

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

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Larry Hudson at approximately 9:01 a.m., Tuesday, October 9, 2018, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hudson: Good morning. Welcome to the Maui Planning Commission meeting of October 9, 2018. My name is Larry Hudson. I'm the Vice-Chair. I'll be the Acting Chair today because the Chair, Keaka Robinson is excused. First item, we're gonna establish quorum. Kahu Hill.

Kahu Alalani Hill: Good morning Chair.

Mr. Hudson: Kellie Pali.

Ms. Kellie Pali: Good morning Chair.

Mr. Hudson: Stephen Castro.

Mr. Stephen Castro: Good morning Chair.

Mr. Hudson: Christian Tackett.

Mr. Christian Tackett: Good morning Chair.

Mr. Hudson: We're joined by Planning Director Michele and Corp Counsel David. Okay, having established order I'm going to turn this over to Corp Counsel for a few minutes to explain something about today's public testimony.

Mr. Galazin: Thank you Chair. And also for the Commission Members as well as members of the public. Just as it pertains to Item D-1 on your agenda today. It's a Communication item on behalf of D&S Ventures. This pertains to an active contested case and what you are looking at today is a procedural motion being put forth by the applicant in this case. There will be...there was a Motion filed in Opposition on behalf of the Department. Because it is a contested case item, the Sunshine Law does not apply. Therefore, the applicant will be speaking, the representative...Corporation Counsel Representative from the Department will be here and maybe speaking as well, but we will not be taking public testimony on this item. Further down the road if and when this is...it to goes through a public hearing that would be a different story, but for today, right now we're just looking at this one motion. So everything else on your , on your agenda is subject to the Sunshine Law and public testimony will be taken as, as each item is taken up, but this one's a little bit different than what you're used to seeing. So, if anyone has any questions, Commissioners or do you...does that make it clear? Okay, thank you Chair.

Mr. Hudson: No questions from the Commissioners? Seeing none, Director.

1  
2 **B. Workshop on the County's Planned MAPPS Permit Tracking System Conducted**  
3 **by the County Information and Technology Services (ITS) Division, Department of**  
4 **Management. (Postponed from the September 11, 2018 and September 25, 2018**  
5 **meetings.)**

6  
7 **The workshop is for information purposes only. No action will be taken.**

8  
9 Ms. Michele McLean: Thank you Chair. Good morning. The first item, a workshop on the  
10 County's planned MAPPS Permit Tracking System conducted by the County Information and  
11 Technology Services Division will be postponed to a future meeting just in the interest of time.  
12 So that will be posted on a future agenda so that item can be deferred.

13  
14 Mr. Hudson: The next two items will involve public testimony. So when you do public testimony  
15 I'll call your name, you'll come up, you'll pause for a moment, I'll ask you to identify yourself and  
16 then you'll pause for another moment and I'll ask you if you're going to speak the truth. If you  
17 answer in the affirmative we will proceed. Okay.

18  
19 When you offer public testimony make sure it's speaking only to the topic. This is not an open  
20 forum where you can speak about anything. You can only speak to the topic on the agenda at  
21 that moment in time.

22  
23 The next item, the Board, the Commission has to make informed decisions. We get informed  
24 decisions from the public in part, and from what we read, and from what the evidence is  
25 presented. So when you're offering public testimony make sure that you offer public testimony  
26 that is relevant and it is...while it could contain opinions please substantiate them. Don't come  
27 up and say, I don't like blue cars. Okay, that's an opinion. But if you come up and say I don't  
28 like blue cars because they cause the hinky dinky bird to crash then that's more relevant.  
29 Something we can use, something tangible. Okay. Director, thank you.

30  
31 Ms. McLean: Thank you Chair. The first public hearing item is a request from the State of  
32 Hawaii, University of Hawaii Maui College for a Special Management Area Use Permit for the  
33 proposed installation of a 3.15-acre ground-mounted solar photo-voltaic panels and a distributed  
34 energy storage system on approximately 48 acres in the County M-1 Light Industrial, R-2  
35 Residential Districts at 310 Kaahumanu Avenue in Kahului at TMK: 3-8-007:040 (por.). Paul  
36 Fasi is the project planner. Arriving just in time.

37  
38 **C. PUBLIC HEARINGS (Action to be taken after each public hearing.)**

- 39  
40 1. **STATE OF HAWAII UNIVERSITY OF HAWAII MAUI COLLEGE requesting a**  
41 **Special Management Area Use Permit for the proposed installation of a**  
42 **3.15-acre ground-mounted solar photo-voltaic (PV) panels and a distributed**  
43 **energy storage system (batteries) on approximately 48 acres in the County**  
44 **M-1 Light Industrial, R-2 Residential District at 310 Kaahumanu Avenue,**  
45 **Kahului, Hawaii 96732, Island of Maui, TMK: (2) 3-8-007:040 (por.)**  
46 **(SM1 2018/0010) (P. Fasi)**

1  
2 Mr. Paul Fasi: I'm going to go over the project as far as the government regulatory  
3 requirements go and the applicant is here to give a presentation on the specifics of the project.

4  
5 So basically the project is a proposed PV system that's gonna approximately cover 3.8 acres of  
6 a 48-acre UH Maui Campus. The valuation of the project is \$9.36 million. So it is a serious and  
7 sizable project. This does necessitate a Chapter 343 because it is using State funds. However,  
8 under 343 Rules, the UH has determined that the project qualifies under the as an Exempted  
9 Action. It is construction or placement of minor structures and accessories on the campus  
10 which has been reviewed and concurred by the Environmental Council in 2011 and in your  
11 report as Exhibit 4 is the Declaration of Exemption.

12  
13 So this project is part of the UH system wide effort to bring energy efficiency to all their  
14 campuses. The magnitude of the system is 2.4 million kilowatts of energy and this is projected  
15 to translate in the cost savings to the UH of about \$1.4 million.

16  
17 The land use designations are State Land Use District is Urban. It's inside the Urban Growth  
18 Boundary. It's in the Wailuku-Kahului Community Plan as Public/Quasi-Public. County Zoning  
19 is M-1 Light Industrial, and R-2 Residential. It is in the Special Management Area. You are  
20 here today to consider approving or not the Special Management Area Permit for the UH.

21  
22 As far as government regulatory concerns in State Land Use District it's Urban. Pursuant to  
23 Chapter 205 the proposed project is compatible with the Urban...State Urban designation of the  
24 property. There are several objectives and policies which I won't go through in my report on  
25 Pages 8, 9 through 11. And basically these are policies and objectives and goals that support  
26 the project as far as Chapter 205 is concerned.

27  
28 As far as the Maui community plan it's in the Wailuku-Kahului Community Plan. The project's in  
29 compliance with the Public/Quasi-Public community plan and the energy is a promotion of the  
30 use of alternative sources including wind and solar which is specifically listed in the objectives  
31 and policies of the Wailuku-Kahului Community Plan.

32  
33 The Maui Island Plan, it is in compliance with the Maui Island Plan since it is in the Urban  
34 Growth Boundary. The Countywide Policy Plan basically as you know is the goals, objectives  
35 and policies and implementing actions for the County of Maui and there's many goals,  
36 objectives and policies and this project meets several on different levels of supporting the  
37 Countywide Policy Plan.

38  
39 County zoning, Title 19, the project site is zoned M-1 Light Industrial and R-2 Residential. Small  
40 scale energy systems are a permitted use as an accessory use in the Light Industrial District in  
41 colleges and the accessory uses are permitted uses in the Residential District. So the project is  
42 permitted by and consistent with current County zoning. So in all three levels of government  
43 regulatory requirements this project does meet the requirements. The SMA, as far as the SMA  
44 is concerned the Department does not anticipate any environmental or ecological repercussions  
45 as a result of this project being built.

46

1 Archaeological resources, the project site has been extensively altered. You've seen the site.  
2 It's extensively graded. It's used for overflow parking for the UH events. The applicant, UH is in  
3 consultation with SHPD because SHPD required an Archaeological Inventory Survey (AIS) and  
4 they are in the process of preparing the AIS for review and approval by SHPD.

5  
6 They hope to get this project up and running by the end of the year but I don't see how that's  
7 possible. The Department supports the project and hope we can move it along in an  
8 expeditious manner. Thank you. The applicant will present the details of the project. Any  
9 questions for the Department? Thank you.

10  
11 Mr. Hudson: One question Mr. Fasi.

12  
13 Kahu Hill: Mahalo. You had mentioned that it would create a savings of 1.4 million. Is that  
14 annual?

15  
16 Mr. Fasi: That is annual.

17  
18 Kahu Hill: Okay, mahalo.

19  
20 Mr. Fasi: It's projected to be what they call a net zero project where they produce enough  
21 energy to make them self-sufficient. That's the projected goal anyway. Thank you.

22  
23 Mr. Hudson: Thank you Mr. Fasi. Excuse me Ma'am will you please identify yourself?

24  
25 Ms. Gwendolyn Rivera: Good morning. My name is Gwendolyn Rivera. I'm with Munekiyo  
26 Hiraga and I'll be speaking to you about the proposed project.

27  
28 Mr. Hudson: Thank you.

29  
30 Ms. Rivera: Here today with me is David Tamanaha Vice-Chancellor with the University. From  
31 the project team with Johnson Controls we have the Project Manager Lowen Okamoto, we have  
32 Blaine Banks and Ron Young. Also here from my office is Tessa Munekiyo Ng.

33  
34 All right, we're here to provide some information on the proposed solar PV improvements on  
35 campus and to request approval of the SMA Use Permit which was filed on August 2<sup>nd</sup> of this  
36 year. Regarding the HRS 343 compliance the University has issued an Exemption Declaration.  
37 So today's request before the Commission is just for the SMA approval.

38  
39 The project is located at the University of Hawaii Maui College Campus. It's off Wahine Pio  
40 Avenue over here not far from the intersection with Kaahumanu Avenue. I would like to invite  
41 David Tamanaha from the University to come up for a couple minutes and address the  
42 Commission regarding the project's backgrounds and goals at this time.

43  
44 Mr. David Tamanaha: Aloha Chair, Commissioners, Planning Director, my name is David  
45 Tamanaha. I'm Vice-Chancellor for Administrative Services at UH Maui College. First and  
46 foremost I wanted to offer apology and regret from our Chancellor Lui Hokoana. He had wanted

1 to be here today, but he's out of state in Hartford, Connecticut on business so...so this morning,  
2 I have the honor and pleasure of presenting our project.

3  
4 You know to really get an understanding of this project you almost gotta turn the clock back  
5 several years, even before 2011 on this timeline. And if you really think back when the college  
6 back in the early mid-90's, 1995 or even earlier and if you were around on Maui back then and if  
7 you drove down Kaahumanu Avenue back then what you would have seen is a very modest  
8 Maui Community College. The buildings were rather old at that time and it was maybe half the  
9 size. So during that 20 years from the early 90's to the mid...to around 2010 the college really  
10 received tremendous support from the Legislature and from our community. So what we saw  
11 was a huge physical planned facelift over that time period where we added two brand new  
12 classroom buildings. We added the Lualaba Building which is our Continuing Ed building. We  
13 added a brand new IT building, Ka'a'ike, we added the culinary facility, Pa'ina. We renovated  
14 our Student Center Building, Pilina, we also renovated our Student Affairs Building, Ho'okipa.  
15 So over this time period the college expanded its footprint twice from 200,000 gross square feet  
16 to 400,000. So there's a lot of growing pains over this period.

17  
18 While we were very fortunate with building out the campus, where we weren't very fortunate is  
19 the way the Legislature work and the State finances work operating costs, the support for  
20 operating costs is lagging usually about three to four years behind. So our janitors, our  
21 custodians, our maintenance people they're actually trying to manage much more space as the  
22 additional staffing it's...we're behind the ...(inaudible)... maybe three to four years as each  
23 building is being built. Not just physical staff but also the operating costs for managing power,  
24 utilities and this and that. So given that time frame if you think about 2011, 2011 was like a  
25 perfect storm for us. What happened in 2011 is the State was in an economic recession. If you  
26 remember back oil prices was climbing. It was at about \$120.00 per barrel. The cost for  
27 electricity because of oil prices was really high, I think it was closer to 40 cents per kilowatt hour.  
28 Our power bill for a modest sized campus was \$2.1 million a year just for power which  
29 represents close to 10 percent of our total operating budget.

30  
31 In order for us to balance our budget and at the same time all of this is going on the college was  
32 also experiencing record enrollments. We reached 4,500 students. Never before ever reached  
33 that level. We were at that time in terms of head count the largest neighbor island campus in  
34 Hawaii in terms of head count. Even larger than UH Hilo at that time. But then we had a  
35 financial crisis going on primarily because of the cost of power. So for us to manage our budget  
36 we had to do a lot of cost cutting across the board. Every department had to manage some  
37 cuts, but in addition we had to freeze about 25 of our permanent position count and sweep the  
38 salary savings to finance the electricity. That's the way we operated back in 2011. Back then  
39 Chancellor was Clyde Sakamoto and back then in order for us to address this problem Clyde  
40 felt, well Chancellor Sakamoto felt let's take this problem, take it as a challenge and see what  
41 kind of opportunity we can make out of this. So back then we decided just so happen the timing  
42 was right because the State was starting to entertain what they called Energy Performance  
43 Contracting where you can enlist the services of an energy service company to help you figure  
44 out how you can reduce your energy cost and finance all of this with future energy savings. So  
45 the college, as well as several other colleges on Oahu, took the deep dive. We had to. We had  
46 to figure out a way to curb our costs.

