

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MAY 28, 2019**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:12 a.m., Tuesday, May 28, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Carnicelli: Good morning everyone, the Maui Planning Commission of May 28, 2019 will come to order. It is 9:12. My name is Lawrence Carnicelli. I am your Chair. Also with us is Commissioner Pali.

Ms. Pali: Good morning.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: Good morning Chair.

Mr. Carnicelli: Commissioner La Costa.

Ms. La Costa: Aloha Chair.

Mr. Carnicelli: And Commissioner Tackett.

Mr. Tackett: Good morning Chair.

Mr. Carnicelli: Good morning everyone. Excused is Commissioner Gomes and Commissioner Castro. We only have seven. We're waiting on two more appointees. So just to let everybody...or actually you know what since we no longer have a Hawaiian practitioner because Kahu Hill stepped down, I would like...she's in the audience I would like for you to please come forward and give us a quick pule to start the meeting please since we established quorum.

Kahu Alalani Hill: Aloha.

Mr. Carnicelli: Thank you.

Kahu Hill: May we all gather together for a moment. Kahu spoke in Hawaiian. We all come together in truth today and in the spirit of aloha and that there be calmness in this room. Blessings to everyone here today as we come and got. Kahu then prayed in Hawaiian.

Mr. Carnicelli: Thank you. So just logistically there's some faces there that are new that I haven't seen before, you know, and so I just wanna kinda at least lay it out how the Planning Commission sorta works. So what we're gonna do is now that we've got called to order, people...there's been some people asking about testimony. The way that we do with the Planning Commission is we take testimony with each item not at the beginning. So then what

1 happens is there is a presentation that's done and there will be testimony after the presentation.
2 Oftentimes, concerns, questions things that you might have will be part of the presentation so
3 then to...since we got a lot of people here I'm assuming a lot of people want to testify. This
4 actually helps expedite everybody's time. So a long as everybody sort of understands it that's
5 kinda how we're gonna do it. So with that being said, Director.

6
7 Ms. McLean: Good morning Chair, Commissioners. The first item on the agenda is the review
8 of a proposed Resolution Agreement for alleged Special Management Area and Shoreline
9 Setback Variance violations. Before you is a proposed agreement between the County and
10 Mr. Walter Hester for failing to construct a retaining wall as represented and approved by
11 SMA Permit SM1 2009/0017 and Shoreline Setback Variance SSV 2009/0004 on property
12 situated at 4855 Lower Honoapiilani road at TMK: 4-3-015:003 in Lahaina. Jim Buika is the staff
13 member handling this proposed settlement.

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15
16 **B. REVIEW OF PROPOSED RESOLUTION AGREEMENT FOR ALLEGED SPECIAL**
17 **MANAGEMENT AREA AND SHORELINE SETBACK VARIANCE VIOLATIONS**

- 18
19 1. **Proposed Resolution Agreement between the COUNTY OF MAUI and**
20 **MR. WALTER HESTER for failing to construct a retaining wall as**
21 **represented and approved by Special Management Area permit SM1**
22 **2009/0017 and Shoreline Setback Variance SSV 2009/0004 on property**
23 **situated at 4855 Lower Honoapiilani Road, TMK: (2) 4-3-015:003, Lahaina,**
24 **Island of Maui. SSV Notice of Violation issued as follows: NOV 2017/0009.**

25
26 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO**
27 **CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO**
28 **THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES, AND**
29 **LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.**

30
31 **The Commission may take final action on the proposed Settlement**
32 **Agreement pursuant to the provisions of Section 12-202-23(d)(3) of the**
33 **Maui Planning Commission's Special Management Area Rules and Section**
34 **12-203-17 of the Shoreline Rules for the Maui Planning Commission.**

35
36 Mr. Jim Buika: Good morning. Thank you Director. Thank you Chair. Good morning
37 Commissioners, Corporation Counsel, Secretary of the Board, everyone in the audience here.
38 My name is Jim Buika. I'm a shoreline planner with the Planning Department. And I'd like to
39 recognize the Commission for all your time and your expertise and service to the people of
40 Maui County. We truly appreciate all the work that you do.

41
42 You have a packet before you, a small packet with a transmittal memorandum that I'll go
43 through and with the Chair's permission how I'd like to quickly present this is I will present
44 the...there are seven exhibits with this transmittal letter. I would like to turn it over to the...so I'll
45 give you some background on the situation then I would like to turn it over to the Planning
46 Director for a few comments about the resolution agreement and Mr. Paul Mancini who is the

1 applicant's representative for some introductory remarks also regarding the resolution
2 agreement. If that's agreeable to the Chair may I proceed?

3
4 Mr. Carnicelli: Proceed.

5
6 Mr. Buika: Thank you. The purpose of the item is for the Maui Planning Commission to
7 deliberate the proposed resolution agreement before you. I have a packet that I'm referring to
8 that I will...there are six short paragraphs that introduce the various exhibits so to be expedient
9 and legally compliant I'll just read through it.

10
11 This memorandum transmits the proposed resolution agreement which is your Exhibit 1 for your
12 review and action. The Commission may take final action on proposed resolution agreement
13 pursuant to provisions of Section 12-202-23(D)(3) of the Maui Planning Commission's Special
14 Management Area Rules and Section 12-203-17 of the Shoreline Rules of the Maui Planning
15 Commission. The resolution agreement is for the applicant Mr. Walter Hester to pay a fine of
16 \$100,000 for violations related to a...the subject Notice of Violation labeled NOV 2017/0009 that
17 is Exhibit 2 is the NOV that was issued on February 27, 2017 for failure to comply with the
18 Shoreline Setback Approval Variance 2009/0004 including failure to construct the wall as
19 represented and approved by the Maui Planning Commission.

20
21 As background, on July 23, 2013 at its regularly scheduled meeting the Maui Planning
22 Commission authorized the Shoreline Setback Variance for the construction of a shoreline
23 retaining wall for the purpose of slope stabilization subject to five conditions and an SMA Use
24 Permit subject to 11 conditions that is included as Exhibit 3. So it's not the full report but it is
25 just the approval letter for the action. From subsequent site visits by the Planning Department
26 Keanui Bay and the subject parcel as represented in the aerial map showing the location of the
27 parcel within Keanui Bay the retaining wall was not built specifications approved by the
28 Commission as represented by the two permits. So the parcel location there's an aerial map
29 Exhibit 4 for your reference showing its relationship to the other parcels in the bay. And
30 furthermore, on or about November 7, 2016 portions of the retaining wall collapsed onto the
31 shoreline and the debris field from the retaining wall remains in the shoreline today and still
32 requires removal from the shoreline area pending completion of the proposed resolution
33 agreement that you have in front of you. Representative photos of the shoreline situation as
34 they are today are included as Exhibit 6. So put together a representative collection of the
35 shoreline from above, along and aerial view.

36
37 Since the collapse of the retaining wall the applicant has retained a coastal engineering firm,
38 Mike Foley from Oceanit is here in the audience if you have any questions for him. To apply
39 proper best management practices at the shoreline in order to first remove and dispose of the
40 debris on the shoreline, demolish and remove the remaining portions of the retaining wall that
41 were not built to the approved standards and to file additional permits to stabilize the property
42 shoreline bluff area so that proposed temporary solution is in Exhibit 7. So the applicant short-
43 term intent is to enhance public safety and long-term is to examine alternatives for structural
44 solution that will stabilize the bank mauka of the shoreline.

45

1 Very importantly the payment of the civil fine is a critical step for Mr. Hester to proceed with
2 restoration of the shoreline in order to minimize ongoing hazards to public safety and we're
3 prepared to do that this summer.

4
5 The proposed shoreline stabilization system will be dealt with later under a separate process
6 and the Planning Department, I'll just conclude by saying that the Planning Department
7 recommends that the Maui Planning Commission authorize approval of the resolution
8 agreement between the applicant, Mr. Walter Hester and the County of Maui. And so you have
9 the packet and the seven exhibits in front of you for reference and that concludes my opening
10 comments and background. Chair, with your permission I'll turn it over to any comments of the
11 Planning Director.

12
13 Mr. Carnicelli: Great. Thank you Jim. Okay, I guess do you want to go to Mr. Mancini then?

14
15 Mr. Buika: No comments Michele? Okay, Mr. Mancini who's the authorized representative for
16 the applicant.

17
18 Mr. Paul Mancini: Good morning. My name is Paul Mancini.

19
20 Mr. Carnicelli: Good morning.

21
22 Mr. Mancini: Can you hear me okay, my voice is a little under the weather today. I'll attempt to
23 be brief. As you can tell from the materials before you this has been a nightmare for the family
24 involved who spent maybe over six years trying to move forward this and two from construction
25 and it continues to be a tragic nightmare.

26
27 I'd like to go through a few sequences to maybe put some of this into perspective because as
28 Jim indicated you know the collapse of the wall took place in November 2016. Right after the
29 collapse there was a series of meetings between the contractors, the engineers, the parties
30 involved with the Planning Department and the intent at that time in November 2016 was to look
31 forward to move forward and to basically clean up the area, repair/replace it and try to stabilize it
32 and replace what had fallen. That series of events took place from three or four months into
33 March of 2017. At that time the County reasonably and wisely indicated that Mr. Hester should
34 entertain and obtain a coastal engineer and make recommendations to the Department as to
35 how to proceed with the protocols. It was perceived and understood that the situation was
36 dangerous both for removal and stabilization in those hazards are there. Felt that was a good
37 idea and at that time Oceanit was hired.

38
39 At the same time in November Mr. Hester obtained a Notice of Violation, a Notice of Violation
40 indicating one to pay a fine, two to apply for a variance, shoreline variance, and to get that
41 variance filed by March 28th within two weeks. Obviously there were two conflicting demands.
42 One going with the ocean engineer to file a variance and of course, we didn't have a scope of
43 work.

44
45 The Notice of Violation did provide that Mr. Hester could ask for a hearing before the Planning
46 Director or his appointee and that the fines would be...not be assessed until the hearing was

1 finished. Conflicting was the two demands and having no scope of work and see the variance
2 really wasn't what was needed at the time the Notice of Appeal for the hearing took place. The
3 hope at that time was to get together with the Planning Staff and with the enforcement people
4 and try to come up with a plan with a timetable. That was the idea of doing in.
5

6 Oceanit then came on the property for at least three visits in April. And as a result of the three
7 visits it determined that more data as needed. The situation was very difficult and complex. We
8 needed to get a topographic survey. We needed to get a geotech analysis of it and finally, we
9 needed to get some soil analysis to make sure we were working on the right plane. Everything
10 was tentative and dangerous.
11

12 At the same time we had to bring some contractors up because removing the first from the
13 ocean, second from the shoreline, third from the property was a very complex task. We looked
14 to bring a barge in to maybe deal with it that ended up not being terribly feasibly, not practical.
15 We took a look at taking a machine down the shoreline to do it and getting an access that didn't
16 seem practical or feasible. The only alternative was to go through Mr. Hester's property which
17 would require a large removal of structures on his property. That seemed like the most practical
18 thing.
19

20 At the same time we needed to go to the State Department of Land and Natural Resources and
21 get a Erosion Control Plan because once we basically went into removal that embankment was
22 going to come down into the ocean and that was not what anybody wanted to happen. So it
23 took us a period of time. We filed the applications with DLNR, DLNR in November of 2017
24 approved it and then we went back with the plan and the recommendations from Oceanit.
25

26 Oceanit's recommendations were received well by Planning except for one aspect. The
27 Planning Department wanted the entire wall taken down. I mean, we understood the reasons.
28 The protocols we were looking to at the time was to examine that wall after everything was
29 taken out, but having that as the demand, Oceanit went back, we brought in slew of contractors
30 'cause we had to be able to dismantle that wall and that good portion of the southern section of
31 the wall was significant. And we had to bring the contractors back in and take a look at those
32 three views to how to do it and more destruction into the Hester property.
33

34 At the same time we had to go back to DLNR at that time and DLNR expand the Erosion
35 Control Plan. That brought us until mid...into the third quarter of 2018 at which time I think
36 everybody was satisfied with regard to the plan. The plan then needed the permits and permits
37 were filed. While that was going on there were current discussions about the hearing that we
38 had asked for originally to come up with a plan and a time table. Finally at the end of that the
39 question of the hearing, the fines and at that time were given notice that there had been another
40 violation which was never served on Mr. Hester, an SMA violation so the matter got much more
41 chaotic as you can tell at that point in time. That led to further discussions to try to resolve all
42 three of those factors.
43

44 Sorry for taking so long but these sequence of events, a couple of points, I'm not making very
45 well, we had a very complex situation with many variables. We had many people involved in it
46 and it's not that we had inadequate attention to all of it, the intention was intense and it was

1 consistent and we went through as you can see two serious phases into the third phase and we
2 still have a serious nightmare before us. Another point I hope you can understand, the removal
3 of the debris from the ocean, from the shoreline, from the property can only take place during
4 certain months, June, July, August, maybe September. Any attempt during the winter months
5 with the surge taking place there would be hazardous to anyone involved in it and it just can't
6 take place then.

7
8 Sorry to be so long, I apologize for that but I thought the series of events would tell you where
9 we went and our attempts to deal with it and the attempts and the appreciation of the staff and
10 staff in trying to walk through it. It was a difficult process. Our main objective at this time is to
11 make the area safe, clean, safe for both the environment. We have a huge problem in front of
12 us to take care of it. We've got four months to do it and we ask you to consider reasonably our
13 ability to move forward. Thank you for your time. Appreciate it.

14
15 Mr. Carnicelli: Thank you Paul. Jim do you have anything else?

16
17 Mr. Buika: Nothing. Thank you Chair, I'll turn it back over to you for questions, deliberation.

18
19 Mr. Carnicelli: Great, thank you. So I think what we'll do at this point in time is we will go ahead
20 and take if anybody wants to speak to this item we'll take public testimony. So...and just so
21 everybody knows again we've got a lot of people, we've got a very large agenda today so when
22 it comes to public testimony you'll get three minutes, not three minutes and thirty seconds, not
23 four minutes, three minutes and that's just to be fair to everyone. We want to hear what you
24 have to say. You know this isn't to cut you off, but it's just basically just to make it fair. At the
25 end of your three minutes the Commission might ask you questions for clarification purposes
26 not new material. Right, this isn't like new discovery, it's not like oh I've got so much to say just
27 please ask me a question so I can go beyond my three minutes. That's not what it's for, it's just
28 to clarify what you've said. So if you've got more than three minutes worth of stuff, please
29 condense it.

30
31 The other part is please speak on the topic you know, what is actually before us. There's
32 certain criteria with which we have to use to make decisions. If you speak to that that actually
33 helps us, it helps us make a decision. Well, actually if you're an expert on something let us
34 know, you know so then we can use that also in our deliberations and our decision making, so
35 that with that being said, we have one person signed up for this agenda item, Kai Nishiki.

36
37 Ms. Kai Nishiki: Aloha, good morning Commissioners.

38
39 Mr. Carnicelli: Please state your name.

40
41 Ms. Nishiki: My name is Kai Nishiki.

42
43 Mr. Carnicelli: Do you promise to tell the truth?

44
45 Ms. Nishiki: I do.

46

1 Mr. Carnicelli: Okay, you have three minutes.

2

3 Ms. Nishiki: Mahalo. Myself along with members of our group and other organizations object to
4 the private negotiation and reduction of fines of around \$640,000 to a mere \$100,000. The
5 public is given no opportunity in the process to monitor and give input into these negotiations
6 along the way. This needs to change in my opinion. This sets a very dangerous precedent.
7 The County of Maui has a responsibility to protect our shorelines. They are priceless resources
8 and this is why the SMA fines are set so high because the County realizes the value of this
9 special and fragile environment and the need for protection. If SMA fines are levied at the level
10 that they were intended it would act as a deterrent and discourage property owners from
11 disobeying the law. There does not seem to be any reasoning behind the reduction of fines.

12

13 For instance last year the Maui Planning Commission approved the Mahinahina Shores
14 settlement which took fines of over a million dollars down to a hundred thousand dollars and in
15 that case a patio was built in the shoreline area, the structure was out of the water and had not
16 caused damage and danger as in this case. If the two cases are to be compared there's very
17 little justification to fine this homeowner, Mr. Hester, the owner of Maui Jim sunglasses the
18 same amount as Mahinahina Shores. Mr. Hester illegally built this seawall causing extreme
19 detriment to the environment, endangering the health and safety of our community, and has
20 caused the neighboring property to develop a dangerous sea cave under their property and of
21 course impacting our public beach. How can you justify the same settlement amount for
22 Mahinahina Shores versus Mr. Hester's flagrant, dangerous and damaging actions?

23

24 In this instance, Mr. Hester did not follow the plan according to permit, denied receiving the
25 violation yet his signature is on the certified mail certificate. He filed an appeal and blatantly
26 ...(inaudible)...the law and now he hires a fancy lawyer to reduce the clearly justifiable and
27 reasonable fine imposed by the County. Look at the scale of the fine, the daily fine could have
28 been up to \$10,000 a day, yet the County only levied the fine at \$500 a day. That is how very
29 low on the scale between those two numbers it is. The justification for this amount is that it
30 would take Mr. Hester a while to resolve the issue and the County was very understanding and
31 reasonable. Same with the initial fine it could have been a \$100,000 yet the County only levied
32 the fine at half that. Please deny the settlement and instruct the Department to enforce fines
33 that take into consider the great danger and damage caused no matter how the County tries to
34 justify reducing the fine with stories of internal staffing issues, appeal procedures, claims by
35 Mr. Hester that he never received the fine, the bottom line is Mr. Hester flagrantly and selfishly
36 violated the law egregiously impacting the environment, beach and public safety just so that he
37 could have a –

38

39 Ms. Takayama-Corden: Three minutes.

40

41 Ms. Nishiki: --bigger oceanfront lawn. Mahalo. Our community is watching.

42

43 Mr. Carnicelli: Thank you Kai. Commissioners any need for clarification of the testimony.

44

45 Mr. Robinson: I have one question.

46

1 Mr. Carnicelli: You do have a question?

2

3 Mr. Robinson: I have one question.

4

5 Mr. Carnicelli: Okay, Commissioner Robinson.

6

7 Mr. Robinson: Aloha Kai.

8

9 Ms. Nishiki: Aloha.

10

11 Mr. Robinson: In your written testimony it says that you have a verbal agreement with
12 Mr. Mancini that about renegotiating the fine is that true?

13

14 Ms. Nishiki: We have a verbal agreement with Mr. Mancini that we will just discuss the issue
15 this week and I also communicated with members of the Planning Department regarding this
16 and I have...it is my understanding that they are open if the Commission does not...feels that
17 that is appropriate that that could happen.

18

19 Mr. Robinson: Thank you.

20

21 Mr. Carnicelli: Thank you Kai.

22

23 Ms. Nishiki: Mahalo.

24

25 Mr. Carnicelli: Is there anybody else in the audience that would like to testify on this item?
26 Seeing none, then if there are no objections we'll close public testimony. Okay, public testimony
27 is now closed. At this point in time the Chair will entertain a motion to go in—

28

29 Unidentified Speaker: Sorry Chair.

30

31 Mr. Carnicelli: That's okay. So at this point I'll entertain a motion to go into executive session to
32 go into the powers, duties, privileges, immunities and liabilities of the Commission.

33

34 Ms. La Costa: I so move.

35

36 Mr. Carnicelli: So moved by Commissioner La Costa. Do I have a second?

37

38 Mr. Tackett: Second.

39

40 Mr. Carnicelli: Second by Commissioner Tackett. Any discussion on the motion?
41 Commissioner Robinson.

42

43 Mr. Robinson: Can you please clarify the need for going into executive session, I don't—

44

1 Mr. Carnicelli: To clarify the duties, privileges, immunities, and liabilities pursuant to
2 Section 92-5(a)(4) of HRS. All those in favor of the motion please signify by raising your hand.
3 That's four. Motion fails. Oh, opposed? One opposed. So motion fails.

4
5
6 **It was moved by Ms. La Costa, seconded by Mr. Tackett, and**

7
8 **The Motion to Go Into Executive Session, FAILED.**

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

13
14
15 Mr. Carnicelli: At this point in time, Paul I will let you come forward.

16
17 Mr. Mancini: Ms. Nishiki indicated that there is an agreement. I have not spoken to Ms. Nishiki
18 at all. I understood she was represented by attorney, Lance Collins and I did call Lance on a
19 couple of occasions and talked to him and we told him we were going forward with this hearing
20 today. In any case, I wanted him to understand the background as I related to you that this
21 thing is not something that was done without strong deliberation and there were many phases to
22 it and that fines had not been assessed because that hearing had not taken place. I had
23 thought it was important for him to understand exactly what I told you and I told Mr. Collins I'd
24 be happy to meet any time and discuss that not that I was looking back to go negotiate
25 anything. I was trying to be expository, I was trying to have people understand that this was a
26 nightmare. Mr. Hester had contracted to get this built according to plans that's what his
27 contract. Somebody was to do it according to plans and according to law. Obviously there's a
28 problem. That's another issue on that. I apologize, but I just wanted to make that clarification.

29
30 Mr. Carnicelli: Thank you Paul. So I guess at this point in time I'll ask the Commission do you
31 have enough information to make a decision on this or do you have a questions that you need
32 to have answered?

33
34 Ms. La Costa: I have questions.

35
36 Mr. Carnicelli: Okay, Commissioner La Costa.

37
38 Ms. La Costa: Thank you. So my question is about the authority. Ms. Nishiki talked about the
39 amount of the fine and the authority to levy and to change and to renegotiate I'm sure sits
40 clearly with the Planning Department so is that a reason for this to be deferred so that further
41 negotiations can happen because of community input? Thank you.

42
43 Ms. McLean: Thanks for the question. I spoke at length with Ms. Nishiki and it seems that she
44 didn't hear the words that I was saying or she took them to mean something that I didn't intend
45 for them to mean. What I tried to explain was that this Commission has the authority to approve
46 this settlement or to deny it or to give an indication of different terms that you might want to see

1 so that a settlement or revised settlement is something that you can approve and if you don't
2 approve this then the matter doesn't get resolved that's completely within this Commission's
3 authority.

4
5 What I explained is that testimony will give you a broader perspective than what's presented by
6 the Department as well as the applicant's perspective but that authority rests with the
7 Commission. What the Department did was to work with the applicant to put together what we
8 thought was a fair proposal for this Commission to consider and I'd be happy to give some of
9 the reasons why we suggested the ultimate fine amount if you want to understand our reasoning
10 for that.

11
12 Ms. La Costa: Sure. Please. Thank you. Yes, please.

13
14 Ms. McLean: So there were...Mr. Mancini gave a timeline as to how all this transpired and it
15 shows that they were working toward compliance. One thing that is still up in the air, sort of a
16 he said, she said, kind of thing is as far as we're concerned we issued two violations, SMA and
17 Shoreline. They claimed they only received one and they filed an appeal on that asking for a
18 hearing. The hearing is allowed for SMA violations not for Shoreline violations and so they
19 appealed shoreline violation asking for a hearing which the rules don't specifically call for.

20
21 So when we got that we, again we were still working with the applicant all this time figuring out
22 how to correct the problem not just removing the debris but also what the next step after debris
23 removal would be. And that was assigned to a staff member in our Department who has since
24 left the Department then it was assigned to another staff member who has since left the
25 Department and it just never really got nailed down. It wasn't Jim. Jim handles the permitting
26 side not the hearings side.

27
28 And so finally it came to me at the beginning of the year or early in the year and we started
29 looking at the fines that were on the table. So the fact that whether one or two notices were
30 issued that's a question in terms of the applicant receiving it so that would make the initial fine
31 either \$50,000 or a \$100,000 depending on whether they received one or two. And then the
32 amount of time it took simply for the Department to figure out how to conduct a settlement
33 discussion and put it before the Commission took months and there's no excuse for that. And
34 so the daily fines were accumulating all this time not because the applicant wasn't willing to
35 move forward but because the Department was simply trying to figure out which rules applied,
36 which violations were issued and so forth. And so I believe the Department bears some
37 responsibility for the amount of the time that has passed and that the applicant shouldn't have to
38 pay daily fines for that amount of time and so the amount in front of you is the initial fine for two
39 violations. The applicant says they only received one but we're saying we issued two so you're
40 gonna pay the initial fine for two, but is the equivalent of waiving the dailies has been working
41 diligently since they...since the collapse happened even before they received the violations to
42 try to resolve this. And so that's how we came up with the settlement amount.

43
44 We don't factor into who the applicant is and their ability to pay. We do levy fines based in part
45 on how long it will take to correct the violation but also we like to put heavy fines out there to
46 make sure that people cooperate. The objective of our enforcement is to achieve compliance

1 and in our opinion the applicant has been working to achieve compliance since even before we
2 issued the violations. Thank you Chair.

3
4 Mr. Carnicelli: Thank you Director. Commissioner Tackett do you have any questions at this
5 time?

6
7 Mr. Tackett: Not at this time.

8
9 Mr. Carnicelli: Okay, Commissioner Pali do you have any questions?
10 Commissioner Robinson?

11
12 Mr. Robinson: I do.

13
14 Mr. Carnicelli: Go ahead.

15
16 Mr. Robinson: Mr. Mancini, oblige me please. I always thought you was qualified but never
17 fancy.

18
19 Mr. Mancini: Excuse me?

20
21 Mr. Robinson: I always thought you was a qualified lawyer but never a fancy lawyer.

22
23 Mr. Mancini: I assure you my wife would not categorize me as fancy. She worries if I have to
24 take the garbage out and I'm somewhat below the washing machine in our leverage in our
25 house so fancy would not be an adjective.

26
27 Mr. Robinson: So Mr. Mancini it's the original contract to put up the original wall do you know
28 what the dollar amount of that wall was?

29
30 Mr. Mancini: You know I tried to research that because I thought the question would come up.

31
32 Mr. Robinson: Could you ask your client?

33
34 Mr. Mancini: Yeah, 'cause I went through all the invoices, I mean, we're talking close to a
35 million dollars.

36
37 Mr. Robinson: A million dollars. And the short-cuts that was taken to not build the wall properly
38 what was, why was, what was the reduction of that?

39
40 Mr. Mancini: Well, the short-cuts become...the major issue with regard...there was supposed to
41 be a second wall there, that's the violation. There were to be two walls, one behind the other
42 one. And when this happened, of course the contractor and the engineer were questioned why
43 didn't the second wall go in? And we didn't get basically clear answer.

44
45 Mr. Robinson: Well, the permit stated that there should be two walls, right?
46

1 Mr. Mancini: That's correct.

2

3 Mr. Robinson: Yeah, and I guess what I'm getting at and I'm with the Director, I don't think
4 means has to do with it, but we're starting to have a lot of seawalls out there, starting to have
5 people you know trying to take shortcuts at it and if...if we're saying well, one wall cost me a
6 million dollars and two walls cost me 1.5 but a fine's a \$100,000 and we have you know...this is,
7 this is why we have this Commission, you know, so if you want to explain it please do.

8

9 Mr. Mancini: Well, I cannot explain what the contractor did. I can explain the fact that the
10 contract to do it contained all of it, it was to be done, it was all to be done. In questioning
11 sometime...another issue you might look at here, each of these projects has to have a
12 compliance report. There was a preliminary compliance report that went through we hadn't got
13 to the final compliance report. If we had gotten to the final compliance report it would have been
14 clear what happened to the second wall. That didn't get that far. It collapsed before that
15 portion. So to basically tell you why the contractor didn't do it, I don't have a clear answer.
16 Questions have been asked on it and clearly it would have had to been put in because we did
17 have to have a compliance report, but it was not—

18

19 Mr. Robinson: Who is responsible for the contractor, the neighbor, the people down the street,
20 the County, who's supposed to make sure the contractor follows the permit?

21

22 Mr. Mancini: Well, we hired somebody to manage the contract also. You had two. You had a
23 contractor and you had a somebody—

24

25 Mr. Robinson: Where does the buck stop Mr. Mancini is everybody else's fault? Whose fault is
26 it that it happened?

27

28 Mr. Mancini: Well, I think to answer your question is the party that owns the property, of course
29 and that's why we're here. Nobody...(inaudible)...from responsibility.
30 Nobody...(inaudible)...goes down, the buck stops where the owner is and what's where we're
31 facing up to that. As I said, this has been a nightmare and it will continue to be a nightmare. It's
32 not something that's easily resolved even now. To be basically get a removal of that debris is
33 gonna be horrendous and it's gonna be a tremendous impact on the existing property to do it.
34 What we would like is to be able to do it in 2019 and not 2020 that's the concern.

35

36 Mr. Carnicelli: Okay, thank you. Go ahead...Ms. La Costa do you have another question?

37

38 Ms. La Costa: Yes, Chair thank you. So my question is I know this is Maui and I know that
39 Maui County at times is slow in things because of change in personnel, et cetera, but this fine
40 was levied, the Notice of Violation is in 2016.

41

42 Mr. Mancini: That's correct.

43

44 Ms. La Costa: It just is an inordinately long time for it to sit there and get more and more and
45 more decrepit and have more and more issues. So I don't understand why it has taken almost
46 three years.

1
2 Mr. Mancini: That's what I was trying to explain in my first narrative. It went through three
3 phases. The initial phase, then the first phase of the ocean engineer trying to take care of it in
4 the period of time to go through the first phase and a plan, and then the County's indication.
5 After that phase the entire wall had to come down and that led to the third phase and then fourth
6 phase was trying to resolve the fact that the hearing hadn't taken place and I just ...the Planning
7 Director basically said there was no hearing with regard to the shoreline setback, but the notice
8 they sent out had...gave you the opportunity to have a hearing, maybe that was an error. And
9 when Mr. Hester got this he got one piece of mail with two papers in it and they were both the
10 same and that's where I think the mistake came there, made there. But I was trying to explain
11 the complexity to do this and the fact that there was a coordination with the County each step
12 and what happened to each element of coordination that took place. We did spend a
13 tremendous amount of time with regard to getting it done quickly. We did go in for a quick fix.
14 We did go in with the ocean engineer for a period of time and then the second phase and then
15 the third phase. The important thing in my mind—

16
17 Mr. Carnicelli: Thank you Paul, I think you answered your question.

18
19 Mr. Mancini: Okay, I'm sorry.

20
21 Mr. Carnicelli: I think she has a follow up though.

22
23 Mr. Mancini: Oh.

24
25 Ms. La Costa: You just mentioned that you would prefer to see it done in 2019 rather than
26 2020. If you still have these processes hanging out there and not cemented, no scope of work,
27 et cetera, how do you expect that to happen?

28
29 Mr. Mancini: Well, as you can tell on the Resolution Agreement the permits are ready to be
30 issued on it. We went through, we filed the permits, the permits are ready to be issued to do
31 this work. The problem is getting the permits, this is the first step in getting the permits. The
32 second step after getting the permits is getting the contractors out there and getting into the
33 complexity of all of this work. And we've got four months to get it done otherwise we're into
34 2020. Sorry to be so long.

35
36 Mr. Carnicelli: Thanks Paul. Commissioner Tackett do you have any questions?

37
38 Mr. Tackett: No.

39
40 Mr. Carnicelli: No, okay. Commissioner Pali. Commissioner Robinson.

41
42 Mr. Robinson: Yes. Sorry Mr. Mancini.

43
44 Mr. Carnicelli: Come on back up. You get your exercise this morning.

45
46 Mr. Mancini: You don't have to be sorry.

1
2 Mr. Robinson: I want to get back to the contractor and we had this problem with the
3 Mahinahina, it's people are hiring contractors and you know, we assume the contractors are
4 gonna do their job and so on and so forth and the contractor shouldn't be doing jobs, that they
5 should be following the permit and it seems that you know they get skirted sometimes. I
6 assume that this contractor was bonded?

7
8 Mr. Mancini: The contractor did not have a performance bond.

9
10 Mr. Robinson: A million dollar job, no bond, just a handshake agreement.

11
12 Mr. Mancini: It was a contract, but there was no performance...you can have a performance
13 bond in the contract which mean you can go to the insurance company if he doesn't comply.

14
15 Mr. Robinson: Right.

16
17 Mr. Mancini: But you can have a contract which most people have if a bank is involved...if a
18 bank is involved you do usually have a performance bond. Normal contracts you normally don't
19 have a performance bond...(inaudible)...

20
21 Mr. Robinson: So we had a million dollar contract on the shoreline that had to follow permit and
22 we didn't have a contractor have a performance bond. That's the situation we're struck with
23 right now.

24
25 Mr. Mancini: That's a correct statement.

26
27 Mr. Robinson: Okay, thank you Director. I mean, thank you Chair.

28
29 Mr. Carnicelli: Thank you Commissioner Robinson. So I think at this point what we'll do is we'll
30 just hit the pause button as far as Q & A and maybe sorta just understand where we are, what
31 we can do at this point in time, what can we do, what can't we do, you know what authority do
32 we have with this particular resolution agreement. So Director what are our options right now.
33 It's like you know, approve, disapproved...whatever.

34
35 Ms. McLean: Thank you Chair, and I'd like Corp. Counsel's concurrence on this. You can
36 approve the agreement as it's proposed to you. You could deny it altogether and if you were to
37 do that, we'd like to get some indication as to why you are denying it because in some way we
38 need to be able to bring closure to this situation or as far as I'm aware you could approve the
39 agreement with amendments if you wanted a different fine amount as long as the applicant was
40 agreeable to that and would still be willing to sign the agreement under a different fee amount I
41 would think that would be an option today as well.

42
43 Mr. Carnicelli: Thank you Director. So I guess before we just throw a motion out there is just to
44 sorta get the pulse of where you guys are as far as commissioners. Commissioner Pali.

45
46 Ms. Pali: Discussion?

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Mr. Carnicelli: Discussion yes.

Ms. Pali: Okay, just gonna go ahead and put it out there. I do like Director Michele's comment about working with the applicant. I feel like being born and raised here I feel like I've lost my island. I feel like we went from aloha spirit, everybody helps their neighbors to now separating who is our neighbor, where did they come from, how much money do they have, and then we go on the attack. Well, if you have money then maybe you're not so good and I would like to move away from that, and I would just like to go back to working with our neighbor. On the same token though there are some valuable input that I like from the testimony of Nishiki. We do have limited resources and we do have to protect them and guard them but it's the way we do it, it's not...it doesn't have to be done assuming everyone's a bad guy, they're purposing trying to destroy our island. And so I like how Planning has taken responsibility of some of the delays. I like that they put a fine that's manageable because the reality is if we overtax or over fine people are we in the end getting what we need a resolution. The end is a resolution. We need to get a resolution so we have to come with a compromise and so I'm okay with the agreement as it is. I think it sends a message that you cannot get away with maybe irresponsibility. Maybe we can look for future permits bonding is required because the contractor should be responsible. My question would be was there litigation on the contractor that failed to perform as he agreed. Those are things that the homeowner can also pursue on a civil matter, but moving forward with obtaining a resolution, I'm okay with the agreement as it is.

Mr. Carnicelli: Thank you Commissioner Pali and I guess the reason why I'm kinda asking for a little bit of discussion before we have an actual motion is because we're at bare quorum. You know, I mean it's essentially all five of us are gonna have to agree on something, right and so that's where it's just like you know that's the unfortunate part of having bare quorum. So Commissioner Robinson would you like to chime in before we have a motion on the floor, would you like to make a motion?

Mr. Robinson: I still have questions, so...

Mr. Carnicelli: Okay, we'll let you ask you some questions then. Do have a ...(inaudible)...at this time Commissioner La Costa?

Ms. La Costa: My sense is that this needs to be rectified, the sooner rather than later 'cause the deterioration is just awful. I think that the fines irrespective of who they're levied against need to be more than a slap on the hand. So I think that to protect our resources people need to know if you don't do things properly then you're gonna pay for it in the long run. So in theory I think that the settlement is okay, but I'm not really okay with the amount that the County has settled on, it's just, it's too manini for what has gone on. Thank you.

Mr. Carnicelli: Okay, thank you Commissioner La Costa. Commissioner Tackett you want to weigh in at this point or we just go to Commissioner Robinson's questions.

Mr. Tackett: I'm okay with the questions part right now. I'm gonna listen.

1 Mr. Carnicelli: Thank you. Commissioner Robinson you have the floor.

2

3 Mr. Robinson: Thank you Chair. Jim could I ask you a question please? I think it's easier to
4 move past this if we see a path towards this not happening again. Again, this is second time in
5 front of me where we have something that some people not following, you know the law and the
6 permit. On the permit itself is what, what do we ask of an applicant, what do we demand of an
7 applicant, and how do we hold those applicants you know up to it.

8

9 Mr. Buika: I can answer that directly. The permit approval is Exhibit 3 in front of you there, you
10 could refer to it, August 19, 2013 letter. If you turn towards...if you turn to Page 3 at the very
11 bottom of the SMA there are standard conditions and there are two standard conditions that are
12 requested of the applicant anyway. How it's followed through again is through compliance
13 reports. So Number 4 states at the bottom of Page 3, the August 19, 2013 letter states, that, to
14 the satisfaction of the Commission or the Department, the applicant shall develop the property
15 in substantial compliance with the representations made to the Commission in obtaining the
16 SMA Use Permit. Failure to do so to so develop the property may result in the revocation of the
17 permit and/or other enforcement.

