriate area.
17

18 So that's just a brief overview of why, why we're doing this getting into the nitty gritty of the bill.
19 It's a lot.
20

21 Mr. Robinson: Okay, thank you. Commissioner La Costa.
22

23 Ms. La Costa: Thank you Chair. I didn't see a map for Lanai on there.
24

25 Ms. Blumenstein: Chair, the Lanai Public Water System is not run by the Department of Water
26 Supply. It's privately owned.
27

28 Ms. La Costa: Thank you.
29

30 Mr. Robinson: Okay. Thank you. At this time we're gonna take public testimony. At this time
31 Mae Nakahata. Aloha please introduce yourself, you have three minutes.
32

33 Ms. Mae Nakahata: Hello. My name is Mae Nakahata and I'm testifying on behalf of Alexander
34 and Baldwin.
35

36 Mr. Robinson: Aloha.
37

38 Ms. Nakahata: First of all, I'd like to commend the department for taking the leadership in
39 preparing these maps because they do provide an important guideline for all of us to follow and
40 I think that's where we just start to differ. I think the maps are an important guideline and these
41 are based on models and I have worked with many models, but models are only good as you
42 can validate them. So and that's where the difficulty comes especially when we talk about
43 ground water because you're talking about different things. You're applying something up here
44 then you have all of this modeling that you have to do of how it's gonna move down the soil
45 profile until it reaches the ground water and then how it's gonna move in the ground water. And
46 depending on what you're gonna work with it's all different. I'm familiar with pesticides. And
47 depending on the pesticides they're all different how they move down the profile. And then you

1 have your biologicals and then you have your other chemicals like dry cleaner fluid or your gas.
2 So it's very complex. So as you have a model that's exactly what it is. It's a model.

3
4 I commend them for recognizing the need for best management practices, but I think by having
5 a map and having a regulatory framework where you're focused within these zones suddenly if
6 you're at this zone you do this. If you're outside of the zone you don't do...you know it's not as
7 important. But understanding that these maps have a level of uncertainty I think it's more
8 important to develop best management practices that apply to everybody and in this particular
9 case they're talking about municipal wells. I mean you have private drinking wells that people
10 drink from. That's no less important. So I think you know with the County has only so much
11 resources. So how do can we best use the resources and it seems to be to help develop robust
12 BMPs that have a very aggressive public relations outreach to everybody that says if you're
13 using chemicals this is what you do and so forth and it protects, you know, our resources for the
14 future.

15
16 You know they talked about other regulatory frameworks. I'm most familiar with pesticides.
17 Hawaii has the Department of Ag has a very strict ground water protection process. So we
18 have chemicals that on the mainland you can just go and buy and apply. In Hawaii it's restricted
19 use. For our farmers to use it they have to undergo classes and so forth because they utilize a
20 model to check for ground water contamination and it's super conservative. So we have several
21 protections in place.

22
23 The other one is for the gas stations. Okay way back you had underground storage tank
24 regulations. Then you have leaky underground storage tank regulation and now you have
25 aboveground storage tank regulation. So anybody who has a gas station knows, right you have
26 to have your primary containment, secondary containment and you have all these other
27 protections that you put in place. So just like the chemicals, the ones that we're finding in
28 ground water was developed way back when a lot of this knowledge was not known. But now
29 we've gotten to a place that you're recognizing contamination so you're putting regulatory things
30 into place to protect. So you know it goes beyond, it goes into ...(inaudible)...and all of these
31 other rules that ultimately impact how groundwater contamination can occur.

32
33 So I respectfully request you consider, you know, maybe adopting the maps but to the point that
34 it's to the best knowledge now, it can be changed. But not take it to the framework where you're
35 putting regulatory requirements on it, but more pushing for robust, strong best management
36 practices. Thank you very much.

37
38 Mr. Robinson: Thank you. Please, Commissioner Carnicelli.

39
40 Mr. Carnicelli: Thanks Mae. I appreciate that. The question that I have is I mean I know that
41 you're here representing A&B but you're also a farmer?

42
43 Ms. Nakahata: Yes.

44
45 Mr. Carnicelli: And so in the testimony that was submitted this morning, we got some written
46 testimony hand delivered this morning it talks about the violation of the intent and spirit of the

1 Right to Farm Law and it will negatively impact farmers. Could you from your orientation could
2 you please address that?

3
4 Ms. Nakahata: And I guess that's where we're coming from this standpoint of uncertainty. You
5 know if we start banning compounds, you know before EPA requires the banning of use on
6 certain parcels of land you're removing a tool that's available to the farmer and it may not be
7 justified and I think that's what was referencing. So their right to farm, in other words, you know
8 we live in Hawaii you guys know if you folks have guavas in your backyard how much pests you
9 folks have. So the farmers need a robust bunch of tools to utilize. And a lot of the tools that
10 they're using now are...you no longer apply it in gallons per acre or pounds per acre, it's in
11 ounces per acre so it's very miniscule amounts. So the mechanism is there. So we're very
12 nervous about a regulation that ends up saying you know no pesticides within so much area or
13 so forth, it's I know we said no. It's not a one size fits all and I've seen the list and so forth but
14 there is uncertainty from the farming community exactly what's going to happen through the
15 regulatory process.

16
17 Mr. Carnicelli: Thank you.

18
19 Mr. Robinson: Commissioner Pali.

20
21 Ms. Pali: Hi, thank you. I have a question. Are you familiar with what the State imposes to
22 protect their wells that are here on Maui and do you feel like this is like far beyond what the
23 State feels comfortable with at this time?

24
25 Ms. Nakahata: Yeah, I read the Department of Health's comments to the County Council and
26 so forth, and the Department of Health I would imagine has the same regulations as most of us
27 do when we look at ground water contamination even for us as private wells, we have a
28 wellhead protection area. It's required in pesticide laws and so forth. And if you understand
29 your compounds, you know, you take that responsibility 'cause for God's sake you may be
30 drinking the water. You're not gonna poison the water you may drink in the future. So I think
31 again, I'm looking at the broader framework, not just wellhead protection but at all of the other
32 regulations that they have that they have to follow and I think you have to take all of that into
33 consideration.

34
35 Mr. Robinson: Commissioners any other questions? So is...since you're here Mae, what is
36 A&B's BMP?

37
38 Ms. Nakahata: Okay, so we have...we have a very strict Environmental Affairs Officer and he
39 crawls through these regulation and we tend to jump ahead of when a regulatory requirement is
40 there. So for example I'll use Atrazine as an example, and since I was in charge of weed
41 control you know I can speak confidently on that. Atrazine is on the list of contaminants by
42 the...so this happened...I'm gonna show my age, but I wanna say it happened over 25 years
43 ago when on the Big Island and I happened to be working on the Big Island EPA found 3 parts
44 per billion in ground water on the Big Island and that's when the notice, you know this concern
45 went through the whole sugar industry and we looked at how utilized Atrazine. So even if this
46 was in a ground water well that was not used for drinking water purpose it was strictly industrial
47 for the factory, our practices for the industry immediately changed including at HC&S. So for

1 example, Atrazine is a very important compound for us. If, you know, vines are a huge problem
2 in the fields. But I also know if you use too much of it, it's gonna to...you know, end up leaching
3 down into the ground water. Therefore, we only use it once and per crop cycle and I alternate it
4 with other compounds. So we take into the account while it's legal to be used, we have it in our
5 practices how we can minimize its impact on the future. And same thing for aboveground
6 storage tanks. If you came to our office you'll see the huge containments around all of the
7 aboveground storage tanks. Way back when the concern about underground storage tanks
8 happened and that must be about 20 years ago too, we went out of our way to dig out all of the
9 underground stuff and replace it with aboveground and we did all of the clean ups at that time.
10 So we go rule by rule and you know, what's coming down and we take the necessary
11 precautions.

12
13 Mr. Robinson: Okay, thank you. Any other questions Commissioners? Okay, seeing none,
14 thank you.

15
16 Ms. Nakahata: Thank you very much.

17
18 Mr. Robinson: Would you like to comment at all on anything that was just testified?
19

20 Ms. Blumenstein: Thank you Chair. Yes, we appreciate that testimony.
21 ...(inaudible)...discussing back and forth too because—
22

23 Mr. Robinson: Major landowner of Maui, so that's...that we're lucky to have that testimony, so
24 yeah.

25
26 Ms. Blumenstein: Yeah, so we...so we certainly don't want to duplicate where there are
27 regulations in place. Maybe we're really just trying to avoid future contamination of drinking
28 water. So we are aware that there are ...(inaudible)... regulations that are...you have to be
29 certified to apply a restricted pesticide on the island. You have to follow what's on the label.
30 But we also know that there's not leachability assessments done before a chemical is approved
31 and nothing prevents that chemical from being applied near a drinking water well. So there is
32 some risk inherent in leaving it at just trust that everyone is gonna use the pesticide according to
33 the label. I think, and I believe everyone does but this is kind of an insurance to make sure that
34 those pesticides have been proved and we know that they are detected both the Maui and on
35 other islands in wells that we want to make sure that...this is also not saying that you cannot
36 apply pesticide. It's the best management practices integrate the pest management means if
37 you cannot find an alternative pesticide that's going to address the pests that you have by all
38 means you're gonna have to use that one, but there is a second layer where you have NRCS
39 coming in and doing that IPM management. And I also wanna just add that we have the
40 Director of Health and the Director for Safe Drinking Water Branch testify to Council and to the
41 board on numerous occasions that they find there are gaps in the regulations that needs to be
42 addressed. So they are fully in support of this program. This is who they envisioned the
43 wellhead protection program would work and we know that the other counties are sort of looking
44 at Maui to see where this is gonna go. It's been going on for a very long time but we have good
45 backing, good science and regulators telling us that this is needed.

46

1 Mr. Robinson: Thank you. I want to do David and then we come back. David you wanna wrap
2 this up and then we can open it up to the Commission if they have questions.

3
4 Mr. Raatz: Thank you Chair. We don't have any other comments, but we would welcome the
5 body's recommendation to go back to the Council. We are going to Molokai tomorrow and
6 Lanai in December and we'd hope to report back to the Council by January 7th if possible.

7
8 Mr. Robinson: And Commissioners this is recommendations we don't have to all approve on it.
9 It's they can take each individual recommendation as one and decide what they want to do. It
10 doesn't have to be a majority, but it's just recommendations from this Commission. Having that
11 said, do you have a question Commissioner La Costa?

12
13 Ms. La Costa: I have. Thank you Chair. Mae brought up about the need for comprehensive
14 and blanket regulations if you will versus the select wells that you have shown on the map.
15 Can you give me your opinion on that please? Thank you.

16
17 Ms. Blumenstein: You mean in terms of whether it applies to private systems?

18
19 Ms. La Costa: Yes.

20
21 Ms. Blumenstein: Yes, this was discussed to exhaustion in the public process, and of course,
22 water supply is important where it's served. But this bill was designed so to say that it could be
23 addressed in-house with existing staff. We as the...you know we provide 90 percent of water
24 supply on Maui so if we could do this there's...of course there's options to apply to all public
25 water system later but there wasn't support for that in the public process when this bill was
26 designed. So it was addressed but just decided that it should not apply to privately owned water
27 systems for now.

28
29 Mr. Robinson: Thank you. Commissioners? Commissioner Carnicelli.

30
31 Mr. Carnicelli: Thank you Chair. So as I'm looking at these maps I'm going okay it's a map with
32 a line, and we're like okay if you're inside the line or not. And we're going like okay are these
33 lines geo tracked? Are we going to have metes and bounds descriptions for these areas?
34 'Cause I mean it seems like...anyways how delineated are these lines going to be?

35
36 Ms. Blumenstein: These are ...(inaudible)...files and there is a definition in the bill where you
37 have a parcel that will span say one parcel is partially inside and partially outside the line—

38
39 Mr. Carnicelli: Right.

40
41 Ms. Blumenstein: -- but there's not going to be metes and bounds designations. I mean this is
42 as precise. The ...(inaudible)...file with the model zones will either have a parcel within or
43 outside or partially inside and outside.

44
45 Mr. Carnicelli: So if my parcel is partially inside and I can kinda just sorta guess okay I can do
46 this activity right there, but not right there and it's gonna be up to who to determine where right
47 there and right there is?

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Ms. Blumenstein: I have to go to the language of the bill, just a second.

Mr. Robinson: Do you have a recommendation on how you would like it to read?

Mr. Carnicelli: I just...yes, thank you Chair. That's...I'll let her say...you can at least go to the draft there where it's addressed. 'Cause it may be addressed.

Mr. Robinson: We can be redundant. If you say, and she says yeah it's in there then it's good.

Ms. Blumenstein: Chair, I'd like to...yeah, refer to 19.61.120, Interpretation of well protection overlay districts zone boundaries. It says, if parts of the parcel lie within one or more of the delineated zones each part shall be governed by the restrictions applied to the zoning in which the part is located. The boundary between two zones passes through a facility the entire facility shall be considered in the more restrictive zone.

Mr. Carnicelli: Okay thank you. If I could a few more questions Chair?

Mr. Robinson: Please.

Mr. Carnicelli: You spoke of earlier in your slide presentation as far as like a vulnerability assessment. Has there been one for Maui? A vulnerability assessment for Maui.

Ms. Blumenstein: Yeah, that was in the context of the source water assessment that was done by the Department of Health for all public water systems whether they're privately owned or county owned. So that was done for all public water systems on Maui. And the aquifers so you don't really look...this sort of assessment is not done aquifer wide but the vulnerability assessment is for the aquifer as a whole. That's a separate...that was separate research that was used for the source water assessment.

Mr. Carnicelli: And do we have statistics and/or breakdowns 'cause you used cost as well for Maui. You didn't have any Maui statistics or Maui costs like you used Oahu. But is there anything that you have for Maui?

Ms. Blumenstein: In terms of treatment?

Mr. Carnicelli: In terms of data, statistical data.

Ms. Blumenstein: I'm sorry can you specify what kind of data you're referring to?

Mr. Carnicelli: I don't know it's your guys presentation, you're saying—

Mr. Robinson: You're talking about the treatment of contaminated water is that what—

Mr. Carnicelli: Yeah, I mean is if I'm looking at—

Mr. Robinson: The R.O.

1
2 Mr. Carnicelli: Let me see if I can gather what it is I'm trying to say. If you go back to either
3 slide 4 or 5. Go back to 4, go back one more, see if you got...so I mean is maybe my question
4 is this, this sounds great like who's against it. But is though the data showing that we actually
5 need it?

6
7 Ms. Blumenstein: That's the question?

8
9 Mr. Carnicelli: That's the question.

10
11 Ms. Blumenstein: Well, based on the support, this testimony that we had from the scientific
12 community and the Department of Health who really are the experts in the field saying yes, this
13 is how the Federal Wellhead Protection Program...(inaudible)...was envisioned to work. We
14 are fortunate to say that we don't have a lot of contamination in our drinking water wells. A lot of
15 other privately owned public water systems are not as lucky. So we both have sort the luxury to
16 site our new wells away from contaminating sources but we also need to protect what's already
17 there. The infrastructure that's there because once a well is contaminated it's not...it's years, I
18 mean it's essentially permanent. So we know there's gaps in regulations and we know that
19 there are contaminating events and I will say that we have been more fortunate than doing
20 something that unnecessary at this point. We would really not pursue it if we thought it was
21 unnecessary.

22
23 Mr. Carnicelli: Okay. Yeah, we just didn't get any of that data. I didn't get any of the
24 information from you know, Department of Health or these experts that you're talking about. So
25 I mean, I just haven't received them.

26
27 Ms. Blumenstein: Okay, they were with the Water Resource Committee with a resolution there
28 were testimonies provided by DOH and other resources. I can provide that—

29
30 Mr. Carnicelli: Okay, I'll to...(inaudible)...that's fine. So one last question Chair. How is this
31 going to affect future sourcing?

32
33 Ms. Blumenstein: Yeah, I touched upon new well siting as the third component.

34
35 Mr. Carnicelli: Right.

36
37 Ms. Blumenstein: When the department sites new wells the same criteria...I have to go back a
38 slide, but essentially—

39
40 Mr. Carnicelli: I saw you had well sitings I think is the word that you used there.

41
42 Ms. Blumenstein: Well siting. Yeah, so when we site new wells, again we site those...we'll do
43 the vulnerability assessment first to assess whether that's...we even have the well protection
44 modeled before deciding on a well site so you know what kind of underlying zoning, what kind of
45 existing, potential contaminating activities are there and you choose the site that has the lowest
46 vulnerability...(inaudible)...information. So that part of the full strategy that restricts the land
47 uses are high risks, outreach and best management practices and well siting.

1
2 Mr. Robinson: Any...you've got questions or recommendations? 'Cause okay, we got a couple
3 minutes left guys. Commissioner La Costa.

4
5 Ms. La Costa: Thank you, I'm looking at Exhibit or Map No. 2 and I noticed that the Kauaula
6 Stream is not a protected area yet that water feeds a lot of residences and ag land. So what
7 was your...how did you determine we're going to do here but we're not gonna do here?

8
9 Ms. Blumenstein: The wellhead protection area the capture zone is based on the groundwater
10 flow and particle tracking model. So it's not a decision sort of what area gets covered or not, it's
11 simply just in this area, the west side the wells are located fairly far mauka and they're fairly
12 steep gradient so that's why those wellhead protection areas are gonna look long and skinny.
13 That's the only area where water is gonna flow and reach the well within a two-year tentative
14 travel time. You can protect the entire aquifer or you know an arbitrary but if you gonna pass
15 restrictions on land uses you really gotta have a scientific basis and this model is the most
16 widely used by USGS and it was specifically designed to delineate capture zones.

17
18 Ms. La Costa: Thank you.

19
20 Mr. Robinson: Any other questions? Vice-Chair Larry Hudson.

21
22 Mr. Hudson: Really not sure as to who I address this question to. Are either of you familiar with
23 the Land Use Research Foundation of Hawaii or is there anybody from that organization in the
24 audience? Did you get a copy of this letter? Okay, go ahead follow at least we can start from
25 there. Page 2 they have something and I'll read from it. While the significance of the proposed
26 ordinance, as well as the potential economic and legal implications thereof would presumably
27 have prompted a thorough vetting of the issues raised by the board, they're referring to the
28 Board of Water Supply, as far as this organization is aware no such comprehensive follow up to
29 the board's concerns or the Committee's report including any credible studies was ever
30 performed by the Department of Water Supply. Did you read that?

31
32 Ms. Blumenstein: Yes, there were questions about ...(inaudible)... reviewed and the
33 information for that board meeting, is that back in 2015 I believe?

34
35 Mr. Hudson: I'm not sure. This letter is dated November 9, 2018.

36
37 Ms. Blumenstein: Yeah, I think it refers back to a 2015 letter. The information was provided to
38 the Board of Water Supply.

39
40 Mr. Hudson: Did anybody else get to view that information?

41
42 Ms. Blumenstein: It's part of the public record.

43
44 Mr. Hudson: Okay. Thank you.

45
46 Mr. Robinson: Commissioner Pali.

47

1 Ms. Pali: I just wanted a few clarifications and a few questions here. So based off of the
2 proposed bill that you have in front of us, are you saying that, and I'm in reference on Page 5,
3 actually it starts on Page 4 and ends at Page 5 that these items listed on Page 5 in 1, 2, 3, all
4 the way to 17, it's not that they're prohibited, it's just that if there is this type of use then that
5 would trigger a need to come in and get this additional overlay permit is that what I'm
6 understanding this bill to be?

7
8 Ms. Blumenstein: That's correct.

9
10 Ms. Pali: Okay, and also just because unfortunately sometimes things that appear to fight one
11 battle secretly fight other battles that sometimes aren't really raised and so I think my biggest
12 concern I'd like to just note that I don't like No. 7, No. 13, 16, and 17 on Page 5. I think because
13 it's too broad. It also would impact development, affordable housing, and so the other thing I
14 would like to just comment on is I like that you pointed out 90 percent of the drinking water wells
15 is handled and I guess managed by Maui County. That was important for me to understand.
16 But I want to know how many contaminations have been recorded in Maui County that you
17 guys, your department is aware of or that's been reported?