1  
2 So in 2012, we engaged in a contract with what we call our partners, Johnson Controls Inc., and  
3 some of the representatives are sitting behind me. In Phase 1 it was pretty substantial for us.  
4 Phase 1 involved energy efficiency at the very beginning where we redesigned all of our chiller  
5 systems. If you think back the college built the buildings one at a time. So as each building was  
6 built, the way the designers designed it they built a separate building chiller plan for each  
7 building. So it's every inefficient that way. So what Johnson Controls helped us figure out is  
8 let's create a central chiller plan. So we undid all of these building specific chillers. And the  
9 timing was right because it was close to end of life anyway. That actually created a tremendous  
10 savings. We also did install a computerized energy management system where it allowed us to  
11 manage when AC go on, when lighting go on much better than the way we used to manage in  
12 the past. We installed...we re-lamped the entire campus with back then I think it was T8  
13 lighting, florescent language, was the most efficient at that time we felt. We converted our  
14 heaters to solar heaters. This project in terms of energy efficiency generated electrical  
15 decrease in consumption of 1.5 million kilowatt hours annually, approximately. That was in  
16 2012; made a big difference in terms of where we were financially.

17  
18 In 2014, we then started installing photo voltaics. That was first biggest project we did in terms  
19 of photo voltaics where in the back parking lot we constructed three rows of carport where the  
20 top of it was photo voltaics. It generated...well it was a 565 kW system about...it generates  
21 about 953,000 kilowatt hours per year. None of this was financed with state capital  
22 improvement funds. It was a power purchasing agreement where investors, outside investors  
23 actually front all of the money. They own the system, we buying the power from the investors at  
24 a discount. But what that does is it actually allows us...for budget people like me we don't like it  
25 when the cost swings up and down with the price of oil. We like it really stable. So with this  
26 power purchasing agreement it allowed us to be less vulnerable to the different costs, the rate of  
27 oil. So that generate about 95,000 a year savings. That's the difference, the delta between  
28 what we purchasing from the owners of the PV system versus what the average cost we would  
29 have purchased if we bought from Maui Electric. That was back in 2014.

30  
31 2015 we're allowed to build the fourth row. The fourth row about another \$27,000 in savings.  
32 2016 we covered all of our vocational shops with standing seam roof with roof top PV as well as  
33 we installed a battery storage system. This generated about \$73,000 a year in savings. Some  
34 may ask why just voc shops? So it's kind of 20/20 hindsight. Way back when we were building  
35 our buildings in the 90's we thought we were really smart with building these long lasting Monier  
36 tile, the green roof tops, what we learned later I mean it's very difficult for us to put the roof top  
37 PV on it. So you know, 20/20 hindsight if we were to start over again we probably wouldn't have  
38 done that, you know, but it is what it is as of today. So that's why we only covered the  
39 vocational shops. And that brings us to where we are today, 2018.

40  
41 About a year ago the University of Hawaii Vice-President for Community Colleges, his name is  
42 Michael Unebasami, he led the effort to see how it is we can take the campuses one more step  
43 further. We're not done yet. We did a lot, but we're not done yet. So he asked each of the  
44 campuses to see what it is we can do to even further reduce our power consumption and even  
45 further expand our renewable energy generation. So we engaged with our partners, Johnson  
46 Controls to establish a Phase 2 Contract. Phase 2 already started in terms of energy efficiency.

1 The Johnson Controls team have already started the LED...so our lighting is now being  
2 converted to LED which is much more efficient. So yesterday to my surprise when I walked into  
3 my office I got booted out a little while because they were in my office working on my lights, but  
4 the difference was really astounding from fluorescent to LED and the type of controls they put  
5 in.

6  
7 They also working on chiller plant improvements, window tinting which in the end, they're not  
8 done yet it will amount to about another one million kilowatt hours of annual reduction in kilowatt  
9 consumption. But that takes us to the project we're here presenting today.

10  
11 It's the large ground mount PV array that we hoping to build in that grass open area alongside  
12 Wahine Pio. It's a 1.57 megawatt system. I wanted to correct something that was mentioned  
13 earlier...my calculation it's not going to generate \$1.5 million in savings a year. I think that was  
14 misinterpreted. There is a time challenge for us to try and get this system up and I think Paul  
15 talked about it that we're hoping to get it commissioned by December 31, 2018. The reason  
16 being is there's a price difference in our agreement. It goes from...if we can get this done by  
17 December 31<sup>st</sup>, the price for us to purchase the power from the investors is 21 cents, about 21  
18 cents. If we don't get it done by December 31<sup>st</sup>, it increases three cents to 24 cents. That three  
19 cents difference over the life of the project is an increase to taxpayers about \$1.5 million. That's  
20 \$1.5 million that I think Paul picked up. Over the course, I think it's about \$238,000 a year in  
21 ...(inaudible)...

22  
23 You know what let me go back...if we get this done, and we're hoping to get this done, it will  
24 accomplish several things for Maui College. One is the Governor set a goal for the University of  
25 Hawaii where all campuses need to be at net zero status by 2035 and for us what net zero  
26 means is the campus would generate equal or greater amount of renewable energy than it  
27 consumes. And this is a challenge by 2035. If Maui College gets this done we'll be ahead of  
28 schedule about 17 years and what we're hoping to do if we get this done and we're really close  
29 to this, if we get this done in the near future Maui College could be the very first higher ed  
30 institution in the nation that has accomplished this. There are some, a few folks that are really  
31 close to it, one is our sister campus at Leeward that's neck and neck, so we hoping we can beat  
32 them 'cause we want to be ahead of Oahu. But there is also another campus on the West  
33 Coast, Oregon Institute of Technology they're almost there also. In fact JCI is working with  
34 them to achieve net zero and I'm asking JCI to slow down that project in Oregon, but you know  
35 we want to be first, we're hoping to be first, we hoping we get there.

36  
37 As far as the site selection it's been a topic of discussion on the campus for some time. We've  
38 been, we've been sharing this information with our college community for some time. When we  
39 presented where it is we decided to locate the ground mount system. Like I said, it's alongside  
40 Wahine Pio. There was a ton of questions we had to face. Some of the questions that came up  
41 was why not cover the parking lot? Why not build more PV carports and believe me the college  
42 really, I mean, all of us wanted to do that. We've been trying to convince our university system  
43 administrators to help endorse that concept. The problem we faced was two-fold. One is the  
44 cost to build those structures was roughly about \$700,000 just the structures, the carport,  
45 concrete structures. If you factor that added cost in the power purchasing agreement the cost  
46 for us to buy the power was...I don't remember how much the increase was but it was enough

1 where the university decided no, they're not gonna support that. So we talked about well, let's  
2 finance it with the energy efficiency side of the project. The university decided against that  
3 because the type of funding they used it's called PELT funding where the project or the cost of  
4 the item we purchasing has to generate energy savings and they couldn't...they didn't feel like it  
5 was appropriate to use that kind of funding to build these concrete structures so we're down to  
6 just building the ground mount type of system. And therefore, after analyzing all of the space  
7 we talked about what about putting it alongside Kaahumanu. We talked about putting some of it  
8 in the interior part of the campus. After all of this discussion with our campus committee we  
9 decided the best place is in that large grass field alongside Wahine Pio.

10  
11 The other question the campus came up is what are you guys gonna do when...if and when the  
12 college decides to build a new building? And that question, we asked our planners the same  
13 question and what made us feel comfortable is what we learned is if a new building does come  
14 up it's possible for us to move some of the array onto the rooftop. We just gotta design the  
15 building to accommodate that. And it's possible for us to realign some of the existing array  
16 systems. So we felt comfortable given our long range plan does include new buildings in that  
17 area. That's my part.

18  
19 Ms. Rivera: Okay, as David mentioned the project is located in that open --

20  
21 Mr. Hudson: Excuse me, could you please identify yourself again for the record?

22  
23 Ms. Rivera: Sorry. Thank you. My name is Gwendolyn Rivera. The site selected for the  
24 project is in the open area which you can see here. This is viewing it from near the intersection  
25 of Wahine Pio and Kaahumanu Avenue. And the project area is currently mostly unutilized  
26 aside from overflow parking and event parking.

27  
28 A few more views of the project area. The upper left photo shows the proposed battery site  
29 where the energy storage component will be located. You can see two existing battery  
30 containers from a previous battery system.

31  
32 Okay, the PV arrays total 2.8 megawatts in capacity. The battery system will have 13.2  
33 megawatt hours of storage capacity. Related improvements for the project will include  
34 landscaping and perimeter fencing as well as conduit lines to service the project.

35  
36 The site plans shows the layout of the project between, again, Wahine Pio Avenue here and the  
37 science building located over here. The grid is...that represents the PV arrays. And a chain  
38 linked fence is located around the entire project perimeter. The area within the fence totals  
39 3.898 acres. Underlying the PV system will remain natural lawn.

40  
41 So the PV component of the project includes the PV panels plus associated equipment such as  
42 invertors, the metal racking. These will be anchored by concrete ballast blocks. The  
43 containerized battery system it consists of two containers which will be housed on concrete  
44 pads in the area to the...on the north portion of the project site. And landscaping will be planted  
45 around the perimeter of the fencing to provide screening for visual impacts.



1 Okay, so as I mentioned the panels will be mounted on prefabricated concrete ballast blocks  
2 rather than sinking anchors into the ground. The project team conducted consultation with the  
3 State Historic Preservation Division (SHPD) as well as other agencies and...other agencies  
4 including Fire and Public Safety and Public Works. But upon consultation with SHPD their  
5 preference was to minimize ground disturbance and to use this ballasted system whereby the  
6 racking system it's anchored by concrete ballast blocks which sit above the ground and that  
7 minimizes the need to drill down to sink anchors. So based on that consultation with SHPD that  
8 design decision was made in order to minimize the ground disturbance.

9  
10 The site was known to be previously altered. It's flat and it doesn't match the surrounding  
11 topography. An archaeological inventory survey, the field work as conducted, no historic or  
12 archaeological resources were found in the course of that survey. The report is currently being  
13 prepared and will be submitted to SHPD for review and approval. We anticipate that monitoring  
14 will be, will be recommended and will be carried out. And the...all SHPD's recommendations  
15 will be followed.

16  
17 So the PV panels are low profile with a maximum height of 65-inches. Just for reference my  
18 height is 65-inches so the panels will be about me or shorter. Landscaping, as I mentioned, will  
19 be utilized to screen the system from the road and from locations within campus visually.  
20 Regarding the site use for event parking such as the Maui Fair, this year the project has been  
21 scheduled so it's not to impact the fair. And in the future event coordinators will be notified  
22 to...that the site will no longer be available for parking so that alternate arrangements can be  
23 made.

24  
25 This slide shows a rendering of an aerial view of the completed project looking kind of north,  
26 over Kaahumanu Avenue with the panels here, and the battery storage area located right about  
27 there mid-field. Okay and from the street level, the rendering looks like this with the landscaping  
28 buffer shown around the perimeter fencing.

29  
30 For consultation with the Fire Department, a 30-foot setback was included between the PV  
31 arrays and the perimeter fencing. The battery system will utilize lithium ion ...(inaudible)...  
32 batteries. They will be operated in an enclosure which is set up with appropriate...a fire  
33 suppression system, and consultation will be done with the Fire Department so that they are  
34 aware of what the fire suppression needs are.

35  
36 The project will not be significantly altering drainage characteristics of the area. As I mentioned,  
37 underlying the PV panels, it will remain lawn. Minimal grading is needed. And the impervious  
38 surfaces introduced in connection with this project will be limited just to the pads, the concrete  
39 pads under the battery containers.

40  
41 So this proposed project is consistent with the Coastal Zone Management's objectives and  
42 policies with SMA guidelines for HRS 205A-26 and with the SMA Rules for the Planning  
43 Commission.

44  
45 So in summary the project will help UHMC become possibly the first net zero higher education  
46 campus in the country as David explain which would be great. And it will also achieve State

1 mandated goal for the UH system to produce as much renewable energy as it consumes ahead  
2 of the target of 2035. So it will not propose...it will not present significant adverse,  
3 environmental impacts and it meets the environmental criteria for SMA. So therefore we  
4 respectfully request today the approval of the SMA Use Permit and...excuse me, the SMA Use  
5 Permit for the PV and battery storage system at UHMC. So thank you very much. The project  
6 team is here to answer any questions that you may have. Thank you.

7  
8 Mr. Hudson: Thank you Ms. Rivera. We're going to hold off on questions until after we have  
9 public testimony. We're going to open the floor to public testimony. The first person signed up  
10 to give public testimony is Mr. James Buika.

11  
12 Mr. James Buika: Good morning Chair, Commissioners. My name is James Buika. I am in the  
13 Planning Department. I'm the shoreline planner.

14  
15 Mr. Hudson: Excuse me Mr. Buika. Do you swear to tell the truth?

16  
17 Mr. Buika: Yes I do.

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

20  
21 Mr. Buika: I always tell the truth...most of the time. Anyway, where was I? I am the shoreline  
22 planner here in the Planning Department, and thank you for posting the...to the Commission  
23 and the County for posting these projects online. This is not my project, but I would like to  
24 comment on it in terms of the Coastal Zone Management (CZM) Act in your authorities under  
25 that Act. I have been a planner for 11 years and I do teach the SMA Rules training to the  
26 Commission yearly and our Coastal Zone Management Act, so I consider myself an authority on  
27 the Act.