18

19 Mr. Robinson: So, Jim when we're dealing with...where we're not taking away somebody's
20 license it's when people are on the shoreline and they're doing these things, we're asking for
21 million dollars for insurance on it, now is...why wouldn't the County go ahead and take this
22 project over and charge them a million dollars and make their insurance pay instead of trying to
23 throw it back to them, what they failed before and have a \$100,000 fine. Couldn't we roll in the
24 fine and the cost of it and do a premium to be done a correct way? I mean, isn't that what the
25 insurance is for or is it just liability?

26

27 Mr. Buika: Impossible for me to follow what you're saying there. Unfortunately that's not my
28 ...(inaudible)...expertise.

29

30 Mr. Robinson: Director, Corp. Counsel?

31

32 Mr. Carnicelli: Go ahead Director.

33

34 Ms. McLean: Thank you. And Corp. Counsel can chime in as well. The main purpose of that
35 my understanding is to indemnify the County. So that if something were to happen with that
36 project and the County were named in an action that that money would be available to protect
37 the County. That comes from, the language, the dollar amount all of that comes from Risk
38 Management, the County's Risk Management.

39

40 Mr. Robinson: So it's just liability on our side. Is it just indemnification of the County?

41

42 Ms. McLean: Yeah, and you folks.

43

44 Mr. Robinson: Now don't we have other projects that we make them have a bond to have it if
45 it's done incorrectly and they have to come back and correct it? I assume not all permits are
46 done this way where we hope an applicant does it right?

1
2 Ms. McLean: For County yes, but I don't know if we impose that requirement on private...I think
3 for some if it's, if it's infrastructure that is going to get turned over to the County roadway
4 improvements or things like that there might be a bond requirement. But typically and for
5 County projects the County would have that requirement, but I don't know...we...I should say,
6 we don't typically have a bond requirement for private projects.

7
8 Mr. Carnicelli: Thank you Director. Jim I'm gonna actually jump in and ask a question.

9
10 Mr. Buika: Sure.

11
12 Mr. Carnicelli: So it's...I'm gonna put you on the spot, oftentimes you will take vacation time to
13 come speak before this Commission as a private citizen on SMA. I know personally you're very
14 passionate about it, it's what your job is, and it's one of those things that you're more than waist
15 deep in. How do you feel about the settlement agreement, I'm putting you on the spot, and if
16 you want to say no comment or whatever that's fine. I will let you bail out on it but how do you
17 feel about this settlement agreement?

18
19 Mr. Buika: Well what I can comment on is, I mean to me \$100,000 is a lot of money but that's
20 irrelevant. My role and you know the whole negotiation of the settlement, the dollar amount is
21 done by an entirely different division, Zoning Administration and Enforcement Division so my
22 role is as an environmental planner and a mitigator. So my role is to mitigate the shoreline. My
23 desire at this point as Mr. Mancini has stated is to not let this summer go by when the waves are
24 manageable to remove the debris. It is very egregious. It is very dangerous. There are
25 additional portions of the wall that could collapse. There is no restriction for people from going
26 in that area and luckily nobody was in the area when it happened. So my main desire as a
27 mitigator is to somehow move forward with the fines and to get the work done by November 1st
28 this year so it's June, July, August, September, October, we have five months and believe me it
29 will take five months of concerted effort to clean up the shoreline. So...

30
31 Mr. Carnicelli: I appreciate that.

32
33 Mr. Buika: That's my comment. So anything you can do...

34
35 Mr. Carnicelli: Okay, thank you. And the part that seems interesting to me like as I'm trying to
36 you know disseminate the information that we've got and the questions and concerns is it feels
37 like right now we're sort of walking this line of we don't want to set a precedence to use the word
38 that the testifier said where it's I'd rather beg for forgiveness than ask for permission, right. Like
39 somewhere off in the future it's worth it, you know if it's a million and a half bucks to put in a wall
40 and the fine's a \$100,000 then I'll you know not do that. And so, you know where as a
41 commission, you know where is that line, you know to where it's just like it's punitive enough or
42 is it punitive to then discourage people from doing this on purpose? My question to you
43 Corporation Counsel is I guess I'll ask two questions in one. Where is punitive and if we were to
44 levy 100 percent of the fine is that punitive? Like you know all of the dailies, everything like
45 that?

46

1 Mr. Galazin: Well Chair when you talk about administrative fines and administrative
2 enforcement and civil fines generally speaking you've got to realize we have a starting point is
3 the authority that the County has pursuant to State Law. And when you look at the enumerated
4 powers of the County one of which is to enact ordinance whereby we can impose fines like this
5 they can be reviewed by a court ...(inaudible)...jurisdiction to see if they are excessive or in
6 other words nearly punitive. The goal of the SMA Law and the goal of these high initial fines
7 and potentially high daily fines is to encourage quick compliance, discourage casual violations.
8 I would agree with Jim that \$100,000 is a lot of money and you...as the Director mentioned, we
9 don't take into account how much or whether a potential violator can pay it's is that amount
10 significant and I think it is. If there is something that is too high a court potentially reject it, but
11 this brings up another issue and I'll indulge me here for a minute here Chair right now what you
12 have before you is a potential settlement agreement that means that you are in the driver's seat
13 right now. You have control over the situation. You can decide how it gets disposed of. I think
14 just speaking and advising you you've seen situations where when you lose control of a
15 situation it ends up being resolved in a way that you may not as a body feel comfortable with.
16 When you have the opportunity and if it seems fair and if the goal is to affect compliance and to
17 affect a remedy and you've got the Department telling you look we've worked out, we think this
18 is the best deal, we want to get this fixed right away and you are in the driver's seat you should
19 probably have a pretty good reason for taking your hands off the wheel. Thank you.

20
21 Mr. Carnicelli: Thank you Mr. Galazin. So and as the Director sort of stated you know and
22 Mr. Buika really what we want is compliance ultimately. We do have bare quorum. Does
23 anybody else have any other questions, any further questions? Okay, so then I guess at this
24 point I will entertain a motion from the floor as to what to do with this particular resolution
25 agreement. Commissioner La Costa.

26
27 Ms. La Costa: I make a motion to accept the settlement agreement with the caveat that the fine
28 is increased to \$200,000 because of the length of time it's taken to get this resolved.

29
30 Mr. Carnicelli: Okay, so there is a motion on the floor to approve as presented with the change
31 of the fine from \$100,000 to \$200,000. Do I have a second?

32
33 Mr. Tackett: Second.

34
35 Mr. Carnicelli: Seconded by Commissioner Tackett.

36
37 **A motion was made by Ms. La Costa, seconded by Mr. Tackett to accept the Resolution**
38 **Agreement with the amendment that the fine is increased from \$100,000 to \$200,000.**

39
40 Mr. Carnicelli: At this point in time, I would like Mr. Mancini to come back forward. So at some
41 point in time this is an agreement with you know you as a part too. Should this motion pass,
42 would the applicant be okay with this change to the settlement agreement?

43
44 Mr. Mancini: Let me suggest a protocol here. The applicant is not here for reasons and we
45 didn't want to defer this. My feeling and maybe Corp. Counsel disagrees with me is that the
46 Commission really can't negotiate...it's not its role to negotiate fines. The Commission has

1 something before it and I think the protocol would be to suggest to the Chair that the Staff go
2 ahead and modify that and tender it that way to Mr. Hester. I think that would be the correct
3 procedure. You have an agenda item which is a resolution agreement. The Commission really
4 doesn't get into the executive parts of negotiatin0g. Your protocol could be if the motion passes
5 please direct the Chair to basically revise the settlement agreement and tender it. That would
6 be your position as opposed to getting into. Corp. Counsel may disagree with me but that's my
7 feeling that the Commission does not get itself into the executive function, administrative
8 function of the Staff and that type of thing but there's another protocol to advance and maybe
9 get you to the same end that you want to get to. But don't listen to me, I'm not your lawyer.
10 You have a lawyer.

11
12 Mr. Carnicelli: Mr. Galazin.

13
14 Mr. Galazin: Thank you Chair I would just ask Mr. Mancini...so in answer to the Chair's question
15 that's no.

16
17 Mr. Mancini: I'm just telling you protocol. I'm saying if the Staff basically, if the direction from
18 the Commission to the Staff is to move forward and amend the agreement that way, as the
19 Commission as the Staff then to tender in that fashion. It's only one line that they have to
20 amend and I'm saying amend it and we'll see if we can get it signed.

21
22 Mr. Galazin: Okay, thank you. So Chair what you have before you the settlement agreement
23 as its monitor suggests it is an agreement that's been agreed to by the Department and the
24 alleged violator so far. You do have the authority to change that number. However unless it's
25 concurred today, I think the practical effect not that you don't have the power to change it, but I
26 think the practical effect is that if somebody isn't here to concur to it today then it's going to be a
27 rejection with instructions to...sorry, so if what I understood Mr. Mancini's answer to be was
28 well, no they're not going to agree to any revised amount today then you voting on this
29 amended motion is nothing more than direction to the Department that you're going to reject it
30 as is and request that they try to negotiate that amount instead.

31
32 Mr. Mancini: That's not what I'm saying.

33
34 Mr. Carnicelli: Okay, can I try to make non-lawyer speak out of this 'cause you guys are really
35 good at what you do, but I don't know if we're all following. So can we approve this to say like
36 yes, we approve this only if the new number is \$200,000? So it's like okay, it's not approved.
37 You guys go lawyer out, do your thing, if you both agree to two then you have our blessing, if it's
38 not that then no.

39
40 Mr. Galazin: So Chair, the answer, the short answer is no. What you would do is to say either
41 defer it and direct the Department to go back and attempt to renegotiate along with your
42 instructions or to reject it but again, those...deferral gives you the opportunity to keep it on the
43 status quo but hopefully get a changed rejection means as I alluded to earlier taking your hands
44 off the wheel. It doesn't mean you won't get 'em back but those would be...your two options
45 would be either approve it as it or defer it with some direction to the Department or reject it
46 whether you give direction to the Department or not. The...you know one thing I will point within

1 your SMA Rules the Department is the one to negotiate that settlement agreement. You are the
2 body that has to approve it. If you don't approve of what the Department's negotiated that's
3 your prerogative, but the Department is the negotiator on your behalf in these matters. You
4 can't do negotiation.

5
6 Mr. Carnicelli: Go ahead Paul.

7
8 Mr. Mancini: Okay, I'm not sure. There's two protocols I think you can advance here is one
9 approve it with that one change and then have it tendered or take a break for ten minutes and
10 let's see if I can contact Mr. Hester.

11
12 Mr. Robinson: It's just a motion. We haven't had discussion on the motion yet.

13
14 Mr. Carnicelli: But that's what this is. This is discussion.

15
16 Mr. Robinson: No, I'm saying but he's gonna...(inaudible)...

17
18 Ms. La Costa: Can we suspend the motion?

19
20 Mr. Robinson: No, we can...we haven't gone through the discussion yet.

21
22 Mr. Carnicelli: We're gonna have some discussion on the motion. I just wanted to get clarity on
23 or at least try to get some clarity on what the motion is so then why don't we now just go ahead
24 and have some discussion on the motion. Commissioner Robinson.

25
26 Mr. Robinson: Thank you Chair. And I agree with you with if you could cut through the chase
27 and somebody can agree to it right away and help solve this you know, I'd probably done the
28 same, so I got that. It's you know, it's...I'm back Commissioners to this not coming back into us
29 again. You know, personally we looked at the \$100,000 Mahinahina that became a precedent,
30 \$100,000 here, you know it's what we do is always you know is always usually bigger than it is
31 just what our vote is today or this instance. I personally think that the applicant, the application
32 and what we're doing for a million-dollar seawalls is not flawed but not sufficient. I think we
33 need to have some bonding and some contractual so there's a trigger if something doesn't go
34 the right way that we spent all the time and energy in the Planning Department and the
35 Commission to grant something then the next mechanism is we have the person who is in
36 charge of doing it which is going to be bonded contractor, right either pay for it or redo it, but not
37 have to come back here and levy fines and go on and on and on because how many miles of
38 shorelines we got here Jim. I mean how many more times we gotta go through this where
39 somebody doesn't build something correctly and even if they did do it correctly you know there's
40 something you know you still got nature and you could have the best engineered wall and that
41 thing could still break. So then do we have to then have a meeting about did the engineer follow
42 it correctly, you know. So I think that's where the dollar amount and the fine amount it's two
43 different things and I'm you know, \$100,000 is a lot of money, and there's people with seawalls
44 that are worth a lot less than Mr. Hester, you know, along different parts and again, I think it's a
45 precedent. So I'm comfortable with moving forward on this resolution only if we have a remedy
46 for the future. If our remedy is we have to make the fine amount larger than that's the remedy.

1 If the remedy is we can work with the Planning Department to make something that we have a
2 better moving forward and better structure then I don't need the fine to as big because to me it's
3 about fixing the problem not about trying to get it. So if we have a deterrent or we have a
4 mechanism to do it then we don't need a deterrent that's what I'm for. Thank you Chair.

5
6 Mr. Carnicelli: Thank you Commissioner Robinson. So just to remind the Commission we have
7 a motion on the floor so if we could go ahead, Commissioner Pali would you like to speak to that
8 motion.

9
10 Ms. Pali: I like what he said. Yeah, I think I already mentioned where I stand. I feel like we
11 have a duty to take testimony into consideration and pull out the portions that we can validate as
12 facts and also take other testimony into consideration like the Director and the applicant and pull
13 out what we feel are facts not opinions but facts. I would like to circle back no matter what
14 happens today and see how we can support the Planning Commission to avoid these pitfalls in
15 the future. I don't think a hundred thousand dollars more changes the resolution of this. I know
16 that we want to make a statement. I feel like one good thing that we've been doing for the last
17 few years is making good statements along the way and Planning has done a really good job of
18 making that next ...(inaudible)...better. And we can talk about how it's been for the last
19 40 years but we can also look at what changes has been made recently and we're taking
20 positive steps forward in that direction. So I'm okay, I'm not for the motion, but okay with the
21 certain agreement, but specific agreement.

22
23 Mr. Carnicelli: Thank you Commissioner Pali. Commissioner La Costa.

24
25 Ms. La Costa: Thank you Chair. Well, the reason that I wanted to see an increase is because
26 this has been going on since 2013 if you look at the documents that is six years and they're in
27 my view irrespective of how long it takes to do things it shouldn't have taken six years and in the
28 meantime look at what has happened not only to Mr. Hester's property but also to the properties
29 on either side of him. So it needs to get fixed immediately, but you know I will withdraw the
30 portion of, restate my motion and take the \$200,000 off and take it down \$1,000 if it means
31 getting it done and protecting the shoreline.

32
33 Mr. Carnicelli: You mean \$100,000.

34
35 Ms. La Costa: \$100,000. Taking it from \$200,000 back to \$100,000.

36
37 Mr. Carnicelli: So are you then amending your motion?

38
39 Ms. La Costa: I can amend my motion if it gets done immediately, if the work gets done
40 immediately, yes.

41
42 Mr. Carnicelli: I'm gonna come back to you on that one. Commissioner Tackett would you like
43 to speak to the motion?

44
45 Mr. Tackett: So I agree with both sides of what is said. I think we need both. I think...I agreed
46 with P. D. because it...our shorelines are invaluable. There's not a number you can attach to it.

1 And if a plan is drawn a certain way and it's drawn for that way for these reasons and it's built a
2 different way then there should be repercussions for that and the repercussions shouldn't be so
3 minimal that people decide to just build it and let it happen whatever happens. So I think that
4 that's the reason why I'm okay with a larger fine. I think that if you don't do something along the
5 lines of what Keaka is talking about it, we're just gonna perpetuate this cycle over and over and
6 over again and with tidal rising and with sea water rise it's going to become a larger and larger
7 problem. So I'm definitely leaning towards both directions what's being said here and those are
8 my reasons why.

9

10 Mr. Carnicelli: Thank you. Corporation Counsel.

11

12 Mr. Galazin: Thank you Chair. And I just want to make a quick point for everybody on the
13 Commission and perhaps for anybody who's listening and is interested. I've heard a couple
14 people mention the word precedent, setting a precedent, we don't want this to be a precedent.
15 Each situation that you have when you have a potential violation, you have an NOV that's been
16 issued is unique and when a settlement is offered, the Department's negotiated this, they've
17 looked at it and they said we think this represents a fair balance between levying the fines that
18 we're supposed to and not having it so high the person's just not going to do anything and it's
19 gonna sit there, nobody's gonna touch it. But settlement agreements in and of themselves the
20 dollar amounts do not set precedent. You are not bound any more to follow one in the future
21 than you are to follow any other one in the past in setting this amount. So because the
22 uniqueness of the situations do not worry that if you say \$100,000 is fine now if something
23 comes up that's ten times worse that you suddenly feel like well we can't exactly fine them more
24 than the \$150,000 because we've done two at \$100,000 now. Really they are looked at each in
25 their own particular vacuum so do not worry about setting a precedent with this dollar amount. If
26 you think this dollar amount's appropriate for this situation then that's your determination, but
27 don't try and encapsulate anything else in it or put anything on it. Thank you.

28

29 Mr. Carnicelli: Thank you Corporation Counsel. So if...I'll just take my turn on speaking to the
30 motion is and thank you for that, I appreciate the precedent setting part. I think one of the
31 frustrating parts for us is we've come to this point to where we're going like okay this needs to
32 be fixed and we're trying to fix it today. You know, is...I think that we all need to be a lot more
33 aware and conscious as commissioners when these SMAs come 'cause you don't know what
34 you don't know, right so now we need to ask about bonding as far as you know conditions and
35 things like that. But what's before us right now is this particular resolution and you know it kinda
36 feels like all right what do we do with this and you need to confirm this for me on the record
37 Mr. Galazin, but as I understand we can't approve an agreement that's not agreed to. So as the
38 motion sits on the floor we actually and I think Mr. Mancini sort of alluded to that is that we
39 can't...you know, we're agreeing to approve something that's not agreed to. So is that true?

40

41 Mr. Galazin: That's more or less correct, yes.

42

43 Mr. Carnicelli: So at this point in time I think all of us have agreed at some point in time that we
44 do need this to be fixed like this is the mitigation part of it is the most important part. Would you
45 like to amend your motion?

46

1 Ms. La Costa: I will amend my motion to accept the settlement agreement as stated with the
2 proviso that the work begins immediately as the permits are issued.

3
4 Mr. Carnicelli: Is a proviso allowed? Okay. So as the second, Commissioner Tackett are you
5 okay with the amendment to the motion?

6
7 Mr. Tackett: Yeah, I'm okay with the amendment.

8
9 Mr. Carnicelli: Okay, Commissioner Robinson.

10
11 Mr. Robinson: I was actually more in support of the other motion and again, the reason why
12 even though it's not precedent, it just happens to be a coincidence that the fines are the same.
13 How people feel about how they're being treated and look at how other fines were is what
14 usually what takes people to court. If everybody is the same, okay, I'm not being penalized or
15 being punitive, but now if mine is five dollars more than the other guys and his less egregious
16 than and blah, blah, blah, you know and so I understand the legality part of it, it's what I'm going
17 and yes, I'm trying to fix it. I'm trying to fix it right now with either having a dollar amount that is
18 going to be straight deterrent and in the future the Planning Department will add a condition
19 hopefully with our help that all contracts on seawalls or everything should be bonded. If we're
20 gonna do something, if it's coming in front of us it has to be a certain dollar amount and it should
21 be bonded. And I'm actually for, I'm actually for a deferral to get a better resolution in front of us
22 that isn't a \$100,000 and it's just going to be an open cycle and I'm not sure of how that would
23 read but that's something that I would look at for my fellow commissioners to try to see
24 something that would make us all comfortable, you know. Thank you.

25
26 Mr. Carnicelli: Commissioner Pali would you like to speak to the amended motion.

27
28 Ms. Pali: Yeah, I think I've now saying it for the third time I'm okay with trusting the Planning
29 Department in their expertise and how they have been managing our shorelines and our land
30 through governing ordinances and rules and regulations far beyond my own expertise. And I
31 trust that they have been learning from their mistakes and you know, we've been evolving, I
32 think it's easy to stick out and remember the things that we've dropped the ball on as a Planning
33 Department per se, but I also think it's a very rare that we actually look at the victories that
34 we've had over a certain things and learning from our mistakes. So again, for the third time I'm
35 okay with the motion as it is for two particular reasons. Number one, with their expertise
36 Planning Department and the applicant this is their agreement. This is the applicant saying hey,
37 we had to do A, B, C, E, F, G. We couldn't C until we did D, and then the time lapsed I didn't
38 feel the applicant was negligent as far as like you're doing nothing about it. Could they have
39 picked a better contractor? Yes. Could they have been bonded? Yes. Could they have
40 managed the project better? Of course. But now here we are and we've got an urgent problem
41 on our hands and I don't want to be part of the delay. So for the third time Chair I am okay with
42 the motion on the floor.

43
44 Mr. Carnicelli: Thank you Commissioner Pali. Commissioner La Costa would you like to speak
45 to the amended motion.

46

1 Ms. La Costa: No, I just want it to be fixed yesterday.

2

3 Mr. Carnicelli: Thank you. Commissioner Tackett.

4

5 Mr. Tackett: So say it goes forward this way and it passes what are the remedies to implement
6 something like what Keaka is suggesting going forward?

7

8 Mr. Carnicelli: Director.

9

10 Ms. McLean: The first thing that would happen I believe Jim is poised to issue permits for the
11 debris to be removed. That's the primary concern right now. Then to correct the situation the
12 applicant would need to prepare again an Environmental Assessment, Shoreline Setback
13 Variance and an SMA Permit. The Shoreline Setback Variance of course would come to you,
14 probably the SMA based on the valuation and the EA you'd be the accepting agency of the EA.
15 So you would see it at least twice to see the corrective measure and that will take some time for
16 them to put together and to get before you.

17

18 Mr. Tackett: I think what I was trying to get at is what is the process for implementing something
19 that has more accountability than what we have right now which is what I think Keaka
20 suggested.

21

22 Ms. McLean: For any further shoreline protection project I'd like to get feedback from Corp.
23 Counsel and maybe even from Public Works as they administer their you know, County projects
24 in terms of bonding and requirements like that 'cause you know we'd have to figure out what
25 kind of language would be appropriate to impose as conditions in the future. And we could also
26 put in language, specific language in the permit saying that, you know breaches would result in
27 the highest penalties allowed under the Commission's rules and that you know there won't be
28 any settlements or something like that just to say you know we're not going to do this again. I
29 mean, those are the kinds of things that could be considered, but again those would be on
30 permits that you folks would review and approve so it would have to be language that went
31 toward what you're, what you're—

32

33 Mr. Tackett: So to achieve this goal that we're trying to achieve here we would have to
34 think...(inaudible)...come up with a solution and then agenda...put it on the agenda and then
35 vote it and at that point it would get implemented is the...

36

37 Ms. McLean: We could do that as a separate standalone thing not related to any particular
38 project that is one way to approach it if that's what you'd like to see. That just its own
39 discussion item on a future agenda.

40

41 Mr. Carnicelli: Right, and I think this is a really, really important line of questioning, but it's just
42 like, is like what are we going to do moving forward? The next one that comes before us what
43 are going to do forward? I think that we need to press pause on that particular line of
44 questioning right now because we do have the motion on the floor, we've got a really full
45 agenda and so you know I just want to stay to the motion.

46

1 Mr. Tackett: And agree wholeheartedly with you Chair. I'm just saying that if everybody feels
2 comfortable that this is gonna get remedied going forward I think you have a better chance of
3 passing what you have on the agenda in front of you.

4
5 Mr. Carnicelli: No, that's very well said. Thank you. So Commissioner La Costa.

6
7 Ms. La Costa: Thank you Chair. So my question then to the Director is if there has to be an EA
8 and a setback and it will take some time, does it look like it can get done before the tides come
9 back in November or can we fast track it in any way because it's getting worse and worse all the
10 time.

11
12 Ms. McLean: We're talking about two things. Removing all the debris that's what needs to
13 happen this summer. So that's...that can happen within the next few months. In terms of
14 getting those permits to replace the wall that will take longer. Jim can speak to that in more
15 detail.

16
17 Mr. Buika: Sure one comment. What will go along with removing the debris and taking down
18 the remaining wall is if you look at Exhibit 7 there is a proposal as part of this...I have those
19 permits on my desk to put on a erosion control blanket, from Oceanit Exhibit 7. It's an erosion
20 control blanket so the reason for that is to stabilize the shoreline without the retaining wall. So it
21 is material that can erode very quickly above the first level of rock out there and so the idea of
22 putting on the...putting these sandbags out front and the erosion control blanket. The State has
23 already approved that and so I have a similar permit on my desk right now. So that would be in
24 tandem with removal of the debris. The debris would happen first and then we would basically
25 temporarily stabilize the shoreline with some sandbags at the base and this erosion control
26 blanket and that's it. As Director Mclean was saying a larger long term solution will require
27 additional thinking, alternatives, environmental assessment, variance that would probably come
28 in a year or two or three down the line to the Commission. So there's two separate actions.

29
30 Ms. La Costa: I understand but it has to do with the motion.

31
32 Mr. Carnicelli: Go ahead.

33
34 Ms. La Costa: Okay, thank you. So this letter was written in 2017 and they're proposing to do
35 exactly the same thing that hasn't been done for two years?

36
37 Mr. Buika: Yes, this is the remediation of the shoreline, yes.

38
39 Ms. La Costa: I'm trying to ascertain again why this expansive time and why this wasn't
40 mitigated in 2017 when this letter was issued and if indeed I need to withdraw my altogether so
41 that's why I asked the question. Thank you.

42
43 Mr. Carnicelli: Okay. Do you have any more questions?

44
45 Ms. La Costa: No Chair.

46

1 Mr. Carnicelli: You good?

2

3 Ms. La Costa: I'm good.

4

5 Mr. Carnicelli: So I think at this point in time what we'll do is we'll go ahead and call for a vote
6 on the motion. So Director if you would please state the motion.

7

8 Mr. Robinson: Chair, can I have a question before you call for the vote?

9

10 Mr. Carnicelli: Sure. Commissioner Robinson.

11

12 Mr. Robinson: Director, the reconstruction of this wall will come back before the Planning
13 Commission that's...so we don't have to worry about this wall being messed up again 'cause
14 we'll have the opportunity to add conditions on if that commission...those commissioners will
15 have an opportunity to add that one is that correct?

16

17 Ms. McLean: For a future permanent wall, yes.

18

19 Mr. Robinson: This residence.

20

21 Ms. McLean: Yes.

22

23 Mr. Robinson: This is gonna need a future permanent wall 'cause this wall is—

24

25 Ms. McLean: Correct.

26

27 Mr. Robinson: Okay, thank you.

28

29 Ms. McLean: Yes.

30

31 Mr. Carnicelli: Corporation Counsel.

32

33 Mr. Galazin: Jim could you get back up for just one quick question. So to get to
34 Commissioner La Costa's ultimate point about the letter in 2017 why was that not done?

35

36 Mr. Carnicelli: Director.

37

38 Mr. Buika: Sure Michele, Director.

39

40 Ms. McLean: Because permits are needed and those are permits that can be administered by
41 Staff administratively. But because the fines hadn't been paid we don't issue new permits until
42 the fines have been paid.

43

44 Mr. Carnicelli: Okay, Director the motion.

45

46 Ms. McLean: The motion I believe is to approve the resolution as presented.

1
2 Mr. Carnicelli: All in favor please raise your hand. That is five. Motion passes.
3

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

6
7 **VOTED: To Accept the Resolution Agreement as presented.**

8
9 **(Assenting – P D. La Costa, C. Tackett, K. Pali, K. Robinson,**
10 **L. Carnicelli)**
11 **(Excused – S. Castro, T. Gomes)**
12

13
14 Mr. Carnicelli: Jim.

15
16 Mr. Buika: Yes, thank you. Chair I have one amendment to the resolution agreement it's a –

17
18 Mr. Carnicelli: Really now?

19
20 Mr. Buika: Sorry.

21
22 Ms. McLean: Typo. It's just a typo.

23
24 Mr. Buika: It's a change in a date.

25
26 Ms. McLean: It's typo that we can correct.

27
28 Mr. Buika: Okay, yeah, we'll change the typo from yeah, July...September 23, 2013 to
29 July 23, 2013 for the record. Thank you.

30
31 Mr. Carnicelli: And you guys thought you'd show up and talk about a B&B today, right. I think at
32 this point in time, should we just keep moving or do you want to take a quick break? All right,
33 we're gonna take a four-minute recess.
34

35 Mr. Mancini: I'd like to thank the Commission for the deliberation and hearing everything.
36 Certainly appreciate it.
37

38 (A recess was called at 10:38 a.m., and the meeting was reconvened at 10:45 a.m.)
39

40 Mr. Carnicelli: The Maui Planning Commission of May 28, 2019 is back in session. Director.
41

42 Ms. McLean: Thank you Chair you have four public hearings on your agenda today. The first is
43 a request from Lew Abrams representing the Sacred Earth Assembly, a non-profit interfaith
44 church for a State Land Use Commission Special Permit to utilize approximately 14.8 acres of
45 the Ahimsa Sanctuary Farm and a 7,693 square foot two-story agricultural building for church-
46 related activities at 4504 Hana Highway at TMK: 2-8-003:075 (por.) in Haiku. Tara Furukawa is
47 the project planner.

1
2 **C. PUBLIC HEARINGS**

- 3
4 **1. LEW ABRAMS representing the SACRED EARTH ASSEMBLY, a non-profit**
5 **interfaith church, requesting a State Land Use Commission Special Permit**
6 **to utilize approximately 14.8 acres of the Ahimsa Sanctuary Farm and a**
7 **7,693 square foot two-story agricultural building for church-related**
8 **activities at 4504 Hana Highway, TMK: (2) 2-8-003:075 (por.), Haiku, Island**
9 **of Maui. (SUP2 2017/0011) (T. Furukawa)**

10
11 Ms. Tara Furukawa: Good morning Commissioners I just wanted to correct the address is 4505
12 and not 4504 as stated. So this item has come to you for review because the applicant,
13 Dr. Lew Abrams and his wife, Maria are proposing a church, the Sacred Earth Assembly on
14 state agricultural land. Lew has a presentation that he wants to share and he can answer any
15 questions that you may have regarding his proposal.

16
17 Dr. Lew Abrams: Aloha Commissioners. I'm Dr. Lew Abrams here representing Sacred Earth
18 Assembly Church and I'm really appreciative to have this opportunity to speak to you and I have
19 some supporters of our congregation here in the audience and I don't know that all of them will
20 get to testify or stay so I was just going to acknowledge our team. We have our consultant,
21 David Jenkins that I have been working with as well as our attorney Les Iczkovitz. And then we
22 have some people from the community that are here to testify in support and I was just going to
23 ask whoever is here in support of us just to stand in this moment because I know you may not
24 all get to testify. Thank you so much for coming out and I just want to point out that there's one
25 important missing member, maybe we should stand for a moment, Dr. Joe Marshalla, one of the
26 main instigators of the shaka movement was going to be here to testify but he's had health
27 problems and a number of heart attacks and last night he called to say he wouldn't be able to
28 make it 'cause he was having heart pains and pain in his arm. So I'd just like to take this
29 moment silence to send some healing energy to Dr. Joe Marshalla who's been an amazing
30 servant for this community and island. Thank you may be seated.

31
32 So yes, I came to this island with my family, my wife and two sons in 1997 and began working
33 as a licensed clinical psychologist. I have PhD from the University of North Carolina and went
34 Undergraduate to UC Berkley and when we first came to the island I began working at the
35 Molokini Unit at the hospital, the locked psychiatric ward doing group therapy with adults and
36 adolescents. I also worked for some other agencies. I worked for the Aloha House Adolescent
37 Unit doing family therapy and I did some evaluations for Child and Family Service while I
38 developed a private practice as well first in Makawao then in Pukalani, and at present I work in
39 Lahaina at West Maui Counseling Center for three days a week seeing individuals, couples and
40 families.

41
42 When we moved to Maui we moved to a two-acre parcel in Haiku above Hanzawa Store on
43 Awalau Road and that's where I began to learn about organic farming and planting trees. We
44 built a fishpond and I took some training in permaculture design and I recognized that that path
45 of growing food naturally without chemical fertilizers and pesticides is an important key to the
46 future of this island for being able to achieve food sovereignty and healthy ecosystems to pass

1 on to future generations. So I'll be speaking more about our organic farm. We moved from that
2 place to a larger parcel on the north shore near Jaws Country Store. It's a 25-acre piece of land
3 that we have gone on to develop into a certified organic farm and we've been certified since
4 2016.

5
6 So parallel to being a farmer and psychologist, I am also an ordained minister in the Temple of
7 Peace in Haiku since the year 2000 and I've help Reverend Kedar St. John with the Sunday
8 services as well as my wife who's also a minister in the Temple of Peace and we have
9 ...(inaudible)...the space and participate in those Sunday gatherings and then when
10 Reverend Kedar goes out of town he asks my wife and I to be the ministers of the Temple of
11 Peace in his absence. And out of that as an outgrowth of that community we established
12 Sacred Earth Assembly, 501(c)(3) nonprofit church. In 2012 we created the structure for that
13 with the intention of beginning to utilize our land for spiritual gatherings and for the community
14 from the Temple of Peace as an interfaith gathering place. And so we have a number of
15 different communities that overlap when...coming to our place that we're asking for permission
16 to meet and worship and celebration at our farm and we'll speak to more about that. Some of
17 those members are here. Today we have some people from Sufi Community, there's the
18 Buddhist Community. It's an interfaith group that shares the value of honoring the earth as
19 sacred and recognizing that human beings are stewards of the plant for the future generations.
20 And I'd like to invite my wife, Maria Abrams to come and speak a little bit to the background of
21 how we came to call our place Ahimsa Sanctuary Farm.

22
23 Ms. Maria Abrams: Good morning. All my appreciation to all our friends that are accompanying
24 here today. I grew up in Honduras.

25
26 Mr. Carnicelli: If you would please, just state your name for the record.

27
28 Ms. Abrams: My name is Maria Abrams.

29
30 Mr. Carnicelli: Thank you.

31
32 Ms. Abrams: I grew up in Honduras in a natural environment surrounded by animals of different
33 kinds, cows and turkeys and I never wanted to partake in the killing of animals so I became a
34 vegetarian very early in my life and I began study plant-based diets and also the optimal diet for
35 human beings to stay strong 'cause I didn't want to eat animals. So this lead to organic farming,
36 looking for the optimal diet without pesticides, without additives, that's how I raised my children
37 and my family. And because of that now the Ahimsa Sanctuary Farm is here for the whole
38 community growing organic food.

39
40 And then I also come from a spiritual family. My grandfather had a church in his farm for all our
41 family we would gather there on Sundays, and my mother also in our farm created a church for
42 us to go on Sundays. So because we are spiritual people and our tradition is earth based
43 spirituality, honoring the earth as sacred and all the living beings and deserve our honor and
44 respect. So this is how we live and this is how we worship. We want to have a place to gather
45 for us and the community to do our meditations, our yoga, our sacred movement, our songs, our
46 prayers, gather for Thanksgiving with righteous food. We celebrate with vegan food and

1 vegetarian. Mostly for our own soul development and also for the stewardship of our planet that
2 we can create a good example for the next generations to protect our environment as well as
3 have an optimal diet for human beings that doesn't involve any killing or any violence.

4
5 As I came to this phase I studied all sorts of traditions from East India and Buddhists from the
6 east and I learn about Ahimsa which is part of the ...(inaudible)... and these gave me the
7 assertiveness that I was in the right path that my intuition had led me to to be a vegetarian and
8 to be a caretaker of the earth with all honor and respect. So this is why we would like to request
9 of you to let us have a temple on our farm where we can meditate, where we can do our
10 spiritual practices so that we can honor the earth as sacred and we can also honor our spiritual
11 community that needs a place to gather and a place to, you know, set the good intentions for
12 our future on this planet where we need a clean environment and good food without pesticides,
13 without GMOs. This is what we're about and we would really like to ask you to honor our
14 request to give us a Special Permit for having a church, a chapel in our farm. So thank you very
15 much and thank you for having us.

16
17 Mr. Carnicelli: Thank you.