18
19 Ms. Blumenstein: Any time there is a contaminating event the Department of Health is the
20 regulatory authority.

21
22 Ms. Pali: Okay.

23
24 Ms. Blumenstein: I did show a map on the slide that shows the—

25
26 Ms. Pali: It's the Oahu—

27
28 Ms. Blumenstein: -- Department of Health, no...yeah, so this is Maui and this is Department of
29 Health, Safe Drinking Water Branch. So they track contaminants year to year and do this
30 primarily to see if there's patterns, if there's changes and how persistent they are on the aquifer
31 over time. So we, the department if we have a contaminating event we would be subject to the
32 same drinking water rules under Safe Drinking Water Branch. But we don't necessarily track
33 the water quality of private purveyors.

34
35 Ms. Pali: I understand, but who had the...I mean I would assume that there must have been
36 some sort of continued contamination to trigger such a...you said you've been working on this
37 for ten years so to put collaborative efforts and time and money into something like this is it
38 because it was triggered by excessive contamination throughout the last 40 years? I guess I'm
39 missing that data.

40
41 Ms. Blumenstein: It was...well part of it is that there are contaminating events both...there's
42 been contaminating events for Maui wells, a few of them...most of those were legacy pesticides
43 they are not applied any more where we had to install costly granular activated carbon
44 treatment. But more so because we know there's contaminating events for private systems and
45 on other islands. So we know that the risks are there and like I said before I think we're more
46 fortunate that we have not...(inaudible)...

47

1 Ms. Pali: So...okay, so you don't really have record of multiple contaminating events that
2 triggered the need for this but you're thinking because you know that in the future it exists that
3 you'd like to get ahead of it like a preventative maintenance is that what I'm hearing? I'm just
4 trying to clarify, I'm sorry.

5
6 Ms. Blumenstein: Yeah, absolutely. This is just future and that it proposes to address only new
7 uses. So whatever is already there, it's grandfathered in. Whatever contaminants already there
8 we have installed treatment for for select wells. So this is more seeing when you increase
9 urban land uses, you know changes in land uses that you increase your risk.

10
11 Ms. Pali: So can I give my opinion.

12
13 Mr. Robinson: Your recommendation?

14
15 Ms. Pali: Oh yeah. So my recommendation just to be a happy medium would I like the 50 feet
16 around that, on heavily regulating that. I'm completely against Zone B and C. I think it's not
17 enough evidence that it's needed quite yet and I think that this could be a way to kill other future
18 endeavors as far as development goes. Also we have to remember that regulation has nothing
19 to do with enforcement. So I know that you mentioned gaps that are there but you can make all
20 the rules you want people are still gonna be illegal and there's nothing we can do about that. So
21 I just want to make sure that we're being friendly to other things happening on Maui. Drinking
22 water is important and I appreciate the effort, but as a happy compromise I think I'd be okay with
23 Zone A, but not Zone B and C.

24
25 Mr. Robinson: Commissioner Carnicelli.

26
27 Mr. Carnicelli: What is the Board of Water Supply weigh in on this?

28
29 Ms. Blumenstein: I can't recall how many times the board have addressed it, but I think there's
30 still a pending inquiry from Water Resources Committee to the Board.

31
32 Mr. Robinson: Does anybody have a recommendation? Yes, no?

33
34 Mr. Carnicelli: You know I'll just. Thank you Chair. I don't know...I don't have a
35 recommendation right now. Is truly what this is and I'm gonna, you know I mean,--

36
37 Mr. Robinson: Concern? You have a concern that you—

38
39 Mr. Carnicelli: Yeah, I mean yeah I do have a concern. I think that we...there's data that we
40 have nothing given. And I don't necessarily want to revisit this. We can send it up to Council
41 'cause they're gonna do whatever they're gonna do anyways. You know they're not gonna
42 listen, they're not gonna read the minutes of this. You know, they'll get whatever they're gonna
43 get. But to recommend passage, I think that there's just items in here that we don't have that
44 we would have to just say okay, is this a good law or not to recommend that we not do it it's just
45 like well, to prevent clean drinking water, like how could I not want to prevent clean drinking
46 water. So that's like, you know like okay, that's a no brainer. You want it. You want something
47 like this but in being around law and making law and ordinances and enforcement of a

1 ordinances there's intended and unintended consequences and I think right now for me there's
2 to many unintended consequences that I don't know to be able to just say wholeheartedly say
3 yes and yet the intent, love the intent of this.

4
5 Mr. Robinson: You recommend that we get more data? It's just a—

6
7 Mr. Carnicelli: No. I'm just gonna say like for me personally I don't have a recommendation on
8 this. That's just what I'm saying is I have no recommendation because I don't feel like I have
9 enough information to say yes or no to it, and so that's just me personally, Lawrence Carnicelli
10 is transmitting to the Council.

11
12 Mr. Robinson: Okay, so is David did you get Commissioner Pali's recommendation? Kahu Hill.

13
14 Kahu Hill: Mahalo. Wai o ke ola and water is life and it so important for all of us. There is some
15 contradicting things in this paperwork. I'd like to be able to study more or have more
16 information. This is a big step looks like for us protecting the waters is so important, but there's
17 some other things that's been handed to us and it seems so important that we be really aware
18 of that and more informed so I stand with Carnicelli in really wanting to know more information
19 or being able to go through what we have. That's just where I'm standing. And I also believe in
20 protecting the waters.

21
22 Mr. Robinson: Vice-Chair.

23
24 Mr. Hudson: I think needs assessment was completed. I think that there is evidence to show
25 that something like this is definitely needed. I do not like being reactive to anything. I'd rather
26 be proactive. And just because something didn't happen before doesn't mean it's not going to
27 happen in the future. So as Lawrence said earlier the intent is very good, but now let's talk
28 about the law itself.

29
30 Kellie mentioned that it doesn't matter what laws we make if can't enforce them then they
31 shouldn't be on the books and that's a 100 percent true based upon my past experience. We
32 can make all the laws we want but we have clearly state who's gonna enforce this. As for
33 myself, there's some flaws with this, but it's not that bad. And so I would recommend approval
34 as it is written and the reason why is because now we have a starting place. This isn't the end
35 of it. Once we get an ordinance in enacted it changes and changes and changes and tweaks,
36 and tweaks, and tweaks, and tweaks, until it finally is a workable instrument. But I don't have a
37 problem this. Thank you very much.

38
39 Mr. Robinson: Thank you. Anyone else? I have a recommendation that we start with what's
40 proposed and we allow exemptions for people who can prove that they are safe. It's kinda like
41 we do everything else with zoning. It's gonna be zoning, so it's gonna be Planning, so it's
42 gonna able to be looked at from different people. But drinking water is too important to
43 reactionary and we shouldn't have to prove that there is a problem before start protecting from a
44 problem. That's all. Anyone else? Seeing none. Calling Lunch, see you guys here at 1:30.

45
46 A recess was called at 12:23 p.m., and the meeting was reconvened at 1:33 p.m.

47

1 Mr. Robinson: Aloha. Thank you. Planning Commission is back in session.
2 Commissioner Carnicelli, yes?

3
4 Mr. Carnicelli: Thank you Chair. I just wanted to formally tie up B.3. I know that we kinda
5 finished it but I think we didn't actually make a motion recommendation to the Council. So I
6 would like to if it's okay with you make a motion to approve with our recommendations.

7
8 Mr. Robinson: Actually we did do recommendations. You had one, Commissioner Pali had
9 one, I had one and no other commission.

10
11 Mr. Carnicelli: We didn't have – I just want to make a formal motion that can then be
12 transmitted to the County Council.

13
14 Mr. Robinson: So David can you...(inaudible)...and go back to what you have for that please?

15
16 Mr. Raatz: Sure, and we are of course keeping recorded minutes. We can go back and later
17 and ...(inaudible)...

18
19 Mr. Robinson: Which we know all the Council Members are just waiting for.

20
21 Mr. Raatz: So we did have comments from Commissioner Pali recommending approval of the
22 50-foot Zone A, recommending against the Zones B and C because it there hasn't been enough
23 shown that it's needed. It may unduly restrict development and there's questions about
24 enforcement. And Commissioner Carnicelli said, we don't have enough information to
25 recommend passage but yet we don't want to go against clean drinking water. He's in support
26 of the intent but there may be too many unintended consequences so no recommendation at
27 this time. Commissioner Hill noted that there appear to be contradicting elements in the
28 paperwork. Other documents haven't been provided reiterating the concerns of
29 Commissioner Carnicelli. Need more information. Also on record as of course believing in
30 protecting water. The Commission's Vice-Chair expressed the view that the needs assessment
31 has been completed so there is enough evidence to show that this legislation is warranted. He
32 expressed the view that the intent is certainly good although he also noted enforcement
33 concerns and on balance he said there are some flaws but not that bad and he would
34 recommend approval. Thank you Chair.

35
36 Mr. Carnicelli: Okay, so I would like to move that we recommend to the Council approval with
37 the just read and stated recommendations to the Council.

38
39 Ms. La Costa: Second.

40
41 Mr. Raatz: Oh sorry Chair, I neglected your comment it was at the bottom of the—

42
43 Mr. Robinson: It's alright. I just want to move onto the next topic. I know you got it. All those in
44 favor please raise your right hand. So moved. Thank you. Director next item.

45
46 Ms. La Costa: I had seconded.

47

1 Mr. Robinson: Yeah, it's just a recommendation. Thank you.
2
3

4 **It was moved by Mr. Carnicelli, seconded by Ms. La Costa, then**
5

6 **VOTED: To Recommend Approval of Council Resolution No. 18-149 to the**
7 **County Council with the Recommendations of the Commission as**
8 **Discussed.**

9
10 **(Assenting – L. Carnicelli, P D. La Costa, A. Hill, K. Pali, L. Hudson,**
11 **C. Tackett, S. Castro)**
12 **(Excused – T. Gomes)**
13

14 Mr. Robinson: Let's go, yeah. Item 4.
15

16 Ms. McLean: Thank you Chair. The next public hearing item is a request from yours truly
17 transmitting proposed amendments to Title 19 of the Maui County to increase the penalty for the
18 operation of a transient accommodation without a necessary permit from the current \$1,000 to a
19 civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists.
20 David Raatz is again presenting the proposed amendments.
21

22 **4. MS. MICHELE McLEAN, Planning Director, transmitting proposed**
23 **amendments to Title 19 of the Maui County Code to increase the penalty for**
24 **the operation of a transient accommodation without a necessary permit**
25 **from the current \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day**
26 **for each day the unlawful operation persists. (D. Raatz)**
27

28 Mr. David Raatz: Thank you Director and Chair. So at last week's general election the Maui
29 County voters by a majority vote answered yes to the following question that was on the ballot,
30 Shall the Charter be amended effective January 2, 2019 to increase the penalty for the
31 operation of a transient accommodation without a necessary permit from the current \$1,000
32 amount to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation
33 persists unless a higher fine is authorized by State Law and to clarify that the current limit of a
34 \$1,000 fine to the violation for the violation of an ordinance is a limit of \$1,000 per day the
35 violation persists, and that's the end of the quote.
36

37 The Charter amendment which again was approved. I don't think it's been officially certified but
38 we have no doubt that it will be certified as being approved. It doesn't take effect automatically.
39 A corresponding ordinance needs to be enacted by the Council to take advantage of the
40 Council's new authority pursuant to this language it's now going to be placed in the Charter. So
41 in anticipation of passage of the Charter amendment, the Planning Department drafted the bill
42 that's before you today. It's a land use ordinance. It amends Title 19 so we need the Planning
43 Commission's recommendations before we can forward to the Council for their approval. I don't
44 know if we're on a fast enough track to get the ordinance actually enacted by January 2nd, but
45 we're hoping to get it approved some time shortly thereafter so that the will of the voters and the
46 Council can be effectuated and this new proposal can take effect.
47

1 I do want to acknowledge that the bill before you based on consultation we've had since we've
2 submitted it and some testimony that's come in appears to be too broadly worded and I think
3 you'll hear some of this in the testimony. One element is...the new Charter provision as I
4 mentioned does say you can have a civil fine of up to \$20,000 plus \$10,000 per day. We have
5 in this draft bill the language shall be \$20,000 plus \$10,000 per day. We would not object to the
6 language being changed from shall to may or a variation to show that there is discretion in the
7 Planning Director's hands on what level to impose the fines as.

8
9 In addition, the bill is drafted in such a way that any unlawful transient accommodation use of
10 any kind would be subject to the increased fine and we've subsequently understood the
11 Council's intent was to have the increased fine not apply to operators who do have a B&B
12 Permit and STRH Permit or perhaps Conditional Permit authorizing TVR use and they've merely
13 violated a term or condition of that permit or violated some other provision of Title 19. So the
14 increased fine as we understand it now is only intended to apply to operators that don't have
15 any type of permit and are completely violating land use laws in Maui County. So we wouldn't
16 object to that being changed in the bill as well. So...and again, like the previous matter this is a
17 bill that the Council is seeking the recommendation of the Maui Planning Commission and the
18 Lanai Planning Commission, Molokai Planning Commission as well, and you can either
19 recommend approval as drafted, recommend approval with revisions, recommend that the
20 Council not pass the bill or defer consideration of the matter pending the receipt of further
21 information. Thank you chair.

22
23 Mr. Robinson: Thank you. At this time, we'd like to take public testimony. I know it's been a
24 while since some people might have signed up so if you're here that be great. First I have
25 Sydney Smith. Thank you. Good afternoon, please state your name and you have three
26 minutes.

27
28 Ms. Sydney Smith: Okay, my name is Sydney Smith. I own Maliko Estate Coffee Farm in
29 Makawao with my husband. I was relieved to hear Mr. Rantz say that things were not as I read
30 them, you know, in this ordinance but I'm going to testify anyway. Aloha Michele and
31 Council...Commission Members.

32
33 I have a Special Use Permit and a short-term rental home permit on my 20-acre coffee farm in
34 Makawao and I appreciate the Planning Department moving forward with new tools to enforce.
35 So I'm all for that. But you know all the permit holders that I know would not knowingly
36 endanger their permit or break the law, but it's possible to unknowingly do it and so I'm gonna
37 give you some examples. There's someone in my neighborhood which is all very rural large
38 properties but they don't like signs and a provision in my permit is that I need to have a sign and
39 so my sign's been stolen three times. So the last time I put it up I put it on two big kiawe posts
40 in concrete and it will take a chainsaw and a couple of big braddahs to help get it off there. But
41 it still I was in violation every time the sign was stolen but I didn't even know it was stolen until
42 somebody pointed it out. You know it's like hey didn't you used to have a sign up there? You
43 know it's like...so I was in violation really unknowingly. And so I wouldn't want a \$20,000 fine to
44 be lowered on my head, you know for something that I didn't mean to do.

45
46 And another thing that happens to probably everybody that has a permit is your photos from
47 your website get stolen basically and put on either a scam site or on Craig's List or something to

1 get a booking from somebody or to get a credit card number from someone and they don't of
2 course put your permit number on that bogus site or that Craig's List ad. So you're in violation
3 even though you didn't do it. And so there are some RFS complaints filed right now on permit
4 holders that have had bogus sites put up without their number so this is another problem
5 that...and there's no way to contact a place that's maybe in Nigeria or Jamaica or something
6 that's trying to you know steal somebody's you know credit card numbers. So there again,
7 there's nothing you can do. And so I would like this law to be reflective of the intent of the
8 Council, and reflective of the intent of the voter which was to apply this to unpermitted people
9 that are breaking the law and not law abiding people that have accidentally had a violation of
10 some kind that they're either not trying to fix or that they didn't even know happened. So that's
11 all I really had to say.

12

13 Mr. Robinson: Do we have any questions for the testifier? Seeing none, thank you.

14

15 Ms. Smith: Aloha, thank you.

16

17 Mr. Robinson: Aloha. Mr. Passon.

18

19 Mr. Gary Passon: Good afternoon, Commissioners and Director. I also am glad to hear that
20 there's been some reconsideration of what's going on. And I want to second point that—

21

22 Mr. Robinson: Can you please introduce yourself again. It's a new item.

23

24 Mr. Passon: All right. My name is Gary Passon and from Kihei. And I'm also here with
25 comments from the Ubraunu Beach Reserve Association group which is about 163 owners. I
26 was contacted. I'm the president of the board there and I was contacted and asked to express
27 their concern about the two main points.

28

29 First was to apply something that was clearly aimed egregious behavior of unpermitted TVRS to
30 use those same rules against people who have gone through the trouble, time and energy to try
31 to do the right thing and be permitted and that that seems like it would...seems an extension
32 well beyond the intent of either the Council or the public in their votes. And the second was that
33 to establish a fine of \$20,000 that shall takes away from both the director and BVA's flexibility to
34 assign the value of a fine to ...(inaudible)... with the facts. So not all fines, not errors should
35 equal the same level of fine. That seems inconsistent. It doesn't sound like good public policy
36 and I don't think it's appropriate. So I think those are my two key points and look forward to the
37 final bill going back to that what the public voted for. Thank you.

38

39 Mr. Robinson: Thank you. Any questions? Seeing none, thank you for your testimony. Is
40 Mr. Couch...there he is. Aloha.

41

42 Mr. Don Couch: Aloha and good afternoon Chair and Commissioners. My name is Don Couch
43 and I too want to appreciate the Planning Department seeing how this could be changed a little
44 bit and my comments were on the whole shall. And I understand some of the reasoning behind
45 that possibly is that that gives, that says the Director shall do this and doesn't give them the
46 opportunity to...have fine somebody \$20,000 and somebody else \$1,000 and the \$20,000 say
47 hey that's not fair. Yeah, you're gonna have that but that's part of the job and it's part of the job

1 of the Director and the Department to meet out the punishments fairly. For instance, Ms. Smith
2 who came up to testify where your sign was stolen. If there's gonna be a penalty at all which I
3 know the Director has the opportunity to not do a fine all or in an example that has happened,
4 companies like Airbnb and VRBO will send, I don't know if you've gotten any mail from them,
5 snail mail from them that says, hey you have the opportunity to rent out your room, why don't
6 you just sign up with us? A lot of people are busy doing their work. They don't know about the
7 controversies that's going on between short-term rentals and not. So I know of one person who
8 got caught up in that and then when he found out it was like holy cow I didn't realize that. So to
9 have this thing say shall and not give discretion to the Director and say, you know that was a
10 potentially a just a mistake and not a \$20,000 mistake versus somebody who says, hey I don't
11 care what the law says I'm gonna run daily. Those are the guys you want to hit with the
12 \$20,000 and all kinds of things in between. So that's why the "shall" is important to say up to,
13 may be up to \$20,000 not shall be and with the exception of. Just say, it may be up to \$20,000.
14

15 And as far as the scam sites that has happened personally I was working for somebody and
16 their site's pictures and everything were taken and put up and somebody actually collected a
17 deposit and when the people showed up, there was no reservation for them or anything. So
18 that is happening a lot and to fine somebody for that you know, again, belaboring the point on
19 the \$20,000 is not a good idea you know for trying to make sure that people come into
20 compliance. And I think over and over again, the Department says our idea is to make sure
21 where people come into compliance. We'd rather them come into compliance than fine.
22 Hopefully that discretion is there. Thank you.
23

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

26 Mr. Carnicelli: Thanks for being here Mr. Couch. So how do you feel if the language for
27 violation of a current permit holder, okay hang on, you know if that was taken out, right. So this
28 is as if the violation on a...like existing people aren't part of this \$20,000 and \$10,000. How do
29 you feel about the "shall" versus "may"?
30

31 Mr. Couch: Still may.
32

33 Mr. Carnicelli: Okay.
34

35 Mr. Couch: It's still may because there are instances that I have firsthand experience with that
36 were fairly innocent, I can't say 100 percent innocent but it's like they didn't know and they
37 certainly once they were told, boom they were done. So...because people are enticing them,
38 you know Airbnb and VRBO, I even got one from the VRBO saying hey, you know you can do
39 your condo for short-term, sign up with us. I was really tempted to see how far they would take
40 it before they told you that oh no, you've gotta get your local permits. But didn't want to take
41 that risk especially with 20 grand on the line.
42

43 Mr. Robinson: Commissioners any questions? I got a question for you.
44

45 Mr. Couch: Yes sir.
46

47 Mr. Robinson: I think you know a little bit about this topic.

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Mr. Couch: I do.