28  
29 My request is for the Maui Planning Commission to add one mitigation condition that will create  
30 a win-win for the college, and the students and the public. Please consider adding a condition  
31 that will physically lower the project by six-feet by creating a footprint retention basin similar to  
32 the Maui Swap Meet parcel which is just makai of that on the campus area. This creates a six  
33 wins for the project. First, it eliminates the physical the light-industrial blight. It is an energy  
34 efficient system, but these, these PV projects are light-industrial blights on a otherwise  
35 absolutely gorgeous magnificent Maui campus. It maintains the beauty of that open space that  
36 is there right on Kaahumanu Avenue by the ocean. It secures the project's investment from  
37 hurricane winds. Rather than being six-feet tall, it is...those things will be scattered all over a  
38 125, 150-mile an hour hurricane and you know we can have one of those. We almost did. It  
39 adds years of life to the project itself by eliminating all of those electrical connections in the  
40 project from being exposed to the direct salt air strong trade winds that are in that area. So it  
41 benefits the project, and it also sets a precedent for this Maui Planning Commission under your  
42 authority to...for future projects that you take view plain impacts seriously. And it also creates a  
43 win for the County in that it provides a sand source. It is on a heavily graded dune there where  
44 no sand sources are available for projects that we need along our shoreline right now so we can  
45 store that.

1 And, I'll, I'll conclude by stating the Maui Planning Commission authority as referenced, it is  
2 Hawaii Revised Statutes 205A as amended, the Coastal Zone Management Act, under 2(B)  
3 objectives and policies, (5) economic uses, and I don't think the consultant referenced this but,  
4 quote, ensure that --. I'll conclude by stating this here and then I'll turn it back. Ensure that, dot,  
5 dot, dot, coastal related development such as visitor industry facilities and energy generating  
6 facilities are located, designed, and constructed to minimize adverse, social, visual, and  
7 environmental impacts in the coastal management zone. And I can go into those details, but to  
8 respect the three minute policy, I'll end it there.

9  
10 Mr. Hudson: Thank you. Ms. Rivera...you're going to be offered a chance to rebut what Mr.  
11 Buika just said. We're going to finish with public testimony and then I'm going to call you back  
12 up and give you a chance.

13  
14 Ms. Rivera: Thank you.

15  
16 Mr. Hudson: I'm just giving you a chance to take notes so that you can get your thoughts  
17 together.

18  
19 Ms. Rivera: Thank you.

20  
21 Mr. Hudson: Thank you. Is there any other public testimony? Please state your name.

22  
23 Mr. Tom Croly: Aloha Chair. Aloha Commission. My name is Tom Croly and I swear to tell the  
24 truth.

25  
26 Mr. Hudson: Let me ask the question first. Do you swear to tell the truth?

27  
28 Mr. Croly: Yes I do Chair.

29  
30 Mr. Hudson: Thank you very much. Please proceed.

31  
32 Mr. Croly: In, in watching the presentation something struck me that I thought might be relevant  
33 to your considerations here. And that is that they're going to have these batteries, these lithium  
34 ion batteries and it sounded like they were going to be in a container, and it sounded like the  
35 container was going to have fire suppression and all that's good. But do recognize lithium ion  
36 batteries are a major fire hazard. If there's a fire they just explode with fire. So, I just think that it  
37 should be noted if they haven't already to make sure that these containers are not just  
38 separated from other buildings, but these containers are separated from any other combustible  
39 materials which would include ground cover. You don't want this thing going on fire, starting a  
40 fire which would then spread through the winds and so forth. So I think that the location of  
41 those, of those batteries should be very carefully selected so that if there is fire that, that doesn't  
42 spread.

43  
44 I also noted that this hearing is about SMA, the shoreline management, and what the effects of  
45 this project might be on the near shore waters. The description here was that we would  
46 continue to grow grass. I'm not sure how well grass is going to grow once you cover everything

1 up with these panels underneath there. My concern is if the grass doesn't grow well, then would  
2 there be drainage that would, that would wash off into the ocean if we don't have something  
3 growing under it. I thought that what Mr. Buika brought up as far as bringing the grade down so  
4 that there is swell so any water would be contained in there certainly makes sense from the  
5 perspective of the...what's holding the earth in place right now, the grass, I don't think it's going  
6 to be there once you cover it all up with solar panels. So for what that's worth I support what  
7 Mr. Buika brought forward.

8  
9 But I do also want to stress irregardless of what I cite here, the timing of this is of essence  
10 apparently. It would save them 15 percent on their future power bills, so please make a  
11 decision today. I recognize that you have bare quorum and you may have some difficulties all  
12 agreeing, but try to make a decision today. Thank you Chair.

13  
14 Mr. Hudson: Thank you. Is there anybody else that wishes to offer public testimony? Seeing  
15 none, public testimony is closed. Ms. Rivera...would you like to rebut anything?

16  
17 Ms. Rivera: Yes, thank you.

18  
19 Mr. Hudson: Please identify yourself yet again.

20  
21 Ms. Rivera: My name is Gwendolyn Rivera.

22  
23 Mr. Hudson: Thank you.

24  
25 Ms. Rivera: So we would make note that further excavation of the project site for extraction of  
26 sand is not part of the currently proposed action. This would need to be considered as a  
27 separate action and the impacts of such excavation for the purpose of sand extraction have not  
28 been evaluated as part of the current project. UH has evaluated the impacts of the project as  
29 proposed and has issued an Environmental Assessment exemption declaration for the  
30 proposed action. Expanding the scope of the project to do a major excavation for the purposes  
31 of, that Mr. Buika mentioned, as including extraction of sand would add to the...potentially add  
32 to the impacts to the project, and that would need to be evaluated.

33  
34 Furthermore, consultation with SHPD resulted in design of the project in order to minimize  
35 ground disturbance. The drilling of anchors in the ground was removed from the project  
36 because SHPD preferred not to disturb ground accessible in this area as it's a sandy substrait.  
37 The design currently features ballast blocks to respect that and to minimize ground disturbance.  
38 So digging out six-feet under the project area would not be consistent with SHPD's stated  
39 purpose...state of preference, excuse me.

40  
41 The proposed modification to the project of digging out additional ground under it would have an  
42 impact on the project's engineering and drainage plans. It would create significant additional  
43 cost and delay to the university in implementing its renewable solar energy project which as  
44 Mr. Tamanaha has mentioned is an important...an important project for saving money and  
45 expediency would be important in order to prevent delays and getting a good power purchase  
46 agreement rate.

1  
2 Additional impacts could include, you know, moving sand in trucks. That could be a traffic  
3 impact which has, again, not been evaluated in connection with this action. And furthermore,  
4 the Planning Department has reviewed the SMA Use Permit application and has not  
5 recommended this additional approval condition related to sand extraction in its staff report  
6 which has been provided to the Commission today.

7  
8 The project area is in R-2 Residential County Zoning District. Resource extraction is not  
9 allowed as either a permitted use or a special use in the R-2 District. And in addition, lowering  
10 the, the ground by six-feet could impact the university's plans for building future buildings in the  
11 area. So that is what we would say about the proposed modifications or the proposed condition  
12 which Mr. Buika suggested.

13  
14 In response to issues about fire suppression and the landscaping --.

15  
16 Mr. Lowen Okimoto: Hi Commission. My name is Lowen Okimoto, part of JCI Project, project  
17 manager for JCI. In response to the battery question, the lithium batteries we're aware that, you  
18 know, lithium has some hazards with the batteries. It is in a containerized system and it has a  
19 fire suppression system so it's fully enclosed. In the event a fire does breakout there's a fire  
20 suppression system that makes gas basically suffocates the fire. After consultation with the fire  
21 inspector...fire inspector Parish Purdy, he did require that we increase the setback distance  
22 between the battery containers so that if there is an event of a fire, you know, it's not near to any  
23 buildings. We have an increased setback. And also a requirement was that the existing battery  
24 containers be tied into the existing campus wide fire alarming system. In the event that a fire  
25 breaks out the campus would be alerted so that would be my response.

26  
27 Mr. Hudson: Thank you. Commissioners, in regards to time we're going to move right into  
28 discussion. You guys are going to ask the applicant the questions that you want to ask. Kahu  
29 Hill, you get to go first.

30  
31 Kahu Hill: Mahalo Chair. A couple of question. I did hear what you were sharing and I know  
32 James Buika just had suggested a possible condition. I did hear in the presentation that  
33 possibly in the future that this may be moved up, that there might be a building that might be put  
34 there. Maybe it be a parking garage. And this project maybe moved up to a higher elevation in  
35 that same location. Is that, is that what I heard? That's a possibility in the future?

36  
37 Mr. Hudson: Please identify yourself and we are working with time constraints so please be  
38 quickly.

39  
40 Mr. David Tamanaha: I'm Vice-Chancellor David Tamanaha, UH Maui College. So we have a  
41 long range development plan. In our long range development plan ...(inaudible)... 78 acres and  
42 in that parcel there are buildings that are designated. And if I remember correctly there is a new  
43 vocational tech center as well as a physical ed facility out there. So that's correct that in the  
44 long-term plan there is further construction out there.

45

1 Kahu Hill: This project, would this ever be moved up, these panels, these batteries in that  
2 location?

3  
4 Mr. Tamanaha: Moved up meaning on to the roof top?

5  
6 Kahu Hill: Yes.

7  
8 Mr. Tamanaha: If those buildings ever get materialized the thought would be we'd design it so  
9 that we can move it on to the roof top.

10  
11 Kahu Hill: And if that happened and you built those bigger buildings then what Mr. Buika is  
12 suggesting would not be so far outside because you would have to go further into the ground  
13 anyways, is that correct?

14  
15 Mr. Tamanaha: I can't say yay or nay. I'm not an engineer. I'm not sure what kind of impact  
16 building buildings if we dig down and lower the, yeah, site. I not sure what kind of impact that  
17 would have, you know, in terms of our future development of building new buildings.

18  
19 Kahu Hill: Okay, mahalo. And another question I have is on Exhibit-3, Figure-3, it appears that  
20 the installation will occupy the majority if not all of the overflow special event parking. And to my  
21 acknowledged as well you have mentioned the fair, the fair grounds, that the MACC also uses  
22 this. Is that the overflow parking for the MACC as well?

23  
24 Mr. Tamanaha: So in terms of the, the use of that grassy area, the college has about 1,300  
25 asphalt parking spaces. And this is off the top of my head, this is what I remember. There's a  
26 requirement for us to have at least 1,100. There is use, when we looked at the use of that  
27 parking area by our students and our staff, on occasion we do see folks, but it's not because of  
28 necessity. The folks parking there primarily are parking there more out of convenience. They  
29 like to be near where their classes are. They want to get in and out. But when you look at  
30 asphalt parking lot, the big parking lot, there's a lot of spaces there. And even when we...if we  
31 ever materialize back up to 4,500 students again, we feel we've got adequate parking. If we  
32 build new buildings we'd design it where the parking that accommodates that new building  
33 would come with it. There is a parking structure in the long, long plan.

34  
35 Mr. Hudson: Thank you.

36  
37 Kahu Hill: Thank you.

38  
39 Mr. Hudson: Ms. Pali.

40  
41 Ms. Pali: I'll be brief. To the project manager; either one. I did hear why you could not consider  
42 the first testifier's suggestions. However, I didn't hear why...I did not hear from you if you could  
43 validate some of the issues that he brought up. He talked about visual impact. He, I think,  
44 someone else...and there are three issues he brought up. If I could just hear your response in  
45 to how those issues he raised valid versus just why you couldn't consider them that would help  
46 me greatly. Thank you.

1  
2 Mr. Okimoto: I think one of them he brought up was eliminating the visual impacts. We did  
3 consider incorporating a landscape plan around the perimeter of the fence of the array to  
4 incorporate native plants to kind of help mitigate, you know, visual impacts from Wahine Pio and  
5 Kaahumanu Avenue. So that was one of our proposed plans to mitigate the visual impacts. We  
6 consulted with the archaeological department...excuse me, the agricultural department at the  
7 college for native plants. As far as reducing the risk of hurricane, you know, the ballast blocks  
8 have been engineered to account for the weight of, you know, high winds. And the third one  
9 was...the project, the lifetime of the project being affected by ...(inaudible)... being digging  
10 down. I think the main concern with digging down, the project went through an extensive back  
11 and forth with the archaeological department and we, we could not get an approval to use what  
12 we wanted to do with the ground penetrating anchors because of the risks of archaeological  
13 remains in the area and being that it was in sand. So which is why we had to go through the  
14 ballast block approach which was less intrusive. So that's all.

15  
16 Ms. Pali: Thank you.

17  
18 Mr. Hudson: Ms. Pali anymore? Mr. Castro.

19  
20 Mr. Castro: Yeah I just, I just want to make sure the location of the battery pack. Is it the  
21 distance far enough away from any of the other structures and --?

22  
23 Mr. Okimoto: Yes. So the battery container and the site would be isolated from...away from any  
24 campus building. It would be kind of isolated. We have at least a 30-foot setback away from  
25 the fence line, and the fence line itself is, you know, at least a couple of hundred feet away from  
26 the nearest building, the science building.

27  
28 Mr. Castro: And the fire suppression system it's something similar like what they use over  
29 kitchen hoods that smothers the flames?

30  
31 Mr. Okimoto: Yeah. It's a gas, so I think it's like carbon monoxide gas so rather than a sprinkler  
32 system from what I understand it's like a gas that suffocates inside the container.

33  
34 Mr. Castro: Thank you.