18
19 Mr. Abrams: Yeah, so once again I'm Dr. Lew Abrams presenting on behalf of Sacred Earth
20 Assembly. The building for which this Special Use Permit is requested as well as some land
21 around it is pictured in that photo. We built it as a multipurpose agricultural workshop and we
22 have used it for drying and packaging herbal teas and spreading out turmeric harvest to dry,
23 and so I did actually bring some of our first value added product that comes from our farm if
24 you'd like to take a look. There's some interesting labeling of the tea that explains our
25 philosophy of Ahimsa honoring all life is sacred. We're interested in becoming and being an
26 example of permaculture design and organic farming and growing food naturally as well as a
27 place for the community to gather in reverence and gratitude for the gift of life, for holiday
28 celebrations, for rites of passage of our community members, and for recognizing that creative
29 self-expression is divinely inspired. So that's part of what we do is we share music and spoken
30 word and dance and other visual arts as part of gathering. I am a sculptor and my wife is a
31 ceramicist and my sons are musicians and so that we've had the opportunity to integrate our
32 creative self-expression into our work as well. So we can go to the next—

33
34 So that map is a little hard to see but Ahimsa Sanctuary Farm is located about 28 minute drive
35 from the airport along the north shore of Maui, kind of right across from Jaws Country Store, a
36 couple hundred yards further towards Huelo and then towards the ocean. And it's a 25-acre
37 parcel I guess we could...and as you can see it's a flag lot and that lower blue outlined driveway
38 coming out to the Hana Highway that is the Hana Highway there at the bottom, and then if you
39 notice the boundaries of the property about three-quarters of the entire perimeter is bordered by
40 major gulch. We own all the way across the gulch on the western side and halfway through the
41 gulch on the eastern side and it's about 200-foot drop down there and it's a wild untamed area
42 where there is some flow of a stream coming down the gulch to the ocean. There's wild boars
43 down there, lot of really thick vegetation and it provides a buffer and border for our farm from
44 our surrounding neighbors that gives a privacy...Privacy that is what attracted us to buying this
45 parcel. We stretched beyond our means to afford to buy it but we had been staying in a two-
46 acre parcel with the neighbors very close. We decided we want to try to find a place where we

1 could actually develop organic farming and have some space for the community to gather. And
2 if you look at the driveway that comes down to the Hana Highway there, we own that and then
3 we have two neighbors that have an easement to utilize the driveway. The first house is right
4 there on the...just 86 feet from the Hana Highway and then the other, our other neighbor
5 Jerome Labat is in this house right there. So there's really only two neighbors that are
6 very...are reasonably close although each of the houses are more than 500 feet away from our
7 home and for almost a quarter mile from the entrance of the Hana Highway and Michele's home
8 to where we are gathering in our Sacred Earth Temple building and what we're asking for
9 permission to gather there. Okay, next slide.

10
11 As you know it's Ag zoned and everything we're proposing is in compliance with the Maui Island
12 Plan. We are within the SMA area and so we've made SMA application, working with
13 Keith Scott of the Planning Department and this proposal was approved. So we do have on the
14 SMA the agricultural building indicated as approved for church use. Sacred Earth Assembly
15 has a 501(c)(3) status and it's an interfaith ministry. Again, we invite people of all faiths who
16 share the value of honoring the earth as a sacred divine mother to gather in gratitude and
17 celebration and the way we celebrate and pray is to share locally grown food from our farm and
18 other farms in the area, to honor rites of passages like births, and deaths, and weddings and
19 birthdays. And then we also celebrate the holidays like we have a tradition of having a
20 vegetarian Thanksgiving potluck that we've hosted for more than 30 years in all the different
21 places we've lived. And it provides a place for the community who may not be eating turkey on
22 Thanksgiving to gather we have an amazing array of vegetarian foods and everyone really has
23 a...is able to celebrate the abundance and being thankfulness without taking the lives of
24 animals.

25
26 And the underlying philosophy of Sacred Earth Assembly is very close to Malama Aina. It's
27 about taking care of the earth for the future generations. And in order to do that we have to find
28 ways to grow our food without pesticides, without chemical fertilizers, without polluting the
29 groundwater as well as to generate energy in nonpolluting ways. So we have a demonstration
30 is also of photovoltaic and wind energy on the farm that I'll tell you about more when we get to
31 talking about our permaculture farm tour. If you can go to the next.

32
33 This is just saying that Sacred Earth Assembly is a 501(c)(3) corporation is in good standing
34 with the County. We've keep up our filing since 2012. So the building in question that we're
35 asking for your approval to use for church related activities is 7,600 square feet. The second
36 floor is the area where we have assembly hall and a place for worship and then downstairs is an
37 area where we can have potlucks and fellowship. And according to the square footage of the
38 building we would be requiring...required to have 26 parking stalls. We have more than
39 65 stalls and then our whole perimeter loop road has parking along the edge. We could park
40 way more than 65 cars without ever impacting our neighbors. We can get all, anyone who
41 might come to visit on our land.

42
43 Oh this is a note that there was some modification of the plans. Originally we were asking for
44 approval of a commercial kitchen downstairs in the church building but as we learned more
45 about it and we heard that the zoning requires that commercial agricultural food service
46 establishments can have kitchens but they have to be in a building of less than 1,000 square

1 feet we decided to withdraw the proposal for a commercial kitchen and our plan is to house a
2 commercial kitchen in a separate building for our value added farm products and to be able to
3 provide meals on our farm tours, from farm to table meals. So what we are asking for is just a
4 church kitchen to accommodate our potluck and fellowships.

5
6 So this is a diagram of the building in question. That's the top floor. The front vestibule or porch
7 area where people can leave their shoes this is a foyer entryway with two bathrooms, half baths
8 at the end and this door can close so that people can be talking and communing out in this
9 entryway while it can stay quiet in the shrine room. And then you'll see there's a large deck
10 around the outside which...grand stairway going down to another deck and so this is a place
11 where activities can happen outside as well. Next slide.

12
13 And then this is the diagram of the lower level. This is the area where fellowship and potlucks
14 and the church kitchen that we're requesting is located. And then there's this other area here
15 on the lower level that we're hoping to turn into a gift shop for the church and we can talk more
16 about that at the end.

17
18 Here's about the infrastructure. We went through the application process and met all the
19 different criteria. We're on a private water system and we also have a water tank where we get
20 potable water delivered into it that can serve the church building. And we do, we did have our
21 septic system, individual wastewater system evaluated by an engineer and it was approved with
22 a capacity of a hundred people which is more than enough for our gatherings.

23
24 There's no issues with drainage. There is a slope on the property heading towards the ocean
25 and we've...with swales and natural drainage. We fill some fishponds with the runoff, but
26 there's no significant runoff coming off of our property. The driveway entering from the
27 Hana Highway is a...as I said it was a flag lot and it opens up to 92 feet of frontage along the
28 Hana Highway and it happens to be in a place where there's a big open visibility. We can see
29 more than a thousand feet towards Kai Huki Place and then about same going to the east
30 towards Manawai so the road is nice and straight and wide there. We have a lot of frontage.
31 It's very easy to turn off the Hana Highway without causing any traffic issues. And there's
32 electrical and telephone and internet there.

33
34 So for the church operations that we're asking you all to approve is a congregation of no more
35 than a hundred members. Usually we have far less than that. We're proposing to have
36 services on Wednesday and Friday evenings and that will probably be typically be about 10 to
37 30 people with operation starting with a potluck and then having a sharing prayer circle that
38 would run from 6:00 to 9:00 p.m. and except there may be some holidays that we meet. As I
39 mentioned we have a tradition of meeting on Thanksgiving and Passover and other holidays in
40 which we invite more people or we would expect more attendees but probably in the 50 to 75
41 person range.

42
43 The land of this farm is old pineapple land. It was farmed in mono cropping, chemical
44 agriculture up till about 35 years ago and that means the soil is quite depleted. If you see on the
45 scale of A to E, our soil is rated in the C and E element of that scale which means it isn't the
46 most abundant and fertile soil because of the farming methods that were employed. So a lot of

1 what we're doing is rejuvenating the soil, rehabilitating the soil. If you're interested in learning
2 more about that I have an article on the left side of this packet. It's a one-page sheet that
3 enumerates all the ways that we're working to reintroduce the micro biota to the ecosystem of
4 the farm, working with permaculture design, biodynamics, we've biochar, and Korean natural
5 farming, and if you know when you have a chance to read this there really are solutions
6 indicated to solve some of the problems in the central valley. It is possible to rehabilitate and
7 rebuild the soil and grow healthy food without chemical pesticides even on soils that are quite
8 depleted. And part of this plan is we're gonna be continuing our farming aberration and
9 agricultural activities as well as inviting people to come to worship to the church. And in fact
10 members of the church are invited to experience and get their hands in the aina and come and
11 volunteer on the land. We have an open workday on Wednesdays where people come and I
12 give some instruction and some of the elements of permaculture design and we work together.
13 So there's no, you know, reduction in agriculture or interference with the primary agricultural
14 use.

15
16 Here's an overview of the farm. You could see that's the church building and focus. There's the
17 nine kilowatts of photovoltaic and a five kilowatt wind generator. This is a grid tied system so
18 the energy that gets produced gets fed back into the grid and runs our meter backwards and
19 reduces our electric bill. And by having both wind and solar to talk about what people we cover
20 through the gamut of some of the alternative power opportunities that we have on the island
21 'cause the wind still blows at night when the solar power is not useful. We haven't gotten
22 separate batteries to store the energy yet because we were waiting for the technology to
23 improve because a lot of the batteries currently being used are lead based or lithium based that
24 have negative environmental impacts. So eventually we do hope to get saltwater battery
25 system to store the energy that we produce there. You can see we have a couple of fishponds
26 that be built. There was a bowl shape to the land where water was running into these areas and
27 so we with permits created a indentation and lined it and now we have tilapia and koi and some
28 peacock bass and some channel catfish growing in these two ponds and whether or not one
29 eats fish there's still a utility to having a fishpond on the farm and I'll explain more about that in a
30 future slide. And then in the front here this is our main farm field that's sheltered by bamboo.
31 One of the first things we did was plant bamboo all along our windward property line as a
32 windbreak as well as a privacy break with our neighbor, Jerome Labat, who's here today. So
33 we have a visual barrier between our next door neighbor.

34
35 As I mentioned it's a 25-acre farm. It's a diverse farm, we're growing all kinds of things. You
36 can kalo or taro growing there. We have—

37
38 Mr. Carnicelli: Dr. Abrams?

39
40 Dr. Abrams: Yes.

41
42 Mr. Carnicelli: About how much longer do you have?

43
44 Dr. Abrams: I'm going as quickly as I can. I was just gonna keep going and I will try to
45 expedite.

46

1 Mr. Carnicelli: Okay, great thank you. Just curious.

2

3 Dr. Abrams: Yeah, so these are just some slides about how we're generating the land on the
4 farm, you could keep going. This is some pictures of our bringing produce to the farmers
5 market with our farm team and some of the abundance and here's some of the crops we're
6 growing papayas, pineapples, bananas and cocos and our eco farm tour that I'll tell you more
7 about. We do produce food and bring it into Mana Food and to some of the local restaurants,
8 most recently a restaurant up in Lahaina Moku Root and then we have our first value added
9 produce which is our soothing herbal tea blend which I believe you have in front of you.

10

11 So part of what we're doing is providing an example for people to come and get inspired about
12 living closer to the earth and farming naturally so we've been offering permaculture farm tours
13 over the past three or four years and this is some photos from that. We do have some tortoises
14 which are popular with the kids and they're an example of an organism that has lived in its
15 environment for 200 million years without polluting or destroying it. So the farm tour is very
16 interactive and hands on. People get to come around and actually pick the herbs that we
17 include in the tea and we brewed and give people a sample of the tea while they're there.
18 Here's more information about the aquiculture. There's a relationship between fish and the
19 plants. It's very mutually beneficial and we're working on developing our own fish food rather
20 relying on packaged foods that come in with a carbon footprint. We're coconuts, moringa,
21 azolla, ground peanut and blending them into ice cube trays and then we can use them to feed
22 the fish.

23

24 Mr. Carnicelli: Excuse me, Dr. Abrams, I hate to interrupt you again, but what's before us
25 today—

26

27 Dr. Abrams: Yes.

28

29 Mr. Carnicelli: --is a special use permit for the church.

30

31 Dr. Abrams: Yes, okay.

32

33 Mr. Carnicelli: All the ag stuff, awesome.

34

35 Dr. Abrams: Okay.

36

37 Mr. Carnicelli: But it's legal. We're not here to talk...you know, it's just like...all that stuff is
38 totally legal and it's great and I get that you're trying to paint a picture and all that's wonderful is
39 we have a really, really super full agenda. We have 18 people signed up to testify so you know
40 do your thing but I just want you to be aware of what we're making a decision on today.

41

42 Dr. Abrams: Okay, thank you for coaching me—

43

44 Mr. Carnicelli: Cool, thank you.

45

1 Dr. Abrams: So the slides that just went by basically show that we've complied with all of the
2 requirements of the Special Use Permit application and then we have testimony from...letters of
3 support from actually 17 people now, some of whom are here today and after you hear from
4 them and our neighbors, you will I guess have the opportunity to make a decision about our
5 request and then the one thing that was left off inadvertently off of our request was to be able to
6 have a church gift shop downstairs in our fellowship area that would be just serving our local
7 congregation. It's unlikely to draw any traffic from anywhere else. It's just when people come to
8 worship they'll be able to pick up literature and other sacred objects. Yeah, so that's where
9 we're asking for the gift shop to be located.

10
11 And then if you look in your packets, it's hard to see it, there's a folded site plan. I think it's
12 important to get a picture of where the relationship of this church building to our neighbors and
13 to the Hana Highway so if you wanna pull it out it's on the...I think right side, the folded plot
14 plan. And you could see the Hana Highway is right at the very bottom and we have the
15 drive...we own the driveway...this is the entrance, the mouth of the driveway that's showing the
16 sight distance in each direction. It's really a long way you can see a car coming that makes it
17 safe to pull in and out. But I did, if we could go back to that other diagram I just wanted to point
18 out that we do have one neighbor right along the Hana Highway, she's 86 feet from the Hana
19 Highway where literally hundreds or thousands of cars go by each day but we own this driveway
20 and she has an easement to access it and then our other neighbor, Jerome Labat has an
21 easement off the end of this cul de sac to get to his property. But you can see the place where
22 the activity, church related activity will happen is more than a quarter mile from this house and
23 over 1,500 feet down out at the point of our land with gulch all around it to provide a buffer. So I
24 believe that concludes my presentation and we can invite some of the folks who came out to
25 testify. Thank you for your...

26
27 Mr. Carnicelli: Thank you very much, I appreciate that Lew. So Tara if you would, could you
28 know, is again trying to just educate everybody so people can be on point, why are we here?
29 You know, it's like it's a State Special Use Permit so what is it that they have to come before us
30 today to get this particular permit?

31
32 Ms. Furukawa: Because this is occurring on State Agricultural land so a special permit is
33 required.

34
35 Mr. Carnicelli: What part, what activity is it that's not allowed on State Ag that they're doing I
36 guess Director?

37
38 Ms. McLean: The church use requires a Special Use Permit.

39
40 Mr. Carnicelli: The church use, okay so I just wanted to, I want to get clear so then people can
41 also understand what it is that we have to decide on and can tailor their testimony in accordance
42 with that as well. So thank you for that clarification. So just to kinda quickly go over it again, as
43 I call you guys up you can actually waive your testimony you don't have to come up if you feel
44 as though Dr. Abrams have covered it. You get up to three minutes. Please no more just to be
45 respectful of everybody else. At the end of your testimony Dr. Abrams will have the ability to
46 cross examine you if he so chooses. Also, I will ask you to be truthful when you come and give

1 your testimony. So we're gonna start with Dr. Malik Slosberg and if I butcher your name I really,
2 really apologize. Please state your name.

3
4 Dr. Malik Slosberg: Dr. Malik Slosberg.

5
6 Mr. Carnicelli: Dr. Slosberg do you promise to tell the truth?

7
8 Dr. Slosberg: Yes, I do.

9
10 Mr. Carnicelli: You have up to three minutes.

11
12 Dr. Slosberg: I'm a professor emeritus of Life Chiropractic College and an ordained minister of
13 the Sufi Order. I've known Dr. Abrams for five years and can attest very clearly to his sincerity,
14 dedication and devotion to hosting and sponsoring teachers, yogis, spiritual guides of the
15 highest caliber from various religious and spiritual groups. On many Sundays my wife and I
16 have witnessed and enjoyed and been inspired by Dr. Abram's invocations at the beginning of
17 the Temple of Peace services.

18
19 As a full-time resident of Maui for three years and part-time resident for seven years I urge you
20 to approve the Special Permit for Sacred Earth Assembly's use of the main agricultural
21 workshop building and surrounding land that Ahimsa Sanctuary Farm. The environment and
22 proposed church building is a beautiful, spacious, uplifting setting for interfaith worship services.
23 It is ideal for all kinds of activities, workshops and interfaith gatherings. I have attended
24 numerous workshops at this lovey facility all of which have been free or by donation. I offer my
25 wholehearted support of Sacred Earth Assembly's request to offer weekly religious services
26 especially holiday prayer gatherings, potlucks and rites of passages for the community. I
27 especially support Dr. Abram's plan to host visiting teachers from numerous religious and
28 spiritual lineages. I look forward to attending programs at Sacred Earth Assembly once the
29 Special Use Permit is granted and I'm very, very confident that Dr. Abrams will provide excellent
30 guidance and leadership for all their programs offered. Thank you.

31
32 Mr. Carnicelli: Thank you very much. Lew do you have any questions for the testifier?

33
34 Dr. Abrams: Only to clarify that the Temple of Peace—

35
36 Mr. Carnicelli: Okay, no, no...okay, hang on, hang on, hang on, hang on. Do you have a
37 question on his testimony?

38
39 Dr. Abrams: I do not.

40
41 Mr. Carnicelli: Okay, great. Thank you. Next testifier is Jason Schwartz. Please state your
42 name.

43
44 Mr. Jason Schwartz: My name is Jason Schwartz.

45
46 Mr. Carnicelli: Do you promise to tell the truth?

1
2 Mr. Schwartz: I do.

3
4 Mr. Carnicelli: You have up to three minutes.

5
6 Mr. Schwartz: I come before you and I'm happy to see a great group of people in support of
7 these guys. I've known them since they've gotten here to the island and share a similar
8 mission. And I just know these are very high integrity people and everything that we see and all
9 that they do and all that they share is of great value to our community and I'd like to be in
10 support of this and hope that you can give them approval. Thank you very much.

11
12 Mr. Carnicelli: Thank you very much. Lew do you have any questions?

13
14 Dr. Abrams: No questions.

15
16 Mr. Carnicelli: Thank you Jason. Jerome C H B A T, Chbat?

17
18 Mr. Jerome Labat: Like the beer only one T.

19
20 Mr. Carnicelli: Ah, there we go, all right, that I can relate to. Please state your name.

21
22 Mr. Labat: Good morning Jerome Labat.

23
24 Mr. Carnicelli: Do you promise to tell the truth?

25
26 Mr. Labat: Absolutely.

27
28 Mr. Carnicelli: Thank you. You have up to three minutes.

29
30 Mr. Labat: So I'm the neighbor of Lew. I've been working and supporting Lew for the last ten
31 years now and he's a neighbor to building a farm and ...(inaudible)...the farm. And really
32 wanted to bring to three observations that you know, hopefully for the committee here to really
33 look at and make an informed decision as you go forward.

34
35 First and foremost is access to the property. While we do have some slides you've seen that
36 the Hana Highway is curve site and I actually personally have to stop every time I go in 'cause I
37 have to be careful of oncoming traffic. You understand that on Hana Highway we have a lot of
38 really active traffic. On some events you know I'll notice and observe you'll have a line of cars
39 parked literally on the highway without the permission from the police, others. And I understand
40 that happens at some events you know over New Year or things like that but it's been
41 happening regularly.

42
43 The actual access I have personally encountered you know some cars that I've been almost cut
44 over sometimes and I mentioned that to Lew a few times. You know just the guests seems to
45 be on a raceway going in and out there. So I understand it's an easement and I understand we

1 have to work together and we've been working through that. So I again I'd be very supportive of
2 the farming activities as Lew has been growing his business.

3
4 The second point observation is really around noise and it related back to you know Haiku and
5 the culture and why I choose, you know to live there in terms of really participating with the
6 community and really find a place of peacefulness. Same endeavor, you know trying to find a
7 balance with the active world here. And you know, on those gatherings, on those days of
8 gathering I like to say that the place of worship transform into a concert hall sometimes. And I
9 know those are harsh words but they are concert halls and it does make...you know I
10 appreciate the kids wanting to play music and be creative in arts, no problem with you know
11 during working hours. I do have a problem when it comes late at night. And so I really
12 encourage the team to ask questions to inquire, you know, to look around, listen what the
13 community has to say. Again, during normal hours absolutely no problem, you know this is a
14 normal function, this is actually a farm, a very active farm. Trucks are coming in and out all the
15 times.

16
17 You have an amazing number of dogs. Looks like we have a whole neighborhood waking up in
18 terms of dogs when the cars are coming in, but the point is it's active. So we have activity and
19 we found ways to work together...(inaudible)...

20
21 The third point really is more around the infrastructure. I have noticed, and unfortunately I was
22 not privy to all this information so I've noticed a couple point on the water infrastructure system.
23 We do share a well...(inaudible)...public use. I do own the other two properties you
24 know...(inaudible)... We share a well and the well was designed for you know I would say
25 normal activities on the property, normal family activities. And the intention of the designer and
26 the builder at the time was to...(inaudible)...farm activities.

27
28 Mr. Carnicelli: That's your three minutes.

29
30 Mr. Labat: I appreciate that, I apologize and just that the infrastructure on the property today is
31 not really helping us and we have some challenges and we have to change –

32
33 Mr. Carnicelli: Thank you. Lew do you have a question for the testifier?

34
35 Dr. Abrams: A couple of questions.

36
37 Mr. Carnicelli: You need to speak into the microphone.

38
39 Dr. Abrams: So my question has to do with being more specific about times that there have
40 been any cars parked along the driveway leading into our property because as far as I know
41 that hasn't happened for years and years. And then the other piece is just inquiring about how
42 frequently you're actually here on the island. I know that you live primarily in the Bay area and
43 we don't see that much of you. So I'm just wanting you to clarify how much time you're actually
44 occupying the—

45
46 Mr. Labat: Sure, absolutely. So first is I do have some videos—

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Mr. Carnicelli: Please just speak into the mic for the record please Jerome, thanks.

Mr. Labat: Sure. I do have some videos of you know full moon events, New Year's events where we had a lot of activities. As far as my presence on the island I'm a very private person. So I reserve the right to my calendar. I'm on a plane most of the time in my company I work you know around the world and I found this place to be my spiritual place to come and reenergize so I can go back and do my work. So I really look for peace.

Mr. Carnicelli: Thank you Jerome, appreciate it.

Mr. Labat: Thank you.

Mr. Carnicelli: Kalimaya Herrera. Please state your name.

Ms. Kalimaya Herrera: Hi good morning. My name is Kalimaya Herrera.

Mr. Carnicelli: Do you promise to tell the truth?

Ms. Herrera: Yes sir.

Mr. Carnicelli: You have up to three minutes.

Ms. Herrera: Anyway I've been a resident here in Maui since 2003 and knowing Dr. Abrams here since 2010 and he's been a really good contributor to our community as I work with our kids, our young keikis and still is. And so I strongly approve of this place to be open so we could be with our young people, the next generation away from all this computers and being there to build their character, their attitude of what's happening here. We need more respect from them and strong believe that if we are on this place it will be happening. And right now is we need a place to practice 'cause I will be performing or competing next month representing Maui to martial arts.

Mr. Carnicelli: Thank you. Lew do you have any questions?

Dr. Abrams: Yeah, I would just maybe one, ask you about—

Ms. Takayama-Corden: Please speak into a mic.

Mr. Carnicelli: Excuse me, it's based on her testimony. It's basically it's the ability to cross examine to clarify testimony is the reason for that particular bit. So, I didn't clarify that ahead of time so I apologize that's my fault. So thank you very much.

Ms. Herrera: Thank you.

Mr. Carnicelli: Jason Groode.

1 Mr. Jason Groode: My name Jason Groode.

2

3 Mr. Carnicelli: Do you promise to tell the truth?

4

5 Ms. Groode: I do, absolutely.

6

7 Mr. Carnicelli: You have up to three minutes.

8

9 Mr. Groode: Thank you. I've lived here on Maui for about 41 years. I've known this wonderful
10 family for decades and very blessed to do so and I don't have a great need to spend three
11 minutes to share that I totally support what they have in mind and I want to say how much I
12 honor your focus in trying to do and doing the best thing for the islands. And I want to say that if
13 you ever going to make a mistake, make a mistake that a church is created so we have a place
14 to come together and pray and have devotion and love one another. Let's make more kind of
15 mistakes. Thank you.

16

17 Mr. Carnicelli: Thank you Jason, I appreciate that testimony. Do you have any questions, Lew?

18

19 Dr. Abrams: I do not.

20

21 Mr. Carnicelli: Thank you. Kahu Hill. Please state your name.

22

23 Kahu Alalani Hill: Kahu Alalani Hill. Aloha Chair, aloha Commissioners.

24

25 Mr. Carnicelli: Do you promise to tell the truth?

26

27 Kahu Hill: I promise.

28

29 Mr. Carnicelli: You have up to three minutes.

30

31 Kahu Hill: Thank you. I just wanted to add my support for the Sacred Earth Assembly's request
32 for a Special Use Permit for Ahimsa Sanctuary. I have known Mr. Lew Abrams for over two
33 decades. I've been very blessed to be there with my...when my mother was live in 1999, and to
34 share a ceremony and as well the last I did was a celebration of life and service for
35 Kupuna Pua Mahoe. I have done many ceremonies with him. I have been doing ceremonies
36 and spiritual practices since 1976, 1981 as a minister and very involved in Hawaiian cultural
37 practices here. So I have seen that this is a perfect location. It's very pristine. Everything's
38 been respectful and where I have seen as far as people going slow on the roads, people being
39 mindful of parking. Maui community coming together to pray, to meditate for all good reasons,
40 for all good reasons. So I just wanted to share my support today and that I believe Lew will be a
41 great director for Ahimsa Sanctuary and for SEA gatherings and I ask you to support and grant
42 the SUP2 for Sacred Earth Assembly.

43

44 Mr. Carnicelli: Thank you. Lew do you have any questions for her?

45

46 Dr. Abrams: I do not, thank you.

1
2 Mr. Carnicelli: Great. Thank you Kahu Hill. Tim Robinson. And just so you guys know if
3 somebody's already said what you would like to say you can pass. It is an option just to let
4 everybody know. I want to hear what you have to say, but if you want to pass that's cool too.
5 Please state your name.

6
7 Mr. Tim Robinson: Tim Robinson.

8
9 Mr. Carnicelli: Do you promise to tell the truth?

10
11 Mr. Robinson: I do.

12
13 Mr. Carnicelli: You have up to three minutes.

14
15 Mr. Robinson: I'm a neighbor to Mr. Abrams and I am opposed to this due to noise factors. In
16 the evenings we've heard everything from drums to loud chanting to other things that must go
17 on in the activity of their ceremony that are disturbing as a neighbor. The curve between
18 Ulumalu and Manawai Street has had five major accidents in a five-year period of time without
19 commercial or church related traffic coming in and out of that. I'd be happy to provide that
20 information from the Department of Transportation to you if you would like. I live on Kai Huki
21 Street which is the street to the east of Mr. Abrams property. I am very nervous 90 percent of
22 the time when I make a left turn onto Kai Huki Street because of the visibility on that non-
23 straight area of Hana Highway. It is very curved and I consider it very dangerous. I've been
24 almost rear-ended multiple times just making a left turn into my property. It's a 30 mile an hour
25 speed limit. I defy anybody other than tourist have been warned not to speed in Maui that they
26 don't drive 30 miles an hour on that road. So for those reasons I hope that you can see that this
27 is not a commercial enterprise, but it's like a commercial enterprise. There will be traffic
28 involved, there will be people moving in and out. And I think as a commission, it's important to
29 look at what agriculture land is and Mr. Abrams, Dr. Abrams has done an excellent job of
30 developing his property as an agricultural property, but to take it to a church where does the
31 County draw the line for what ag land is intended for for it's use. Thank you very much.

32
33 Mr. Robinson: Chair?

34
35 Mr. Carnicelli: Hang on a second Tim. Commissioner Robinson has a question for you.

36
37 Mr. Tim Robinson: Certainly.

38
39 Mr. Robinson: Do you have a remedy for the traffic problem?

40
41 Mr. Tim Robinson: No, other than not allow enterprises which are gonna take place on that
42 curve that would increase the traffic. Since Jaws Country Store has opened there's been a
43 tremendous increase in traffic and I don't think that was an intended consequence when that
44 commercial enterprise was approved several years ago. But no, not unless you can widen
45 Hana Highway and put left turn lanes and warning lights and traffic lights which I wouldn't want
46 either. It's not a safe curve for increased and we're talking as many as a hundred people

1 coming in and out of there. Okay, give them the benefit of the doubt and say that's 50 to 75
2 cars on a big event. I think that you're asking for trouble traffic wise and safety wise on that
3 curve.

4
5 Mr. Robinson: Thank you.

6
7 Mr. Carnicelli: Commissioner La Costa.

8
9 Ms. La Costa: Tim, thank you for testifying. You talked about the noise, the chanting and that
10 kind of thing. How often does it happen and about what are the hours?

11
12 Mr. Tim Robinson: At least once a month and generally in the evening and I try to enjoy Maui's
13 sunrise so I usually am in bed by sunset and the noise goes into the evening and night hours.

14
15 Ms. La Costa: Please be more specific about times.

16
17 Mr. Tim Robinson: I would say as late as 9 o'clock, even 10 o'clock and they're proposing that
18 their meetings go till 9:30 at night.

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

21
22 Mr. Carnicelli: Lew, do you have a need to clarify questions?

23
24 Dr. Abrams: I did have one question because I've only met you one time and –

25
26 Mr. Carnicelli: I need you to use the microphone. Sorry, it's just we gotta have a record that's
27 all.

28
29 Dr. Abrams: Yeah, okay I was wanting to inquire about how long you've lived as my neighbor
30 'cause I know you're a new resident of the neighborhood?

31
32 Mr. Tim Robinson: My house was completed in 2016, October so I'm coming up on three years
33 of being a resident, neighbor of Dr. Abrams and his family.

34
35 Mr. Carnicelli: Okay, thank you very much. Reverend St. John. Please state your name.

36
37 Reverend Kedar St. John: Reverend Kedar St. John.

38
39 Mr. Carnicelli: Do you promise to tell the truth?

40
41 Reverend St. John: Yes indeed.

42
43 Mr. Carnicelli: You have up to three minutes.

44
45 Reverend St. John: Thank you. I think you have my testimony in front of you and so it's not
46 really necessary for me to go through it 'cause I know that you guys are busy. I have worked

1 with Dr. Lew and his wife, Maria for the last 20 years in ministry and ministry training and I
2 would like to say that this man is of the highest caliber and character in his desire to serve the
3 community. Certainly the church has in recent years certainly in the new millennium has talked
4 about the greening of the church which is a completely beautiful idea of how church bodies of
5 faith come together to work and malama aina. So our church principles are consistent with the
6 Sacred Earth Assembly. And I would thoroughly support you to grant this Special Use Permit
7 as soon as possible because there's so many people of faith and who would like to attend
8 gatherings where they can learn about malama aina. So this is imperative for our community as
9 far as I'm concerned. I believe that we are a group of ministry builders in Haiku. We have very
10 many temples and many churches. So I would highly urge you to support his endeavors.
11 Thank you.

12

13 Mr. Carnicelli: Thank you. Lew do you need to clarify the testimony?

14

15 Dr. Abrams: No thank you.

16

17 Mr. Carnicelli: Thank you very much. Alay Lott. Please identify yourself.

18

19 Mr. Alan Lott: Alan Lot.

20

21 Mr. Carnicelli: Oh, Alan, sorry. Ah, that's an N, okay.

22

23 Mr. Lott: No worries.

24

25 Mr. Carnicelli: Do you promise to tell the truth?

26

27 Mr. Lott: Yes, I do.

28

29 Mr. Carnicelli: All right you have up to three minutes.

30

31 Mr. Lott: Thank you. I won't use all the time. I so appreciate what you guys do. I so appreciate
32 you. I'm—

33

34 Mr. Carnicelli: Okay, if I could, hang on, hang on, hang on, and this is for everyone. When you
35 testify you're actually only allowed to testify to the Commission. Just to—I know you've not
36 been here before at least as far as I can recall.

37

38 Mr. Lott: Yes, first time.

39

40 Mr. Carnicelli: This is your first time, and other people kinda did the same thing, but anyways
41 just so you know, and I'll add another 20 seconds onto your three minutes if you need it.

42

43 Mr. Lott: Thank you. It means a lot to me. I've known Lew and his family for years and it
44 means a lot to me to worship with them and it means a lot to me for them when they come to
45 the Temple of Peace and they contribute significantly to the service. I get inspired and uplifted
46 as many people do. I really don't have any more to say except a new generation is coming and

1 the times that we're living we're not living in normal times we need this. We will benefit from
2 this. It would benefit the island and the planet. Thank you.

3
4 Mr. Carnicelli: Thank you very much. Lew any questions?

5
6 Dr. Abrams: No.

7
8 Mr. Carnicelli: Great. Thank you very much Alan. Bodhi Be.

9
10 Mr. Bohdi Be: I'm Bohdi Be I tell the truth.

11
12 Mr. Carnicelli: I actually have to ask you. Will you tell the truth?

13
14 Mr. Be: I will tell the truth.

15
16 Mr. Carnicelli: Thank you very much.

17
18 Mr. Be: So help me God. Aloha I'm Reverend Bohdi Be ordained in Sufi lineage for over
19 32 years. I'm the Executive Director of Doorway into Light, a nonprofit organization here on
20 Maui that since 2006 has been providing education, counsel, and support to the dying, their
21 families, those who work in these fields, and all those grieving the death of a loved one. I'm
22 also a licensed funeral director. In 2012, we opened Doorway into Lights funeral home.
23 Hawaii's only nonprofit funeral home and only certified green funeral home. We work closely
24 with local hospices, religious organizations, social services, funeral homes and the State
25 Department of Health. We also operate an educational resource center and store in Haiku
26 providing free counseling support and inexpensive locally made caskets and urns. We've made
27 presentations at senior centers, churches, clubs and community centers. I teach here at the
28 University of Hawaii, Maui EdVenture Program. I facilitate a grief group involving high school. I
29 have a weekly radio show on Akaku and I write a column for a local magazine. I have lived on
30 Maui for over 43 years together with my wife, Leila who is also a minister, we lead prayer and
31 meditation programs here in and around the world.

32
33 I have known Dr. Lew Abrams and his family for over 25 years. I've watched Lew and his wife,
34 Mariah raise to two beautiful sons. I have witnessed their efforts to be useful in the world and to
35 be in service to God. I have witnessed them pour their hearts and souls into making something
36 beautiful to serve our Maui community and the world. Dr. Lew and Mariah are dear friends. We
37 have prayed and meditated together and laughed and cried and too considered how best to
38 support each other as friends and as ministers.

39
40 My wife and I have attended many prayer meetings, birthdays, memorials and religious
41 ceremonies at the Sacred Earth Assembly. Joining with many other people in the community
42 who value Dr. Lew and Mariah's leadership and love. My wife and I have also lead prayer
43 meetings at the Sacred Earth Assembly. We so appreciate the beauty of the place and have so
44 much respect for all the work the Abrams Family does to care for the land as a part of their
45 ministry. They are in my view exemplary stewards and kahus of a place on Maui. I hope you
46 will grant them all the permits they need to continue their mission. Thank you.

1
2 Mr. Carnicelli: Thank you very much. Lew do you have any questions?

3
4 Dr. Abrams: No, thank you.

5
6 Mr. Carnicelli: Great. Thank you. Lili Townsend. Please state your name.

7
8 Ms. Lili Townsend: Lili Townsend.

9
10 Mr. Carnicelli: Do you promise to tell the truth?

11
12 Ms. Townsend: I do.

13
14 Mr. Carnicelli: You have up to three minutes.

15
16 Ms. Townsend: You have my letter before you so I won't talk. We need not say it again. What
17 I would just like to assure the community that their service to elders is so important. There's so
18 many people who live with their families off the island and Lew and Mariah have provided
19 sanctuary and love and guiding support to all of us and I do hope you'll approve this motion.
20 Thank you.

21
22 Mr. Carnicelli: Thank you very much. Lew any need for a question?

23
24 Dr. Abrams: No.

25
26 Mr. Carnicelli: Thank you very much. Deborah Eudene. Please state your name.

27
28 Ms. Deborah Eudene: Aloha, my name is Deborah Eudene.

29
30 Mr. Carnicelli: Do you promise to tell the truth?

31
32 Ms. Eudene: Absolutely.

33
34 Mr. Carnicelli: Thank you. You have up to three minutes.