Mr. Robinson: What's the difference between \$1,000 and \$20,000. I mean...as far as enforcement goes?

Mr. Couch: We had this discussion when I was on the Council and bringing up the short-term rental law that this is changing. We wanted the Department to have a little bit more of a hammer. As I mentioned, you have some people out there that are saying I don't care, it's only a \$1,000 that's the cost of doing business. Cost me \$4,000...I mean I charge \$4,000 a night for the rooms so I can pay the \$1,000 that happens which is amazing to me, but that does happen out there and it frustrates the heck out of the Department. That's the discussions we had coming up with this law. So we tried to get that to \$10,000 in the Charter two years...two elections ago that failed. So specifically pointing to unpermitted up to \$20,000 was enough for the constituency to say okay let's give this a try. So the \$20,000 is the sledge hammer to say look you're breaking the law, you know you're breaking the law. We've given you the chance, 20 grand today. I don't know that anybody is gonna make that a cost of doing business. People are physically saying a \$1,000 a day is the cost of doing business and I'm paying it.

Mr. Robinson: Okay, so the first part of the question is unpermitted. So if, if that will take care of the people whose signs are stolen. That will take care of people who have a violation of a noise or a parking violation. So they're already clear. So we don't have to worry about those people getting hit.

Mr. Couch: Correct.

Mr. Robinson: So now your concern is the people who are unknowledgeable and who get it. So...and your part is too...(inaudible)...the first thing that happens is a RFS, right?

Mr. Couch: Usually yes.

Mr. Robinson: So, so we're talking...absolutely yes, okay. And so...so then after that then...so a violation doesn't happen the first day somebody sees the thing.

Mr. Couch: Correct.

Mr. Robinson: You know and I think that's what you know I guess I...(inaudible)...starts happening, people get worried and they see the dollar amount, but it's not a gotcha. It's, it's we talked to you—

Mr. Couch: Understood.

Mr. Robinson: We cited you and we need...and again, and again it is also a vote on a Charter Amendment and I'm more worried...I'm not worried, I'm more looking for something to define the fine than to reduce the fine or to make a shall or maybe.

Mr. Couch: Right.

1
2 Mr. Robinson: You know I think, you know, that's the way that the Council can be easier to
3 enact something than to have such a discretionary threshold from one to 20,000.

4
5 Mr. Couch: I would say yes, but if you listen to the discussion at Council and what was on the
6 ballot it specifically says up to, so that's what I voted on anyway. I was happy to see that on
7 there. I voted for up to but not shall be. So that's my concern. And there are...to your point on
8 Notice of Violations. This one person, you know I'm a trusting guy usually and this one person
9 got several different notices. Saw the first one on illegal structure. The other two were down
10 below and freaked him out oh my gosh, put the stuff the away, fixed his illegal structure and
11 thought he was done. He got hit again and then finally saw that oh, I was supposed to read
12 these other two letters. So that's his claim. I'm not sure that that's 100 percent true but just the
13 reaction I got when he was discussing it with me it seemed like it was kinda true. So there are
14 people and it's not the only story I've gotten both being as a Council member and as an
15 executive assistant and even as Deputy Director, oh I didn't see that part or my, you know so
16 and so signed for it and I never saw it. There are excuses, most of them are bogus but I think
17 there are some legitimate. If there are and that's totally up to the Director and the Deputy
18 Director and the planner if there are, it's a legitimate excuse and the person can sell it then I
19 think yeah, you made a mistake, don't do it again, 'cause if you do it again it's gonna be not a
20 thousand but twenty.

21
22 Mr. Robinson: Thanks Don, appreciate it.

23
24 Mr. Couch: Okay thank you.

25
26 Mr. Robinson: Aloha. Next we have Eve Hogan. Aloha Eve, please introduce yourself and you
27 have three minutes.

28
29 Ms. Eve Hogan: Aloha I'm Eve Hogan. I'm the owner of the Sacred Garden in Makawao and
30 Sacred Garden Retreat on the adjoining property which is a vacation rental. And I'm really here
31 just to support what you've already heard and I'm so grateful to the Planning Department for
32 being aware of the mistakes in this if you don't mind me saying so for the oversights in that and
33 fixing it. I wanted to point out that as Sydney said I got an RFS, I'm aware that I'm on the list
34 and when I called to find out what it was for I was told that I was listed on some sites without my
35 number and so I did a search and I went on and I found some sites that I...they weren't just
36 bogus scam sites like Sydney saying although that has happened too. These are real vacation
37 rental sites that network with all the other ones and so I didn't put my vacation rental on them. I
38 don't know how they got there and when I tried to call them, they wouldn't take my call without a
39 booking number. So then I tried to email them, they wouldn't take it without a booking number.
40 I went down a hundred different rabbit holes and the only way I can figure out to reach these
41 people is to book something, you know, I can't do it. I just want people to be aware that no
42 matter what we do, we cannot possibly address all of the sites that list us. I don't even know
43 who they are.

44
45 So the other thing I wanted to just implore you was to recognize that if you make the same
46 punishment for the illegal vacation rentals as you do for the legal vacation rentals, you're not
47 giving much incentive to those of us who are legal and you're not giving much incentive illegal to

1 become legal. So I beg of you to listen to what everybody else just said and make the
2 distinctions in the bill. Thank you.

3
4 Mr. Robinson: Thank you. Any questions? Thank you for your testimony. Next we have
5 Will Spence.

6
7 Mr. Will Spence: Good afternoon Commissioners.

8
9 Mr. Robinson: Good afternoon.

10
11 Mr. Spence: Director. My name is Will Spence. I am here on my own behalf but also as a
12 voter. So when I became aware of this bill...well, let me back up a little bit. Back in June of this
13 year I staffed the Policy Economic Development and Agriculture Committee where Chair White
14 introduced a Charter amendment to up the potential penalties for illegal vacation rentals, illegal
15 bed and breakfasts for up to \$20,000 for the initial and \$10,000 thereafter.

16
17 The...so and also, you'll note in my testimony I made a copy of the resolution that finally passed
18 out of committee and it gives you the exact wording and I highlight the areas where it says up to
19 et cetera. When I became aware of this potential bill and I am very glad to hear thank you
20 David that this is...this wording is going to change. When I heard shall and I saw it also applied
21 to existing vacation rentals and you know, permitted ones and permitted B&Bs I went this isn't
22 what I voted for. This isn't what the Council passed. This isn't what was on the ballot. So I felt
23 obligated to come forward and say something with this.

24
25 When you use words like "shall" you put everybody in to the same bucket, every single violator.
26 Are there violations? Absolutely there are, but similar to what Mr. Couch was saying
27 everybody's story is different. I've been doing this for 26 years on this island and every single
28 time there's a different circumstance. You do have people who are habitually violating that lie to
29 your face, that post stuff on websites that you can't see with county computers or even within
30 Hawaii. Those things happen all the time. Those are the people that we should be going after
31 for the \$20,000 and \$10,000 a day. You also have people who make simple mistakes. People
32 trying just to keep their house, those kinds of things. There needs to be some discretion
33 practiced because again, not everybody's story is the same. Not everybody's trying to beat the
34 system. There's every circumstance imaginable. The...and again, the...this should not apply to
35 people who have gone through the process to get permission. It's you guys think you all are
36 nice and easy to get in front of, you're not. For those...especially Chair Robinson I know he's a
37 big pussy cat so...but you know most of the time they are honest mistakes people are really are
38 protective of their permits. You already have a big hammer. If they're in violation and they
39 continue to violate there are already provisions in the law that those permits can be revoked.
40 There's due process that's involved with it, but all the same, losing your permit and then not
41 being able to apply again for a considerable amount of time that's a pretty big hammer already.
42 So I would thank you for the recommendation towards keeping the intent of what the County
43 Council and what the voters approved. Thank you.

44
45 Mr. Robinson: Questions anyone? So you're in favor of the "shall" is what I heard?

46
47 Mr. Spence: No sir.

1
2 Mr. Robinson: Okay, Commissioner Hill.

3
4 Kahu Hill: I just wanted to know if you were in favor of those words, from “shall be” to “maybe
5 up to \$20,000?”

6
7 Mr. Spence: Yeah, let’s make it discretionary, whatever the proper wording is. That may be up
8 to what was the exact language of the reso...it just says the Charter question on the ballot said,
9 to a civil fine of up to \$20,000. The reso up above said, shall not exceed \$20,000. That gives
10 you room from you know to practice that discretion.

11
12 Kahu Hill: So you would also suggest maybe may not exceed instead of shall?

13
14 Mr. Spence: If it says, “shall not exceed” that’s just the initial fine. There’s still...you can still
15 fine up to \$10,000 a day thereafter. So...

16
17 Kahu Hill: Mahalo.

18
19 Mr. Robinson: I have a question.

20
21 Mr. Spence: Yes sir.

22
23 Mr. Robinson: So in the big scope of things like I asked the Council member before, what’s the
24 difference between 1,000 and 20,000 to make somebody to actually comply? How many, how
25 many...what percentage does actually these come about where people pay a fine and actually
26 correct their uncorrectness with just the 1,000? Because I mean, we’re focusing on the dollar
27 amount which is insurmountable but if we go...we know from Honolulu and different counties
28 you go to court and sometimes people...we’re about compliance. We really want to have the
29 number as a ...(inaudible)...not as a punitive and then we settle and they stop. So I mean can
30 you quantify that in the terms of your position and how many things that you’re actually able to
31 execute to where we have this fines actually be tangible instead of just a threat?

32
33 Mr. Spence: Well that...again, that should be at the discretion of the Director. I mean you do...I
34 think some people will just drop out of this once they’re aware that this potential fine is hanging
35 over them. There are some who like Don Couch said aren’t even aware that a permit is
36 necessary. So expect that some people are just gonna drop out altogether and just quit
37 operating. But there are some of those people who...I mean, when you see that they’re
38 charging \$15 or \$20,000 a night to stay at their home, you need something more than a \$1,000.
39 A thousand will be a disincentive to some, 20,000 is gonna be a disincentive for others.

40
41 Mr. Robinson: Yeah, and like I said you know we’ve had this law for a while because we know
42 that there’d be violators but we haven’t had any ability to stop them and I guess I’m not so sure
43 raising the dollar amount is still gonna do the trick. I know we’re ...(inaudible)...because it’s
44 larger but a \$1,000 five years ago a day was still a lot, you know just the rates have gone up.
45 And during your administration I know there was some pretty forward thinking commissioners
46 before that thought about maybe shutting down people’s water meters or doing something like
47 that to where it’s not a monetary thing, it’s more of a operational thing. And without water

1 because the County does own the water, without the water they couldn't operate unless they're
2 in the private places in, you know, in Kapalua.

3
4 Mr. Spence: Well, that might be two years from now for another Charter amendment. I mean,
5 there's lots of ways to go about this, so...but this is certainly one that the Council came up with
6 and the voters approved.

7
8 Mr. Robinson: Okay, thank you. Thank you for your testimony.

9
10 Mr. Spence: Okay thank you Commissioners. Good to see you.

11
12 Mr. Galazin: Thank you Chair. I would just like to point out and I have some comments I can
13 make after the public testimony but just to clarify one thing you just mentioned. Although the
14 Charter amendment was approved, you know we're still constrained by the powers granted to
15 us pursuant to State Statute and one of the sections that I'll expound on a little more if you'll
16 indulge after I said the public testimony is over, but County may by ordinance provide for the
17 addition of any unpaid civil fines to any taxes, fees or charges with the exception of fees or
18 charges for water for residential use and sewer charges. So it's a nice idea but water and
19 sewer you can't just turn off.

20
21 Mr. Robinson: So is...Corporation Counsel it says, it says water charges but not water service.
22 No, I'm serious. It says, it says water charges is for water, but water service and having a water
23 meter is also contingent on following County rules.

24
25 Mr. Galazin: Chair, I think you'd have a hard time convincing a judge of that.

26
27 Mr. Robinson: Thank you.

28
29 Mr. Spence: I would also note that the...the Charter provision says unless the State provides
30 even for more punitive fines. So the State may impose something else. I mean, you know
31 we're gonna be going into a legislative session. This is gonna be a big issue so stay tuned for
32 that as well.

33
34 Mr. Robinson: Thank you Will.

35
36 Mr. Spence: Okay, thank you Commissioners.

37
38 Mr. Robinson: Aloha. Mrs. Stone.

39
40 Ms. Sharyn Stone: And I've got to follow that act. Well, it's nice to know you're a big pussy cat
41 Mr. Robinson.

42
43 Mr. Robinson: Thank you Sharyn. Please introduce yourself, you have two minutes now.

44
45 Ms. Stone: Two minutes now what happened to the big pussy cat thing? Thank you. Aloha
46 Maui Planning Commission. I'm Sharyn Stone, permitted B&B owner since 2009. I worked
47 hard for that permit. Michele, you know how hard I worked for that permit and I really don't have

1 any tolerance for those who have not bothered to apply. Believe me I am all for enforcement.
2 However, and I'm very glad that David has returned my pulse level to relatively normal the
3 proposed legislation of a one size fits all lumping permitted operators with perceived violations
4 in with people who have made no effort at all to get a permit and this is where obviously I have a
5 problem and I think most people do. I just got two RFSs a few weeks ago for not having permit
6 number displayed properly on two websites. Sure enough I found those two old websites which
7 I hadn't used or paid for years. Instead of the permit number, my tax id was clearly shown. And
8 let me explain, when permits first came out I was told it was okay to have either your tax id or
9 your permit number. Now obviously that's changed and as soon as I found out I got in there
10 within a few hours and I was able to put my permit number on there. But let me ask you, is my
11 perceived violation the equivalent of someone operating with no permit, no liability insurance.
12 No guest safety measures in place and paying no taxes? I hope you agree that the answer is
13 no.

14
15 Let me explain something you may not be aware of there are hundreds literally of websites out
16 there with my name on it. I subscribe only two VRBO, Airbnb and Hawaii Visitors Bureau. Now
17 let me tell you about Booking.com which I tried for six months. My permit number was in those
18 original ads, but then I realized I had made a deal with the devil. They stole my organic listings.
19 So I demanded they take me off their websites. This one ginormous company has hundreds
20 literally of smaller websites out there, Hotels.com, Trivago or Booking.com under another name.
21 To this day, there are still sites out there that I know are Booking.com sites supposedly listing
22 me, but if you click on them you're told your dates are unavailable perhaps you'd like to look at
23 these alternatives. That is they continue to steal my name. They refuse to take down those
24 listing. No, those listings do not have permit numbers. Booking.com will not acknowledge these
25 listing even exist despite being sent screenshots showing they do. They tell me there's
26 something wrong with my browser. Now I might be a techy idiot but I'm not that stupid. Okay,
27 Oyster.com an associate of TripAdvisor who is in bed with Booking.com is another one who
28 refuses to remove listings. Skyscanner lumps me with Huelo Point Fruit Stand. There must be
29 a lot of confused tourists, it's a mile past my place.

30
31 Ms. Takayama-Corden: Three minutes

32
33 Ms. Stone: Hanamaui.com, no contact numbers on their site and I never put myself on there in
34 the first place, no permit numbers and this is just the first page of search results. But if this law
35 were to be passed in its present form these would be officially punishable violations, and of
36 course, I'd be running out of money really fast. So please limit the 20K and 10K thing to
37 unpermitted operators only and find a different specific fair helpful way to deal with any
38 perceived violations from legal operators. People who have done the right thing deserve
39 respect. One size does not fit all and in these days of weird politics I would love to encourage a
40 culture of can I help you rather gotcha. Thank you very much.

41
42 Mr. Robinson: Thank you. And you know with all due respect, her name is Sharyn Stone, so
43 you know...there are hundreds of her address out there. Thank you so much. Is there anybody
44 else that would like to testify at this time on this item? Aloha.

45
46 Ms. Zandra Amaral Crouse: Aloha, good afternoon guys. Thank you for being here all day and
47 serving us. I was compelled to testify because I sat through hundreds...Zandra Amaral Crouse,

1 I saw the Chair's...we gotta know who you are. Zandra Amaral Crouse testifying on my behalf.
2 I am real estate broker with a real estate firm and I do know that the board as well as many of
3 these people has fought for years for legal B&Bs and vacation rentals and I do know through the
4 hundreds and hundreds of hours that I sat through Council, Board of Realtors and public
5 testimony and community meetings and owners of B&Bs I do know the intent of the Council and
6 of the people and of me when I voted for this was to separate the legals from the illegals, to
7 penalize the illegals so that we may bring that...them into compliance with the law. So I humbly
8 ask that the testimonies that you heard before me said it very eloquently. We cannot punish
9 those who spend years literally and hundreds of thousands of dollars to comply with the laws of
10 Hawaii, of Maui County. So I humbly ask whatever needs to be done to separate the legals
11 from the illegals because this law was not...the intent was not to punish the legals. The sole
12 purpose and intent of this law in every meeting that I've ever gone to was to punish those who
13 refuse to respect the laws of this land. So I humbly ask that you take into consideration the
14 many testimonies that you have heard from people who have lived it and paid for it. Mahalo.
15 Thank you Planning Commissioners.

16
17 Mr. Robinson: Thank you so much. Anyone else would like to testify at this time? Good
18 afternoon, please introduce yourself and you have three minutes.

19
20 Ms. Catherine Clark: Aloha Commissioners. My name is Catherine Clark. So the subject for
21 the agenda today is penalties for unpermitted or illegal operation of transient accommodation
22 without necessary permit. Likewise, the Charter amendment read, for the operation of a
23 transient accommodation without a necessary permit. The ordinance before you in its current
24 state attempts to levy this fine against permitted rentals that might be in violation of their permit
25 although there's no definition of what those violations might be. The Charter amendment and
26 the subject of the meeting indicated that it would apply to a property without necessary permit. I
27 was pleased to hear Mr. Raatz clarify that the ordinance before you would be changed to reflect
28 that the new policies and penalties would apply only to unpermitted properties.

29
30 A couple of comments. Will there be a Notice of Warning allowing unpermitted properties to
31 correct the violation prior to a Notice of Violation and imposition of these new fines? The
32 ordinance doesn't clarify that process. In the first paragraph it states, if the director determines
33 that any person is violating or has violated any provision. The words, "or has violated" are new
34 in this ordinance. What does this refer to? Is it applying the penalty to something that
35 happened in the past? As with other testifiers I strongly feel that the wording should match the
36 Charter amendment specifying that the penalty would be up to \$20,000.

37
38 And one comment on the difference between \$20,000 and \$1,000. If nobody knows about it
39 there is no difference. So the real question here is how do you make everybody aware of it?
40 You put a notice in the property tax bills. There's usually only one page of paper in there. It
41 wouldn't even cost anything extra to add that. A front page *Maui News* story will capture a few
42 people, but once that paper has moved on, nobody else will know. So if you want it to be a
43 deterrent and a strong one which \$20,000 is, you need to figure out how to let everybody know
44 about it. Thank you.

45
46 Mr. Robinson: Thank you. Seeing that that's all the—
47

1 Mr. Tom Croly: Thank you Chair, Tom Croly. I don't want to repeat everything that's been said.
2 Obviously the points have been well made. I truly hope that this \$20,000 fine acts as an
3 effective deterrent. As Cathy was saying we need to play that up. We need to make sure that
4 everyone is aware. Sometimes people truly are not aware. You know in fact I get calls from
5 people saying I want to get a bed and breakfast or I want to get an Airbnb permit. And I go
6 there's no such thing as an Airbnb permit. There's a bed and breakfast permit but there's not an
7 Airbnb permit. And they said, no, no, no, I don't want to do a bed and breakfast. I just want to
8 rent out a room. And then I have to explain to them the full rules that go along with that. Just
9 renting out a room in your house means you have to get a bed and breakfast permit. It means
10 you lose your homeowners exemption and so forth. And I gotta tell you most people they're not
11 tuned into that. They really aren't. So there is truly the honest person out there who they think
12 it's okay to do this and to subject them immediately to a \$20,000 fine would certainly be quite
13 draconian.