35  
36 Mr. Hudson: Mr. Tackett.

37  
38 Mr. Tackett: I have no questions at this time.

39  
40 Mr. Hudson: Kahu Hill.

41  
42 Kahu Hill: You called on me already Chair but I'll say something else. I do think we should look  
43 at the EIS and the, and the timing of this that that comes through.

44  
45 Mr. Hudson: Ms. Pali. Mr. Castro. Mr. Tackett. I have one quick question. The project costs  
46 about \$3 million. The bid ...(inaudible)... about \$250, say a quarter of a million dollars a year,

1 it's going to take you 12 years to pay it back, between 10 ½ and 12 years to pay it back. What's  
2 the life expectancy of the solar panels and is this a viable project?

3  
4 Mr. Tamanaha: The agreement the college has in terms of the construction of this project, we  
5 actually not...we're not outlaying any upfront costs. The, the construction is being financed by  
6 investors, so the investors own all of the PV array system. The college's perspective we're  
7 buying the power at a discount.

8  
9 Mr. Hudson: Okay, thank you. Chair will now entertain a motion. Oh, yeah, maybe we should  
10 get a recommendation first. Department's recommendation.

11  
12 Mr. Fasi: The subject, the subject application complies with the applicable standards for a  
13 Special Management Area Permit found under HRS 205A-26, and Sections 12-202-10 and 11  
14 of Chapter 202, Special Management Area Rules of the Maui Planning Commission. The Maui  
15 Planning Department recommends approval subject to the following conditions. There are six  
16 standard conditions, one project specific condition and that is just so that the UH will coordinate  
17 with SHPD. Therefore the Planning Department recommends that the Maui Planning  
18 Commission adopts the Planning Department's report and recommendation prepared for the  
19 October 9<sup>th</sup>, 2018 meeting as its Findings and Fact, Conclusions of Law, and Decision and  
20 Order, and authorize the Director of Planning to transmit said Decision and Order on behalf of  
21 the Planning Commission. Thank you.

22  
23 Mr. Hudson: Thank you Mr. Fasi. Corp Counsel do you have comment?

24  
25 Mr. Galazin: Thank you Chair. Paul, I just had a quick question. I see that condition three is  
26 that the applicant shall develop the property in substantial compliance with the representations  
27 made to the Commission in obtaining the SMA Use Permit. But that condition six basically says  
28 the exact same thing so would you recommend one over the other?

29  
30 Mr. Fasi: These are standard conditions in every SMA Permit. We probably need to revise the  
31 duplicity. It doesn't harm or do anything to include them both. You can...if you want to include  
32 one over the other, it has no affect.

33  
34 Mr. Galazin: Okay, thank you.

35  
36 Mr. Hudson: Thank you Mr. Fasi. Now the Chair will entertain a motion.

37  
38 Mr. Castro: I move to recommend the Planning Department's recommendation.

39  
40 Mr. Tackett: Second.

41  
42 Mr. Hudson: Discussion?

43  
44 Mr. Castro: I think it's a well, worthwhile project. It's probably something that's been overdue  
45 and I think the sooner they get on it, it will be beneficial to all.

46



1 Mr. Tackett: I'd also like to speak to it. We have a problem with our youth leaving this place as it  
2 is, and anything we can do to, to make it more affordable for our kids to get quality education  
3 right here in the place that we live I think it is something that would be a noble cause. I think as  
4 far as the hurricane wind if it do hit a three or four in a hurricane you're going to beyond what is,  
5 what is, what is expect as to be built, you know, so it's going to, it's going to be rough on  
6 anything. It's going to be rough on everything, upwind, downwind, left, right, you know. Like  
7 everybody should go to...a hurricane safe shelter in that type of scenario. It shouldn't be --. I  
8 don't think there's a lot of structures around that are built to withstand those types of forces.

9  
10 And then as far as what they said about going down into the sand. The sand, if you dig down  
11 into the sand, I think you have a large chance of hitting something that could possibly put a stop  
12 to the project. And I think that the greatest respect for, for the lives that have been in Maui  
13 County before we came, and, and to their, their children, and their children's children, and their  
14 grand-children that are still alive today trying to get an education and survive in this world, I think  
15 that, that...they would approve us making it easier for, for their descendants to have an  
16 education and to, to support their families and to, and to make a living in this place where they  
17 actually come from. So, I'm definitely in favor of it and I appreciate the opportunity to speak to  
18 it.

19  
20 Mr. Hudson: Thank you Mr. Tackett. Kahu Hill.

21  
22 Kahu Hill: I think this is a very good project and very needed for energy. And really thank the  
23 college not only for what it brings to everyone here which is the consciousness in moving  
24 forward and you know what we need on the island...especially towards energy. Mahalo.

25  
26 Mr. Hudson: Thank you. Ms. Pali.

27  
28 Ms. Pali: Yes, I'm excited about the project. I also appreciate the testifiers just coming up here  
29 and helping us with your professionalism of understanding other items. I think as Commissioner  
30 Tackett said, I think they're, all projects are going to have some oppositions and some issues  
31 and I guess the question for us is to determine what are going to be the best benefits moving  
32 forward. And again, there's not going to be a perfect project. And I think for me as a new  
33 planner I don't want us to get caught up in all of the reasons why it wouldn't work. I would like to  
34 stay focused on doing our best to mitigate those issues and move forward in why we can move  
35 forward and progress as a community, so I do stand in favor of this.

36  
37 Mr. Hudson: Any further discussion Commissioners? Seeing none, all of those in favor of the  
38 motion say aye? Aye. Motion carries. Approved.

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

41  
42 **VOTED: To Approve the Special Management Area Use Permit as**  
43 **Recommended by the Department.**  
44 **(Assenting – S. Castro, C. Tackett, A. Hill, K. Pali, L. Hudson)**  
45 **(Excused – L. Carnicelli, P D. La Costa, K. Robinson, T. Gomes)**  
46

1 Mr. Fasi: Thank you.

2

3 Mr. Hudson: We'll take a six minute recess; reconvene at 10:15 a.m.

4

5 *(The Maui Planning Commission recessed at 10:08 a.m., and reconvened at 10:15 a.m.)*

6

7

8 **2. RU LI requesting a Bed and Breakfast Home Permit in order to operate**  
9 **Ruby's Ocean View B&B, a two-bedroom bed and breakfast located in the**  
10 **Interim District at 1367 Kilou Street, TMK: (2) 3-2-020: 052, Wailuku, Island**  
11 **of Maui. (BBWK T2018/0002) (J. Burkett)**

12

13 Mr. Hudson: The Planning Commission is back in session. It is 10:15 hours. Director.

14

15 Ms. McLean: Thank you Chair. Your second public hearing item is a request from Ru Li for a  
16 bed and breakfast home permit in order to operate Ruby's Ocean View B&B, a two-bedroom  
17 bed and breakfast located in the Interim District at 1367 Kilou Street, at parcel (2) 3-2-020:  
18 parcel 52 in Wailuku. And Jared Burkett is the staff planner.

19

20 Mr. Jared Burkett: Hello. Staff planner Jared Burkett. Hearing today is Ru Li's request for an  
21 approval for a bed and breakfast home permit to operate Ruby's Ocean View. The Maui  
22 Planning Commission is the approving authority for this bed and breakfast home permit  
23 because there's an existing B&B operating within 500-foot distance from the lot in which the  
24 B&B is proposed. So this can be seen in Exhibit-6. As of September 19<sup>th</sup>, there are nine  
25 permitted B&B's in the Wailuku-Kahului Community Plan region. The cap for this region is 36  
26 permits. There are also six permitted short-term rental homes in this region and the cap for  
27 short-term rental homes in the Wailuku-Kahului Community plan region is 36.

28

29 There are no request for service related to bed and breakfast home permits. However there is  
30 an open request for service that's related to -- regarding real property tax and they're trying to  
31 straighten out an issue with their assessment. And then there is a closed RFS that's requesting  
32 a permit, just a copy of the permit. And those can be seen in Exhibit-7. The one can be seen in  
33 Exhibit-7 that's open.

34

35 So as far as applicable regulations, Maui County Code, Chapter 19.64.030, Restrictions and  
36 Standards, outlines the requirements and the Department has previewed those requirements  
37 and has found that they are meeting those. I have visited the site myself on July 26<sup>th</sup>, 2018 to  
38 make sure that it's in compliant with the regulations and there isn't anything that was hidden to  
39 our knowledge.

40

41 So there are...if you can see on Exhibit-10, there are opposition letters that have been received.  
42 As of September 21<sup>st</sup> these were mapped out so that you could see the spatial relationships  
43 between that and the subject property. So because it is a large buffer area and you can see  
44 that there are a few that are close by. The rest were spread out further away. Since then we  
45 have also received two more letters of protest. One of the letters of protest is from the same  
46 household that was received before September 21<sup>st</sup>. We also have, since then, we've had

1 some of those letters of protest change to letters of support. Two of those which are seen in  
2 this six letters of support in this extra packet after the applicant had written letters to address the  
3 neighbor's concerns.

4  
5 So now we would like to let the applicants give their, give a presentation regarding the property.

6  
7 Mr. Hudson: Please proceed.

8  
9 Ms. Ru Li: Aloha. My name in Ruby in English. Chinese name Ru Li. I'm from China of course.  
10 Sorry. I think my English so-so, so I am doing this business just to pay the bill and the  
11 insurance and the food. I marry my husband, you know, four years ago in China, so we moved  
12 here about 2016, June 12<sup>th</sup>. So ...(inaudible)... house. I loan so much money from my family so  
13 I need to repay back so I just want to have this business and pay bill and because my husband  
14 almost 70 years old. And he working Home Depot one and half years. And he, he works so  
15 hard it's not good for, for his health. And he had a three ...(inaudible)... surgeries in China. So  
16 don't want he to work too hard for us so that's all. Thank you.

17  
18 Mr. Hudson: Thank you.

19  
20 Mr. Mike Villa: Commissioners, my name is Mike Villa. I'm Ruby Li's husband. We were  
21 married in 2014 in Beijing, China. Before we moved to Maui I was a teacher of Economics and  
22 English in China, and that's how we happen to meet. Before going to China I was a lawyer of a  
23 small law firm. I told Ruby at the time we were married that I planned on staying in China the  
24 rest of life. I liked it. She said no, we're going to America. You choose the place, but we'll go to  
25 America. So having been to Maui more than 30 years ago, I knew this was the place that she  
26 would love. She does love it and we're very happy here. It was the right choice. It's beautiful,  
27 but expensive.

28  
29 As she said we spent a year and a half before we bought the house that we live in on Kilou. We  
30 were in a B&B and a short-term rental and that's our first experience of a B&B. She loved it. It  
31 was friendly and formal, a family like setting. So there she developed her dream of owning a  
32 B&B herself. She, as I think you can tell, even though she may be nervous, she is a great  
33 hostess. She has the strength and personality and conviction that I think will make a very good  
34 owner and host for a B&B.

35  
36 We hired Lisa Starr as our consultant. We worked with her to guide her through the process as  
37 well as Jared Burkett from the Planning Commission. We've invested a considerable amount of  
38 time and money in complying with the Planning Commission's requirements. We want to have  
39 to legal B&B. All you have to do is drive up and down the streets in the morning or in the  
40 evening and you can see a number of illegal B&Bs in the neighborhood. Because of the density  
41 of the area we had to mail out 119 notices and we had some letters of protests, a number of  
42 which surprised me. It wasn't the aloha spirit that I expected.

43  
44 Two of our immediate neighbors support us. The neighbor across the street had initially  
45 opposed this. After we talked to him, he changed in his letter of support with his wife is in our  
46 packet. There's no house behind us so we have support or non-opposition from neighbors on

1 either side and the neighbor directly across the street.

2

3 Another objection was in e-mail from a neighbor three houses down the street. She objected  
4 because she thought we didn't live in the house. We've lived there since January 12<sup>th</sup> and she  
5 didn't realize we lived there. So I've talking to her, she said she would write a letter in support.  
6 We haven't received it, but that was the basis for her objection which really has no basis.

7

8 As for the other objections I think they are understandable. The one Commissioner in the  
9 previous hearing said all projects have some opposition so I expect that. It's understandable  
10 but I don't think we should be penalized for going through the process, complying with all of the  
11 requirements, and then be rejected because there are other illegal B&B's that are the cause of  
12 the noise and traffic, and some of the objections that others have had. Some of the protest  
13 letters say that they object because they think their property values are going down. We didn't  
14 invest substantially in this house in order for our property values to go down well alone our  
15 neighbors. We're not going to allow or do anything that's going to affect property values. We  
16 love the residential beauty, the quiet beauty of the neighborhood. We're not going to allow  
17 anything that's going to impact that negatively. We're only going to rent to one guest at the  
18 time, even though we have two bedrooms. We're only going to rent to one person at a time or  
19 one group at a time, so there really should not be any negligible impact on the neighborhood.  
20 We have house policies that deal with noise, traffic. The noise shouldn't be any worse than  
21 barking dogs and motorcycles that are already in the neighborhood.

22

23 A couple of letters cited our driveway, the steep grade of our driveway. The driveway was  
24 designed, engineered, and approved for that house. Other neighbors have the same driveway.  
25 The only other B&B in the neighborhood, within the 500-foot radius has the same grade on their  
26 driveway. Obviously they were approved. There will be no on-street parking. So I think to deny  
27 our application based upon the fears of neighbors as far as property value, noise, traffic is  
28 simply unfair and unreasonable when we've all complied with all of the requirement set forth by  
29 the Planning Department.