35
36 Ms. Eudene: So I have been a long-term resident of Maui and I am an ordained minister from
37 Church of the Earth Foundation, ordained by Reverend Robin Youngblood. And I've known
38 Dr. Lew and Mariah for about decade now and watched this project come into fruition and a lot
39 of resources have gone into the creation of something really beautiful and sustainable and
40 regenerative and supportive of the community. And during the 18 years that I've lived on island
41 I've seen lots of other projects come in in all different places that are not so honoring of what
42 Maui is and what it has to offer. They put a tremendous amount of resources into building this
43 beautiful temple space before Kai Huki development was approved and any residents were
44 there, before the Jaws store was there. And I feel that this is a place that I've come to celebrate
45 many times holidays, birthdays, rites of passage and memorials and really appreciate that

1 they've chosen to devote their lives to being of support to our greater community and I would
2 love to see more projects like this exist on our island. Thank you.

3
4 Mr. Carnicelli: Thank you very much. Lew any questions?

5
6 Dr. Abrams: No questions.

7
8 Mr. Carnicelli: Great. Thank you very much. George Kahumoku.

9
10 Mr. George Kahumoku: Aloha, I'm George Kahumoku.

11
12 Mr. Carnicelli: I'm sorry I was reading something else. Do you promise to tell the truth?

13
14 Mr. Kahumoku: Yes.

15
16 Mr. Carnicelli: Thank you very much George. You have up to three minutes.

17
18 M. Kahumoku: Okay, I'm George Kahumoku. My family have been priests,
19 ...(inaudible)...priests of the land, Kahu the priest of the land, a native practitioner. My great
20 grandfather we come from a line of...at first they call them menehunes, but they were actually
21 Mongolian priests that came from Mongolia. That's in our oral history. So you know, the
22 ...(inaudible)...so I also hold the priesthood and I totally support Sacred Earth Assembly and
23 their leader Blue Mountain here. I'm a Native Hawaiian planter, practitioner, and mentor and I
24 visited and taken part in many events at Sacred Earth Assembly in Haiku since 2012. I'm
25 actually known for my music, but I'm actually a native planter. I spend about three percent of
26 my time playing music and 95 percent of my time mentoring and farming. I share this mission of
27 taking care of Mother Earth and being stewards of the land and applaud your willingness to
28 grow and share food and celebrate rites of passage for individuals as well as community events.
29 Also share and teach their Hawaiian values of aloha, love and connection with each other.
30 Wahi Pana celebrating a sense of place, Malama and Aina Aloha and Aloha Kai and Wai, love
31 for and taking care of lands, our sea and our resources of fresh water.

32
33 I also practice Ho`oponopono where you use the four concepts of love, forgiveness, being sorry
34 and thankful for our many blessings to help each other as well as the Earth and our
35 communities. I was the founder and high school principal in Honaunau at the City of Refuge in
36 South Kona for the Kamehameha Schools Alternative Ed program called Hale O Hooponopono,
37 the house to set right. The school went for about 25 years. I also taught special motivation for
38 20 years at Lahainaluna High School teaching and working mostly with at risk kids. To get in
39 most of my programs you needed to be absent from school at 23 out of 44 days two quarters in
40 a row and have six out of seven F's for two quarters in a row. Those are the kinds of kids...a
41 common thread that most of these kids have is a disconnect with each other, a disconnect with
42 their parents, a disconnect with their culture, a disconnect with the environment, as well as a
43 disconnect with the community. Blue Mountain and Sacred Earth Assembly is filling the gap in
44 helping children as well as adults reconnect with each other, the environment and our
45 community. Please grant them their Special Use Permit and cut through all the red tape so they
46 continue on their mission of helping others. Mahalo.

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Mr. Carnicelli: Thank you George. Lew do you have any questions?

Dr. Abrams: I do not.

Mr. Carnicelli: Great. Thank you very much. So Federico Nelson?

Mr. Federico Meloni: Meloni.

Mr. Carnicelli: Meloni.

Mr. Meloni: Argentinian.

Mr. Carnicelli: Argentinian. We're cousins then.

Mr. Meloni: Half Italian.

Mr. Carnicelli: Do you promise to tell the truth?

Mr. Meloni: I do.

Mr. Carnicelli: Okay, you have up to three minutes.

Mr. Meloni: So something that Lew and Jerome failed to mention I am the closest neighbor by a long shot. I live on the ohana that is above a barn that it doesn't show on that map but in the picture you can see clearly I'm pretty close. I'm closer to the temple than his own house. So I get the worst of it. The noise it's quite a bit, but he tries. He's not a bad guy. I share a little things that's he's trying to do here, but I'm truly afraid of what is this is going to become for me living there. I'm not the only person that shares that. I have other neighbors that live on the other side of the gulch much farther than myself that they clearly hear and they have the same concern that I do. The amount of traffic it's immense. And one more thing, I live there before anybody, any of these people actually. I live there for like 13 years so I experience that place being incredibly peaceful no noise at all. I'm not opposed so much to the church but I'm opposed to the church that celebrates everything. It's not that you are a Christian or Buddhist or you celebrate the Earth. They celebrate everything, birthdays, death, agriculture, I mean, name it. So if we could narrow it down and let's say okay, one of the people here so I know I gonna go over my three minutes but, one of the people said, ...(inaudible)...said once a month he hears the noise. That's a full moon party am I wrong?

Mr. Carnicelli: Please address the Commission.

Mr. Meloni: Sorry. That's the full moon party, that's one a month, but then you have other celebrations whatever you know that falls on any other religions or beliefs or whatever. So that's my concern. Oh, and the amount of traffic coming to my place, I have in excess of ten lost people, tourist that they come to visit and looking for the temple, for Blue Mountain or for belly dancing or for ...(inaudible)...retreat or for someone that birthday that is an elder or so, so

1 I don't know where I stand with this other than I'm afraid of what it could become. I like him. I
2 try to be a good neighbor. I help him all the time. I go...Right?

3
4 Dr. Abrams: You do.

5
6 Mr. Meloni: So I don't know guys what to do but it...the agricultural part I share it, a church of
7 that sort I don't know.

8
9 Mr. Carnicelli: Thank you very much. Hang on. Commissioner Robinson has a question for
10 you.

11
12 Mr. Robinson: Do you have any suggestion for remedy for the traffic?

13
14 Mr. Meloni: No, the traffic is a real issue especially the turn off Hana Highway. I live there, and
15 when you stop you have to do a 90-degree turn and it's true what Tim said, you're...this goes to
16 get rear ended especially you know the tourists or people that don't know where the place
17 is...he put a couple signs now so you can slow down so you see it...because the turn sneaks up
18 on you. So he put some reflectors so you can turn but still it's not an easy one. And recently
19 we opposed on Kai Huki a zip line for the same reason, noise and traffic. I am against the noise
20 and the traffic really and I don't think there's a solution to it.

21
22 Mr. Carnicelli: Thank you very much. Lew do you have any questions?

23
24 Dr. Abrams: Only to clarify what is meant by traffic being—

25
26 Mr. Carnicelli: You gotta speak into the microphone again.

27
28 Dr. Abrams: Thanks, I just was wanting to try to quantify the amount of traffic. You used the
29 word immense. I think it's important to put it in the context of you know how many cars, how
30 many times a month.

31
32 Mr. Meloni: Okay, so the traffic is every day people go up and down that they weren't there
33 before. Probably 15, 20 cars other than the people who live there. And then on New Years to
34 give you a size of the party, security has to be stationed on the cul de sac which were stopping
35 me from coming into my own place.

36
37 Mr. Carnicelli: Thank you I appreciate that.

38
39 Mr. Meloni: And there was 300 people, 400 people, huge. Beautiful party, I've been there
40 myself, okay, so the party...

41
42 Mr. Carnicelli: Okay, thank you very much. I appreciate that. Judith Levy. Hello.

43
44 Ms. Judith Levy: How do you do.

45
46 Mr. Carnicelli: Please state your name.

1
2 Ms. Levy: My name's Judith Levy.

3
4 Mr. Carnicelli: Do you promise to tell the truth?

5
6 Ms. Levy: Always.

7
8 Mr. Carnicelli: All right you have up to three minutes.

9
10 Ms. Levy: I've lived on Maui for ten years. I'm a teacher, substitute teacher, I'm a small
11 business person. I'm a member of the farmers union. I met Dr. and Mrs. Abram soon after I got
12 here. I'm part of spiritual community with them. I hold them in the highest esteem. As a
13 member of the farmers union I love, love, love what we're doing there and I've gone out many
14 times. I have to say I've been there many times 'cause I was just recently there for Passover. I
15 appreciate having a place to go for Thanksgiving because I don't have family per se on this
16 island. I've never seen a problem with traffic. It's easy, it's just a left turn and now that there is
17 allowed a sign up it's very simple for people see.

18
19 What do at these beautiful spiritual gatherings is very important and it's allowing the community
20 of Maui to come together in an even higher manner and this Special Use Permit I think will only
21 benefit the island. We must have examples of how people can celebrate together and to grow
22 more food. He happens to grow the best turmeric I've ever eaten and among other things. It's
23 just a definite beautiful addition to this island and the fact of with all of us coming together is a
24 wonderful example for the planet that we're not supposed to be separated by our spiritual
25 beliefs, supposed to come together to celebrate our Earth. We're all connected. So I highly
26 support this use, Special Use Permit. I don't believe it's gonna go crazy and I think if many
27 once a month there's a little music, well you know there are way worse things in the world. It's
28 good music. So I hope that you'll come celebrate some of these beautiful holidays and
29 understand why this is an absolute addition and benefit to Maui. Thank you so much for your
30 consideration.

31
32 Mr. Carnicelli: Thank you very much. Lew any questions?

33
34 Dr. Abrams: No questions.

35
36 Mr. Carnicelli: Great. Thank you very much. Leo the Lion.

37
38 Mr. Leonard Diaz: Hi guys.

39
40 Mr. Carnicelli: Please state your name.

41
42 Mr. Leonard Diaz: I'm actually Leonard Diaz or Leo the Lion.

43
44 Mr. Carnicelli: Okay, you promise to tell the truth?

45
46 Mr. Diaz: I promise.

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Mr. Carnicelli: You have up to three minutes.

Mr. Diaz: Okay, so I'm...I don't really have a speech or anything so I just speak from my heart. I think it's very important what Blue Mountain does on his property. Permaculture is the future and if you don't want this place become like the mainland I think it's really important that you support it and make like a culture around it and the church helps people like me from the younger generation to connect with older generation. And I think that's very important and I love you guys. I think everyone is my cousin, okay. And I don't know...I just...I think it's really important and that you guys talk about laws and such I don't know, you know like I think that's back in Washington, but I think you shouldn't hesitate and take so long because this is the future of this island and that's what we need. And there is some problems maybe that can be solved maybe they can be put up more signs for the parking and those two neighbors that have a problem like you and I don't know the other guy, I mean, you two—

Mr. Carnicelli: Please speak to the Commission. Please speak to the Commission.

Mr. Diaz: Okay, I would invite them to the Temple of Peach to maybe get a better picture and then maybe that can solve a lot of problems. Okay, and that's about it.

Mr. Carnicelli: Thank you very much. Lew any questions?

Dr. Abrams: No thank you.

Mr. Carnicelli: Great, thank you. Tara Grace.

Ms. Tara Grace: Aloha.

Mr. Carnicelli: Please state your name.

Ms. Grace: Tara Grace.

Mr. Carnicelli: Do you promise to tell the truth?

Ms. Grace: Yes.

Mr. Carnicelli: You have up to three minutes.

Ms. Grace: You know when I thought about what I would say I thought...I thought about mental health here on Maui and how many people need help and how this church helps so many people feel a sense of belonging and uplifting and hope and that all the agricultural efforts are equally important. And I'm really sad that their neighbors are the ones, seemingly the only ones that are missing the joy that's found here for so many in this community and I hope that their needs can be met in some solutionary way with your help. But I support this family following through with their personal mission to support and serve their community.

1 Mr. Carnicelli: Thank you. Lew any questions?

2

3 Dr. Abrams: No questions.

4

5 Mr. Carnicelli: Great. Thank you very much. Rob Parsons. Please state your name.

6

7 Mr. Rob Parsons: Aloha my name is Rob Parsons.

8

9 Mr. Carnicelli: Do you promise to tell the truth?

10

11 Mr. Parson: Now and always.

12

13 Mr. Carnicelli: You have up to three minutes.

14

15 Mr. Parson: Aloha. Thank you Chair Carnicelli and Commissioners for your dedicated service
16 to our community through what you do here. I'm a 40-year resident of Maui. I've lived in Haiku
17 for over 25 years so I'm familiar with the subject property and the applicants and I would echo
18 many of the accolades that the previous testifiers have shared.

19

20 I did review the application that's before you today and I found that some of the issues, some of
21 the questions that arose such as traffic and noise actually I think would be mitigated by issuing
22 this permit because the County doesn't always make it crystal clear how to get to a path and it's
23 kind of trial and error and I think that's the situation that has existed here over the past years
24 since the Abrams Family moved to this property. I feel that this is a somewhat different from the
25 usual application that comes before you which is often a bed and breakfast or TVR for someone
26 that wants to maximize the economic benefit of the property which is they're entitled to do as
27 long as it comports with the rules and regulations set forth by the County.

28

29 In this case, they're not looking to do that. They're looking to have agricultural production
30 continue to be the primary use and they're welcoming the community to come and celebrate
31 and I think that's a wonderful thing and it's not something that's an easy path and I think the
32 depth of this application shows that they have worked with the planning consultants and their
33 lawyer to make sure that they got their ducks in a row before they came this commission. So as
34 the previous testifier said, if there are still some existing questions on traffic, I don't think traffic
35 is a big issue here at least on Page 11 it said that it didn't appear that any County infrastructure
36 would be triggered by issuance of this permit. I think the opposite is true is there would be more
37 certainty and regularity because there's prescribed hours and days when there would be
38 celebration in the permit and I think that's a result of substantial compromise. So it's not gonna
39 be celebrate every day because we love life and we love this planet which we do. So I mean,
40 we can celebrate in our own way but are we gonna party at Ahimsa every day? No. It's there
41 are prescribed times and dates for that. I could see that you're about to tell me it's three
42 minutes so thank you for your time.

43

44 Mr. Carnicelli: No, but thank you very much Rob, I appreciate it. Lew do you have any
45 questions for Rob?

46

1 Dr. Abrams: I do not.

2

3 Mr. Carnicelli: Great. Thank you. Bruce Douglas.

4

5 Mr. Bruce Douglas: Aloha my name is Bruce Douglas.

6

7 Mr. Carnicelli: Do you promise to tell the truth?

8

9 Mr. Douglas: Only the truth and nothing but the truth.

10

11 Mr. Carnicelli: You have up to three minutes.

12

13 Mr. Douglas: Thank you. New information. A church in Haiku is gonna look different than a
14 church in Wailuku. Okay, the people that we're ministering it's important in very culture on this
15 island has a place to minister in the way that they see fit. When different cultures, Portuguese
16 have come, Japanese with their Buddhism, all these different lineages have brought their
17 lineage, they spirituality in that form. Well there's a new form of spirituality it's brewing and I
18 guess Haiku is a hot bed of that and that's a multi-spirituality embracing many different spiritual
19 lineages, Buddhist, Hindu, Sufi, Native American, Hawaiian, Christian, all included as one so
20 many people they don't identify themselves as a religion but they respect the wisdoms of all
21 their lineages and all the wisdoms and this is what has been going on at Ahimsa Sanctuary
22 Farm and Sacred Earth Temple. It embraces all the spiritual religions and it really ministers to
23 the people of Upcountry that it's going to be different than people in say Wailuku. And so it's
24 important that we really embrace that so all communities are represented here.

25

26 It's also important to realize that this couple has put their whole nest egg, their whole life
27 savings, everything into building this not for themselves, but for the community. This is really
28 special. How many of you guys would take all your money and all your nest egg and put that
29 into a community center and a spiritual center that honors everybody in the community to come
30 to. That is really special. So feel that in your heart. What would you do? Would you put all
31 your life savings? They're not broke. They spent everything to put this forward, to build the
32 farm, build the sanctuary, to pay all the money it takes for lawyers and everything to put this
33 permit together and all the energy it's taken. That's all their life savings in it. We need to
34 cherish people in the community that willing to do this, have the vision, receive a vision to do
35 something that is important for this community, actually go through with it, put everything they
36 have into it, put their whole life energy and force into it and put this forward to us that's really
37 special and I hope that we can honor that level of commitment.

38

39 I don't believe the traffic is a problem. It's a very minor curve in the road. It's no different than
40 any other left turn off the highway. Any time you take a left turn off Hana Highway you're gonna
41 have that issue. So I don't see that as a particular problem. It's a wide road. There's no...very
42 few cars on...houses on that particular road coming down and the whole sanctuary is a long
43 ways away from any sort of housing or any sort of...(inaudible)...on a very large property. So I
44 don't see those as issues about the place. So I really hope you guys reach in your heart and
45 realize that this is something special for the Haiku community. I, myself has done birthday...my
46 birthday parties there...celebrations—

1
2 Mr. Carnicelli: That's three minutes Bruce.

3
4 Mr. Douglas: Thank you.

5
6 Mr. Carnicelli: Thank you very much. I appreciate it. Lew do you have any questions?

7
8 Dr. Abrams: I don't, thanks.

9
10 Mr. Carnicelli: Great. Thank you very much. Bruce is the last person to sign up. We will allow
11 anybody that hasn't signed up and would like to add something different come forward? Seeing
12 none, if there are no objections we will close public testimony. Public testimony is now closed. I
13 guess at this point what we will do is we will entertain questions from the Commission. Once we
14 do that then we will come to a motion and a vote just so everybody kinda knows what we're
15 gonna do. So P. Denise La Costa I will start with you with Q and A.

16
17 Ms. La Costa: Thank you Chair. Dr. Abrams please. Thank you for being here and testifying
18 today. I have a couple of questions if I might Chair. The preponderance of negativity towards
19 your property is about music and the celebrations so are you currently using amplified music
20 during your celebrations?

21
22 Dr. Abrams: There are times when we do use amplified music, yes. We keep the doors closed
23 though to keep it contained in the building.

24
25 Ms. La Costa: Is there a way that the amplification could not be used after a certain time at
26 night?

27
28 Dr. Abrams: So we are...we are—

29
30 Ms. La Costa: So that the neighbors aren't affected?

31
32 Dr. Abrams: We are certain to stop any kind of amplified music by 9:00 and at the latest
33 10 o'clock. Yeah, so we never...we always turn everything off by then.

34
35 Ms. La Costa: Okay. To go along with what one of your supporters said perhaps you and
36 neighbors can get together and talk about a schedule so that your needs are met and their
37 needs are met as well so everyone can live in harmony because that's the basis of what you
38 have, okay?

39
40 Dr. Abrams: I'm definitely open to that. I would want to speak to one exception for that curfew
41 of 10 o'clock. On New Year's Eve we have a tradition of making a midnight prayer with
42 Reverend Kedar St. John where we light the peace flame of the Temple of Peace and make a
43 prayer for world peace and that's part of our spiritual ceremony that we would like permission to
44 continue on that one day of the year.

45
46 Ms. La Costa: I'd say check with your neighbors and let them know that and invite them.

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Dr. Abrams: I have invited them.

Ms. La Costa: That's what I'm saying. So the other thing I had a little bit of an issue with is it says that you're limiting members to a hundred. How do you do that? If everyone has so much joy and light and life from your service and they tell their friends and they tell their friends I mean, you know, you sneeze in Lahaina they say bless you in Kihei, right? So, and then Upcountry says, you catching one cold. So coconut wireless is such on this island. So how are you going to keep your membership to a hundred so that you don't have issues with additional noise and parking and traffic, et cetera?

Dr. Abrams: Right as I had suggested in the presentation our typical turnout for prayer circles and so on is much less than a hundred more like 30 or 40 people. So it's rare that there would ever be that many people. We do have parking, ample parking and three bathrooms and if we were to have more people show up it would be possible to bring in a porta potty to serve them that's taking into account future growth. At this point, we just have that many folks coming although it is a gather for church whoever feels called to come would be welcomed. Typically that's been less than 50 people.

Ms. La Costa: That didn't answer...I'm sorry, that didn't answer my question. How are you going to limit your number to a hundred as you have in this paperwork?

Dr. Abrams: Yeah...at this point I don't have a plan of turning people away who want to come and worship and I feel that at a certain point the governmental regulation of church needs to take a step back so who feels called to come should be welcomed. We would certainly make whatever accommodations we, in terms of parking and to our septic system if more folks came, but at this point it would also rely on what the occupancy get set for the building once we have it approved for occupancy we would always comply with whatever that is.

Ms. La Costa: Thank you.

Mr. Carnicelli: Great. Thank you. Commissioner Tackett, you have any questions at this time?

Mr. Tackett: I heard mention of a full moon party? What does that look like?

Dr. Abrams: Yes, thank you. Actually yeah, full moon gatherings are something that we have held for more than 30 years wherever we have lived and in fact I met my wife Maria at a celebration and it comes from having traveled around the world and visited many different cultures in Bali and Nepal and India. Most indigenous cultures gather and celebrate and pray in sync with the cycles of the moon. So our full moon gatherings involve a vegetarian potluck and then sitting together in a circle, doing some meditation and singing, passing a speaking object where person has a chance to share, offer a poem or a song. So it's creating a sacred space where people can come together to pray and meditate.

Mr. Tackett: And what are the time and noise impacts generally associated with that?

1 Dr. Abrams: Right. Generally we start the vegetarian potluck around six and by 7:30 we gather
2 and sit in a circle, a good portion of it silent meditation so there's no impact of that and then the
3 individuals who might choose to share a poem or a song are typically just playing an acoustic
4 instrument so there's no, no significant impact of that on a full moon celebration. We always
5 make sure we wrap up so that people have driven out by 10:00.

6
7 Mr. Tackett: Thank you.

8
9 Mr. Carnicelli: So Tara I have a question for you. I know when it comes to STRH permits and
10 now B&B permits if you have Notices of Violation you're not allowed to even apply does that
11 also account for Special Use Permits.

12
13 Ms. Furukawa: No, that's...I just included it because I wanted to kinda give you the history on
14 this permit. He has been making an effort to work with the Department to resolve some of the
15 violations. So I just wanted to bring it to your attention I guess.

16
17 Mr. Carnicelli: Right. No, I appreciate that because it looks as though there's one, two, three,
18 four, five, six, seven, seven violations that have accrued since 2012.

19
20 Ms. Furukawa: Yes, he said that's it by two people, so—

21
22 Mr. Carnicelli: Oh, okay.

23
24 Ms. Furukawa: Yeah.

25
26 Mr. Carnicelli: Okay. Well, he also admitted on the record that he was doing, doing church
27 functions on New Year's Eve, so I'm just...and just so people know and understand one of the
28 things of the criteria, 'cause we have criteria, right with which we have to view this through the
29 lens of and it is desired use would not adversely affect the surrounding the properties, right. So
30 that's part of so when the neighbors come up and they say hey, you know we've got
31 traffic...basically and this is true for most of the time, traffic and noise, right that's are going to
32 be the two things that impact your neighbors. And so it's not that we have to say no, but what
33 can we do as a commission to help mitigate those things, right. So one of the things that the
34 Director is working on is possibly putting in especially for the guy that's lived there the longest is
35 some signage. It's not fair that people have to go him to find you, right. Did you say, actually go
36 ahead and grab mic and you don't have to stand. Did you say you own the right of way all the
37 way in, right?

38
39 Dr. Abrams: We do, yes.

40
41 Mr. Carnicelli: Everybody else has easements over the top of you.

42
43 Dr. Abrams: Just two other properties.

44
45 Mr. Carnicelli: Two other properties, okay.

46

1 Dr. Abrams: And we have remedied that issue by putting in a large sign right next to our
2 driveway at the top of the cul de sac. It used to be ambiguous when you would come down
3 there were three driveways and some people would go straight and visit Fedde but now that we
4 put a large sign saying this is Ahimsa Sanctuary Farms driveway that has been eliminated for
5 more than a year as far as I know.

6
7 Mr. Carnicelli: Okay. Okay. So, but the reason why I ask that is if we required you to put
8 additional signage up whether it's right at the entrance not at the cul de sac whatever it is you
9 own that right-of-way so then therefore you have the ability to do that without getting somebody
10 else's permission.

11
12 Dr. Abrams: Yes we have a small sign on the Hana Highway. We intend to erect a larger one
13 when the church is approved so that people can find it.

14
15 Mr. Carnicelli: Gotcha. Gotcha. You know I'll restrict my questions. Do you have any
16 additional questions? No, yes? Commissioner Pali.

17
18 Ms. Pali: To be fair and just for clarification of the record I believe I counted three neighbors
19 that were seemed like they liked you which is good, good character reference but they all in a
20 very subtle way had problems with both noise and traffic. And so I believe they in a roundabout
21 way felt a little bit more aggressive than others sort of opposed this or maybe wanted to mitigate
22 some of these issues. Do you, you have a lot to read through here. I just want to make sure I
23 didn't miss it, did you have a neighbor that's adjacent to your property, did you find one neighbor
24 that was supportive and did not have the same issue.

25
26 Dr. Abrams: Yes, the second letter on the right side of your pack is by Paul Mana. He was
27 intending to be here today I'm not sure what happened. He's the neighbor immediately across
28 the driveway within 500 feet of the mouth of driveway and his property overlooks ours and the
29 roadway, the driveway entering our property. And if you'll read his letter he said that there's
30 been no impact. He's never seen any cars backed up on the road and he's not been disturbed
31 any noise and that he's in support of this special use permit.

32
33 Ms. La Costa: Yeah, it's right behind the Temple of Peace letter.

34
35 Dr. Abrams: Yeah, it's second letter in the ...(inaudible)...

36
37 Ms. Pali: Oh got it.

38
39 Dr. Abrams: You know we do encourage people to carpool and to drive slowly with low beams
40 and to make sure that they park on our land not out on...well, our land is the driveway coming
41 from the Hana Highway. No one ever parks there anymore. There was once occasion that
42 people stopped and parked.

43
44 Mr. Carnicelli: Got it. While Commissioner Pali is reading that I do have a question about your
45 501(c)(3). Are you in good standing with the IRS right now?

46

1 Dr. Abrams: We are in standing with the County and with the IRS...We are intending to file a
2 Form 1023 when it comes time to receive nonprofit donations. But as we were instructed by our
3 law firm when we established the church there is no requirements for church to report to the IRS
4 and so we are in good standing. There's no violations and neither are we listed as a 501(c)(3)
5 business to which donations were automatically be preapproved as tax deductible. But as a
6 church donations would be and when it comes time to receive donations we do intend to file that
7 form so that people can be sure that their donations are tax deductible.

8
9 Mr. Carnicelli: Corporation Counsel, do you know what defines a church.

10
11 Mr. Galazin: No, but I know it when I see it.

12
13 Mr. Carnicelli: Commissioner Pali.

14
15 Ms. Pali: So for clarification you're advertising as 501(c)(3) but are you saying you do not
16 technically have a certificate as a 501(c)(3) issued by the IRS.

17
18 Dr. Abrams: We have a certificate from the State of Hawaii to have incorporated a 501(c)(3).
19 We've not asked for any kind of blessing or approval from the IRS at this time.

20
21 Ms. La Costa: That's a IRS code, 501(c)(3), that's a IRS code.

22
23 Dr. Abrams: There's an optional form that can be filed to get the IRS to decide in advance that
24 donations will be tax deductible but it is not required of churches to report to the IRS. The
25 501(c)(3) in fact there's a clear exemption for churches to have to make that filing.

26
27 Ms. La Costa: Is there anywhere that it says in this paperwork.

28
29 Mr. Carnicelli: I don't mean to go into details but that's part of why we're here right. And as the
30 former Deputy Director said sitting right there being a great person isn't a qualification and being
31 an A hole isn't a qualification. You guys are obviously great, right? You guys qualify on that
32 side, but we need to do it unfortunately through the head and not the heart. That's just where
33 we're coming from. Does anybody else have any questions? P. Denise.

34
35 Ms. La Costa: Thank you. You are here to get a permit to have a church correct?

36
37 Dr. Abrams: To have church related activities on our agricultural land in a building that has
38 been permitted as an agricultural workshop, but to be able to change that for church use.

39
40 Ms. La Costa: From what I've been hearing from parishioners, friends, neighbors you are
41 already conducting church activities on the property without this permit being issued is that
42 correct?

43
44 Dr. Abrams: So far what we have is informal gatherings of friends and that are coming for free
45 community celebrations. We will step into our ministry as a church more fully once we have the
46 approval of this.

1
2 Ms. La Costa: That's not my question. My question is are you currently doing church activities
3 in the property and as Corp. Counsel says when he sees a church he knows a church. So I
4 would prefer that you be straight up with me. Are you performing church activities on the
5 property?

6
7 Dr. Abrams: We do invite the community for some religious spiritual gathers at this point in an
8 informal gathering of friends. We aspire to step into doing more full church activities with a
9 regular weekly service. We've never had regular weekly services to date.

10
11 Ms. La Costa: So your moonlight, new moon—

12
13 Dr. Abrams: Full moon gathering.

14
15 Ms. La Costa: Okay, those are not church services?

16
17 Dr. Abrams: It's something we've done for 35 years before ever considering—

18
19 Ms. La Costa: That's not my question. Are those church services?

20
21 Dr. Abrams: It's a community potluck and a celebration and prayer and it is consistent with
22 church. We're hoping to formalize it with this Special Use Permit so that we can do more full
23 regular church meetings.

24
25 Ms. La Costa: So as the Chair said, we work with our heads here not with our hearts and we
26 have to be sure that when we make a decision it is based upon law—

27
28 Dr. Abrams: Yes.

29
30 Ms. La Costa: --upon use, upon previous activities and upon what we hear on public
31 testimony—

32
33 Dr. Abrams: Yes.

34
35 Ms. La Costa: --and read in public testimony.

36
37 Dr. Abrams: Yes

38
39 Ms. La Costa: And everyone that encompasses that process. So that's my question. That's
40 why I'm so direct. Have you been doing church activities already and now you're coming for a
41 permit?

42
43 Dr. Abrams: Well, I'd just like to consult with my counsel for a minute by how to respond.

44
45 Ms. La Costa: We ask short-term rentals the same questions.

46

1 Dr. Abrams: Right, right, that's a important decision to make, right, right. Right, to date we have
2 private gathering of friends without having regular church meetings. We are aspiring to with
3 your approval to step into the ministry of having weekly regular church services. So what we
4 have done to date are informal gathering of our community and friends having celebrations of
5 Thanksgiving, birthday celebrations, memorials none of which are specifically a public church
6 function but rather we're not advertising publicly we informally invite our community and circle of
7 friends and we're aspiring to begin full church activities with your approval.

8
9 Mr. Carnicelli: Great. Thank you Lew. So the green one right guys is the recommendation
10 from the Department and we're gonna just, the Director and I will go through a couple items on
11 it. So in Recommendation No. 1 it says the permit shall be valid till June 30, 2024 subject to
12 extension by the Director. So we can change that, right? I mean if there's concerns from the
13 neighbors we can say instead of a five-year permit we can go one-year permit, we can do two-
14 year permit, we can do whatever it would be, so we can sorta start there. Then if you go to
15 Condition No. 4 where it says, that all church and religious activities shall only occur between
16 the hours of 8:00 a.m. and 10:00 p.m. Any amplified sound or music at any event shall not be
17 heard beyond the subject property lines. The 8:00 a.m. to 10:00 p.m. we can tweak, right.
18 Obviously amplification we can tweak. Okay, and then if we go to Condition No. 5 that as
19 represented by the applicant service shall occur no more than three times per week plus holiday
20 celebrations. You know we can get more specific there. And the applicant shall maintain an
21 average of no more than 40 people for weekly services and no more than 100 people for holiday
22 celebrations including employees and staff. So we can also say, okay, you know holiday
23 celebrations we can put a number to that. 'Cause again guys is what we can do is just instead
24 of just saying no, we can just say all right how can we try to make this fit within the criteria that
25 we have?

26
27 So let's start with No. 4 and the hours of operation. Do you want to say sunup to sundown? Do
28 you want to say...I mean, what are you guys comfortable with?

29
30 Mr. Robinson: Discussion.

31
32 Mr. Carnicelli: Discussion. Okay, I put that on the floor let's go ahead and discuss? There we
33 go. Commissioner Robinson.

34
35 Mr. Robinson: Commissioners even though I'm the youngest on this Commission I have served
36 a few of these in the early years and I've actually dyed it gray. It's, it's we had a lot of these and
37 we had what I think our Chair is trying to do, we had so many events per year, we had time of
38 the events, we had restrictions on the size, restrictions on substance that are gonna be at the
39 events. You know, we as a Commission would always try to support agriculture and we use
40 these activities to help them pay for the agriculture. There's been a few religious things that
41 have come in front of us before in the early years. We had...I had a like half a dozen my first
42 year, we had a lot and then it kind of subsided away because the restrictions that we put on
43 them people weren't as...they're looking for different areas where they...(inaudible)...the
44 restrictions. You know, things like that and actually this is a...it always traffic, like you know, it
45 was always noise. I mean, we know they've been practicing even though you know he don't
46 want to admit it, right? Gathering, private gathering, membership...membership, membership is

1 already a commercial enterprise if you have membership, right? So instead a club, club is still
2 a...still considered a group. I am for putting some limits on this. I think it's fantastic that they
3 love everybody except the people that speak out against them like their neighbors, you know.

4
5 Dr. Abrams: We love them too.

6
7 Mr. Robinson: Okay. Not all of them though, not everybody is what I heard and that's okay.
8 You know, not everybody is on a I love list, but I know I try to put them on that, but the thing is
9 we have to try to respect and limit it that way. So we talked about the one before about
10 precedence, about stabilization of our permits, about different areas and different things. The
11 law's the same if it's Makawao or Lahaina. The law's the same if it's you know State Law, State
12 Law so we can, you know we can kinda massage a little bit or kinda look at it, but the testimony
13 that I heard today from the neighbors is we need to keep in mind what they testified for. You
14 know, it be great that everybody that visited would also listen to that as well.

15
16 Now as far as...the question I have one, is this going to Council or is it stop with us? It stops
17 with us, okay. 'Cause I know we had one before we spent days and then it went to Council and
18 they killed it anyway. So ...(inaudible)... that. It's...

19
20 Ms. La Costa: Chair?

21
22 Mr. Carnicelli: ...attorney, they can talk.

23
24 Mr. Robinson: So personally hours I would start with first, right. Quiet time is quiet time. So is
25 Chair is there a standard that SUPs follow besides 10:00 p.m.?

26
27 Mr. Carnicelli: I tell you what is before we get into ...(inaudible)... since we're gonna just
28 discuss this. Let's do a little discuss and then we'll go, we'll do them one at a time, yeah, just
29 like you're saying. Corporation Counsel.

30
31 Mr. Galazin: Thank you Chair and I wanted to bring this up before we get too far in discussion
32 because this is a jurisdictional question. As you know, this body reviews some Special Use
33 Permits and the State Land Use Commission reviews others. The delineation for that is found
34 within 205-6 of the Hawaii Revised Statutes and if it is for a property that's less than 15 acres of
35 Ag land then it's approval before this body. If it's for greater than that, approval lies before the
36 Land Use Commission and not with this body. What haven't seen and perhaps Planning can
37 confirm for me this is a 25.54 acre parcel and the request is to use 14.8 acres of it but I haven't
38 seen a delineation of which 14.8 acres are proposed to be subject to the Special Use Permit.
39 So that would be a jurisdictional issue for you folks. I just want to make sure it's clear. Thank
40 you.

41
42 Dr. Abrams: Yeah, the plot plan is in your folder that folded plot plan.

43
44 Mr. Carnicelli: Speak into the mic please.

45

1 Dr. Abrams: Oh yeah. So yeah, the portion of the land that would be included around the
2 church building is delineated by that dotted line that runs across towards the northern section of
3 the property so it's really the point that sticks out into the gulch towards the ocean. The upper
4 portion or southern portion closer to the Hana Highway is where our primary farming activities
5 happen. Mostly what's out around the temple space is pasture, coconut orchards and then
6 gulch.

7
8 Mr. Galazin: And Chair if I can make clarify? Has this been surveyed? Is there an acreage on
9 this, this line on this plot?

10
11 Dr. Abrams: It was surveyed when we were considering doing a—

12
13 Mr. Galazin: Do you have one in the application is what I'm asking.

14
15 Dr. Abrams: No.

16
17 Mr. Galazin: Okay, thank you.

18
19 Mr. Carnicelli: Is the parking for this within the 14.8 acres?

20
21 Ms. Furukawa: Yes.

22
23 Dr. Abrams: Yes.

24
25 Mr. Carnicelli: Yeah.

26
27 Dr. Abrams: There's ample parking. We have a 26 spot parking lot and then along the edges of
28 the road in that portion of the property.

29
30 Ms. McLean: If we're looking at the same diagram, you're saying that this line is what
31 delineates the church use?

32
33 Dr. Abrams: Yes.

34
35 Ms. McLean: And is this darker line the property boundary?

36
37 Dr. Abrams: Yes.

38
39 Ms. McLean: And so this is 14.8 acres here?

40
41 Dr. Abrams: Yes, that's my estimate. It's actually they've never went all the way down into the
42 gulch there to survey that area. It's so steep and rugged that the surveyors estimated that line
43 there. They didn't actually make it down the cliff.