14
15 Chair I heard you talk about RFSs and I just want to be clear. When someone files an RFS,
16 Request for Service, whether it's the County filing it, one of the people within the County or a
17 member of the public filing it. That's not immediately notified to the individual. That's something
18 that goes on their record if you will. But then it takes an enforcement action, a Notice of
19 Warning, maybe a telephone call, maybe an email in some cases before the violator or the
20 apparent violator is even notified. That is step one. Then if they don't take action to a Notice of
21 Warning in time, then step two comes where a Notice of Violation of occurs. But the RFS in and
22 of itself doesn't notify the person. So there can be that little black mark on your record if you
23 will, and the owner doesn't even know that that exists until they get notification from the County
24 about it.

25
26 I do wanna make note of some written testimony I hope that you received from Council Chair
27 Mike White who talked about being the originator of this, of this measure and that he didn't feel
28 that the language that was being proposed accurately reflected what the intent was when that
29 came up. Certainly the up to and certainly applying it to folks who already have permits. In fact,
30 I would ask and I would support what Chair White wrote in his testimony that we actually put
31 clearly in the language that it does not apply. That it specifically shall not apply to someone with
32 a permit. The consequence of violating the terms of your permits should be you lose your
33 permit. Then once you lose your permit if you continue to operate then you can apply this fine if
34 that's the case. But for any violation of your...the terms of your permit, you should be given the
35 opportunity to correct that violation and if that violation persists well then you know perhaps the
36 next action is to take away the permit. But just to be clear the way this is worded it sounds like it
37 could be applied to someone who already has a permit. Thank you Chair.

38
39 Mr. Robinson: Thank you Tom. Any other public testimony at this time? Seeing none, public
40 testimony is now closed. I'd like to turn it over to the Director if you have a second and I think
41 it's, you know we're all kind of hearing the same thing and I'm sure that you know from the
42 original to what you guys might want to propose before you let us eight knuckleheads take a
43 crack at throwing words in there, you know, can you do that?

44
45 Mr. Raatz: I do have just one point of information that came up in testimony about state
46 legislation. I think the reason that Council put that provision in the Charter amendment to
47 authorize higher fines if the State Legislature so mandates. There was a bill in the 2018

1 Legislative Session called House Bill 2605 that made it all the way to the Conference
2 Committee stage which is the last stage before both bodies, the House and the Senate give
3 approval and send it to the Governor. So it went pretty far and in this version it passed
4 unanimously out of the State Senate. It was kind of ...(inaudible)... regulatory scheme for
5 transient accommodations. It has a lot of different elements to it. One of them was a provision
6 that said any violation of a county transient accommodations ordinance shall result in at a
7 minimum a civil fine of not less than \$25,000 to be levied by the County Planning Director. So
8 you know I can't predict what the next Legislature is going to do but that was something that
9 looming and advanced pretty far down the path towards approval in 2018.

10

11 Mr. Robinson: David please read that one more time.

12

13 Mr. Raatz: Sure. Any violation of a county transient accommodations ordinance shall result in
14 at a minimum a civil penalty of not less than \$25,000 to be levied by the County Planning
15 Director and it went on elsewhere in the proposed statute to give the councils the authority to
16 establish what the fines would be and it could go above \$25,000 if they wanted but in this bill
17 they were purporting to mandate that the counties establish a fine of the minimum of \$20,000 for
18 any violation of a transient accommodations ordinance.

19

20 Mr. Robinson: And transient...transient is all transient not just short-term rentals or B&Bs we're
21 talking...

22

23 Mr. Carnicelli: No.

24

25 Mr. Robinson: No? It's just—

26

27 Mr. Carnicelli: Not in that bill.

28

29 Mr. Robinson: Not in that bill?

30

31 Mr. Carnicelli: No.

32

33 Mr. Robinson: I'm sorry, yeah Carnicelli please, please.

34

35 Mr. Carnicelli: Chair in my previous life I actually tracked HB 2605 from start to finish. It's one
36 of those infamous gut and replace bills. It did not pass as David had indicated. It made it all the
37 way to Conference Committee. It was the shortest Conference Committee in the history of the
38 Legislature. Senate sat down on this, House sat down on that side and they said are we going
39 to be able to come to anything that we are going to agree on? And they said, nope and they got
40 up and they left. So this isn't law. But it was one of those bills that it was...as he said it was an
41 ominous bill. It was I think something like 700, no I'm sorry, 78 pages long. It was...but it was
42 in there...anyways but it's not law—

43

44 Mr. Robinson: Not law.

45

46 Mr. Carnicelli: Not law.

47

1 Mr. Robinson: They didn't get past the snap. Okay, Director, did I give you enough time, okay
2 thank you.

3
4 Ms. McLean: Sure. Thank you Chair. Looking at the bill that we forwarded to you where the
5 wording says, except that the initial civil fine shall be 20,000 or shall be 10,000...I would prefer
6 the wording "shall not exceed" because if the language is may be 20,000 then that leaves it or
7 maybe up to 20,000 that leaves it wide open. But if you say, it shall not exceed this then that's,
8 that's what we're gonna aim for in most cases unless there really are extenuating circumstances
9 to change it. So changing it from shall be to shall not exceed I think is in concert with the
10 Charter amendment and addresses the concerns of the testimony.

11
12 Then after that there are four different instances in the proposed bill where these higher fines
13 could be levied. That first one I think can be revised to make it clear that it's intended for
14 operations that should have a permit but don't have a permit. That's what that's intended to say
15 but I agree it is broader than it needs to be.

16
17 And then the following three relate to operations that have permits already and our goal there
18 was because we have seen really horrible abuses of people who have permits and I agree
19 that's not the norm and so I'm fine with removing those three so that that the bill would only
20 apply to operations that do not have permits at all. But I do want to say that we have seen
21 ridiculous violations. Someone comes in for let's say a B&B for two rooms and it seems like a
22 nice little mom and pop operation and then we see something far, far different is the reality. So
23 that kind of thing is more in line with an unpermitted operation but certainly that is...those are
24 few and far between and it would be better to deal with those in their own way and not penalize
25 those who have permits and are doing their best to comply with their permit terms but then there
26 are situations out of their control where they end up technically being in violation but it's...they
27 are certainly keeping within the spirit of the law. Thank you Chair.

28
29 Mr. Robinson: And Commissioners patience please while we, we try to you know get this. So
30 that's a few changes that I think that we definitely want to see, but I'd like to...I know
31 time's...time is of the essence with this, suggestion of how we can see it in a written form. Are
32 you fast enough to type and throw it on top our screen in five minutes David?

33
34 Ms. McLean: Chair if I can suggest, if you look at Council Chair Mike White's testimony he has
35 proposed language.

36
37 Mr. Robinson: Okay.

38
39 Ms. Pali: Where is that at?

40
41 Ms. McLean: It was distributed.

42
43 Mr. Robinson: Okay, I'm on Page 2 of Mr. White's testimony.

44
45 Ms. McLean: So the only modification I would make and this would be in both sections where it
46 says, except that the initial civil fine shall be \$20,000, to change that from "shall be" to "shall not
47 exceed 20,000" and then same thing in the second paragraph, "shall not exceed 10,000". And

1 then in terms of you folks voting on language to send back to Council I think that's, that's in very
2 good form. They may still choose to tweak it and we still have the other commissions to get
3 input from. But for the sake of having something to look at for your recommendation that would
4 be sufficient.

5
6 Mr. Robinson: Wait, wait, wait, wait one second, one second. Director what about on Item
7 Number One of Mr. White's testimony of the deletion of those?

8
9 Ms. McLean: I think that's appropriate to delete those items too. So that permitted operators
10 who violate their permit terms are still facing the \$1,000 fine and not the 20 or \$10,000 fine.

11
12 Mr. Robinson: Okay.

13
14 Mr. Carnicelli: Or revocation.

15
16 Ms. McLean: Sorry?

17
18 Mr. Carnicelli: Or revocation.

19
20 Ms. McLean: Well, they might face revocation just under their permit terms. But it wouldn't
21 have a...the fines wouldn't change from what they currently are.

22
23 Mr. Robinson: Corporation Counsel.

24
25 Mr. Galazin: Yes, thank you Chair. I would further note there's one difference that may seem
26 slight but I think could be important between what was submitted by Chair White and what the
27 Planning Department had submitted. If you look at the Planning Department's submission, the
28 first one, Subsection C, Number lower case 1 it's the operation of a bed and breakfast home,
29 short-term rental home or transient vacation rental in violation of the Comprehensive Zoning
30 Ordinance. Whereas Chair White's specifically calls out Chapter 19.40, 19.64 and 19.65, the
31 Conditional Use Permit, B&B Permit and Short-Term Rental Permit. However, I know there's
32 situations in which a TVR is allowed through a Special Use Permit. So I would rather keep the
33 language or suggest that you keep the language in violation of the Comprehensive Zoning
34 Ordinance that way you don't unnecessarily box yourself in or box the Planning Department in
35 from enforcing something against somebody who you know, should have a Special Use Permit.
36 If you just do it...keep it the way that Planning initially wanted to see it in terms of violation of the
37 Comprehensive Zoning Ordinance that makes it broad enough to cover ever scenario I would
38 think.

39
40 Mr. Robinson: And Director I have one question for you before I turn it over to the Commission
41 its unpermitted, right we wanted to clear up all the TVRs, TVRs are a permitted use, it's a zoned
42 use and so all those other ones you have...(inaudible)...if we have unpermitted in type of the
43 language that which I...(inaudible)...we don't see and that's what we've heard testimony today
44 which we wanted to get cleaned up. Is there a recommendation we'd like to insert that in this, in
45 this changes?
46

1 Ms. McLean: Going along with Corporation Counsel's recommendation of language from the
2 Department's proposed bill being used rather Chair White's language. If it is going to reference,
3 if it's going to be as broad as the entire comprehensive zoning ordinance rather than the three
4 chapters cited by Chair White then definitely we would want it put unpermitted. That would
5 narrow it down appropriately.
6

7 Mr. Robinson: You have a recommendation of where you'd like to maybe insert that in that?
8

9 Ms. McLean: It would be, the operation of an unpermitted bed and breakfast, short-term rental
10 home or transient vacation rental in violation of the Comprehensive Zoning Ordinance.
11

12 Mr. Robinson: So Commissioners the suggestion is right at the top in the operation of a
13 unpermitted.
14

15 Ms. La Costa: It shows without a permit in the third line that's underlined. Is that redundant?
16

17 Ms. McLean: Yeah, well that's...we're sort of hybridizing the two. If we were to look at the bill
18 forwarded by the Department as I suggested saying, change "shall be" to "shall not exceed",
19 then in Item C.1, the operation of an unpermitted and bed and breakfast home and then just
20 strike 2, 3, and 4 and that would be...
21

22 Mr. Robinson: Commission at this time we'll take a five-minute recess and we'll get back.
23

24 A recess was called at 2:32 p.m., and the meeting was reconvened at 2:39 p.m.
25

26 Mr. Robinson: Aloha, Maui Planning Commission is now back in session. Director.
27

28 Ms. McLean: Thank you Chair if we can look at the language from Mike White's testimony. I
29 think that's the cleaner version to look at, then the underlying portion we would change, "shall
30 be" to "shall not exceed" and then we would delete the reference to those three chapters of the
31 Code. And so that whole paragraph would read, Pay a civil fine not to exceed \$1,000 in the
32 manner at the place and before the date specified in the order, except that initial fine shall not
33 exceed \$20,000 for the operation of a bed and breakfast home, short-term rental home or
34 transient vacation rental without a permit as required by the Comprehensive Zoning Ordinance.
35 This initial fine shall not apply to operations that have been issued a permit as allowed for under
36 the those chapters and—
37

38 Mr. Carnicelli: So how about under the Comprehensive Zoning Ordinance. Use the same
39 language.
40

41 Ms. McLean: Yeah, under the Comprehensive Zoning Ordinance. Because there are as
42 mentioned in Business Districts and in other places there are vacation rentals are allowed with
43 different types of permits so it's not just those three that were issued. So that same change
44 could be made to the paragraph below and then we can forward those comments to the Council
45 if that's the way the Commission wishes to go.
46

1 Mr. Robinson: And Commissioners we know that this, this will be, you know tweaked a little bit
2 too at the Council. These aren't the exact words, but I think the gist of it, so I'll open it up now to
3 Commission for comments at this time.

4
5 Mr. Carnicelli: The motion.

6
7 Mr. Robinson: Say it now, not ...(inaudible)... Commissioner Carnicelli.

8
9 Mr. Carnicelli: Thank you Chair. I'm in favor of the changes that the Director just read. I think
10 that there's a couple of things going on, you know, from all of the testimony written and verbal
11 here today is we have the intent. You know, I was actually at the original meeting as well when
12 Mike White proposed this. I think that the current language meets what the intent was. I think
13 when you look at what was on the ballot, a reasonable man would say that this is what was on
14 the ballot and what we voted on, and so then therefore I think that this is as written with the
15 changes is a good ordinance and if someone were to make a motion supporting it I would favor
16 that motion.

17
18 Mr. Robinson: Thank you. Having said that we have a motion on the floor?
19 Commissioner La Costa.

20
21 Ms. La Costa: I move that the ordinance be reworded as was presented by Director McLean.

22
23 Mr. Robinson: Thank you. We have a motion. Do we have a second?

24
25 Kahu Hill: I second.

26
27 Mr. Robinson: We have a second by Kahu Hill. Discussion on the motion? Commissioner Pali.

28
29 Ms. Pali: I would just like to put on record that although the majority of the image of vacation
30 rentals might be portrayed to maybe the more wealthy, we also have to recognize that because
31 of economy, because of the housing crisis there are many local families that are potentially
32 being illegal as well just because they would be on the streets if they didn't have that extra
33 money coming for that room rental. And so I just like to be sensitive and cautious of those
34 families as well as we work towards a solution not to throw the hammer at them but to help them
35 get on board, be legal and find a means to support their family as a they still in the place that
36 they were born. That's it.

37
38 Mr. Robinson: Corporation Counsel?

39
40 Mr. Galazin: Thank you for indulging me Chair. Just for the edification of the members as well
41 as perhaps those members of the public who may be watching. The State statute that
42 authorizes imposition of civil fines for violations of ordinance such as these does prescribe
43 certain things that a county must follow. That at the completion of an appeal in which the
44 county's enforcement action is affirmed and upon correction of the violation the case shall be
45 reviewed by the county agency that imposed the fine to determine the appropriateness of the
46 amount of the civil fines. And the department is supposed to consider the nature and
47 egregiousness of the violation, duration of the violation, number of reoccurring and other similar

1 violations, efforts taken to correct, degree of involvement and causing or continuing of the
2 violation and reasons for delay and other extenuating circumstances and that's a requirement
3 that we have to do. So I think your suggestion in keeping it to "shall not exceed 20,000" falls in
4 line with what the State statute already requires and recognizing that there no one size fits all
5 situation. Furthermore, I would just add that after completion of review the amount of the
6 accrued civil fine by the county agency the amount of the civil determined appropriate shall be
7 reviewed...shall be subject to judicial review notwithstanding any provisions for administrative
8 review and County Charters. So even if somebody thought we had an egregious violator and
9 the \$100,000 fine for operation of a short-term rental, it could go to court and a judge could still
10 deem that to be too much. So we already are prescribed in some ways in terms of limits on how
11 high we can go. But I think this...I think allowing for that flexibility is in line with what State Law
12 requires so I think that's good step for everybody. Thank you for allowing me Chair.

13

14 Mr. Robinson: Thank you. Commissioner Kahu Hill.

15

16 Kahu Hill: Mahalo Chair. I just wanted to share it was really eye opening for those testifying
17 today and I think as we move forward it's good for all of us to educate ourselves and to share
18 information because our lives that we're living and simple lives and what people are doing can
19 be so twisted and used on the internet today, you know and in coming times. And I think we
20 need to be mindful of that as well because people may be fined and they may not have done
21 anything that's outside of this so I think we need to still keep learning about this as we move
22 forward.

23

24 Mr. Robinson: Thank you. Commissioners anything else? I got a question. I'm sorry
25 Commissioner Pali I didn't understand your comment. Did you say...was there a justification for
26 this, for disregarding a law?

27

28 Ms. Pali: Absolutely not. Absolutely not. I just want to make sure that we are looking at all the
29 faces that this would encompass and that's why I like the openness of it.

30

31 Mr. Robinson: Okay, yeah because hopefully everybody follows the law. Okay, having that
32 said, Director.

33

34 Ms. McLean: Chair you have a motion to recommend approval of the bill with the revisions
35 discussed with the commission to narrow the scope.

36

37 Mr. Robinson: Okay, all those in favor the motion, please raise your right hand. That is seven.
38 Thank you so much.

39

40

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

42

43 **VOTED: To Recommend Approval of the Proposed Amendments to Title 19**
44 **of the Maui County Code to Increase the Penalty for Operation of a**
45 **Transient Accommodation Without a Necessary Permit to the**
46 **County Council as Recommended by the Department with the**
47 **Discussed Revisions.**

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

6 Mr. Robinson: Moving on.
7

8 Ms. McLean: Chair this is your last, oh no it's not the last, but last public hearing in this section
9 which is another proposed bill from the Department to amend your rules of practice and
10 procedure to authorize the submittal of electronic documents as official documents and this is in
11 anticipation of the County implementing the Maui Automated Planning and Permitting System or
12 the MAPPS system. The rules right now currently call for paper documents and so the
13 proposed amendments would allow for electronic submittals and David Raatz once again is
14 presenting the bill.
15

16 **5. MS. MICHELE McLEAN, Planning Director, transmitting proposed**
17 **amendments to the Planning Commission's Rules of Practice and**
18 **Procedure to authorize the submittal of electronic documents as official**
19 **documents, in anticipation of Maui County's implementation of the Maui**
20 **Automated Planning and Permitting System. (D. Raatz)**
21

22 Mr. David Raatz: Thank you Director and Chair. I would reference the Director's memo to the
23 body dated November 1st. And the proposal before you today is actually within your authority.
24 You're sitting not as an advisory body to the Council as you had been on the previous two items
25 we've discussed. But this is a proposal to amend your own rules to allow for the electronic
26 submission of documents to the commission in advance of and anticipation of the MAPPS
27 project being implemented countywide.
28

29 So the main actions you could consider taking today are adopt the proposed amendments as
30 presented. Adopt the proposed amendments with revisions. Defer consideration of the matter
31 or reject the proposed amendments. And I would note we haven't routed these through
32 Corporation Counsel so if you were to adopt, recommend adoption as presented there still could
33 be some technical amendments after we get legal review. But we're just proposing the
34 amendment of two sections of the Rules of Practice and Procedure for the Maui Planning
35 Commission.
36

37 First is Section 12-201-12, titled Communications. Currently that provision says all
38 communications shall go to the Planning Department at the specified mailing address and we
39 do correct our mailing address in this document. We would add another alternative that says,
40 Communications to the commission can be submitted via system authorized by the County to
41 allow for the submission of electronic documents. So that's for communications generally.
42

43 The other section we're proposing for amendment is also in your Rules of Practice and
44 Procedure, Section 12-201-20, titled Formal Requirements for Filing of Documents. And we've
45 got very similar language where we say, In addition to submittal of paper documents which the
46 rules currently envision, documents to the body can be submitted via system authorized by the
47 County to allow for the submission of electronic documents.

1
2 So fairly simple proposal. Oh, and finally one last element in the very last subsection of the
3 section, Retention of Documents by the Commission. We say that all documents filed with or
4 presented to the Commission shall be retained in either paper or electronic files. So again,
5 we're in anticipation of the County moving largely to electronic document based operation so
6 with that Chair, we would appreciate your favorable consideration. Be happy to answer any
7 questions. Thank you.

8
9 Mr. Robinson: Thank you. At this time, we're taking public testimony on this item. Is there
10 anybody in the audience that would like to testify on this item on please step forward? Seeing
11 none, thank you. Commissioners, any questions or discussion on this topic? Commissioner
12 Carnicelli.