30

31 There's only one other B&B in that neighborhood within the 500-foot radius, so density should  
32 not be an issue. We will continue to be good neighbors. We'll obey the law and pay our taxes.  
33 We trust you to make a decision based upon the law, not opinions and fears. My wife's dream  
34 is in your hands and we've done everything we could. Thank you.

35

36 Mr. Hudson: Jared, does that conclude the presentation? Thank you.

37

38 Mr. Burkett: Yes it does.

39

40 Mr. Hudson: We're now going to open up the floor to public testimony. Mr. and Mrs. Lu keep in  
41 mind to takes notes. You'll be offered a chance to come back up. Do you understand? Okay,  
42 first in the batter's box, Mr. Long. Ms. Long, Gayle Long. Sorry.

43

44 Ms. Gayle Long: My name is Gayle Long, and I live at 1412 Kaka'e.

45

46 Mr. Hudson: Okay. Hi Ms. Long.

1  
2 Ms. Long: Hi.

3  
4 Mr. Hudson: Do you swear to tell the truth?

5  
6 Ms. Long: I do.

7  
8 Mr. Hudson: Thank you.

9  
10 Ms. Long: Okay.

11  
12 Mr. Hudson: Please proceed.

13  
14 Ms. Long: All right, thank you Commissioners, staff and Jared for allowing the testimony here  
15 today. I just want to give you a quick background of why I'm here. I've been in the Ocean View  
16 Estates Subdivision for over 20 years. Not a matter of a few months. The reason my husband  
17 and -- he's deceased now -- bought in that subdivision originally is because of the CC&R's that  
18 actually ran with the property. I don't know if you guys have a copy of those or not, but they're  
19 distributed to every homeowner and basically just a quick --. Okay. Well, anyway real briefly  
20 we'll get a copy to you, but I do have on there, it's actually a legal document that runs with the  
21 deed and they clearly say that the spirit of the subdivision and the intent of the subdivision is to  
22 be for family use only. And it says basically on the very first page where is in order to develop  
23 and create a proper subdivision for residential purposes, and to enhance and protect the value,  
24 desirability, and attractiveness of the subdivision. It is a desire to establish certain restrictive  
25 covenants relative to the use of the lots in that subdivision. That particular, and I won't, I won't  
26 read the entire thing, but basically it restricts the use of the deed and the homeowner's use of  
27 that property to single-family. I realize that you guys do not enforce CC&R's, but it is a civil  
28 issue that can be enforced. The last page-5, it says for enforcement, for any breach or violation  
29 or threaten violation of any of the restrictive covenants contained herein, the owners or any  
30 other lots in this subdivision shall have a ready remedy against the delinquent or offending party  
31 or parties. And then it goes on to say and recourse with the attorney, fees, et cetera.

32  
33 So basically the bottom line is everybody that bought in that subdivision in the last 20-years that  
34 I know of bought in a single-family subdivision for residential, quiet use. Over the years the  
35 traffic in that subdivision has increased substantially. I live on a corner lot on the main road,  
36 Hoana, which where egress and ingress. And the traffic now starts with motorcycles, cars, et  
37 cetera as early as five o'clock in the morning and that's a newer development over the years.  
38 But the point is nobody that I know that bought in that neighborhood, none of our neighbors in  
39 our quiet street anyway bought to be in a hotel or a commercial zoned area. If so we would  
40 have moved to Kihei and then clearly aware of the, you know, liabilities for personal use  
41 whatever. But I do have another list of 10 people that I would like to...I can either give them to  
42 you. I would like to add to the list of objectors. They have already included their name and  
43 couldn't come here because of the time of this meeting and the fact that it would interfere with  
44 their work schedule. So I don't know what to do with those 10 names.

45  
46 Mr. Hudson: You can give that list to Jared.

1  
2 Ms. Long: Okay. You might not be able to read it. But anyway. So I'm asking the Committee to  
3 please respect the spirit of the subdivision and the fact that everyone that actually bought a lot  
4 in that subdivision implicitly agreed to the restrictive covenants and we're asking not have you  
5 guys make the traffic any worse, nor increase to the parking issues, et cetera, that have evolved  
6 over the years. So I'm glad that the perspective bed and breakfast owner noted that, you know,  
7 the traffic had gotten considerably worse.

8  
9 Mr. Hudson: It's been three minutes.

10  
11 Ms. Long: Okay. All right. So anyway please don't approve this permit application.

12  
13 Mr. Hudson: Hold on a second Ms. Long. Go ahead.

14  
15 Ms. Pali: Thank you. I have a question for you. I know that CC&R's are really important to the  
16 nature of each of the different subdivisions. What is the association doing with the current  
17 owner that's already been approved and how else are you guys enforcing this quiet  
18 neighborhood because I also know that boards are only as strong as they are with follow  
19 through and enforcement.

20  
21 Ms. Long: Yeah, we don't have an active association unfortunately so that's why I went back to  
22 the CC&R's. And they are legally, a legal, I guess document that allows each individual owner  
23 to have a civil issue with any violation. But it's essentially a contract with every homeowner,  
24 with every other homeowner purchases. And I have talked to legal counsel and he said it is  
25 definitely a viable document and able to be enforced.

26  
27 Ms. Pali: And a follow up question. Do you know of anyone attempting to use that and following  
28 through with the current approved permit that's allowing?

29  
30 Ms. Long: I didn't even know there was an approved permit because I didn't get a letter nor do I  
31 know where that is. And that's part of the problem with this process. If you don't drop by the  
32 sign and you don't get a letter then you're not aware of the issues that are going on.

33  
34 Ms. Pali: Do you feel that also would be because if there's an unawareness it might be that this  
35 person is doing a good job at keeping the quietness of the neighborhood and being a good  
36 neighbor?

37  
38 Ms. Long: How would I know? You know, all I know --

39  
40 Ms. Pali: But no complaints so far?

41  
42 Ms. Long: I don't even know where it is so I wouldn't --

43  
44 Ms. Pali: Well that could be a good thing too. Thank you.

45  
46 Ms. Long: Well, I also work. So unlike a lot of the people in the neighborhood that go up and

1 down, I don't have a lot of time to do other activities on other streets. I just know what's going  
2 on in my area because I got the letter.

3  
4 Mr. Hudson: Thank you. Next up, Debra Hoffman.

5  
6 Ms. Debra Hoffman: Aloha. I'm Debra Hoffman.

7  
8 Mr. Hudson: Do you swear to tell the truth?

9  
10 Ms. Hoffman: Yes sir. I swear to tell the truth. We live at 1312 Kilou Street.

11  
12 Mr. Hudson: Thank you.

13  
14 Ms. Hoffman: Okay. I am also a 20 year resident at Ocean View Estates and I am opposed to  
15 having vacation rentals in our small neighborhood. I'm also experienced in vacation rental  
16 management as we owned a vacation rental for seven years here in Maui. It was a legal  
17 vacation rental in a vacation area in Maalaea. It was one of the condos. There's many legal  
18 rentals for vacation people in vacation zoned areas, and many of them are vacant many weeks  
19 of the year. So there isn't a shortage of vacation rentals for people. I don't think we need to  
20 provide what was in the application for a B&B what they call an alternative vacation experience  
21 at the expense of residents. Being in a neighborhood is not really an alternative vacation  
22 experience. You're in a neighborhood with people who live there. Tourism is very important to  
23 the island. I've worked in areas here on the island that caters to tourist but do we need to bring  
24 that into our subdivision where we live and work?

25  
26 Now, rules. I managed our vacation condo myself. You can have all the rules you want, but the  
27 guests usually don't even read them much less follow them. Yes, they are onsite. We also  
28 lived on island. People just don't pay attention. You can give them a very clear list and they still  
29 ask you a million of questions of all of the information that you gave them. And it doesn't mean  
30 that they comply with that. We constantly had problems with other people parking in our parking  
31 space at our condo. So people just don't necessary pay attention. They're on vacation, they  
32 want to have fun, they're not thinking about being responsible. They're thinking about having  
33 their vacation. So you can't control other people's behavior. Otherwise you're going to have to  
34 go out there constantly telling people you can't do this, you can't do that. I don't think that's  
35 really going to be a good experience for guests.

36  
37 Noise. Quiet hours are from 9:00 p.m. to 8:00 a.m. I don't know how those can be enforced  
38 when guests' arrivals can and do occur after 9:00 p.m. There's many people who fly in from the  
39 mainland from different locations who arrive late. They arrive at all hours late because they may  
40 have a delay in their flight or their flight gets in late. There's also people who depart for late  
41 flights. Those people are not get there or arrive at 11 o'clock at night. They're going to make  
42 noise and there's people who have to go to work so there's no way to control that.

43  
44 Mr. Hudson: Please conclude.

45  
46 Ms. Hoffman: Okay. Anyway, there will be noise, traffic and we as the taxpayers oppose this

1 business activity in our neighborhood. The benefit to one taxpayer, one new taxpayer should  
2 not outweigh the negative effects to many long term taxpaying working residents.

3  
4 Mr. Hudson: Thank you. Next testifier would be Mr. David Hoffman.

5  
6 Mr. David Hoffman: David Hoffman.

7  
8 Mr. Hudson: Do you swear to tell the truth?

9  
10 Mr. Hoffman: I do.

11  
12 Mr. Hudson: Thank you.

13  
14 Mr. Hoffman: Thank you. I too live at 1312 Kilou at Ocean View Estates neighborhood. I've  
15 given a lot of thought regarding today's meeting. It's never fun to take a stand against a  
16 neighbor. I don't know this neighbor. But besides the typical concerns regarding parking and  
17 noise there are other issues. My wife and I moved to Ocean View over 20 years ago to escape  
18 the visitor industry both of which we've worked in. It is our domicile away from businesses. The  
19 internet did not exist at that time. The entire country is wrestling with this issue, ...(inaudible)...  
20 neighbor versus neighbor. Just because a new technology makes new ways of making money  
21 does not mean we must allow everything and everything. Anything and everything. It's a  
22 quality of life issue. New legislation is being considered throughout the state. Why not wait until  
23 firmer fair policies are established? Even though our homeowner's association is dormant,  
24 CC&R's required by purchase contracts. While you're not obligated to consider CC&R's, you  
25 should. Ours specifically stated businesses were excluded from this neighborhood. The vision  
26 of this quiet neighborhood specifically was not designed for the visitor industry. Visitors typically  
27 are not quiet. If the applicants want to enter the visitor industry then they should buy a condo in  
28 an H1 area. Otherwise rent out rooms on a long-term basis to pay bills. Maui is not in need of  
29 more hotel rooms, but more rooms for residents.

30  
31 For some reason our neighborhood is zoned interim as opposed to R1, but in practice it really is  
32 an R1. The zoning definition of interim specifically states to prevent certain uses that would be  
33 detrimental to existing users. A B&B is a visitor business not consistent with a sleeping  
34 neighborhood. You in essence are changing our zoning to a limited H1. Please do not. B&B  
35 Permits should be taken into consideration with the entire layout of a specific property. There's  
36 an existing B&B at 1306 Hiahia and it has a separate detached ohana with a separate entrance  
37 on Lower Waiehu Beach Road with ample off-street parking causing virtually no impact on the  
38 neighborhood. This property in question was not designed as a hotel. Two sets of visitors  
39 checking in and out right in plain in audio and visual sites of many neighbors will be detrimental  
40 to existing users. There's another application at 1235 Kilou Loop is pending. My thoughts are  
41 the same for this permit. These properties are simply houses on a street not like -- not park like  
42 settings with ample space. The parking plan is totally inadequate. Parking on a slanted  
43 driveway is impractical especially for older people. They will end up parking on already  
44 overcrowded street regardless of the naive statements by the applicants that they can enforce  
45 rules before they are broken. Additionally anyone who has experienced -- anyone who have  
46 experienced with double parking cars will know that unless others have duplicate sets of keys,



1 cars will be blocked creating more in and out traffic shuffling cars around as well as emergency  
2 safety issues if the car is blocked in. Two rooms means two sets of visitors which means more -  
3 -

4  
5 Mr. Hudson: Please conclude.

6  
7 Mr. Hoffman: I've got about 20 seconds max here please. Two rooms means two sets of  
8 visitors which means more car alarms, loud talking, suitcases being loaded and dragged over  
9 cement, and increased traffic will come with your approval. I have no problem with anyone  
10 making money off of the visitor industry, but just now, not at our expense. Keep it in a visitor  
11 area. You have received many letters of protests, very few of support. This alone should throw  
12 a ...(inaudible)... of caution regarding this permit. Please don't even issue a provisional permit.  
13 We will find ourselves back here next year complaining about the exact same thing.

14  
15 Mr. Hudson: Okay, thank you Mr. Hoffman.

16  
17 Mr. Hoffman: Thank you.

18  
19 Mr. Hudson: Next speaker Ms. Lisa Starr.

20  
21 Ms. Lisa Starr: Good morning Commissioners. Thank you for your time. As the consultant to  
22 the --

23  
24 Mr. Hudson: Please identify yourself.

25  
26 Ms. Starr: Sorry, Lisa Starr.

27  
28 Mr. Hudson: Hello Lisa. Do you promise to tell the whole truth?

29  
30 Ms. Starr: I do. I do promise.

31  
32 Mr. Hudson: Okay please proceed.