44
45 Ms. McLean: Because if it's a 25-acre parcel and this is roughly 15 acres that would mean that
46 all of this is ten? That doesn't seem to scale.

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Dr. Abrams: It may not be accurately drawn to scale.

Ms. McLean: And the parking spaces some are within the 15 acres, but the majority seem to be outside of this line that was drawn across.

Dr. Abrams: Yeah, all the parking can be contained on that northern portion of the land that's included around the church building. So that perimeter road had parking all around, along either side of it. So it's easy to get a hundred cars in that same area.

Mr. Carnicelli: So...

Mr. Robinson: Chair?

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: In lieu of this new information I make a motion that we continue this meeting at a later date until we have the correct information of jurisdiction for our Commission.

Mr. Carnicelli: So we have a motion for continuance on this item to make sure we have jurisdiction.

Ms. Pali: Second.

Mr. Carnicelli: By Commissioner Robinson, seconded by Commissioner Pali. We have to pick a date if we're gonna do that. June 10th is a Monday is the next, holiday is the 11th.

Dr. Abrams: Might I have my attorney address this issue?

Mr. Carnicelli: Sure, please identify yourself.

Mr. Leslie Leskovich: My name is Leslie Leskovich. I've been a lawyer in Honolulu for over 40 years. I've been a member of the community. I met Dr. Abrams a dozen years ago and I'm just incredibly inspired by what he's done and what his vision is. What I want to remind the Commission of the following is that there have been absolutely no complaint filed regarding noise, traffic or anything else since 2016.

Mr. Carnicelli: Okay, Leslie hang on, hang on. This isn't testimony right now.

Mr. Leskovich: Oh, I know.

Mr. Carnicelli: This is we have a motion on the floor.

Mr. Leskovich: But I want to address...I understand, but what I want to address is the legalities of before we extend things I want to make it clear that the Planning Director McLean made findings that said the desired use will not adversely affect surrounding property.

1
2 Mr. Carnicelli: Okay, thank you. Thank you. Thank you. Duly noted.
3
4 Mr. Leskovich: And also the law—
5
6 Mr. Carnicelli: Leslie, thank you. I appreciate it.
7
8 Mr. Leskovich: Am I allowed to continue speaking or no.
9
10 Mr. Carnicelli: No.
11
12 Mr. Leskovich: I can't talk about the strict scrutiny test that the courts have announced, I can't
13 talk about the compelling government interest that this Commission would have to find?
14
15 Mr. Carnicelli: This isn't a final verdict.
16
17 Mr. Leskovich: I understand.
18
19 Mr. Carnicelli: This is continuing to see if we have jurisdiction. That is the motion on the floor
20 right now. I really appreciate you wanting to weigh in.
21
22 Mr. Leskovich: I just want to remind the court, the Commission that case clearly says, the case
23 that Commission got sued on clearly talked about jurisdiction. So I just want to just ask the
24 Corporate Counsel to go back to that case and make...is there anything in that case that would
25 indicate that this Commission does not have jurisdiction over this matter.
26
27 Mr. Carnicelli: Okay—
28
29 Mr. Leskovich: That's all.
30
31 Mr. Carnicelli: --so thank you very much. I appreciate it. Okay, so we have a motion on the
32 floor would anybody like to speak to the motion? Commissioner Robinson.
33
34 Mr. Robinson: I'll speak to my motion. Commissioners is there's a discrepancy between
35 15 acres less, 15 acres more, if it's above as we all know it's LUC which would make any
36 decision that we have moot. And I just think it's prudent that way. There's no sense putting a
37 decision down either way until we make sure that we're the one to make the decision and I think
38 that's something that can be easily cleared up through a survey and I think the Planning
39 Department can get that and we can you know move on with a continuance. Thank you.
40
41 Mr. Carnicelli: Thank you. Commissioner La Costa.
42
43 Ms. La Costa: Thank you Chair. I don't know if this is in addition to, but some further
44 information not only...well, first of all do we have jurisdiction and if we have then a survey map
45 with an outline of where the parking is, where the actual 14.8 acres are so that we can address

1 exactly the permit that Dr. Abrams would like to apply for. So we need to have all the
2 information so we can make an informed decision. Thank you.

3
4 Mr. Carnicelli: Thank you.

5
6 Dr. Abrams: If you look at No. 28 on the—

7
8 Mr. Carnicelli: Okay—

9
10 Dr. Abrams: --okay, the parking—

11
12 Mr. Carnicelli: You gotta be, you gotta be recognized.

13
14 Dr. Abrams: All right.

15
16 Mr. Carnicelli: Thank you. Thank you. Commissioner Pali would you like to speak to the
17 motion? No?

18
19 Ms. Pali: Get more information so we can be clear would be good for me as well.

20
21 Mr. Carnicelli: Commissioner Tackett.

22
23 Mr. Tackett: I'm good at this point.

24
25 Mr. Carnicelli: No. Okay, so I'll speak to the motion as well is you know guys this isn't about
26 whether we like it or not. It's just like you know that's not what this is about is I love everything
27 you guys are doing honestly the fact that you guys are trying to heal the planet we need it, right.
28 Everything you guys are doing is spot on. But we gotta make sure the bouncing ball happens
29 correctly, right. So we're just gonna hit the pause button, we'll get a survey, we'll make sure
30 that it's our jurisdiction and then we can move forward from there. So with that being said,
31 Director.

32
33 Ms. McLean: The motion on the floor is to recess, continue the discussion of this item and the
34 date proposed would actually not be the next meeting on June 10th, but the following meeting
35 June 25th.

36
37 Mr. Carnicelli: All those in favor of the motion please raise your hand. That's five ayes, the
38 continuance happens. So we will see you on June 25th. Thank you for everybody that came,
39 thank you for everybody that testified, we really, really appreciate your passion, we really, really
40 your testimony. Thank you very much and apologize that we couldn't come to a decision today
41 for you but we will get one on June 25th.

42
43 **It was moved by Mr. Robinson, seconded by Ms. Pali, then unanimously**

44
45 **VOTED: To Continue the Matter to the June 25, 2019 meeting in order to get**
46 **clarification on the concerns discussed by the Commission.**

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

6 Mr. Carnicelli: With that being said, the Commission will go into recess. We will be back at
7 1:30.
8

9 A recess was called at 12:34 p.m., and the meeting was reconvened at 1:37 p.m.
10

11 Mr. Carnicelli: Good afternoon everyone, the May 28, 2019 Maui Planning Commission is now
12 back in session and I appreciate everybody spending most of the day here with us. We're
13 gonna do a quick deviation on the agenda just to dispose of some items. Director.
14

15 **D. DIRECTOR'S REPORT**
16

- 17 **1. Designation of the Hana Advisory Committee to conduct the public hearing**
18 **and provide a recommendation to the Commission on the following**
19 **applications:**
20

21 **GREGORY KOCH requesting a State Land Use Commission Special Use**
22 **Permit in order to operate the Hana Panoramic Retreat, a two-bedroom**
23 **STRH located in the State Agricultural and County Agricultural District at**
24 **630 Kapia Road, TMK (2) 1-4-011:041, Hana, Island of Maui. (STHA**
25 **T2018/0008) (R. Quigless)**
26

27 **BRADLEY AND ROBIN NEWTON requesting a State Land Use Commission**
28 **Special Use Permit in order to operate the Hana Nautilus, a three-bedroom**
29 **STRH located in the State Agricultural District and County Agricultural**
30 **District at 2575 A Hana Highway, TMK (2) 1-3-003:015, Hana, Island of Maui.**
31 **(STHA T2019/0002) (R. Quigless)**
32

33 **The Commission may take action to designate the Hana Advisory**
34 **Committee to conduct the public hearing and provide a recommendation**
35 **on the subject application requests or take some other action.**
36

37 Ms. McLean: Thank you Chair. Under Item D, Director's Report before you is to designate to
38 the Hana Advisory Committee to conduct the public hearing and provide a recommendation
39 back to this Commission on the following two applications. The first is a request from Gregory
40 Koch for State Land Use Special Use Permit in order to operate the Hana Panoramic Retreat, a
41 two-bedroom short-term rental home located in the State Agricultural and County Agricultural
42 District at 630 Kapia Road, TMK: 1-4-011:041 in Hana. And also a request from Bradley and
43 Robin Newton for a State Land Use Commission Special Use Permit in order to operate the
44 Hana Nautilus a three-bedroom short-term rental home located in the State Agricultural District
45 and County Agricultural District at 2575A Hana Highway at TMK: 1-3-003:015 in Hana. So
46 again what's before this Commission is to designate the Hana Advisory Committee to conduct
47 the public hearing and provide a recommendation back to you.

1
2 Mr. Robinson: So move.

3
4 Mr. Carnicelli: Moved by Commissioner Robinson.

5
6 Ms. La Costa: Second.

7
8 Mr. Carnicelli: Seconded by Commissioner La Costa. Any discussion on the motion? Seeing
9 none, all those in favor of the motion please raise your hand. That's five ayes. Motion passes.
10 Thank you. Director.

11
12 **It was moved by Mr. Robinson, seconded by Ms. La Costa, then unanimously**

13
14 **VOTED: To Designate the Hana Advisory Committee to Conduct the Public**
15 **Hearing and Provide a Recommendation.**

16
17 **(Assenting – K. Robinson, P. D. La Costa, K. Pali, C. Tackett,**
18 **L. Carnicelli)**

19 **(Excused – S. Castro, T. Gomes)**

20
21
22 **2. Designation of the Hana Advisory Committee to conduct the public hearing**
23 **and provide a recommendation to the Commission on all future items for**
24 **which a hearing is required, pursuant to State or County statute, ordinance**
25 **or rule, and which pertains to a proposed land use action on real property**
26 **located within the Hana Community Plan region.**

27
28 Ms. McLean: The next item, No. 2, similarly is for the Commission to do a blanket designation
29 to the Hana Advisory Committee for any public hearing item and to provide a recommendation
30 back to the Commission rather than them having to come to the Commission on an agenda first.
31 If you'd like to continue to see them, we'll continue as the same way, but if you want these to
32 just go straight to the Hana Advisory Committee then we can do that.

33
34 Ms. La Costa: So move.

35
36 Mr. Carnicelli: Moved by Commissioner La Costa.

37
38 Ms. Pali: Second.

39
40 Mr. Carnicelli: Seconded by Commissioner Pali. Basically briefly guys this is it skips this step of
41 D.1 that we just did. I think it helps the applicants expedite things and I don't think we've ever
42 not referred things to the Hana Advisory Committee. Commissioner Robinson.

43
44 Mr. Robinson: I'm 99 percent of it, it's just it says all instead of certain things. All things to go
45 to...that happens to be in Hana.

46
47 Ms. McLean: It's all future items for which a public hearing is required.

1
2 Mr. Carnicelli: So the public hearing happens in Hana.

3
4 Mr. Robinson: Thank you.

5
6 Mr. Carnicelli: Any other discussion? All those in favor please raise your hand. That's five
7 ayes. Motion passes. Director.

8
9 **It was moved by Ms. La Costa, seconded by Ms. Pali, then unanimously**

10
11 **VOTED: To Designate the Hana Advisory Committee to Conduct the Public**
12 **Hearing and Provide a Recommendation to the Commission on**
13 **Future Items for Which a Hearing is Required.**

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

18
19
20 **3. MS. MICHELE MCLEAN, Planning Director, notifying the Maui Planning**
21 **Commission pursuant to the provisions of the Maui Planning**
22 **Commission's SMA Rules of the issuance of the following Special**
23 **Management Area Emergency Permit:**

24
25 **Approval letter dated April 8, 2019 to MR. STEPHEN LEIS requesting a**
26 **SMA Emergency Permit to implement temporary measures as three large**
27 **sinkholes developed within eight feet of the residential structure mauka of**
28 **the existing seawall at 1640 Halama Street, TMK (2) 3-9-011:014, Kihei,**
29 **Island of Maui. (SM3 2019/0001) (K. Lau Hee)**

30
31 Ms. McLean: Next item is a notification item only and this is notifying the Commission that an
32 SMA Emergency Permit was issued to Mr. Stephen Leis to implement temporary measures as
33 three large sinkholes developed within eight of a residential structure mauka of the existing
34 seawall at 1640 Halama Street at TMK: 3-9-011:014 in Kihei.

35
36 Mr. Robinson: So move.

37
38 Mr. Carnicelli: I don't think...We don't need a motion on it. Just notification.

39
40 Mr. Robinson: Okay.

41
42 Mr. Carnicelli: Okay.

43
44 **4. SMA Minor Permit Report**

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

47

1 **5. SMA Exemptions Report**

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

4
5 Ms. McLean: Next in front of you is the SMA Minor and Exemptions Reports do Commissioners
6 have any questions on those reports.

7
8 Mr. Carnicelli: I have none. Thank you Director.

9
10 **6. Discussion of Future Maui Planning Commission Agendas**

11
12 **a. June 10, 2019 (MONDAY) agenda items**

13
14 Ms. McLean: And then lastly, the January or excuse me, June 10th, the next meeting is on a
15 Monday because the Tuesday is a holiday. So the next regular meeting is June 10th. You have
16 one item of old business and currently three public hearing items.

17
18 Mr. Carnicelli: Is everybody okay with that day, yeah?

19
20 Ms. Pali: I will be off island that day.

21
22 Mr. Carnicelli: You're off island. I do believe that Stephen is gonna be back, right? He's on his
23 honeymoon in Alaska right now. So he definitely has an excuse for not to be here. You're cool,
24 yeah.

25
26 Mr. Tackett: I'm gonna try my best, yeah.

27
28 Mr. Robinson: I possibly have a conflict. I will know next week.

29
30 Mr. Carnicelli: So I guess we will know next week.

31
32 Ms. McLean: We'll poll.

33
34 Mr. Carnicelli: Okay, great. Thank you, Director. I guess then going back to public hearing
35 items.

36
37 Ms. McLean: Yes, Chair. This is the Commission's second public hearing item today. The
38 Chair suggested that the Commission proceed with the next two public hearing items and then
39 after that second public hearing item take a look at the time and how long the presentation
40 would take for the remaining public hearing item and how many people are signed up to testify.

41
42 Mr. Carnicelli: Well, and just so everybody that's sitting here also understand we lose quorum
43 at 4:15 so our timeline strung and so I apologize everybody that's been here all day and wants
44 to testify on, we'll call it what it is on the Grand Wailea, right but we actually may not even get to
45 it today unfortunately, so but we're gonna try and jam through these first two things as we can.
46 So, with that being said, thank you Director.

47

1 Ms. McLean: Next is a request from Ms. Ayoko Hashimoto for a State Land Use Commission
2 Special Permit in order to operate Zen Island Farm, a three-bedroom bed and breakfast home
3 located in the State Agricultural District at 820 West Kuiaha Road at TMK: 2-7-008: 137 in
4 Haiku. Jared Burkett is the Project Planner.

5
6 **C. PUBLIC HEARINGS**

7
8 **2. MS. AYAKO HASHIMOTO requesting a State Land Use Commission Special**
9 **Permit in order to operate Zen Island Farm, a three-bedroom bed and**
10 **breakfast home located in the State Agricultural District at 820 W. Kuiaha**
11 **Road, TMK: (2) 2-7-008:137, Haiku, Island of Maui. (SUP2 2018/0008)**
12 **(J. Burkett)**
13

14 Mr. Jared Burkett: Good afternoon Chair, Commissioners. My name is Jared Burkett. There is
15 one home located on the property and three bedroom of that four-bedroom, three-bath home
16 will be used for a bed and breakfast home rental. Your hearing this item because the State
17 Agricultural District requires the Land Use Commission Special Permit. The B&B Permit will be
18 approved administratively because no triggers are bringing that permit to come before the Maui
19 Planning Commission so you're just considering the State Agricultural District's requirement for
20 the Special Permit.

21
22 There are no requests for service on the property and three letters of support have been
23 provided to the Commission by email previously and the farm plan has been implemented on
24 the property which it can be seen on Exhibit 6. And the applicant's consultant, Ilima Smallwood
25 will now speak on the item and she printed out a slideshow that she's going to be showing
26 which you have copies of. So if...and after the applicant's presentation, the Department will
27 give their analysis and recommendation after any discussion and testimony. So if there are no
28 objections I will invite Ilima to make her presentation.

29
30 Mr. Carnicelli: Great. Thank you.

31
32 Ms. Ilima Smallwood: Good day Commissioners, Good day Chair. Thank you so much for
33 having us here. The service you provide to the community through showing up here is really
34 important and we really appreciate your presence, your time, and of course your consideration,
35 so thank you.

36
37 Mr. Carnicelli: Thank you. Just do say your name for the record.

38
39 Ms. Smallwood: Of course, I was getting to that. My name is Ilima Smallwood and through my
40 business, ITS Sustainable Architecture I am honored to serve the Maui community as both a
41 junior architect and a permit facilitator and I am here before you today to...on behalf of the
42 owner, Ayoko Hashimoto who's here to present the Land Use Special Permit for a three-
43 bedroom bed and breakfast home in the main farm dwelling.

44
45 And pictured here on this first slide...is it possible to...thank you so much...so pictured here this
46 is the main farm dwelling. The property is located as mentioned at 820 West Kuiaha in Haiku.

1 On the upper left you can see the path from the airport to the subject property. On the lower
2 right there's a blow up that gives its context with the greater Haiku Town and area. And to the
3 upper right you can see the subject property highlighted in red with all the adjoining properties
4 highlighted in blue. The lot totals 2.13 acres and there are two development structures on the
5 property. One is a barn of 864 square feet and the main farm dwelling which is 1,855 square
6 feet. The main farm dwelling contains four bedrooms and three baths. And the property is
7 zoned Agricultural in both County and State zoning.

8
9 Ms. Hashimoto moved to Maui about three and a half years ago and has been living on this land
10 since its purchase in March of 2017. She bought this property with the intention of transforming
11 from horse pasture which you see in the lower picture here into a thriving permaculture farm.
12 Upon purchase Ayoko hired Simon Russell of Farm Maui LLC to both advise on and create Zen
13 Island Farms. Together they have created a thriving Veganic permaculture farm as you will see
14 in the following slides. At the conclusion of my representation Ayoko will briefly talk you herself
15 on her journey with this land and to becoming a farmer.

16
17 As part of this journey Ayoko decided to learn more about how to be the best farmer she could
18 be and enrolled in the FAM Program. For those unfamiliar this is a Farm Apprenticeship
19 Mentoring Program offered by the UH Maui College. She completed this program in June of
20 last year and her son Kae who has been helping to her to develop the farm is currently enrolled
21 in the same program.

22
23 Here you can see the initial permaculture design which was designed by the consultant
24 Jenny Pell at the beginning of the stages of developing the design for Zen Island Farms.
25 Ms. Hashimoto and Farm Maui used this as a starting point for the now approved and fully
26 implemented farm plan and a creation which you can see on this next slide here. There's also a
27 list of the various crops that can be found on Zen Island Farm.

28
29 I'm now going to take you through some images of the farm creation and as the farm exists
30 today. Here you can see the beginnings of the swale and berm design which now hosts many
31 of the new orchards as well as some other complimentary crops. The three lower orchard
32 berms were constructed with these impressive kiawe orchard trellises which the various trees
33 are being trained upon as they grow. There are three main crops on these trellises they are
34 mango, avocado and lychee. You can see the mango on the left, the avocado on the right and
35 on the slide the lychee is on the right. And in the swale portion of this design are other
36 complimentary plants which prefer a moister soil here. You can see taro flanked by Vetiver.
37 The farm also has a large dragon fruit orchard which had its first harvest this past year, small
38 though it was. And upon purchasing the property it came with a citrus orchard which is already
39 in production.

40
41 There is a very, very diversified architecture...agriculture on the property. As you can see
42 there's mac nuts, pineapple, papaya, a young ulu tree. As we said she purchased this farm in
43 2017 so a lot of the trees are still quite young and not quite in production yet. There's also a
44 host of lei plants and flowers. Here is some estimated production as the agriculture develops.
45 Here are some projections for 2021 and 2022. There are some things that you won't see here
46 because they have a longer time for maturation such as coconut and et cetera.

1
2 This farm stands apart from other farms in that it is employing something called Veganic farming
3 which is a combination of both organic and vegan farming which means it is...they will use no
4 pesticides, no animal products, no herbicides, and no chemicals. This is also in combination
5 with Japanese natural farming techniques which is referred to as Shizen-Saibai and here are a
6 couple of images of ways that they improve the soil quality using these techniques.

7
8 As these are relatively new concepts in the world of sustainable agriculture and one that Ms.
9 Hashimoto is passionate about one of the main goals of Zen Island Farm is to become an
10 educational farm where people wanting to learn about these methods and techniques may
11 come to learn about them hands on in the living classroom of the farm itself. This brings us
12 back to why we're here before you today and asking for approval of Land Use Special Permit to
13 operate a three-bedroom bed and breakfast home on this land. The primary goal and function
14 of the B&B operation will be to host and facilitate educational farm stays where visitors may
15 come to become educated on the various methods and techniques being used here at the farm
16 and also may be introduced to the vegan lifestyle. A few of the other goals are to introduce the
17 vibrant meals a vegan farm to table lifestyle can include. To create an additional revenue
18 stream which can support the growth and sustainability of Zen Island Farm and make a farming
19 lifestyle financially sustainable for the owner, her family and the farm workers. And to share the
20 wisdom of sustainable farming and showcase what is best for the aina and what is possible
21 without the use of chemicals, herbicides, pesticides, and animal products. And lastly, Ayoko
22 wishes to share the abundance, health, vitality and joy being a Maui farmer can bring to one's
23 life.

24
25 Here are the images of the bedrooms themselves. It's an existing home. It was built in 1991.
26 These three bedrooms are on the second story and B&B guests will also have use of the
27 common spaces on the lower level.

28
29 And for our last slide we have a menu that Ayoko put together and that just shows some of the
30 offers that she looks forward to offering to the guests should this be approved. Ayoko would
31 now like to share a little bit herself and then I will close the presentation.

32
33 Mr. Carnicelli: Great. Thank you.

34
35 Ms. Ayoko Hashimoto: Hello Chair and Commissioners. Thank you for being here today. I
36 would also like to thank Jared for the support, Jared thank you, for the support and guidance
37 through this application process. My name is Ayoko Hashimoto and I'm the owner of Zen Island
38 Farm and the applicant of the bed and breakfast.

39
40 I'm going to introduce myself and talk about my...talk about why I became a farmer and also
41 why I want to run a bed and breakfast. I was born and raised in Japan and in my adulthood I
42 lived in different parts of the world including Beijing, Taiwan, Bay area California and I have
43 lived here on Maui for three and a half years now. When I was living in the Bay area I was
44 working as chef and food product specialist. Bay area was the place where the farm to table
45 concept was born. As a chef in order to get the best ingredients I often when to the farmers
46 market and soon I got to know different farmers who put so much effort and care in order to

1 grow the best vegetables and fruits. I felt honored to make food using such freshest ingredients
2 it became my dream to sell farm to table meals and to be involved in furthering the local and
3 sustainable farm to table movement.

4
5 Four and a half years ago I lost my husband from brain cancer and that was the main reason
6 why I decided to move to Maui and to start my new life and pursue my dream by myself. When
7 I moved to Maui I started to volunteer at organic farms to learn about farming and also to meet
8 people who care about the land, environment, food supply, and our community. That was the
9 time I learned the meaning of aina and importance of the land for the Hawaiians. That is also
10 when I met my farm advisor Simon Russell who is today and will offer testimony. During my
11 volunteer time I learned about permaculture and met the permaculture designer Jenny Pell and I
12 ask her to design my farm with the concepts of permaculture. Permaculture means permanent
13 culture or permanent agriculture. Permaculture emphasize the lifestyle of human beings living
14 in harmony and balance with nature and growing food with minimum human impact on the land.
15 My farm is also veganic. We do worming compost and get help from worms which are living in
16 the soil to maintain the soil health in the most natural way.

17
18 When I purchased the house with the ag land two years ago it was a horse pasture. I want to
19 grow food and wanted to do something good for the land, the community and the world. So last
20 year as I started to build the farm I decided to enroll in the Farmer Apprenticeship Program
21 organized by HFUU, Hawaii Farmers Union United and I learned so many things about farming
22 from different mentors on the island. Now I strongly feel that sustainable and regenerative
23 farming is a crucial part of our lives not only for the food security but also for the environment of
24 the aina and four children. As a farmer and host I will I'd like to offer opportunities for people to
25 learn about the ...(inaudible)...lifestyle of farming and that is the reason why I'm applying to run
26 a bed and breakfast. I believe it will be really beneficial for the people who come to Maui to
27 experience a farm stay and farm to table breakfast prepared with lots of care and love to the
28 land and people. Thank you so much for consideration of my application. With your favorable
29 approval I really hope that my farm and bed and breakfast can enrich the Haiku community and
30 people that choose to come to stay here.

31
32 Mr. Carnicelli: Thank you very much.

33
34 Ms. Smallwood: I just have one closing statement if that's all right.

35
36 Mr. Carnicelli: Yeah.

37
38 Ms. Smallwood: As you've hopefully been able to see through this presentation this project's
39 intent is to enhance and to further diversified agriculture not only within the boundaries of this
40 particular lot but hopefully far and wide throughout the word to wherever its guests shall return
41 with the new knowledge they have learned during their stay.

42
43 In the analysis section of the staff report before you drafted by our Planner, Mr. Burkett he has
44 clearly pointed out the many ways this project is in alignment with the goals of the County of
45 Maui 2030 General Plan which is a Countywide Policy Plan, the Maui Island Plan which is a
46 Countywide Growth Plan and lastly with the Haiku-Paia Community Plan which most intimately

1 reflects the wishes of the residents of this town and area. By being able to host educational
2 farm stays Ayoko hopes to not only offer an alternative to the conventional resort tourism
3 commonly available here on our island but also hopes to give to our guests with a unique and a
4 new experience allowing them the opportunity to truly connect with the aina, with the source of
5 their food and with their host community. The hope of Zen Island Farm is that this experience
6 and knowledge will plant in guests a seed of hope for what is possible when one truly lives in
7 sustainable harmony with the land and that this seed may blossom into a healthier world one
8 small inspired farm stay guest at a time through the employment of things learned upon
9 returning to wherever they call home. Thank you again for your consideration of our application.

10
11 Mr. Carnicelli: Great. Thank you very much. Jared do you have anything else before we open
12 public testimony? Okay, sounds great. So at this point in time we will go ahead and open
13 public testimony starting with...and just to go over it, some of you guys weren't here earlier. It's
14 three minutes. You will have the opportunity to be cross examined by the applicant and you
15 have to swear to tell the truth. Kae Hashimoto. Please say your name for the record.

16
17 Mr. Kae Hashimoto: My name is Kae Hashimoto.

18
19 Mr. Carnicelli: Do you promise to tell the truth?

20
21 Mr. Hashimoto: I do.

22
23 Mr. Carnicelli: You have up to three minutes.

24
25 Mr. Hashimoto: Okay, I'll try to keep it short and sweet. Hi everyone, my name is
26 Kae Hashimoto and I'm the son to Ayoko, the applicant for the B&B Permit today and I've been
27 on Maui about eight months ago...for about eight months and I moved from California right after
28 I graduated from the University of California, Santa Cruz. And when I graduated, you know I
29 knew that my had recently just started up her farm in Haiku and she needed some help on the
30 farm so I thought why not, you know while I'm still young might as well come out and help out on
31 the farm so here I am and to keep it short it's been a rollercoaster of eight months just working
32 on the farm, toiling on the land, being sweaty, hot, wet not smelling so great all the time, but I
33 think it's great and you know, I'm glad that I'm experiencing that every day.

34
35 But even more so than that being around my mother every single day, seeing how hard she's
36 worked not only to get the process for this farm going, this permit going, but also you know
37 working on the other aspect of the farm such as offering several cooking classes to the
38 community at Maui Heritage Hall, you know so that every time we've had about three class so
39 far. In the process I, myself became just about a third degree black belt in dishwashing so that's
40 been great as well and it's opened my eyes as to how hungry the people of Maui are not only for
41 the great food that my mother can cook, but also just to learn about healthy eating choices.

42
43 And to finish it off, you know we also had an opportunity a few months ago to welcome some
44 kindergarteners from Japan on the farm. They were here on the island to participate in a
45 English summer camp and just seeing the little kids like they must have been three or four with
46 their tiny straw hats, tiny hands like planting tiny seeds it was so cute and just the fact that they

1 were so happy made me really excited about the possibilities for the future on the farm you
2 know whether it be farm stays, farm tours and such and for me by just helping out on the farm
3 today the ultimate goal for the Zen Island Farm to be a generational farm so that you know my
4 kids of the future one day can also experience what the little kids experienced a few months ago
5 when they came and then I think you know just for my kids of the future a little bit of hard work
6 and dirt can't really hurt them. So thank you. Appreciate it.

7
8 Mr. Carnicelli: Thank you very much. You have any questions for your son? No? Okay.
9 Sarah Taylor.

10
11 Ms. Sarah Taylor: Sarah Taylor.

12
13 Mr. Carnicelli: You promise to tell the truth.

14
15 Ms. Taylor: I do.

16
17 Mr. Carnicelli: You have up to three minutes. Thank you very much.

18
19 Ms. Taylor: Thank you. Aloha. My husband and I own the property where Leilani Farm
20 Sanctuary is located at 250 East Kuiaha in Haiku and I'm a friend and neighbor of Ayokos and
21 am here today to give my support for her farm. As you probably can tell by now she's an
22 incredibly hard worker. I've watched her transform this property from when she first bought it as
23 a simple grassy pasture into this incredible farm that's just burgeoning every time I go over
24 there's more growing and more things that are happening it's incredible. And she hired Simon
25 Russell to come out and help clear and design the land in a way that's natural for the area and
26 promotes healthy and organic agriculture and as you just met Kae he...you know works very
27 hard on the farm as well and this is intended to be a generational farm. Ayoko's invested an
28 incredible amount of time and money not just to create a farm but specifically to create a farm
29 that's aligned with natural farming methods which is what I really, really appreciate about what
30 she's doing. And it's just been amazing to watch how quickly and beautifully they've been able
31 to manifest this vision.

32
33 But on a personal note I'm a medical researcher for 20 years and I'm really excited that this will
34 be a vegan farm. I wish I had an hour to give a presentation, but the reason why that excites
35 me is that research shows that the compounds found in fruits and vegetables have been shown
36 to lower the risk of many deadly diseases specifically cancer but also heart disease and
37 diabetes and so based on this research I just believe that the more that we can promote a
38 largely vegetable based diet as Ayoko's farm will do it will be better for human health and for the
39 animals and for the aina.

40
41 I know that there has been some kind of buzz in our neighborhood about you know about
42 housing availability for renters and just wanted to point out on a side note that approving this
43 project wouldn't impact the housing availability because the rooms will not be available for long-
44 term rent if this project is not approved. So I thought that was an important point as well.

45

1 And finally I just want to note that while her application for a bed and breakfast is ancillary to her
2 farming activities if you approve the application I'll be really excited for those who get to stay
3 there as well because I just can't imagine a better souvenir to bring home than the kind of
4 knowledge that she's gonna be teaching people. Thank you.

5
6 Mr. Carnicelli: Thanks Sarah. Do you have any questions? No. Thank you. Simon Russell.

7
8 Mr. Simon Russell: Aloha Chair Carnicelli.

9
10 Mr. Carnicelli: Good afternoon Simon. Please say your name.

11
12 Mr. Russell: Director McLean and honorable Members of the Commission my name is Simon
13 Russell.

14
15 Mr. Carnicelli: Do you promise to tell the truth?

16
17 Mr. Russell: So help me.

18
19 Mr. Carnicelli: All right, you have up to three minutes.

20
21 Mr. Russell: Thank you. I am a second generation family farmer from Hawaii. I grew up on
22 Kauai and moved here in 1997. Shortly thereafter I started farming with my brother in Hana and
23 Upcountry Maui. And a couple years ago I decided to start my company which is called Farm
24 Maui LLC and I specialize in sustainable and organic farming systems and their installation. I
25 work all over the island and in this particular instance I had the good fortune of working with
26 Ayoko who I met some years ago I believe it was 2015 when she worked...volunteered with me
27 on a organic farm I was managing growing sugar cane and then also volunteered with me on
28 another farm. So I've known Ayoko for some years and I can testify to her commitment to
29 farming and helping our community and this is not a fly by night person. She's committed to
30 what she says she's committed to.

31
32 I also believe that the B&B that's she's applying for is gonna be a great boon to her farming
33 enterprise 'cause we all know that ...(inaudible)...market forces are not friendly to vegetable
34 prices and fruit prices they're grown a lot cheaper in Vietnam, Mexico, California and all over the
35 place so as a vegetable farmer myself I know that we need additional revenue streams to
36 support the operation. And so since she's living there I fully support her bed and breakfast
37 application and if it pleases the Commission I would ask that you please do approve her
38 application.

39
40 Mr. Carnicelli: Okay, thank you Simon. Do you have any questions for him? No, okay, great
41 thank you very much. David Fisher. All right, David Fisher. I'm bad with names and then
42 people's handwriting it's a clash that poor, but please state your name for the record please.

43
44 Mr. David Fisher: David Fisher.

45
46 Mr. Carnicelli: Thank you. Do you promise to tell the truth David?

1
2 Mr. Fisher: I do.

3
4 Mr. Carnicelli: Great. You have up to three minutes. Thank you.

5
6 Mr. Fisher: My background, I've been on Maui 30 years during that time I've been a small
7 business consultant. I helped to open the Small Business Development Center at the Tech
8 Park that was sponsored by the University and the FDA and it's still operating. I did that for 19
9 years, almost ten years ago I left to be more entrepreneurial myself and one of the areas that
10 fascinated me the most and felt that there was a need was this whole idea of food sustainability.
11 I've done a lot of work with companies like Pacific Biodiesel and so forth so the energy side I
12 thought was being pretty well covered but the food side of it seemed like a real challenge and of
13 course we've all seen it's been more than just the last couple years, it's been a 20-year process
14 seen the sugar operations and also small independent farms have a problem so I've been
15 looking at, I've been doing...working on business plans for small farms, value added food
16 businesses, looking at composting businesses, a whole range of businesses and consulting with
17 the Hawaii Farmers Union. I taught a class for the Farm Apprentice Mentoring Program which
18 Jared took part of it, he was an okay student. But anyway it was called Regenerative Business
19 Development, but anyway, the main point here is I did the business plan for Ayoko and she
20 definitely needs to have the bed and breakfast income to be viable and frankly I know of...I was
21 corrected by Al Perez this morning, but I know...I have not seen the financial statements of any
22 business that doesn't have other kinds of...farm business that doesn't have other revenue
23 streams to support it. So it's really important that these...if we want to have food security that
24 we allow some creativity and innovation. I know it's a challenge because it's important that
25 we...you know there are some people that abuse the ability to do this so coming up with a more
26 micromanaged approach which I'm not saying that that's what's happening here but we need to
27 sorta get more into that to make sure that we're being creative while at the same time protecting
28 the idea of developing food security. So that's...I think that's basically...I have a written
29 testimony as well. Thank you.

30
31 Mr. Carnicelli: Thank you David. You have any questions? No. Okay, thank you very much.
32 That's the last of the people that signed up. Is there anybody else that would like to come testify
33 on this particular item? Seeing none, without objection we'll go ahead and close public
34 testimony. Public testimony is now closed. So questions from the Commission? Ms. La Costa.

35
36 Ms. La Costa: This is for Ms. Hashimoto. Arigato gozaimasu for showing up today.

37
38 Ms. Hashimoto: Arigato..(inaudible)...

39
40 Ms. La Costa: Appreciate very much. Have you used your home for a rental previously?

41
42 Ms. Hashimoto: No.

43
44 Ms. La Costa: And your menu looks delicious so I can't wait to come up and try it.

45
46 Ms. Hashimoto: Thank you.

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Ms. La Costa: Arigato.

Mr. Carnicelli: You're going to come from Lahaina and stay with her?

Ms. La Costa: I could. I could do a holoholo.

Mr. Tackett: I have no questions.

Mr. Carnicelli: Okay, does the Commission have enough information to make a decision? Okay, could I have the recommendation please?

Mr. Burkett: Staff Planner Jared Burkett. The Department has determined that this permit application meets the requirements of obtaining a Land Use Commission Special Permit which you can see what those requirements are on Page 12 and 13 of the report and recommendation. I conducted a site visit and confirmed that the property is as it is represented on the application and the conditions of approval has been met including implementation of that farm plan. So the Department is recommending approval of the SUP2 Permit subject to the seven standard conditions for a duration of three years and in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation as its finding of fact, conclusions of law and decision and order and to authorize the Planning Director to transmit said written decision and order on behalf of the Planning Commission if you so move to approve this permit. Thank you.

Mr. Carnicelli: Thank you very much. Do we have a motion? Ms. La Costa.

Ms. La Costa: I move to approve the permit as stated with the seven conditions shown thereof.

Mr. Carnicelli: As presented by staff.

Ms. La Costa: Correct.

Mr. Carnicelli: There we go, thank you very much. Do I have a second?

Mr. Tackett: Second.

Mr. Carnicelli: Commissioner Tackett. Any discussion on the motion? Commissioner Pali.

Ms. Pali: Is it standard for three years? Is that standard? That just seems really quick and I don't know about you guys but I have another five years that just started so that means I'd be seeing her again after three is that how it works?

Ms. McLean: The initial term is for three years and that is typical, and then the renewal would be by the Department—

Ms. Pali: Oh, so it wouldn't come back.

1
2 Ms. McLean: It wouldn't come back to you unless you specified that.

3
4 Ms. Pali: Okay.

5
6 Mr. Carnicelli: Okay, any other comments? Okay, Director.

7
8 Ms. McLean: The motion before you is to approve the permit as recommended in the staff
9 report.

10
11 Mr. Carnicelli: All those in favor please raise your hand. That's five ayes. Congratulations.
12 The motion passes you get your B&B Permit.

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

15
16 **VOTED: To Approve the State Land use Commission Special Permit as**
17 **Recommended by the Department.**

18
19 **(Assenting – P D. La Costa, C. Tackett, K. Pali, K. Robinson,**
20 **L. Carnicelli)**

21 **(Excused – S. Castro, T. Gomes)**

22
23 Mr. Carnicelli: Livit, how long do you need to set up?

24
25 Ms. Callentine: Five minutes.

26
27 Mr. Carnicelli: Five minutes. Okay, we're gonna take quick recess to set up the newest
28 presentation.

29
30 A recess was called at 2:10 p.m., and the meeting was reconvened at 2:15 p.m.

31
32 Mr. Carnicelli: The meeting is now back in order. Director.

33
34 Ms. McLean: Thank you Chair. Your next public hearing item is a request from Carlos and
35 Alexa PenaVega for a Short-Term Rental Home Permit in order to operate Hale Kai, a three-
36 bedroom STRH located in the A-1 Apartment District at 51 West Kapu Place at
37 TMK: 3-9-006: 016 in Kihei. Livit Callentine is the project planner.

38
39
40 **3. CARLOS AND ALEXA PENAVERGA requesting a Short-Term Rental Home**
41 **(STRH) Permit in order to operate Hale Kai, a three-bedroom STRH located**
42 **in the A-1 Apartment District at 51 W. Kapu Place, TMK (2) 3-9-009:016,**
43 **Kihei, Island of Maui. (STKM T2018/0009) (L. Callentine)**

44

1 **The matter is being brought before the Maui Planning Commission for**
2 **review because there are at least two permitted short-term rental home**
3 **operations located within 500 feet of the subject property.**
4

5 Ms. Livit Callentine: Thank you Director and good afternoon Commissioners. This request for a
6 Short-Term Rental Home Permit is under your review because two or more existing short-term
7 rental homes are operating within 500 feet of the subject property and that makes you the
8 approving authority. In this case there are three short-term rental homes within 500 feet of their
9 boundary.

10
11 The permit request is to allow short-term rental use of one three-bedroom single-family dwelling.
12 This dwelling is about 1,500 square feet, it's two-story. It contains three bedrooms, three
13 bathrooms, one kitchen and dining room, a living room and two parking stalls in the driveway.
14 There have been no police reports on this property regarding excessive noise or other
15 complaints. There have been no Requests for Service filed on the parcel.

16
17 In response to noticing requirements the applicants mailed a Notice of Application and a Notice
18 of Public Hearing. The Department received three letters of support from owners within
19 500 feet. The Department did not receive any letters of opposition. The applicants, Carlos and
20 Alexa PenaVega are here today to describe the project. They do have a slideshow and they will
21 respond to your questions afterwards. Thank you.

22
23 Mr. Carnicelli: Great. Thank you.

24
25 Mr. Carlos PenaVega: Hello everyone. I'm Carlos PenaVega and my wife, Alexa PenaVega is
26 over there. So we'll just start with the slide show is that...okay. So Alexa and I and our son,
27 Ocean, babe if you could hit that? There we go. We moved here two years ago almost to the
28 date, June 6th of 2017 and we were living in Los Angeles. We needed a change of pace. I had
29 been trying to convince her to move here for two years, she kept saying no and then we had a
30 kid and she was like, let's go. So we did that and that's our dog, Sasha who also lives with us.
31 But we were super, super lucky we found a house out here 'cause there's just never...there's
32 such a whatchamacallit a slim supply of really awesome properties. And we went to go see this
33 house and the photos we were like naw, maybe but no, and we get there and it's just...it's this
34 perfect little slice of paradise.

35
36 So it is on a street called Kapu Place, and Kapu is like this...it's this secret that nobody knows
37 about. It is a private, gated street. The people who live on that street there's...I think there's a
38 huge timeshare, and I'll show you later, but they're all vacation rentals. There's like three or four
39 vacation rentals and then our home. We're the only people who live on the street, so we take
40 care of it and maintain it. If something needs to get paved, that's us paying for it. It's totally
41 worth 'cause literally nobody goes down that street, it's super quiet, super private.

42
43 So the next slide will take us just like a little aerial. So it's right off South Kihei Road next to the
44 Azeka Market Place, right across the street from the Church, I think it's St. Theresa's, and so on
45 the left is the gate. There's that huge street down...the first house on the left is ours, Hale Kai,
46 and then all along the beachfront is all vacation rentals and the one on the very end is a lot that

1 has not been built upon. I know that there's plans to build there but they haven't since we've,
2 you know, had it for the last two years. The one next to the lot is a timeshare, I think they have
3 12 units and then the rest all vacation rentals. And what's super unique about this is that we all
4 have beach access right there on the bottom and then all of the land in front of those homes is
5 actually owned by Maui so it's all public land but nobody ever goes back there so you kinda
6 have like this little, you know, private huge grassy area to play soccer, do whatever and the
7 beach right there is incredible.

8
9 So next slide. This is the house. It's a three-bedroom, two and a half bath. Built in 2006. It's
10 about 1,500 square feet. It's never been an STRH and just a heads up, the garage will not be
11 accessible to our guests. It's a pretty big...like a decent size garage but we kinda have it just for
12 storage and stuff, makes easier in our new home. These are just some shots of the outside.
13 It's you know, super lush, feels very Maui. Could you just go back one, yeah, very Maui. We
14 got in there and we really cleaned the place up. The original owner did a great job with the
15 inside, but outside was kinda just left. So we, you know, spent the last two years kinda cleaning
16 everything up. We have a nice little barbeque area and yeah, the entrance of the house is
17 actually on the back side of the house which is kinda cool.

18
19 Next slide, please babe. Our parking plan is right here so we have space in the driveway for
20 two parking space...two cars even though there's just one in there right now. So plenty of
21 parking. Next slide. Here's just a floor plan. The first floor has the master bedroom, living
22 room, kitchen and then a full bathroom in the master bedroom and a half bathroom with laundry
23 machines in there. And then...oh, it's a pointer. Cool. Always wanted to use one of these.
24 Could you go back real quick so I can just...there we go, cool...then the second floor just has
25 two bedrooms and a then a big, big bathroom that has two sinks, a shower, a tub and a toilet or
26 a commode. So here just some shots of the house. I think...I like to think I'm a decorator so I
27 think it looks really good and then here are the bedrooms, bedroom one, bedroom two both
28 have queen beds. The third bedroom has this really cool like loft kid bed thing which I think
29 families are gonna love. I mean we sure loved it. And then here are the bathrooms. They're all
30 full except for the bottom left, that's a half bath. And here are all of our fire escape plans, our
31 extinguishers, everything is up. I actually put them up back in September when we applied so
32 they've been up for a very long time.

33
34 So why apply for a short-term rental home? Well, you can't really read it on there, but I'll just
35 talk it out. So we really want to create business on island and income for us on island.
36 Currently we do have to leave for you know, two weeks at a time here and there for work so we
37 are trying to make it so we don't ever have to leave especially for our kids. We have a two year
38 old and my wife is pregnant now about to give birth and...not right now, but soon, but we just
39 want to be able to stay here and just kinda create routines for them, you know, the vacation
40 rental business has just been, especially on our street we just show it booming and I was like
41 man, if we can afford to keep this this house and then move and do this it be a great income for
42 us. So that is the goal.

43
44 And then I think...sorry, babe go back real quick, so like I said, everything on our street is all
45 vacation rentals so one thing that we really struggled with was community. There was really
46 nothing. We just saw families coming in and out and so you'll meet somebody and...oh, yeah,

1 yeah, on the street so you meet somebody and then you know, a week they were gone. For us
2 as a growing family we really value community out here so that was tough. But our new place,
3 now we have community, and yesterday the aunty from next door come over and brought like
4 lemons and everything and I was like this is what this is about. You know she's totally part of
5 our life and we're part of hers. So that's something that we're looking forward to.

6
7 So because we do have to leave currently for like two weeks at a time we have Alexa's father
8 who moved...he moved in with us about a year and a half ago and he is our full-time...he will be
9 our full-time manager when we have to leave, but at the end of the day, we're all one big family.
10 So we're all a team working together. But he's the guy, he's fully retired here and ready to help,
11 willing. He's the guy with the kid outside too.

12
13 And I have this in here you know, we believe in the value of putting hard work into your home
14 and businesses. When we first started applying for this, the question was like, oh you know, like
15 why do you want to do this it's a lot of hard work. Are you just gonna hire people out? I'm like
16 no, you know, we take pride in doing a lot, if not everything ourselves and for me, I at least try
17 something once, and if I fail at it then I'll ask for help or something. It drives her nuts
18 sometimes. But, next slide babe, but I mean, we literally we've done everything to that property.
19 Our new property we're doing everything, but we have two acres Upcountry and we like, like
20 me, her and her father literally manage the whole property. We took a tree down yesterday and
21 it was just like we can do this stuff. So I take a lot of pride in that we aren't just people who are
22 gonna, you know have a vacation rental and have somebody else run it and we'll just you know,
23 try and collect the checks. That's not what we're about. We're about trying to keep this as an
24 asset for years to come for our family and for our kids and you know, keeping us on island.

25
26 And here's just a recap of the process, we started 6/25/18 so almost a year ago and we actually
27 hired a consultant who was very helpful because we had no idea what...like how to even start
28 this whole thing. She was going to come to this but I told her, I said, you know, it's okay, we got
29 this, 'cause again we like to do things ourselves and I think it just means more just to be here
30 and show you guys that we are 100 percent serious and 100 percent in love with Maui and like
31 this is our home. Like even though we leave for two weeks at a time here and there, it's this is
32 where we want to be, this is where we want to stay and for that to happen we do need to create
33 some business for us here.

34
35 And we did get four letters of support, that one came last minute, from all of our vacation rental
36 neighbors. The one that was really hard to get was the timeshare, 'cause I tried but they said
37 they had to go to every single person and go to the board and there was just...it was going to be
38 really hard to get a letter of support from them but they did not say no. Yeah, and that's about it.
39 That's us.

40
41 Mr. Carnicelli: Thank you very much Carlos.

42
43 Mr. PenaVega: Thank you.

44
45 Mr. Carnicelli: So at this point in time we will open up for public testimony. Albert Perez.

46

1 Mr. Albert Perez: Aloha Planning Commissioners and thank you for your service today.

2

3 Mr. Carnicelli: Hang on Albert. Please state your name for the record.

4

5 Mr. Perez: My name is Albert Perez.

6

7 Mr. Carnicelli: Do you promise to tell the truth?

8

9 Mr. Perez: I do.

10

11 Mr. Carnicelli: All right. You have up to three minutes.

12

13 Mr. Perez: Okay, so...and this is nothing personal, Maui Tomorrow Foundation we've
14 discussed this on our board and we have a policy although we're not happy with bed and
15 breakfast homes we do not oppose them because there are many local people who they have
16 these homes and it helps them to stay in their home. But for short-term rental housing
17 applications we are not in support. I'm just looking at this presentation, apparently there was a
18 family living here before and now they've moved out and there is now a home that's not
19 available for local people to rent. So if this kind of a permit application is approved then it's
20 more incentive for other people to come along and do the same thing. What this does is it
21 increases the value of this property and it increases the value of all similar properties namely
22 residential properties. So we are not in support of this kind of a permit and that pretty much
23 sums it up.

24

25 Mr. Carnicelli: Hang on Albert. You can ask him a question to clarify his testimony if you so
26 choose, if not, that's not a problem. Okay, great. Thank you Albert.

27

28 Mr. Perez: Thank you.

29

30 Mr. Carnicelli: Nohelani Ahia.

31

32 Ms. Noelani Ahia: Aloha mai kakou. I'm Noelani Ahia.

33

34 Mr. Carnicelli: Nohelani do you promise to tell the truth.

35

36 Ms. Ahia: Noelani.

37

38 Mr. Carnicelli: Oh, I'm sorry. Noelani do you promise to tell the truth?

39

40 Ms. Ahia: I do.

41

42 Mr. Carnicelli: You have up to three minutes.

43

44 Ms. Ahia: Thank you. I wasn't planning on testifying on this agenda item. In fact I didn't know it
45 was on the agenda. I'm so sorry this is nothing personal, you seem like lovely people, but this
46 makes my blood boil. We have huge housing crisis here and our families who have been here

1 on these islands for 60 plus generations, for thousands of years are moving to the mainland
2 because they can't afford housing. This is not okay. We cannot, we cannot be allowing this
3 type of thing to continue to happen when our people, not just Kanaka Maole but local people
4 who have been here for generations can't even afford to stay here. And we have people
5 moving here buying that property so that they can turn around and rent it out to people who
6 aren't even from here. This island is still under an illegal military occupation which hopefully you
7 all got to hear Keanu ...(inaudible)...presentation about and he's not the only one there are
8 many different people who speak about this from different context including American law. The
9 Kanaka Maole people are still suffering from the genocide of settler colonialism.

10

11 Mr. Carnicelli: So Noelani—

12

13 Ms. Ahia: Yes.

14

15 Mr. Carnicelli: --I need you to speak to the item please.

16

17 Ms. Ahia: The item is short-term—

18

19 Mr. Carnicelli: Yeah, I need to you—

20

21 Ms. Ahia: --vacation rental and that falls in the category of settler colonialism. It is all the same
22 thing. I hate to break it to you, but if it wasn't for the illegal occupation we wouldn't be in this
23 room right now listening to people from foreign places who have bought property and are going
24 to rent it out for a profit displacing our people. It's enough already, e kala mai, but it's enough
25 already. Mahalo.

26

27 Mr. Carnicelli: Thank you. Do you have any questions? No. Okay, thank you. Would anybody
28 else like to speak to this item? Please come forward.

29

30 Mr. Baruch Vega: My name is Baruch Vega.

31

32 Mr. Carnicelli: Hello Mr. Vega do you promise to tell the truth?

33

34 Mr. Vega: I do.

35

36 Mr. Carnicelli: Okay, you have up to three minutes.

37

38 Mr. Vega: Yes, I am the father of Alexa, father-in-law of Carlos. I was born in Columbia. I'm a
39 PhD in Engineering. I'm ...(inaudible)... law and I have worked for the U.S. Government for
40 55 years in the foreign services with the CIA and ...(inaudible)... During all these years
41 servicing this country this is the first time that I come and testify in front of anyone. I have
42 defended this country with the biggest and most incredible things that had happened in my life.
43 I was, I have been one of the very fewer survivors it's incredible sometimes that we reject each
44 other here I feel as an American, as anybody else in this room, and I feel rejected.
45 Unfortunately sometimes it's due to lack of knowledge of what is being international,
46 ...(inaudible)...international of the foreign services for this country. A lot of people don't

1 understand that. I fully understand. I respect everyone, but I do have one thing I had an
2 incredible honor of have served this country in the best possible way. I am defending my kids
3 and with great respect I admire and respect everything all you people say and all the people
4 believe but we are here to continue pushing for this country, for this island and we're going to
5 make it happen and we're going to make it big one way or another with our help especially.
6 Thank you.

7
8 Mr. Carnicelli: Thank you. Do you have any questions for testifier? Thank you. Anybody else
9 wishing to come forward? Hang on, hang on Bob. Please state your name for the record.

10
11 Ms. Claire Apana: Claire Apana, Wailuku, Maui.

12
13 Mr. Carnicelli: Hi Claire, do you promise to tell the truth?

14
15 Ms. Apana: I do.

16
17 Mr. Carnicelli: Okay, you have up to three minutes.

18
19 Ms. Apana: Thank you very much. I would like to say that I do not approve this application. I
20 think it's a terrible, terrible example that you can move here in two years, take a home that was
21 for a family and then turn it into a vacation rental, make a profit and move somewhere else
22 where you'd like to live. That is a terrible example and I think that I would like to suggest that
23 why don't you just keep it as a long-term rental where you could rent it to a family.

24
25 Mr. Carnicelli: Claire, Claire, I need you to testify to the Commission please.

26
27 Ms. Apana: I would like to suggest that perhaps the Commission could suggest to these people
28 that they could keep it as a long-term rental and help the community out. That would be truly
29 helping the community. And I am interested in why you think I'm not speaking to the question
30 when the testifier before me spoke about the United States Government and service. Thank
31 you very much and thank you for hearing this. I hope that you will do something about these
32 examples coming forth. You are the people who can stop this, please do that. Do not make it
33 so that we are a rental market for tourism, we have families that need homes, and unfortunately
34 a lot of them are the people who belong here and were born here and they can't afford to live
35 anywhere. Thank you very much.

36
37 Mr. Carnicelli: Thank you Claire. Do you have any questions for the testifier? Thank you.
38 Please state your name for the record please.

39
40 Mr. Bob Hansen: Bob Hansen.

41
42 Mr. Carnicelli: Hi, Bob do you promise to tell the truth?

43
44 Mr. Hansen: I do.

45
46 Mr. Carnicelli: You have up to three minutes.

1
2 Mr. Hansen: We worked a long time you know to get bed and breakfast and vacation rental
3 homes on Maui. We have a really good program right now. We limit it, in Maui Meadows I think
4 to only five available there and I don't know the number in Kihei but it's all controlled. Tourism is
5 the life blood of Maui. We don't have sugar cane anymore so tourism is it, and I respect...these
6 are the kinda people we want on Maui. I get a good feeling from them. So I just think that they
7 should be allowed to go ahead and do what they can on this street that everything else is
8 vacation rental. Thank you.

9
10 Mr. Carnicelli: Thank you. Do you have any questions for the testifier? Okay, thank you. Is
11 there anybody else wishing to testify on this item? Come forward.

12
13 Mr. Kaneloa Kamanu: Aloha mai kakou, Kaneloa Kamanu, Waihee Valley.

14
15 Mr. Carnicelli: Please state your name.

16
17 Mr. Kamanu: Kaneloa Kamanu.

18
19 Mr. Carnicelli: Kaneloa do you promise to tell the truth?

20
21 Mr. Kamanu: Yes, I do.

22
23 Mr. Carnicelli: Okay, you have three minutes.

24
25 Mr. Kamanu: So, okay, e kala mai. I know this is heart wrenching for you to be here even to
26 you know give testimony and I have to object to what the person said about tourism because I
27 attended a meeting of our community boards that they had a presentation by the County about
28 tourism. Funny thing is if you look at the review tourism has failed Hawaii. Even though we've
29 increased since 1985 to 15 million people I believe here on Maui the amount that is spent per
30 person hasn't changed and the thing is the money that gets kept by tourism is even less than it
31 was in 1985 that is the report that came out due to the impact of Costcos, Walmart and these
32 other sources who have put, you know, grounds here, stakes here to make business and their
33 money doesn't stay here, only a portion, the rest goes back to the headquarters so Maui doesn't
34 get to use that. So to say that we need to support tourism is a fact that's not substantiated in
35 the reports. So when we look at this, does it really benefit the whole and we're only talking
36 about this section but really how is Maui effected by whole? We're affected by the, affected by
37 the use of facilities that are already overused. We're looking at beaches that are being polluted
38 by you know, people coming in using them, and our resources are dwindling, why because we
39 promote such action which doesn't confer to be the truth. So tourism really doesn't work.

40
41 And the other part as a Kanaka, kala mai to the brother who spoke for his service for his country
42 yes, but this is my country. Kohopai aina Kanaka Maole, my roots are here. So things like this
43 and it's not against these young people and they want to do, they have this idea and that's what
44 they bought it with, fine, but you must understand the culture. For us we have lost a lot. We've
45 lost the use of our beaches, we've lost the use of our access areas, we are lose...we are losing
46 our people to development and to such things that come here that are foreign and yet nobody

1 cares about us. We have to come like the little child that's put the side and not listened to when
2 we have to...you know it's not our custom to come and grumble, but yet there comes a time
3 when we have to come forward and to have truth settled and yes, we are losing our Hawaii for
4 the benefit of the mighty dollar. Mahalo.

5
6 Mr. Carnicelli: Thank you. Do you have any questions or the testifier? No. Thank you.
7 Anybody else wishing to come forward? Come up. Please state your name for the record.

8
9 Mr. Cody Nemet Tuivaiti: Aloha, Cody Nemet Tuivaiti.

10
11 Mr. Carnicelli: Cody do you promise to tell the truth?

12
13 Mr. Tuivaiti: Yes.

14
15 Mr. Carnicelli: You have up to three minutes.

16
17 Mr. Tuivaiti: Okay, mahalo. So I was raised in Kihei my whole live and I am against short-term
18 rentals only because I have watched the community disappear from Kihei. Basically nowadays
19 you know we are strangers in our own town where before we knew everybody and everyone
20 was acted as a community. I think that short-term rentals and tourism, our community and
21 tourism should be separated you know, and in our community neighborhoods we should remain
22 a community. It is important that we put community first, yeah, we put community on the
23 backburner a lot of times, we put the aina on the backburner a lot of times, and we always
24 putting tourism in the front and that is creating a lot of division within our communities, within our
25 people and it's causes us to be strangers within ourselves, within our lands. We don't even
26 know each other anymore. So I would like to kinda differ with what was said before about
27 tourism being the number one thing. It's community is the number one thing, you know we
28 forget that we live on an island. We are islanders, all of us are islanders and we need to think
29 like islanders and be a community, be a village and act accordingly together, you know. Not try
30 to monopolize off of each other, off of the land and trying to profit and make money as much as
31 we can without thinking about the other people, that's not what islanders do. Yeah, we're not
32 the mainland, this is Hawaii, this is Maui, and you know, I just want us to think as a community
33 again. Mahalo.

34
35 Mr. Carnicelli: Thank you. Any questions for the testifier? Thank you. Is there anybody else
36 that would like to come forward and testify on this particular item? Then without objections we'll
37 go ahead and close public testimony. At this point in time, Commissioner questions?

38
39 Ms. La Costa: I always have questions.

40
41 Mr. Carnicelli: That's why I looked at you first. Commissioner La Costa.

42
43 Ms. PenaVega: I'll go up to the mic.

44
45 Ms. La Costa: Perfect. Thank you.

46

1 Ms. PenaVega: Hello.

2

3 Ms. La Costa: Thank you for being here today and testifying. So I have a question for you. Did
4 you purchase your home on Kapu Place specifically to short-term rent it?

5

6 Ms. PenaVega: No, not at all.

7

8 Mr. PenaVega: No, we bought it and we thought that that was gonna be our kinda just home.

9

10 Ms. PenaVega: Home. That was home.

11

12 Mr. PenaVega: But then we realized that our two-year-old was a little wild and we wanted to
13 have more kids and we needed more space and we—

14

15 Ms. PenaVega: Can I say...I'm sorry...the biggest thing for us was that and I understand what
16 everybody is saying and I agree. Our issue was that there wasn't community on that street. So
17 our kid, and even though we have community within our church and it's...everything is amazing,
18 on that particular street he can't play with anybody and at least we have that private road that
19 we get to use which is wonderful to go kick around the soccer ball and whatnot, but it is all just
20 vacation rental and bed and breakfast so there just wasn't a sense of like this is our
21 neighborhood. It's just kinda felt like oh, we're kinda a part of this hotel. So when we found
22 another place Upcountry we had, we have the neighbors, we have the people that we can go to
23 and have fun with and they have their grandkids. So there is this sense of community where we
24 are right now but that was never our intention to vacation rental at all. We came here to live
25 here.

26

27 Ms. La Costa: Thank you for your honesty.

28

29 Mr. Carnicelli: Commissioner Tackett any questions at this time?

30

31 Mr. Tackett: I have none at this time.

32

33 Mr. Carnicelli: Thank you. Commissioner Pali. Commissioner Robinson. No questions. Do
34 you have any additional questions then we'll full circle back to you.

35

36 Ms. La Costa: I'm always the one with the questions. So someone asked you about short-term
37 renting or about long-term renting it. If that were an option would you consider it?

38

39 Mr. PenaVega: So the closer you get to the beach I'm sure you guys know the more expensive
40 the properties get, so for us it was either try and sell it and sit on it for a while until somebody
41 wanted to buy it or we can try and make an income property out of it. We genuinely live here so
42 for us it was like we live here, we didn't see an issue with like having a business that was here.
43 So if somebody could afford to live there long-term and cover what the costs are absolutely, but
44 it's like...like I said, the closer you get the more expensive it is. So short-term, I mean...it's so
45 hard believe me.

46

1 Ms. PenaVega: We would ...(inaudible)...

2

3 Mr. PenaVega: Yeah, I would totally have to sell it because that's just, I mean, it's...we've
4 already...my fault, I thought that this process was a long quicker than what it was. So in
5 October when we moved Upcountry I only thought that we would have to you know not rent it
6 out for you know three months or six months, but now that we're almost in a year it's like, it's
7 getting to the point where if this doesn't work for us, I don't know if someone is going to pay
8 long-term that much money, so it's gonna have to get to a place that we sell it.

9

10 Ms. La Costa: When you say long-term that much money, in your mind you probably have a
11 rental number for a month plus G.E.T. of course and what is that number please?

12

13 Mr. PenaVega: Well, to run that every single month it costs me \$8,000.

14

15 Ms. La Costa: Okay.

16

17 Mr. PenaVega: And that's no...that's with the insurance, property tax, everything.

18

19 Ms. La Costa: That answers my questions. Mahalo.

20

21 Mr. Carnicelli: Thank you. So Commissioners you have enough information to make a decision
22 at this point? Okay, Commissioner Robinson.

23

24 Mr. Robinson: Director, when is the...when was the cutoff for application dates to people who
25 bought homes?

26

27 Ms. McLean: Sometime in September.

28

29 Ms. Callentine: September 26, 2018.

30

31 Ms. McLean: September 26th.

32

33 Mr. Robinson: So they made it within 30 days of the cutoff?

34

35 Ms. McLean: They applied prior to that date.

36

37 Mr. Carnicelli: So Commissioners do we have enough information to make a decision?
38 Corporation Counsel.

39

40 Mr. Galazin: Thank you Chair and you know once again I'll just make sure I go through the
41 criteria for everybody and this is you know for the Commissioners as well as for members of the
42 public. The standards that you're looking at are codified in the Maui County Code in
43 Chapter 19.65, Subsection 030(N) that short-term rental homes shall conform to the character
44 of the existing neighborhood in which they are situated and that prior to issuing the permit the
45 Planning Commission shall consider the following criteria. There are nine of them, one doesn't
46 apply 'cause it's about homeowner's associations which I don't believe this one has. Two,

1 would be the existing land use entitlements. Three, the community plan. I think Livit's covered
2 those in the report.

3
4 The things you really want to be focusing on when you have a public hearing like this and you
5 get testimony would be community input, potential adverse impacts, and the number and
6 substance of protests to the short-term rental home applicant and protests related to the
7 cumulative short-term rental homes in the neighborhood or area. And it's really important to
8 remember the Council didn't just put the number of protests, they put the number and substance
9 of the protests.

10
11 As a body you don't have law making authority. You can engage in what would be akin jury
12 nullification. These are the criteria set forth. The County Council decided okay, we think that
13 short-term rental homes are okay in these circumstances and they spelled out these are the
14 circumstances. Protests that are based on the fact that that law is something that people don't
15 approve of that's not something you need to judge, that's something for the County Council to
16 judge and I would encourage people who the substance of their protest is that this law is flawed
17 and should be scrapped or some other change should be made to it you know, urge you to go to
18 the County Council and make the pitch there because they are the people who are in charge of
19 that.

20
21 What you have authority over and your positions as commissioners is just to see if everything
22 matches up with what the Council has instructed you to do. So you have you set of instructions
23 and kinda read through them. If you believe that the criteria are not met, I'll say it probably
24 ad nauseam, but you need to point to which one of the specific criteria you're looking at and
25 which facts introduced into the record support your finding that one of these criteria has not
26 been met, one or more otherwise you end up with a decision that's going to be flawed and
27 subject to be challenged. Thank you Chair.

28
29 Mr. Carnicelli: Thank you Corporation Counsel. So that being said, Livit would you give the
30 recommendation please.

31
32 Ms. Callentine: Thank you Chair. The applicant has demonstrated that the proposed short-term
33 rental meets the criteria for a short-term rental home permit. It is not anticipated to be contrary
34 to the goals and objectives of the County. The short-term rental use will occur in a permitted
35 dwelling that existed prior to the application and without conflict with the residential uses on the
36 property or in the surrounding area. The desired use is not anticipated to adversely affect
37 surrounding properties. The number of guests is limited to one group at a time and up to two
38 guests per bedroom. There is adequate parking on site. There are no records of disturbance
39 reported by the Maui Police Department. Neighbor notice was provided twice and in response
40 to that there were three letters of support received by the Department and apparently one
41 additional support letter we do not have. There were no letters of opposition received. The
42 designated property manager is Baruch Vega, Alexa PenaVega's father who lives with the
43 applicants as you learned earlier. They applicants do not hold an STRH permit on another
44 property. There are three permitted STRs within 500 feet and as of March 31, 2019 there were
45 44 permitted short-term rental homes within the Kihei-Makena Community Plan region with the
46 cap being 100. Potential adverse impacts including noise, traffic and trash were considered in

1 making this recommendation. However, the permit will be limited to one group at a time so the
2 impacts should be comparable to those of a homeowner occupant or a long-term rental tenant.

3
4 The Department is recommending that the Planning Commission, Maui Planning Commission
5 approve the short-term rental permit subject to 23 conditions. The Department is also
6 recommending that the Maui Planning Commission adopt the Planning Department's report and
7 recommendation prepared for the May 28, 2019 meeting as its findings of fact, conclusion of
8 law, and decision and order and to authorize the Director of Planning to transmit said written
9 decision and order on behalf of the Planning Commission.

10
11 Mr. Carnicelli: Thank you very much. So Commissioners I guess at this point in time we can
12 entertain a motion.

13
14 Mr. Robinson: I make a motion to deny this application with the facts of the reason why they
15 even had the trigger with the clustering of the different units in the same area.

16
17 Mr. Carnicelli: Thank you. Do we have a second? Seeing no second, motion fails.

18
19 **The Motion to Deny made by Mr. Robinson, DIED due to no second.**

20
21 Mr. Carnicelli: Do we have another motion.

22
23 Ms. La Costa: I would like to move to accept the application and approve it based on staff's
24 recommendation.

25
26 Mr. Carnicelli: So we have motion to approve as recommended by Staff.

27
28 Ms. La Costa: Correct.

29
30 Mr. Carnicelli: Do we have a second? I will second it for discussion. So there's now a motion
31 on the floor. As the movant I will let you speak to it first.

32
33 Ms. La Costa: Thank you. While I concur about housing I don't think that it's up to the
34 individual person to provide housing for many, many, many people that is a County function and
35 they are failing miserably. When a couple or a person comes before us and they have diligently
36 done everything and we have seen plenty who have not, then when you follow the laws then
37 you should be rewarded if you fall within the parameters that are set forth in those laws and for
38 that reason I see no reason to withhold this permit because they have followed the letter of the
39 law and I hope that it gains approval.

40
41 Mr. Carnicelli: Thank you. Commissioner Pali would you like to speak to the motion?

42
43 Ms. Pali: Yeah, that was very eloquently said P. Denise. I struggle because I'm an affordable
44 housing advocate. I've been working on affordable housing, several work taskforce committees,
45 holding my now 15-year-old baby, 15-year-old daughter which was a baby on my hip when we
46 moved and passed two percent of all property taxes into the affordable housing fund. I was one

1 of the 36 in that coalition and so my heart breaks because I get it. But unfortunately as we
2 heard from Corp. Counsel we are not tasked here with this Commission to create affordable
3 housing. It is something that we have to work together with the County Council and I can tell
4 you after no building and freezing of all movement for the last seven years and the last two
5 years we've gotten through that hurdle and we're progressing in that area, a lot of work to do,
6 but progressing. And so I'm...my discussion points are just I have a struggle with the situation.
7 I understand the applicant has done what they needed. I commend young people getting
8 involved, doing what they see other people doing, having the ability, the wherewithal, the down
9 payment, the credit. I'd like to be able to educate our own children, our keiki to do just that in
10 our own island, but first housing for everyone. So that's where I'm at.

11

12 Mr. Carnicelli: Thank you. Commissioner Tackett would you like to speak to the motion?

13

14 Mr. Tackett: I'm still, I'm still going over it in my mind so I don't have anything to speak to at this
15 point. Thank you.

16

17 Mr. Carnicelli: Thank you. Commissioner Robinson.

18

19 Mr. Robinson: First I would like to agree with the testifier there, the Chair I felt that you were
20 biased in your testament of them staying on point. I think you're biased when you didn't second
21 my motion for discussion but you did to the pro and it's just aware to a lot of us here and that's
22 just the, the part of the battle that we fight. It doesn't mean that people are not good people or
23 not it's just people see things differently.

24

25 And my motion was following the trigger which is the law. It's not something I'm making up. It's
26 not a personal choice. Yes, we can all agree that this is the current law but not one of those
27 Council members that passed this law is still on the Council. We've been trying to slowly get it
28 out, you know, we got another year and a half to go, we have a different Mayor. We have new
29 facts. Director you know these facts that Maui is now for income to housing is the worst in the
30 state and it's sad. I mean, my...I don't get upset when I see people come because it's money
31 and it's math. You know, if you get a house and you can rent it out wow, you can cash in. But
32 what it is I hurt, not upset, I hurt because people, people are getting second homes when
33 somebody can't even get a room, not a house, a room with their family. We've got families
34 sleeping on couches in Hawaii guys.

35

36 We got people and our government know they're not doing what they should do, but this in front
37 of us we do have a remedy which is the trigger. The Council did put something in there luckily
38 to say you know what if there's a whole bunch and our applicants attested to the fact that they're
39 leaving because it's full of vacation rentals next to them. People in front of us didn't stop the
40 house in front of them to turn this street into a vacation rental, then this one's gonna go and then
41 the next neighbor is going to say the same thing, well now there's five, there's six, there's eight,
42 there's ten and it's not going to stop and it's not going to stop the exodus of people of people
43 leaving you know, going to find just, you know, just living wages.

44

45 Tourism is a, is a base of our economy but it's not the base of who we are and it doesn't have to
46 be. We're all trying to build affordable housing. I mean, almost every contractor I know. But

1 sorry, we failed in the last eight years, you know, the Council has...I'm not trying to litigate but
2 the Council has taken money instead of affordable housing. They're taking credits instead of
3 affordable housing and it makes some projects work but when the Council...when the County
4 doesn't support affordable housing through the monies and the revenues they got and find
5 excuses we're in this mess where we're turning people against people.

6
7 Nobody thinks you guys are not nice people, you know, but it's...you're at a different angle.
8 You're able to buy two properties, good for you guys, you know, that's good for you guys,
9 nothing wrong with it, nothing wrong with prospering in life, but this short-term rental is a
10 different thing. Bed and breakfast still got a home, still got your family there to where you could
11 rent out. I personally have multiple homes and not one is rented out to anybody else. It's all
12 given for my family. So people come from different places. We have different feelings about
13 what to do. I could, I could say aloha to my ohana, slide them all in one and make bank, but
14 that's not who Hawaii is. You guys come to Hawaii because Hawaii is a place where everybody
15 gives and shares and bed and breakfast like Maui Tomorrow said, to me that's like a stick
16 instead of a cut and that's something that I've, that I've been, you know, been moving to support
17 more because it doesn't displace somebody but I cannot support the congestion of these
18 homes, the congestion of this street. And the map that I see here and the map that I was on top
19 the screen it doesn't quite match up with the amount of homes. Thank you Chair.

20
21 Mr. Carnicelli: Thank you Commissioner Robinson. And so since you attacked me personally
22 I'll go ahead and speak to the motion as well.

23
24 Mr. Robinson: You can call it attack.

25
26 Mr. Carnicelli: Well, when you call me out personally and tell me that I'm biased then I'm gonna
27 ahead and speak.

28
29 Mr. Robinson: Okay.

30
31 Mr. Carnicelli: I don't take it personally.

32
33 Mr. Robinson: You just said it was personal.

34
35 Mr. Carnicelli: No, I said you made a personal attack but I don't take it personally. Because the
36 laws that we're talking about that are flawed that we agree are flawed I personally worked on
37 myself to rectify and fix. I've written legislation to try and fix the affordable housing crisis.

38
39 Mr. Robinson: What does it have to do with the testifier that I called you out on?

40
41 Mr. Carnicelli: All day long I've tried to do the best that I can. When it comes to testimony,
42 keeping people on point, I've asked more than one person all day to speak to the Commission,
43 I've asked more than one person to adhere to three minutes. I'll say I made a mistake. If
44 someone wants to talk about illegal occupation I will let them talk about illegal occupation from
45 now on that was my mistake. I fully admit it. But for the record, I don't believe that there's
46 anybody that's worked as hard as I have on affordable housing over the last three or four years.

1 Truth, I got called out for not having a life two days ago because I was at a meeting at 8 o'clock
2 at night when my wife was giving my three-year-old a bath which is my thing that I do every
3 night. I agree STRHs are a different animal than B&Bs, absolutely agree. However, when it's
4 triggered to come to us that's not necessarily a criteria, that's a trigger. If I look at the criteria
5 with which we are bound by whether I agree with it or not that's what I'm bound by and that's
6 what I'll make my decision on. And ironically enough you started with me and said then said we
7 don't need to be divisive at the end and this is kind of ground zero on Maui right now. Tourism
8 versus locals. Somehow we need to heal this. Is it going to be with one B&B or STRH
9 application I doubt it but we can choose to have it drive a further wedge between us or not. I'm
10 not done yet. I think where we're at is we have a disagreement and that's fine and that's what
11 this place is for is for people to express their views. And my hope is that it's not polarized in
12 social media, the actual media, everything's been polarized. You're either for us or against us,
13 you're either right or wrong. You're either left or right. Life is gray. And the five of us have to
14 make a decision which is black or white, but whatever that is I hope we can all see the gray. So
15 with that being said, Director.

16
17 Ms. McLean: Chair the motion on the floor is to approve the permit subject to the conditions in
18 the staff report.

19
20 Mr. Carnicelli: All in favor please raise your hand. That's three, that's four. All opposed, that's
21 one, motion fails.

22
23
24 **It was moved by Ms. La Costa, seconded by Mr. Carnicelli, and**

25
26 **The Motion to Approve the Short-Term Rental Home Permit, FAILED.**

27
28 **(Assenting – P D. La Costa, K. Pali, C. Tackett, L. Carnicelli)**
29 **(Dissenting – K. Robinson)**
30 **(Excused – S. Castro, T. Gomes)**

31
32 Mr. Carnicelli: So we would have another motion. I will entertain a motion to defer. So moved
33 by Commissioner Pali. Seconded by Commissioner La Costa. Any discussion on the motion?
34 Commissioner Tackett.

35
36 Mr. Tackett: So you have a street that as was explained earlier is all vacation rentals which is
37 why we're having this problem right now. And then I think that why I didn't want to speak the
38 first time and why I don't really want to speak this time and why I would be just as happy going
39 with Keaka as I would with P. D.'s is because on one avenue we got this thing we're trying to do
40 which is what they're saying we're supposed to do is make these things happen and the
41 question is whether or not we gonna put it on a street where I mean, which is so weird 'cause I
42 went to the beach this weekend and I drove by Kapu Place and I was all what the frick is Kapu
43 Place, you know what I mean, like I never seen Kapu Place in my whole life and it's a big sign.
44 It's a massive sign. Like I ask my old lady, I'm all what is that? Oh, I don't know what is. She
45 has been here her whole life. You know she's from Lahaina so I figure maybe, maybe, and I'm
46 from Waiehu I figure well maybe we just don't know you know what I mean, what that is.

1
2 But the stressful part of it and the stressful part that these people are coming up against is if we
3 put yours in then we actually going with what people came up against. What we're doing is
4 we're keeping it out of the normal neighborhoods 'cause Kapu Place is not one normal
5 neighborhood to me. You know what I mean? Welakahao is one normal neighborhood you
6 know what I mean? That's normal neighborhoods to me. And so half of the people on this table
7 are saying hey if you put it over there at least you're not taking a house out of Welakahao, you
8 know and we got this number to hit too. So my speaking to the motion is just to say that I think
9 you got a whole group of people over here just trying to do the best thing and not matter what
10 way you go down the road, I mean there's a way to interpret it that people aren't going to be
11 happy with. So anyways that all I would like to say to what we have in front of us today.

12
13 Mr. Carnicelli: Thank you. Commissioner La Costa.

14
15 Ms. La Costa: My final comment is I absolutely concur with Keaka but I also see the other side
16 of the coin and is it right for someone to buy a second home and use it as a vacation rental
17 because they can if they're it properly. This is America and capitalism is kind of what we're
18 based upon. So I say that you add that to your portfolio early that's to be commended. If there
19 are families who can afford the \$8,000 a month for a rental they probably would prefer to do it
20 long-term than there isn't as much wear and tear. I have a lot of clients who would love to do it
21 long-term but they can't cover their bills because of that and I've lived here 30 years so...and I
22 didn't just fall off the mango truck. So it's a tough thing. It's yes, they have done everything
23 right and I compliment people for doing that because too many people don't, but the housing
24 thing also is critical here, but again, we cannot change it here. If they've done the right thing
25 that they should be able to go ahead and get their permit.

26
27 Mr. Carnicelli: Commissioner Robinson.

28
29 Mr. Robinson: I think we, we should be careful in falling into the trap of certain areas become
30 vacation rental areas. We have zoning for that. You know we have general plans for that. We
31 have staff members that go to college and get degrees that plan areas out that this is how we're
32 gonna grow. We have our Legislature that says this is the areas, this is the zoning, you know,
33 this is special, right. This is a special place that we're trying to go. I know personally that there
34 are people that are local that are Hawaiian that are renting long-term beachfront property. So to
35 say that it's not attainable is not true. And I...(inaudible)...and so I don't want us to fall into that
36 oh, well nobody from Hawaii would rent that out anyway.

37
38 Ms. La Costa: I didn't say that.

39
40 Mr. Robinson: If it's available, the house would either be sold or it would be filled and the chain
41 moves, one will move from this one to that one and the shuttle continues all the way till there is
42 one. People are always looking for better, right that's just, that's you know that's just the thing it
43 is. And we're not gonna solve affordable housing here.

44
45 Ms. La Costa: No we're not.

46

1 Mr. Robinson: Yeah. Chair I wanted you to be consistent with stopping the other testifier not
2 stopping the one testifier that was off point.

3
4 Mr. Carnicelli: I know that.

5
6 Mr. Robinson: So it wasn't...it was the opposite. It's just to be consistent. And that's all. When
7 you second one and not the other. I'm just, I'm asking for consistency and fairness that's all. I
8 feel bad that you don't know more people that work on affordable housing 'cause I know people
9 that's been working on it for 10, 15 years day in and day out and I meet with them and I'm
10 gonna introduce you to them so that way you don't feel like you're the only guy that does it or
11 you do it the most.

12
13 Mr. Carnicelli: I didn't say I'm the only guy.

14
15 Mr. Robinson: You said, you don't know one person, one person that works harder than you in
16 affordable housing and I know tons of people that work harder than me in everything I do from
17 being a dad to going to sleep, I'm never going to be the best at anything, and you know, and
18 hopefully do that. But what we have in front of us again is a trigger and I'm not gonna defer
19 either. So I don't know what the next step is after that because I don't feel it's needed. They
20 came just under one month. We sent a resolution to the Council to say if people who purchase
21 new homes have to wait a certain amount of time—

22
23 Ms. La Costa: Five years.

24
25 Mr. Robinson: --to do it. So we corrected something that we had a flaw in our stuff and we're
26 continue to correct. Every session there's other corrections and resolutions have been coming
27 along for four and a half years. When I first got here the first meeting I got here they signed a
28 resolution to the Council to ask stop all short-term rental homes. So this isn't something that
29 just came about last year. This is a long, long thing doing there and that's what I feel. Thank
30 you Chair.

31
32 Mr. Carnicelli: Commissioner Pali.

33
34 Ms. Pali: Okay, I guess I'm just gonna wrap it up for us. I want to focus on measuring the effect
35 of this meeting making sure that all of our voices are heard and it was, it doesn't fall on deaf
36 ears. And so will denying this permit give us the effect we're looking for, does it give us the
37 effect of affordable housing probably not. If they sell will another investor come in, will they
38 move in or will they just attempt to do the same thing like what is denying this permit, how is that
39 going to affect what we really want here which I believe we've all acknowledged is bigger than
40 this meeting. That's...I want to leave that with you.

41
42 The second thing though is I understand that we have to put our foot down somewhere and as
43 Chair Keaka Robinson mentioned in this first year he mentioned right off the bat that we now
44 have a new rule that when you purchase you have to wait five years before you can then apply.
45 That's a positive thing here folks. It's been pretty somber over the last 30 minutes but that's a
46 pretty good thing. The question is is it fair that these applicants beat out the deadline? Does

1 that make it better? These are all questions that I'm wrestling with in my heart. And ultimately
2 the problem I believe with all of our conflicts is that we all in our hearts believe we know what
3 the right thing is. And if you just look in this room there's probably at least 35 people here, we'll
4 all be in conflict because we all have a different idea of what is right. That's why it's so
5 important that we follow and honor the law and that's where I'm at right now. I just feel like the
6 law currently allows them to have the permit, they got in front of the new wave and the direction
7 we want to go, does the buck stop here or will it stop from all applicants moving forward and so
8 we're not gonna agree, we already know that, but I'm sorry that this had to land on your
9 application. I do appreciate the voices and just respecting everybody's opinion, but I want to
10 apologize.

11
12 Mr. Carnicelli: Livit.

13
14 Ms. Callentine: Yes, thank you Mr. Chair, the applicant has asked if, if he may have...give a
15 few words to the Commission.

16
17 Mr. Carnicelli: I think at this point we've already ruled out approval, we've already ruled out
18 denial, right. I mean, we're just now deferring this until we have more than five people, 'cause
19 when you have bare quorum you gotta get a unanimous vote, right and we're just not gonna get
20 a unanimous vote today so as much as I appreciate you wanting to, you know, say something
21 else, we're just not at that place right now. So thank you. Director, motion on the floor.

22
23 Ms. McLean: The motion on the floor is to defer.

24
25 Mr. Carnicelli: All those in favor of the motion to defer please raise your hand. That's four. All
26 opposed, that's one. So motion to defer fails.

27
28
29 **It was moved by Ms. Pali, seconded by Mr. La Costa, and**

30
31 **The Motion to Defer the Short-Term Rental Home Permit, FAILED.**

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

36
37 Mr. Carnicelli: Corporation Counsel.

38
39 Mr. Galazin: Thank you Chair. Seeing it's not going to have a majority agree to anything you
40 do have the ability as Chair just to defer the item to the next meeting.

41
42 Mr. Robinson: Corporation Counsel it's we've asked for three motions with no amendments, no
43 input on trying to see if there is...it's just been yes, no. And so I agree that the Chair does have
44 the stuff to defer it if he wants to but I don't think it's a foregone conclusion at least in my eyes
45 that there isn't something that I would be agreeable to.

46

1 Mr. Carnicelli: Well, Commissioner Robinson we had a motion on the floor and we had
2 discussion, you had the ability to try to make an amendment at that point in time. If that is your
3 wish then we can throw another, we can throw another motion on the floor and you can amend
4 that if that's where you're headed. I mean, if it's where you think we're gonna get to a resolution
5 I think that...we...it's you know fair to the applicant to say like okay, instead of just punting, if we
6 can come to a decision let's do that. So is that what you're alluding to is the fact that you would
7 be amenable to something if it were amended?

8
9 Mr. Robinson: Yes.

10
11 Mr. Carnicelli: Okay. Then would you like to make a motion?

12
13 Mr. Robinson: I would like to...I would like to bring out something that I could support. I, as well
14 as Maui Tomorrow understand that there are certain things that you know you have to draw a
15 line at and I would support a bed and breakfast application in this area if that's something you
16 guys interested in you guys would have my support. Don't have to have it today, but I just
17 wanted to put that out there that it's not a...you know, my way or the highway, it's just I feel bed
18 and breakfasts do serve a dual purpose and it does have supplemental income. We passed
19 one earlier today. Somebody was doing farming to supplement her income on her farming, she
20 goes and she rents out her rooms so thank you.

21
22 Mr. Carnicelli: So I'm sorry is there a motion? You have a motion?

23
24 Mr. Robinson: We can't approve that, I just wanted to speak to them about ...(inaudible)...

25
26 Ms. Callentine: On the mic, on the mic, we couldn't hear you.

27
28 Mr. Robinson: It's not a motion because ...(inaudible)...

29
30 Mr. Carnicelli: Commissioner Pali would you like to speak? No. Okay. So I guess we will defer
31 the item them. Yes, Corporation Counsel.

32
33 Mr. Galazin: Thank you Chair. And just to the members, make sure we're cognizant of this fact,
34 that nobody forgets, we have had the closing of the public hearing and if you fail to take action
35 either to approve or deny within a certain point of time it will be deemed approved so it is
36 deferred for now, but I would suggest you take it up sooner rather than later.

37
38 Mr. Carnicelli: Thank you.

39
40
41 **The Matter was Deferred by Chair Carnicelli.**

42
43
44 Mr. Carnicelli: Due to lack of quorum we are now in recess.

45
46 A recess was called at 3:18 p.m., and the meeting was reconvened at 3:24 p.m.

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Mr. Carnicelli: ...in order. Director.

Ms. McLean: Thank you Chair. Your last public hearing item is a request from BRE Iconic GWR Owner, LLC for a Special Management Area Use Permit, Step 1 Planned Development Approval, and Step 2 Planned Development Approval for the Grand Wailea Resort to transfer “H-2 Hotel” and “OS Open Space” zoning designation areas, update facilities and create 224 new guest room units, renovate and expand the resort swimming pool and restaurant facilities, expand the parking structure from three to five levels to provide 316 additional parking stalls, removal of the Seaside Chapel Structure, addition of approximately 30 public beach parking stalls, and related landscape, utility, and infrastructure improvements at 3850 Wailea Alanui Drive in Wailea at TMK: 2-1-008:109. Ann Cua is the Project Planner.

- 4. **BRE ICONIC GWR OWNER LLC, requesting a Special Management Area Use Permit, Step 1 Planned Development Approval, and Step 2 Planned Development Approval for the Grand Wailea Resort to transfer “H-2 Hotel” and “OS Open Space” zoning designation areas, update facilities and create 224 new guest room units, renovate and expand the resort swimming pool and restaurant facilities, expand the parking structure from three to five levels to provide 316 additional parking stalls, removal of the Seaside Chapel Structure, addition of approximately 30 public beach parking stalls, and related landscape, utility, and infrastructure improvements at 3850 Wailea Alanui Drive, Wailea, Island of Maui, TMK (2) 2-1-008:109. (SM1 2018/0011) (PD1 2019/0001) (PD2 2018/0003) (A. Cua)**

Ms. Ann Cua: Good afternoon Chair and Members of the Commission in the interest of time I’m gonna just be very brief and let you know the additions that we have received to the staff report that we prepared for you. The staff report notes that we had not received any letters in support or in opposition to the project. And since the writing of that staff report we have received seven letters. They’ve all been distributed to you. I just received one about two minutes ago and that has been circulating right now. But at this point in time, I’d like to have the applicant be able to do their presentation. They’re gonna abbreviate their presentation so that we can get to the people who have been waiting here all day to testify and get the public hearing done.

Mr. Carnicelli: Thank you.

Ms. Cua: Thank you Chair.

Ms. Gwendolyn Rivera: Good afternoon my name is Gwendolyn Rivera. I’m with Munekiyo Hiraga. I’ll be providing you with the presentation on the SMA Use Permit and Planned Development Approval applications. Here representing the applicant we do have Jim Kwasnowski and Scott McCormack from BRE Hotel and Resorts. We also have representatives from the Grand Wailea here on hand to answer any questions that may come up as well as representatives from the project team, archaeology, engineering, et cetera for any questions that come up.

1 The SMA Use Permit, Planned Development Step 2 and Shoreline Setback Assessment
2 applications were filed in October. We note that there were actions proposed within the
3 150-foot shoreline setback area which are limited to nonstructural and landscape related
4 improvements. As such there was a Shoreline Setback Assessment submitted to request
5 confirmation that these actions were permissible within the setback. Although the Shoreline
6 Setback Approval is not before Commission today for approval because that can be issued by
7 the Department. A Planned Development Step 1 was also submitted in February but to keep it
8 short, the approvals requested today are an SMA Use Permit and Planned Development Step 1
9 and Step 2 Approvals.

10
11 The location of Grand Wailea Resort I'm sure you're quite familiar with adjacent to Wailea
12 Beach. The neighbors are Wailea Blue Golf Course across the road, Ho`olei Grand Wailea,
13 Four Seasons Resort located to the South, the county owned beach right of way and Wailea
14 Beach Villas to the north. And here's a aerial view of the familiar property and you can see the
15 location of the various neighbors which if you need any clarification we can address that in the
16 Q&A.

17
18 All right, okay so with respect to land use information just want to note that with respect to land
19 use it's within the Urban Designation. For Kihei-Makena Community Plan the lands use
20 designations for the property are Hotel and Open Space. And the Maui County zoning for the
21 property include H-M, H-1 and H-2 Hotel designations as well as some Open Space
22 designations.

23
24 Okay, the background of the project goes back prior to 2012. Just to give you some context at
25 that time the previous ownership of the resort applied for and obtained approvals for an SMA
26 Use Permit and Planned Development Step 1 and Step 2 Approvals and that included a number
27 of renovations and guest room expansions. That totaled 300 additional guest rooms. Although
28 the SMA approval was granted in 2012, the project was not initiated by the previous owners and
29 the permits were allowed to expire in 2015. Since that time BRE Hotels and Resorts has
30 acquired ownership. They've determined that improvements are needed in order to upgrade the
31 resort and stay competitive with other similar resorts since the resort originally was constructed
32 in 1991. So as such, BRE is now seeking a new SMA Use Permit and Planned Development
33 Approvals for an updated project plan which addresses evolving trends and visitor's preferences
34 for the type of resort facilities and accommodations and the type of swimming pool facilities.

35
36 The plan that was approved in 2012 it did include many similar components to the plan that is
37 currently proposed as well as some additional components which were approved at that time
38 which have now been removed and are no longer being proposed today. The currently
39 proposed project would provide 224 additional guest units. This is then reduced from 300 units
40 previously approved.

41
42 In order to respond to guest preferences, and again remain competitive the applicant is
43 proposing to undertake improvements which include renovations and expansions to the hotel to
44 update the facilities and create new guest units. Renovations and expansions to the resort's
45 swimming pool and restaurant facilities, expansion of the north parking garage to provide
46 additional off street parking for the resort, removal of the Seaside Chapel structure, renovation

1 of the luau area, outdoor landscaping improvements, and addition of some public beach parking
2 facilities.

3
4 At this time, I'd like to invite Norman Hong, the project architect from G70 to come up and do a
5 brief presentation of the proposed project plans.

6
7 Mr. Norman Hong: Thank you Gwen. Mr. Chair, Members of the Commission thank you. First
8 of all, thank you for your patience and perseverance today. You guys deserve a medal for this
9 kind of time frame. Anyway, I'm gonna go really quickly through this because the exhibits are
10 before you. This is the site plan as Gwen mentioned. Okay, no, no, go back to the...as Gwen
11 mentioned this is actually a reduction from the originally approved 2012 SMA. I'm going to hit
12 on highlights.

13
14 Working from mauka to makai, the parking structure will be expanded by two floors. We will be
15 adding an addition to the Wailea Wing. We'll be adding an addition to the Haleakala Wing, and
16 an addition to the Lagoon Wing. We will also be building a new family pool, renovating in a
17 significant way the adult pool. The Chapel will be removed and we will be talking about that a
18 little later and being replaced by bungalows which are more attuned to what the market is today.

19
20 Two areas that were included in the 2012 plan...

21
22 Mr. Robinson: I'm sorry, are we at Exhibit 3 right now. I want to follow with you. I can't see that
23 far.

24
25 Mr. Hong: Let's see...

26
27 Ms. Cua: Pretty much.

28
29 Mr. Robinson: Yeah.

30
31 Mr. Hong: Exhibit 3?

32
33 Ms. Cua: Yeah.

34
35 Mr. Hong: Is that...okay, thank you. Two areas that this proposal is not including that results in
36 the reduction from 300 to 224 keys. There was a proposal for the Molokini Wing expansion in
37 this location. The current owner and applicant decided to not pursue that because of potential
38 sensitivity in terms of archaeological sensitivity. So they've taken that away. There was also an
39 addition above the Haleakala Ballroom that was deemed to be structurally infeasible so that was
40 also taken out. So that's why the reduction from 300 to 224 keys.

41
42 I'm gonna go through real quickly now some detailed plans. The parking structure located at
43 the north part of the site we are going to be expanding it by two floors. Next. At the top floor we
44 will be adding what you see shaded in yellow here some trellises to soften the appearance of
45 the parking structure from the properties up above. Next. When we presented this to the Urban
46 Design...this is the existing, what's there now, it's currently a three-story parking structure, but

1 we'll be adding two floors. When we met with the Urban Design Review Board earlier they
2 asked us to take a look at that addition and see what we can do to mitigate its impact upon the
3 street scene. So we came up with a proposal, next slide, where we would add those two floors
4 but we would have a very appropriate decorative pattern, perforated on that floor so that it can
5 soften the wall effect. But in addition to that, the existing landscaping of plumeria trees and
6 coconuts will be left but we will be adding, next slide, Rhapis palms along that whole perimeter
7 to help shield it. The next slide shows the initial installation of those plant materials upon
8 completion and in five years what that's going to look like. So essentially you will not see the
9 parking structure addition.

10
11 Next, this is the...next slide please...I'm sorry go back one, I'm sorry. The Wailea Wing which is
12 a little hard to see. Hopefully you can follow me on the exhibits. I'm going pretty quickly but
13 holler...you tell me slow down. We are going to be adding 63 keys to the backside of the
14 existing Wailea Wing. What that looks like, next slide, is what you see here is the existing which
15 is a single loaded corridor. We will be working off of that corridor and adding these keys right
16 here. So for all intents and purposes the building will look like as if it was always part of the
17 original building. We are not exceeding the height nor are we changing the style of the
18 architecture in any significant way. Next. We have landscaping that's going to be redone
19 around the addition. Next.

20
21 The Haleakala Wing we will be adding 72 keys along the backside of the existing Haleakala
22 Wing. Next. And it consists of two parts, one would be a six-story addition and a four-story step
23 down addition. And that's as a result of being sensitive to as these additions get closer to
24 Wailea Alanui Drive we want to step the building down so that it's a little more suitable for the
25 environment. Next. Additional landscaping that will be added. Next. This is a view and hard to
26 see, but maybe in your exhibit the before and after on the Haleakala Wing addition. And
27 because of the mature landscaping along the entry drive you virtually do not see what that
28 addition will be like.

29
30 This is the addition to the Lagoon Wing we're adding 33 units...33 units keys there. Next. And
31 similar to the other additions we are adding to the backside of that building where the single
32 loaded corridor is and we are gonna be adding the keys there. Next. And this is the
33 landscaping of that area. Next.

34
35 We have two locations in the resort which are would be the overlooks. These are three existing
36 three-story elements that connect the main tower to the outlying bays, outlying Wings and we're
37 going to be adding two floors of keys to those two locations. Next. And you can sort of see
38 here it's three stories here and we're adding two stories to the top of that. Next. This is what it
39 looks like before three stories and we're adding two stories. But even with these additions they
40 do not go any higher than the existing hotel. Next. And this is the other mirror image of that
41 overlook. Next.

42
43 We are adding some sunscreen elements to help shield the afternoon sun in the dining rooms.
44 Those are relatively minor awnings and those kinds of attachments. Next. We are adding a
45 stairway to more easily connect the dining at the third floor down to the pool level. Right now

1 there's only access through an elevator and we believe that this stairway will allow guests and
2 visitors to use the stairway instead of using the elevator. Next.

3
4 We get to the existing main pool of the hotel and that view there is what you see currently today.
5 Next. And because of the high demand for more pool area as well as chaise base we are
6 completely redoing that pool. We will have an upper level pool that terraces down to a mid-level
7 pool, down to a lower level pool. This is going to add a significant amount of swimming area as
8 well as chaise bases thereby relieving the pressure on the rest of the pool areas. Next. This
9 just shows a section through that the upper pool down to the middle pool down to the lower
10 pool. Next. These are just two renderings showing what it looks like from above the new pool
11 and next slide showing from the angle showing the upper pool, middle pool and lower pool.
12 Next.

13
14 In order to also add to the amount of pool area chaise space needed for the resort thereby
15 relieving pressure on those at the beach we are adding a family pool in what is currently a
16 landscape garden and this will be geared towards family, younger children, there'll be a slide,
17 there'll be some swinging bridges, infinity edge pools, those kinds of things. Next. And this is a
18 rendering of what that pool will look like. Next.

19
20 This is the Chapel site. As I mentioned the Chapel will be removed but it will be memorialized
21 and celebrated in another way which will be presenting a little later. It is being replaced by a
22 series of bungalow units. As was mentioned by Gwen, the market is such that it demands
23 spaces and accommodations for families where you can have one large...one unit that has
24 three or four bedrooms that can be rented out by one family or can be rented out separately. So
25 that's in response to the market. Next.

26
27 This is just a typical floor plan. You can see the living room, bedroom, bedroom, and bedroom,
28 three-bedroom that can be separated, rented out separately or all together for one family. Next.
29 This is a two-story...three of the buildings are going to be two stories and the others are going
30 to be one-story. Next. This is a rendering showing that. One-stories along the oceanfront with
31 these three buildings being two stories.

32
33 The luau area we are going to do some minor improvements to that. We'll be moving the imu
34 pit. We'll be replacing some of the current lawn with probably artificial lawn that will reduce the
35 amount of water usage as well as have that area look really nice and green at all times. We will
36 be looking at expanding the restrooms which are currently inadequate as well as temporary, a
37 bar. Next.

38
39 Public parking that's a big issue here. Currently there are public parking spaces located in the
40 County right of way here as well as stalls that are being provided by the hotel on their property.
41 In addition to that we will be providing 30 additional stalls for public parking with access through
42 the County property. When we met with the Urban Design Review Board they suggested that
43 perhaps because of the number of larger trucks that use these beach facilities that the stalls be
44 made wider and aisle spaces be made wider so we have complied with that and we will be
45 providing that. Next.

46

1 Landscaping I'm not gonna go into this but we have Shelly McKelvey our landscape architect
2 present in case there are any questions regarding landscaping. It will be matching up exactly.
3 Next. That's it. Awesome.

4
5 Mr. Carnicelli: If you can do it quickly because we have about 15 people signed up and we got
6 35 minutes to get through them.

7
8 Ms. Rivera: Will do. Will do.

9
10 Mr. Carnicelli: Okay.

11
12 Ms. Rivera: Just wanted to note a couple of important things with respect to the shoreline and
13 sea level rise issues. All of the new structures and all improvements to existing structures are
14 located outside of the 150-foot shoreline setback. There is some landscaping work proposed
15 within the setbacks and minor activities at the luau grounds that Norman mentioned and for
16 those activities the Shoreline Setback Assessment is being processed. Also, I wanted to note
17 that if we use the Planning benchmark of the sea level rise exposer area as was defined by the
18 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report which considers a 3.2-foot sea
19 level rise we can confirm that all the proposed structural work including the new bungalows lies
20 outside of that sea level rise exposure area for the 3.2-foot sea level rise. Next.

21
22 A traffic impact analysis was conducted for the project in May 2018. While the project is
23 projected to result in some increase in vehicle trips the TIAR showed that there is no anticipated
24 change in level of service at intersections in the vicinity with the resort with implementation of
25 the project. Level of service is a rating system for traffic flow that ranges from A to F similar to
26 school grades with A being the best F being the worst. The level of service that we're observing
27 in the vicinity of the resort ranges from A to C representing from free flow conditions to stable
28 flow conditions at or near free flow. And based on the traffic analysis which has been prepared
29 these levels of service are expected to remain the same after the project.

30
31 However, in order to help to reduce vehicle trips to and from the property the resort has
32 implemented and is continuing to implement a transportation management plan which does a
33 few things it incentivizes carpooling and the use of public transportation by employees and
34 encourages shuttle use for guests. Of course the resort is continuing to seek to implement any
35 additional programs that may be effective and feasible for reducing traffic.

36
37 With regard to off street parking the off street parking requirements will be met by the proposed
38 expansion of the north parking garage and as Norman mentioned there will be an addition of
39 30 public beach stalls provided.

40
41 Water. The increase in guest units and the swimming pool projects is projected to result in an
42 additional demand of water of around 92,000 gallons per day. To mitigate impacts to water
43 supply the resort has implemented a comprehensive water conservation program which has
44 been quite successful at reducing water use. And we are happy to answer further questions
45 with the engineers on that.

46

1 The wastewater system is projected to result in some increased waste water contribution and
2 it's expected that some additional sewer laterals will be required to service the additional
3 facilities. Just to summarize and you know we can answer Q&A but the applicant is
4 coordinating with both the Department of Water Supply and the Department of Environmental
5 Management to ensure that the infrastructure systems won't be adversely affected by the
6 project.

7
8 For archaeology I would actually like Trevor Yucha of Cultural Surveys Hawaii who's the
9 archaeological consultant for the project to come up at this time and provide a very brief
10 discussion of archaeological considerations for the project.

11
12 Mr. Carnicelli: Please be brief 'cause we've got a lot of people that want to testify, right. So go,
13 go, go, go.

14
15 Mr. Trevor Yucha: Trevor Yucha from Cultural Surveys. This slide shows the number of
16 previous archaeological studies that have been conducted at the Grand Wailea property
17 beginning in the 1970s including multiple inventory surveys, monitoring, data recovery. Next
18 slide. This map shows the location of findings in the property. It shows that there were
19 some...burial clusters found along the coast but there were no historic properties identified in
20 the Chapel area of the resort and that there were some surface finds in the mauka portion of the
21 property. There are only two existing historic properties located on the property that's 6057 and
22 8658 there are two burial preserves. Next slide.

23
24 We're working with ongoing consultation, meeting with community groups and descendants to
25 prepare an SHPD HRS 60 submittal packet. We've done a number of recommendations from
26 consultation including recordation, interim protection during archaeological monitoring, onsite
27 archaeological monitoring throughout the project, preservation of human remains. Next slide
28 and just in terms of the archaeological review there was an inventory survey conducted and
29 prepared for the 2010 project, the current footprint of the proposed action. A monitoring plan
30 was also prepared and accepted by the SHPD. The current reduced scope project was
31 presented to the SHPD in August 1st, we are waiting to hear from them to get their final
32 guidance in terms of historic preservation requirements.

33
34 Ms. Rivera: Just to wrap it up. Community outreach was conducted alongside with agency
35 consultation and we'd be happy to address that. Next slide is Urban Design Review Board just
36 to summary there were a few comments that were provided by the UDRB and all of these have
37 been addressed in the current design that is presented in your packets.

38
39 Regarding the Seaside Chapel, the chapel as mentioned is planned to be removed and plans
40 are in place to provide something that celebrates and commemorates the presence of the
41 chapel and its significance and the history of the resort. For the purposes of time we'll leave
42 that to Q&A but there are plans in your packet which show what is being planned for the chapel
43 and we have team members on hand to address that if any questions come up.

44
45 Okay, so to wrap up the project has been analyzed against the criteria for projects within the
46 SMA and is found to be consistent with the guidelines as well as Planned Development. Just to

1 note that the resort as it's located within the Wailea Resort Planned Development which does
2 allow for transfer of zoning uses within the Planned Development as long as the overall area for
3 each zoning use remains the same. There is a Planned Development Step 1 transfer proposed
4 between an area of H-2, Hotel zoned use to the luau area in exchange for an equal area of
5 Open Space zoned use, and again the information about this is included in your packets.

6
7 Mr. Carnicelli: Gwendolyn it was gonna be brief. We're 20 minutes in now, 25 minutes in—

8
9 Ms. Rivera: Okay.

10
11 Mr. Carnicelli: I just want to reiterate that I want you to be able to do your presentation but we
12 gotta get to people.

13
14 Ms. Rivera: I understand. So to conclude, the BRE respectfully requests that the
15 Maui Planning Commission approve the SMA Use Permit and the Planned Development Step 1
16 and Step 2 Approvals. Thank you very much for your time in considering the project and we are
17 here for questions.

18
19 Mr. Carnicelli: Thank you very much. So at this point in time we're gonna go ahead and open
20 up public testimony. Again, you guys you will get three minutes, at three minutes Carolyn will
21 say three minutes and I will ask you to basically stop at that point in time and that is so we can
22 try to get through everybody here by...Bob Hansen you're first. Please state your name.

23
24 Mr. Bob Hansen: Bob Hansen.

25
26 Mr. Carnicelli: Do you promise to tell the truth?

27
28 Mr. Hansen: I do.

29
30 Mr. Carnicelli: You have up to three minutes.

31
32 Mr. Hansen: Thank you. I want to thank the Commission Members, Planning Director for doing
33 this. We ought to double your salary from how much you're making, zero. Yeah, thank you. I
34 just wanted to say that, you know my whole family lives here and I love the Grand Wailea
35 Resort and I really respect that their ability to go ahead and do what they need to do to put more
36 rooms and 224 more rooms. That's means 448 more people on Wailea Beach maybe but that's
37 not why I'm here. I don't know, I'd leave that for other people to decide.

38
39 The reason I'm here is I remember very clearly when the Grand Wailea was being built and they
40 found bones and the bones means something to the Hawaiian culture. I know
41 Uncle Charlie Maxwell and I knew him very, very well. I lived next door to you know
42 Charlie Young, Eddie Young. I know a lot of the history. There's something about the bones,
43 you know the Hawaiian ancestors that there's something there, there's a mana that's there with
44 those bones. So when they found the bones they stopped construction for about eight months
45 I'm guessing. I remember in about 1989 give or take. And they reinterred...they took the bones
46 out, reinterred them other places and I'm just thinking from the first time that some of the bones

1 still remain on the property. But part of the deal was the chapel was built to honor the Hawaiian
2 ancestors. So I personally am completely against tearing down that chapel, moving the chapel,
3 doing something else. I don't know if you guys have been in that chapel but it is the most
4 unbelievable glorious place you know for Hawaiian culture and I think the Grand Wailea, the
5 original developer did a wonderful thing putting that chapel in. So I'm asking you, you can
6 approve the rest of the stuff but leave the chapel alone. Thank you.

7
8 Mr. Carnicelli: Thank you. Gwendolyn do you have any questions for Bob? Thank you Bob.
9 Next up is Donna Hansen followed by Noelani Ahia after that will be Lisa Paulson. So just be
10 ready guys okay.

11
12 Ms. Donna Hansen: My name is Donna Hansen.

13
14 Mr. Carnicelli: Thank you. Do you promise to tell the truth?

15
16 Ms. Hansen: Yes, I do.

17
18 Mr. Carnicelli: Thank you very much. You have up to three minutes.

19
20 Ms. Hansen: Thank you. First of all I'm glad that they're reducing the amount that they got
21 approval of before but I don't really think that is...I mean that's great but however, I don't think
22 that—

23
24 Mr. Carnicelli: Please speak into the mic, just yeah.

25
26 Ms. Hansen: I don't think that that should affect any decisions you make now. Will be they
27 have less, less building going on but I don't think that should affect your decision now. But what
28 I do think is really important I do respect that the Grand Wailea, the new owners they've got all
29 this stuff going on so they can make more money and have more tourists come and I get that. I
30 mean, I'm a business person I respect business. I do understand that. However, when one of
31 the previous owners when they did they did the development they promised that chapel. That
32 chapel is holy. If you have not been in it, please go in it and sit down before you make a
33 decision, if you're gonna make a decision to approve them removing the chapel. It is so
34 beautiful in there. You can feel Hawaiiana, you can feel the love, you can feel how important
35 ancestors are to what Maui is all about, what Hawaii is supposed to all be about. So I really feel
36 strongly that this will be a black mark against the Grand Wailea and against the approval of
37 removing this chapel. Please go look at it, feel it, understand it, also so many people committed
38 their lives to be married in that chapel. They made promises to each other and that is important
39 as well that that's gonna be removed where they would be able to go back and be happy, I
40 guess I don't know or unhappy, but nonetheless, you know, but you know to me this is really,
41 really important the chapel. I don't know about the other structures and how that will hurt the
42 beaches. I'm already getting complaints from clients saying you know I can't get on the beach,
43 what am I going to do, where am I gonna go? I mean, to go on the beach in Wailea and I can't
44 move, you know, and there are people there and there are all these you know, umbrellas and
45 everything and they're not happy and so they say well where else can I go? And I tell them the
46 nice places to go. So I'm just asking please do not approve removing the chapel. It needs to

1 stay where it is and we need to really respect Hawaiian culture and what this means to not just
2 Hawaiians but to people who have lived here for over 30 years, I mean I care about this. It
3 breaks my heart and I every time I heard somebody say anything the bones-

4
5 Ms. Takayama-Corden: Three minutes.

6
7 Ms. Hansen: --being moved.

8
9 Mr. Carnicelli: That's three minutes.

10
11 Ms. Hansen: Okay. It just makes me sad. Thanks.

12
13 Mr. Carnicelli: Thank you Donna. Any questions from the applicant? Seeing none,
14 Noelani Ahia followed by Lisa Paulson and then Cody's after that. So Noelani before you
15 start—

16
17 Ms. Noelani Ahia: I promise to tell the truth.

18
19 Mr. Carnicelli: Okay. But first you have to say your name.

20
21 Ms. Ahia: My name is Noelani Ahia and I promise to tell the truth.

22
23 Mr. Carnicelli: Promise to tell the truth. And then I actually want to apologize publicly for cutting
24 you off last time.

25
26 Ms. Ahia: Thank you.

27
28 Mr. Carnicelli: That was mistake and I actually over compensated with the next guy because
29 the way that you corrected me. So I apologize that was my fault.

30
31 Ms. Ahia: I apologize to you too. Thank you.

32
33 Mr. Carnicelli: Okay, you have up to three minutes.

34
35 Ms. Ahia: Thank you. I actually read through all of the materials and had prepared something
36 but I think I'm gonna forego what I wrote in favor of just talking to you folks because there is a
37 healing that has to happen. There is a fracturing that's happened on our aina and part of that
38 does come from the illegal occupation because what that does is it sets up an opportunity where
39 people make decisions for the aina other than the first people of this land and the citizens of the
40 Hawaiian Kingdom. So what that does is it displaces us from the decision making process and
41 it doesn't give us any agency and where that is of concern in this particular project is that this
42 hotel is built on an ancient burial ground. This hotel should not have been built. Our ancestors
43 were laid to rest carefully. If you read the archaeological reports they're buried with birds next to
44 them. Sacred beings that they were laid to rest with the belief that they would be there forever,
45 that they would rest in peace. And what does rest in peace mean when your ancestors are
46 gonna be dug up? So how many people here have had their ancestors displaced? Anybody

1 besides the Kanaka? You have? So you know what it feels like. It's awful. It's feels like we as
2 the descendants are being tortured again because we feel, we're sensitive we know the
3 fracturing that happens. And it not only happens to us, to the spirits of the iwi it happens to the
4 people who are working in these places. I have an uncle who worked on this construction site
5 and he's not one to come out and testify in person but he witnessed Matson container size
6 containers full of iwi kupuna leaving this project because this was before there were burial laws.
7 So while there is about 200 document iwi kupuna on this site nobody knows how many more got
8 taken off. And we also have heard testimony from archaeologists from that area that our iwi
9 kupuna used to be incinerated. So this is very painful thing for Kanaka Maole to look at
10 development and see that they're gonna do further ground disturbing work. To me, the remedy
11 for desecration is not more desecration, it's stop, leave it alone, don't touch it. Let the sacred be
12 sacred. It's nice that there's a chapel, but personally I couldn't care less about the chapel. I
13 want my ancestors to stay in place where they are. You know where the luau grounds are there
14 were burial down there that got moved. So how are you gonna sell that to tourists? Welcome
15 to our ancient burial ground where you can have mai tais with the disturbed spirits of my
16 ancestors. My people, I know 30 years might seem like a long time to be here, five years might
17 seem like a long time, but I can trace my genealogy back 54 generations to Papa and Wakea so
18 I'd like you to consider that. Thank you.

19
20 Mr. Carnicelli: Thank you very much.

21
22 Ms. Ahia: Please don't put this through.

23
24 Mr. Carnicelli: Any questions? Seeing none, Lisa Paulson followed by Cody followed by
25 Kahu Hill.

26
27 Ms. Lisa Paulson: Good afternoon Commissioners. My name is Lisa Paulson and I promise to
28 tell the truth.

29
30 Mr. Carnicelli: Thank you very much.

31
32 Ms. Paulson: First of all, thank you for your service. I do appreciate all your time and efforts. I
33 represent the Maui Hotel and Lodging Association. We're the legislative arm of the visitor
34 industry and we are in support of the proposed improvements to the Grand Wailea Resort that
35 represent a positive and welcome change to the resort in the Wailea area for the following
36 reasons.

37
38 The Grand Wailea is nearly 30-year-old resort and compared to newer and recently renovated
39 properties it is due for a refresh in order to meet the standards of our Wailea guests. There are
40 many positive additions that bring the property in the current demands of our ever evolving
41 traveler such as the updated adult pool, new family pool, lap pool, ground level unit lanais
42 opening out to pools, additional deck, cabana and chaise capacity. The additional bungalow
43 units and larger suites that will accommodate larger families wanting to stay together is a
44 positive alternative to the prolific illegal vacation rental homes we now see on Maui that hosts
45 these type of traveler. Improvements will include 30 additional beach access parking stalls
46 bringing the total provided by the Grand Wailea Resort to 70 stalls for our Maui residents.

1
2 Additionally, MHLA is proactively working with the County Department of Transportation on
3 providing additional shuttle services for employees. Currently the County does provide Roberts
4 coach buses for south and west side employees. We are looking at ways to increase ridership
5 and offering additional pick up locations and times. I'm currently working with Michael Du Pont
6 in the County Department of Transportation. In compliment to the above the Grand Wailea
7 promotes ride sharing programs to all employees paying for 100 percent of the cost of a monthly
8 bus pass for participating team members and just rolled out a carpool cash incentive program.
9 Thank you for allowing me to testify.

10
11 Mr. Carnicelli: Thank you very much. Any questions from the applicant? Seeing none, thank
12 you very much. Cody followed by Kahu Hill, followed by Scott Shapiro. Please state your name
13 for the record.

14
15 Mr. Cody Nemet Tuivaiti: Aloha, my name is Cody Nemet Tuivaiti and—

16
17 Mr. Carnicelli: Do you promise to tell the truth?

18
19 Mr. Tuivaiti: Yes.

20
21 Mr. Carnicelli: You have up to three minutes.

22
23 Mr. Tuivaiti: So my concern is that the Grand Wailea sits on remains of a massive grave site for
24 iwi kupuna. Part of the process for the SMA is to recognize the cultural integrity of the area.
25 The hundreds of men, women and children uprooted from their place of peace, dismembered,
26 displaced and relocated. A mitigation effort was put forth in that time to help with the healing of
27 the wounds but all mitigation does is remind us of the wrong that was done. There's too much
28 out of sight, out of mind mentality for those who choose to look the other way. We must
29 acknowledge what has happened in the past and the many unaccounted for. I mahalo those
30 who agreed to meet with us for consultation but I cannot with a clear mind be okay with more
31 digging in the area. It is fine if improvements are to be made but not at the expense of ripping
32 open the wounds that are still to heal. No reinterment plan set forth will minimize the effects of
33 uprooting kupuna from which they were planted and all mitigation mitigating to be done in the
34 future will only be an excuse for developments to plow forth. I understand that there are many
35 factors to play regarding the SMA permit but I ask that we acknowledge the factor that does
36 come into play regarding the kuleana of protecting that which is most sacred and speak for
37 those that have no voice. Mahalo.

38
39 Mr. Carnicelli: Thank you Cody. Any questions from the applicant? Seeing none, Kahu Hill,
40 followed by Scott, followed by Dick Mayer.

41
42 Kahu Alalani Hill: Aloha.

43
44 Mr. Carnicelli: Please state your name for the record.

45
46 Kahu Hill: Kahu Alalani Hill.

1
2 Mr. Carnicelli: Do you promise to tell the truth?

3
4 Kahu Hill: I promise.

5
6 Mr. Carnicelli: You have up to three minutes.

7
8 Kahu Hill: Mahalo for all being here. Real fast. So I do have connections to this property. I
9 have known it since 1989 and was watching it be built. I've known it since the Hyatt Regency. I
10 have been a part of many blessings there. I have also blessed next door and all of the Wailea
11 Beach Villas, a lot of them all and bless everything from the groundbreaking to all of the building
12 at Ho`olei. I've also taught there. I've done, taught la`ua lapa`au in the old days and as well
13 done awa ceremonies with the Spa. I've blessed the employee lounge. I blessed the murals. I
14 bless all the luau grounds. I do have the DLNR ...(inaudible)...tried to pull permits there and I
15 have done many weddings. I'm here...please do what you can for the iwi kupuna and
16 remember their voices and make sure that the monitoring is here for this. I'm here today staying
17 because I'm...my heart's for the chapel and I've married many people there and there wasn't
18 one time where I didn't talk about the murals and talk about what the story that it said about the
19 Hawaiians and if you'd ever stood in there you'd understand. So I invite you to please go there
20 and pray or just mediate, look inside the stained glass. I can't imagine the story that is told
21 there to be taken down and memorialized. I can't imagine being separated where our oral
22 language here in Hawaii and the stories are told from generation to generation, pass through
23 olelo Hawaii, pass through hula, pass through our kupuna and our keiki o ka aina and I'm asking
24 to please have in your hearts to protect the chapel and as well, let us be aware of the traffic. My
25 mom came around that street and totaled her car and she did pay for the pole over there at the
26 Grand Wailea so just that we be aware of that and public parking 'cause we all need to go some
27 time. So mahalo for listening.

28
29 Mr. Carnicelli: Thank you very much Kahu. Any questions from the applicant? Seeing none,
30 Scott...actually Claire you're after Scott, I...it's Scott, then Claire, then Dick. Please state your
31 name for the record.

32
33 Mr. Scott Shapiro. Scott Shapiro.

34
35 Mr. Carnicelli: Scott do you promise to tell the truth?

36
37 Mr. Shapiro: I promise.

38
39 Mr. Carnicelli: You have up to three minutes.

40
41 Mr. Shapiro: In 2012 when the Maui Planning Commission approved 300 guest rooms,
42 additional guest rooms things were very different. We were just coming out of a very large
43 recession and any construction was invited with open arms. There was no talk of sea level rise
44 during any County meeting. We're living in a new era, new time. When where sea level rise
45 estimates range from a conservative 3.2 feet to an almost ridiculous 15 feet of sea level rise.

1 Can you imagine if the ridiculous becomes real or even if the conservative comes much more
2 quickly than we anticipated what do we do then? We need to plan for that now.

3
4 I have about five areas of my greatest concerns, there's a lotta concerns I have but five big
5 ones. The addition of the two story parking garage. The view corridor driving along Wailea
6 Alanui will be negatively altered. There'll be a big out of place wall for a minimum of five years
7 as the applicant states on the plans and I'm guessing it's gonna be a little bit longer than five
8 years. I urge you to ask them to build on an alternate site or their self-parking garage that is
9 much further than the road and a much lower elevation or at a minimum in one of the open
10 areas south of the hotel.

11
12 Affordable housing. I hear the developer may be buying credits from a development in West
13 Maui. I know buying credits is allowed in the Maui Code but building units in West Maui for 130
14 more employees in Wailea is not answering the desire to live near where you work. I don't
15 know if you can answer that here today but I just wanted to bring it up.

16
17 Beach Parking. DLNR Land Agent commented in Exhibit 32 at least 50 to 60 spaces should be
18 added. I spoke the other day to Wailea patrol agent they routinely have to kick out contractors
19 and well as employees running late parking illegally. They said in high season there are never
20 spaces available. More patrolling of these areas, definitive signage along with levying fines for
21 illegal parking to be posted as should be a minimum. These parking lots could become in effect
22 more employee parking if not controlled. I urge at least 50 more spaces.

23
24 Luau grounds. Change in zoning from Open Space to H-2 to construct another building in the
25 OS zone and to move the OS zone to the area above the entrance waterfall. This area which is
26 already wouldn't be built on makes little sense to move that Open Space zone to above the
27 waterfall makes no sense to me. It doesn't make any sense for the County to grant this zoning
28 change. No change should be allowed period. Keep the permitting process going.

29
30 Lastly, the beach bungalows and the wedding chapel. I hope I can make it through this. The
31 chapel is iconic. It's a feature that was built on these grounds. According to one member of the
32 Ahu Moku Council as compensation to the agreed removal of so many iwi during original
33 construction approvals. You may have done this already but I ask you to research and read all
34 the conditions of approval of the original development and make sure no conditions will be
35 broken before you grant this SMA.

36
37 Ms. Takayama-Corden: Three minutes.

38
39 Mr. Carnicelli: Thank you Scott.

40
41 Mr. Shapiro: Don't forget about sea level rise please.

42
43 Mr. Carnicelli: Do you have any questions for the testifier? Seeing none, Claire you're next
44 followed by Dick, followed by Tom and Kaniloa.

45
46 Ms. Claire Apana: I'm passing out something for, for you—

1
2 Mr. Carnicelli: Please just state your name for the record.

3
4 Ms. Apana: I'm sorry. Claire Apana, Wailuku, Maui.

5
6 Mr. Carnicelli: Do you promise to tell the truth?

7
8 Ms. Apana: I do.

9
10 Mr. Carnicelli: You have up to three minutes.

11
12 Ms. Apana: I'm passing out something. It is a report from Theresa Dunham about this subject
13 property. It is from the book Ka`eo and it talks about the various different studies that have
14 been done about the iwi kupuna on this site. As I count them up there's at least over 250 going
15 to 300 and that's not counting the fact that there were no real good studies in the early times of
16 the 70's and the...I know the uncle who spoke about the two containers filled with iwi kupuna
17 and if you add them into it and don't think that this is a burial ground, I'm not sure what kind of
18 brain you have but I am representing Malama Kakanilua and it is one of our goals to stop
19 development in Hawaiian burial grounds and this is certainly one of them. This is a Hawaiian
20 burial ground.

21
22 I believe that the first mitigation made was when they built that hotel and there was a mitigation
23 made with the chapel and there was a mitigation made I believe with the luau grounds. Why do
24 you suppose the luau grounds are empty? They're right over the beach. Developers don't do
25 things like that. They put their rooms overlooking the beach. Think about it. I believe that this
26 developer knew what they were getting when they bought this property. They spent a billion
27 dollars for the property, they knew that they were buying a Hawaiian burial ground. They should
28 not be allowed to intrude one more inch into our burials and this SMA...this SMA application has
29 Federal regulations in it. SHPD wrote something in 2009, we haven't seen another letter. If
30 SHPD cannot protect our burials and the rights of the Kanaka Maole to having fishing
31 unimpeded by wastewater overruns and have our cultural practice of preserving our burials in
32 place we would like you to consider that you are using Federal laws already and we would like
33 you to consider that these burials could be protected by the Federal laws of NAGBRA and what
34 is most important to us is not that we go into the Federal Government but that our burials are
35 protected. I do not know why SHPD has not answered. 2009 that's a long time and a lot of
36 times it has come to this planning commission without a review from them. So I want you to
37 know that we are not getting what we need—

38
39 Mr. Carnicelli: That's three minutes.

40
41 Ms. Apana: I need to say one more thing.

42
43 Mr. Carnicelli: It's three minutes. Is I'm sorry, is I gotta be consistent with everybody, so but
44 thank you very much. Is there any questions from the applicant? Thank you very much Claire.
45 Dick Mayer, followed by Tom, followed by Kaniloa. Please state your name for the record.

46

1 Mr. Dick Mayer: My name is Dick Mayer.

2

3 Mr. Carnicelli: Do you promise to tell the truth.

4

5 Mr. Mayer: I do.

6

7 Mr. Carnicelli: Thank you very much. You have up to three minutes. I was very pleased to
8 hear Ms. Pali earlier say the importance of the Commissioners following the law. One of the
9 laws that you all have to follow is the Maui Island Plan. It's the basic...basis of our General
10 Plan. In looking at the criteria for a SMA approval it states the following, the following guidelines
11 shall be used by the authority in reviewing developments within the SMA. That the development
12 is consistent with the County General Plan and zoning and you cannot do things that are
13 against that. In this plan which is the law, it's not a resolution of the Council or anything like
14 that, it was worked on by Citizen Advisory Committee of which I was the Vice-Chair, your
15 planning commission approved this, the County Council approved it, the Mayor signed it, it's
16 now law. You are now going to be making a decision today I think which is...could be a
17 watershed in Maui's history and that decision is what are we going to do with tourism on this
18 island?

19

20 The plan here called for the regulation control of the growth of tourism and it specifically says
21 there should be no more than one visitor on the island for every three residents. We now have
22 156,000 residents of the island, one-third of that is 52,000. The average daily census today is
23 way above that 52,000. For the first three months of this year it averaged over 68,000, last July
24 it was 75,000. We're way over that number. You'll notice that the lady who spoke from the
25 hotel industry from the tourism group talked about the facilities on the property, mentioned a few
26 bungalows but she did not endorse the 224 units that the applicant is asking for. I'm urging you
27 to turn this down. We do not need any more hotel rooms on this island. We need to control it.
28 We need to look for the benefit of local residents. One of the decisions, and when I say it's a
29 watershed, you'll have to decide are you in favor of supporting the residents of Maui, the
30 workers on Maui, the people who wants houses on Maui or are in favor of the big company,
31 Black Stone which is pumping money into this island but then taking out much more back home
32 out of this island. Are you in favor of just providing more rooms for tourists all of whom want
33 to come here? We have to at some point say, residents come first because all of the incoming
34 tourists, before the big investors outside keep buying our properties. Black Stone not only
35 bought the Grand Wailea of \$1.1 billion, they also bought the Kapalua Hotel as well. These are
36 companies coming in and just making a feast on Maui.

37

38 The Island Plan that we have here also says, the relationship between the number of residents
39 and visitors on the island at any given time cannot be overlooked as an important public policy
40 discussion point. These ...(inaudible)...condominiums have grappled with the golden goose
41 debate whereby the tourism experience may be compromised by the very nature of the area's
42 popularity. We cannot allow more, more tourists to come to this island and spoil the experience
43 for those tourists who would like to be here. We cannot allow our quality of our product to
44 deteriorate.

45

1 Mr. Carnicelli: That's three minute Dick. Thank you very much. Any questions from the
2 applicant? Seeing none, thank you very much Dick.

3
4 Mr. Mayer: Are there any questions from the Members of the Commission? That's usually the
5 case?

6
7 Mr. Carnicelli: Yeah, I mean, they will chime in if they have them. Yeah, and nobody has done
8 that today. So thank you Dick. Tom Goergen followed by Kaniloa.

9
10 Mr. Thomas Goergen: Good afternoon, I'm Thomas Goergen and I...

11
12 Mr. Carnicelli: You promise to tell the truth?

13
14 Mr. Goergen: I promise to tell the truth.

15
16 Mr. Carnicelli: Thank you very much. You have up to three minutes.

17
18 Mr. Goergen: I promise to tell this is my birthday today, I can't think of a better way to spend it.

19
20 Mr. Carnicelli: Happy Birthday. Yeah, here with the Planning Commission, wow you're a
21 partier.

22
23 Mr. Goergen: Very enlightening meeting, first time. First, I've got a lot of stories to talk about
24 later with my friends. I sent a letter in, I'm not gonna read the letter. I want to make one
25 point...I'm speak for...I'm the President of the Board of Directors of the Wailea Beach Villas
26 Association of Apartment Owners. We're the next door neighbor. We're most concerned with
27 just the intensification of activities in Maui general and in Wailea specifically regarding the
28 number of visitors, the amount of traffic, impact on restaurants and services and the impact on
29 the beach. We're concerned primarily about 224 new rooms.

30
31 We recognize that it's very important that the all the resorts continuously upgrade the product,
32 appearance, and the infrastructure and we're very much in support of many of those factors.
33 We're also concerned about the mitigation of some the problems that will happen if construction
34 is approved and goes on and a lot of the letter is about that and I'm sure that will be addressed
35 as part of the planning process but our major concern, only concern really big one is the
36 additional 224 rooms. Thank you very much.

37
38 Mr. Carnicelli: Great. Thank you very much. Any questions from the applicant? Seeing none,
39 thank you very much. Kaniloa please state your name for the record.

40
41 Mr. Kaniloa Kamaunu: Kaniloa Kamaunu.

42
43 Mr. Carnicelli: Do you promise to tell the truth?

44
45 Mr. Kamaunu: Yes.

46

1 Mr. Carnicelli: You have up to three minutes. Thank you.

2
3 Mr. Kamaunu: So mahalo. Again, ...(inaudible)... on what we talked about earlier as far as
4 tourism it is not a viable business. It hasn't shown itself except to use our vital resources as well
5 as to...for me, change the outlook of Maui. This area is known as Honuaula not Wailea. Wailea
6 is one small rock that juts out from the beach that's Wailea. Honuaula is where they are and it's
7 a sacred place. That is an interpretation of the area. So we should respect...we're looking at
8 the culture, the culture is Honuaula. It is not, and I do not respect Wailea because it sounds
9 beautiful when you say it but Honuaula is where we come from and that's the place.

10
11 And the thing is over there it's already known that it is a burial site. I don't know what the magic
12 number is that will change it. You know, they taken...it's been recorded that they've taken many
13 of our bones away from that area. A story was told to us that one of the persons that was
14 working there when he looked at it he could see from the ocean to the roadway it was in a
15 triangle shape, not triangle but...yeah triangle shape, almost like a pyramid and it was full of
16 bones. And all he remembers is these 40-foot container, Matson containers coming in and at
17 least four a day will be filled and taken away. Where they are we have no records. But my
18 concern is what's gonna happen when they find the one, the one finger, the hand, the one leg,
19 the one feet? Then they going go back and worry about this. The thing is they there. How
20 people bury in the sand it's recorded, we've been fighting the sand dunes forever and it hasn't
21 changed. This is not gonna change so my concern is what's gonna happen to them when they
22 find that one piece of person or scattered remains? What is the recourse then? They going
23 continue to build? It's there. It's been recorded. Our people talk about it. It's not an unknown.
24 And yet, we're gonna have this happen, we're gonna have this happen again. You found it then
25 what's gonna change? Two hundred and what else rooms you know that you're gonna
26 dig...you gotta dig and drilling some of the things for the pools. They going have to dig down.
27 That's you know, ridiculous. This is just a ridiculous conversation. I've been to court on this and
28 to talk about it as everyday business removing my people. That's wrong. And it's become
29 acceptable and it's, it is unacceptable and things have to be done or you know, I can always
30 come there and protest. I've been every place else on Maui so you probably see my face out
31 there, but mahalo.

32
33 Mr. Carnicelli: Thank you. Any questions from the applicant? Thank you very much Kaniloa.
34 So we have three other people, Bruce U`u, followed by Michelle Del Rosario and Ivan Lay. Hi,
35 state your name for the record please.

36
37 Mr. Brue U`u: My name is Bruce U`u.

38
39 Mr. Carnicelli: Do you promise to tell the truth?

40
41 Mr. U`u: Yes, I do.

42
43 Mr. Carnicelli: All right you have up to three minutes.

44
45 Mr. U`u: Aloha, thank you for your time. Thank you for being on the commission. First I'd like
46 to state that I'm in support of the project with concerns and again the iwi. We gotta go through

1 the due diligence and the process and be respectful of the iwi, and as a Hawaiian I have to
2 share that, you know. I represent my Hawaiian side and I also am a labor union, Carpenter's
3 Union agent, so who hires a lot of carpenters but who is Hawaiian. So I both sides. I've been
4 on the Planning Commission when they came before us in 2009. The difference between now
5 and 2009 where there was no TVRs and B&Bs what was the topic you guys was on before, all
6 the tourism was put in one place. It was shot out you know it's either in Wailea, it was in
7 Kapalua. We didn't have this issue where they actually in my neighborhood and they are right
8 now. I preferred them there. I rather you take 'em out of my neighborhood and put them there,
9 the 224 rooms. They said one in eight or one in five is legal. So they doing the projections of
10 tourism I mean where does that come into play? When my neighborhood of 72 homes, ten or
11 twelve is illegal. I take them in Wailea away from me. I like my lifestyle in Paia and it's
12 changed.

13
14 Personally I support the building where it's zoned, but do the respectful thing and do the
15 process which in a respectful manner and if the iwi come up, do it in a respectful way. But I no
16 like 'um in my house, I no like them by my yard. I think what's done, it's zoned, they pay their
17 fair share of taxes, we hit every way we can, they contribute to our economy, they provide our
18 work...I remember working on there in 1989. I cannot tell you I remember the iwi being taking
19 out but I was working on the project right next Four Seasons. My older brother was working
20 Grand Wailea it was never mentioned to us and my brother was an operator. He would tell me
21 if had something. I'm telling your right now he would tell me if he seen something. I'm not
22 saying it didn't happen. I just saying it wasn't brought up and I was there.

23
24 As far as the church no feel like an Hawaiian church for me. Feel foreign for me. I belong to a
25 Paia Hawaiian Church. I'm a part of that church. I walk in that church it looks too beautiful and
26 the construction is not of what I'm used to in my church. So for me, I don't think it will be a
27 respectful thing to build that type of church in a burial area. I think for me would be disrespectful
28 my two cents. So I support it. I like tourism where it is there. If they can take 'um out of my
29 neighborhood better. I respect your time, I respect everybody that testified. Aloha.

30
31 Mr. Carnicelli: Thank you Bruce. Any questions from the applicant? Seeing none, Michelle
32 followed by Ivan. Please state your name for the record.

33
34 Ms. Michelle Del Rosario: Michelle Del Rosario.

35
36 Mr. Carnicelli: Do you promise to tell the truth?

37
38 Ms. Del Rosario: I do.

39
40 Mr. Carnicelli: You have up to three minutes.

41
42 Ms. Del Rosario: I didn't plan on testifying because of my voice but I felt moved to do so, so it
43 will be short. I'm here today testifying as an individual not in my capacity of the County of Maui.
44 I wanted to bring your attention to the Maui Island Plan and the policies 4.2.3A and 4.2.3B.
45 4.2.3A says you will promote a desirable island population by striving to not exceed an island
46 wide visitor population of roughly 33 percent of the resident population. By today's numbers we

1 are already past that point by about 15 percent. I am not in support of any further construction
2 of hotel rooms at the Grand Wailea or anywhere else. We also have several thousand hotel
3 rooms that are already entitled that have yet to be built.

4
5 4.2.3B says you will use the required general plan annual status report to monitor trends related
6 to residents and visitors. I don't know that anyone has ever done a general plan annual status
7 report on this number and I would request that you request the Planning Department or the
8 appropriate agency to do so prior to moving forward with this or any other hotel room related
9 projects. That concludes my testimony.

10
11 Mr. Carnicelli: Thank you very much Michelle. Any questions from the applicant? Seeing none,
12 Ivan.

13
14 Mr. Ivan Lay: Hi, I'm Ivan Lay.

15
16 Mr. Carnicelli: Do you promise to tell the truth?

17
18 Mr. Lay: Promise to tell the truth.

19
20 Mr. Carnicelli: All right, you have up to three minutes.

21
22 Mr. Lay: Long day for you guys. Okay, for me like Bruce brought up earlier where you have
23 tourists. The tourists should be in an area. You're building up this area that the tourists are
24 going to be at. The amenities, the pools, you're building and making nicer these are the things
25 that bring the tourist go out to do that and because it is a nice pool they stay there. They have
26 restaurants, everything at this location. Building it up can only show that it is a place that's in
27 demand and I have to say I've been there several times with my family because of the pool. It's
28 a great place to go. We have a great time. It's one of my favorite hotels.

29
30 Another good thing about this project to me is the beach parking. That's one of my pet peeves.
31 Every time you go to the beach before you say it's...gonna have beach parking and the next
32 thing you know you gotta pay for beach parking or they close it up, they gate it and these are
33 places that say there's gonna be beach parking so we're gonna have to hold you guys to that
34 beach parking. It's very important to me and the local families who is there.

35
36 The church, okay that's a touchy one. It's super beautiful church and I'll say I actually worked
37 on that church too building it. But come on everybody who's went there has to say it looks
38 weird, it doesn't fit in. It doesn't really blend in with everything out there. It's a church in the
39 middle of the hotel. Beautiful church but it just doesn't match and I think if they can...get it
40 somewhere else or you know, again the people that got married there, total respect for
41 everybody that got married there, but it just doesn't fit.

42
43 As far as the iwi, of course respect for anything that's found and I'm sure they're gonna be doing
44 it to make sure that if anything is found it's taken cared of accordingly and done right. There's
45 no way they can get around it. That's all I gotta say. Thank you.

46

1 Mr. Carnicelli: Thank you very much. Any questions from the applicant?

2

3 Mr. Lay: Good to see you guys. It's been a while.

4

5 Mr. Carnicelli: Seeing none, is there anybody else that would like to testify please come
6 forward. Come Albert quick.

7

8 Mr. Albert Perez: I thought I signed up. Sorry.

9

10 Mr. Carnicelli: I don't see your name. You probably put it on a different one that's okay. Please
11 say your name for the record.

12

13 Mr. Perez: My name is Albert Perez.

14

15 Mr. Carnicelli: Do you promise to tell the truth?

16

17 Mr. Perez: I do.

18

19 Mr. Carnicelli: You have up to three minutes.

20

21 Mr. Perez: So I feel like a couple of people have already covered my testimony. So I'll just
22 kinda summarize what I think this boils down to. You know I understand that it's not easy to go
23 through all the laws and review all the laws in the staff report but there are some instances
24 where this unlimited increase of tourism is something that's directly addressed in the Maui
25 Island Plan. And so some of those items these are statements that were not evaluated in the
26 staff report. The Maui Island Plan says we need to diversify our economy in order to flourish as
27 times and markets change. We need to reduce Maui's reliance on tourism and its consequent
28 vulnerability to fuel costs and external economic conditions. This project will do just the
29 opposite. So 700 and what is it...currently it has 776 guest rooms and the proposal is to add
30 224 more. We hear from the Hotel and Lodging Association that the property is need of a
31 refresh that's one thing, but it doesn't...we don't need more visitors, we don't need more hotel
32 rooms. We already have uncontrolled visitor accommodations outside of the designated areas
33 and outside of the permitted ones. This would only add to that.

34

35 The SMA Permit is a discretionary permit that must comply with the County General Plan which
36 includes the Maui Island Plan. So these are not optional items and in fact the staff report does
37 list the standard for reviewing an SMA application and one is that it has to be consistent with the
38 General Plan. So I would prefer that the staff report review those parts such as let's keep the
39 tourist percentage to 33 percent. By my calculation it's currently 44 percent of the people on
40 Maui are now tourists. And the proposed expansion would add to this, it do the opposite of what
41 the stated policies are in the Maui Island Plan where it's all about controlling the impact of the
42 visitor on our community and improving the experience of the visitor that does come here. So
43 today you have an opportunity to follow the law and implement the Maui Island Plan and to deny
44 the proposed expansion and it is time for us to do that. Thank you.

45

1 Mr. Carnicelli: Great. Thank you Albert. Any questions from the applicant? Seeing none,
2 thank you. Is there...please come. Please state your name for the record.

3
4 Mr. Bill Kamai: Aloha, my name is Bill Kamai.

5
6 Mr. Carnicelli: You promise to tell the truth Bill?

7
8 Mr. Kamai: Yes, I do.

9
10 Mr. Carnicelli: Okay.

11
12 Mr. Kamai: I just wanted to address and put to rest the facts about the iwi. As a carpenter I was
13 working there in 1989 and worked in a particular area called the bone yard and in this bone yard
14 was where we would put all the parts and pieces and components to do the form work to pour
15 the concrete and there was a lot of parts and components there. There was also a shed, a
16 Sears shed made out of metal typical tool shed. In it was all the bones, all the iwi and there
17 were two archaeologist, one man and one wahine that would put all the iwi in cardboard boxes,
18 label them and that's where they kept it and we were working right next to it for the duration of
19 the job. Truckloads no, that's somebody telling you one story. I was the only guy there in this
20 room that can say firsthand I witnessed what they did with the iwi. Not like the movies there's
21 no skull and ribcage and no, none of that stuff. This was parts of a body, pieces but they would
22 do their due diligence and gather what they could label them and put them inside this Sears
23 shed, say that three times real fast. But I witnessed it firsthand, but truckloads they listening to
24 one story somebody told them. That's not the truth. I'm what you call niele in Hawaiian. Niele
25 is nosy. So every time they would find one bone or iwi nearby I was the guy that would go over
26 there and take a look and work would cease immediately and there was a lot of Native Hawaiian
27 operators on the job and everybody would deal with it in their own way. Some guys would just
28 shut their machine off, grab their lunch can and take the rest day of off. They would...what I
29 witnessed they would cover the iwi with plastic until these archaeologists from Bishop Museum
30 would come over and when they would peel back the plastic I would go take a look and see
31 them with their brushes and again, was never ever was one full body was always pieces of a
32 body. So each box had each own identification of what they found. I just wanted to make it
33 clear to you folks.

34
35 Mr. Carnicelli: Thank you Bill.

36
37 Mr. Kamai: You're welcome.

38
39 Mr. Carnicelli: Any questions from the applicant? Seeing none, anybody left? Please state
40 your name for the record.

41
42 Mr. Tom Croly: Tom Croly.

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44 Mr. Carnicelli: You promise to tell the truth?

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46 Mr. Croly: I do.

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Mr. Carnicelli: You have up to three minutes Tom.

Mr. Croly: I'll try to be as brief as possible. I did some research recently that I thought might be helpful because I heard three statements made about the number of tourists that we have on the island or the number of visitors which would be a better term versus our population. I looked up in the Maui Data Book which is something that's published every year. This year's version hasn't come out. And I looked at the island population and the average visitor count. Now the average visitor count is not how many visitors are here on our busiest day it's the average throughout the year. What I found was in 1995 their average visitor count was 42,751 tourists or visitors and we had a population of 117,895 people that was a little off three to one. There were a few less than three to one. Through the years that has remained pretty consistent. Our population, our resident population grown at the same rate that our visitor population has grown. We might not feel that because we see that things are getting more crowded but through the years it's grown, they've grown pretty much together except for two periods. There was a period where we had a recession and the visitor count dropped dramatically, you know what that felt like and it never went down to four residents for one visitor, but it went down to like three and a half a that point. And right now the latest data that I had came from the 2017 Maui Data Book and it was based on 2016 numbers and it said that we had an island population of 165,384 and a daily visitor count of 59,982. Well if you do the math that works out exactly the same percentage as back in 1995. So while we might all feel like wow, there's way more visitors than there are these statistics published by the Maui Data Book don't say that. I can't...they're not my numbers. I can't say that they're absolutely accurate but I just wanted to give that to you because you were given some statements that aren't consistent with the numbers. Thank you.

Mr. Carnicelli: Thank you Tom. Any questions from the applicant? Seeing none, anybody else wishing to testify? Seeing no one else coming, without objection we will go ahead and close public testimony. Public testimony is now closed. As we are going to lose quorum at this point in time I would like a motion to defer this item. We don't need a motion? Nope, okay. Are we going to continue it or defer it or we're gonna continue it. Yes, we're gonna continue this item to the June 25th again? Director.

Ms. McLean: Chair, I think it would be more appropriate to defer. There are some issues that we need to follow up on and I can't say that we would have that follow up information by a date certain.

Mr. Robinson: Make a motion to defer Chair.

Mr. Carnicelli: Moved to defer by Commissioner Robinson, seconded by Commissioner La Costa. Discussion? Seeing none, all in favor of deferral...

Mr. Robinson: Chair are we able to email maybe some questions to Ann that we might have at the next meeting if possible?

Mr. Carnicelli: Always.

1
2 Mr. Robinson: Thank you.

3
4 Mr. Carnicelli: Yeah, we always have that option. So all in favor of the motion. That's five,
5 motion to defer passes.

6
7 **It was moved by Mr. Robinson, seconded by Ms. La Costa, then unanimously**

8
9 **VOTED: To Defer the Matter.**

10
11 **(Assenting – K. Robinson, P D. La Costa, K. Pali, C. Tackett,**
12 **L. Carnicelli)**

13 **(Excused – S. Castro, T. Gomes)**

14
15 Mr. Carnicelli: At this point in time we lose quorum and so I want to say thank to everybody that
16 was here bright and early before 9 o'clock, stayed all day, I appreciate it. The Maui Planning
17 Commission of May 28, 2019 is now adjourned.

18
19 **E. NEXT REGULAR MEETING DATE: JUNE 10, 2019 (MONDAY)**

20
21 **F. ADJOURNMENT**

22
23 The Commission lost quorum and meeting was adjourned at 4:40 p.m.

24
25 Respectfully Submitted by,

26
27
28 CAROLYN TAKAYAMA-CORDEN
29 Secretary to Boards and Commissions II

30
31
32 **RECORD OF ATTENDANCE**

33 **Present**

34 Lawrence Carnicelli, Chair
35 P Denise La Costa
36 Kellie Pali
37 Keaka Robinson
38 Christian Tackett, Vice Chair

39
40 **Excused**

41 Stephen Castro
42 Tina Gomes

43
44 **Others**

45 Michele McLean, Director, Department of Planning
46 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
47 Stephen Welling, Deputy Director, Department of Public Works