13
14 Mr. Carnicelli: Yeah, Chair just one quick question is I guess I'm a little apprehensive to vote to
15 approve this if this is our own rules like this is one stop. You know, so if we say oh okay these
16 are our own rules let's vote for them and then they're gonna change. Are we approving the
17 change already or if they do change then they gotta come back?

18
19 Mr. Raatz: Thank you, Chair. If the MAPPS system changes you mean?
20

21 Mr. Carnicelli: No, no, no, I'm sorry Corp. Counsel. If Corp. Counsel says no, it needs to be a
22 comma here or whatever it is that they've gotta do. You know Corp. Counsel...
23

24 Mr. Raatz: I'm envisioning that if it's nonsubstantive changes that we could regard those rules
25 as being approved by the body. I defer to the Deputy Corporation Counsel if he has any
26 comments on that.
27

28 Mr. Robinson: And I think, you know, because it is our rules we can change it.
29

30 Mr. Carnicelli: Change our rules after we change our rules?
31

32 Mr. Robinson: Yeah, we can. I mean, that's what it is, is you know as we grow. So
33 Commissioner Kahu Hill.
34

35 Kahu Hill: Mahalo. I know for me I wouldn't be able to be on this planning commission without
36 printed documents 'cause of a issue that I have with technology. So if I was to adopt this it
37 would have to be with the revision that if requested by a planning commissioner that hard copies
38 would be sent or provided and I wanted to know if that's possible. I like the thought of being
39 green but just I'm not able...and others may not be able to do that either for reasons or for just
40 'cause there's so much documentation.
41

42 Mr. Robinson: Director.
43

44 Ms. McLean: Thank you Chair. The rules currently don't cover how information is provided to
45 the commission. This is for information or documents being submitted to the commission for
46 processing. So what this is saying, right now the rules as you can see are very specific on the
47 size of paper, so we...you know it says, bound and typewritten upon paper 8 ½ by 11 or 8 ½ by

1 14 inches in size, double spaced, except footnotes and quotes. I mean it goes into a lot of detail
2 about how a paper document is submitted. And the rules don't allow for electronic submittals.
3 This doesn't have anything to do with how we provide information to the commission.
4

5 Kahu Hill: Mahalo.
6

7 Ms. McLean: So if you feel very strongly about that, we could certainly put language in there,
8 but currently they don't address that in any way so we're not proposing to change that part of
9 the process.
10

11 Kahu Hill: One question. I know that we talked at one point of hopefully being able to have
12 laptops here in the future. So I thought maybe that would be connected to how the planning
13 commission would look at documentations in the future as well, not this one, but it's connected
14 to that.
15

16 Ms. McLean: And if we were to go there if there are still commissioners who want printed
17 copies we would provide commissioners with printed copies and I don't think the rules would
18 have to be amended for us to provide commissioners with packets in electronic form if we get
19 there.
20

21 Kahu Hill: If we get there. Mahalo.
22

23 Mr. Robinson: Commissioner Pali.
24

25 Ms. Pali: Question. So we would be adding the underlined areas that are new in this document
26 we have? I have a letter dated November 1, 2018?
27

28 Ms. McLean: Yes, except for the headings of each section that are underlined to call
29 them...(inaudible)...yes.
30

31 Ms. Pali: So in...under Number 1, Section B, submitted via system authorized by the County to
32 allow for submission of electronic documents. So am I to understand that if we do allow for
33 electronic documents since we are Maui County, ...(inaudible)...county, we could then, I mean it
34 would really open up for like written testimony because now they don't have to mail it, they don't
35 have to...(inaudible)...sign it, they don't have to physically bring it down or mail it, they could
36 just then email it or upload it and so we as commissioners need to probably understand that if
37 we do allow this that would open a portal to a lot more testimony which could be both good and
38 bad if assuming that the person writing it is really the person writing it.
39

40 Ms. McLean: And information doesn't go from the public directly to you folks. It all comes
41 through the Planning Department office and currently we receive...I mean a lot of the testimony
42 in front of you today, we received by email and we print it up and distribute it. So that doesn't
43 preclude it, it's just as a formality in terms of accepting applications. The rules don't call for that,
44 but we, you know, we take testimony and revisions and things like that.
45

46 Ms. Pali: This is also for applicants as well?
47

1 Ms. McLean: This is predominantly for applicants, but yes it would be for testimony.

2

3 Ms. Pali: Okay, thank you.

4

5 Mr. Robinson: Commissioner La Costa.

6

7 Ms. La Costa: Thank you Chair. Director if the system goes down which technology is want to
8 do then what happens if someone has a deadline to submit something and they can't get it in
9 8 ½ by 11, double spaced, yada, yada, yada to you before that. Is there an alternative way to
10 be able to continue to service the public in a timely manner?

11

12 Ms. McLean: That's a good question. And David has an answer.

13

14 Mr. Robinson: Corporation Counsel.

15

16 Mr. Galazin: Thank you so much Chair. In answer to your question Commissioner La Costa the
17 rules actually do have a provision for actions that may be taken after a deadline has passed and
18 for good cause this body can allow late submissions. So I would...I would be hard pressed
19 ...(inaudible)...scenario where the County's computer system and then that's the reason why
20 there's a late submission that this body wouldn't consider that a good cause. So...but there's
21 already something in the rules that addresses that for any kind of scenario that might happen.
22 You know be it, you know a hurricane or anything else.

23

24 Ms. La Costa: Thank you.

25

26 Mr. Robinson: Commissioners? And you know Commissioners I brought this up as part of
27 when I wanted to give some information to the Commission and I was away and I wanted to do
28 testimony and on top of the form which I will testify later on a different item, but it was...the
29 forms that are passed out to our people that get letters that are surrounded by 500 feet and so
30 no, it is not an option to where they can email. So in order, in order for somebody to do that
31 they'd have to do their research, call in, ask for a different area to get it instead of trying to get
32 something in by regular postage mail. So if somebody wanted to do that and I thought it was a
33 limitation of evidence, I thought it was a limitation of testimony and what we always want is we
34 never want to silence anybody at any time or lack any testimony, to take it all as much as we
35 can so that way in the future nobody can say that they weren't heard. And so I think this is the
36 part of it of opening it up electronically, it will ease...people can do it on their phone. And when
37 people do email, we have a tracking 'cause it's from an email address. Unless there's some
38 really good guy that knows how to bounce it around three, you know, that is even a better
39 tracking than a mail or somebody's signature 'cause we got the address that it came from with
40 the IP and the computer. So thank you.

41

42 With that said, do we have a motion? Commissioner Carnicelli.

43

44 Mr. Carnicelli: I move to adopt the proposed amendments as presented.

45

46 Mr. Robinson: Do we have a second?

47

1 Ms. La Costa: Second.

2

3 Mr. Robinson: Second by Commissioner La Costa. Discussion on the motion? Seeing none,
4 Director.

5

6 Ms. McLean: Chair, the motion on the floor is to adopt the proposed amendments to your Rules
7 of Practice and Procedure as presented.

8

9 Mr. Robinson: All those in favor please raise your right hand? And that is six. And it passes.
10 Thank you so much.

11

12 Mr. Raatz: Thank you.

13

14

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

16

17 **VOTED: To Approve the Amendments to the Maui Planning Commission's**
18 **Rules of Practice and Procedure to Authorize the Submittal**
19 **Electronic Documents as Official Documents, as Recommended by**
20 **the Department.**

21

22 **(Assenting – L. Carnicelli, P D. La Costa, A. Hill, K. Pali, L. Hudson,**
23 **S. Castro)**

24 **(Excused – T. Gomes, C. Tackett)**

25

26 Mr. Robinson: Next on the agenda is Item C1. We'll take a five-minute recess before that let
27 them get set up. Thank you.

28

29 A recess was called at 2:58 p.m., and the meeting was reconvened at 3:09 p.m.

30

31 Mr. Robinson recused himself for Item C1. Vice-Chair Hudson chaired the remainder of the
32 meeting.

33

34 Mr. Hudson: Good afternoon. Vice-Chair Hudson reporting. The Chair has recused himself
35 and will be a member of the public for this next item. Director.

36

37 Ms. McLean: Thank you Chair. This is an item under Unfinished Business. It's a request from
38 Ru Li for a Bed and Breakfast Home Permit in order to operate Ruby's Oceanview B&B, a two-
39 bedroom bed and breakfast located in the Interim District at 1367 Kilou Street, TMK: (2) 3-2-
40 020: 052 in Wailuku. The public hearing was conducted on October 9th and the matter was
41 deferred. I believe the Commission can choose to open up public testimony but the public
42 hearing was concluded at the last meeting and so it's the Commission's call today whether to
43 reopen for public testimony and Jared Burkett is the project planner.

44

45

46

47

1 **C. UNFINISHED BUSINESS**

- 2
3 1. **RU LI requesting a Bed and Breakfast Home Permit in order to operate**
4 **Ruby's Ocean View B&B, a two-bedroom bed and breakfast located in the**
5 **Interim District at 1367 Kilou Street, TMK: (2) 3-2-020: 052, Wailuku, Island**
6 **of Maui. (BBWK T2018/0002) (J. Burkett) (Public Hearing was conducted on**
7 **October 9, 2018 and the matter was deferred.)**

8
9 **The Commission may take action on this request.**

10
11 Mr. Hudson: Couple of housekeeping things. Commissioner Carnicelli—

12
13 Mr. Carnicelli: Yes sir.

14
15 Mr. Hudson: Did you get yourself up to date on this agenda item?

16
17 Mr. Carnicelli: I did.

18
19 Mr. Hudson: Everybody else was here during the last public hearing. Are there any objections
20 to opening up public testimony again? Seeing none, we will have public testimony. Go ahead
21 Jared give us a brief overview of what's going on please.

22
23 Mr. Jared Burkett: Staff Planner Jared Burkett. Previously there was not a unanimous vote so
24 we are...the Commission chose to vote to defer so that there could be consensus and because
25 there was bare quorum last time.

26
27 So today we're looking at Ruby's Ocean View which is...for two bedroom in the Interim County
28 Zoning District. It's located in a subdivision that has some protest which is why the County did
29 not make a recommendation for one way or the other. So there are two Requests for Service
30 that are on the property. Neither are related to bed and breakfast permits however one is...was
31 still open and I was regarding some assessment mistakes that are under investigation so they
32 can...it wasn't due to the applicant. Also there is...there were no complaints made on the
33 property via police reports so the County has determined that the application...the applicant met
34 the requirements and it's just now open to considering due to there being one other permitted
35 bed and breakfast home within the area of 500-foot radius. So we are now open for the
36 applicant to speak if you'd like and they can make a presentation regarding their intended view
37 of the bed and breakfast permit.

38
39 Ms. Ruby Li: Good afternoon everyone my name is Ruby. My English name is Li Ru, Ruby.
40 My English name is Ruby. Chinese called Ru Li. Thank you for give me the chance to tell you
41 about my dream of running a B&B in my home in Wailuku. I'm from Beijing, China for more than
42 two years...20 years I worked for an import, export business in Beijing. I am a legal resident of
43 U.S. I plan to become a U.S. citizen next year. I am so happy to be living America in
44 Hawaii...(inaudible)... We are married, my husband almost five years ago. I told my husband
45 only one question that we move to America. He would choose where we would live. He knew
46 Maui from his first visit here more than 30 years ago. He said Maui is the most beautiful place
47 in the world, I agree. I love Maui.

1
2 We have lived here more than two years. We spent our first year and a half in bed and
3 breakfast then a long-term rental it was my first time living in a B&B. It was so wonderful,
4 friendly, casual like living with family instead of in a hotel. It became my dream to have my own
5 B&B and to share the aloha spirit of warmth, kindness and acceptance with people from all over
6 the world.

7
8 It is my understanding from our Planner Jared that we have met all of the requirements of the
9 Maui County Code and that our home and permit conform to neighborhood. Unlike some in our
10 neighborhood we have chosen to apply with the strict requirements of the Planning Board. I
11 don't believe it is right or fair for me to be denied a B&B license because other have chosen not
12 to comply with the Planning Board rules. Our small two bedroom B&B will not impact the
13 existing neighborhood and will conform to quiet residential character that we love. I hope that
14 you will approve my application so that I can live my dream of sharing the aloha spirit in a B&B
15 with people from all over the world. Thank you. Mahalo.

16
17 Mr. Mike Dillon: Commissioners, my name is Mike Dillon. I'm honored to be the husband of
18 Ru Li, Ruby. We live in our home together at 1367 Kilou in Wailuku. Before moving to Maui I
19 taught English and economics in China. Before going to China, I was a small town lawyer in the
20 Midwest. As she said we've been in Maui two years, first in a B&B and then in a long-term
21 rental. It was first experience in a B&B a she found it to be overwhelmingly friendly, warm and
22 accepting like a family. She began her dream at that point to one day owning and operating her
23 own B&B on Maui. She is the embodiment of the aloha spirit. She is Miss Hospitality. She's
24 warm, friendly and accepting.

25
26 We hired Lisa Starr as our consultant to get us through the guidelines of the Planning Board.
27 We have invested consideration time and money complying with the Planning Board's strict
28 requirements. As required we mailed out 119 notices to our neighbors within a 500-foot radius.
29 There is only one other B&B within that 500-foot radius thus triggering this hearing requirement.
30 It's located at the very edge of the 500-foot radius. In fact, according to Lisa Starr there's only
31 one other B&B within a 2,000-foot radius so density of legal B&Bs should not be an issue. Our
32 immediate neighbors are supportive of our endeavors. Two of our neighbors are here to speak
33 in our behalf later. I must say I was surprised at the objections that we received from people
34 who we never met or knew not exactly the aloha spirit I expected and just within the last
35 30 minutes I received these petitions of additional opposition. There's no information as to what
36 was said to get the signatures and they were apparently gotten within the last few days. Our
37 address doesn't even appear on the petition so I'm at a loss to explain or respond to them.

38
39 As I understood the Commissioner's counsel at the October 9th meeting the Commissioner's
40 primary focus should be on whether we have met the requirements of Maui County Code 19.64
41 specifically 19.64 Paragraph M and I think that we have but I do want to address some of the
42 objections. So objections I know are expected and understood, understandable. Some people
43 want to revert to a time 20 years ago when life was simpler, there were fewer people and less
44 congestion. Others oppose our application because of the illegal businesses already in the
45 neighborhood that add to the traffic and noise. Some said they felt our B&B would affect
46 property values, cause more traffic and noise. We assured them in our individual written
47 responses that we too love the neighborhood and have invested substantially in our new home

1 and weren't about to do or allow anything that would negatively impact its value or our
2 neighbors. We will enforce our house policies to ensure that noise generated will be no more
3 than the dogs and motorcycles already in the neighborhood. Other opponents cited the grade
4 of our driveway as a concern. The drive is engineered and approved for two cars. The only
5 other B&B that's within the 500-foot radius has an exact same grade and it was approved and of
6 course there'll be no off street parking. So we submit that to deny our application because
7 others have chosen to ignore the law and cause traffic and noise is not fair or right. When there
8 is only one other B&B within the 2,000-foot radius of our home density should not be an issue.
9 We submit further that to do deny our application based upon fair or prejudice is contrary to
10 everything that the aloha spirit is supposed to represent. In compliance with Maui County Code
11 19.64(M) we submit our B&B will not impact the existing neighborhood and will conform with its
12 quiet, friendly, residential character. We trust you will make your decision based upon the law
13 and not fear, opinion or prejudice. Thank you. Any questions?
14

15 Mr. Hudson: Thank you. Any questions from the Commissioners?
16

17 Ms. La Costa: I have a question.
18

19 Mr. Hudson: Question. Hold on one second.
20

21 Ms. La Costa: Thank you. Thank you for testimony. When you talked about fear or prejudice
22 what kind of prejudicial actions are you talking about?
23

24 Mr. Dillon: Well, one of the letters that we received said we don't belong in the neighborhood so
25 I'm not sure what he was referring. I think we belong in the neighborhood as much as anybody
26 who's lived there 20 years. So I'm not sure exactly what he was talking about. We tried to
27 approach him and he waved us off, he didn't want to talk to us.
28

29 Ms. La Costa: Thank you. Appreciate that.
30

31 Mr. Hudson: Any other questions? Go ahead.
32

33 Ms. Pali: I think I mentioned this the last time you presented in October 9th I believe and I just
34 want to, for those that weren't there and if you can answer I do believe that...well, I just want to
35 thank you for going through the process of applying and doing the right thing, I mean, for that I
36 just really respect you and your wife. The difficulty at least for me and I'm sure the other
37 commissioners but I can't speak directly for them is that we believe that you know we've lost a
38 lot in regards to just sacredness. You know we hold, you know our homes they're sacred
39 places away from the tourist and our busy life and careers and that's really important to us and if
40 you look at the history of our islands we've lost a lot of that and so I just want you to know for
41 me I appreciate that it sounds like you may not impact the current environment in the
42 neighborhood. There are still some neighborhoods that are really sacred for more so residential
43 and we may reserve the right to keep them, those that way. And so for me it's a struggle
44 because you guys seem like good people and so that would just be my personal challenge as I
45 vote today.
46

47 Mr. Dillon: Okay, thank you.

1
2 Mr. Hudson: Any further questions? Seeing none, we're gonna open public testimony but
3 before we do a couple of things about public testimony. Public testimony is three minutes, not
4 four minutes, just three minutes, that's item one. Item two regarding public testimony it got to be
5 relevant. You can't talk about anything on the planet, speak to the issue, stay on track, speak
6 only to the issue. When you come up I will ask you to identify yourself, and then I'm gonna ask
7 you will your testimony be truthful. The applicant will have an opportunity to ask you questions
8 afterwards. I want everybody to understand that. There will be no badgering, no belittling,
9 everybody will conduct themselves in a professional manner. All right, having said that we'll get
10 started. John Brady.

11
12 Mr. John Brady: Aloha everybody. My name is John Brady. Aloha Committee Members, thank
13 you for the opportunity to express my views regarding the—

14
15 Mr. Hudson: John.

16
17 Mr. Brady: Yes sir.

18
19 Mr. Hudson: You promise to tell the truth?

20
21 Mr. Brady: Absolutely.

22
23 Mr. Hudson: On your testimony. Thank you please continue. Your three minutes start now.

24
25 Mr. Brady: Thank you. Aloha Committee Members thank you for the opportunity to express my
26 views regarding the proposed bed and breakfast at 1361 Kilou. I currently live directly next door
27 to Ru and Mike at 1367 Kilou so I get to witness on a daily basis the kindness and care they
28 demonstrate in the neighborhood. Checking in on the elderly neighbors, maintaining their yard
29 and home, always a friendly smile and wave as you walk by, demonstrating the spirit of aloha
30 on every level, even handing out Halloween candy. So to deny Li and Mike the opportunity to
31 show visitors of Maui is unimaginable since hearing I have been informed on many issues that
32 was discussed since the last issue.

33
34 Number one, there were 119 notices sent out to neighbors informing them of the proposed B&B
35 and at that time only seven opposed the idea which means to me a 112 did not sign the petition.
36 I was also told by another individual in the area who has a long term rental permit that it takes
37 30 percent of complaints or another B&B within 500 feet that the appointed city planner is not
38 able to recommend approval according to his regulations. Number three, it is to my
39 understanding that the public opinion, complaints and petition is not a valid argument in the
40 decision making of a B&B. Number four, Ru Li and Mike have a two-bedroom downstairs unit
41 with one bathroom and I cannot imagine there being two guests there at the same time sharing
42 a common bathroom.

43
44 In closing we all know as neighbors there's numerous businesses in our neighborhood
45 operating without permits. These have an adverse effect on noise, traffic, overnight parking on
46 the street which I might add endanger the children playing in the nearby area. So if
47 enforcement was achieved then the negative impact of the neighborhood would decrease

1 dramatically so the added one car in the neighborhood would go entirely unnoticed and the city
2 would be promoting a legal B&B enforcing fines on the illegal businesses. And this comes to
3 mind what my elderly grandma told me of a 100 years of age, she said, you know try not to
4 make a mountain out of a mole hill and I see only one car in the neighborhood and if they wasn't
5 before this board trying to do it in the right way, I see zero or no impact on anyone's lives in the
6 neighborhood. And you know I think we should reward those doing the right thing and punish
7 those who choose to go otherwise. Thank you very much for your time today and for your
8 volunteer work.