33  
34 Ms. Starr: As the consultant assisting the applicants with their application I would like to  
35 comment that they were extremely diligent and impeccable in all aspects of getting through the  
36 checklist and the permit process. As -- and I don't need to really address anything having to do  
37 with their application because Jared and the applicant have already addressed all that as far as  
38 being compliant with the regulations and the ordinance. But as an individual I would like to ask  
39 that the Commissioners here who are going to make the decision about this application that  
40 they do heed the spirit of the intent of the Commissioner's review. In my understanding as I  
41 recall when the ordinance was drafted it was --. The reasons for an applicant to be triggered to  
42 a review by the Commissioners was primary to have a second review of the density and to  
43 assess whether the density was getting to a level that should be a concern. Otherwise the  
44 administrative approval within the Planning Department was adequate.

45  
46 I happened to look up to see how many-- about the density. Is this an issue? I'm fully aware of

1 the opponents and their concerns, but the density there's one as it's been mentioned within 500  
2 feet. I actually did an expanded area of 2,000 feet and there's only one B&B and one STRH  
3 within 2,000 feet radius of the property. So density really isn't an issue. Certainly not  
4 permitted...operations. There may be some non-permitted ones which I obviously not going to  
5 address.

6  
7 It's my hope that...they can be assessed on the merit of their application and that they wouldn't  
8 be denied based on the...opinions, personal views, resistance to tourism, and other ideas that  
9 have been brought before you. That that to me is not a fair way to assess them. And I know  
10 you, your Commission has been well informed and trained by Corp Counsel about how to  
11 evaluate applicants, and I want to just trust that you do follow their directions on how to be the  
12 best Commissioners in assessing a fair applicant's application. I appreciate that. Thank you.

13  
14 Mr. Hudson: Thank you Ms. Starr.

15  
16 Ms. Starr: Any questions? Thank you.

17  
18 Mr. Hudson: Go ahead. Ms. Starr?

19  
20 Ms. Pali: Hi. I have a question for you. I believe the reason why there might have been rules  
21 placed aside for these kind of things is because we do want both allow these types of things, but  
22 also sort of support certain neighbors and keep the integrity of the neighborhoods to protect the  
23 working families from being turned off. And I think, although, there might be rules that clearly  
24 have been followed the voice of the neighborhood in general and its integrity is important. So  
25 what's your opinion regarding the majority of these complaints? Do you see any ...(inaudible)...  
26 in them at all and what would be your response?

27  
28 Ms. Starr: Thank, thank you for that. I've said many times earlier on with people about why  
29 there should be so many restrictions on vacation rentals and B&Bs that were there to be  
30 allowed a proliferation. Soon you wouldn't see school buses driving down the streets anymore  
31 because who wouldn't want to try to make more money off of their property and apparently have  
32 less to give from having visitor occupants than long term occupants which we all know can be  
33 problematic. I know -- I've been in this neighborhood and these applicant, and I thought it was  
34 kind of amusing that they were one objection letter made a claim that they didn't even live there.  
35 That's how quietly they live there that they were thought to be not even occupying their own  
36 home.

37  
38 As far as the objections, the idea of bringing tourism about, I think they've addressed,  
39 adequately addressed the traffic, and as does the ordinance and the criteria for being approved  
40 that the sound stipulations, the traffic, and offsite parking stipulations. Onsite, I should say.  
41 Would their quiet little two room B&B appreciably change the neighborhood? I can't imagine  
42 that it really would. These are very conscientious people and I don't think within 500 feet to  
43 have two B&B is -- would appreciably change the neighborhood. And I don't believe that the  
44 impact ...(inaudible)...

45  
46 Mr. Hudson: Okay, thank you.

1  
2 Ms. Starr: -- would be too negative.  
3  
4 Mr. Hudson: Thank you. Okay next in the batter's box, Mr. John Brady.  
5  
6 Mr. John Brady: Aloha Commissioners and the Board.  
7  
8 Mr. Hudson: Do you swear to tell the truth?  
9  
10 Mr. Brady: I shall.  
11  
12 Mr. Hudson: Thank you. Please proceed.  
13  
14 Mr. Brady: Yeah. Thank you. I am actually the direct neighbor of the -- Mike and Ru's proposed  
15 bed and breakfast, and I find them to be wonderful individuals. And one thing that they brought  
16 to my attention is that Ru is cultivating a business from China who she could then interpret our  
17 wonderful language of English to them and show them beautiful Hawaii and provide a service to  
18 the Chinese culture that not everybody offers. So I saw that being a positive for Hawaii and the  
19 community of Hawaii. I also had a vacation rental for 12 years on the County of Maui, and  
20 served on the association board for over 12 years for a condominium complex of a 160 units.  
21 When we bought our place --. Well, we got married on the big island 26 years ago, and said  
22 someday we'll live in Maui or Hawaii, and it took me 26 years to get here. And it wasn't just for  
23 the community itself and the beauty, but also the beauty of the people and the aloha spirit that  
24 I've received every time I came over to the Hawaiian Islands, and enjoyed the culture and the  
25 people. When we bought our place three and half years ago we rented it out for about a year  
26 and a half, and when I purchased my home there was no CC&R's given to me. There was no  
27 knowledge. There's never been any notification of any board meetings. There's never been  
28 notification of rules and regulations and bylaws. There's never been any meeting minutes given  
29 to me, what's on the table, what needs to be voted on. To me there was no association dues  
30 and no CC&R's. And this was just brought to my attention in this meeting today and I find it very  
31 alarming that the association hasn't been more in our community.  
32  
33 As I bought in Ocean View Estate I wanted an ocean view and we had a neighbor directly  
34 across from me who was allowed to, you know, plant full grown palms trees that now I have a  
35 garden view not an ocean view. So if there is an association, to me it certainly isn't doing their  
36 job or doing any kind of work for the community.  
37  
38 You know, I find right next door one or two visitors now and then, I see zero or no impact on our  
39 neighbor. And, you know, I welcome the spirit of free enterprise, and for them to want to make  
40 a living honestly, by the book, paying their taxes and living respectfully in our neighborhood, I  
41 support that. Thank you for your time.  
42  
43 Mr. Hudson: Thank you very much.  
44  
45 Mr. Brady: You're welcome.  
46

1 Mr. Hudson: Next is Diana Brady.

2

3 Mr. Brady: She had to ...(inaudible)...

4

5 Mr. Hudson: I'm going to open the floor up. Anybody want to offer testimony on this agenda  
6 item?

7

8 Mr. Tom Croly: Aloha Chair. Tom Croly.

9

10 Mr. Hudson: Do you swear to tell the truth?

11

12 Mr. Croly: Indeed I do.

13

14 Mr. Hudson: Thank you. Please proceed.

15

16 Mr. Croly: I don't know the applicants. I don't know this application. I haven't been involved in it  
17 in any way. I just met them here. However one thing that I, that I do pay close attention to is  
18 what illegal uses are taking place in Maui County. And I make it a goal to try to help, you know,  
19 make the uses that are made only be legal ones. What I note in the most recent RFS's is that  
20 on this very street there's three properties that have recently been noted in the RFS's for  
21 potentially, allegedly making short-term rental uses. I didn't hear anyone make any comments  
22 about them, but I would not want to be seceding the demand of the, of the market to someone  
23 who's doing it illegally, and deny the opportunity for someone who is trying to do everything right  
24 legally, the opportunity to do that.

25

26 What I heard the applicant say here is that he's going to have one guest, or one group of guests  
27 at one time that would probably just have one car at a time. One of the RFS's notes that the  
28 person says "free street parking." And everyone should know and I know that the Chair knows  
29 who's a former police officer that overnight street parking isn't allowed in Maui County. So  
30 whether, whether you're making that street parking as a resident or whether you're making that  
31 street parking as a visitor that's not allowed. These folks would have a condition that would say  
32 that guest must park in the driveway and not on the street. If these guests, if these folks don't  
33 keep to that condition, then the Planning Department has the opportunity to revoke this permit.  
34 And I would encourage them to do so because the conditions of these permits were very  
35 carefully thought out by the, the Maui County Council when this ordinance came about. And  
36 they came up with the conditions for these permits as to make sure that these uses would not  
37 be making the impacts that some fear might be made on the neighborhoods.

38

39 So I would encourage you to give these folks the opportunity to have this permit and make sure  
40 that they don't impact their neighbors. And if they do and there's a problem, then I would  
41 support revoking the permit. Again, I have nothing to do with these, these folks other than to  
42 bring you this experience of mine and this information about the RFS's of illegal uses taking  
43 place on their street. Thank you.

44

45 Mr. Hudson: Thank you Mr. Croly. Is there anybody else that would like to speak to the agenda  
46 item? Seeing none, public testimony on this agenda item is closed. Commissioners, discussion.

1 Oh, I'm sorry, I forgot. Mr. and Mrs. Lu, rebuttal to what everybody said. I'm sorry.

2  
3 Mr. Villa: Just briefly. Thank you for the opportunity to rebut. The only thing I would say as far  
4 as CC&R's, we were not aware of the CC&R's. We asked about an HOA. They said there was  
5 no HOA. There's no -- and no notice, no meeting, no dues, no board of directors that we're  
6 aware of so we weren't aware of those. Again, we would ask for your positive approval of my  
7 wife's application. Thank you.

8  
9 Mr. Hudson: Thank you kindly. Commissioners, we're going to open up for discussions for  
10 Q&A. Mr. Castro we'll start with you.

11  
12 Mr. Castro: Actually I just had one question for one of the speakers.

13  
14 Mr. Hudson: ...(inaudible)... Ms. Long, please identify yourself again.

15  
16 Ms. Long: Gayle Long and I have a business, Long Financial Services. I've been here 20 years,  
17 almost 30.

18  
19 Mr. Castro: My question to you, you said you had 10 additional names?

20  
21 Ms. Long: Yes, and I scratched them. I'm going to provide those to you guys. I have provided  
22 them, but I made a clear copy. It's on a spreadsheet.

23  
24 Mr. Castro: Do you have testimony from those people?

25  
26 Ms. Long: Actually those people have told me verbally, but they would be able to go on record  
27 as objecting to this permit application.

28  
29 Mr. Castro: So there's nothing from them in writing?

30  
31 Ms. Long: No, they had to work. Yeah. I mean I do too, but I'm willing to ...(inaudible)...

32  
33 Mr. Castro: Okay, thank you.

34  
35 Ms. Long: Yeah.

36  
37 Mr. Hudson: Mr. Tackett.

38  
39 Mr. Tackett: I've got a question for you Ms. Long. Is your house located within the 500 feet?

40  
41 Ms. Long: Yes.

42  
43 Mr. Tackett: Which one, which one is it?

44  
45 Ms. Long: Well, I mean, I got a letter, so I assume it is. 14 -- I'm 1412 Kekae. At the corner of  
46 Kekae and Hoana, and I'm in a direct path of all entrance and exits for that subdivision except

1 for the very bottom one that clears out of the beach road, so --

2

3 Mr. Tackett: Are you on the, the Kihei side or you on the Kahakaloa side of --?

4

5 Ms. Long: Well, I'm neither actually. I'm on the even side of the street. Let's see, the ocean  
6 side and on that corner of Hoana where the traffic goes by and my house is right there on the  
7 corner. You should be able to see it...if you have a map.

8

9 Mr. Tackett: That's my --

10

11 Ms. Long: Okay.

12

13 Mr. Hudson: Kahu Hill.

14

15 Kahu Hill: One more question Gayle. Okay, just to be clear, so do you believe that this  
16 commercial B&B would change the character of the neighborhood?

17

18 Ms. Long: I believe the character of the neighborhood is already changing, and what I don't  
19 want --. It seems to me from the people I've talked to and from what I've seen in the  
20 neighborhood is the illegal, the illegal units not, you know, not counted in this particular  
21 application. That the neighborhood is already a victim of substantial traffic and the County's  
22 inability to stop illegal TVR's whatever rentals. I'm asking not to comply with the spirit of the  
23 neighborhood not necessarily the fact that it's a legal rental or not. My, and if it's 500 feet, be  
24 that it's the second one that maybe the answer to the issue right there. I guess my concern is  
25 that there's not that many quiet neighborhoods in Wailuku anyway. And, at some point the  
26 people that live and work in Maui County have to be able to count on their governing bodies to  
27 help them live the life that they thought they were going to live when they bought into a  
28 neighborhood and not because of extra traffic, extra this, extra that. And the noise, et cetera,  
29 that to me that's not a big of an issue obviously because that unit is not close. But, I do know  
30 that across the street they've had illegal rentals, et cetera, and just know that there's a lot more  
31 traffic because of the additional people that are already abusing the privilege. Does that mean  
32 that people shouldn't have the privilege? Not necessarily. But at least enforce the sections that  
33 are applicable to the law, or at least make sure the neighborhood isn't already suffering is all I'm  
34 saying, and it is. Thanks.

35

36 Kahu Hill: Mahalo.

37

38 Mr. Hudson: Do you have one Ms. Pali?

39

40 Ms. Pali: Ms. Long, thank you for your testimony. Just a couple of clarification questions. So  
41 the 10 people that you mentioned, you have an additional list. Can you confirm that all 10 of  
42 those are different households, and also within the 500 foot radius in the neighborhood.

43

44 Ms. Long: Those are basically --. I don't know if they're 500 feet. Most of them probably are  
45 and I'm not sure what households. I think three, maybe, are married, I'm not sure.

46

1 Ms. Pali: Okay, so 10 might look more like three and then four? Okay.

2

3 Ms. Long: But I've also got calls out and I haven't gotten a response because I just got the letter  
4 actually. I didn't know what it was so I denied the first time, so it just came. But I haven't -- I've  
5 actually got calls out to a number of people that have told me that they would follow up and  
6 commit.