9
10 Mr. Hudson: Thank you. Any questions from the Commissioners? Seeing none, thank you
11 Mr. Brady. Next person is Diana Brady.

12
13 Ms. Diana Brady: Hi, my name is Diana Brady.

14
15 Mr. Hudson: Will your testimony be truthful?

16
17 Ms. Brady: Yes it will.

18
19 Mr. Hudson: Thank you. Please proceed.

20
21 Ms. Brady: Thank you. I would just like to say I'm sorry I wasn't here...able to attend the first
22 meeting so I didn't hear everything that was said, but I just want to say that they really are
23 commission about keeping to sacred neighborhood and I'm sorry I was behind the pillar so I
24 don't know who to address about that, to me I think that's what Ruby and Mike are doing here
25 by applying for the permit. It's the illegal bed and breakfast that we have in our neighborhoods
26 that I don't think are complying with that so I would like to see that this is approved just because
27 they are going through the process to be under permit, to be under the government regulations
28 and the law so that is just my thing for that. And as my husband indicated, we are directly next
29 door to them, we don't see any impact with the minimal guests that they're gonna have. One
30 car in the driveway I can't see that Ruby or Michael is gonna let any guests get out of hand or
31 adversely affect the neighborhood and so that is my intention of this. They are very kind and
32 caring with the neighborhood, very helpful and courteous. I'm sure if something is addressed to
33 them, they will take care of it. So thank you.

34
35 Mr. Hudson: Thank you. Any questions? Go ahead.

36
37 Ms. La Costa: Thank you for your testimony. Excuse me Ma'am. Both you and your husband
38 have talked about the illegal rentals in the neighborhood and your perception that Ruby and
39 Mike will be punished because of that or will be looked upon differently. As a neighbor and if
40 you know that are illegal rentals going on have you stepped forward to do anything about those
41 illegal rentals?

42
43 Ms. Brady: Not yet. We're not sure of the steps. But looking down the street we know there
44 are several in the neighborhood and I do, from that earlier meeting that you had earlier about
45 the increased fines I think that will help those go ahead and that I think will help if anybody has
46 issues with traffic or guests coming into the neighborhood I think that will help reduce that that
47 we have illegal bed and breakfast. I'm sorry, so did I not answer the question?

1
2 Ms. La Costa: You did, but only if the County is aware of who might be the—

3
4 Ms. Brady: Right, and I don't know the process for doing that and that will be an education for
5 me also 'cause I know I don't know how it's mandated if they have to be turned in or if you have
6 a committee that just looks through Airbnbs and I don't know how you compare that to who's
7 permitted 'cause I honestly don't know. I know there's several in our neighborhood that I'm sure
8 don't have permits but I would need a resource to look up to see, match houses up with permits.
9 So I'm not quite sure how that's available and it would be something that I would look into, so...

10
11 Ms. La Costa: Thank you.

12
13 Mr. Hudson: Thank you. Does the applicant have any questions for the Bradys? Okay, we'll be
14 moving on then. Next in the batter's box Andrew Mahaney.

15
16 Mr. Andrew Mahaney: Andrew Mahaney. My wife and I won the property at number
17 1232 Kilou.

18
19 Mr. Hudson: Andrew, Andrew, you promise to tell the truth?

20
21 Mr. Mahaney: I certainly do.

22
23 Mr. Hudson: Thank you sir. Please continue.

24
25 Mr. Mahaney: We've lived in the neighborhood called Ocean Estates for approximately the last
26 12 years. We had our home custom built because at the time I probably weighed as much as
27 myself and this gentleman and built on one level so I didn't have to climb stairs. Other than that
28 I'd like to say that this is a neighborhood. I certainly welcome these people to our
29 neighborhood. I spent three years in Asia during the Vietnam War, six years in the Air Force. It
30 was my dream to live here. Don't tell anyone it's less costly to live here than Massachusetts
31 where I came from. You don't want to hoarde coming in here.

32
33 Other than that this is a neighborhood. It is a mixed neighborhood. I bought my new car from
34 Mr. Rapoza, Japanese man who runs the Mercedes dealer down here. We have numerous
35 Filipino people, we have several doctors, there's a few dentists of which, Denise knows a couple
36 of them as well, the Dodson brothers who've worked on my teeth. This is a neighborhood.
37 Jan Apo is two houses down from me, he said, we don't want any businesslike things in the
38 neighborhood. Now businesslike things I have no problem with people that have apartments.
39 My neighbor across the street who designs and builds windsurfing devices that he can sell all
40 over the world, but a bed and breakfast is a 24/7 item. My neighbor directly next door who has
41 two apartments in their home have also applied for a four bedroom and they just amended it to
42 a two. I object to any bed and breakfast because again, this is a neighborhood and a
43 neighborhood supports family and people and not a commercial venture.

44
45 Please don't make our neighborhood another Kihei carnival. I wouldn't live on South Kihei Road
46 because of the congestion and the carnival like atmosphere. We chose this neighborhood and
47 built our home. I partially designed it for our own comfort. My three dogs enjoy it, my wife you

1 couldn't blast her out of there, we're growing our own tomatoes and fruits and vegetables that
2 we give out to many of our neighbors. There's an opportunity for elderly daycare or childcare. I
3 would suggest that those would be more acceptable type businesses for this couple to get
4 involved with because they seem like a very kind couple and I certainly welcome them to my
5 neighborhood. Thank you sir.

6
7 Mr. Hudson: Hold on one second. Questions from the Commissioners? Any questions from
8 the applicant? All right thank you very much. Next testifier is David Hoffman.

9
10 Mr. David Hoffman: Hello Commission my name is David Hoffman. I promise to tell the truth.

11
12 Mr. Hudson: David you gotta let me ask the question. You promise to tell the truth?

13
14 Mr. Hoffman: I do promise to tell the truth.

15
16 Mr. Hudson: Thank you very much.

17
18 Mr. Hoffman: I live at 1312 Kilou and have since 1998. As of the last hearing, I said at the last
19 hearing I take no pleasure in going up against a neighbor. There's no prejudice here. But in
20 this case today's objection in my testimony today is against a number of neighbors. Ocean
21 View Estates used to have an active HOA. We haven't had a formal meeting in about three
22 years but many of us still interact. As a result of the deferral of the final vote on the B&B we
23 now have today's meeting. Some have started to circulate petitions unbeknownst...there were
24 two petitions being circulated unbeknownst to each other until two days ago. There are
25 currently three active B&B applications pending in our neighborhood. The petitions and names
26 we are providing today are in objection to all and current and future applications. Today we
27 have submitted 54 unique TMKs in objection and if given more time we can get more.

28
29 But I would like to know if you deny...if you need to defer again is how many is enough?
30 There's about 110 homes in the neighborhood, 54 is a pretty significant number. So please give
31 me some direction if we have to come back to this again. I want to emphasize these again are
32 to all three. I remind you we moved into this specifically because we did not want to live in a
33 hotel district. If your approval goes through today you are moving us into that direction. We
34 purchased these homes hoping to avoid that Kihei carnival.

35
36 Additionally as a result of last month's hearing we have discovered an inordinate number of
37 illegal TVRs in our neighborhood and we are working with the Planning Department on
38 documenting and requesting RFSs on them. My only comment is this process is extremely slow
39 and perhaps with our due diligence and assistance it can be sped up and combined with the
40 newly voted increased fines perhaps we could reclaim our neighborhood into the one we used
41 to live in and hope to again someday. Vacation rental businesses should be approved in areas
42 already grandfathered in or in zoned Hotel districts not residential ones that do not want them.
43 The two other B&B applications are currently renting to visitors and we are trying to document
44 that now so they will be disqualified for two years. We don't have that documentation yet.
45 Thank you for your time I urge you please vote no and deny this application.

46
47 Mr. Hudson: Questions from the Commissioners? Mr. Carnicelli.

1
2 Mr. Carnicelli: Did I hear you say that you just found out about some illegal ones and now
3 you're trying to pursue RFSs on them? Is that what you said?

4
5 Mr. Hoffman: Yes, we've already done. We've already provided the County some websites,
6 URLs and photographic evidence of a few. We also were informed that a number of Notices of
7 Warnings apparently went out in October so we're trying to cross reference the ones that we
8 discovered with the ones that the County has already discovered.

9
10 Mr. Carnicelli: So when did you discover these?

11
12 Mr. Hoffman: Since the last hearing, October 9th.

13
14 Mr. Carnicelli: How long have those people been operating?

15
16 Mr. Hoffman: I have no idea. My wife and I went on line and we saw the little dots on Airbnb.
17 We were shocked there must have been a dozen or more.

18
19 Mr. Carnicelli: Oh, so you found them on line?

20
21 Mr. Hoffman: And we kinda suspected a few places, but yes we discovered them on line.

22
23 Mr. Carnicelli: Okay, 'cause I'm just trying to get a handle on if...I mean, how many illegal ones
24 would you say is in Ocean View Estates?

25
26 Mr. Hoffman: A dozen or more.

27
28 Mr. Carnicelli: A dozen or more. Here's the balance, I get that this is your community and you
29 guys wanna do what you wanna do in your community, but what I'm trying to balance here is if
30 there's a dozen of them that are illegal and you've gotta go to Airbnb and you gotta go on line to
31 find them then what impact are they having on the community. Like what I'm trying to garner
32 here is I guess that it's...you know there's the fear that this is gonna impact the community and
33 you know we're gonna be run amuck and yet, we gotta go on line to find them. So I'm sorry, I
34 don't have a question, I'm sorry Chair.

35
36 Mr. Hoffman: May I comment on that?

37
38 Mr. Hudson: Yes you may.

39
40 Mr. Hoffman: Since the internet has made this business type possible I believe in the last three
41 years our neighborhood has changed. We were wondering why our streets were so congested.
42 I was like what happened? How come there's so many cars here. There are times when
43 there's cars lined up on both sides of the street and you can't even drive down the street. And I
44 know there's a process to get rid of cars that are parking on the street, but the neighborhood
45 has been impacted that way. Car alarms have increased and more importantly with the visitor
46 industry, visitor business versus a long term rental, the dogs in the neighborhood can get used
47 to a long term neighbor. They get to know their habits, they know when someone comes home.

1 When there's a visitor checking in and out at 10 o'clock at night or talking loudly did you forget
2 my toothbrush, can you go get my suitcase or dragging the suitcase down that increased noise
3 is noise and the dogs particularly, and the car alarms alone have increased tremendously in the
4 last few years.

5
6 Mr. Hudson: Thank you Mr. Hoffman. Applicants you guys have questions? Mr. Hoffman, one
7 more question please.

8
9 Kahu Hill: Mr. Hoffman I just wanted to know did you go house to house to get these petitions
10 or how were they...

11
12 Mr. Hoffman: Okay there's two different petitions there. Both of them do identify specific
13 properties and both of them have languages in them specifically saying that they object to all
14 temporary...all vacation rental business in our neighborhood. I went, I got some of those, the
15 ones that are horizontal there I got some of those, my neighbor got some of those and
16 Gail Long who testified at the last hearing she got some of those. The vertical ones were done
17 by Mr. Mahaney and he started his in objection to the B&B that was going in next door to him.
18 We only discovered that he had his own petition going Sunday. So I was unable to get it to the
19 County yesterday because you were closed. But combined there are 60 names that you'll see
20 there. We believe there are six duplicates and therefore we have submitted 54 unique TMKs
21 today. We hope that's enough.

22
23 Kahu Hill: Mahalo. Just had one question on here. It's very clear when I'm looking at this
24 petition and Mr. Mahaney I see that people have signed it but it doesn't say right above what it
25 is. Was it all attached?

26
27 Mr. Hoffman: There is a letter...there should have been a letter that was attached.

28
29 Kahu Hill: I do see a letter I just wanted to make sure that the people understood.

30
31 Mr. Hudson: Mr. Mahaney you already had a chance to speak, sorry.

32
33 Mr. Hoffman: It was pretty clear to me in my conversations with him that everyone knew exactly
34 what they were signing and that they not only wanted to object to the B&Bs that was specifically
35 named that they didn't want our neighborhood turning into a TVR neighborhood.

36
37 Kahu Hill: Mahalo.

38
39 Mr. Hoffman: Thank you.

40
41 Mr. Hudson: Any other questions? Seeing none...hold on one second, Mr. Hoffman, the
42 applicant—Mr. Mahaney you had a chance to speak already.

43
44 Mr. Mahaney: Just like to clarify ...(speaking from the audience)...

45
46 Mr. Hudson: No, we're done. Have a seat. Thank you. Applicant come up to the—
47 Mr. Hoffman, just hang out over there.

1
2 Mr. Dillon: I just wanted to point out that the 54 reported opponents, some of those, many of
3 those may not pertain our 500-foot radius if both Mr. Mahaney and Mr. Hoffman have been
4 collecting. We haven't had a chance to determine which ones apply.

5
6 Mr. Hudson: Mike, do you have a question for the testifier?

7
8 Mr. Dillon: I just wanted to know which names apply to our B&B and which names apply to the
9 others?

10
11 Mr. Hudson: You have an answer?

12
13 Mr. Hoffman: The language of the survey says, we the undersigned are concerned owners who
14 urge our Maui County Planning Commission to deny a permit for a bed and breakfast in our
15 neighborhood of Ocean View Estates. We want to maintain our subdivision as a residential
16 neighborhood and do not want any category visitor accommodation businesses to be approved.

17
18 Mr. Hudson: You mentioned that you provided TMKs do you have reference points to how far
19 the TMKs are from the applicant's house that's the question?

20
21 Mr. Hoffman: I'm not sure I understand your question.

22
23 Mr. Hudson: How far do the people who signed the petition live in reference to the applicant?

24
25 Mr. Hoffman: Some of them are within the 500 and some are further, but again there's an
26 applicant at the bottom of the development and there's a applicant at the top of the development
27 so it encompasses all of them. And doesn't the 500 yard radius only pertain to granting
28 additional B&Bs?

29
30 Mr. Hudson: So your answer is you do not know how many then?

31
32 Mr. Hoffman: Not at this time.

33
34 Mr. Hudson: Okay, thank you. Thank you. Any further questions?

35
36 Mr. Mahaney: ...(speaking from the audience)...I would like to clarify your question.

37
38 Mr. Hudson: Mr. Mahaney if the answer was no before, it's no now. Next item,
39 Mr. Keaka Robinson. Please state your name.

40
41 Mr. Keaka Robinson: My name is Keaka Robinson.

42
43 Mr. Hudson: And you promise to tell the whole truth?

44
45 Mr. Robinson: I promise.

46
47 Mr. Hudson: Thank you. Please proceed.

1
2 Mr. Robinson: Thank you Commission, Commissioners. You know it's I wanted to talk about a
3 couple different things in the process but I guess first I'll start with I've met my neighbors, I've
4 been there twenty something years, raised three kids. Kids have walked, biked, dog to
5 the...around the block for training for sports, walk down to the beach, walk to the park. It's a
6 residential neighborhood and I got the notice and a person as involved as I am it was not even
7 easy for me to try to get my testimony. There's a certain amount of time for the hearing to do it
8 and that's why I sort of showed the...show that this is what we actually get in the mail. I don't
9 know if anyone's ever seen it. It's the first time I ever saw it. It doesn't, it doesn't state our
10 rights, it just states if we have an opinion really. It doesn't give us criteria of how we can protest
11 to bed and breakfasts and when there's nine people opposed to something that they took the
12 amount of effort it is to go and get this done, I now have so much more value and so much more
13 weight on it than I did before because I got this in I think 48 hours or less and just because I was
14 lucky enough to have a phone number who I can call and ask where I could email it in. So I
15 think that the thing that we did before...(inaudible)...

16
17 I heard the applicant talk about the aloha spirit and aloha spirit isn't a Hawaiian thing. Aloha
18 spirit is a thing that people share. It's nothing something that's...it's not an entitlement. Aloha
19 spirit is you know I hear you know, penalize, rewarded, we're here today because it's a
20 special...it made a trigger so you don't automatically get it. So this is not an entitlement, this is
21 something that you have to come for and ask and you have to be approved by a commission of
22 your peers. And we change laws to where people have to live here for five years first, we just
23 passed that. We passed different things. We hear about it's so easy for somebody to promote
24 something, yet we hear neighbors saying I know there's illegal rentals but I don't say anything
25 about it. Exactly, people don't say anything about it. People in Hawaii are humble, they don't
26 want to turn people in, but when you have this many protest letters and this much it means
27 something, you know. When people protest that's harder than supporting. Easy to support, be
28 everybody's friend, you know vote for everything that passes that's easy, but to be against
29 something to stand up for yourself, that's not a lack of aloha spirit that's a lack of, of nothing. To
30 me, I'm standing up for my neighborhood, I'm standing up for the safety of the kids that are
31 around us. People in this neighborhood they do long-term room rentals. There's a lot of senior
32 citizens and they supplement their income and they rent out rooms and I know these people. I
33 see these people every day. I see them for years, they don't move because people don't want
34 people rotating. It's too expensive to live in Hawaii we all know that, but these long-term rentals
35 that is what this neighborhood is for not for short-term. Thank you. Sorry.

36
37 Mr. Hudson: Okay, Mr. Robinson hold on. Are there any questions from the Commissioners?
38 Go ahead.

39
40 Ms. Pali: Just to be fair, do you live within the 500-mile...500-foot radius just to be fair.

41
42 Mr. Robinson: Yeah, so is on top of the paperwork there I did get the letter. I was notified and
43 what it is, people haven't been to Ocean View Estates before it's a tier. So when you have the
44 circle it encompass the circle and it's the...it is the street away, but it's also is the...again, it's
45 people that move there, they hardly ever, every leave, because one it's a great view, you know
46 for locals. It's for locals to get a view like that. And two, it's such a quiet neighborhood that you
47 know, that people sort of know each other but we have had problems with new vagrants coming

1 in, we've had problems with our HOA like he reported about people parking on the street, and
2 you know, and I think that's the type of things that we're concerned about.

3
4 Ms. Pali: So just to clarify everyone within the 500 got the letter and if you were outside you
5 didn't get the letter?

6
7 Mr. Robinson: That you'd have to ask the Planning Department.

8
9 Ms. Pali: Okay, so that was a yes? You're within the 500.

10
11 Mr. Robinson: I got the letter, I never took out a tape measure but I think I am.

12
13 Ms. Pali: ...(inaudible)...

14
15 Mr. Robinson: Yeah.

16
17 Mr. Hudson: Hold on one second, does the applicant have any questions? Hold on one second
18 Mr. Carnicelli has a question.

19
20 Mr. Carnicelli: Thank you for taking time to be here Mr. Robinson. Have you ever submitted an
21 RFS?

22
23 Mr. Robinson: To somebody that's doing an illegal rental in our neighborhood?

24
25 Mr. Carnicelli: Yes.

26
27 Mr. Robinson: I have not. I have not. Unfortunately, I don't...I'm not a person that goes around
28 and drive in my neighborhood looking for somebody who's illegal and like I said, there's a lot of
29 long-term renters there. But I have not submitted an RFS. I have submitted a protest letter
30 though.

31
32 Mr. Hudson: One more question Mr. Robinson.

33
34 Kahu Hill: Aloha Mr. Robinson.

35
36 Mr. Robinson: Aloha.

37
38 Kahu Hill: So you believe just this even one bed and breakfast it could influence the character
39 of your neighborhood?

40
41 Mr. Robinson: Is well this trigger is because it's not one, it's number two, and that's the reason
42 why we're here today is because it hit that trigger. I am a belief that residential neighborhoods
43 need to be protected, need to be maintained because our Mayor ran for affordable housing, our
44 second place ran against short-term vacation rentals. Everything has to do with housing, it
45 doesn't have to do with...nobody is saying we need more visitor accommodations, nobody.
46 Nobody is saying that. Everybody is saying we need to have more housing for people to work
47 and support the tourism industry, you know which I'm also in. And I think it's once and this

1 neighborhood it's a long term residential, I mean, you know I bought this house a long time ago
2 and people can't afford to move, people can't say oh, I don't like how the neighborhood's
3 changed, I don't like bed and breakfast, short-term rentals I'm just gonna go move somewhere
4 else. That's not the opportunity that these people have in this neighborhood. This is a long
5 term neighborhood. You know people in Wailea can say you know what too many tourist now I
6 can go get my third home. This isn't this neighborhood. Ocean View Estates is different.

7
8 Kahu Hill: Mahalo.

9
10 Mr. Hudson: The applicant you have any questions? All right, thank you Mr. Robinson.

11
12 Mr. Robinson: Thank you.

13
14 Mr. Hudson: Is there anybody else out there wishing to testify on this agenda item? Seeing
15 none, public testimony is closed. The applicant do you have anything else to say? You're
16 done. Okay, thank you. All right, Jared bring it back up and read to us again what the
17 recommendation is.

18
19 Mr. Burkett: Staff Planner Jared Burkett. The Department is making no recommendation due to
20 the protests. However, if the Commission does choose to decide to approve the Department is
21 recommending that you would choose to do a one-year permit and then of course if there are no
22 issues that would come up in that time the Department could make a renewal for when the one-
23 year is up. Also, we suggest that you make the approval contingent on having the
24 standard...the conditions listed on this recommendation. And then if...also if the Commission
25 chooses to approve that we also suggest that you, that we recommend that the Planning
26 Commission adopt the Planning Department's report and recommendation that was prepared
27 for the October 9, 2018 meeting as the findings of fact, conclusion of law, and decision and
28 order and authorize the Director of Planning to transmit said written decision and order on
29 behalf of the Planning Commission.

30
31 Mr. Hudson: Thank you Jared. Go ahead Commissioner.

32
33 Kahu Hill: Just a question for Corp. Counsel. Last time you shared about TMKs and about bed
34 and breakfast and there's a lot of testimonies opposing this and more that were given us today
35 and petitions and just wanted to be clear and understand the validity and the importance of
36 these today in this bed and breakfast.

37
38 Mr. Galazin: Chairman may I?

39
40 Mr. Hudson: Go ahead please.

41
42 Mr. Galazin: Thank you Chair, thank you Commissioner Kahu Hill for that question. I think it's
43 important to note from the start that the ordinance that you've gotta look, you've gotta base your
44 decision on has all these criteria one of which in Subsection R it lists the caps and the various
45 districts by community plan and if you look at Number 5, the Wailuku-Kahului District there's
46 36 B&B as the cap. Now that's a legislative decision. The County Council has decided it's okay
47 to take 36 potential long-term rentals or you know residential houses off of that market and allow

1 them to be bed and breakfast homes in this area. That's means they're gonna be in
2 somebody's neighborhood, it's wherever they go it's going to be a residence. It's probably
3 gonna be in a residential neighborhood, but Council is the one who's made that decision and
4 they gave you the standards by which you need to judge this.

5
6 When it comes to testimony and I would point out one of the petitions you received I would ask
7 you not consider because it refers to a different application, it's the one dated August 21st. It
8 appears to be for somebody named Jared and Catherine Libby. You also cannot consider
9 whether or not there are any illegal rentals. So far as I can tell that's been unsubstantiated and
10 that's not really a criteria that you're supposed to look at either. What you need to do and
11 whether or not there is, you know, the opposition seems to be all bed and breakfasts period
12 within this area. Again, that's not a criteria that you look at.

13
14 What you look at is really as I go down through the list you know, does the person live there, are
15 they in compliance with the other laws, they have their advertising, their smoke detectors, really
16 the one that you...that you really focused on I think in this based on what you've received today
17 is Subsection M which says, No bed and breakfast home shall create any impact greater than
18 those theretofore existing in that district and shall conform to the character of the neighborhood.
19 So take everything aside, look at this one house that's existing right now, if two bedrooms were
20 allowed to be used as a bed and breakfast is that going to have a dramatic impact on the
21 character of the neighborhood? Is that going to change how it is? The testimony that yes if
22 there's ten illegal rentals and five B&Bs obviously that's going to change the character of the
23 neighborhood. But that's not what you have before you. You're limited to the record that's
24 provided. The record consists of the Department's report, the evidence received and what
25 you've been able to illicit today and we can discuss that a little more at length if you need to but,
26 but for the fact that's there's one permitted B&B within 500 feet this wouldn't be before you this
27 would be an administrative decision. So there's...this would only be the second permitted B&B
28 and no short-term rentals in this neighborhood. If there are illegal ones then that's something
29 that needs to be taken care of but that's not a factor in your decision.

30
31 So you know wholesale opposition to any kind of short-term rental or any kind of B&B is really
32 inapplicable when you look at your standards because it's not specific to what is the impact of
33 this specific operation. I think you know like Commissioner Carnicelli brought up a great point,
34 you know, if all these things been going on what is the impact? What is the impact going to be
35 of this application and that's what you need to look at. And ...(inaudible)...again it comes down
36 to and I'll say it one more time for the benefit of everybody, Council has made this decision that
37 there are 36 of these within the Wailuku-Kahului area. You may like it or you may not like it but
38 your job here as Commissioners is to apply the standards that Council set forth in a
39 dispassionate and rational manner. Thank you. Does that answer your questions?

40
41 Mr. Hudson: Any other questions? Discussion? No discussion. Call for the motion. We have
42 to make a motion guys.

43
44 Ms. La Costa: I'd like to move that we accept what Planning has set forth.

45
46 Mr. Hudson: Is there a second.

47

1 Mr. Castro: Second.

2

3 Mr. Hudson: We have a motion and second. Discussion?

4

5 Mr. Galazin: Yes, Chair. I need to know exactly what the motion is.

6

7 Mr. Hudson: The motion I believe and correct me if I'm wrong is to recommend approval.

8

9 Mr. Galazin: Okay.

10

11 Ms. La Costa: That is correct with Planning –

12

13 Ms. McLean: With the conditions.

14

15 Ms. La Costa: With the conditions, sorry.

16

17 Mr. Galazin: Thank you.

18

19 Mr. Hudson: Go ahead.

20

21 Mr. Carnicelli: Thank you Chair or Vice-Chair. So somebody had accused me earlier of
22 enjoying this particular non-paying job and at times I do and this is the times when I don't. You
23 know you don't always enjoy it, sometimes you do, sometimes it's you know really feel like
24 you're helping your community other times you feel like you're stuck in the middle. So to me
25 this is where I'm going to land on this particular motion and that is it's kinda like Lona Ridge
26 where you have just a bunch of people that are against a thing, a concept and the community
27 doesn't want that and on one hand I really need to weigh that as a commissioner. Okay, this
28 community does not want this particular operation. There's a difference between okay you can
29 build things in your house, you can do these other things but you can't do this thing and so
30 there's this wholesale sort of opposition to this industry in my neighborhood. But when I look
31 through the 17 criteria that I have to judge this by and if I personally have to sign a decision and
32 order to a judge denying this applicant I personally can't go to any one of these and say I'm
33 going to sign this decision and order based on this particular thing. So I'm not gonna vote in
34 favor of this motion, but I'm also not gonna vote against this motion. So that is where I'm going
35 to land on this because it will show that I am split on it so that's where I land and thank you
36 Chair.

37

38 Mr. Hudson: You're welcome. Kahu.

39

40 Kahu Hill: I've been sitting in this chair for a year and this is one of the hardest times and you
41 know you seem such beautiful applicants and it was hard last time sorry, if there's some
42 emotion last time but just hearing all the people you know that you wanted this home as a
43 business Ruby and that really affected me and I've heard so many in the community in this local
44 community not in favor of this and it's very hard 'cause for any of those listening or apart of this
45 really commending those that are doing it right, those that are going through this and going
46 through the right channels to do things right and pono. And yet, at the same time it's very hard
47 because I can see how one, one thing can change and there is this Condition M on Page 4 and

1 it keeps coming back to me. So much is changing in our islands. I believe your home is
2 beautiful, you both seem beautiful to be able to open it to people and rent and support that for
3 the local community. I'm hearing such overwhelming testimony not to have a commercial
4 business in this area and so it is very difficult and I just wanted to know all your voices for me
5 have been heard this time and the last time we were together. Mahalo.

6
7 Mr. Hudson: Comments, no?
8

9 Ms. Pali: Sure why not. I sort of voiced my struggle earlier. I also struggle with trying to take
10 matters and fighting for them where they belong and so I was sort of even more challenged
11 when Corporation Counsel stated that you know this was put in at Council level like they said
12 we'll allow 36 vacation rental permits in Kahului-Wailuku. I mean, that's all residential, these are
13 it's not your home, it's my auntie's home, if it not my auntie's home, it's my cousin's home like
14 so that's the challenge and so I just wanna continue like that's great that people are showing up
15 to fight this but maybe we're in the wrong room, maybe we should have shown up and fought it
16 at the other place. And so here we are, its law, and we're tasked with did this applicant follow
17 the law? And so that's the challenge.

18
19 Mr. Hudson: Any other comments?
20

21 Mr. Galazin: Can I make...(inaudible)...

22
23 Mr. Hudson: Sure.
24

25 Mr. Galazin: Thank you Chair. And also you know as Commissioners you deal with a lot of
26 different applications and you know transient accommodations are often lumped in together but
27 there's an important distinction when you're talking about STRH applications and B&B
28 applications. One of the criteria for STRH applications is the number and substance of protest
29 letters you receive that's primarily because for an STRH nobody is living there. It's a house that
30 is rented out to somebody. Yes, there's a manager who's supposed to be on-call but really it's
31 free reigns and that's where I think a lot of people sort of might conflate the two with a B&B that
32 is a specific criteria on that's not there and it's not there for a specific reason and the legislature
33 and the County Council decided that wasn't to be considered and I think primarily if you look at
34 the history is because they are living there and they are renting out the rooms, but they are still
35 living there, it's still their home and they're just sharing some of the rooms. So you know while
36 you may in some instances be looking at a bunch of protest letters and denying a permit for a
37 transient accommodation for B&B it's slightly different. So there are situations where you can
38 consider it and situations where you really just can't as you said Commissioner Pali you know
39 there's black and white stuff laid down and as hard as it may be you've gotta look at what are
40 the record, where the facts match up with the law.

41
42 Ms. Pali: ...(inaudible)...

43
44 Mr. Hudson: Go ahead.
45

46 Ms. Pali: So I do feel better that the people are in the home, the applicants are in the home and
47 if, I always try to look at compromise so I might be joining Commissioner La Costa and Castro in

1 the recommendation of the Department that it's a one-year, it's a one-year provisional and that
2 will give the neighbors possibly an opportunity measure the true impact and also following up on
3 another neighbor it would help mitigate and get you know, get rid of the illegals and maybe
4 cleaning up the neighborhood might be a happy compromise.

5
6 Mr. Hudson: Commissioner Castro.

7
8 Mr. Castro: Thank you Chair. I too, I have mixed feelings about this but I have to support it.
9 They have gone through the process. Usually the process is a vigorous process and while I can
10 see both sides they did go through the process and therefore I would have to support it.

11
12 Mr. Hudson: Go ahead.

13
14 Ms. La Costa: Thank you Chair. This is a very difficult position to be in because you
15 understand both sides. Where I live they have short-term rentals and B&Bs and so I understand
16 the impacts that can happen, but conversely when you do something right then it should be
17 recognized and with a one-year license only and they have to come back to renew it then the
18 neighbors I think would then be able to see how much of an impact it does make and as
19 Commissioner Pali said and Corp. Counsel said if the law is X and you're doing X it's hard to
20 say sorry you can't. So this is a very difficult position I understand because I live short-term
21 rentals in my neighborhood and I also understand all the work that it takes to get the permit so
22 that is why I made the motion.

23
24 Mr. Hudson: Any further discussion? Seeing none, we will call for the vote. All those in favor of
25 the motion say aye, raise your hand. All those opposed. The motion carries.

26
27
28 **It was moved by Ms. La Costa, seconded by Mr. Castro, then**

29
30 **VOTED: To Approve the Bed and Breakfast Home Permit with the**
31 **Recommended Conditions of the Department.**

32
33 **(Assenting – P D. La Costa, S. Castro, L. Carnicelli - Abstained,**
34 **A. Hill - Abstained, K. Pali)**

35 **(Recused – K. Robinson)**

36 **(Excused – T. Gomes, C. Tackett)**

37
38 Mr. Hudson: Five-minute recess.

39
40 A recess was called at 4:08 p.m., and the meeting was reconvened at 4:15 p.m.

41
42 Mr. Hudson excused himself for the remainder of the meeting at 4:08 p.m.

43
44 Mr. Robinson: Aloha Director next item.

45
46 Ms. McLean: Thank you Chair this is another public hearing item a request from Dion Abbott
47 and Iris Lin for State Land Use Commission Special Permit in order to operate the Hale Ola a

1 Ululani a short-term rental home in the State Agricultural District on approximately
2 87,226 square feet of land located in the State Ag District at 19 Ululani Street at
3 TMK: 2-2-10: 046 in Kula. Kim Willenbrink is the project planner.
4
5

6 **B. PUBLIC HEARINGS** (Action to be taken after each public hearing.)
7

8 **6. DION ABBOTT and IRIS LIN requesting a State Land Use Commission**
9 **Special Permit in order to operate the Hale Ola a Ululani Short-Term Rental**
10 **Home in the State Agricultural District on approximately 87,226 sq. ft. of**
11 **land located in the State Agricultural District at 19 Ululani Street, TMK: (2)**
12 **2-2-010: 046, Kula, Island of Maui. (SUP2 2017/0026) (K. Willenbrink)**
13

14 Ms. Kim Willenbrink: Thank you Mr. Chair. Good afternoon and Members of the Commission
15 good to see you after a nice long day. My name is Kimberly Willenbrink and as a resident of
16 this County may I take this opportunity to once again thank you for all of your hard work and
17 dedication it's very impressive.
18

19 This matter is scheduled for your review and recommendation today, the owner/applicants
20 Dion Abbott and Iris Lin are seeking approval of State Land Use Commission Special Permit to
21 operate a two-bedroom short-term rental home in Kula in the State Agricultural District on
22 approximately 87,226 square feet of land. The street address is 19 Ululani Street. The owners
23 will be living on the property. As you're aware Ordinance No. 4315 was enacted in May 2016
24 permitting STRHs in the County Agricultural Zoning District with a State Special Permit.
25

26 I would like to appreciate Mr. Castro's comment in the last this is a process bed and breakfast
27 permit applications and STRH permit applications and it's a process from beginning to end. I
28 would like to mention there were no comments from the State related to the proposed STRH.
29 There were no reports filed with the Police Department. There were no Request for Services
30 and there were no letters of opposition. There are no other STRHs within the 500-foot radius
31 The Code currently allows for a cap of 40 STRHs in the Makawao-Pukalani-Kula Community
32 Plan area. As of September 30th there are only ten. The Department notes that there is an
33 approved and implemented farm plan for the property that is not anticipated to be negatively
34 impacted. The farm plan consists of bamboo, succulents, olives, a variety of fruits and citrus,
35 proteas, avocados and other various fruit trees and herbs occupying 60 percent of the land.
36 The subject property is currently served by the County Department of Water Supply.
37

38 You are here today to approve the State Special Permit. If you approve the State Special
39 Permit the STRH Permit will be approved administratively. The owner/applicants are here today
40 and with your permission they would like to deliver a presentation and to answer any questions
41 you may have. After the presentation, I will provide the Department's recommendation. If there
42 are no objections Mr. Chair I will invite Mr. Abbott and Ms. Lin to come to the podium.
43

44 Mr. Robinson: Please.
45

46 Mr. Dion Abbott: Mr. Chair, Planning Members my name is Dion Abbott. I live at 19 Ululani
47 Street in Kula. I'm a resident of Maui for the last 40 years. I've raised my children here. I've

1 lived in this residence for the last ten years and my wife and reside there permanently. It is our
2 permanent residence. We have an ohana that we're trying to get a Special Use Permit for. Our
3 business is in food. We open restaurants and we train kids. And so all the money that we put
4 out is for training our kids. We also use the property for training kids. We bring kids up to the
5 house and we teach them how to grow, we teach them how to cook. I'm a chef by trade and a
6 caterer. I also am a food developer. My wife is a business developer. We launched our first
7 business in 2014 which is Maui Fish and Chips where train, where we train our kids and we put
8 them through a very rigorous program that we fund completely. And we fund this because it's
9 my give back for Maui. When I grew up here, I grew up here with all the little restaurants that
10 you could just go get a ramen every morning, you could get lup cheong with your ramen over
11 here, you could go to Kihei and it was just sort of a peaceful little environment. I lost my kids to
12 Portland because there's nothing for them here. So we decided that we wanted to give back.

13
14 So our first restaurant was Maui Fish and Chips. Our second restaurant was Maui Teriyaki and
15 our third was a bakery called Maui Bread Company which I worked that last night and I got there
16 at 3:00 a.m. So we are asking for this short-term because we...when I moved into this house I
17 moved into this house in 2008 with a partner. We had another partner that was involved. A
18 couple years ago I bought the partner out completely and we incurred the debt on the property
19 so I refinanced the property. And when we refinanced the property it costs us about \$70,000 a
20 year or so and so we normally take all the money that we have and we put it towards training
21 our kids and opening new businesses and new restaurants. And so I'm asking for the Special
22 Permit so we can continue to move forward on what we're doing in our teaching. Iris will do the
23 presentation of our property and what it is that we do on our property. Any questions?

24
25 Mr. Robinson: I think we're good. Commissioners, does anybody need to see the
26 presentation? Have you reviewed the paperwork in front of you? I think we're good with the
27 presentation. I'd like to open this up now for public testimony. Would anybody here like to
28 testify at this time? Seeing none, would you like to give the recommendation please?

29
30 Ms. Willenbrink: Thank you Mr. Chair. The Department's...Kim Willenbrink...The Department's
31 full analysis is included in the staff report. The Department has no additional analysis or
32 comments to add. The application complies with the applicable standards for a State Special
33 Use Permit, State Special Permit. In consideration of foregoing the Planning Department
34 recommends that the Maui Planning Commission adopt the Planning Department's report and
35 recommendation as its findings of fact, conclusions of law, and decision and order and to
36 authorize the Planning Director to transmit said written decision and order on behalf of the
37 Planning Commission. Thank you Mr. Chair.

38
39 Mr. Robinson: Commissioners any questions for the applicant? Commissioner Kahu Hill.

40
41 Kahu Hill: Yes, I just wanted to understand just reading, you talk about teaching the children,
42 you had said that you had Maui Fish and Chips and then Maui Bread Company, but that you
43 made no income from that and that you were teaching children there and teaching on your land
44 and I just wanted to understand about that a little more clearly or...you have a nonprofit and
45 teaching—

46
47 Mr. Abbott: Sure. We do not have a nonprofit.

1
2 Kahu Hill: Okay.

3
4 Mr. Abbott: These businesses were set up and they're restaurant businesses. They
5 traditionally don't make money and these businesses were funded by Iris and myself to take
6 kids that it doesn't really matter where they come from. We have kids from King K that
7 Mark Elliott the Principal from up there sends down to us, we have kids that come in from Kihei,
8 it doesn't really matter where they come from. We take them in, we teach them sometimes how
9 to open a bank account, it really doesn't matter what it is we have to teach them, but we teach
10 them business and we teach them living and we teach kind of all the way down. We have a
11 student with us right now who now's in college, she's going to go to nursing school. She was a
12 a cashier at Fish and Chips for a year and a half. It's not really her calling and her calling is to
13 help other people. She'll be an amazing nurse. So that's kind of what we're doing.

14
15 Kahu Hill: You said you made no income from these businesses though.

16
17 Mr. Abbott: Right.

18
19 Kahu Hill: Sure be happy to hear from your wife.

20
21 Ms. Iris Lin: Hi, good afternoon, my name is Iris Lin. I am the wife and I also control the money
22 as I should and by the way, hats off to you guys, I can't believe you guys do this on a regular
23 basis. Yeah, my heart goes out to you guys. So financially speaking we have spent \$500,000
24 to date to invest in these restaurants because each restaurant in order to open it up just build
25 out and assets and all that it cost about \$200,000 per. And then we got some break from the
26 landlords but it does cost us \$500,000. When we elected...look at our finance and realize we
27 have to make other additional income we entered this process. We didn't know how arduous it
28 is. So it's naïve on our part.

29
30 So we've been holding all the property, no doing any rentals, nothing whatsoever just to honor
31 the process and that cost us \$75,000 to date. And just you know we're so pretty low in cash
32 and all these students actually comes from walks of life, some of them are previous
33 incarcerated, some of them have...mom that actually committed suicide and passed away, and
34 some actually come from pretty broken homes, some has been raped before, so they all come
35 to us through different avenues and we try to rebuild them as individuals because our beliefs is
36 that we don't want them to become unemployed and become another burden to the government
37 and they should succeed and surpass their trauma no matter what.

38
39 So we spend every ounce of our money and every ounce everything and the products that you
40 see here today we actually take all the fruits and everything that we have on land and try to
41 process them and make a little bit extra, maybe get our cost of goods lower or give it to people
42 who can use. So this is where I think your path is crosses that you guys were talking about jobs
43 and houses before this is where STRH can actually help jobs. So I'm hoping that you guys can
44 support us on the endeavor we're doing. It's incredibly exhausting to finance education and we
45 choose not to apply for any grants and anything at all because to these kids it's about dignity
46 and what reality is. We don't want to build them flimsy by the time they leave us and then they
47 live in some sort of hyper reality and they're just crippled just like the next kid.

1
2 Kahu Hill: Mahalo. One last thing. You said you wanted to have people come for healing to
3 your property does that include the students or you're wanting to rent the property to help,
4 'cause you call it the house of healing.

5
6 Ms. Lin: Yeah, it's both ways. It's really interesting how we ...(inaudible)...the property and
7 how it has been. So far we have 12 kids that we mentor every single week. They come up for
8 two to four hours a day and we also feed them as well and the people that has been brought to
9 us that we haven't charged them we just give them for free for housing because we're not
10 allowed to through this process and we didn't and has been a friend's friend who's been
11 divorced or somebody had actually been really traumatized by you know some personal events
12 and so people just kinda naturally came and we don't really know how they got it, but it's just
13 been so natural and organic. We just want to have a avenue that we're allowed to charge it
14 legally to support what we want to do. Me and Di are constant Costco shopper because we
15 can't afford anything so I'm one of those girls who will buy five t-shirts because it's on sale at
16 Costco. So I'm happy to tell you that any of your effort and support would definitely pass
17 directly and that's one of the reason why we bypass a lot of the programs because they're just
18 too stringent and there's too many criterias we can hop through.

19
20 Kahu Hill: Mahalo. Mahalo Chair.

21
22 Mr. Robinson: Thank you. At this time, do we have a motion?

23
24 Mr. Carnicelli: Thank you Chair, I would like to make a motion to approve as recommended by
25 Staff.

26
27 Mr. Castro: Second.

28
29 Mr. Robinson: Second by Commissioner Castro. Discussion on the motion?

30
31 Mr. Carnicelli: I would just like to say Chair that I as much as you might appreciate the work that
32 we do we only have to do it twice a month, you're doing it every day so thank you what it is that
33 you do too as well and thank you Chair.

34
35 Mr. Robinson: Anyone else.

36
37 Ms. La Costa: I was going to say the same thing.

38
39 Mr. Robinson: Thank you. Director.

40
41 Ms. McLean: Chair, the motion is to approve the State Special Permit as recommended by
42 Staff which is subject to the standard seven conditions I believe and then the STRH permit
43 would be issued subject to its numerous standard conditions.

44
45 Mr. Robinson: All those in favor please raise your right hand. That's five. The motion passes.
46 Thank you.

47

1 **It was moved by Mr. Carnicelli, seconded by Mr. Castro, then**
2

3 **VOTED: To Approve the State Land Use Commission Special Permit, as**
4 **Recommended by the Department.**
5

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

9 Mr. Robinson: Take a five-minute recess.
10

11 A recess was called at 4:30 p.m., and the meeting was reconvened at 4:35 p.m.
12

13 Mr. Robinson: Planning Commission back in session. Director.
14

15 Ms. McLean: Thank you Chair. This is your last public hearing item. A request from
16 Hue Thi Ha, excuse me if I'm mispronouncing that, for a Short-Term Rental Home Permit in
17 order to operate the Lahaina Blue Villa STRH, a three-bedroom short-term rental home located
18 in the R 1 Residential District at 211 Panaewa Place at TMK: 4-6-010:019 in Lahaina.
19 Ryan Quigless is the project planner.
20

21
22 **7. HUE THI HA requesting a Short-Term Rental Home Permit in order to**
23 **operate the Lahaina Blue Villa STRH, a three (3) bedroom short-term rental**
24 **home located in the R-1 Residential District at 211 Panaewa Place , TMK:**
25 **(2) 4-6-010: 019, Lahaina, Island of Maui. (STWM T2017/0030) (R. Quigless)**
26

27 **The Commission is reviewing the application because there are at least**
28 **2 permitted short-term rental home operations located within 500 ft. of the**
29 **subject property.**
30

31 Mr. Ryan Quigless: Aloha, I would normally say good afternoon, but I'll say good evening today,
32 so my name is Ryan Quigless, Staff Planner with the Maui County Planning Department. We
33 meet here today to review and discuss an application for a Short-Term Rental Home Permit for
34 what is referred to as Lahaina Blue Villa Short-Term Rental Home. Filed on October 4, 2017 by
35 Consultant Debbie Mitchell on the applicant, Hue Thi Ha. The applicant is requesting a
36 Short-Term Rental Home Permit to operate a three-bedroom short-term rental located at
37 211 Panaewa Place, Lahaina, Island of Maui. Pursuant to Chapter 19.65.060 of the
38 Maui County Code this short-term rental application must be submitted to the Maui Planning
39 Commission for review because two or more existing short-term rental homes are operating
40 within a 500-foot radius of the proposed short-term rental home lot. As of October 23, 2018, no
41 letters of objection were received by the Department. We have a presentation provided by the
42 consultant also if you would us to provide that for you.
43

44 Mr. Robinson: Commission that's up to you if you would like to see the presentation or have
45 you seen the paperwork in front of you? I think as long as we can ask questions I think we can
46 go through it.
47

1 Mr. Quigless: Absolutely.

2

3 Mr. Robinson: Thank you so much. At this time, I do have to open up for public testimony.
4 Anybody would like to testify on this item? Seeing none, thank you. Commissioners,
5 questions?

6

7 Kahu Hill: I just wanted to know if the owner lives here.

8

9 Mr. Quigless: The owner does currently.

10

11 Mr. Robinson: That's it? Okay, do we have a motion on the floor? Oh, I'm sorry,
12 recommendation first.

13

14 Mr. Quigless: The Planning Department recommends approval of the permit request subject to
15 the standard 22 conditions on short-term rental home approval.

16

17 Mr. Robinson: Thank you. At this time do we have a motion on the floor?

18

19 Mr. Castro: Move to accept the Department's recommendation.

20

21 Mr. Robinson: We have a motion to accept.

22

23 Mr. Castro: With the conditions.

24

25 Mr. Robinson: With the conditions. Do we have –

26

27 Ms. La Costa: Second.

28

29 Mr. Robinson: We have a second by Commissioner Lac Costa. Discussion on the motion?
30 Commissioner Pali.

31

32 Ms. Pali: I have this in front of me here, the circle and I see the support and I see the applicant
33 and then does this mean person against, the red. What does the red mean? You've got initials
34 there, sorry.

35

36 Mr. Quigless: ...(inaudible)...

37

38 Ms. Pali: Oh existing.

39

40 Ms. McLean: That's an existing.

41

42 Ms. Pali: That answers my question. So basically is the 500-foot radius is that what it is?

43

44 Mr. Quigless: Correct.

45

46 Ms. Pali: So currently there's two approved permits in the area.

47

1 Mr. Quigless: Correct.

2

3 Ms. Pali: Got it. By chance do you know the cap in the Lahaina area?

4

5 Ms. La Costa: 88.

6

7 Ms. Pali: Do you know where we are now?

8

9 Mr. Quigless: Let me look it up one moment.

10

11 Mr. Robinson: Commissioner La Costa.

12

13 Ms. La Costa: Directly across the street from the applicant is Spinnaker so there is already a lot
14 of activity coming and going. They have 13 units currently in short-term rental there. So as far
15 as an impact on traffic, I don't know if that there would be anything like that.

16

17 Mr. Quigless: Just to answer your question also, the cap is 88.

18

19 Mr. Robinson: Commissioner Kahu Hill.

20

21 Kahu Hill: There's two permitted in that area, right, STRHs within the 500 feet now.

22

23 Mr. Quigless: Yes, ma'am.

24

25 Mr. Robinson: Any other questions? Commissioner Pali.

26

27 Ms. Pali: How is the home currently being used?

28

29 Mr. Quigless: Currently it's being upgraded so the owners are living there and upgrading and I
30 don't know the intent when they go into full operation if they are approved, but I would assume
31 that they would not live there once it was approved as a short-term rental.

32

33 Mr. Robinson: Commissioners good? I'm surprised that there's not even a protest letter. I think
34 that's pretty rare. But as we learned today protest letters don't matter so you know, so it doesn't
35 matter anyhow. But I'm surprised there's not people at least speaking up on it. I remember we
36 had extensive testimonies with a person trying to build housing in Lahaina for long-term rentals
37 and for people I think it was across the street from the church so, you know so I know that it is
38 something that is a...is desirable. Okay, seeing that there's no more communication or you
39 have no question...Commissioner Pali.

40

41 Ms. Pali: When did the owners of the home acquire the property?

42

43 Mr. Quigless: Sorry, I don't have this.

44

45 Ms. La Costa: It was about 15 months ago. I...(inaudible)...

46

47 Mr. Quigless: Thank you for that. And I did confirm with the applicant it was 15 months ago.

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Mr. Robinson: Commissioner Pali.

Ms. Pali: May I ask Corp. Counsel?

Mr. Robinson: No, I don't want you ask Corp. Counsel anything, I really don't.

Ms. Pali: Please.

Mr. Robinson: I heard enough from him today. Are we good?

Ms. Pali: Would you know Chair if we have caps let's say you can't have more or at least we'll revisit after it reaches the cap, but do we also have a saturation allowed per block.

Mr. Robinson: Yes, so it's a good question. So what the County Council is they made the Short-Term Rental Law as well as B&B Laws and what they did, they gave triggers. They gave trigger to the Planning Commission that we could come and say even though it's automatic when things are clustered or in a certain area or there's protests within 500 feet people may disagree legally but that's why we're here. Yes, we are able to bring things like that up. And that's why we're here today.

Ms. Pali: So my question would be would you know how the surrounding properties are currently occupied, do you know if...we just squeeze out all the locals on this block or do we still have some long term people that live...I'm just curious. I mean I'm from Lahaina so...

Mr. Quigless: It's mostly residential in all directions and that's also noted in the report also.

Ms. Pali: Thank you

Mr. Quigless: It's not a dense concentration of short-term rentals or B&B properties.

Ms. Pali: Thank you.

Mr. Robinson: I think one thing to note that at least with the current passing of the new ordinance where people have to live there for five years there's only a few people that are getting under this speculative, you know make a profit off people real quick and turn into a short-term so we shouldn't see any more of that hopefully after these next couple months. Okay, we good? Director.

Ms. McLean: Thank you Chair. The motion on the floor is to approve the Short-Term Rental Home Permit subject to the 22 standard conditions in the staff recommendation.

Mr. Robinson: All those in favor please raise your right hand. That's five. All those opposed. ...(inaudible)...that will be counted as a yea, motion passes. Thank you.

Mr. Quigless: Mahalo for your time Commissioners.

1 **It was moved by Mr. Castro, seconded by Ms. La Costa, then**
2

3 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
4 **by the Department with Conditions.**

5
6 **(Assenting – S. Castro, P. D. La Costa, L. Carnicelli, A. Hill,**
7 **K. Pali-Abstained)**

8 **(Excused – T. Gomes, C. Tackett, L. Hudson)**
9

10 Mr. Robinson: Director.

11
12 Ms. McLean: Thank you Chair.

13
14 Mr. Robinson: Sometimes it's good to go last you know, you never know.
15

16 **D. DIRECTOR'S REPORT**
17

18 **1. SMA Minor Permit Report**
19

20 **This is for notification and review purposes. No action is anticipated.**
21

22 **2. SMA Exemptions Report**
23

24 **This is for notification and review purposes. No action is anticipated.**
25

26 Ms. McLean: You have your SMA Minor and Exemptions Report. Are there any questions?
27

28 Mr. Robinson: Commissioners any questions. Seeing none.
29

30 **3. Discussion of Future Maui Planning Commission Agendas**
31

32 **a. November 27, 2018 agenda items**
33

34 Ms. McLean: Next is discussion of future Maui Planning Commission agendas you have your
35 memorandum from Mr. Yoshida with the items that are listed on the agenda for next meeting.
36

37 Mr. Carnicelli: Chair.
38

39 Mr. Robinson: Commissioner Carnicelli.
40

41 Mr. Carnicelli: Chair I would like to just state on the record that with respect to Item C.1, on the
42 proposed agenda for November 27, 2018 I would like to provide notice to the Commission and
43 to the public that I intend to make a motion to rescind something previously adopted specifically
44 rescinding my motion to reject the hearing officer's recommendation related to Item C.1 of the
45 Planning Commission's regular meeting of September 25, 2018, Seashore Properties, LLC.
46

1 Mr. Robinson: And is that something that has to be done now or is that something that you
2 want that to be put as part of the agenda.

3
4 Mr. Carnicelli: No, I'm just making notice that I will be making a motion to rescind that at that
5 time when that agenda item comes up.

6
7 Mr. Robinson: And do you know how that will affect our agenda? I mean could you expand at
8 all? Are you rescinding your motion so therefore the vote that we took is then invalid is that
9 what might happen?

10
11 Mr. Carnicelli: I know you don't like him right now.

12
13 Mr. Robinson: No.

14
15 Mr. Carnicelli: But I think that I would defer to Corporation Counsel to explain what the
16 ramifications of that would be with Robert's Rules and then our own rules, and the ordinance
17 with which it's affected by.

18
19 Mr. Robinson: Okay. Anyone else on the agenda? Okay, Corporation Counsel if you'd like to
20 comment and that's a trick question.

21
22 Mr. Galazin: Thank you Chair I would love to. In answer to your question yes, a motion to
23 rescind something previously adopted would put you back to the starting point that you were
24 right before that motion was made. So you had a presentation, you had Judge McConnell's
25 report and recommendation and the vote was to...for the Seashore Properties, LLC and the
26 vote was...motion was made by Commissioner Carnicelli to not adopt the retired judge's
27 findings of fact and to deny the permit. So that would be...if that motion to rescind is seconded
28 and carried by a majority vote, then we can put back a starting point and then you know, the
29 ramifications of where you go there I could either get into executive session now or we can just
30 talk about it at the next meeting when it comes up.

31
32 Mr. Robinson: So for clarification a commissioner can make a motion and have a vote and then
33 at a later time rescind their motion and then the vote be invalid?

34
35 Mr. Galazin: That is correct. It's unusual and not common thankfully, but it would require...it's a
36 motion so it would require a majority vote of the commission.

37
38 Mr. Robinson: Is there a length of time that that has to be exercised by?

39
40 Mr. Galazin: According to Robert's Rules there's no specific length of time. I would consider it's
41 going to be what is reasonable under the circumstances given that you haven't adopted the
42 D&O yet, I think that's reasonable.

43
44 Mr. Robinson: So theoretically somebody could say today there was something that somebody
45 made a motion that was passed, somebody could then rescind their motion and then the permit
46 could then be denied is that a possibility? No, I mean this is first time I've ever heard
47 somebody...

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Mr. Galazin: So what would happen is somebody would...who made a motion

Mr. Robinson: Commissioners, Commissioners...

Unidentified Commissioner: I'm listening.

Mr. Galazin: Somebody who made a motion and this would be a motion to deny something would have to go ahead and ask for a motion to rescind that denial and then that motion itself would have to be seconded and then that motion to rescind would have to be passed by majority of the commission and that wouldn't necessarily grant the permit at that point it would just put you back at the point of having to vote on it again. So it's...I'm not going to make any, you know judgments about what the commission may or may not want to do with it. I'm just saying the commissioner is providing notice of that's what he intends.

Mr. Robinson: Thank you. Appreciate it. Mr. Carnicelli, you okay with that, it's good.

Mr. Carnicelli: Good.

Mr. Robinson: Thank you. Anything else? Director.

Ms. McLean: Chair just playing this out if this item is on the next agenda and Commissioner Carnicelli makes his motion and that gets adopted and it gets rescinded then what would the next step be?

Mr. Carnicelli: A new motion, discussion on that motion and a vote on that new motion.

Ms. McLean: Okay. At the same meeting or would that would be a subsequent meeting?

Mr. Carnicelli: No, on that same meeting. It's still is going to be Item C.1 and so at Item C.1...

Ms. McLean: I'm just trying to figure out from the Department's side what we need to prepare for that item.

Mr. Carnicelli: Well, we still have the zip drive and the entire file potentially.

Ms. McLean: Okay. We'll figure it out. That's okay.

Mr. Carnicelli: I can also discuss it with you offline as well.

Mr. Robinson: And Commissioners I encourage you to revisit that report that we did on the hearings officer and revisit that meeting that we had and the votes that you all took.

Ms. La Costa: Is this Paia Inn? That's what we were looking up here as we were trying to ascertain if the Seashore was the Paia Inn.

Mr. Robinson: Well, it's Seashore yeah. Okay.

1
2 Ms. McLean: Commissioners if I could just ask really quickly we had polled members to see
3 about having a special meeting on December 18th and we did not hear back from
4 Commissioner Castro, Commissioner Carnicelli or Commissioner Kahu Hill. I don't know if you
5 folks would be available to do a special meeting on December 18th.

6
7 Mr. Castro: I will not.

8
9 Ms. McLean: You will not be, okay. And then also...

10
11 Mr. Carnicelli: I don't know if I responded. Did I respond?

12
13 Ms. Takayama-Corden: No.

14
15 Ms. McLean: You didn't respond.

16
17 Mr. Carnicelli: Yeah, I didn't respond. Yeah, I can.

18
19 Ms. McLean: You can be available.

20
21 Kahu Hill: Do I have anything on my calendar? He has the calendar. I think I'm free, but I
22 would need to verify, I don't have a phone calendar.

23
24 Ms. McLean: Okay, and then lastly the Native Hawaiian Law Training which is on Friday,
25 December 7th from 10:30 to 5:30. We have Commissioner Kahu Hill and Commissioner Gomes.
26 There are two other slots available. Commissioner La Costa is not available although you were
27 interested in it. Were other Commissioners interested in attending that?

28
29 Mr. Carnicelli: Cannot.

30
31 Ms. Pali: If nobody else goes I'll take a spot.

32
33 Ms. McLean: Oh okay.

34
35 Mr. Robinson: Commissioner Pali.

36
37 Ms. Pali: If no one else wants it.

38
39 Ms. La Costa: I would love to go but I'm going to see the 49ers.

40
41 Ms. Pali: Where is that and what time?

42
43 Ms. McLean: It's at the Cameron Center from 10:30 to 5:30. Thank you Chair.

44
45 Mr. Robinson: Okay, thank you. Thank you everyone.

46
47 **E. NEXT REGULAR MEETING DATE: NOVEMBER 27, 2018**

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F. ADJOURNMENT

The meeting was adjourned at 4:48 p.m.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

- Lawrence Carnicelli
- Stephen Castro
- Kahu Alalani Hill
- Larry Hudson, Vice-Chair (Excused at 4:08 p.m.)
- P Denise La Costa
- Kellie Pali
- Keaka Robinson, Chair
- Christian Tackett (Excused at 2:48 p.m.)

Excused

- Tina Gomes

Others

- Michele McLean, Director, Department of Planning (1:33 p.m. – 4:48 p.m.)
- Joe Alueta, Deputy Director, Department of Planning (9:00 a.m. – 12:23 p.m.)
- David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
- Rowena Dagdag-Andaya, Deputy Director, Department of Public Works