7

8 Ms. Pali: So then I have a hypothetically question, Corp Counsel, if that's legal. If the County  
9 would be able to crack down better on all the illegal activities that's currently going on in your  
10 neighborhood which you've already testified is already sort of upsets the neighborhood. Would  
11 you have a different opinion on this applicant specifically?

12

13 Ms. Long: On this specific applicant because the rules are already established with the 500 feet,  
14 I would fall back on what the County Planning Commission has already carved out as part of the  
15 acceptance or rejection standards. So if the County has carved out the rules, that's what should  
16 be obeyed. And what I'm saying is regardless of whether or not the people that have received  
17 CC&R's there's still a legal part of the division, subdivision.

18

19 Ms. Pali: Thank you for your honesty.

20

21 Ms. Long: Thanks.

22

23 Mr. Hudson: Mr. Castro, we're back at you.

24

25 Mr. Castro: Back at you. I have no further questions.

26

27 Mr. Hudson: Thank you. Mr. Tackett.

28

29 Mr. Tackett: One last time. So what I thought I heard you say is that if it weren't for the negative  
30 impacts that are already happening in your neighborhood that you might have a different  
31 thought than you are currently? Is that what I understand?

32

33 Ms. Long: Well, I'm not sure I understand --. Well, let me say what I think and then hopefully  
34 that will answer your question. When we bought as, I mentioned before, in this subdivision it  
35 was single-family residence, period. If the Planning Department again do approve regular  
36 commercial entities in that subdivision it would change the subdivision for me as a resident, and  
37 I would probably feel like I should move...at some point. Because I, I work New York hours.  
38 I've been a pretty good citizen for the County, but I've got to have some confidence that the right  
39 thing will be done as far as what is supposed to be a residential subdivision as designed by --

40

41 Mr. Hudson: Thank you Ms. Long. Thank you. Kahu Hill. Last run, last chance.

42

43 Kahu Hill: Last question, last statement?

44

45 Mr. Hudson: Last chance. Kahu?

46

1 Kahu Hill: I do have one concern. Do I state it?

2

3 Mr. Hudson: No, it's more of a question right?

4

5 Kahu Hill: More of a question.

6

7 Mr. Hudson: No? All right, very good. We're going to hear the recommendation, we'll have  
8 more discussion and then we'll do that. Recommendation please. Oh, there he is.

9

10 Mr. Burkett: Staff planner Jared Burkett. So the Department has determined that this  
11 application does meet the requirements that are presented in Maui County Code, 19.64.030,  
12 restrictions and standards for the bed and breakfast ordinance. So however due to the  
13 concerns and the number of protests, we are making no recommendation. We are asking that  
14 the Planning Commission determines that recommendation or that decision. However if you  
15 choose to -- choose to approve this bed and breakfast rental application, we suggest that it be  
16 valid be one year so that will give time for them to prove themselves and see how it works out  
17 with community, and then it could be determined if there would be an extension. And then it  
18 also be approved with the standard conditions that we typically would recommend. And then we  
19 also would suggest that if you do approve that this, this recommendation staff report be adopted  
20 as the Department's -- as the Finding of Facts, Conclusions of Law and Decision and Order.

21

22 Mr. Hudson: Thank you Jared. Okay Commissioners, any discussion? Kahu?

23

24 Kahu Hill: I think it's great you guys are going through the process and that's important. I have  
25 concerns based on the number of the opposition letters by the neighbors granting this  
26 application that it would change the character of the neighborhood. We didn't talk a lot about it,  
27 but I read about it and the difficulty about implementing the parking plan, how that would look,  
28 also the safety of the children, and...no support or not much support to have a commercial  
29 business in this residential neighborhood. Mrs. Ru Li when she came and spoke said that she  
30 wanted this home as a business, and didn't speak of it first as a home or to share that, and I  
31 think that it would be a good rental as well to be in this neighborhood. It seems like it was  
32 zoned this way and I believe it would change the character of the neighborhood to allow  
33 commercial business there.

34

35 Mr. Hudson: Thank you Kahu Hill. Ms. Pali.

36

37 Ms. Pali: I have a question for the planner. So you -- so I understand, for clarity, the  
38 Department is not giving the recommendation.

39

40 Mr. Burkett: Correct.

41

42 Ms. Pali: However, I would like to ask you, has the Department find, has the Department  
43 resulted in a conclusion that you believe the applicant at least has met whatever applicable  
44 guidelines and rules at this time?

45

46 Mr. Burkett: Yes, they've met the requirements. And if you have any questions regarding



1 CC&R's I would defer to Corporation Counsel because we don't consider those when make our  
2 decision, or during our review.

3  
4 Ms. Pali: Okay, great. And then I would just --.

5  
6 Mr. Hudson: ...(inaudible)...

7  
8 Ms. Pali: That's it.

9  
10 Mr. Hudson: Mr. Castro. Any other discussion?

11  
12 Mr. Tackett: So the discussion I have for this particular subject is it seems like that the  
13 neighborhood is against it...in a substantial manner. The area I grew up in, I used to surf that  
14 spot before any of you guys' houses were on that mountain side, you know. We have pictures  
15 of it, it was cool. But I think, I think the applicant that is before you, I think this is probably one of  
16 your best chances of getting somebody that's, that's very quiet. I think if you're going to get  
17 quiet, it's going to be under this, under these guidelines. It's going to be a bed and breakfast,  
18 and it's going people similar to, to, to what you have before you today. But with the, with  
19 substantial amount of people in the neighborhood going against it, I don't, I don't feel  
20 comfortable. Although I do think that they are definitely quality candidates for this particular type  
21 of venue. I'll probably be going...as opposed to it because of the neighborhood coming against,  
22 coming out against it in the fashion in which it has.

23  
24 Mr. Hudson: Thank you Mr. Tackett. Corp Counsel please.

25  
26 Mr. Galazin: Thank you Chair. I just wanted to make a couple of comments for to make sure  
27 that all the Commissioners are on the same page. As it pertains to CC&R's, within 19.64.030  
28 (i), in permitting bed and breakfast homes, *"neither the Department nor the Commission shall be*  
29 *bound by any private conditions, conveyance, or restrictions upon the subject parcel."* So you  
30 are not to consider that. It's a private matter. It's a civil matter between neighbors. If and when  
31 they do have a legal recourse that's when they can take it into account. But that is not  
32 something you can take into account as a Commission.

33  
34 Secondly, I know that when you review a lot of permits, you review STRH permits, you review  
35 B&B permits, a lot of times they seem like similar types of features. Well, they do have very  
36 specific requirements that differ in one substantial way. For an STRH permit, short term rental  
37 home, the number and substantive of protest letters received from the community is something  
38 that you consider as one of the criteria. For Bed and Breakfast Permit that is not included within  
39 the criteria. What you would look at is in subsection (m) of 19.64.030 it says *"No bed and*  
40 *breakfast home shall create any impact greater than those theretofore existing in the district and*  
41 *shall conform to the character of the neighborhood."* You need to disregard whether or not  
42 there are any illegal rentals there. You have to focus on the application, the fact that there is  
43 one within the 500-foot radius, and I think it's right at 500-feet, and...if there's enforcement  
44 actions needed to be taken by the Department that is a separate matter. But you need to kind  
45 of box yourself in, look at this application, and determine in and of itself is this two-bedroom  
46 application as represented by the applicant because they are bound by the representations they

1 make here today, is that in and of itself going to substantially have an impact in the  
2 neighborhood. And if you choose to, if you're choosing to not support the application, I would  
3 ask you make it very clear the basis for why you are saying that. And, and if you need to look  
4 through the staff report for the citations that would be most helpful in coming up with the D&O.  
5 So that would be --

6  
7 Mr. Tackett: Have a question, a question, to you. So are you saying the letters and the, and the  
8 testimonies, again, from, from residents within that 500 square feet do not apply because of this  
9 bed and breakfast type of permit as opposed to an STRH?

10  
11 Mr. Galazin: Chair?

12  
13 Mr. Hudson: Go ahead.

14  
15 Mr. Galazin: My only, my only clarification is that the nature and the substance of protest letters  
16 you receive is a specific criterion on when you are looking at STRH permits. They are not a  
17 specific criterion when it comes to bed and breakfast permits. It may speak to whether or not  
18 the opinion of that, this particular bed and breakfast application will have a significant impact on  
19 the character of the neighborhood. You could consider them certainly for evidence of that, but  
20 these are, you know, this is opinion. You have to understand the nature of it, and take it into  
21 consideration and weigh that versus what is being proposed and recommended as a, as a one-  
22 year permit that would not allow overnight parking. You know, it's certainly within your purview  
23 to grant or deny. I just ask that you keep these, these issues in mind because the STRH, you're  
24 used to seeing those and seeing these letters and relying on them. But the B&B ordinance, it is  
25 slightly different. You can, you can rely on those letters, but you understand that's an opinion as  
26 to what the character of the neighborhood is as to what this one B&B would do, this one two-  
27 bedroom B&B would do to change the character of that neighborhood in respect with anything,  
28 any other illegal activities that may be going on.

29  
30 Mr. Tackett: So with that being said...I believe that that my previous stance was incorrect. I'm  
31 basing the majority of my thought process on people in this neighborhood up and against the  
32 process that is in front of us. I think that, that all of our neighborhoods and that neighborhood  
33 have been changed. I got one right across the street coming up from my house. I got illegal  
34 ones all over my neighborhood. Those are detrimentally affecting my neighborhood,  
35 detrimentally affecting your neighborhood. If they...if I'm held to the standard that, that the  
36 attorney holds me to, I don't believe that...I don't believe that, that my opinions on this would  
37 stay the same just because it seems like what they're asking for and what they're asking me to  
38 grade it on that it has been achieved so.

39  
40 Mr. Hudson: Thank you. Ms. Pali.

41  
42 Ms. Pali: My discussion comments are just that. This is just a really tough situation. I just tried  
43 to look at the applicant and apply it to my neighborhood, and my neighborhood is total local  
44 style. Like, I don't know that the tourists want to even invade which is a blessing to us, but what  
45 if they did. You know, what if they did. And so I am super my heart is just overwhelmed with the  
46 support of the neighborhood coming out and taking their time to protest. But again, I'm...it's a,

1 it's a moral issue for me because here in this position we have a task and we have to just  
2 determine with transparency, you know, did the applicant meet the rules. And all I can do is just  
3 encourage people out there even listening or watching that if you don't like the rules it's not  
4 done here. It's done at County Council. So go to County Council and let's change the rules to  
5 benefit us. But we don't change the rules here. And so I'm conflicted and that's my, that's my  
6 comment.

7  
8 Mr. Hudson: Seeing no further discussion, the Chair will entertain a motion.

9  
10 Ms. Pali: I will make the motion. I will make the motion to approve with a one-year stipulation  
11 and I just encourage the neighbors that if this goes through please speak up, let us know that it  
12 is or is not working for you, and we gladly entertain that at least we attempted to follow the rules  
13 with your concerns in mind. So I do put a motion on the floor to approve the applicant with a  
14 provisional period of one year.

15  
16 Mr. Castro: Second.

17  
18 Mr. Hudson: Motion has been made and seconded. Any further discussion? Kahu? All right,  
19 all those in favor say aye? All those opposed? We have three in favor, one opposed; the  
20 motion fails. The Chair will entertain another motion.

21  
22 Ms. Pali: Three ayes.

23  
24 Mr. Hudson: We have three ayes and one opposed, motion fails. Yeah, we need it to be  
25 unanimous.

26  
27 Ms. Pali: Okay.

28  
29 Mr. Hudson: Is there another motion on the floor? Like a deferral maybe because we might not  
30 be able to reach anything.

31  
32 **It was moved by Ms. Pali, seconded by Mr. Castro, and**

33  
34 **The Motion to Approve the Bed and Breakfast Permit with a One-Year Time Period,**  
35 **FAILED.**

36 **(Assenting – K. Pali, C. Tackett, S. Castro)**

37 **(Dissenting – A. Hill)**

38 **(Excused – L. Carnicelli, P D. La Costa, K. Robinson, T. Gomes)**

39  
40 Mr. Castro: Yeah, I'll make a motion to defer and give them time to get testimony from the other  
41 10 potential...people that are out there that are in opposition or in favor.

42  
43 Kahu Hill: I'll second that.

44  
45 Mr. Hudson: Okay, the motion on the floor now is to defer. All those in favor say aye. Aye. The  
46 motion has been deferred.

1  
2 **It was then moved by Mr. Castro, seconded by Kahu Hill, then**

3  
4 **VOTED: To Defer the Matter as Discussed for the Applicant to Speak to the**  
5 **Additional Ten Individuals Who Were In Opposition or In Favor.**  
6 **(Assenting – S. Castro, A. Hill, K. Pali, C. Tackett, L. Hudson)**  
7 **(Excused – L. Carnicelli, P D. La Costa, K. Robinson, T. Gomes)**  
8

9  
10 **D. COMMUNICATIONS**

- 11  
12 1. **CALVERT G. CHIPCHASE and CHRISTOPHER T. GOODIN, of CADES**  
13 **SCHUTTE, attorneys for D&S VENTURES, LLC submitting a [Motion for](#)**  
14 **[Appointment of Hearings Officer dated August 29, 2018](#) on the remanded**  
15 **County Special Use Permit application from D and S VENTURES, LLC to**  
16 **operate Camp Maui including a zipline in the County Agricultural District at**  
17 **2065 Kauhikoa Road, TMK: (2) 2-7-012: 086, Haiku, Island of Maui. (CUP**  
18 **2015/0002) (P. Fasi)**

19  
20 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO**  
21 **CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO**  
22 **THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND**  
23 **LIABILITIES, PURSUANT TO SECTION 92-5(a)(4), HAWAII REVISED STATUTES.**

24  
25 **The Commission may take action on the Motion.**

26  
27 Mr. Hudson: We will not be taking a break. We will be going right into the next item.

28  
29 Ms. McLean: Thank you Chair. The next item is a communication item, and this is from Calvert  
30 G. Chipchase and Christopher T. Goodin of Cades Schutttes attorneys for D&S Adventures LLC  
31 submitting a motion for an appointment of a hearings officer dated August 29<sup>th</sup>, 2018 on the  
32 remanded County Special Use Permit application from D&S Ventures LLC to operate Camp  
33 Maui including a zipline in the County Agricultural District at 2065 Kauhikoa Road at TMK: 2-7-  
34 12 parcel 86 in Haiku. And the before we proceed I would defer to Corporation Counsel on how  
35 this item will be considered by the Commission.

36  
37 Mr. Hudson: Corp Counsel please.

38  
39 Mr. Galazin: Thank you Chair and thank you Director. Yes, so counsel to the applicant, how  
40 much time do you think you need to go over orally your motion? Any more than 10 minutes or --  
41 ?

42  
43 Mr. (\_\_\_\_): That should be sufficient.

44  
45 Mr. Galazin: Okay. So Chair I would just say allow the applicant up to 10 minutes to present his  
46 position. Allow the Department's attorney an opportunity to speak to his opposition. And then

1 allow the applicant again just a couple of minutes to rebut anything that's been said and then  
2 ask any questions.

3

4 Mr. Castro: Chair, I would like to request we go into Executive Session.

5

6 Mr. Hudson: Okay after the presentation.

7

8 Mr. Castro: After.

9

10 Mr. Hudson: Okay we're, gentlemen, we're working with time constraints. We're going to lose  
11 quorum in a little while and we want to make a decision on this for everybody's interest so be  
12 brief, be concise and be direct. Thank you.

13

14 Mr. Christopher Goodin: Commission, Chair, thank you very much for having us. I'd like to  
15 advise the Commission of a very important update.

16

17 Mr. Hudson: Sorry. Please introduce yourself.

18

19 Mr. Goodin: I'm sorry. Christopher Goodin for D&S Ventures.

20

21 Mr. Hudson: Thank you.

22

23 Mr. Goodin: So I'd like to advise the Commission of a very important development since we filed  
24 our motion. And that is two individuals, neighbors of D&S, have filed a petition to intervene.  
25 They filed a petition to intervene and we have not opposed that petition. And in fact, we have  
26 stipulated as to the petition to intervene and it was served on me as well as Mr. Galazin, a  
27 signed fully executed copy of that petition to intervene. And so in light of that petition to  
28 intervene I believe it changes the basic issue here and that this is going to be an intervention  
29 case. And so we believe that the simplest thing for the Commission to do is to approve the  
30 petition to intervene pursuant to the Commission's rule specifically Section 12-201-54. And  
31 upon approving the petition the hearings officer would be appointed under those rules and that  
32 is mandatory under those rules.

33

34 So far we have reached out to the intervener's counsel, Mr. Rankin. I believe he's here today,  
35 and we have already discussed a hearings officer. We have also discussed a potential  
36 mediator which is also required under the Commission's rules. Mediation is mandatory. And so  
37 in addition to the appointment of a hearings officer and the selection of a mediator, I think, as far  
38 as this case goes there are a number of things that remain to be done including discoveries,  
39 motions, and a pre-hearing conference. And so we'd like to move forward with that as  
40 expeditiously as we can. But it's something I think that the Commission can do today and can  
41 do relatively quickly to get this process started.

42

43 One thing that I did hear today that I was not aware of was that the Department had filed an  
44 opposition which we still have not received. I called my office and we did not receive the  
45 opposition and so I would object to any actually action on my motion because I have not  
46 received a copy of the opposition that the Department filed.

1  
2 Mr. Hudson: A quick question for you then.

3  
4 Mr. Goodin: Yes sir.

5  
6 Mr. Hudson: So the petition to intervene is not up for discussion today. It's not. And so are you  
7 withdrawing your motion to appoint a hearings officer?

8  
9 Mr. Goodin: I'm not withdrawing your honor.

10  
11 Mr. Hudson: Please proceed.

12  
13 Mr. Goodin: And so --

14  
15 Mr. Hudson: I'm not, I'm not a judge, but thank you.

16  
17 Mr. Goodin: I believe you're still honorable and still the same. But as far as the motion though  
18 because we didn't receive a copy of the opposition we believe it would be a violation of due  
19 process to proceed with our motion given that we haven't receive the opposition. But the  
20 stipulation has been submitted to the Commission specifically to Counsel, and so we believe  
21 that the easiest and quickest thing to do would be to act on that so we can get the contested  
22 case proceeding moving forward.

23  
24 Mr. Hudson: Please identify yourself.

25  
26 Mr. Koa Holiana: Yes. Good morning everybody. Koa Holiana, Deputy Corporation Counsel on  
27 behalf of Department of Planning. As to our opposition, we still have an opposition to the  
28 motion for a hearings officer. I mean if Mr. Goodin has not receive that I would double check. I  
29 thought we had served, filed it, submitted it to the Planning Department back in, well, maybe a  
30 week ago. But essentially what the opposition is, it wasn't extensive, essentially saying that --.  
31 The Department of Planning's position based on this Planning Commission itself is more than  
32 capable and knowledgeable to handle the application that's presented from D&S Ventures. It's  
33 an application for a Special Use Permit. This Commission has heard numerous occasions,  
34 applications similar to it. It maybe not be exactly, but similar and they've handled it capably with  
35 knowledge especially with the makeup of the Commission itself. So essentially our opposition is  
36 like there's no need for a hearings officer to be appointed in this matter. We're fully confident  
37 the Commission here.

38  
39 Alternatively if this Commission is inclined -- I'm not saying ...(inaudible)... -- if they're inclined,  
40 you know, under the Commission's rules itself, they define a hearings officer as someone not  
41 just an independent third party like Mr. Goodin is thinking, but also it could be the Commission  
42 itself or a sub ...(inaudible)... designated by the Commission to be the hearings officers, plural.  
43 So it doesn't necessarily mean if you're inclined to appoint a hearings officer it has to be some  
44 independent person, a third party individual, it could be a makeup of a portion of this Council or  
45 Commission as a whole. So that's basically our opposition to this, and I don't, again, I don't  
46 think there is a need for it, for a hearings officer. I think this Commission is more than capable

1 of hearing this application. Because again, it's simply an application for a Special Use Permit.  
2 Thank you.

3  
4 Mr. Hudson: Thank you.

5  
6 Mr. Goodin: Just very briefly as to why --

7  
8 Mr. Hudson: Please identify yourself again.

9  
10 Mr. Goodin: Sorry. Christopher Goodin for D&S Ventures. To very briefly explain why we  
11 believe a hearings officer, particular a third party hearings officer would be useful and essential  
12 in this case is because we believe that our case to present would be a few days long. And so  
13 given that the Commission only meets twice a month, by having a hearings officer we could  
14 schedule a hearing to put on ...(inaudible)... And then the interveners, I assume, will have a few  
15 days of testimony to present. And that way we can set it all at once and it would be the most  
16 efficient and fairest of all the parties involved. Additionally this case presents a number of legal  
17 issues. I'm sure you're all familiar with the remand order from Judge Loo that, that set out very  
18 specific procedural issues that needed to be followed on remand, and we believe that, again, it's  
19 the fairest course for all involved to have a hearings officers particularly Counsel or perhaps a  
20 retired judge who can address those procedural issues on remand as well as the prior motions  
21 that Judge Loo reviewed on appeal on remand.

22  
23 Mr. Hudson: Okay, thank you. You guys have been hanging around for a while I'm sure.

24  
25 Mr. Castro: Chair, at this time I'd like to recommend we go into Executive Session.

26  
27 Mr. Hudson: We need a second. You want to go into Executive Session to discuss this?

28  
29 Mr. Castro: Yes.

30  
31 Mr. Hudson: With our attorney?

32  
33 Mr. Castro: Correct.

34  
35 Mr. Galazin: Chair, could I suggest perhaps maybe a friendly amendment?

36  
37 Ms. Pali: We move to enter into executive session pursuant to HRS 19-5.2 to consult with our  
38 legal counsel regarding the Commissions' powers, duties, privileges, immunities, and liabilities.

39  
40 Mr. Hudson: Who second?

41  
42 Mr. Castro: Second.

43  
44 Mr. Hudson: Very good. All those in favor? Okay, we're going to go into executive session.

45  
46 **It was moved by Ms. Pali, seconded by Mr. Castro, then unanimously**

1  
2 **VOTED: to go into Executive Session.**  
3 **(Assenting – K. Pali, S. Castro, A. Hill, C. Tackett, L. Hudson)**  
4 **(Excused – L. Carnicelli, P D. La Costa, K. Robinson, T. Gomes)**  
5

6 *(The Planning Commission recessed the regular meeting at approximately 11:27 a.m. to enter into*  
7 *Executive Session. The Planning Commission reconvened the regular meeting at approximately*  
8 *11:39 a.m.)*  
9

10 Mr. Hudson: Back in session. Right now is 11:39 hours. All right, here is what we believe. We  
11 agree, we concur, it is a contested case. We agree, we concur, it does need a hearings officer  
12 and calling for a motion for a hearings officer.  
13

14 Kahu Hill: I would like to make a motion Chair that the MPC should be hearings officer for this. I  
15 don't think this is complex, and I think we can have this ourselves be the hearing officer.  
16

17 Mr. Hudson: Thank you. Any second?  
18

19 Mr. Castro: Second.  
20

21 Mr. Hudson: Motion has been made and second. Discussion? Seeing none, all those in favor  
22 say aye? Aye. The motion carries.  
23

24 **It was moved by Kahu Hill, seconded by Mr. Castro, then**  
25

26 **VOTED: That the Maui Planning Commission shall be the Hearing Officer.**  
27 **(Assenting – A. Hill, S. Castro, K. Pali, C. Tackett, L. Hudson)**  
28 **(Excused – L. Carnicelli, P D. La Costa, K. Robinson, T. Gomes)**  
29

30 Mr. Galazin: Chair, may I?  
31

32 Mr. Hudson: Please.  
33

34 Mr. Galazin: Thank you Chair. So now this is going to be scheduled for a hearing on October  
35 23<sup>rd</sup>, so Counsel you understand that there will be public hearing on the 23<sup>rd</sup> for this?  
36

37 Mr. Goodin: Yes.  
38

39 Mr. Galazin: And so you also understand that this is going to be a public hearing for a Special  
40 Use Permit pursuant to Maui County Code Section 19.510.070, and that pursuant to the order of  
41 Judge Loo and the public hearing, members of the public will be allowed to testify. But pursuant  
42 to Judge Loo's order and in accordance with HRS 91-9 and 10 that any public testimony will be  
43 subject to cross examination as necessary in order to illicit the facts and it will be taken under  
44 oath. Counsel, do you understand that?  
45

46 Mr. Goodin: I understand that. Will the identities of any public testifiers be disclosed prior to the  
47 hearing?



1  
2 Mr. Galazin: No. It's going to be a public hearing, a notice to the public, so if anyone shows up  
3 that day and wishes to testify on that item, they'll be allowed to do so, the typical three minutes  
4 at the discretion of the Chair. Thank you Chair.

5  
6 Mr. Hudson: Thank you. We'll be in recess for five minutes.

7  
8 **Quorum was lost at 11:40 a.m.**

9  
10 **E. Workshop on the Planning Department's proposed amendments to the Maui**  
11 **Planning Commission's Special Management Area Rules and Shoreline Area**  
12 **Rules conducted by Planning Department Staff. (M. McLean)**

13  
14 **The workshop is for information purposes.**

15  
16 **Due to the loss of quorum the workshop will be rescheduled to a future agenda**

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

19  
20 **1. SMA Minor Permit Report**

21  
22 **This is for notification and review purposes. No action is anticipated.**

23  
24 **2. SMA Exemptions Report**

25  
26 **This is for notification and review purposes. No action is anticipated.**

27  
28 **The SMA Minor Permit and SMA Exemption Reports will be placed on the next agenda.**

29  
30 **3. Discussion of Future Maui Planning Commission Agendas**

31  
32 **a. October 23, 2018 agenda items**

33  
34 **G. NEXT REGULAR MEETING DATE: OCTOBER 23, 2018**

35  
36 **H. ADJOURNMENT**

37  
38 The meeting was adjourned at 11:40 a.m.

39  
40 Respectfully Submitted by,

41  
42  
43 LEILANI A. RAMORAN-QUEMADO  
44 Secretary to Boards and Commissions II  
45 for CAROLYN TAKAYAMA-CORDEN  
46 Secretary to Boards and Commissions II

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

**RECORD OF ATTENDANCE**

**Present**

Stephen Castro  
Kahu Alalani Hill  
Larry Hudson, Vice-Chair  
Kellie Pali  
Christian Tackett

**Excused**

Lawrence Carnicelli  
Tina Gomes  
P Denise La Costa  
Keaka Robinson, Chair

**Others**

Michele McLean, Director, Department of Planning  
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel