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**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 28, 2020**

[\(HYPERLINK TO AUDIO RECORDING OF THE MEETING\)](#)

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:03 a.m., Tuesday, January 28, 2020, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Carnicelli: Good morning everyone. The Maui Planning Commission of January 28, 2020 is now in session. It is 9:03. My name is Lawrence Carnicelli, I am the Chair. Also in attendance with us is Vice-Chair Christian Tackett.

Mr. Tackett: Good morning Chair.

Mr. Carnicelli: Good morning. Commissioner Castro.

Mr. Castro: Good morning Chair.

Mr. Carnicelli: Good morning. Commissioner La Costa.

Ms. La Costa: Aloha Chair.

Mr. Carnicelli: Aloha. Commissioner Robinson.

Mr. Robinson: Good morning.

Mr. Carnicelli: Good morning. Commissioner Pali.

Ms. Pali: Aloha kakahiaka.

Mr. Carnicelli: Good morning. Commissioner Thompson.

Mr. Thompson: Top of the morning Chair.

Mr. Carnicelli: Top of the morning. And Commissioner Freitas.

Mr. Freitas: Good morning.

Mr. Carnicelli: Good morning. Excused right now is Commissioner Gomes. She said that she may possibly show up late if she does and we've already started proceedings on something then we'll ask her to recuse herself from that particular item.

So before we get into the actual agenda I think that there's some stuff that it's appropriate for us to explain to the public how today is going to unfold and how sort of how the ball is going to bounce. So we have one public hearing item, two communication items and then unfinished

1 business. The unfinished business is BRE ICONIC GWR Owner, basically the Grand Wailea,  
2 right and then there's an intervention. So what I'm gonna do is actually turn this over to the  
3 Director or Corporation Counsel. I'll turn it over to Corporation Counsel to explain how this is  
4 going to work because it's, it's an unusual way that it's gonna go, so Mr. Galazin.

5  
6 Mr. Galazin: Thank you Chair and Commissioners and members of the public. Just regarding  
7 Item D.1 which as the Chair noted is the Grand Wailea SMA and Step 1 and Step 2 Approvals  
8 that is something that was the subject of a public hearing on May 28<sup>th</sup> of 2019. Public testimony  
9 was taken then and at that meeting, at the close of the public hearing, public testimony was  
10 closed. Action was deferred on the item meaning that you know you folks didn't take any vote  
11 one way or the other that day but the bulk of what you have to consider right now before you is  
12 a record and this is a quasi-judicial proceeding so you have to confine your decision based on  
13 the record that was created then and closed. So because that is...this is a contested case you  
14 cannot consider any evidence that comes in that would supplement the record after that date for  
15 from the public because that public testimony portion is closed. I'm aware that the Department  
16 has received a couple of submissions of written testimony, however you cannot consider those  
17 in order to preserve the integrity of the contested case much like a judge could not listen to  
18 something outside of the court room and then base a decision on that. You have to keep it  
19 confined to what was presented before you.

20  
21 You do have a petition to intervene which you have to dispose of one way or the other before  
22 you can move on. Testimony related to whether or not the petition should be granted or denied  
23 that can be accepted when that item is taken up and so what we will have is you know a  
24 presentation by petitioners and the applicant as they wish and then public testimony if there is  
25 testimony related to whether or not the petition should be granted on the underlying permit that  
26 will be taken up then, but there will be no, you can't accept any testimony or consider any  
27 testimony or anything you've heard related to the SMA permit or the other permit approvals, the  
28 underlying project itself that was not presented during the public hearing. Thank you Chair.

29  
30 Mr. Carnicelli: So Commissioners do you have any questions at this time regarding that?  
31 So...Commissioner Robinson.

32  
33 Mr. Robinson: Of course I do.

34  
35 Mr. Carnicelli: Of course.

36  
37 Mr. Robinson: Corporation Counsel so when the meeting was closed last time we didn't have  
38 any discussion. So is...and if we were...if in our discussion and we wanted to ask different  
39 questions or different applicants or the people that weren't here and if they're not here today  
40 and we can't get those answers how does that prohibit us from trying to find answers?

41  
42 Mr. Galazin: Chair?

43  
44 Mr. Carnicelli: Yes.

45  
46 Mr. Galazin: So I think the biggest issue you have right now is we've got to go through the  
47 petition to intervene. If you grant the petition to intervene then it's going to take a separate

1 process and those questions are going to be put off till a later date. So we can get to that if the  
2 petition is denied by this body and the decision is made to move forward on the permit then we  
3 can talk about the procedures for that, but we've got to deal with the petition first.

4  
5 Mr. Robinson: Okay, thank you.

6  
7 Mr. Carnicelli: So if I could just say it in my own words instead of the attorney's words is we've  
8 got Item D.1 and "a" under that is the petition to intervene even though that's technically later in  
9 the agenda we're gonna deal with it first. We will take public testimony on that. However, the  
10 actual SMA itself, the public hearing's been closed. So, for those of you that have shown up to  
11 testify on the SMA you have noticed that there's no sign in sheet and that is because that has  
12 been closed. So you're more than welcome to stay and be a part of this but we won't be  
13 accepting public testimony on that particular item just so you guys are clear. I just said I was  
14 going to take the intervention before the SMA, I'm not going to move it to the first part of the  
15 agenda, we're still going to go in order, so at that particular time I guess we will turn it over to  
16 the Director to start.

17  
18 Ms. McLean: Thank you Chair. You have one public hearing item today and that is request  
19 from Christine Hele Yasak Namau`u requesting a State Land Use Commission Special Permit  
20 to operate Kekihapai, a three-bedroom bed and breakfast on property located in the State  
21 Agricultural District at 950 Pulehu Road in Kula at TMK: 2-3-060: 030. Ryan Quigless is the  
22 project planner.

23  
24 **B. PUBLIC HEARING**

25  
26 **1. CHRISTINE HELE YASAK NAMAU'U requesting a State Land Use**  
27 **Commission Special Permit to operate Kekihapai, a three-bedroom Bed and**  
28 **Breakfast, on property located in the State Agricultural District, at**  
29 **950 Pulehu Road, Kula, Island of Maui, Hawaii, TMK: (2) 2-3-060:030**  
30 **(SUP2 2019/0018) (R. Quigless)**

31  
32 Mr. Ryan Quigless: Aloha and good morning Commissioners, Director, Chair.

33  
34 Commission Members: Good morning.

35  
36 Mr. Quigless: So we meet here this morning to discuss the State Land Use Commission  
37 Special Permit to operate Kekihapai, a three-bedroom bed and breakfast home in the State  
38 Agricultural District and County Agricultural District on approximately 2.113 acres of land. I will  
39 go into a brief description of the project.

40  
41 The matter arises for the State Land Use Commission Special Permit as mentioned. It was filed  
42 with the Department on June 26, 2019 by the consultant, Georgie Rocha. The applicant is  
43 requesting the SUP and the Bed and Breakfast Home Permits to operate a bed and breakfast  
44 home on her property. The subject property was purchased in 1985, the applicant will reside in  
45 the primary farm dwelling constructed in 1990. The three-bedroom B&B will be located in the  
46 second farm dwelling constructed in 1986. The location map, site plan, bed and breakfast  
47 dwelling floor plans, fire escape, house policies, photographs of the B&B interior and exterior

1 are attached as Exhibits 1 thru 28 in your report. It's also noted that if the SUP is approved  
2 today by the Commission the Bed and Breakfast Permit can be approved administratively.

3  
4 Like to go over briefly the active agricultural component for the property is ornamental, lei, plant  
5 and flower production. The applicant raises, maintains and harvests lei, plants and flowers  
6 while offering instructional workshops to guests, this will continue.

7  
8 Also pursuant to Section 205-6, Hawaii Revised Statutes the Maui Planning Commission is the  
9 approving authority for this SUP because the property consists of less than 15 acres on  
10 agriculture.

11  
12 Again a brief description of the property. The lot size as mentioned is 2.113 acres located off  
13 Kula...located in Kula off of Pulehu Road, TMK: (2) 2-3-060: 030. The land use designations  
14 are State Land Use District Agriculture, County District Agriculture, not in the Special  
15 Management Area, outside the growth boundaries, outside protective areas. Surrounding uses  
16 are residential and agriculture to the east, south, west and north. The parcel is located in the  
17 Federal Flood Hazard Zone X which is an area of minimal flooding. There are no requests for  
18 services on file with the County or the Department.

19  
20 And we'll go into a brief analysis of the land use. The proposed project is in conformance with  
21 goals, objectives and policies of the Hawaii State Plan as it may provide additional opportunities  
22 for employment and economic growth in the visitor industry. Also noted is that the proposed  
23 use is consistent with the agricultural designation of the property. And finally, the use would not  
24 unreasonably burden public agencies to provide roads, streets, sewers, water, drainage and  
25 school improvements or police and fire protection. Commissioners do you have any questions  
26 of myself or the owners at this time?

27  
28 Mr. Carnicelli: Is the owner gonna do a presentation at all or is...is that it?

29  
30 Mr. Quigless: All of the photographs and the information is in the report and they're here to  
31 answer questions.

32  
33 Mr. Carnicelli: Okay when what we'll do is we'll take public testimony and we'll come back to  
34 you. Awesome. Thank you Ryan. So at this point in time we have nobody signed up to testify  
35 on this particular agenda item. Is there anybody that would like to come forward to testify on  
36 this particular agenda item? Going once, going twice, seeing none, then if there are objections  
37 we'll go ahead and close public testimony. Seeing no objections public testimony is now closed.  
38 So commissioners I'll go ahead and start with Commissioner La Costa 'cause I know you have a  
39 question.

40  
41 Ms. La Costa: Could the owners please come forward?

42  
43 Mr. Carnicelli: Good morning, please identify yourself for the record.

44  
45 Ms. Christine Hele Yasak Namau`u: Aloha, my name is Christine Hele Yasak Namau`u but  
46 most people in my community know me as Kili, Kili Namau`u.

47

1 Mr. Carnicelli: Good morning Kili.

2

3 Ms. Namau`u: Good morning.

4

5 Ms. La Costa: Aloha Kili. Thank you very much for your presentation. Couple of things I am  
6 most impressed by the fact that you are looking to help the community and have your unit  
7 available for coaches and referees and doing halau presentations and boarding them so thank  
8 you so much for including the community as well as doing a commercial venture. I noticed that  
9 you have your friends and family stay there. Have you used this property previously and  
10 received income from rentals?

11

12 Ms. Namau`u: Yes, I've had it as a long-term rental previously. I've also had operated as a  
13 licensed permitted bed and breakfast previously, but unfortunately I had let me permits expire in  
14 advertently so I took the property off the market at that time and I have come back to reapply for  
15 a new license for the property.

16

17 Ms. La Costa: And you've done no renting or anything in between the time that you –

18

19 Ms. Namau`u: Correct. I have allowed friends and family to reside there. I've had a lot of  
20 people come to visit me during this time and I've also had it available for things like the coaches  
21 and things like that available.

22

23 Ms. La Costa: Mahalo.

24

25 Ms. Namau`u: Mahalo.

26

27 Mr. Carnicelli: Thank you. Commissioner Castro any questions at this time?

28

29 Mr. Castro: Yes, just one. On Exhibit 2 in the map there's different names on the Lot 30,  
30 Plunkett, Gerald, Perreira.

31

32 Ms. Namau`u: Those were the original owners. Those are the people that we purchased the  
33 property from in 1985, the Perreira people.

34

35 Mr. Castro: So and then this hasn't been updated.

36

37 Mr. Carnicelli: It's the original plot map.

38

39 Mr. Castro: It's the original plot map. Thank you.

40

41 Mr. Carnicelli: Commissioner Tackett.

42

43 Mr. Tackett: It looks wonderful. I have no questions at this time.

44

45 Ms. Namau`u: Mahalo.

46

47 Mr. Carnicelli: Thank you. Commissioner Robinson.

1  
2 Mr. Robinson: I just have one question for the Director. And I'm just gonna take a breath, I'm  
3 gonna go at it now so that we don't have to wait about it later. This to me is considered a visitor  
4 accommodation so we have reports of us being with our general plan, our visitor  
5 accommodation is over the desired amount of 33.13 percent. So where does the Department,  
6 where do we stand with the Island Plan as far as jurisdiction. The Council allowed so many  
7 units. We got all this, so this is gonna come up all day so I figure just you know, let's, let's jump  
8 in right now.

9  
10 Mr. Carnicelli: Thank you Commissioner Robinson. Director.

11  
12 Ms. McLean: Thanks for that Keaka. A couple of things. The language in the Maui Island Plan  
13 is encourage. I believe it says encourage so it's not mandate. And then looking at an operation  
14 like this especially the intent of the applicant it's not surveying tourists so much it's halau, it's  
15 involved with interscholastic sports, so it's not your typical tourist accommodations. So I think  
16 there is room to make a judgment call with what the community benefit is for certain operations.  
17 But it's not, it's not a mandate in the Maui Island Plan.

18 Mr. Robinson: Thank you.

19  
20 Mr. Carnicelli: Thank you. Commissioner Pali. Commissioner Thompson.  
21 Commissioner Freitas.

22  
23 Mr. Freitas: I just like to see really clean applications like this that I have no questions to ask.  
24 I'm very proud of what you've submitted so I have no questions.

25  
26 Mr. Carnicelli: I have one, just one quick comment I did notice since you ran, you know the  
27 operation previously and you're reapplying that there are no RFSs against the property so I just  
28 want to make that a note. My only question is, this is, it's an unusual B&B because your main  
29 dwelling unless there's some you know path through the gulch up and over and around and  
30 back it's kinda...I mean, it's completely separate you know, and typically when people talk about  
31 B&Bs it's like oh somebody's living in my house. It's you're really connected to the guest. This  
32 is, it's almost has more of the vibe of an STRH so how, how connected are you in your main  
33 dwelling to the ohana and the B&B portion.

34  
35 Ms. Namau`u: Well, it is difficult...there is kind of a pathway to go to the other side, but it's kind  
36 of hard to go through that so most of the time we do drive and it is, you have to go around to the  
37 other side to the gulch, you have to drive there. I mean, without having to get through the jungle  
38 of the property.

39  
40 Mr. Carnicelli: And then any of the...the photos here don't show necessarily how close...the  
41 proximity of this ohana to the neighbors.

42  
43 Ms. Namau`u: There are—

44  
45 Mr. Carnicelli: To neighboring buildings let's just say.

46

1 Ms. Namau`u: There's on both sides of the property on that side, they're empty lots. They're  
2 not empty lots but they're not developed lots. There's no, there's no, there's no buildings  
3 adjacent, directly adjacent to the houses.

4  
5 Mr. Carnicelli: Right. And I see, yeah there's one kinda kitty-corner across, I believe that's  
6 Pulehu, yeah.

7  
8 Ms. Namau`u: And it's a farm dwelling, and it's over a berm. You don't even see the property  
9 because it's...there's a berm right across the street from that.

10  
11 Mr. Carnicelli: Gotcha. And the house seems to face the other direction anyways over at the  
12 gulch with the lanai there, so okay that was my only questions just to kinda get a visual. Does  
13 anybody else have any other questions at this point in time for the applicant and/or the  
14 Department? Seeing none, Ryan we'll go ahead and take your recommendation please. Thank  
15 you Kili.

16  
17 Mr. Quigless: Okay, at this time the Department recommends approval of the SUP2 subject to  
18 the standard eight conditions to include Condition No. 8 that the applicant shall educate all  
19 guests about potential detrimental impacts to natural and cultural resources particularly to the  
20 coastal environment and near shore waters. Evidence of such an education program shall be  
21 provided to the Department prior to operation. Would you like us to go over the conditions at  
22 this time?

23  
24 Mr. Carnicelli: No, I think that that's good. Thank you very much. So at this point in time, I'll go  
25 ahead and entertain a motion.

26  
27 Mr. Freitas: I move to approve.

28  
29 Mr. Carnicelli: Move to approve as recommended by Staff by Commissioner Freitas, seconded  
30 by Commissioner La Costa. Would anybody like to speak to the motion? Seeing none,  
31 Director.

32  
33 Ms. McLean: Chair, the motion on the floor is to approve the State Land Use Commission  
34 Special Permit subject to the conditions noted in the staff report.

35  
36 Mr. Carnicelli: All those in favor please raise your hand. That is six ayes. All those opposed?  
37 All those abstaining is one. So six in favor, one abstaining that is 7-0. Congratulations, you got  
38 your Special Use Permit and you'll have to go get your Bed and Breakfast Permit from the  
39 Department. Awesome. Thank you very much.

40  
41 Mr. Quigless: Thank you Commissioners.

42  
43  
44 **It was moved by Mr. Freitas, seconded by Ms. La Costa, then unanimously**

45  
46 **VOTED: To Approve the State Land Use Commission Special Permit as**  
47 **Recommended by the Department.**

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

6  
7 Mr. Carnicelli: Ryan, you read to go just straight into your next one?  
8

9 Mr. Quigless: Sure.  
10

11 Mr. Carnicelli: Okay. Let the Director go ahead and bring it up then.  
12

13 Ms. McLean: Chair, next we have two Communication items. The first is a request from  
14 Bradley and Robin Newton for a State Land Use Commission Special Permit to operate the  
15 Hana Nautilus, a three-bedroom short-term rental home, on property located in the State  
16 Agricultural District at 2575A Hana Highway in Hana at TMK: 1-3-003:015-0001 and again,  
17 Ryan is the Project Planner. I would note the next Communication item is also in Hana and  
18 there is written testimony provided to you this morning from a Hana resident who wanted to be  
19 sure that the Commission received his testimony and it's applicable to both items.  
20

21 Mr. Carnicelli: Ryan.  
22

## 23 **C. COMMUNICATIONS**

- 24  
25  
26 **1. BRADLEY and ROBIN NEWTON requesting a State Land Use Commission**  
27 **Special Permit to operate the Hana Nautilus, a three-bedroom short-term**  
28 **rental home, on property located in the State Agricultural District, at 2575A**  
29 **Hana Highway, Hana, Island of Maui, Hawaii, TMK: (2) 1-3-003:015-0001**  
30 **(SUP2 2019/0006) (R. Quigless)**  
31

32 Mr. Ryan Quigless: Okay, we'll recap a little bit on the basics of the project because the public  
33 hearing was held in Hana on October 29, 2019 so that's the official public hearing where the  
34 details and testimony was accepted and then so happy to answer any questions that you  
35 regarding the project but just to it be noted that it's not a public hearing today for this.  
36

37 So we'll go over the first of the agenda items for the public hearing in Hana it was Bradley and  
38 Robin Newton to operate Hana Nautilus. I think that you've had time to go over the report itself  
39 and the figures so I think we can go right to questions if you have any.  
40

41 Mr. Carnicelli: We will have to open up for public testimony as well so thank you very much.  
42 Why don't you go ahead and just at least walk us through the basics before we take public  
43 testimony so at least we kinda have, you know, we're not just sitting here fumbling through  
44 whatever it is that we've already fumbled through.  
45

46 Mr. Quigless: Okay, so let's go over the basics. Then so again, Bradley and Robin Newton,  
47 they're requesting a State Land Use Commission to operate a three-bedroom short-term rental

1 home, Hana Nautilus located in the County Agriculture District, in the State Agriculture District  
2 so that's the reasoning for the hearing to begin with. The property is approximately 2.78 acres  
3 of land. The address is 2575 Hana Highway, TMK: (2) 1-3-003: 015-0001 in Hana, Island of  
4 Maui.

5  
6 Description of the project we have the original application was filed with the Department on  
7 February 4, 2019 by the owners, Bradley and Robin Newton, the applicants. So it's also noted  
8 that the applicants filed an STRH application with the Department on February 4<sup>th</sup>. If the SUP is  
9 approved today then the STRH Permit can be approved by the Department administratively.

10  
11 Land use designations for the property again, State is Agriculture, County is Agriculture and  
12 there's no other zoning. It's also not located in the growth boundary. The surrounding uses are  
13 agriculture and residential lots. The property is surrounded by dense vegetation and agricultural  
14 trees and plants. There's one other permitted STRH located within 500 feet of the property and  
15 as of March 2019 there are 20 permitted STRH operations in Hana Community Plan region and  
16 the cap for the area is 30. This is also in Exhibit 4 of your reports. There are currently 11  
17 permitted bed and breakfast homes and the cap for the bed and breakfast homes for the area is  
18 48.

19  
20 Go into briefly analysis of the land use. The proposed project is in conformance with the Goals,  
21 Objectives, and Policies of the Hawaii State Plan. It will provide additional opportunities for the  
22 employment, economic growth in the visitor industry in the area. The farm plan for the property  
23 was approved in 2006 also located in Exhibit 2 and 2A and the farm plan was updated in 2011  
24 which is also shown in Exhibit 2B. Confirmed with the site visit of the property in 2019 is  
25 confirmed that the farm plan has been implemented as a requirement of this application. The  
26 photographs and examples of the agriculture grown on the property are located in Exhibit 5 and  
27 5L. I think that's a brief description for you and if there's any other questions, we're happy to  
28 answer—

29  
30 Mr. Carnicelli: Great. Thank you Ryan. I think at this point in time we are gonna go ahead and  
31 take public testimony then. There is nobody that has signed up for this particular item. Is there  
32 anybody in the chamber that would like to come forward and testify on this particular item?  
33 Going once, going twice. Okay, so if there are no objections we'll go ahead and close public  
34 testimony at this time. Public testimony is now closed. Questions for either the applicant or the  
35 Department? We'll start with you again, Commissioner La Costa.

36  
37 Ms. La Costa: Could the applicant please step forward?

38  
39 Mr. Quigless: The applicant is not here today.

40  
41 Ms. La Costa: Okay, my question is my usual. Has it been used for short-term rental or income  
42 derived from the use of the home previously.

43  
44 Mr. Quigless: Not from the applicant, not to my knowledge as for the Department.

45  
46 Ms. La Costa: Thank you Ryan.

47

1 Mr. Carnicelli: Commissioner Castro.

2

3 Mr. Castro: No questions.

4

5 Mr. Carnicelli: Vice-Chair Tackett.

6

7 Mr. Tackett: No questions.

8

9 Mr. Carnicelli: Commissioner Robinson.

10

11 Mr. Robinson: No questions Chair.

12

13 Mr. Carnicelli: Commissioner Pali.

14

15 Ms. Pali: One for Staff Planner. I had made a note about the Hana Advisory Committee's  
16 minutes that you attached, but I didn't see that you had attached any written testimonies that  
17 came out of that. Is that something we would normally not get?

18

19 Ms. McLean: The...as far as I know the only written testimony that was provided was what was  
20 on your desk this morning.

21

22 Ms. Pali: Okay, so it wasn't there. Okay.

23

24 Ms. McLean: It wasn't included in the packets, correct.

25

26 Ms. Pali: Okay. Did you get a chance to review those by chance?

27

28 Mr. Quigless: I did.

29

30 Ms. Pali: Can you just give me a synopsis of what this Blumer-Buell was sort of upset about?

31

32 Mr. Quigless: Okay, so I think the best way to go over that is kind of start with procedural so at  
33 the meeting on October 29<sup>th</sup> in Hana the applicant showed up for public testimony with the  
34 documents. The day prior to the meeting the applicant emailed those documents to us and  
35 there were a few corrupted files in there that we couldn't open so there was a back and forth of  
36 how many pages were actually included. So what you have now is the complete testimony as  
37 far as the documents go and then...

38

39 Ms. Pali: So I assume that he was against it?

40

41 Mr. Quigless: He's against all short-term rentals and I spoke with him this morning and he  
42 wanted to confirm that he is in support of bed and breakfasts for local communities.

43

44 Ms. Pali: Oh, so I think just, just for the record and just for future testifiers the stories that you  
45 have help us but it was hard to read his testimony because I didn't see anywhere that he  
46 actually said I support this or I don't support this and so I would say start off with what you're,

1 what you're here for do you support it or don't you and then tell us the story because we get  
2 lost. It's hard to track so thank you for that. Thank you for clarifying, no further questions.

3  
4 Mr. Carnicelli: Yep. While she's just bringing Mr. Blumer-Buell's testimony he talks about  
5 private road versus public road could you please address that?

6  
7 Mr. Quigless: All I have as far as clarification on that is what I've read and from a legal  
8 document standpoint I'm trying to really decipher what that document's connection is to the  
9 short-term rental. I think it has something to do with ownership of the road that gains access to  
10 the rental and so that court documents are showing that there's been some discourse back and  
11 forth as far as who is the actual owners and who's given right of that private/public road to the  
12 short-term rental and bed and breakfast.

13  
14 Mr. Carnicelli: So as of right now the Department is of the belief that this particular parcel does  
15 have access?

16  
17 Mr. Quigless: Correct.

18  
19 Mr. Carnicelli: Okay, thank you very much. Commissioner Thompson.

20  
21 Mr. Thompson: No questions.

22  
23 Mr. Carnicelli: Commissioner Freitas.

24  
25 Mr. Freitas: When I read the meeting notes from Hana it was brought to the attention, I believe  
26 Ms. Lono asked where did he get his water from and in the paperwork that was submitted that  
27 was incorrect and it was not corrected in this last one that we're looking at so can that be  
28 corrected to they're on the Hana Water System versus the County or did that change?

29  
30 Mr. Quigless: That was a correction that was noted at the Hana Advisory Committee and it's a  
31 private well system and there's not a report that goes with this meeting to correct that so we can  
32 note it in the minutes and then it will also be noted in the permit itself.

33  
34 Mr. Freitas. Oh, okay, okay, all right. No, no other questions.

35  
36 Mr. Carnicelli: Thank you. Any other questions at this point in time? So just Ryan forgive me,  
37 did you read the recommendation of the Hana Advisory Committee into the record or do we  
38 need the entire recommendation or...

39  
40 Mr. Quigless: I didn't, but I think we can go over that.

41  
42 Mr. Carnicelli: I mean I think that it's important to note what it is the Hana Advisory Committee  
43 recommended in this since we sent it to them for their recommendation.

44  
45 Mr. Quigless: First off, I think we would note that the Department recommends approval of the  
46 SUP2—

47

1 Mr. Carnicelli: Right.

2

3 Mr. Quigless: --subject to the standard eight conditions to include the education program as  
4 well. As far as the Hana Advisory Committee goes they also recommended approval at that  
5 meeting.

6

7 Mr. Carnicelli: Okay, thank you very much. So at this point in time since there are no other  
8 questions, I think we can entertain a motion.

9

10 Mr. Robinson: Motion to approve.

11

12 Mr. Carnicelli: Mr. Galazin.

13

14 Mr. Galazin: Thank you Mr. Chair. I just wanted to make one notation if you look in the minutes  
15 from the meeting of the Hana Advisory Committee the standard recommendations from the  
16 Department, one of them No. 2, Mr. Quigless and I had a discussion about that. Currently as it  
17 reads right now and I'll read it out, the first sentence is, the condition is that the subject SUP2  
18 shall not be transferred without the prior written approval of the Director. The second sentence  
19 reads, however in the event that a contested case hearing preceded issuance of said SUP a  
20 public hearing shall be held by the commission upon due published notice including actual  
21 written notice to the last known addresses of parties to said contested case and their counsel.  
22 Now during the Hana Advisory Committee hearing I do want to make that distinction that every  
23 permit whether or not you know these...if the agency hearing an opportunity for appeal it is a  
24 contested case under case law in Hawaii whether or not anyone is actually "contesting it". So I  
25 suggest perhaps we would change the language to say that if intervention had been granted,  
26 however at this point you are...the hearing's been conducted, there was no intervention so my  
27 recommendation might be if the Department's amenable just to strike that entire second  
28 sentence from Condition No. 2 because no intervention was actually granted.

29

30 Ms. McLean: And actually reading through this, it appears that the Hana Advisory Committee  
31 amended the recommended Conditions 1 and 2 and rather than extensions being approved by  
32 the Director that they would be approved by the Commission. So that's another notable change  
33 from what the original recommendation was and that should have been called out to you more  
34 clearly.

35

36 Mr. Robinson: Which commission again?

37

38 Mr. Carnicelli: Us.

39

40 Ms. McLean: It would be this commission.

41

42 Mr. Carnicelli: Maui Planning Commission.

43

44 Mr. Robinson: I have a question.

45

46 Mr. Carnicelli: Commissioner Robinson.

47

1 Mr. Robinson: Mr. Galazin you were at this meeting correct?

2

3 Mr. Galazin: Yes I was, Commissioner Robinson.

4

5 Mr. Robinson: Was there any question about striking it then?

6

7 Mr. Galazin: Chair if I can?

8

9 Mr. Carnicelli: Go ahead.

10

11 Mr. Galazin: So my recommendation at the time was to change the description from...to say  
12 that instead of if a contested case hearing was conducted that if intervention was granted.  
13 However at this point we already know intervention hasn't been granted so it would seem  
14 superfluous to put in a condition that says in the event intervention was granted when it hasn't.  
15 So that was my recommendation at the time. However, I have a different recommendation for  
16 you folks today.

17

18 Mr. Carnicelli: But okay, so I'm gonna piggyback if I could then but if what we're gonna do, if the  
19 Hana Advisory Committee doesn't want the extension to just be able to granted by the Director  
20 and it has to come back here then it's possible there could be a contested case in the renewal,  
21 correct?

22

23 Mr. Galazin: For if...what is the, if they have to come back for a hearing or if they have it come  
24 back for a communication because that would be the difference. Is if the hearing I required by  
25 law so I would have to look at the minutes to see exactly what they as a body wanted to do.  
26 However, if it comes back and there is an intervention then at that point you can say if  
27 another...that a transfer can't happen The reason that the Department puts this language in is  
28 to make sure that everyone's rights are protected. If somebody had participated in the original  
29 hearing besides the applicant and then the applicant wanted to go ahead and transfer then the  
30 person who had an interest in that original proceeding besides the applicant would have an  
31 interest in knowing whether it was transferred. Right now you're saying is that anybody in the  
32 general public would be able to come if there was, if it comes back to this commission for a  
33 renewal sometime down the road, but I'm not sure that that would be if you're talking about a  
34 permit renewal even if it's something that's required by this body I don't know if that would meet  
35 the standard of contested case. I think that's something you could deal with if it comes up down  
36 the road but for what you have before you today I would say just strike the entire second  
37 sentence of Condition No. 2 for this particular permit.

38

39 Mr. Carnicelli: Commissioner Robinson.

40

41 Mr. Robinson: If I could get clarification. So we're talking about the SUP or we're talking about  
42 the STRH.

43

44 Mr. Carnicelli: SUP.

45

46 Mr. Robinson: The SUP because the STRH it wouldn't transfer. How does it transfer for  
47 somebody unless they've lived there for five year so is that, is that a skirt around? I mean, so I

1 mean, you know 'cause this is all going to be tied in, so I understand the SUP, the Director does  
2 the SUP that's fine but the STRH and the intent of Hana I think is for them to make sure is to  
3 make sure that it gets heard again, it's not a automatic you know, you know re-op like how it has  
4 been.

5  
6 Mr. Carnicelli: Director.

7  
8 Ms. McLean: I would have to look in the Code. I don't know if Ryan knows offhand or perhaps  
9 Clayton knows offhand, but I don't STRH permits can be transferred. I don't believe they can  
10 be. You'd have to apply for a new permit, a new applicant would have to apply for a new permit.  
11 I don't believe they can transferred.

12  
13 Mr. Robinson: So is that transfer of the SUP then moot?

14  
15 Ms. McLean: I suppose it would be.

16  
17 Mr. Robinson: David's looking it up.

18  
19 Mr. Carnicelli: So at this point in time I'm just gonna be...the will of the body at this point in time  
20 is that we don't want an automatic extension that we wanna go ahead and have this come back  
21 here is is...Commissioner La Costa.

22  
23 Ms. La Costa: I believe that's what the Hana Advisory Committee wanted.

24  
25 Mr. Carnicelli: Correct that we don't have just an automatic approval. So—

26  
27 Ms. La Costa: Correct. So I would like to go on that —

28  
29 Mr. Carnicelli: So whether that's you, Director or Mr. Galazin or Ryan...go ahead Ryan.

30  
31 Mr. Quigless: I just want to note also that we previously approved all public hearings for Hana  
32 to be conducted with the Hana Advisory Committee so we should clarify whether or not it's  
33 gonna be Hana Advisory Committee that hears the extension or...

34  
35 Mr. Carnicelli: Well I...here's, here's and again, for the record I'm gonna say intent, right, 'cause  
36 if we have to go back to the record, the intent would be that yes, a public hearing would happen  
37 at the Hana Advisory Committee but they're not the approving body if that...so it's like we can  
38 send it to them...like say if it comes back to us we can send it to Hana for another advisory  
39 opinion, it comes back to us, but we're the ones that according to statute and law right now  
40 we're the ones that make that approval decision so I say that we'll keep it with us however note  
41 it in the record that the public hearing should probably still happen in Hana.

42  
43 Mr. Quigless: Okay, thank you.

44  
45 Mr. Carnicelli: And I don't know if we want to, you know, put all that mishegoss in the condition  
46 or not or at least have it noted somewhere that that is sort of how the intent of how the ball  
47 would bounce.

1  
2 Mr. Galazin: Chair?

3  
4 Mr. Carnicelli: Mr. Galazin.

5  
6 Mr. Galazin: Thank you Chair. So I was able to pull this up. The Short-Term Rental Home  
7 Permit itself under 19.65.030(i), a permit is not transferrable except the permit may be  
8 transferred upon the death of a permit holder to an immediate family member as defined in  
9 19.65.030(d)(2)(a). So the only situation in which it can be transferred is to an immediate family  
10 member upon the death of the permit holder.

11  
12 Mr. Carnicelli: Okay, so at this point in time what we'll do is we're gonna use the cover memo  
13 as what it is that we're gonna go by for the recommendation coming from the Department and  
14 then...I'm sorry, coming from the Hana Advisory Committee and yet, Corporation Counsel if you  
15 look at No. 2 is asking that we strike the second sentence starting with, however in the event.  
16 So is what would be out there is coming from the Hana Advisory Committee Page 1 and Page 2  
17 of our handout but striking the second sentence of Condition 2, everybody so at this point in  
18 time I guess we'll go ahead and Commissioner Robinson you did make a motion, we didn't get a  
19 second is that what your motion is in regards to?

20  
21 Mr. Robinson: Correct.

22  
23 Mr. Carnicelli: Okay, so his motion is that. Do we have a second to Commissioner Robinson's  
24 motion? Seconded by Commissioner Thompson. Discussion?

25  
26 Mr. Robinson: Speak to the motion.

27  
28 Mr. Carnicelli: Commissioner Robinson.

29  
30 Mr. Robinson: Following the history of since I've been here, we've always deferred Hana issues  
31 to the Hana Advisory and I'm gonna continue that even though I disagree with, with having the  
32 STRH there I do respect their advisory board and that's therefore I did the motion. Thank you.

33  
34 Mr. Carnicelli: Thank you Commissioner Robinson. Anyone else like to speak to the motion?  
35 Seeing none, Director.

36  
37 Ms. McLean: Thank you Chair. The motion on the floor is to approve the State Land Use  
38 Commission Special Permit subject to the eight conditions listed in the transmittal letter as  
39 recommended by the Hana Advisory Committee with the amendment to Condition 2, deleting  
40 the second sentence.

41  
42 Mr. Carnicelli: All those in favor please raise your hand. That is seven ayes. Unanimous.  
43 Congratulations to the applicant who is not here.

44  
45  
46 **It was moved by Mr. Robinson, seconded by Mr. Thompson, then unanimously**

47

1           **VOTED:       To Approve the State Land Use Commission Special Permit as**  
2                           **Recommended by the Hana Advisory Committee and the**  
3                           **Department subject to the eight conditions with the amendment to**  
4                           **Condition No. 2, deleting the second sentence.**

5  
6                           **(Assenting – K. Robinson, D. Thompson, K. Freitas, K. Pali,**  
7   **C. Tackett, S. Castro, P. D. La Costa)**  
8                           **(Excused – T. Gomes)**  
9

10       Mr. Carnicelli: So Ryan are you ready to just jump into the third one?

11  
12       Mr. Quigless: Absolutely.

13  
14       Mr. Carnicelli: All right, heavy lifting today. Director.

15  
16       Ms. McLean: Thank you Chair this is the second Communication item which is a request from  
17       Monyca and Olamana Eleogram requesting a State Land Use Commission Special Permit in  
18       order to operate The Farm Cottage, a one-bedroom bed and breakfast located on approximately  
19       5.189 acres in the State Agricultural District at 180 Ulaino Road, TMK: 1-3-009: 060 in Hana,  
20       and again, Ryan is the project planner.

21  
22  
23           **2.       MONYCA and OLAMANA ELEOGRAM requesting a State Land Use**  
24                           **Commission Special Permit in order to operate The Farm Cottage, a**  
25                           **one-bedroom bed and breakfast located on approximately 5.189 acres in**  
26                           **the State Agricultural District at 180 Ulaino Road, TMK: (2) 1-3-009: 060,**  
27                           **Hana, Island of Maui. (SUP2 2019/0011) (R. Quigless)**  
28

29       Mr. Ryan Quigless: Okay, same format, we'll just go over the basics and then open to any  
30       questions that you have.

31  
32       Mr. Carnicelli: Okay, thanks Ryan. Is Monyca here?

33  
34       Mr. Quigless: Neither one of them.

35  
36       Mr. Carnicelli: The applicants are not here again.

37  
38       Mr. Quigless: No.

39  
40       Mr. Carnicelli: Okay. All right, walk us through then.

41  
42       Mr. Quigless: Okay, the applicants are Monyca and Olomana Eleogram requesting a State  
43       Land Use Commission Special Permit to operate bed and breakfast home, The Farm Cottage in  
44       a one-bedroom, second farm dwelling located in the County Ag Zoning District and the State Ag  
45       Zoning District on approximately 5.189 acres of land at 180 Ulaino Road, Hana, Island of Maui,  
46       TMK: (2) 1-3-009: 060.  
47

1 We'll go over a brief description of the property again. Again, previously stated the total  
2 acreage is 5.189 acres in size. The maps are located in your exhibits in your reports. Land Use  
3 Designation, State Land Use – Agriculture, County Land Use – Agriculture, not located in  
4 Growth Boundaries nor protected areas. No other zoning exists. The surrounding uses again  
5 are agriculture and residential lots. The parcel is located in the Flood Hazard Zone X which is  
6 an area of minimal flooding. If the SUP is approved then the Bed and Breakfast can be  
7 approved administratively by the Department.

8  
9 Brief analysis of the land use to go over the proposed project is in conformance with the Goals,  
10 Objectives and Policies in the Hawaii State Plan, provide additional opportunities for  
11 employment and economic growth in the visitor industry. Also noting that this is a similar project  
12 to the previous project except that this one is a B&B.

13  
14 Chapter 206, HRS, allows for the establishment of unusual and reasonable uses within the  
15 State Agriculture District through the approval of an SUP2 which is the reason why we meet  
16 today. Again, this is a communication item for the public hearing that happened on  
17 October 29, 2019 and the Hana Advisory Committee recommended approval at that meeting.

18  
19 Mr. Carnicelli: Thank you, Ryan. At this point in time we'll go ahead and open up the floor for  
20 public testimony. There is no one that is signed up for this particular item. Is there anyone that  
21 would like to come forward and offer testimony on this particular item? Going once, going twice,  
22 three times, so if there are no objections we'll go ahead and close public testimony. Public  
23 testimony is now closed. We will go to our standard question from Commissioner La Costa.

24  
25 Ms. La Costa: Thank you. Ryan, being that the owner is not here are you aware of any  
26 previous short-term rental or income derived from short-term rentals on the property?

27  
28 Mr. Quigless: Not from the applicants nor from my knowledge at the Department.

29  
30 Ms. La Costa: Thank you.

31  
32 Mr. Carnicelli: Commissioner Castro any questions?

33  
34 Mr. Castro: No questions.

35  
36 Mr. Carnicelli: Commissioner Tackett?

37  
38 Mr. Tackett: No questions.

39  
40 Mr. Carnicelli: Commissioner Robinson? Commissioner Pali?

41  
42 Ms. Pali: Who's responsible for the photos? Is that something when you do site you do or do  
43 the applicants provide those?

44  
45 Mr. Quigless: Both, but in this case the applicant provided all of them.

1 Ms. Pali: So, yeah, we gotta do a better job on these photos specifically Exhibit 1E the view  
2 from the west and I'm sure it's maybe just, just the bad quality of the photo or maybe just I mean  
3 it doesn't even look like it might even be acceptable as far as the maintenance on the outside of  
4 the home, you know, and I know that's something that Commissioner Keaka Robinson always  
5 talks about of just if we're going to appeal to even just local tourists or tourists we just want to  
6 make sure that we are representing Maui correctly, sorry I'm like tripping out on sugar and  
7 coffee right now, so yeah, but if you've seen it, you've inspected it, you believe that these  
8 photos are probably just really distorted and you know that the condition is acceptable and  
9 meets County Code and things.

10

11 Mr. Quigless: Absolutely yeah. With the...it's confirmed with the site visit, pretty extensive site  
12 visit and they are really a great couple.

13

14 Ms. Pali: Okay, okay, yeah so I don't know do you think it's just because it's been for a while  
15 and then after so many Xerox copies maybe we just kinda lose the quality?

16

17 Mr. Quigless: Definitely, yes.

18

19 Ms. Pali: Okay, all right thank you, okay. Thanks for that.

20

21 Mr. Carnicelli: Mr. Galazin.

22

23 Mr. Galazin: Thank you for indulging me Chair. I just wanted to make sure that  
24 Commissioner Pali that you understood with Ryan's reference that the whole advisory  
25 committee did conduct a site visit.

26

27 Ms. Pali: Oh okay.

28

29 Mr. Galazin: Prior to holding the hearing so the Commission, the Hana Advisory Committee  
30 actually viewed the property.

31

32 Ms. Pali: Got it.

33

34 Mr. Galazin: Not just the Department.

35

36 Ms. Pali: Awesome. Thank you.

37

38 Mr. Carnicelli: Thank you for that clarification Mr. Galazin. Commissioner Thompson any  
39 questions? Commissioner Freitas any questions?

40

41 Mr. Freitas: I kind of look at the house plans sometimes and this is a B&B, bed and breakfast, I  
42 see the bed, I see the kitchen, but I only see one chair, do these people get their breakfast in  
43 bed or is there a table for them to eat? It's, I see one chair.

44

45 Mr. Quigless: The interior décor is completely up to them.

46

1 Mr. Freitas: Okay, all right fair enough. My other question was also the same as the water  
2 source, the water source is the same—

3  
4 Mr. Quigless: Exactly.

5  
6 Mr. Freitas: -- for this one as well. I thought that the questions asked by the Hana Advisory  
7 were great questions. You gotta feel that they really knew these applicants well and gave their  
8 support and so I would support this.

9  
10 Mr. Carnicelli: Great. Thank you. Are there any other questions at this point in time for Ryan?  
11 So we'll go ahead and take the Hana Advisory Committee recommendation.

12  
13 Mr. Quigless: So the Hana Advisory Committee recommended approval of this project subject  
14 to the eight standard conditions to include that the applicant shall educate all guests about  
15 potential detrimental impacts to the natural and cultural resources particularly to the coastal  
16 environment near shore waters and evidence of such an education program shall be provided to  
17 the Department prior to the operation of the B&B.

18  
19 Mr. Carnicelli: Thank you very much. Can I have a motion?

20  
21 Mr. Thompson: Motion to approve.

22  
23 Mr. Carnicelli: Motion to approve as recommended by the Hana Advisory Committee by  
24 Commissioner Thompson. Do I have a second? Seconded by Commissioner Castro. Would  
25 anybody like to speak to the motion? Seeing none, oh Commissioner Galazin, I'm sorry  
26 Commissioner, oh blep, blep, blep, let's back up. You're not a commissioner you're the  
27 Corporation Counsel. So I'm gonna make a motion to amend, the amendment, friendly  
28 amendment to delete, however in the event from Item No. 2 as we did the last one. Can I get a  
29 second to my amendment? Seconded by Commissioner La Costa. Would anybody like to  
30 speak to the amendment? Seeing none, can we get a vote on amending the main motion? All  
31 those in favor please raise your hand. That is seven, unanimous.

32  
33  
34 **It was moved by Mr. Carnicelli, seconded by Ms. La Costa, then unanimously**

35  
36 **VOTED: To Amend Condition No. 2 Deleting the Second Sentence.**

37  
38 **(Assenting – D. Thompson, S. Castro, K. Freitas, K. Pali,**  
39 **K. Robinson, C. Tackett, P. D. La Costa)**  
40 **(Excused – T. Gomes)**

41  
42  
43 Mr. Carnicelli: So back to the main motion. Director.

44  
45 Ms. McLean: The motion on the floor is to approve the State Land Use Commission Special  
46 Permit subject to the eight conditions recommended by the Hana Advisory Committee with the  
47 deletion of the second sentence of Condition 2.

1  
2 Mr. Carnicelli: All those in favor please raise your hand. That is seven ayes, unanimous.  
3  
4

5 **It was moved by Mr. Thompson, seconded by Mr. Castro, then unanimously**  
6

7 **VOTED: To Approve the State Land Use Commission Special Permit as**  
8 **Recommended by the Hana Advisory Committee and the**  
9 **Department subject to the eight conditions with the amendment to**  
10 **Condition No. 2, deleting the second sentence.**  
11

12 **(Assenting – D. Thompson, S. Castro, K. Freitas, K. Pali,**  
13 **K. Robinson, C. Tackett, P. D. La Costa)**  
14 **(Excused – T. Gomes)**  
15  
16

17 Mr. Carnicelli: Thank you very much Ryan. Head out to Hana again soon.  
18

19 Mr. Quigless: Absolutely.  
20

21 Mr. Carnicelli: All right, so at this point in time we're going to go ahead and take a ten-minute  
22 recess before we get into our Unfinished Business. So we'll see you back at 10 o'clock.  
23

24 A recess was called at 9:52 a.m., and the meeting was reconvened at 10:04 a.m.  
25

26 Mr. Carnicelli: Good morning everyone. Maui Planning Commission of January 28, 2020 is  
27 now back in session. I am going to yield the floor to Mr. Galazin again. I don't think we're on  
28 Carolyn. There we are okay. Good morning everyone, Maui Planning Commission meeting of  
29 January 28, 2020 is now back in session. Director.  
30

31 Ms. McLean: Thank you Chair. Under Unfinished Business we have a request from  
32 BRE ICONIC GWR OWNER LLC for a Special Management Area Use Permit, Step 1 Planned  
33 Development Approval, and Step 2 Planned Development Approval for the Grand Wailea  
34 Resort to transfer "H-2 Hotel" and "OS Open Space" zoning designation areas, update facilities  
35 and create 224 new guest room units, renovate and expand the resort swimming pool and  
36 restaurant, expand the parking structure from three to five levels to provide 316 additional  
37 parking stalls, removal of the Seaside Chapel Structure, addition of approximately 30 public  
38 beach parking stalls, and related landscape, utility, and infrastructure improvements at  
39 3850 Wailea Alanui Drive in Wailea at TMK: 2-1-008:109.  
40

41 We have since received modified plans from the applicant that Planner Ann Cua can present to  
42 you and as the Chair mentioned at the beginning of the meeting in addition to this item we have  
43 a Petition to Intervene.  
44  
45

46 **D. UNFINISHED BUSINESS**  
47

- 1           **1. BRE ICONIC GWR OWNER LLC, requesting a Special Management Area**  
2           **Use Permit, Step 1 Planned Development Approval, and Step 2 Planned**  
3           **Development Approval for the Grand Wailea Resort to transfer “H-2 Hotel”**  
4           **and “OS Open Space” zoning designation areas, update facilities and**  
5           **create 224 new guest room units, renovate and expand the resort**  
6           **swimming pool and restaurant facilities, expand the parking structure from**  
7           **three to five levels to provide 316 additional parking stalls, removal of the**  
8           **Seaside Chapel Structure, addition of approximately 30 public beach**  
9           **parking stalls, and related landscape, utility, and infrastructure**  
10           **improvements at 3850 Wailea Alanui Drive, Wailea, Island of Maui, TMK (2)**  
11           **2-1-008:109. (SM1 2018/0011) (PD1 2019/0001) (PD2 2018/0003) (A. Cua)**  
12           **(Public hearing was held on May 28, 2019)**

13  
14           **(Report from the May 28, 2019 meeting)** **(Members please bring your report**  
15           **from the May 28, 2019 meeting)**

- 16  
17           **a. MALAMA KAKANILUA represented by its President CLARE H.**  
18           **APANA, PELE DEFENCE FUND represented by its President**  
19           **PALIKAPU DEDMAN, and HO`OPONOPONO O MAKENA represented**  
20           **by its President ASHFORD KALEOLANI DELIMA, submitting a**  
21           **Petition to Intervene dated June 25, 2019 on the above mentioned**  
22           **application from BRE ICONIC GWR OWNER LLC.**

- 23  
24                   **1) Action of the Petition to Intervene**  
25                   **2) If the Commission acts to grant the Petition to Intervene, then**  
26                   **the Commission may select a Hearing Body/Hearings Officer.**

- 27  
28           **b. If the Commission denies the Petition to Intervene, then they may**  
29           **take action on the application request.**

- 30  
31           **c. WILLIAM MEHEULA, ESQ., Attorney for BRE ICONIC GWR OWNER,**  
32           **LLC’S submitting a Statement of No Opposition To Petitioners’**  
33           **Petition To Intervene Filed June 28, 2019.**

34  
35           **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO**  
36           **CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE**  
37           **COMMISSION’S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES,**  
38           **PURSUANT TO SECTION 92-5(a)(4), HAWAII REVISED STATUTES.**  
39

40           **Mr. Carnicelli:** So at this point in time for those of you that weren’t here at the beginning of the  
41           **meeting when Mr. Galazin explained sort of how this whole process is gonna work I’m gonna go**  
42           **ahead and yield the floor to him so he can explain it again for those of you that weren’t here at**  
43           **the beginning of the meeting. So Mr. Galazin.**

44  
45           **Mr. Galazin:** Thank you Chair and again, just to recap you know the public hearing that was  
46           **held on these permits was closed last May so public testimony was closed. The public**  
47           **testimony on the underlying permit itself can’t be considered by you folks. However, you’re**

1 gonna be given a presentation and you're gonna be looking at a Petition to Intervene. If there is  
2 public testimony just on the issue of the Petition itself very narrowly that can be heard but how it  
3 will go is that the Petitioners will have an opportunity to present their opinion as to why they  
4 should be admitted to the proceeding and I can just go over really quickly there are under rules  
5 there are two kinds of intervenors what I would call mandatory intervenors and permissive. So  
6 I'll read that out from the rules.

7  
8 For the mandatory your rules state that all persons who have property interest in the land  
9 subject to the action who lawfully reside on the land or can demonstrate that they will so directly  
10 and immediately affected by the matter that their interest in the proceeding is clearly  
11 distinguishable from that of general public. Those are the mandatory and they shall be admitted  
12 upon timely application.

13  
14 The second group of people it states that all other parties may apply to the commission and that  
15 leave to intervene shall be freely granted. However, the commission may deny an application to  
16 intervene when it appears that, one of three things, either the position of the intervenor is  
17 substantially the same as a party already admitted, the admission of additional parties will  
18 render the proceedings inefficient and unmanageable or that the intervention will not aid in  
19 development of a full record and will overly broaden the issues. And then if intervention is  
20 granted to any party then automatically all departments and agencies of the State are admitted  
21 as parties to the proceeding and the Department of Planning is automatically is admitted as a  
22 party to the proceeding as well. So probably we can go over it again as you deliberate if we  
23 need to.

24  
25 Mr. Carnicelli: Okay, so before we go I want to ask you a couple of questions. So we have the  
26 Petition to Intervene and there are three representatives I guess or three petitioners and the  
27 applicant has no opposition so in the interest of just expediency can we just say okay, there's no  
28 opposition it's granted?

29  
30 Mr. Galazin: Well Chair there are still a few standards that have to be met. One is as I said  
31 within in these rules you've got to determine and they've got...any party must demonstrate that  
32 either they're a mandatory intervenor or that a permissive intervenor. And again in the petition  
33 filing in your rules 12-201-40 it states that untimely petitions will not be permitted except for  
34 good cause and I would note that this was not a timely permission or a time petition for  
35 intervention and so you would have to be shown that there was good cause for why it was not  
36 timely. So there are standards you have to meet regardless of whether the applicant has a  
37 statement of no position or not.

38  
39 Mr. Carnicelli: Could you please say more about not timely. Why is this not timely? I want to  
40 get into this so it can be addressed as we talk.

41  
42 Mr. Galazin: Sure. Okay, so under your rules in 12-201-40 a petition to intervene shall be in  
43 conformity with your rules and shall be filed with the commission and served upon the applicant  
44 no less than ten days before the first public hearing date and that public hearing date was  
45 May 28<sup>th</sup> in 2019. So that it would have had to been filed ten days before that. I believe it was  
46 filed on June 28<sup>th</sup> of 2019. The Department can correct me if I'm wrong so that was a month  
47 after. Your rules state that you shall not consider it unless there's good cause shown. So the

1 petitioners in this case have to show good cause and you should probably put the reasoning for  
2 that in the record if you are inclined to grant the petition.

3  
4 Mr. Carnicelli: Okay. So then one other question that I want to have in regards to this as far as  
5 timeliness and you know the public hearing date. The SMA application has been altered right?  
6 Now it's been altered as I understand it to more of what the petitioners want not less of what the  
7 petitioners want. How much can one change their application that triggers a brand new hearing  
8 to say okay this isn't what everybody testified on, this is now something different than what we  
9 testified on so what is the trigger for that, so is potentially another hearing would come forward.

10  
11 Mr. Galazin: Well, I'd probably let the Department speak to that first if they wish to.

12  
13 Mr. Carnicelli: Ms. Cua do you want to handle this or Director?

14  
15 Ms. Cua: I'll defer to my Director.

16  
17 Ms. McLean: It's my day. Generally if a project is smaller in scope than what was originally  
18 presented and noticed we would not require an additional public hearing. If...because the  
19 impacts are less, all the analysis is applicable but impacts are presumably the same or less than  
20 what was originally presented. If it's different, even if it's reduced, it's different in some way that  
21 could trigger a new public hearing and certainly if it's larger that would trigger a new public  
22 hearing, but generally that's, that's what we'd consider.

23  
24 Mr. Carnicelli: Okay.

25  
26 Ms. Cua: And if I could add a little bit, just a little bit to that. I think another thing that we look at  
27 is this does happen at times where a project gets deferred because there's been testimony from  
28 the public in opposition or with concerns that maybe the applicant has not been able to address  
29 and so sometimes you send the applicant back and say can you please go and meet with the  
30 community to see if you can address some of these issues because maybe they only arose at  
31 the public hearing and so sometimes they go and they talk story and as a result of that talk story  
32 session there's changes to the plans. So sometimes changes that come back is because of  
33 meetings that they've had which in this case we understand that that's that's what caused the  
34 plans to change.

35  
36 Mr. Carnicelli: Thank you for that. So as far as procedure goes do any of my fellow  
37 commissioners have any questions right now as far as the procedure? Okay,  
38 Commissioner Robinson.

39  
40 Mr. Robinson: If intervention is granted, will it come back before this Commission?

41  
42 Ms. Cua: Yes, so if intervention is granted then as Corp. Counsel mentions there's a separate  
43 process that has to occur. And so like any other time that the Department receives a petition to  
44 intervene we prepare a potential list of mediators and hearing officers. So the process would  
45 first start with mediation and if mediation is not successful then a contested case hearing with a  
46 hearing officer would occur. At some point in time upon conclusion of a contested case hearing,  
47 the hearing officer would prepare a hearing officer's report that would come to the planning

1 commission because you are still the authority on the permit application. So a report will come  
2 back to you at some point in time, you will look at the report and you will rule if you find it  
3 acceptable, if you want to completely throw it out, if you want to add additional things to it and  
4 then you would review the project moving forward.

5  
6 Mr. Robinson: In the past when we've had that happen this body has been contested the  
7 hearing officer's recommendations and then it's been...then thrown out and ruled in the hearing  
8 officer's favor and that's why I'm asking because there was an intervention that happened here  
9 last year where we disagreed with the findings of the intervention but yet the intervention  
10 findings were granted anyway, Paia.

11  
12 Ms. Cua: Oh okay.

13  
14 Mr. Robinson: Okay.

15  
16 Mr. Carnicelli: Director.

17  
18 Ms. McLean: The reasons for that were the way that the proceeding was conducted and this  
19 Commission has significantly modified how it conducts its business as a result of that. That's  
20 when testifiers are sworn in now, applicants have the opportunity to question testifiers so there's  
21 been a number of procedural changes since that time because they were procedural flaws not,  
22 not your decision, although I think there were questions about that too because not enough was  
23 established on the record to back up your decision but it was more the procedural problems and  
24 we will not let that happen again.

25  
26 Mr. Carnicelli: Mr. Galazin.

27  
28 Mr. Galazin: Thank you Chair and just to explain for my department's role also in reviewing the  
29 hearing officer's report, you know I think if...in referring back to the one that you referenced, if  
30 we had looked at it in a time to go ahead and file objections you know the Department may  
31 have, may had noted some of those issues that were brought up in that report and addressed  
32 them so that rather than having something that seemed incongruous in places, you had  
33 something that was a little more reliable. So you know I think that procedures in place from both  
34 the Department for this Commission and you know, within my department as well are all slightly  
35 different than they were for that so I believe that would help mitigate some of your concerns.

36  
37 Mr. Carnicelli: Commissioner Robinson.

38  
39 Mr. Robinson: Thank you Commissioners. Is my concern is that, is when we're hearing  
40 something now before intervention does our criteria lessen at all from when it comes back from  
41 intervention? Do we have to just choose from certain five things that we find wrong...well, now  
42 SMA it's such a large...there's so much more vast area like what happened in the last one and  
43 that's my concern where it comes to proof of objection or reason for denial.

44  
45 Mr. Carnicelli: Director.

46

1 Ms. McLean: The action that you would be taking would still be based on the SMA criteria same  
2 as if there wasn't intervention before. What had happened before was we...the Commission  
3 didn't strictly follow the criteria for that particular permit, didn't establish clearly enough on the  
4 record what criteria they found were not met by the application. A number of statements were  
5 made but they weren't tied into those criteria so the criteria do still apply, it's...that doesn't  
6 change.

7  
8 Mr. Robinson: Thank you Chair.

9  
10 Mr. Carnicelli: Thank you. Commissioner Freitas.

11  
12 Mr. Freitas: The Petition to Intervene was received on June 28<sup>th</sup> and the plans for the project  
13 was changed in July. Why wouldn't there be another Petition to reflect those changes and I give  
14 you an example. One of the, one of the issues was alignment, seeing certain marks on the  
15 property and there was an adjustment to lower the structure for the parking that might have  
16 been. Also, areas were identified that there were burials found and all of the construction that  
17 they have been...that they've changed went away from those areas, so why wouldn't there have  
18 been a newer one so that we read less instead of some stuffs that were already fixed?

19  
20 Mr. Carnicelli: Ann.

21  
22 Cua I can take a stab. We don't know. We, we...the Department just received what we  
23 received. I haven't really gone through officially the documentation but our understanding of the  
24 reason why we received amended plans as is specified in a September 6<sup>th</sup> letter is because of a  
25 meeting that occurred between the applicant and the potential intervenors and then changes  
26 were made to the applications.

27  
28 What we seen sometimes in the past is that sometimes when that process occurs when the  
29 potential intervenors and applicants get together prior to even the petition to intervene being  
30 heard by the commission they kinda do their own mediation and then sometimes, sometimes it  
31 works and sometimes we get a letter like we got from an applicant stating that we've had this  
32 meeting, these were the concerns, as a result of that we would like to propose changes to the  
33 project so this is now our proposed plan. And usually, not usually...at times along with that  
34 comes a letter of withdrawal of the Petition to Intervene that has happened in the past. In this  
35 particular case that did not happen and I can't speak to why that didn't happen maybe that's  
36 questions you can ask both parties.

37  
38 Mr. Carnicelli: Okay. Thank you. Yeah, and I think at this point we're trying set the structure of  
39 how things are gonna follow, you know follow and I think that that's a fantastic question I mean  
40 as far as trying to understand. Do you have another follow up questions?

41  
42 Mr. Freitas: I did, but I forgot now.

43  
44 Mr. Carnicelli: That's okay. Welcome to my world.

45  
46 Mr. Freitas: I know what it is, so the meeting that they may have had is that public information?  
47

1 Mr. Carnicelli: Let's go down to that later. I think right now I just want to set the stage for what  
2 we're...I'll get to you Clare. I'll get you. So is there any other questions as far as procedure  
3 goes? Commissioner Pali. I'll get you Clare. You'll have your turn.  
4

5 Ms. Pali: Chair, so as you set the procedures are you asking us for discussion to help you  
6 decide if you're gonna allow public testimony or not allow?  
7

8 Mr. Carnicelli: Oh, no, no, no...I just I wanna just set the record as far as how everything  
9 unfolded and how it's gonna proceed from here. So now I'm gonna go ahead and Clare do you  
10 want to be the point person on this as I address you guys?  
11

12 Ms. Clare Apana: That make sense.  
13

14 Mr. Carnicelli: And that's fine, I mean just for right now. Just for right now, so I think clarification  
15 just again for everybody that's here and for you as well is that the petitioners are gonna get their  
16 turn to make their presentation. After that, the applicant will get to respond to that. We'll then  
17 have public testimony. The public testimony will be on the petition to intervene not on the SMA  
18 right, on whether or not they meet the threshold and we'll move forward from there. So my  
19 question or...okay, so actually before you guys go then Ann, we'll have you do a brief overview  
20 of the project itself and then we'll have you guys go. So my question first is, as Mr. Galazin read  
21 it into the record do you understand the mandatory and permissive thresholds for intervention?  
22

23 Ms. Clare Apana: May I ask a question?  
24

25 Mr. Carnicelli: Sure.  
26

27 Ms. Apana: It was our understanding that we would be presenting our petition...our petition. It  
28 was also our understanding that we did not have to do anything as far as timeliness or proving  
29 that that was...it was okay, the way that the petition was applied for was not acceptable or  
30 acceptable. We were told...we were not given that instruction. We did ask. So I think if you  
31 want to vet whether the timeliness issue is a problem or if we do have a standing to continue our  
32 petition because there is just cause I think we should do that first.  
33

34 Mr. Carnicelli: As I understand it and maybe I'll have to have Mr. Galazin chime in is you can,  
35 you can, you can raise, you can address that while you're doing your presentation and we'll give  
36 you enough time to address those things because it is part of the threshold.  
37

38 Ms. Apana: But it is something new that is presented to us now. We've done everything to try  
39 to be prepared. I mean, we are not attorneys and so we have done everything to prepare with  
40 the Planning Department ...(inaudible-microphone not working)...be prepared with this hearing  
41 and this was never a question...(inaudible-microphone not working)...because I think we can put  
42 my whole petition up and then have you say, well we can...(inaudible-microphone not  
43 working)...or you don't have this...(inaudible-microphone not working)...  
44

45 Mr. Carnicelli: Okay, thank you for that Clare. Mr. Galazin.  
46

1 Mr. Galazin: Thank you. And yes, just to speak to the petitioners, part of your presentation is  
2 going to be why you filed when you did, what your understanding was and that will go to  
3 whether or not there was good cause. The rules state what they are. Whether or not you are  
4 represented you are held at the standard of knowing what the rules are and understanding what  
5 the rules are when you file, but you will be given ample opportunity to explain your position and  
6 why you believe that you meet the standards and why you believe that your petition should be  
7 accepted despite the timeliness issue of why you think good cause exist and that's something  
8 you certainly are free to raise first, last, middle, whenever you think is most appropriate during  
9 your presentation. Thank you.

10  
11 Mr. Carnicelli: Do you understand I guess?

12  
13 Ms. Apana: ...(inaudible-microphone not working)...but we are ready to go.

14  
15 Mr. Carnicelli: Okay, so—

16  
17 Mr. William Meheula: May I respond to address, maybe I can clear it up...

18  
19 Mr. Carnicelli: You'll have your say, you'll have your turn. So I think at this point in time, Ann  
20 you have the floor.

21  
22 Ms. Ann Cua: Thank you. A lot of what I'm presenting has been said, but I'd like to for  
23 procedural matters take you through what has happened from when we last met on this  
24 application which was May 28<sup>th</sup>, your regularly scheduled meeting you conducted a public  
25 hearing on the above referenced applications which is the Special Management Area Permit  
26 and the Planned Development Step 1 and 2 applications.

27  
28 At the hearing, 17 people testified on the project and prior to the meeting you received the  
29 Department's report for the May 28, 2019 meeting. There were 45 exhibits attached to that  
30 report so as we talk about documents that we've received since then we've started our exhibits  
31 with the number 46.

32  
33 After the public hearing, one month later on June 28, 2019 the Department received a Petition  
34 to Intervene from Malama Kakanilua, Pele Defense Fund, and Ho`oponopono O Makena and  
35 copies were distributed separately to the Commission from this report.

36  
37 As was previously mentioned Subsection 12-201-40 of your Planning Commission Rules of  
38 Practice and Procedure states that petitions to intervene shall be in conformity with  
39 Section 12-201-20 herein and shall be filed with the Commission no less than ten days before  
40 the first public hearing date. Untimely petitions will not be permitted except for good cause as  
41 was mentioned but in effect will intervention be permitted after the Commission has taken the  
42 final vote on the matter before it.

43  
44 And then approximately one month after that on July 23, 2019 the Department received a  
45 Statement of No Opposition to the Petitioner's Petition to Intervene from William Meheula,  
46 Attorney for the applicant BRE ICONIC GWR, Owner, LLC and that's attached as Exhibit 46 to  
47 our Department's report.

1  
2 On August 9, 2019 as we do with any other time as I mentioned when we receive a petition to  
3 intervene the Department emailed a memorandum to potential mediators and hearing officers  
4 that are on a County approved list and that email is attached as Exhibit 47. The Department  
5 then received five responses from potential mediators and hearing officers and a list was  
6 compiled and distributed to the applicant and the potential intervenors and that list is attached  
7 as Exhibit 48. I'm sorry, but I didn't put the number on it. It just says says Exhibit but it's 48.

8  
9 And then all parties were advised to review the list and to come to an agreement on a mediator  
10 and a hearing officer. The parties were further informed that if they are not able agree the  
11 Commission would choose from the list of five.

12  
13 As of January 2, 2019 the Department has not received confirmation from the parties that there  
14 has been agreement on a possible mediator and hearing officer. I should mention at this time  
15 that there was a meeting with the potential mediators where they informed the Department that  
16 they were...they did not agree to the mediators and hearing officers that were on the list and we  
17 provided them with the entire list that the County has and told them if they found anybody else  
18 acceptable on that list to you know get back to us or anyone else that they may be found that  
19 they would want to put a name forward. And so there were emails back and forth on that and  
20 we get into that further but we haven't received to this date resumes from anyone else that we  
21 felt met the qualifications of what is needed to be a mediator, hearing officer and understand  
22 that the potential...the potential intervenors did bring documents forward today which we have  
23 not seen yet so at some point we may get into that.

24  
25 So again as was mentioned another item that the Department received was a letter dated  
26 September 6, 2019 attached as Exhibit 49 it was from the applicant indicating that following  
27 consultation with potential intervenors during a meeting on August 29, 2019 project plans were  
28 further revised to reduce ground disturbance and avoid work in areas of archaeological or  
29 cultural sensitivity. The revisions included a reduction in the number of guest rooms from 224 to  
30 151 by removing the 40 proposed bungalow units from the project scope, by limiting the lagoon  
31 wing expansion to eight lagoon overlook suites and removing the lagoon wing addition  
32 consisting of 33 units. Also, the Seaside Chapel will now remain. Also, instead of adding two  
33 additional levels or 316 parking stalls to the existing parking structure they are only proposing to  
34 add one additional level to the existing parking structure with a total of an additional 158 parking  
35 stalls. Relative to the luau area, improvements in the luau area is now limited to the addition of  
36 artificial lawn turf and interior renovation to the existing restroom facilities.

37  
38 And then in term of cultural monitoring in addition to the four above-referenced modifications to  
39 the project scope the applicant agrees to complete a new archaeological monitoring plan upon  
40 recommendation by the State Historic Preservation Division and will coordinate with Native  
41 Hawaiian groups to implement cultural monitoring during ground altering work. These  
42 adjustments represent a reduction of 32.8 percent in the total proposed guest units and a  
43 reduction of 47 percent in disturbed area from the originally proposed scope of improvements.  
44 And we've summarized...there's a summary of the proposed improvements but I won't go into  
45 that.

46

1 The Department also received a letter from the State Historic Preservation Division dated  
2 November 14, 2019, it's attached as Exhibit...oh excuse me, that should be 49 I believe,  
3 sorry...Oh, no 67, I'm sorry because all of the plans are exhibits as well. And basically State  
4 Historic Preservation Division had concluded that based on information provided they have  
5 insufficient information to determine that the project will not adversely affect potential subsurface  
6 historic properties. They are requesting then that archaeological monitoring be conducted for all  
7 ground disturbing activity for identification purposes and that a new archaeological monitoring  
8 plan meeting the requirements of Hawaii Revised Statutes 13-279-04 be submitted for review  
9 and acceptance prior to permit issuance.

10  
11 After receiving that letter we asked SHPD for clarification as to whether they felt the SMA Permit  
12 could proceed and by email we...email dated November 21, 2019 attached as Exhibit 68, SHPD  
13 indicated that the permit could proceed provided that it be subject to a condition that  
14 archaeological monitoring will be conducted and that no ground altering permits will be issued  
15 until the archaeological monitoring plan is accepted.

16  
17 And then the final piece of information that the Department received which I'm sorry I did not  
18 include that in this report, we received a letter dated June 24, 2019 from the applicant regarding  
19 workforce housing compliance related to the applications and basically the applicant has  
20 indicated that they've entered into an agreement with Ikaika Ohana, a nonprofit affordable  
21 workforce developer who is currently developing units in South Maui area to acquire and utilize  
22 59 qualifying housing credits to the applicant through DHHC to fulfill the required condition.

23  
24 So the next steps now that you have all the information that the Department has received since  
25 the application and we've also given all this information to the petitioners, now the Commission  
26 will consider the petition to intervene and we would move forward from then. Are there any  
27 questions?

28  
29 Mr. Carnicelli: Thank you Ms. Cua. Does anybody have any questions for Ann at this time?  
30 Commissioner Pali.

31  
32 Ms. Pali: Can you just clarify the credits that they're working with that nonprofit on new housing  
33 to be built?

34  
35 Ms. Cua: That's my understanding that this group is doing, they're currently developing units in  
36 the South Maui area and maybe you can later on ask that.

37  
38 Ms. Pali: I think that's just a really good important factor that's all. Thank you for clarifying.

39  
40 Mr. Carnicelli: Any other questions for Ann at this time? So Clare, we're gonna go ahead and  
41 give you the floor at this time and we've had a little bit of conversation at the break, typically we  
42 allow petitioners about 10 or 15 minutes, you said that you want 30. I'm more than willing to  
43 give you that. There's three different entities I guess here in the petition to intervene. Do you  
44 still feel as though 30 minutes is gonna be adequate for you guys to express how you meet the  
45 thresholds of intervention?

46  
47 Ms. Apana: If you don't mind I will try...can you hear me?

1  
2 Mr. Carnicelli: Actually when you speak directly into—  
3  
4 Ms. Apana: It sounds like it's not—  
5  
6 Mr. Carnicelli: Yeah, is, is it's kinda like eating an ice cream cone you kinda have to put it right  
7 at you.  
8  
9 Ms. Apana: Can you hear me?  
10  
11 Mr. Carnicelli: There you go.  
12  
13 Ms. Apana: I will try to address as much as I can of the...of the...on expected questions that we  
14 have to answer to you and I hope that you will give the rest of the people who have come to  
15 present the adequate time to finish what they have.  
16  
17 Mr. Carnicelli: Well, here's what we...I was thinking about is...is, is I was just going to give you  
18 an allotment of time. You guys can divvy it up however you want. One guy could go for a  
19 minute and somebody can go for 29, you can all go eight minutes, I mean is--  
20  
21 Ms. Apana: All right.  
22  
23 Mr. Carnicelli: I mean is that okay with you, I mean I want to be fair here, right. I want you to be  
24 able to have the opportunity to say what it is you want to say, present your case.  
25  
26 Ms. Apana: I would have to be presenting things that we were not going...planning to have to  
27 do, so I will try to do it during my time.  
28  
29 Mr. Carnicelli: Okay.  
30  
31 Ms. Apana: Okay.  
32  
33 Mr. Carnicelli: So what we'll do is Carolyn if you could go ahead and we'll do 30 minutes and  
34 then, yeah...So the other part too is as the ball bounces, you're gonna go, they're gonna go,  
35 you'll have another shot too.  
36  
37 Ms. Apana: Right, after we finish our presenting our petition.  
38  
39 Mr. Carnicelli: Correct.  
40  
41 Ms. Apana: Correct.  
42  
43 Mr. Carnicelli: So it's not like okay, 30 minutes and then you're pau. You'll have another time to  
44 address this.  
45  
46 Ms. Apana: Right, thank you.  
47

1 Mr. Carnicelli: Okay, so the floor is yours. Thank you Clare.  
2

3 Ms. Apana: Clare Apana. I live in Wailuku, Maui. I am a resident of Maui. I was born here. I  
4 am also a Kanaka Maole from the people who lived here prior to contact with the other world  
5 and therefore, can be regarded in your system as a...having the rights of a Native Hawaiian but  
6 I am a Kanaka Maole in my definition.  
7

8 I would like to address the timeliness of filing. I came and testified in May. I thought that was a  
9 second hearing but your counsel says not. And so I came and testified at that hearing and in  
10 preparation I noticed that there was no SHPD approval for the project and there was no SHPD  
11 response. You have a law and rule in this County that says that before a director can agendize  
12 an item you must have all the comments from the agencies. I addressed that with Director  
13 McLean and Ann Cua. I said, do you have the SHPD approval, do you have, do you have their  
14 comment? And they did not. And I asked that for several weeks after the  
15 petition...before...after the hearing. And that just did not sit well with me that that was...that  
16 had happened because I also saw in the petition, the...in the planner's report that there were  
17 mistakes, there were big mistakes about the iwi kupuna and the big mistakes about how  
18 endangered they would be and the possible harm that could never be, never be mitigated,  
19 never, never be able to be turned back and made whole again. So we then researched this  
20 project because I belong to Malama Kakanilua, it is an organization name that I started to begin  
21 to protect our iwi kupuna and advocate for them. It was started in 2007 and we have advocated  
22 since then continuously for the protection of iwi kupuna. We are latest and most recent goal is  
23 to see that known burial areas do not get built upon and this is just that. This is a known burial  
24 area. There is no other area in this entire part of South Maui that has this many burials on it.  
25

26 And what has happened to our burials is just egregious. It is not necessarily the fault of the  
27 present owners. It is just the way they did things then. It is the fault of a system that looks at  
28 our burials as nothing, as part of a commodity. And so in bringing forth this petition you will find  
29 that we have lineal descendants of the area, lineal descendants of the area who also have  
30 property interests in this area, who live nearby this place. You'll find that Malama Kakanilua last  
31 year was given a ruling from Judge Cardoza that said that we have property interest in the iwi  
32 kupuna that we are trying to protect. And I hope that you will find that interpretation as a  
33 property interest because there are hundreds of iwi kupuna that have been disinterred and  
34 moved and some of them lost from this property. But that will be your ruling that is the ruling of  
35 the Second Circuit Court.  
36

37 What has happened here is since the time that I have made my inquiries to Director McLean  
38 and Planner Cua we filed the petition, and we filed the petition knowing that this was agendized  
39 too early. As a matter of fact, I still do not see a response from Office of Hawaiian Affairs who  
40 has the Memorandum of Agreement for the disinterment and reinterment of burials on this  
41 property. I looked, it's not there. I do not see a meeting with the CRC. I do not see a meeting  
42 with the Burial Council for this particular iteration of the project plans and they have done this  
43 before. As far as I'm concerned it's still incomplete but that is the reason...and I'm sorry I don't  
44 have it with me, the number, it is in my petition, the number of rule that states that all  
45 department responses must be in before you agendize and maybe that's good for you to know.  
46

1 What has happened is we had a meeting. I spoke to Director McLean and I said, well what do  
2 you we do, are we going to be regarded as intervenors, not intervenors, and she says, we'll you  
3 know they're not contesting you, they're not, they're not saying you can't be so why don't you go  
4 ahead and talk to them, you're gonna have to talk to them anyway. So we said well, we don't  
5 have an attorney, well okay we will. And so Mr. Meheula who's the attorney representing BRE  
6 or the Grand Wailea asked for the 408 rule which means you don't take what you do in there  
7 outside. We met with the Trevor Yucha, I'm not sorry if that's not right and he was the only one  
8 there, Mr. Meheula did not appear, the person, the cultural person from the hotel did not come,  
9 and there was an owner on the phone. We had a meeting. We were not shown any plans. We  
10 were not told we were giving a consultation.

11  
12 So I have since then found out that a document was given to SHPD in September after our  
13 meeting that is listed as consultation from the intervenors. You will see when you read the  
14 SHPD approval that she held off that...Susan Lebo held off approving it to get more community  
15 input, in particular she wanted our input at that, at the time after we intervened. She, I learned  
16 at a different meeting with her in December that she wanted to come to our second meeting with  
17 BRE. We were not given the opportunity to have her come to that meeting. So it is as is often  
18 done to us a system which makes us go through hoops and then closes those hoops and  
19 makes it so that we are shut out as I feel we have been shut out of the process of speaking to  
20 SHPD and having our manao said. As a matter of fact, we have never been given or asked  
21 specifically what is it about this plan that we don't like. The plan I understand, the modification  
22 was turned in in September. We didn't get a copy of the modification from BRE or from  
23 Ann Cua, Planner. I had to ask her for it after a reporter told me that that, hey there's a new,  
24 there's a new plan and it's been accepted by SHPD. That was news to me. So I wrote to  
25 Planner Cua and said, you have a new plan, I mean, there's a modification. She sent me a  
26 map. That is not the whole plan. I asked for the entire modification. I asked twice for it. And  
27 finally I sent it to Michele McLean also, she on that very day, the day before we met them sent  
28 me all of the modification plan. So that is in December.

29  
30 I do not believe that to answer questions from the commissioner, I do not believe we have been  
31 given the opportunity to do, to give you our response. And I have reserved that right with  
32 Planning to augment our, our comments if necessary. And I have asked...you know I don't see  
33 any of my letters to Planning in your documents, maybe they're there I just don't see them. I  
34 have asked do we need to augment, do we need to change our petition, do we need to do this  
35 before ten days before this meeting? I did not get an answer from Planning so I just reserved  
36 our right to augment what we have supplement what we had done. I think that one of us is early  
37 in agendizing this project. There are few...(inaudible)...things that have happened so that we  
38 have not been properly notified of changes so that we perhaps a different kind of petition could  
39 be shown to you today and I would have spoken more about why I'm here, but I want to tell you  
40 those things that have happened and if...when you accept us as petitioners I will then give you  
41 the rest of the story of how hard we tried to get someone with, who could qualify to be a  
42 hearings officer and who also is knowledgeable about traditional practices. We thought that  
43 would be the fairest hearings officer and we worked really hard to find them and I will tell you  
44 what happened when we get the opportunity. Thank you very, very much. And we'll go for next  
45 person. Thank you. ...(Not speaking into a microphone)...does he have to stand up?

46  
47 Mr. Carnicelli: It be better if he stood at the podium please.

1  
2 Mr. Ashford Kaleolani Delima: Aloha kakou.

3  
4 Commission Members: Aloha.

5  
6 Mr. Delima: It goes to everybody in this room. Kakou means everyone. My name is  
7 Ashford Kaleolani Delima. I'm a lineal descendant of Makena. Was born in Kula. That time  
8 known as sanitarium now it's Kula Hospital. Lived in Makena, Oneloa Beach until I graduated  
9 high school and we still have a home close to Makena Landing and I'm real knowledgeable  
10 about the whole area and I do have kupunas, iwi kupunas from makai to mauka. It means from  
11 Ulupalakua to Makena and I'm very concerned of the land in general, the ocean and what's  
12 happened from the 50's till today and there's a big change. You can see the change on the  
13 land, but majority of the people don't know what's going on in the ocean. I've been in the ocean  
14 since I was three years old. My tutu kane was a fisherman, my dad was a fisherman. I was in  
15 the ocean since I was three years old and we fished from North Kihei till Nu`u that's past the  
16 light house in, in what is known as La Parouse Bay.

17  
18 So I like to say that we need to take care our aina, take care our iwis, kupuna iwis and we  
19 should present this to everyone that's concerned and lot of people that lives in Makena been  
20 there for many years and now living outside. By the way, my residence is in Wailuku. They are  
21 concerned with everything that I am concerned about plus little bit more. So I urge you to listen  
22 to everyone like you're listening to me right now and put things into consideration and do the  
23 right thing. By the way I'm representing the Ho`oponopono O Makena and just to interpret what  
24 Ho`oponopono O Makena is or what it's for is to make things right in Makena and that goes  
25 further than Makena. I, the President, would like to see this happen throughout the whole Island  
26 of Maui and throughout the whole State of Hawaii. With that, I conclude by saying mahalo nui,  
27 maka nana pepeiao nana. Mahalo. If there's any questions I would answer the questions right  
28 now.

29  
30 Mr. Carnicelli: I think what you'll do is let you guys continue on and then we'll definitely have  
31 questions as we go for sure. Carolyn where are we at on the time?

32  
33 Ms. Takayama-Corden: Fourteen minutes left.

34  
35 Mr. Carnicelli: Fourteen minutes left.

36  
37 Ms. Carol Lee Kamekona: Aloha kakahiaka Chair, Commissioners.

38  
39 Commissioners: Aloha.

40  
41 Ms. Kamekona: E kala mai. I ask your indulgence as I read to you my testimony so as to not to  
42 waiver from my thoughts, to express the pertinent facts relating to me at my place within this  
43 intervention. Ms. Kamekona spoke then in Hawaiian.

44  
45 My name is Carol Lee Kamekona. I come from Moku o Keawe, but I live Maui Nui a Kama. I  
46 am a Hawaiian. Kanaka Maole, Kanaka o Iwi, are the aboriginal peoples of this aina. As a  
47 people our origin is believed to come from Wakea, Sky Father, and Papa, Earth Mother. They

1 are first parents of human life on Earth as they are of plant life that springs living from Earth  
2 under the influence of the sun and rain from Heaven and of animal life that feeds upon it. So  
3 when we as Kanaka Maole bury our loved ones traditionally we say, we kanu the iwi. We plant,  
4 so grows another. We return them to where they came to the one of Earth Mother, to the sands  
5 of her bosom. As is stated in Baibala, Ecclesiastes Chapter 3, Verse 20, All go into one place;  
6 all are of dust, and all turn to dust again. Why do I tell you this you ask? Because we as a  
7 people have a close and unique spiritual connection to Earth and environment, to Ke Akua.  
8 Aspects of togetherness, continuity, purpose and significance are a part of learning and coincide  
9 with that spiritual connection. As our loved one's bones or iwi are placed in the one the `i`o, the  
10 essence of that loved one is also placed in the one. So when you disturb that iwi, desecrate  
11 that value, that burial you devalue their worth, the existence.

12  
13 The many times I have walked the aina of the Grand Wailea Resort, the hours I spent reading  
14 all or whatever reports we found or were given, the pain, the hurt, the anger, the tears, all the  
15 emotions flooding through as I read of all the burials, over 300 in one report that have been  
16 desecrated. Why? Because it doesn't have a headstone? Because it's not a particular or  
17 specific place called a cemetery? So what? In the name of profit, in the name of development.  
18 Enough. Pau, already. Let our kupuna rest in peace. One desecration is one too many.

19  
20 My tutu kane, my grandfather had a special gift. He was a vessel for Ke Akua, a beacon of his  
21 light. Known and understood among my mother's generation as it was not something you  
22 discussed publicly. I'm not saying that I possess any kind of a special gift, but I know something  
23 is not right. Once when I was walking on the pathway between the Chapel and the Chapel  
24 Wing I was taken aback like I had run into a glass door that was shut. I bounced backwards, my  
25 friend who was with me saw it happen and didn't know what to make of it, actually neither did I.  
26 Another time, I am walking near the burial preserve by the Wailea Wing and my body gets cold,  
27 all my hair is standing up, I'm getting goose bumps, my feet are like frozen and I can't move.  
28 This has happened to me a few times already and when I walked in the Humuhumu Restaurant  
29 I get nauseous and lightheaded. My legs get weak, I gotta stop and lean on the post until it  
30 passes. These instances to me are the hoailona that my kupuna are reaching out. They are  
31 telling me it is my kuleana to kokua them, to malama their resting place, to be their voice to say  
32 enough, pau already.

33  
34 According to Abraham Fornander, an important Hawaiian journalist, judge and ethnologist there  
35 was a High Chief of Hawaii Island that lived in Honuauula. He was the grandfather of Liloa and  
36 the great grandfather of Umi, both High Chiefs of Hawaii Island. His name was  
37 Kauholanuimanu. He is attributed to building the Loko Ia of Keoneoio. His wife, Neula was  
38 from a Maui family with ties to Honuauula. As reported by Inez MacPhee Ashdown Maui  
39 County's historian for a number of years, Oneula, Oneuli or Kalani Heiau by Keawalai Church  
40 about eight miles south of the Grand Wailea Resort and Onepaa Heiau south of the Makena  
41 School not far from Keawalai Church were both built by Kauhola. A dated feature found Oneuli  
42 Heiau relates to Kauhola's era, AD 1420. I am a 15<sup>th</sup> generation direct lineal descendant of  
43 Kauholanuimahu. My contention has always been no digging. The four d's, no digging, stop  
44 desecrating, no more disinterring, stop disrespecting my kupuna.

45  
46 I would like to close with this thought. For those of you on this commission, if you proclaim to be  
47 a Kanaka Maole and have a speck of koko in our kino, I challenge you to reach deep into your

1 naau and ask yourself is this a pono thing? What if these were your ancestors, what if these are  
2 your ancestors would you want them dug up? Enough. Pau already. Kupuna always say what  
3 goes around comes around maybe not to you but to your ohana, your keiki or your  
4 ...(inaudible)... Mahalo.

5  
6 Mr. Carnicelli: Thank you. Carolyn how much time we have left?

7  
8 Ms. Takayama-Corden: Five minutes fifty-five seconds.

9  
10 Mr. Carnicelli: Just shy of six minutes.

11  
12 Ms. Takayama-Corden: Yes.

13  
14 Mr. Kaneloa Kamaunu: I'm gonna...there's others that want to make it so I'm gonna make it  
15 short. My name is Kaneloa Kamaunu. I'm from Waihee Valley. I am with the petitioner of  
16 Malama Kakanilua. In that intervention I talked about water and the use of the water.  
17 According what they explained in the intervention that they weren't taking any more water for  
18 the use of the reconstruction. For the mere reason that they found they had leaks throughout  
19 the year that were never addressed until later on. So they're saying because the leaks we're  
20 already there...(inaudible)...and now that they you know fixed it that they still gonna use that  
21 water. Well, for me had it been corrected on a timely manner we would have an estimate of  
22 how much water they actually would use in the operation what they have now, but just because  
23 you fix the leak and you had use this much water doesn't give you the excuse now to reapply for  
24 more water because for one thing you're extending and now you're saying oh, we had this...it's  
25 like you have this money, this discretionary money that we can play with. No you don't. You fix  
26 the leak so now you got what you got and you can't expand it because you misused a resource  
27 that can never be created. Man cannot create this resource. So I don't see how you can say  
28 that oh, we're just gonna continue on as we did before. You know I would say, no you want it  
29 you go reapply for it. That's the proper procedure not just saying oh we've been using it  
30 anyway. You were basically letting it go to waste which to me is something that needs to be  
31 addressed.

32  
33 So...and being that I having recognized by the County of Maui in Council Chambers as kuleana  
34 I was part of the Na Wai Eha case. So when that started they recognized me as kuleana. They  
35 also recognized that I had superior rights and because the water that these guys are using  
36 come from my ahupuaa which is Waihee and I'm recognized as a kuleana in the area there  
37 needs to be a discussion and I need to come forward because I have to make my objections  
38 yeah to what they want to use it for, you know, and I have lots of questions for them and the  
39 thing is is there's nothing, they haven't put out information to describe you know the water use.  
40 So, and who actually is putting out these numbers and how do we qualify these numbers with  
41 people that have nothing to do with them. It has to be a party that's has nothing to connection  
42 with this construction. So where is all that information? But as kuleana and I've been  
43 recognized by the State Resources...Resource Commission on Water Use, on water as having  
44 superior rights. People don't understand what that means through the Kuleana Act because this  
45 our...and I'm not saying...you can believe the Kingdom is alive or whatever, but the thing is it's  
46 my right. It's my birth right and all my kuleana and seven generation and so I have the right to

1 mitigate this situation as far and I put in that intervention, but it is my right. It's a right that have  
2 and I want that to be addressed.

3  
4 Going to as far as iwi as the other issue a lot of you don't realize that there is a law, there is a  
5 law in 1860 which gave the right of these people and it says the act of protection, a place of  
6 sepulcher was created to protect the sacred resting places of our forefathers and prevent the  
7 illegal or unlawful conveyance, discretion, disinterment, disturbance, looting and/or removal of  
8 any human body from any burial place. Those are willing to violate the law are subject to such  
9 penalties of punishment prescribed. The law itself says any person not having any legal right to  
10 do so shall willfully dig up, disinter, remove or convey away any human body from any burial  
11 place or shall knowingly aid in such disinterment, removal or convey away every and each  
12 offender, every person, accessory thereto either before or after the fact shall be punished by  
13 imprisonment and hard labor for not more than two years or by fine not exceeding \$1,000. This  
14 is an 1860 law. So it is a law that was legislated. We were, we were, we had a government, it  
15 was recognized, we were part of the family of sovereign whatever, but we were recognized. So  
16 the thing is this is one legal law and if you like challenge to see whether it still lives in 2009  
17 when it came to real property tax I opposed that because the old law says that we don't have to  
18 pay property tax 'cause that was already taken care of. Corp. Counsel when was asked by  
19 Bill Medeiros who was the Hana representative what I was saying was correct. Respond from  
20 that Corp. Counsel was it's an old law meaning the law still is enforced. Your law that you have  
21 7-1, HRS 7-1, talking about building materials is a law of the Kingdom, you know. So  
22 63 percent of HRS is in Hawaii reflect back to the original law of the Kingdom. Thank you.

23  
24 Mr. Carnicelli: Thank you.

25  
26 Ms. Takayama-Corden: ...(inaudible)...

27  
28 Mr. Carnicelli: You got a half a minute.

29  
30 Ms. Apana: You're gonna hold us to a half a minute? We have two, two more to speak.

31  
32 Mr. Cody Nemet Tuivaiti: Aloha mai kakou. ...(spoke in Hawaiian)... My name is Cody. I live in  
33 Kula, Kula Kai, and my connection to the Wailea area is from everything that I've been learning  
34 in these areas from kupuna. I have walked the lands with kupuna in Paiahu and they tell me  
35 this place has Paiahu, this is the...(inaudible)...

36  
37 Mr. Carnicelli: Cody hang on one second, okay. Just hang on. I'm sorry to interrupt you but  
38 just like we did 30 minutes. Does the applicant have any problem with us going beyond  
39 30 minutes?

40  
41 Mr. Meheula: A few more minutes is okay.

42  
43 Mr. Carnicelli: Okay, go ahead and finish what it is you wanted to say Cody.

44  
45 Mr. Tuivaiti: Okay. So my connection to the iwi, my connection to Wailea it begins in this area  
46 called Paiahu, yeah. I have walked the land with kupuna and elders from in this area. We have  
47 been taught about the pohaku in this area. We gather pohaku in this area. We have conducted

1 our own Makaiki season, the rising of Makalii in this area. We have learned how to gather  
2 seeds in this area. When to gather the seeds in this area. And everything that we do conducts  
3 pule ceremony. When you conduct one pule, when you conduct any kind of ceremony you  
4 referring back to the ancestors. You referring to them, you asking for them to pali you, to  
5 protect you, you asking for them to look over you, with every pule we do we reach to them. We  
6 asking them for something. So when the iwi is getting taken out of the ground like that the  
7 effects of ground disturbance for us as cultural traditionalists we gotta refer to them. We doing  
8 everything in their name. We've gotta refer to them again. How could I not be here today to  
9 defend them? Everything I do is for them. Everything we learn is for them in the same area as  
10 them. This is not a random area. It was said by the archaeologist himself that the iwi that we  
11 kanu here were kanu in a particular way that they have never seen before. The amounts of iwi  
12 that was kanu here is the biggest amount in South Maui found so far. For us as traditionalist we  
13 depend on them, we ask of them, so when they come out of the ground and they say we still  
14 here how could we not acknowledge them? We understand that there's building, there's  
15 developments and all these have to happen but this is the reason why we're here. We cannot  
16 say, we cannot pretend that this is not happening. I took the day off of work to be here for them,  
17 you know. And so, I ask you allow us to intervene because we need to sit at the table for them.  
18 They deserve us. We have asked so much of them. They asking for us now and that's why we  
19 here. Mahalo.

20  
21 Mr. Carnicelli: Thank you. Cody, just for the record which entity are you a member of?

22  
23 Mr. Tuivaiti: Ho'oponopono O Makena.

24  
25 Mr. Carnicelli: Okay, thank you.

26  
27 Mr. Tuivaiti: Mahalo.

28  
29 Mr. Carnicelli: So at this point in time, Cody you said that you had somebody else that you  
30 wanted to bring up?

31  
32 Ms. Apana: ...(inaudible – not speaking into a microphone)...

33  
34 Mr. Carnicelli: So you're okay for now. Okay. So at this point in time we'll go ahead and have  
35 the applicant step forward and with any response that you may want to have.

36  
37 Mr. William Meheula: Okay. Aloha kakou.

38  
39 Commission Members: Aloha.

40  
41 Mr. Meheula: Mr. Chair, Commissioners, Madam Director, intervenors. My name is  
42 Bill Meheula and I represent the resort, Grand Wailea. And I think, the first thing I wanted to  
43 start with is what's relevant today? Today is whether or not the Petition to Intervene is gonna be  
44 granted not so much the claims that the petition alleged against, against the Grand Wailea.  
45 That's not today, that would be the contested case hearing. So I'm gonna speak mostly to that  
46 issue and first of all timeliness. We did not oppose the petition even though it was about a  
47 month late because there's a standard of good cause. They didn't really address it in their

1 petition but I know the law in this area and the law is that if the resort didn't suffer any kind of  
2 harm because of a one-month delay then...you know the State of Hawaii has, has a policy of  
3 wanting issues to be resolved on the merits versus just a technicality. So we said, you know,  
4 we're not going to let the timeliness thing, we're not gonna object and go about it that way.

5  
6 As far as standing, I think it's mandatory for them. I mean, they've expressed I think clearly that  
7 they have a special interest that's different from the general public so I think they've satisfied  
8 that and that's why we don't oppose it.

9  
10 I think couple other things I wanted to address procedurally is. If the petition is granted today  
11 then I urge you to then move to the next step which would be the appointment of a mediator and  
12 hearings officer. We have five, five folks there. I think Glenn Kosaka he was a mediator back  
13 when this property came up first time for SMA Permit in 2012 and Dana Hall intervened and he  
14 successfully participated and mediated that dispute. So we would recommend him as a  
15 mediator. As far as a hearings officer, they all appear to be, to be qualified and we leave it to  
16 you. I don't really know the sequence whether you pick a mediator first or hearings officer first,  
17 it's unclear from the rules but I urge you to do that today to appoint both because there's a rule  
18 that says that if the petition to intervene is granted then within 30 days there shall be a one-day  
19 mediation paid by the Commission.

20  
21 There is also rule there in that section on mediation and that's 201-68 and that would be  
22 Section D, it says that the Commission can waive mediation in its discretion. I've asked, I've  
23 asked them if...the intervenors whether they would waive and we've talked about it. I haven't  
24 really gotten a firm response but the reason why we're asking to waive it is that we've met three  
25 times, it's true I missed the first one 'cause I had a trial, but I did attend the last two and the top  
26 management from Grand Wailea was present. I mean, the ownership was there, the general  
27 manager was there, and we had a, we had really good frank discussions about what, you know,  
28 their bottom line is and what our bottom line is and it's clear to me at this point at least that you  
29 know spending another day is not going to resolve it and why waste 30 days, why waste the  
30 County's money so I just put that out there and they can address that if...but that's definitely a  
31 power that you have to just move it forward to the contested case hearing.

32  
33 The...one of the things that I think Clare said was that they would like the right to amend their  
34 petition. So I'm...I don't believe that's that's proper because a petition to intervene lists out what  
35 are your objections to, in this case, the SMA. That's what relevant as far as when it gets  
36 transferred to the contested case hearing. That's the...so all the evidence is about that the  
37 SMA and your attacks on the SMA and the attacks that they specified in their petition which are  
38 pretty broad. I mean, they...it's mostly focused on iwi but they address water and workforce  
39 housing, sight view, traffic, you know things like that, so those are relevant and they can do that,  
40 but for them to come in and add something new would be unfair and would be outside of the  
41 scope of what is granted to the hearings officer. And the reason for that is if you look at the  
42 hearings officer's powers under the rules then the hearings officer doesn't have the right to  
43 amend it and like go outside of the SMA. So that's why I'm saying they shouldn't be allowed to  
44 amend. Just raise that because they, they did.

45  
46 And finally just to, address you know their passion rightly so for you know all of the burials that  
47 were found, 219 mostly from 1970 when they put in a sewer line and then the balance about

1 60 percent more when they did the initial grading of the hotel back in the late 80's all of those  
2 219 were reinterred with Dana Hall and onsite. And that is, that is a function of history, that's a  
3 function of the laws at that time, and public awareness, but now we have a new owner and this  
4 owner purchased the resort in 2016 and when he purchased the resort in 2016 this SMA Permit  
5 had already been granted in 2012 and expired in 2015 but that's the, that's the archaeological  
6 inventory survey they were working off of. It allowed 310...301 new rooms. They looked at that  
7 and they reduced it back. And they reduced it back because what SHPD did back in 2008 was  
8 they said okay, if you're gonna do this area then we want some testing, some subsurface  
9 testing, some borings. And what happened was they couldn't do the borings because it would  
10 have hit too close to utility lines and what SHPD did was they said, okay then you don't need to  
11 do the borings we'll just, we'll just monitor it when you do the construction. This owner came  
12 back and said, no let's just take out that whole area and not do that whole area so it's reduced  
13 from 301 to 224.

14  
15 And then we got their petition and we met with them and at the first time they met on August 29  
16 of 2019 we already saw their petition and what they said so we put together a proposal which is  
17 exactly the same as the reduced project now which reduces it down to 151 rooms and it took  
18 out anything that got close to any kind of iwi finding. And the way we went about that was, there  
19 was a monitoring plan that was done of the work that had been done before that resulted in the  
20 217 that had been reinterred at the preserve on the...at the hotel. And that monitoring plan  
21 pinpoints exactly where every burial finding was found. We took those and said, okay let's stay  
22 away from anywhere near that and so these other areas that we're now proposing, these are  
23 area that have...that is not close to those number 1, number 2 it's been built over already. And  
24 when they built over already when...it was monitored so they watched if there was anything  
25 there and so it's just in those areas and most of the areas here that we're talking about that  
26 we...this proposal it's bedrock after one foot. So not your typical you know iwi burying area.

27  
28 So I mean, I know it's not, it's not you know...the reason we're here today to discuss the merits  
29 but you know a lot was said about their position and I just wanted to explain why it is that we  
30 were able to go back this far but not any further. I mean I think it's consistent with the mission  
31 statement there, I mean sustainable growth with a balance of economic, culture and  
32 environment and that's, that's what this owner is trying to do. And going forward with this...if  
33 they can demonstrate any other kind of...it's gonna be a real risk for iwi then you know maybe  
34 we'll scale back it a little more, but this is based on the monitoring report. We even, we even  
35 have the person that did the monitoring report, Bob Reckman, archaeologist. He's here today if  
36 you want to speak to him. We have our planners here today. We have ownership here today  
37 and we have the general manager. So if you have any questions of any of them, but otherwise  
38 that's all I have.

39  
40 Mr. Carnicelli: Thank you Bill. So at this point in time we're gonna go ahead and open  
41 up...okay, so we're gonna go ahead and open up the floor for public testimony. Clayton can  
42 you hand me the sheet please? There's no sheet. Okay, so just so everybody is clear is, is this  
43 is the motion to or it's the yeah, the motion to intervene, so this is the intervention that we're  
44 gonna take public testimony on not the SMA but the intervention itself. Yes, Clare.

45  
46 Ms. Apana: Are we not be...(inaudible-not speaking into the microphone)...

47

1 Mr. Carnicelli: What we're gonna do is take public testimony and then you'll have a chance to  
2 rebut public testimony and/or what Bill had said as well.

3  
4 Ms. Apana: ...(inaudible-microphone not working)...

5  
6 Mr. Carnicelli: You're gonna have to turn the mic on I think. I don't know if it's on or not.

7  
8 Ms. Apana: ...(inaudible)...took like eight minutes.

9  
10 Mr. Carnicelli: Right. He had up to 30 to match you, and he only took like eight yeah.

11  
12 Ms. Apana: ...(inaudible)...

13  
14 Mr. Carnicelli: I think at this point in time is we're not gonna be able to allow that at this time.  
15 So, and again, what we'll do is...actually is...so here's what we're gonna do as we come  
16 forward I will actually ask you to state your name and then whether or not you'll truthful so you'll  
17 be sworn in. After your testimony both parties will have the opportunity to "cross-examine you  
18 or ask you questions" just so you guys are aware. If there are none, that's not that problem then  
19 we'll go to the next person. So at this point in time since we didn't have a signup sheet, is there  
20 anybody that would like to speak to the intervention itself? Please come forward.  
21 Corporation Counsel.

22  
23 Mr. Galazin: Thank you. And just, just a reminder this is an opportunity for members of the  
24 public who are not affiliated with the petitioners to speak to whether they believe the petition  
25 should be granted or whether they believe the petition should be denied. So just want to make  
26 that clear and so members of petitioners are already represented so they're not public testifiers.

27  
28 Mr. Carnicelli: Thank you. Please state your name.

29  
30 Ms. Johanna Kamaunu: I'm Johanna Kamaunu.

31  
32 Mr. Carnicelli: Johanna do you promise to be truthful?

33  
34 Ms. Kamaunu: Yes.

35  
36 Mr. Carnicelli: Okay, you have up to three minutes.

37  
38 Ms. Kamaunu: Thank you.

39  
40 Mr. Carnicelli: Okay, thank you.

41  
42 Ms. Kamaunu: I am a current member of the Maui Lanai Island Burial Council. We have had  
43 one opportunity, just one opportunity to hear about the expansion at the Grand Wailea.  
44 Unfortunately I have to tell you that it is not the characterization that is being discussed today.  
45 So it's very concerning to me that we do not or have not had an opportunity to even go over  
46 what they're planning to do and that the intervenors have instead taken this on is, I mean I'm  
47 glad somebody's doing something, but that really should have been left to us to participate and I

1 would like that opportunity. If you make a decision I would hope that it would be to also include  
2 an opportunity for them to bring that project before the Burial Council for review. Okay, thank  
3 you.

4  
5 Mr. Carnicelli: Okay, hang on a second. Commissioners do you have any questions for the  
6 testifier? Clare do you have any questions for the testifier? You're gonna have to speak into  
7 the mic so it's on the record please?

8  
9 Ms. Apana: When was the project brought to the Burial Council?

10  
11 Mr. Carnicelli: Try again Clare. See if it's on.

12  
13 Ms. Apana: When was the project brought to the Burial Council.

14  
15 Mr. Carnicelli: So for the record, she asked when was, when was it brought to the Burial  
16 Council?

17  
18 Ms. Kamaunu: I can't be sure, but I would say about what four or five months ago.

19  
20 Ms. Apana: So you have not seen the—

21  
22 Mr. Carnicelli: I'm sorry, Clare. Can we get her mic to work? Just 'cause we got the...sorry  
23 about that. Thank you Carolyn.

24  
25 Ms. Apana: So you have not seen the...you have not seen the plan that was submitted in  
26 September of this year?

27  
28 Ms. Kamaunu: No. The Council has not seen anything. I have not seen that.

29  
30 Ms. Apana: Did you have any, any concerns with the project?

31  
32 Ms. Kamaunu: Initially there was with the areas that were going to be under development, the  
33 ground disturbing work. But we were more concerned with the preservation site that's on the  
34 area and how that would be affected. At the time we were told that not much would be done to  
35 that particular area, we're talking about the luau gardens. But I understand since then things  
36 have changed somewhat, I don't know how much.

37  
38 Ms. Apana: Would you be concerned to...if the main preservation area which is the large one  
39 up near the parking lot where most of the iwi kupuna have been reinterred, would you be  
40 concerned about how close a new building is built to it?

41  
42 Ms. Kamaunu: We're always concerned about how close anything comes to the iwi. If you  
43 consider that you're sitting in your living room in your most favorite easy chair enjoying your  
44 favorite program how close do you want a machine or a building next to you?

45  
46 Ms. Apana: Thank you, as we have concerns and we hope that you will get to see the new  
47 project plan.

1  
2 Ms. Kamaunu: I would hope that if it's possible that somewhere in your plan that you could  
3 make it a condition. Thank you.

4  
5 Mr. Carnicelli: Thank you. Hang on a second. Clare I'm sorry if I wasn't clear. I wasn't actually  
6 at all. Is is this particular portion as far as you asking questions is to either clarify something  
7 that you hadn't understand in her testimony or you know to rebut something but it's not  
8 something actually to solicit new information. Just moving forward so we all know that is it's just  
9 about clarification of—

10  
11 Ms. Apana: ...our very best.

12  
13 Mr. Carnicelli: I get it, I know. Is you're not an attorney and I get that you're trying your best,  
14 but I take that as my fault 'cause I didn't explain that to you. So that's why I'm trying to explain it  
15 to you. Bill do you have any questions for the testifier?

16  
17 Mr. Meheula: No, just to—

18  
19 Mr. Carnicelli: You need to speak into the mic.

20  
21 Mr. Meheula: So we'll be reaching out to you to give you the current plan so you have the...you  
22 know it.

23  
24 Ms. Kamaunu: Okay, thank you.

25  
26 Mr. Carnicelli: Thank you. Commissioner Freitas, you had a question for the testifier?

27  
28 Mr. Freitas: Yes, I do. Was it Miss Kamaunu?

29  
30 Ms. Kamaunu: Mrs. Kamaunu.

31  
32 Mr. Freitas: Mrs. Kamaunu you said you attended one of the intervention meetings.

33  
34 Ms. Kamaunu: No. I did not attend any intervention meetings.

35  
36 Mr. Freitas: I thought you said you did one, I'm sorry. Okay.

37  
38 Ms. Kamaunu: No, what was I talking about? I think I was saying that we've only had one  
39 meeting before the Burial Council.

40  
41 Mr. Freitas: Oh, okay. That's fine. Thank you.

42  
43 Mr. Carnicelli: Thank you very much. I appreciate your time and your testimony. Is there  
44 anybody else that would like to come forward and speak to the petition to intervene? Please  
45 state your name.

46  
47 Mr. G. Kamai: ...(inaudible)... Kamai.

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Mr. Carnicelli: Are you a petitioner, are you one of the intervenors?

Mr. Kamai: No.

Mr. Carnicelli: No. Okay, do you promise to be truthful?

Mr. Kamai: To the best of my ability.

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

Mr. Kamai: Mahalo. ...(spoke in Hawaiian)...I flew in yesterday from Oahu thinking I was going to be able to testify. Apparently I can't, but what I like to say is at least I support the intervenors. I wish you folks would listen to what they have to say. I'm also a descendant of Chiefs of Maui and Oahu. Wailea, and my mom told me this couple years before she passed. We have ancestors there, there's gonna come a time when we need to step up to the plate, I'm here. Last year at Queen Liliuokalani's birthday at ...(inaudible)...was the last time I performed kiai duties. After that I laid down my ihe and I joined the kupuna. However, if I have to pick up ihe, don my malo, and come back here to ...(spoke in Hawaiian)...Mahalo. Ninau, questions?

Mr. Carnicelli: Thank you. Is there any questions from the Commission? Clare do you have any clarifying questions for the testifier?

Ms. Apana: That's a pretty big statement that you would come with your ihe. What drives you to say that at this time about this, this particular area?

Mr. Kamai: Last week when my ohana aumakua came to visit me and reminded me that I have kuleana here. Waikui, I've been up to the mauna several times, couple weeks each, been Waimanalo, kokua there. I've been to Kalaeloa support of Kahuku over there was with Kapu Aloha. If I have to come back to Maui it's gonna be kue.

Ms. Apana: Mahalo very much. Mahalo.

Mr. Kamai: Me ike.

Mr. Carnicelli: Bill do you have any clarifying questions?

Mr. Meheula: No, he was clear.

Mr. Carnicelli: Okay, thank you. And Clare I know that you know you're doing the best you can but it's not to solicit something new, it's just to clarify something that you had heard in the testimony. Just...I...I just wanted to try to keep the record as clean as we can that's all. But that's fine, do the best you can. Is there anybody else that would like to come forward and speak to the intervention?

Mr. Palikapu Dedman: Yeah, aloha I'm Palikapu Dedman with the Pele Defense Fund.

1 Commission Members: Aloha.

2

3 Mr. Dedman: I was wondering why I wasn't...had some consideration from this Commission  
4 that there was only one more intervenor that didn't have any voice yet and you got his name in  
5 front of you, why weren't you concerned to say we gotta add more time 'cause we got one more  
6 intervenor in front of our face and we didn't hear from. I was wondering, waiting for that to say  
7 we can extend maybe a few more minutes because we didn't hear from one more intervenor  
8 who's here, but you didn't even look at that.

9

10 Mr. Carnicelli: So, is I understand that...I understand your frustration. At the very beginning—

11

12 Mr. Dedman: What is it—

13

14 Mr. Carnicelli: Hang on. Let me, let me just go ahead. At the very beginning I allowed  
15 30 minutes and you guys could divvy it up however you wanted to divvy it up, okay. And so if  
16 we didn't get to you I apology, right.

17

18 Mr. Dedman: Well, wouldn't it be a little consideration. I mean how'd you come up with  
19 30 minutes?

20

21 Mr. Carnicelli: It's normally about ten and I asked Clare, Clare asked for 30.

22

23 Mr. Dedman: I mean, you know this is serious things for us.

24

25 Mr. Carnicelli: It is. It's completely serious. I get it.

26

27 Mr. Dedman: There's no exception that you make for Native Hawaiians knowing that  
28 constitutionally we're different than the general public so why aren't we treated with this respect  
29 about that acknowledgement. I mean you just make up things like okay Hawaiians you got ten  
30 minutes, you out after that. What is this now?

31

32 Mr. Carnicelli: So after, is the Director actually did remind me, after Cody finished I did ask if  
33 there was anybody else and Clare did say that you go—

34

35 Mr. Dedman: Yeah, but you also said half minute, two minutes, so what are we supposed to do  
36 now?

37

38 Mr. Carnicelli: I tell you what is there's another point in time where we're gonna get back to you  
39 guys doing presenting and I will allow you to speak at that time, how bout that?

40

41 Mr. Dedman: Well, is that part of the intervention you going to let me speak—

42

43 Mr. Carnicelli: Yes.

44

45 Mr. Dedman: --or it's general public?

46

47 Mr. Carnicelli: No, part of the intervention.

1  
2 Mr. Dedman: Thank you.  
3  
4 Mr. Carnicelli: Okay. So is there anybody like to speak to come forward and speak to the  
5 intervention?  
6  
7 Mr. Scott Shapiro: Good morning.  
8  
9 Mr. Carnicelli: Please state your name.  
10  
11 Mr. Shapiro: Scott Shapiro.  
12  
13 Mr. Carnicelli: Scott, do you promise to be truthful?  
14  
15 Mr. Shapiro: I do.  
16  
17 Mr. Carnicelli: You have up to three minutes.  
18  
19 Mr. Shapiro: I am in support of the intervention and I'm glad that the owners of Grand Wailea  
20 have accepted that. Sounds like everybody's on board with that. I would, I would like to say to  
21 the intervenors that I think they should have a mediator to follow the steps to not...they don't  
22 have an attorney, I think it's a great step for them to have a mediator and not bypass that. If it  
23 ends up going to a judge, the judge may ask did you go to mediation so it's something they  
24 should consider. Since they're going to be admitted I think because the, again, the owners have  
25 felt that that's a good thing to do for them to be admitted as intervenors I think that's all I have to  
26 say. I don't want to talk about SMA stuff right now so, I'll just leave it at that.  
27  
28 Mr. Carnicelli: Thank you, Scott. Is there any need for clarification from the Commission?  
29 Clare to clarify anything? Bill, you good?  
30  
31 Mr. Meheula: I'm good. Thank you.  
32  
33 Mr. Carnicelli: Okay, thank you Scott. Anybody else like to come forward and speak to the  
34 intervention. Please come forward.  
35  
36 Mr. John Kahawai: Good morning.  
37  
38 Mr. Carnicelli: Good morning. Please state your name.  
39  
40 Mr. Kahawai: John Kahawai.  
41  
42 Mr. Carnicelli: Good morning John, do you promise to be truthful.  
43  
44 Mr. Kahawai: I will try.  
45  
46 Mr. Carnicelli: Okay, you have up to three minutes.  
47

1 Mr. Kahawai: Okay. I do, I do stand with these people. I believe that what they're doing  
2 is...they've, they've done a lot of work. They have my testimony and also in my, in my field of  
3 work is civil engineering, also with plans, and part of my working with them is to inform them of  
4 things that are...have been revised, addendums, things that was originally on the plan, things  
5 that have been changed and so that's part of my service to our group. Oh, that's part of my  
6 service to our group here, what their name now, Malama Kakanilua, also Ho'oponopono O  
7 Makena. I am Native Hawaiian, I am Native Hawaiian of Paiahu which is the old name of  
8 Wailea. Part of the history of that area is that my grandfather is one of the old ranchers on  
9 Kahoolawe, my great grandfather, I'm sorry, Auhana Akina. My grandfather is John Akina. He  
10 was born there. So my roots for all of this area is a lot of, a lot of our family is from this area,  
11 and so today, I have to, I have to speak on behalf of our iwi. I have to see some of this things  
12 that are being done to, you know, have these people have to continually call up to receive some  
13 of these new plans or revised plans or have to call in and say how come I didn't get this or how  
14 come I didn't get that and that, that's not right. We should be informed. They should be  
15 informed and that's what I'm here for. I'm here to inform you guy too on what's gonna be done.  
16 And I'm also here to inform them on what happened in 2006, the septic system and that we did  
17 run into iwi. We did run into bones and we had to put it back and that's why today there's a,  
18 there's a stone wall that's, that's built around it's called a ahu on the luau grounds. It was about  
19 maybe 11 or so that were reinterred. So this property definitely has iwi that's connected to us  
20 that's why we're here today. Four seconds. Mahalo.

21  
22 Mr. Carnicelli: Thank you very much. Is there any need for clarification from the Commission?  
23 Clare, do you have any need for clarification from the testifier?

24  
25 Mr. Delima: Are you connected or were you connected to this project?

26  
27 Mr. Kahawai: Well, this current project, no, but I was involved with the septic, the 30,000 gallon  
28 septic in 2006 that was through a ... that was with the hotel was actually doing that septic. They  
29 were in charge of purchasing everything so when we ran into the iwi we had to restore the iwi  
30 with I don't see, I forget her name, what's her name, Rotunna, Mrs. Rotunna was the lead  
31 archaeologist at that time.

32  
33 Ms. Cua: Lisa.

34  
35 Mr. Carnicelli: Thank you.

36  
37 Mr. Delima: Mahalo.

38  
39 Mr. Carnicelli: Bill any need for clarification?

40  
41 Mr. Meheula: None.

42  
43 Mr. Carnicelli: Okay, thank you. Long time no see. And just a reminder to everybody, the  
44 portion of the...where we're at right now is to address the intervention itself, not the SMA so just  
45 for clarification on that for everybody as a reminder. So please state your name.

46

1 Ms. Lucienne D'Naie: Thank you. I'm Lucienne D'Naie, I'm here representing Sierra Club, Maui  
2 Group.

3  
4 Mr. Carnicelli: Do you promise to be truthful?

5  
6 Ms. D'Naie: I do.

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

9  
10 Ms. D'Naie: Thank you. Around ten years ago Sierra Club Maui submitted testimony in front of  
11 a different group of planning commissioners about this same property when it proposed to add  
12 around 300 additional units and modify some other features of the hotel. And then we felt that  
13 wow, you really need a site visit to figure out what's going on there. We looked over the maps  
14 and it was very confusing. We feel the same way now. We support this intervention because  
15 the amount of information that keeps changing and coming forward it's very difficult for the lineal  
16 descendants and people who are connected to the burials that keep being found on this area to  
17 keep track of things and to know if, if things are being done pono. So by intervening they'll be  
18 able to have access to a detailed level of information and you will be able to fulfill your duties  
19 under the SMA Rules which say that intervention shall be freely granted if they provide  
20 additional information that will really help inform the decision making. Lineal descendants have  
21 different information than the average hard working volunteer on the Planning Commission and  
22 we feel it should be granted. We know that the Commission may remember back in 2009  
23 another intervention was proposed, it was denied, it was taken to court, it cost everybody a lot of  
24 time and money and eventually it came back to the Planning Commission 'cause the court said  
25 yeah, these people have a right to provide you with the additional information and they did and  
26 then you know some settlements were worked out and then plans changed and we have a new  
27 owner. You know in essence this is probably, this is the second largest known burial complex,  
28 burial...traditional burial ground that we have on Maui. I guess it's kind of a...well, Maui Lani,  
29 this and Honokohua, you know they're all in there and it really probably is eligible for nomination  
30 to the National Register of Historic Places as an important part of Maui's history, but its story  
31 has really never been told. I'm not aware of the...any of the owners reaching out to the lineal  
32 descendants or the Hawaiian groups and saying would it be appropriate to nominate this place  
33 as important to our history. Instead it's kind of a piecemeal approach and we find these burials  
34 and we put them some place, we find these burials and we put them some place. So it is time I  
35 think...this hotel has been around for 30-some years, it is time that we try to get the whole story,  
36 heal the past and get it right. So please support the people who are asking for the intervention.  
37 Thank you.

38  
39 Mr. Carnicelli: You know three minutes pretty well. You wound it up just right as it beeped. Any  
40 need for clarification from the counsel, Clare?

41  
42 Ms. Apana: Yes, you mentioned nomination to National Preservation?

43  
44 Ms. D'Naie: Yeah, the Historic Register, the National Historic Register, yes.

45  
46 Ms. Apana: Do you know if any of the sites that have been found are eligible?

47

1 Ms. D'Naie: A—

2

3 Ms. Apana: Or the site...are you speaking of the site itself or the—

4

5 Ms. D'Naie: I believe the whole site could be nominated and certainly some of the grave goods  
6 speaks to the importance of the individuals who lived there and were buried there.

7

8 Mr. Carnicelli: Thank you. Bill, any need to clarify?

9

10 Mr. Meheula: No.

11

12 Mr. Carnicelli: Okay, thank you. Anybody else wishing to testify on the intervention?

13

14 Mr. Dick Mayer: Dick Mayer.

15

16 Mr. Carnicelli: Do you promise to be truthful?

17

18 Mr. Mayer: I do.

19

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

21

22 Mr. Mayer: One very quick comment and one question. The comment is that I've been involved  
23 with this project for a long time in the sense that I was on the planning commission in this room  
24 in 1973 when Wailea was originally approved and I was a Planning Commissioner at that time  
25 and voted on this whole project. But more specifically I want to urge you all to accept the  
26 intervention and to allow it go forth as has been suggested by other people and I won't go  
27 through all the reasons.

28

29 The question I have though is is public testimony closed on the SMA and the reason I ask that  
30 question is they resubmitted a whole new project really in September after the last May meeting  
31 when you did close public testimony at that time. So the question I have is will there be an  
32 opportunity for public testimony on the project itself?

33

34 Mr. Carnicelli: Yeah, we addressed that already twice in the meeting Dick, so yeah, no  
35 there's...the public hearing for the SMA has been closed.

36

37 Mr. Mayer: Even though it's a different project now?

38

39 Mr. Carnicelli: Right. Is and this is public testimony time, this isn't Q&A time so it's just like if  
40 you have more public testimony you're more than welcome to provide that.

41

42 Mr. Mayer: Hmm?

43

44 Mr. Carnicelli: You're more than welcome to provide more public testimony.

45

46 Mr. Mayer: When?

47

1 Mr. Carnicelli: Right now.

2

3 Mr. Mayer: On—

4

5 Mr. Carnicelli: You still have your three minutes.

6

7 Mr. Mayer: Okay on the SMA.

8

9 Mr. Carnicelli: Yeah, this is...no, no, no, the SMA is closed Dick.

10

11 Mr. Mayer: No, I'm asking though—

12

13 Mr. Carnicelli: Okay, well this is...this...come on, you're a planning commissioner, you know  
14 how this...you testify all the time. You know that this isn't a time for you to ask questions. This  
15 is a time for you to testify.

16

17 Mr. Mayer: When would there be a time to ask questions? If there is no time to ask questions  
18 then there should be an opportunity to because this is a different project. In September they  
19 majorly changed the project. So the question is when will there be a chance to talk about it?  
20 Thank you.

21

22 Mr. Carnicelli: Thank you Dick. Any need for clarification from the petitioner? Dick come back  
23 you got a question. Come back?

24

25 Mr. Tuivaiti: I was just wondering how come the SMA doesn't have...you're saying the SMA  
26 doesn't have anything to do with the intervention but it does. So why can't we discuss the facts  
27 of the SMA Permit.

28

29 Mr. Carnicelli: Thank you Cody. Is I'm gonna have Corporation Counsel respond.

30

31 Mr. Galazin: Thank you. And just as a general reminder for the petitioners, if you have a...if  
32 you didn't understand something that a testifier said or you disagree with something a testifier  
33 said, you can, you can question them about that. But this isn't a chance right now for you to ask  
34 other questions or for a testifier to ask any other questions of this body right now. It's just if you  
35 didn't understand or if you disagree with something a testifier said, you can question them about  
36 that, otherwise we'll move onto the next testifier.

37

38 Mr. Mayer: Let me try to answer, I think that the SMA has changed and I think in your  
39 intervention you will bring that issue up for discussion during that period of time when you do the  
40 intervention and the mediation.

41

42 Mr. Carnicelli: Dick, Commissioner Robinson has a question for you.

43

44 Mr. Robinson: Mr. Mayer—

45

46 Mr. Mayer: Yes, Mr. Robinson.

47

1 Mr. Robinson: Is one of the petitioners has you as your testimony have you been worked it out  
2 with one of the petitioners in part of this intervention?

3  
4 Mr. Mayer: Not that I'm aware of. I've talked with them. I don't know they had listed my name  
5 in any capacity.

6  
7 Mr. Robinson: Okay, thank you.

8  
9 Mr. Carnicelli: Bill, do you have any questions for Dick?

10  
11 Mr. Meheula: No.

12  
13 Mr. Carnicelli: Okay, thank you Dick.

14  
15 Mr. Mayer: Thank you.

16  
17 Mr. Carnicelli: The tall guy from the back.

18  
19 Mr. Albert Perez: Good morning Commissioners.

20  
21 Mr. Carnicelli: Please state your name.

22  
23 Mr. Perez: I'm Albert Perez. I'm the Executive Director of Maui Tomorrow.

24  
25 Mr. Carnicelli: Albert, do you promise to be truthful?

26  
27 Mr. Perez: Yes, I do.

28  
29 Mr. Carnicelli: Okay, you have up to three minutes.

30  
31 Mr. Perez: Thank you before I begin I would just like to ask that we give people like Mr. Mayer  
32 the respect he deserves. He just said that he was 50 years ago he was a planning  
33 commissioner. So I felt unfortunately like the direction that you were giving him was in a  
34 mocking way and I think that we need to try to be respectful to all of our kupuna including  
35 Mr. Mayer. He's coming here, he's not being paid. Anyway, I just wanted to state that. So  
36 thank you in advance.

37  
38 I just wanted to speak to the intervention. All persons who can demonstrate that they're directly  
39 and immediately affected by the matter before the Commission and that their interest is clearly  
40 distinguishable from the general public shall be admitted and this is coming from your rules of  
41 practice and procedure which you're probably much more familiar with than I am.

42  
43 The petitioners have a close and unique spiritual connection to the iwi kupuna that are known to  
44 exist in the area and they've already been found. Hundreds have been disturbed and removed  
45 leading to untold sadness and anger and this spiritual connection is an interest that is  
46 distinguishable from that of the general public. Archaeological monitoring is not sufficient,  
47 petitioners seek to prevent disturbance of any further burials. Imagine if someone decided to

1 put a waterline through a modern day grave yard and just decided to make sure that there was  
2 a archaeological monitor. Not all graves are marked and preventing disturbance is the goal  
3 especially of Hawaiian kupuna. So please respect this and grant the intervention and I'll leave it  
4 at that. Thank you.

5  
6 Mr. Carnicelli: Thank you. And any questions for the testifier? Clare, any need to clarify? Bill?

7  
8 Mr. Meheula: No questions.

9  
10 Mr. Carnicelli: Okay, thank you Albert. Is there anybody else that would like to come forward  
11 and speak to the intervention? Going once, going twice, so if there is no objection we will now  
12 close public testimony to the intervention. Okay, and that is now closed. So at this point in time  
13 the next...the two next steps is we're gonna have the applicant respond and then Clare we'll  
14 have you respond, and Bill if...typically what we were gonna do is just give five minutes but due  
15 to the nature there's another intervenor that would like to speak I'm gonna expand that to ten.  
16 Okay, so you get ten and they get ten and if you don't have a problem with that then that's how  
17 we would like to proceed.

18  
19 Mr. Meheula: Well, I have no comments based on the public testimony. If, if Mr. Dedman  
20 speaks I would like to have some time. I don't know what he's going to say, but I'll keep it  
21 limited.

22  
23 Mr. Carnicelli: That's fair.

24  
25 Mr. Meheula: Okay, thank you.

26  
27 Mr. Carnicelli: So Mr. Dedman, I'm gonna go ahead and give you a chance to come forward  
28 and just so, Clare so you guys know, there's two things that I would like for you guys to do right  
29 here is for one, I want to give Mr. Dedman the opportunity to speak. The other thing is I want  
30 you to be able to address what's been said, right? We had public testimony, we had people  
31 come forward, share their manao. You can respond however it is you want to respond. So  
32 that's part of what this is, right? You got to do a presentation, he got to do a presentation, we  
33 had public testimony, now we're gonna have response based on that. So Mr. Dedman,  
34 together, again just so you guys know you have ten full minutes right now, right. You can use it  
35 however you want, Clare you can use it however you want so you guys have ten minutes okay.

36  
37 Mr. Palikapu Dedman: Thank you.

38  
39 Mr. Carnicelli: Awesome. Thank you Mr. Dedman, go ahead.

40  
41 Mr. Dedman: Ralph Dedman with the Pele Defense Fund, a intervenor. I think that this is  
42 should be passed on to a higher level, next level up so he can address our real concerns.  
43 There's constitutional issues here. You got lawyers, you got Corporate Counsel, but how many  
44 of you looking at the...(inaudible)...State, Federal acts on how you treat Native Americans,  
45 Hawaiians and its burials then you got the State Constitution. So where does Corporate  
46 Counsel step in to say that those concerns and those rights that are way higher than your  
47 County ordinances and rights, this is State and Feds Acts and Constitution that you got to deal

1 with. So how is it being addressed in your concerns of going forward and explain why if not. I  
2 think it should always be looked at as experienced in the Pele Defense Fund case that  
3 was...went up to the Supreme Court and ruled in our favor. Judge Klein at that time said that  
4 these kind of situations that we raise should always be exhausted at the permitting stage.  
5 These kind of cases shouldn't come up to the Supreme Court when people in your level, at your  
6 decision making, should be addressing these constitutional rights. And I'm saying that that's the  
7 language I'd like to see in your decision making that they are acknowledged or ignored and  
8 that's what I wanted to say and why I'm being part of the intervenors is that I think that we  
9 should try to change these laws.

10  
11 You're sitting here listening to people talk about bones like numbers and 300 here, 200 there,  
12 and you are all part of guilt by association when I look at the whole Kaanapali it all came from  
13 planning commissions and how many thousands of bodies did they dig up and then we just get  
14 caught up lately and now we're talking about hundreds. I mean it's not you. Do you go home  
15 and tell your children that you approved a permit that you can dig up Hawaiians. I bet you don't  
16 even mention a word of that to your kids. But I gotta go home and tell mine when he asks what  
17 happened. Come on, man. I'm a Vet too. I fought for while you folks didn't go to the service, I  
18 fought for your freedom and your rights, come home and find out that I'm being treated this way.  
19 I don't have any rights. I'm just saying that that's how I feel about it as a Vet.

20  
21 So I'm just saying that I think that consideration of our rights, Constitutional and State rights, I  
22 think you should be looking at it and from now on I don't think you make any decisions what you  
23 heard today that there was...I didn't hear anything from Mrs. Cua's report about any Hawaiian  
24 intervention in anything in the process, no OHA paper, no groups papers of interests, no SHPD  
25 talk about Hawaiians, so you could see that we're left out of the picture and I think there's an  
26 opportunity if there is legally that I think I hold you all responsible that drag you through this  
27 legal process and it's not about cost man, it's just about rights and I'm not afraid to do that, so  
28 that's what you're up against if you're gonna deny our intervention, I'll still appeal it. Thank you.

29  
30 Mr. Carnicelli: How much time they got left?

31  
32 Ms. Takayama-Corden: Six and a half minutes.

33  
34 Mr. Carnicelli: Still got six and a half minutes left if you care to use it if you want.

35  
36 Ms. Apana: ...(inaudible-not speaking into a mic)...rebuttal.

37  
38 Mr. Carnicelli: Yeah.

39  
40 Ms. Apana: This is a rebuttal of public testimony or rebuttal of all that has been said today?

41  
42 Mr. Carnicelli: It's you can rebut or yeah, there's now a record. You can speak to that record  
43 however you choose.

44  
45 Ms. Apana: Thank you. Okay, I think from the testifiers who have come up to offer support that  
46 you can see that this particular project really does need more than just what you would get  
47 coming through your Commission unless you're ready to dive in and deal with all the issues and

1 so I think having support from people in the community who regularly come to testify, who  
2 regularly vet these projects I think that that great show of support is something that you should  
3 consider.

4  
5 And I just want to address some of the things that Mr. Meheula said. First of all, I didn't ask to  
6 modify our petition. I did ask to supplement or augment it. And second, it has been a really big  
7 contention of how many burials were actually disinterred and possibly even taken off the site,  
8 where they are, where they've been placed and we've done a very lot of research. Mr. Meheula  
9 and his group were kind of enough to bring someone, Mr. Bob Rechtman who wrote one of the  
10 studies and I believe he's saying that he did a monitoring plan. I was entirely disappointed that  
11 that Mr. Rechtman said he was never working on that site. We really went to see him because  
12 we thought he worked on the site, but I believe he just looked at data and did a report.

13  
14 So I appreciate that, but something he said, was just didn't sit right with us and we went to vet it  
15 ourselves and we found information at the SHPD in Hilo which is where the collection for the  
16 early archaeology is held, is held where the company owner died and so it's in Hilo even though  
17 it's for Maui. And the information we found was a lot more and does not support 200 burials. It  
18 supports many more burials in a much smaller time period than we're talking about. You know  
19 we talk ...(inaudible)...numbers as Palikapu said but really it's not about the numbers except to  
20 show you that this is a special area, this is a burial area, this is a burial area. You cannot doubt  
21 it whether Mr. Meheula says 200 burials or I say...you keep saying you're putting people in the  
22 preserve and I'm counting like more, 400 and if I go back farther I'm counting more. You know  
23 it's not about that, we know, we know this is a burial area. So why do we want to keep building  
24 swimming pools and buildings.

25  
26 You know there's two kinds of burials. One the bones have disintegrated into the lepo, into the  
27 soil, into the sand, but that doesn't mean they're not there. For us, they're there, they have now  
28 become part of the aina, they're ano is still there to be connected to us. And if you really  
29 thought about it, all of the people who are foreigners to this place this is part of why you love this  
30 place because the ano of our ancestors are in that ground and sometimes you find places  
31 where there many ancestors buried there. This is one of them. Can we just not stop trying to  
32 make money and build buildings and I will say this not true about how we have been consulted  
33 about this plan absolutely you are going to impact our iwi kupuna, endanger them to a place  
34 where they...we will not be able to repair the harm that can be done to them.

35  
36 So you know there is a real shortcoming with SMA projects. The blueprints, the plans that are  
37 given are not nearly as detailed or as good as what you get when you're in the department  
38 where you get your permits, the permitting department so we tried to do it, we tried to piece it  
39 together. We did our best guess. Those buildings are gonna be impacting the hillside. There's  
40 just no way to build it without impacting even just the ground. If you impact the ground, the  
41 hillside, you're impacting our iwi kupuna, and one of them, the burial preserves right above it. I  
42 don't think you even have the necessary amount of feet for a regular buffer zone let alone one  
43 with hundreds of iwi kupuna in it. And so thank you, I would...that's all I wanted to say for this  
44 time.

45  
46 Mr. Tuivaiti: I just kinda wanted to speak on what Meheula was saying earlier about the new  
47 archaeological monitoring kinda talking about the iwi not being found. So kinda what they're

1 saying is that because this area where they're gonna dig is kinda previous fill that it's unlikely for  
2 them to find any iwi. But you know in kinda what we're looking into you know we found already  
3 that iwi has been found in fill, you know so I just kinda wanted to bring that to the table to  
4 acknowledge that that iwi has already been found in fill. Mahalo.

5  
6 Mr. Carnicelli: Thank you Kody. Bill.

7  
8 Mr. Meheula: You know at the contested case hearing there's gonna be a lot of testimony on  
9 facts. It's gonna be a lot of discussion on the applicable law and then the parties are gonna  
10 have an opportunity to do recommended findings of fact, conclusions of law and then the  
11 hearings officer is gonna make his or her own and then recommend that we have a chance to  
12 do exceptions and then it's your decision at that point so there's gonna be a lot of opportunity to  
13 discuss and debate the facts and the law and even the procedure applied here and that's the  
14 purpose of a contested case hearing, so that's all I have. Thank you.

15  
16 Mr. Carnicelli: Great. Thank you. Oh, a big exhale. So essentially at this point in time, the ball  
17 is now in our court. We need to go ahead and deliberate and make a decision. I need lunch.  
18 So I think at this point in time...yes, Clare?

19  
20 Ms. Apana: ...(inaudible-not speaking into a microphone)...

21  
22 Mr. Carnicelli: You gotta speak into the mic there.

23  
24 Ms. Apana: I thought, I thought there was one more, one more thing after Mr. Meheula spoke,  
25 we spoke one more time, but I could have that wrong, but that was in my email. It was one  
26 more rebuttal.

27  
28 Mr. Carnicelli: Well, the reason why I reversed it and you spoke first and he spoke second was  
29 because we let Mr. Dedman go and so he needed to be able to speak to that, but if you want  
30 to...I want to give everybody enough information, enough time to speak so nobody says that  
31 you know they were shut out or anything like that. That is, I want to try and be as openly fair as  
32 we can.

33  
34 Ms. Apana: Thank you so much. I'm really trying to do my best to cooperate with this hearing.

35  
36 Mr. Carnicelli: I know you are.

37  
38 Ms. Apana: But I thought we had one more rebuttal session. So I...I'll just stay a couple  
39 minutes.

40  
41 Mr. Carnicelli: Okay. You want to do it after lunch?

42  
43 Ms. Apana: No, no it will just be a couple minutes.

44  
45 Mr. Carnicelli: Okay.

46

1 Ms. Apana: One thing that is...one other reason why you really should grant us this intervention  
2 is in our research we have come across people who have worked on this site in the 1980s, 90s  
3 and people who have worked in the 2000s such as Mr. Kahawai, Kahawai who testified. And  
4 what we are finding which is just heartbreaking is the effect that it has had on them. And we  
5 would never have known this had we not been researching this project but there are great long  
6 lasting effects to digging up, moving somebody's ancestors, threatening to dig them up again,  
7 I'm speaking for myself when I think about the thought of we're fairly sure that we won't be  
8 finding any more or discovering any more iwi kupuna. That makes my heart stop 'cause I know  
9 those machines are gonna go in there, but why should they be able to go one more time? You  
10 know how many AISs are on this property? And you know how many workers are still holding  
11 the burden of what they had to do? It is not something that we have to live with. It's something  
12 that can change. I believe, I've never seen a richer company, I believe they have the means to  
13 do something different. They don't have to go through our iwi kupuna. They can be of respect.  
14 My goodness we have given them the land, we've given them the soul of our people they call it  
15 of what they're aloha program, I mean, how much do we have to give? We do not want to give  
16 our iwi kupuna anymore and thank you, I just wanted to make that point. Mahalo.

17

18 Mr. Carnicelli: Thanks Clare. Commissioner Freitas.

19

20 Mr. Freitas: I wanted to ask you a...if I can ask a question to—

21

22 Mr. Carnicelli: Sure.

23

24 Mr. Freitas: -- to Mr. Meheula about the intervention process. Is this the right time or can I?

25

26 Mr. Carnicelli: Let's do it after lunch. Write it down so you don't forget it 'cause I know I would  
27 forget it.

28

29 Mr. Freitas: Okay.

30

31 Mr. Carnicelli: So at this point in time it's almost 12:15, let's go to 1:15 we'll be back. So we're  
32 now in recess.

33

34 A recess was called at 12:13 p.m., and the meeting was reconvened at 1:20 p.m.

35

36 Commissioner Gomes was excused from the remainder of the meeting.

37

38 Mr. Carnicelli: Good afternoon everyone, the Maui Planning Commission meeting of  
39 January 28, 2020 is now back in session. So just to recap what we did is, is we basically made  
40 a record for the request for intervention and at this point in time we're gonna have to go ahead  
41 and address that. So I think before we do that I think it would be good to have Corporation  
42 Counsel reiterate the thresholds of which you know basically why are we here and what is it that  
43 we have to make a ruling on and have him present that and then I think what we'll do is go  
44 ahead and put a motion on the floor and then have a discussion based on that. So with that  
45 being said, Mr. Galazin.

46

1 Mr. Galazin: Thank you Chair. So again what we're dealing with right now is the petition to  
2 intervene. There's multiple intervenors presented in one petition. As I mentioned before there  
3 is the mandatory intervention that is where anyone who has a property interest in the land or  
4 lawfully resides or demonstrates that they can be so directly and immediately affected by the  
5 matter that they are different from anyone in the general public who might be interested in that.  
6 If you find that then they can be admitted as of right upon timely application.  
7

8 Then there's permissive intervention and leave shall be freely granted to intervene although it's  
9 within your discretion to deny if it appears that the interest of the applicant for intervention is  
10 substantially the same as somebody already admitted, if it would render the proceedings  
11 inefficient or if the intervention would not aid in development of record and would overly broaden  
12 the issues.  
13

14 So to boil it down you can either find that the intervenors have a right to intervene, you can find  
15 that they meet the lower stand for permissive intervention. If you find, if you don't believe that it  
16 would impermissibly meet any of those criteria and then again, just to go back to 12-201-40 with  
17 the petition filing you know the untimely petitions will not be permitted except for good cause  
18 and good cause is basically a reasonable explanation for why it wasn't filed and as I believe the  
19 applicant's attorney noted standing laws are pretty liberally construed by case law and the  
20 courts favor inclusion over not. So you've gotta look at these criteria but sort of think through  
21 that that lens of where you, where you want to go. So that's what's before you right now.  
22

23 Mr. Carnicelli: Okay, so at this point in time we can either take action to grant the intervention or  
24 deny the intervention, correct?  
25

26 Mr. Galazin: That is correct Chair, and I would just make sure that when you're discussing the  
27 matter and when you're making the motion that you establish you know what you're looking for  
28 in terms of if you find good cause, why, if you believe that it's...they meet the intervention  
29 standard as of right, why that would be or if it's permissive intervention.  
30

31 Mr. Carnicelli: Thank you. Commissioners do you have any questions at this point in time  
32 about that? Okay, so I think that at this point it would be probably the best way to go is just to  
33 start with a motion. Do I have a motion either to grant and/or deny the intervention?  
34

35 Mr. Tackett: I move to grant the intervention.  
36

37 Mr. Carnicelli: Okay, moved by Commissioner...Vice-Chair Tackett to grant the intervention.  
38

39 Mr. Castro: Second.  
40

41 Mr. Carnicelli: Seconded by Commissioner Castro. Now we'll open up the floor to discussion  
42 based on what Corporation Counsel said did you want to go ahead and speak to the motion?  
43

44 Mr. Tackett: I believe, I believe through the testimony that was presented here today that  
45 they've shown that they definitely have a right to be heard over and above what the general  
46 public work be included in so that's the reason why I feel that way. So that's, that's, that's the  
47 reason for my motion.

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Mr. Carnicelli: Commissioner Castro would like to speak to your second?

Mr. Castro: I support this since the owners they're not opposing the intervention and I think it would suit both parties to go ahead with the intervention.

Mr. Carnicelli: Great. Thank you very much. Would anybody else like to speak to the motion at this point? Commissioner Robinson.

Mr. Robinson: I'm not a big supporter of intervention. I always...my history here that any time there's intervention it always seem to work out a little bit to the left than what we thought the meetings were supposed to work out. The outcome always seems to be a little bit different than what I think the vote would have to been. But I will support, I will support the motion of my fellow commissioners. I do think that that part of, part of the situation we have here is iwi, but I think the situation is larger than that. I think, I think the, and I've seen this a few times I see new owners come in from these big developments and they're the second, third, fourth owners and these plans have gone two, three, and the one before them has tried to do it and this one thinks okay, we'll do it...we'll come in and we'll do it differently 'cause it will be a little bit more better, it will be a little bit more pono, we'll do this and they always come with good intentions but some projects just shouldn't be done. Some projects just if we went back to the beginning of this permit I'm not sure if Mr. Mayer if they would have passed this in the beginning. I think...and it's nothing to do with the management or the ownership, it's nothing to do with intentions or nothing nefarious. It's just we've been here for so many years we know so many problems over there and I was hoping to, to have a say in it today as far as the SMA, and I could have shared what I...the objections that I have but I'm gonna I guess step back and I guess I'll miss that because I won't be around to do that. There's a lot of things, there's a lot of system problems, there's a lot of you know like, like we had a testifier said that we're supposed to take care of things at the permit process, I totally agree that was, that was right on. Maybe the delivery wasn't how I wanted to hear it but the message came across you know.

I think when we don't, we don't get and it's not proper notice 'cause were working on notice, but when somebody has a, has a concern about a project and they're not, they're not considered in a certain list or a certain...or give them a certain email, and I talked about this about five years ago to where you get put in a category where you're an opponent of something that okay, you know what there might be an alert or there might be something you're always going to check as this process moves forward. And that's why I'm on Maui...on this planning commission 'cause it happened to me. I was on the other side and it was with Grand Wailea. And you know, their lawyers are better than me and they understand the systems better than we do and it was not that what they did was incorrect or the thing that they were asking for was incorrect, it was access to information, it was being able to share my side of the story and then the commission votes and whatever the votes are, that's our, that's our system.

So that's what I hope and I like I said I heard that again today that intervention has to come at what time, all those types of things it's hard because if you don't hear the information how do you, how do you know it's not gonna be good until after you hear it. And the last time we had this, we had this hearing it stopped right after testimony and then there was no questions from us to where we could have asked a certain questions or certain things or dug in or something

1 like that, you know, water right, why, you know we never asked how come, how come the burial,  
2 how come these people weren't included in the comments you know, that's all stuff that we  
3 thought but we never got that opportunity six months ago, and then what happens when you  
4 come around the second time it's like it was trying to be hidden instead the process just wasn't,  
5 you know, wasn't equitable and it's hard because a lot of people want to testify and we only  
6 have so many hours in the day, you know, and so intervention's tough when you don't, you don't  
7 have a legal you know support. You don't have an attorney that understands it and it always  
8 concerns me when people who intervene have great intentions to do pro se but you know, they  
9 say procedurally you know, they want to get the information but sometimes they get you  
10 procedurally, you know, that's a defense. And it all depends on what hearings officer you have,  
11 always depends on arbitrator you have and then what judge to do it and then what comes back.

12  
13 And sometimes when you have intervention people agree on something that, that the  
14 commission may not have known all the process, might not agree with and then so now do you,  
15 do you grant intervention to a group like yourselves and then when you guys come to an  
16 agreement with Grand Wailea how do we as a commission then step in and say, oh we don't  
17 like that, you know. Then it makes you know, so you know, and all of these things happen with  
18 intervention. Again, it's a process and it's, it's a very, it's a very important process to take  
19 seriously. It's a very important process to make sure that you get as much support as you can  
20 ahead of time and you can't count on the County, you can't count on the opposing side to give  
21 you every...all the information you want. It be nice, but you gotta understand that. You gotta  
22 jump in there and you gotta ask for help you know, and I'm sure a lot of people would love to  
23 help, you know, and so I'm hoping that, that this intervention comes out on both sides good, that  
24 both people say, but you know, my feeling is some projects just shouldn't be built and nothing to  
25 do with anything, it's just it's good, we're working, it's functional now, you know, and you know  
26 just because can doesn't mean supposed to. Thanks.

27  
28 Mr. Carnicelli: Thank you Commissioner Robinson. Commissioner Pali.

29  
30 Ms. Pali: Just to notate, the way I'm gonna vote solely on the admittance to the applicants from  
31 the applicants that they don't object to the late filing and the time line of the filing for their  
32 intervention and also they do believe that the intervenors have special and unique qualities  
33 unlike the general public, those are statements that their attorney made. I think that I would be  
34 okay with moving forward with also voting in favor of the intervention.

35  
36 Mr. Carnicelli: Thank you. Commissioner Thompson.

37  
38 Mr. Thompson: No.

39  
40 Mr. Carnicelli: Commissioner Freitas.

41  
42 Mr. Freitas: Before we went on lunch I had some questions, but maybe Corporation Counsel  
43 can answer this how...how many meetings will the intervention process take?

44  
45 Mr. Galazin: You know I can probably let the administration explain how it, how it works. It's  
46 not necessarily from the, from a legal standpoint.

47

1 Mr. Freitas: The only reason I ask is we're voting on something and I don't know what we're  
2 sending it off to and I wanna also ask questions like of the terms that they've mentioned in here  
3 Mr. Meheula said that it was very broad and general. Can they then input additional things that  
4 falls within the scope or he can only answer those? Can it be more than what's in the petition?  
5

6 Mr. Carnicelli: Director.  
7

8 Ms. McLean: The first step in the process would be for this commission to appoint a mediator  
9 and a hearing officer. The applicant's attorney indicated that they would be amenable to  
10 waiving the mediator...let me back up, your rules call for at least an eight-hour mediation  
11 session, but the parties can waive that, this commission can waive that. If the parties don't  
12 believe mediation is going to get them anywhere at all, you don't have to appoint a mediator that  
13 process can be waived, it can go straight to a hearing officer. But if there is the option for  
14 mediation then the Department is obligated to pay for eight hours for a mediator. What has  
15 happened in the past is if after that mediation session it seems that there's potential for things to  
16 be resolved through mediation we would continue to pay for that mediation process to go on.  
17 So the amount of meetings that takes that's really up to the parties and how mediation goes.  
18

19 If mediation isn't successful or if they waive mediation and it does go to the contested case  
20 hearing and a hearing officer is appointed by this commission then the hearing officer's first step  
21 would be to have a prehearing conference with the parties and layout a timeline of witnesses  
22 and exhibits and how often they're going to meet and when both parties will have their evidence  
23 and their arguments ready. So again, that's up to the parties through the hearing officer to  
24 decide.  
25

26 In response to your question, I believe the intervenor can provide more information behind  
27 what's in their petition to intervene. I do not believe they can go outside of what's in their  
28 petition to intervene. But if issues are brought up in the petition they can get into that with  
29 greater detail with evidence and witnesses and so forth, but they can't raise new issues that  
30 haven't been...that aren't already contained in the petition.  
31

32 Mr. Freitas: So after the mediator gets the information presented to us what was decided or  
33 agreed does that end any discussion when it comes back through us regarding anything  
34 cultural.  
35

36 Ms. McLean: We do not get anything from the mediator. That's...if they go into mediation and  
37 issues are resolved in mediation that's private among the parties. They may choose to disclose  
38 things to us but they don't have to. They might have a private agreement among themselves  
39 and then the application as it may be modified would come to this commission for action. If  
40 mediation doesn't resolve the issues and it goes to a hearing officer as the Chair described  
41 earlier the hearing officer would present his or her proposed findings of fact, conclusions of law,  
42 decision and order and you could adopt that as is, each party would also have the option to file  
43 arguments against it and then the commission could act on that. They could adopt it as it is,  
44 they could adopt one party's or the other's, they could change it, they could vote the whole thing  
45 down.  
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47 Mr. Freitas: Or we could add conditions?

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Ms. McLean: Absolutely.

Mr. Freitas: Okay, I kinda feel bad for the petitioners that the information did not come to them in a timely manner of the revised plans and I really don't think that that was fair to them to be prepared. I am sorry, I apologize to you folks that you have to go through that. I'm, I'm supportive of the intervention request.

Mr. Carnicelli: Thank you, and those are actually good questions that kinda layout what the process is so thank you for doing that and clarifying for us and for everybody. One question on what he brought up as far as the scope with which information can be presented in either mediation and/or arbitration. Does the hearing officer and/or the mediation officer determine then what is within the bounds or not?

Ms. McLean: I believe there's a lot more openness and flexibility with mediation. That's not as strict, it's not as procedural, it's not as structured, but I do believe it would be within the authority of the mediator to say hey, I think that's going beyond. The hearing officer I believe, and maybe Corporation Counsel can confirm this or correct this that it's strictly within what the issues that are raised in the petition to intervene and the information that is contained in the application. Now let's just say theoretically there's discussion about an issue and they agree oh that needs to be investigated further, we need a further study, that might be allowed but again, within the, within the existing framework as contained in the petition or in the application.

Mr. Freitas: And the mediator would decide what the minimum from each side that should attend. Like they showed up for a meeting, some of them took off of work and the main attorney didn't show up. Now what happens then, I mean, any accountability or what guarantees that they have that when they set that date that everybody involved show up?

Ms. McLean: I don't know that there would be a guarantee. When it comes to mediation that has to be a mutual process. So if one of the parties doesn't show—

Mr. Freitas: But it doesn't hurt, they can't continue, they can reschedule if they feel the important people aren't here we come another time and get this done right, am I correct?

Mr. Carnicelli: Corporation Counsel.

Mr. Galazin: Yeah, thank you Chair. So part of, part of what you're getting into in terms of looking at this process, you know mediation there's a number of different rules that if the intervention is granted the first part of it is that all parties shall participate in good faith in at least one mediation conference and that's a requirement before it's gonna go to a hearing officer. So this permit can't go anywhere unless the parties make a good faith effort to engage in mediation. If the intervention is granted, there is the ability, you know one party can request that mediation be waived and go straight to a hearing officer and that's something that we can discuss after we deal with the question of whether intervention should be granted in the first place. So focus on that for this time.

Mr. Freitas: Okay, that's all I have.

1  
2 Mr. Carnicelli: Okay. Commissioner La Costa.

3  
4 Ms. La Costa: Thank you Chair. I will also be voting in favor of the intervention. I was a little  
5 distressed as were couple of my other fellow commissioners that not everyone who should have  
6 been in the room was in the room. So I think that that...those things might be answered also  
7 when they go to intervention, the Burial Council and the other factions that want to get answers  
8 and want to make sure that that if the project moves forward, if it does that it is done properly,  
9 so that's my two cents.

10  
11 Mr. Carnicelli: Thank you. At this point, I guess I'll just sort of open it up does anybody else got  
12 anything to say as far as the motion? Commissioner Freitas.

13  
14 Mr. Freitas: Does the intervention take so much time that we may run into longer than...is there  
15 a time limit since we started in May? We got what, two years, one, three years, is there any  
16 time limit? We've had time limit issues before.

17  
18 Ms. Cua: No.

19  
20 Mr. Freitas: So by doing the intervention, if it takes them a month longer we're not gonna run  
21 into any problem with the project, okay?

22  
23 Ms. Cua: No.

24  
25 Mr. Carnicelli: Great and then I guess before...oh, go ahead Director.

26  
27 Ms. McLean: I need to correct one statement. If the parties end up settling whether it's in  
28 mediation or if the contested case hearing gets going and they end up settling, if they do  
29 execute a settlement agreement that is public. That document is public. What went into it, the  
30 details of the background that that does not need to be revealed, but the document itself is a  
31 public document. Thank you Chair.

32  
33 Mr. Carnicelli: Thank you. I guess I'll just go last as far as speaking to the motion. I do believe  
34 as the applicant stated himself that the petitioners have met the threshold with which that they  
35 needed to and I do believe as far as the timeliness goes that they have proven just cause or  
36 good cause because I think it's important to put that on the record because I don't want it  
37 moving forward for us to set precedence that anybody can, you know, file a petition at any point  
38 in time and then say oh, well you guys granted those guys and you didn't grant us or whatever it  
39 is, so I just think it's important for the record to show that they did in fact show good cause for  
40 not filing in a timely manner. So that's all I have to say, and I guess and Director the motion on  
41 the floor?

42  
43 Ms. McLean: The motion on the floor is to grant the petition to intervene.

44  
45 Mr. Carnicelli: All those in favor please raise your hand. That is seven ayes, unanimous.

46  
47

1 **It was moved by Mr. Tackett, seconded by Mr. Castro, then unanimously**

2  
3 **VOTED: To Grant the Petition to Intervene.**

4  
5 **(Assenting – C. Tackett, S. Castro, D. Thompson, K. Freitas, K. Pali,**  
6 **K. Robinson, P. D. La Costa)**

7 **(Excused – T. Gomes)**  
8  
9

10 Mr. Carnicelli: So congratulations on that, but don't go anywhere just yet 'cause now we have to  
11 talk about mediation and hearings officers. So at this point in time Clare what I'm gonna ask  
12 you first is the applicant had floated a...on you know the idea of skipping mediation saying you  
13 know what I don't think we're gonna be able to...it's...I don't want to put words in his mouth I  
14 don't remember exactly what it was...oh, Mr. Galazin.

15  
16 Mr. Galazin: Thank you. So under Section 12-201-68(d) requires mediation, it says, upon  
17 motion by a party, the commission may waive the mandatory mediation for good cause shown  
18 by the movant. So as you, as you recognize the applicant's counsel did request that the  
19 mandatory mediation be waived with the good cause being that they had engaged in some  
20 discussions previously that seem to not end in resolution. You can let the applicant speak more  
21 to that and then...or if you want to let the petitioners say first if they are amenable to waiving  
22 that step that might be good cause right there.

23  
24 Mr. Carnicelli: Hey Bill, why don't you go ahead and come forward and then explain to us and  
25 the intervenors where you're coming from on that please?  
26

27 Mr. Meheula: Yeah, so chronologically we met August 29<sup>th</sup>, I wasn't at that one, but at that one  
28 we did prepare an offer and it's the current scope of the 151 you know, not taking out the  
29 Chapel, all the bungalows are gone, so it's the SMA as amended now. That was the offer. And  
30 we met that night and then we met two more times, one on October 11<sup>th</sup>, and then another one  
31 on January 12<sup>th</sup>, and both times we tried to express to them why it is that we're not going to cut  
32 the project back any more because and we were only talking about iwi, we weren't really...they  
33 weren't really interested in talking about you know water and traffic and workforce housing and  
34 things like that and their main issue was iwi. And their position was you know they don't want  
35 any more excavation work on...at the Grand Wailea at all. And we were trying to convince them  
36 that well, you need this balance and we're cutting it back to the point where you know we don't  
37 think there's much risk at all and tried to explain our reasoning. And we're, you know, they have  
38 their position, we have our position and that's why I think mediation is just going to be the same  
39 thing so that's why I thought we made the motion to or make it now to waive mediation.  
40

41 Mr. Carnicelli: Sure, okay. Clare would you want or I guess anyone of you want to speak to  
42 that?  
43

44 Ms. Kamekona: Thank you Chair for allowing me to speak to that. First off, the meeting that we  
45 had in August, yes the CSH archaeologist was the only one that was present. The cultural  
46 advisor for the hotel along with the attorney was not present. There was however a gentleman  
47 on the phone with us supposedly a lawyer, we did...I mean a owner, we not know for sure. We

1 never ever discussed an offer. Nothing was provided to us until we were walking out the door  
2 by Mr. Trevor Yucha. That is what we saw on the top that says, intervenor settlement  
3 concessions which is the current scope of work. We were never ever told about that at that  
4 August meeting. So when SHPD, Ms. Lebo told us that that was what was presented as a  
5 concession, as an intervention, as a settlement, aole. That is not our understanding of what has  
6 happened.

7  
8 Mr. Carnicelli: Thank you I appreciate that. Do you feel as though mediation could be  
9 productive? I mean, that being said, do you feel as though mediation could be productive?

10  
11 Ms. Kamekona: I feel mediation will help both parties in order to come to an agreement maybe  
12 closer than what we are now hopefully for the betterment of our kupuna. And I would also like  
13 to address a point that Mr. Meheula said that we did not bring any other issue forward other  
14 than the iwi and he is incorrect in that statement because in the last meeting we had I told them  
15 everybody that was present this body who is currently at this table their issue is iwi..  
16 Mr. Kaneloa his issue is water, kuleana rights. I said there's more than just iwi. So his  
17 statement is incorrect. We know there's more, it's just the iwi people have been the ones at the  
18 table. Mr. Kamaunu was at the original August meeting so he also was able to share his  
19 opinions at that point.

20  
21 Mr. Carnicelli: Thank you. Do you want...I'll give you ability to speak to it as well.

22  
23 Mr. Kamaunu: So my whole thing is I understand his position and what his thought is, but of  
24 course if we overlook a step, I mean it's there for a reason to use. And whether or not we come  
25 to an agreement even at that part of this process. It's still something that should be looked into  
26 and it should be something used because if you throw away a tool, you know a lot of times us  
27 guys when we start building things sometimes we forget stuff or we decide oh I don't need that  
28 today and all of a sudden what tool do you need, that tool that you left at home. So to say or to  
29 mitigate that this won't come with any positive results is I think a misconception. I think it should  
30 be used and it should be allowed to be used. It's there for the purpose and has sound  
31 reasoning that it's there and so whether we come to an agreement or not I believe that we  
32 should go through the process.

33  
34 Mr. Carnicelli: Okay, I appreciate you saying that and it sounds as though you guys are not  
35 agreeable to it and as I understand it you guys, both parties have to be agreeable to waive  
36 mediation so it sounds as though you guys are not wanting to waive mediation.

37  
38 Ms. Apana: No.

39  
40 Mr. Carnicelli: Okay.

41  
42 Ms. Apana: ...(inaudible-not speaking into the mic)...

43  
44 Mr. Carnicelli: Commissioner—

45  
46 Mr. Robinson: I said, if you look at their name it's mediation, right Ho'oponopono O Makena,  
47 that's what it, that's what, that's what it is. So that's what we want to do, right?

1  
2 Ms. Apana: I think we need to have a new beginning. I don't believe that we really have been  
3 in mediation without a mediator. Obviously we needed a mediator to have the process begin,  
4 so yes, we are always looking for a solution. So thank you for that.

5  
6 Mr. Carnicelli: Yeah, yeah. Commissioner Freitas.

7  
8 Mr. Freitas: For the petitioners, I have a question. Have you folks be to or a party to any  
9 petition to intervene prior to this, any of the three organizations?

10  
11 Unidentified Speaker: On any other case?

12  
13 Mr. Freitas: Don't have to be specific about which one just say yes or no or how many?

14  
15 Ms. Apana: Malama Kakanilua has never intervened.

16  
17 Mr. Freitas: Okay.

18  
19 Mr. Delima: Ho'oponopono did have a judge to kinda look over both sides and come back and  
20 discuss what happened from one side to the other. I don't know if you call that mediation or not.

21  
22 Mr. Freitas: I would say. Mr. Delima did you think that was helpful. Would you prefer  
23 something like that or would you not? Was helpful?

24  
25 Mr. Delima: Yes, I think that will be very helpful.

26  
27 Mr. Freitas: Okay.

28  
29 Mr. Carnicelli: Yeah, I think that's the next step since we're not agreeing the way that we're  
30 gonna go ahead, and so at this point in time we have to agree on a mediation officer and no?  
31 Oh, Corporation Counsel.

32  
33 Mr. Galazin: Thank you Chair. So the rules state that a mediator shall be selected jointly by the  
34 parties or appointed by the commission if the parties fail to agree. And the only stipulation  
35 beyond that, the mediator shall not be the person appointed as the hearing officer. They cannot  
36 be the same person. I believe the Department maintains a list of both mediators and hearings  
37 officers.

38  
39 Mr. Carnicelli: And Ann, I would like for you to explain that again just as far as 'cause we have a  
40 list here, one, two, three, four, five and I believe there's a County list, anyways if you could  
41 please go over that again.

42  
43 Ms. Cua: Sure. Thank you Chair. So whenever...well first of all stepping back the County  
44 keeps a list, every year as the Director mentions the Planning Department goes out and puts an  
45 ad in the paper or notice in the paper, not an ad a notice you know if anybody's interested in  
46 being a hearing officer or mediator, and from that notice the County has a list. And so whenever  
47 we have a petition to intervene that is going to come before the planning commission, the

1 Department takes that list and sends out to...sends out an email to a number of people on the  
2 list and we describe the application at hand or applications at hand and we indicate who the  
3 applicant is and who the potential intervenors are so that anybody that's on the list can have  
4 that information to see if they conflict out because they may have represented someone on  
5 another case and they're not able to service in any capacity towards these applications. So we  
6 did that and we received five interests back and the names are provided in the list that we've  
7 given you, Exhibit 48. All names have agreed to either be a mediator...serve as a mediator or a  
8 hearing officer and as Corporation Counsel pointed out one person can't serve in the same  
9 capacity so we have Joel August, Guy Haywood, Gilbert Keith-Agaran, Glenn Kosaka, and  
10 Linden Joestein, as potential mediators and potential hearing officers. That list was distributed  
11 to both parties with a recommendation that they meet and agree on one person for each and  
12 then be able to come to the meeting and let you know who that person would be and then they  
13 were also told if they are not able to agree then the Commission would make the selection.  
14

15 Mr. Carnicelli: Thank you Ann. Bill why don't you go ahead and come forward, we got them  
16 here and we'll you up front as well. So I guess my question is to either, both parties have you  
17 guys come to an agreement as to a mediation officer. So I'll speak for a period.  
18

19 Mr. Meheula: No, we haven't. I mean we had the list before we met on January 12<sup>th</sup> and so I  
20 proposed that we talk about it at that meeting and they weren't ready to talk about it, and  
21 haven't heard back from them. So we don't have an agreement.  
22

23 Mr. Carnicelli: Okay. Do you have a preference?  
24

25 Mr. Meheula: Yeah, as I stated earlier Glenn Kosaka previously mediated an intervention by  
26 Dana Hall in this matter, this SMA, the first version of it back in 2012, so I think he probably be  
27 good for that, but that's it.  
28

29 Mr. Carnicelli: Thank you. So Clare, so obviously we don't have an agreement here...of these,  
30 who is it that you would prefer? I think you mic went off again. Might have timed out is the light  
31 on?  
32

33 Ms. Apana: ...(inaudible)...talk about the list? May we talk about the list?  
34

35 Mr. Carnicelli: Sure.  
36

37 Mr. Dedman: So in the follow up to that, that person we're talking about to be hearing officer we  
38 had conversations with Mrs. McLean, Ann Cua and brought up the fact that how do they and  
39 what's the qualifications besides just asking whether the qualification that gives them the  
40 position. So since we had sensitive issues about burials we wanted a hearing officer that was  
41 sensitive, who understand the Hawaiian concerns of this whole thing and their comment was  
42 well, submit some names. So we submitted names and then got denied of the names because I  
43 didn't see an explanation of why they were denied. Then it was a conversation between us and  
44 the Planning Director, then when we get to this meeting with the Grand Wailea, Meheula knew  
45 who this names were that we submitted and he rejected it and was reflected by Mrs. Cua of his  
46 rejection. I mean, it's like you folks only work with developers and not with the people, and why  
47 was ours turned down and with no explanation and this person that we submitted was a judge,

1 an attorney and does Hawaiian practical exercises so we thought he'd be perfect to  
2 understand our concerns and that got denied. So the conversations we had I don't know how  
3 they defend themselves now when they said it was okay and submit some and then deny it  
4 when we submit it and apparently you guys don't even know who was submitted and their  
5 background of why they were submitted and why we wanted them to be our hearing officer. So  
6 you go ahead and explain to your colleagues why you didn't do that to them and you did it to us.

7

8 Mr. Carnicelli: Thank you. Director.

9

10 Ms. McLean: Thank you Chair. I'd be happy to explain. There were two candidates that the  
11 intervenors recommended and I emailed both of them and copied one of the intervenors and  
12 said after reviewing both of their resumes which had a lot of information in them it didn't have  
13 information about their training or experience as a mediator or as a hearing officer and so I  
14 asked them if they could provide any clarification as to if they had experience in training as a  
15 mediator and if they had experience as a hearing officer under HRS, Chapter 91 and  
16 understanding the applicable rules of the planning commission. They don't...they wouldn't have  
17 to specifically have worked with the planning commission before, but in the same context, and  
18 that's the same kind of information that's in the ad that we run every year and those emails were  
19 well over a week ago and I didn't hear back from them with any follow up information. They  
20 weren't denied, we weren't able to add them because it's not clear that they meet the  
21 qualifications as the, as the list is formulated.

22

23 Mr. Meheula: Could I please respond?

24

25 Mr. Carnicelli: Sure.

26

27 Mr. Meheula: So the only information I received concerning an outside potential hearings officer  
28 or mediator was an email that Ann Cua sent to all of the intervenors and myself and so  
29 everyone and said that Clare has a possible hearings officer/mediator, Gerald Lam and then  
30 she says, in order for this to occur the Department needs the following information, you know  
31 whether he's willing to serve and the parties will need to agree that they request that  
32 Gerry Lam's name be added to the County's list. So confidentially discussed with my client we  
33 said no and I emailed back saying, applicant does not agree to adding Mr. Lam to the County's  
34 list, that was a reply to all and I think that was the end of that. So that's the only information I  
35 have about use of a...someone outside of the five that was proposed.

36

37 Mr. Carnicelli: So your objection to including them in the list is it because they do not qualify or  
38 you just don't agree?

39

40 Mr. Meheula: You know it doesn't say that we have to give a reason. It says the parties will  
41 need to agree to the request to add his name so I mean that was, that was the instruction.

42

43 Mr. Carnicelli: Okay, fair enough.

44

45 Mr. Meheula: You know obviously we have our ideas on stuff so, but...yeah.

46

47 Mr. Carnicelli: Sure. Commissioner Freitas.

1  
2 Mr. Freitas: I have a question Mr. Meheula when you spoke just before this you said you never  
3 heard from them and now you say you did hear of names that they submitted.

4  
5 Mr. Meheula: No, I never—

6  
7 Mr. Freitas: How is that—

8  
9 Mr. Meheula: No, no, I never heard from them as to the five. You see the five that were on  
10 there. I said, I said we're gonna meet...so this is January 8<sup>th</sup>, we're gonna meet on the 12<sup>th</sup>, we  
11 did meet on the 12<sup>th</sup>, I said let's talk about the five, they said they weren't ready to talk about the  
12 five.

13  
14 Mr. Freitas: Okay.

15  
16 Mr. Meheula: But we're ready now, so we can do it now if you want.

17  
18 Mr. Freitas: But I heard you say you didn't hear from them and I, I...contradicts that they did  
19 send a name so...a little different, but that's fine.

20  
21 Mr. Carnicelli: Commissioner Robinson.

22  
23 Mr. Robinson: Corporation Counsel. So the applicant denied adding the name to the list which  
24 is their right, can the intervenors deny names on the list and then we end up with nobody on a  
25 list? Well, I...I'm saying but, but he's not our list that that they denied and that's the list that we  
26 have to choose from. So what if they say they don't want any of these guys on the list then we  
27 don't have a list to choose from.

28  
29 Mr. Galazin: Chair?

30  
31 Mr. Carnicelli: Corporation Counsel.

32  
33 Mr. Galazin: So what the rules provide is that it's going to be up to this body in the event that  
34 the parties don't mutually agree on a mediator and oftentimes that's a really important part of  
35 the rules because they're not agreeing in the first place on some fundamental things so it  
36 ultimately is not uncommon that they do not agree on a mediator. The list that is in Exhibit 48  
37 that's provided are people who you know meet the qualifications, are not conflicted out and at  
38 least you know meet the minimum standards from the Department. I don't know the names that  
39 were proposed by the intervenors, you can look at the names, consider them. You know, I do  
40 know that that the ones that are here you are certainly within your authority to just mandate that  
41 one of them serve and they do their mediation because ultimately you can't let things to an  
42 impasse like that so the power's vested in you.

43  
44 Mr. Carnicelli: Commissioner Pali.

45  
46 Ms. Pali: I just want to add one thing. I know that while there might appear to be a benefit to  
47 using Glenn Kosaka, I think my personal opinion is maybe to have someone fresh so they can

1 sort of come to their own conclusions maybe and maybe not use past cases to sort of influence  
2 this one. That would just be my recommendation.

3  
4 Mr. Carnicelli: I would...I actually completely concur with that. I think that...anyways rather  
5 than us going and drilling down on one specific name right now though, I guess the question  
6 that I'm gonna pose before you guys as a board here, as a commission, is do we want to go  
7 ahead and see the resume of the person that they...is not on the list, is not on the County list  
8 that they would like? Commissioner Robinson.

9  
10 Mr. Robinson: Chair my understanding is the person on their list does not qualify as of yet to be  
11 on this paper, not that he wouldn't and my suggestion would be to, to give, to give us until  
12 maybe our next meeting have the resumes of everybody on this list and give an opportunity for  
13 those other people to hopefully get him on the list before our next meeting, and then if they did  
14 not agree at that time to a hearings officer and a mediator then at that point we would have the  
15 information and we can make a decision then.

16  
17 Ms. Kamekona: Chair, if I may? If I may?

18  
19 Mr. Carnicelli: Sure.

20  
21 Ms. Kamekona: Point of clarification. We did get a list of five names. As Mr. Dedman said,  
22 there was no one on that list that we felt comfortable who had a traditional and cultural lens in  
23 which to look at our intervention and our petition. We met with the Planning Department, we  
24 voiced our concern and they stated that they would provide us with the full list of names that  
25 they had. That was done. We had also asked if we could provide some people who we thought  
26 would be able to look from a Kanaka lens and they said yes. So we solicited, we got names, we  
27 got resumes and we asked them to submit it to the Planning Department. My understanding is  
28 that was done. However, Ms. Cua sent a letter to Grand Wailea and said, they want to add this  
29 person, are you okay with it? Grand Wailea came back and said, no. We thought all we had to  
30 do was provide names to go on their list not to be agreed upon or disagreed upon by the  
31 applicant, by the Grand Wailea so why did that letter go out to Mr. Meheula? Why was he able  
32 to say, nay when we never even got a chance to put him on the list?

33  
34 Also, there was emails between Clare and the Planning Department on what are the  
35 requirements of being a mediator and/or hearings officer. That was provided to us and in  
36 reading that there wasn't anything as what was told by Director. So again, we solicited. Then  
37 we get an email back that states, well we need to know that they have SMA and that they have  
38 205A. So Clare asks what are the qualifications of the others that have agreed to be on this  
39 list? We would like to see their qualifications then if you want us to make an informed decision  
40 on who to provide as hearings and mediation officers. To date, we have not received anything  
41 that says what the resumes are of anybody else that is on the list. We are here willing to  
42 provide you resumes for the two names that we have submitted if you so wish to accept.

43  
44 Mr. Carnicelli: Thank you. Director.

45  
46 Ms. McLean: There are two issues regarding the names. If for example the applicant had  
47 agreed to one of the names then we could have gone forward with that name. The reason that

1 we're looking at those additional qualifications is to meet the same standard of those who are  
2 already on the list. So there are two different things. One is the parties agreeing to a name.  
3 You could agree to someone who you know doesn't have qualifications but if both parties agree  
4 that that's the person then the commission would likely go along with that. It doesn't matter  
5 whether or not they're on the list if both parties agree they could go on the list. So that was the  
6 first thing that we attempted with the names that you gave or with that one name that you gave  
7 do both parties agree, and if you had then we would have suggested to the commission that you  
8 go with that name. Since the applicant didn't agree then the next step was well we can see  
9 about adding them to the list and then if you don't agree then the commission can choose from  
10 the names on the list. But we haven't gotten that follow up information from either candidate to  
11 put them on the list.

12  
13 I do want to make an important point that the rules call for this commission to appoint the  
14 mediator and the hearing officer. We have this longer list, we pair it down for people who we  
15 know are available and don't have a conflict. You don't have to choose from this list. You could  
16 choose Mediation Services of Maui to be the mediator, you could choose somebody else to be  
17 the hearing officer. We're don't know right now if they're available and have a conflict, but  
18 you're not bound by this list. We know this lists these people are available and don't have a  
19 conflict but you don't have to choose from it. So that's...the rules don't require that a list be  
20 prepared and vetted, it's up to this commission to make those appointments.

21  
22 Mr. Carnicelli: Mr. Meheula.

23  
24 Mr. Meheula: Yeah, if I could provide a comment. You know you have a thought out system as  
25 to how to select a mediator and a hearings officer. It's an independent method of selecting  
26 basically the judge and so if you're gonna come up with a new system then you've gotta, you  
27 know guarantee yourself that it's gonna be also independent so neither side has a say on it. So  
28 that's why I thought the system you have is fine because you know neither party had a say on  
29 who's on that list or the system that you developed, but now if you're gonna, if you're gonna  
30 change the system just for this thing, this SMA application then I think we're, we're all gonna  
31 have to carefully see how, how you're gonna do that, you know I mean like, everybody gets five  
32 to add on or you know it's, it's complicated and it doesn't have to be, so...

33  
34 Mr. Carnicelli: Thank you. This mediation starting off really good.

35  
36 Ms. Apana: I'm...(inaudible)...sorry, no I...thank you for—

37  
38 Mr. Carnicelli: No, no, hang on, hang on, hang on Clare. Corporation Counsel.

39  
40 Mr. Galazin: Thank you Chair. So as the Director noted you can sort of generally designate a  
41 firm that does mediation. When you're looking at a hearing officer I think it's important to make  
42 sure that you be as neutral as possible and not necessarily skew towards one or the other. A  
43 hearing officer is going to need to understand what the contents of you know Chapter 205A are.  
44 They are going to need to understand what the constitutional rights to Native Hawaiians are,  
45 somebody...everybody on this list understands that. You don't necessarily want to skew  
46 towards somebody who only specializes in Native Hawaiian rights and not Coastal Zone  
47 Management, you don't want to skew towards somebody who only does Coastal Zone

1 Management and is ignorant of you know constitutional rights that belong to the Native  
2 Hawaiians. You have this list here and you know, we know that we don't have the information  
3 about what kind of hearing officers or what experience as hearing officers the applicants have.  
4 Sounds like the Director has requested that, that information has not been received, mediation  
5 you're a little more flexible, for hearing officer I would recommend that you stick to somebody on  
6 this list and again, it's your prerogative as a body you want to choose somebody who's going to  
7 be able to look at the law, interpret the law, understand the facts, rule on the evidence. Each  
8 party is going to be able to bring their own arguments and in the end neither the mediator nor  
9 the hearing officer abrogates your authority. It is going to come back to you folks. What comes  
10 back is a report, a recommendation, but ultimately the decision and rules reflect that is still up to  
11 this body whomever may be sitting in these chairs at the time.

12

13 Mr. Carnicelli: Thank you. Commissioner Tackett.

14

15 Mr. Tackett: So what I have to say is as I sit here I'm...what I would consider and everybody  
16 you guys got all your own name, some are Native Hawaiian, some is Kanaka Maoles and some  
17 are like me. I consider myself a lucky Haole that's what I am. I was brought here when I was a  
18 very young man and went to Wailuku Elementary, I went to Iao, and I went to Baldwin, and I'm  
19 fortunate, fortunate to have gotten, gotten some Hawaiian culture. Actually I got a lot of  
20 Hawaiian culture like I rode the bus with the Hawaiian Home kids you know, and I was the only  
21 blonde kid on that bus and I had a lot of time in the sun, I was way blonder than what I was now,  
22 you know, and I think what we got now is, is just the time of our world right now and it's so  
23 important that we get this right because you guys have, you guys have the old versus the new.  
24 You have the living versus those who have passed, you know, you have, you have...I love my  
25 grandparents. My grandparents were the biggest and most motivating factor of my life, nobody  
26 taught me anything of a higher moral value than my grandparents taught me and that's what  
27 you guys are talking about.

28

29 And you're talking about the iwi and you're talking about a romantic belief of your culture that I  
30 so admire that because I grew up with it and I have...I studied it because I paid the price being  
31 a young Haole kid growing up over there when I was the only one and I wanted to know why I  
32 paying this price like wasn't my parents, you know what I mean? I wanted to know why. So I  
33 always been into the history of it and I go deep in the history. And of course, the history is  
34 nobody was there, you know everybody has their idea of oh well, we think these guys was first,  
35 we think these guys was first, these guys think these guys came and then they replaced these  
36 guys, and what I think is important is that when we choose, we choose somebody that is gonna  
37 listen to you both and I think when...I think it shouldn't be the guy that he just said it should be  
38 and it probably shouldn't be the guy that you guys say it should be. It should be somebody  
39 willing to look down the road and somebody that both you guys think can be fair about it.

40

41 And I think the vexing part of this is, is what you guys are protecting your Hawaiian ancestors,  
42 where you're putting yourself is when this all said and done who you are going up against is one  
43 of the hotels that pay the highest pay and have the most benefits and there are Hawaiians that  
44 purchased homes and got lands back that way through opportunities. And when hotels come  
45 into this kind of place they don't have to do that, they choose to do that and most of them  
46 choose not to do that. And then when you go and look at the construction workers that will build  
47 these, the people that these people will hire they have a choice between going paying prevailing

1 wage or union wage or just paying the minimum wage and I think the ones that you guys should  
2 go over most tenaciously are the ones that try to take your working class people's benefits, the  
3 ones that try to under pay the people, the ones that try to take, to take the, to the money out of  
4 this community and put it somewhere else and what I'm saying is that when your ancestors look  
5 back, when my grandparents look back they're gonna look at what the choices for your  
6 generation were. And when you, when you look at these, these guys and I, I love Maui the way  
7 it was you know, like I said I got more than I deserved. I own a house with a Baldwin High  
8 School education like who do you know that owns a house with a Baldwin High School  
9 education that got it hour by hour like I didn't...my parents didn't give me no money for it, you  
10 know. I got it one hour at a time and so there are opportunities for Hawaiians and there are  
11 opportunities for local people and there are opportunities to get things back but it's gonna be, it's  
12 gonna be a balance between those companies that come in here and try to provide higher  
13 paying jobs and either we kill 'um or we let 'um live, but if we kill all the ones with the higher  
14 paying jobs, I tell you in the trades there's a high percentage of local kids and there's a high  
15 percentage of Hawaiians in the trades you know and I think it's important that you guys look at a  
16 balance between the two because when the iwi win some of the kids will starve and if some of  
17 the iwi move, some of the kids will eat and some of those young people from this community will  
18 buy homes with that money, so I, I cannot tell you what is right and what is wrong because  
19 everything is right, you know.

20  
21 The iwi deserve all that respect and they deserve to stay exactly where they were and the  
22 young people of this community they deserve good paying jobs and they deserve to get  
23 something for a lifetime worth of effort and not have to leave and not have to work for ten or  
24 fifteen bucks an hours and no your kids cannot have medical and no they cannot have dental  
25 and no they cannot have retirement you know, so you guys are, you guys are in a place where  
26 you going have to say no to something that is right or you going have to yes to something that is  
27 partially right and something else is partially right. And so I would suggest that you use  
28 somebody from a list and this list was a list that that they didn't pick and it's a list that you guys  
29 didn't pick and it's a list that we didn't pick. So I think we should pick somebody that you guys  
30 feel should be fair and right now nobody can agree and I think you should probably pick...it's  
31 Page 48. I think, I think—

32  
33 Mr. Carnicelli: Exhibit 48.

34  
35 Mr. Tackett: I think you should pick one of the ones that that that that nobody picked. Where's,  
36 where's...oh, right here, so maybe—

37  
38 Ms. Apana: Thank you so much for your heartfelt sentiments. That was very beautiful how you  
39 feel about the plight of people, the working people—

40  
41 Mr. Tackett: I mean it's magical you know.

42  
43 Ms. Apana: But this is a process I believe in...and if you would just, just so that we can be sure  
44 that we have vetted this process because it was actually started at the meeting that we had with  
45 Ms. Cua and Ms. McLean where they said you can find people, see if they can go on the list and  
46 I just want to say that I have finally found one of the people who I think is really the best  
47 candidate for—where you don't have any questions and this person because it is the end of

1 Makahiki has not been able to be in touch in the, you know, like in our real computer world. I  
2 spoke with that person, he helped write the SMA Rules in case you're worried about that 205.

3  
4 Mr. Tackett: I not worried about it but I would, I would like to conclude and you guys, you  
5 guys—

6  
7 Ms. Apana: Sorry.

8  
9 Mr. Tackett: Yeah, no problem, no problem. I'm gonna end it. I said what I had to say and like  
10 I said, I go more than I deserved. I don't even think, I don't even think I don't know how I got  
11 here you know. I love to surf Sand Piles that was my thing growing up you know. So I don't  
12 know how I got here, but I happy to be here and so I don't think it should be a choice from you  
13 or them. I think it should be a choice of somebody that you feel is neutral and I would pick  
14 somebody like perhaps Gil, Joel, Guy, somebody that, somebody didn't...somebody else didn't  
15 pick 'cause if you guys pick somebody that's like we're just giving it to you. It's just like if he  
16 come up well, I got somebody else, it's like I giving it to him, you know, it needs to be somebody  
17 that's not for both of you guys and you guys I think, I think you guys should, should cut them just  
18 a little bit of slack 'cause they do pay the higher paying jobs and they do employ a lot of the, the  
19 Hawaiian kids you know, and it's true you know, and and so that's just my opinion.

20  
21 So my suggestion would be and I'm just gonna pick one I would go with Gil Agaran just because  
22 he popular, everybody known him, he's been pretty fair and I think that he would be fair for both  
23 sides, you know. I think something like that is what would happen with what needs to happen  
24 and that's...so that's my, that's my suggestion is that we choose Gil, you know. Gil is a neutral  
25 compared to the rest. That's my opinion on it.

26  
27 Mr. Carnicelli: Thank you for that soliloquy Commissioner Tackett. Here's, here's what I'm  
28 gonna do is is at this point in time I'm gonna try to show a little bit of leadership as the chair and  
29 we keep trying to see like okay, can we get an agreement, can we get an agreement. I've  
30 oftentimes said in politics it's a win when everybody loses, it's counterintuitive, but oftentimes  
31 that works. This is really hard sitting on this side of the camera guys. You guys all sit there  
32 looking at me, throw darts at me, this is a volunteer job, five years, do this, we try to do the best  
33 we can for the community, we try to weigh everything. I'm the new kid on this commission. I've  
34 only been on Maui 26 years. I'm the new kid. I lay awake at night thinking about the faces  
35 looking back at me, this side happy, that side sad but you make a decision whatever it is. I take  
36 this job really, really seriously as well as do the other eight people on this commission. And the  
37 unfortunate part is we can't let everybody get their own way. We have to make tough choices.

38  
39 So this is what I would like to do. I'd like to scratch both preferences. The preferences of both  
40 sides. I would like to start with the hearings officer and we pick the hearings officer 'cause that's  
41 the person ultimately I mean, we've spent an hour now just talking about picking a mediator let  
42 alone going to mediation. So chances of it ending up in...with a hearings officer is probably  
43 pretty good so I think that that's the person that is gonna be more important than the mediator.  
44 So Gil is at the State Leg, I like Gil, he's at the State Leg for the next four months, you know so I  
45 would have to say scratch Gil. The fact that Glenn has history and the fact that you know one  
46 side wants him I would scratch that as well just personally. If I look at this and just trying to  
47 know what I know about these people I might go with Linden as the hearing officer and Joel as

1 the mediator. Ultimately it's gonna come down to you know the eight of us voting. So that's just  
2 what I think, in saying all of this it's like I said guys there's not going to be...everybody is not  
3 going to walk out of here happy no matter what we do. So we just have to make a decision.  
4 We have to you know do what I wish some of our leaders at different levels would do and that is  
5 make hard choices. So at this point in time—

6  
7 Mr. Tackett: My motion, my motion was for Gil.

8  
9 Mr. Carnicelli: Okay.

10  
11 Mr. Tackett: That was my motion.

12  
13 Mr. Carnicelli: Okay, do you want to have a second to that motion then? Does anybody second  
14 Gil as...did you make him as the mediator or as the hearings officer?

15  
16 Mr. Tackett: As the hearings officer.

17  
18 Mr. Carnicelli: So we have a motion for Gil as the hearings officer. Do we have a second?

19  
20 Mr. Castro: Second.

21  
22 Mr. Carnicelli: Seconded by Commissioner Castro. Discussion to the motion?  
23 Commissioner La Costa.

24  
25 Ms. La Costa: Thank you Chair. Gil is very knowledgeable, he's pono, but he is at the Leg until  
26 May and if you want to get this done expediently then it will take a long time if you have him as  
27 your officer. I think all of these folks on this list are under oath to do the best they can just like  
28 we do the best we can. So I'm in concurrence with the Chair that we're the ones who has to  
29 throw the darts on the board and that's where they land. Thank you.

30  
31 Mr. Carnicelli: So I'm sorry, did you speak in favor or opposition to the motion? Okay, anybody  
32 is Commissioner Robinson.

33  
34 Mr. Robinson: Chair before I speak I got, I got one question. Mr. Meheula will you please  
35 reconsider your denial of the applicant's mediator?

36  
37 Mr. Meheula: Yes...no, I won't.

38  
39 Mr. Robinson: Okay, thank you.

40  
41 Mr. Meheula: Yeah, yeah.

42  
43 Mr. Robinson: I had to ask.

44  
45 Ms. Apana: I didn't...

46

1 Mr. Robinson: Wait, wait, wait, it's okay, it's okay, it's okay. Is it I think what's, I think what's  
2 happening here is and it's everybody's good people, but when they start talking about from a  
3 lens it's because I can't look at somebody, I can't understand somebody else from a different  
4 lens. I can only see what my lens and what my things are and it's not right or wrong, it's just  
5 what it is. And when we have a list of, of, of zero part Hawaiian, any type of Hawaiian on top a  
6 list that we have to choose from and we have, we have, we have an entity that is talking about their  
7 Hawaiian rights, their Federal rights, we water rights, we have, we have, we have people that  
8 are in it and what they're saying is don't send me up to bat with two strikes, you know because,  
9 because there's a reason why there's more minorities in prison is because the juries are, are of  
10 one side. It's a not a purposeful thing, it's not a, it's not a, it's not a nefarious thing like how we  
11 say, it's that's just the reality we have and, and, and to deny a mediator because, because of  
12 what, it's a mediator, I mean to me that shows, that shows that they're not being open on the  
13 side and mediation is supposed to be open. So I've, I've never heard of say somebody I don't  
14 want that mediator, it's just a mediator. I mean, I've been to mediation a bunch of times and I've  
15 never turned down a mediator because and, you know, it's and I guess and so what I'm saying  
16 is yes, is Chair I understand we have to make a decision and make the list and we have to take  
17 it, but I don't agree with this list. You know, because, because one, I don't have all the facts of  
18 these people in front of me. I may choose these people, I know, I know some of the  
19 backgrounds because, because of the judge and because of verdicts that I've read in the paper  
20 but I don't know everybody and so I'm all for taking it out of their hands but I would like to see  
21 the whole list that's qualified instead of just these five. Thank you.

22  
23 Mr. Carnicelli: Let's go to...I'll go to David and then back to you.

24  
25 Mr. Galazin: Thank you Chair. So when you're looking at mediation again that's something that  
26 could be waived, not waived, sounds like you're intending to not waive it. For a mediator you  
27 know somebody that's more empathetic can be helpful but I want to try and recast this for  
28 everybody on this body. When you are choosing a hearing officer you could appoint yourselves  
29 so in effect what you're doing is you're choosing somebody to help you. You're choosing  
30 somebody who's going to help you do your job which is make a decision on this permit and we  
31 know that the people on this list are qualified to help you do that job. It's not going to be to help  
32 the applicant, it's not going to be to help the intervenors it's going to be to help you 'cause you  
33 have an enormous decision. So I would keep that in mind. It would be difficult to decide that  
34 you want to hand off your responsibility to an unknown quantity and that may be an unwise  
35 decision even if it is legally permissible. I think you should really take that to heart when you  
36 decide who you want to pick as a hearing officer.

37  
38 Mr. Carnicelli: Commissioner Pali...oh sorry, wait, wait, wait, the Director.

39  
40 Ms. McLean: The other names that are on the list that we keep did not respond as being  
41 available for this proceeding or they may have had a conflict of interest. So we don't have any  
42 other names on the list that we maintain.

43  
44 Mr. Carnicelli: Commissioner Pali.

45  
46 Ms. Pali: If I may just for clarification purposes. Is there still a motion on the floor?  
47

1 Mr. Carnicelli: Yes.

2

3 Ms. Pali: Okay.

4

5 Mr. Carnicelli: Yeah, there's still a motion on the floor to accept Gil Keith-Agaran as the  
6 hearings officer.

7

8 Ms. Pali: Okay, so just to not take away on a rabbit trail, I am not making any claims but I would  
9 maybe feel, I feel that he may not be a good candidate only because he is an elected official  
10 and we don't know if there's with elected officials if there was any support, monies, donations,  
11 from any particular companies. So to keep it clean since it's a unknown I might say it would be  
12 helpful maybe not to consider Mr. Gil.

13

14 Mr. Carnicelli: Commissioner Tackett.

15

16 Mr. Tackett: I agree, that makes sense with what Kelly says so where's the list again?

17

18 Ms. Pali: And while you look at the list if I may Chris, may, may, yeah—

19

20 Mr. Tackett: So I'm gonna withdraw the motion that's what I'll do.

21

22 Mr. Carnicelli: Okay, does the second agree with withdrawing the motion?

23

24 Mr. Castro: Yes.

25

26 Mr. Carnicelli: Yeah, okay, let the record show that the motion has been withdrawn.

27

28 Mr. Tackett: And I would like to pick the first name on the list and I would like to move that the  
29 Joel August be...that a motion that, that Joel August be the one that is chosen.

30

31 Mr. Carnicelli: Okay, do I have second.

32

33 Ms. Pali: I'm gonna second it.

34

35 Mr. Carnicelli: Commissioner Pali, second. Okay, moved by Commissioner Tackett, seconded  
36 by Commissioner Pali for the hearings officer. So former Judge Joel August as the hearings  
37 officer is the motion on the floor.

38

39 Ms. Pali: May I speak to the motion?

40

41 Mr. Carnicelli: Yes, please.

42

43 Ms. Pali: In the mortgage business we have a process in where the bank has to order an  
44 appraisal so that the buyer knows if they decide to pay 550 for the price of the home that it in  
45 fact is valued at 550. There was a firewall several years back that does not allow the bank to  
46 pick their uncle, aunty, cousin who is the appraisal because of a potential influence,  
47 manipulation and I think that's what I keep hearing. I feel like that's the underlying score is that

1 we really here wholeheartedly want to not influence the outcome by who we pick and I feel like  
2 we're all actually saying the same things. One party is fearing influence from the other side, one  
3 party is fearing influence on the other side and so just with my core training in my career of  
4 20 years I actually am grateful I don't know Joel or Linda, Linden because I can pick without  
5 being biased or influenced by what I think they may or may not know because I would like to  
6 piggyback on Corp. Counsel that that gives me a clear conscience. They're not making the  
7 decision for us, they're just doing further deeper more official investigation, giving us more  
8 information 'cause it's gonna come back here and then we can use our lens, through our own  
9 walks of life to then decide is if the information provided is something we can accept or not  
10 accept. So the way I understand it, that's what we are tasked with and because of that I am  
11 okay to second the motion for this Joel August guy whoever he is.

12

13 Mr. Carnicelli: Would anybody else like to speak to the motion? Commissioner Castro.

14

15 Mr. Castro: I just have a question. So all these names that were submitted they all responded  
16 that's why they're on here?

17

18 Mr. Carnicelli: Correct. Commissioner Robinson.

19

20 Mr. Robinson: Do we not have the opportunity to see the bios of these people or do we just  
21 have to go by name 'cause I mean is that how we're going to choose? I mean we discuss it for  
22 an hour and a half but yet none of us know we're just going by names. We knew Gil 'cause he's  
23 a politician. I mean is it something that has to be decided today or can we get the bios and then  
24 when we make a decision we make...I know Mr. August was appointed was by Mr. Abercrombie  
25 and Mr. Abercrombie and we had that problem with the property that he had with the Paia, it's  
26 everybody's connected, you know everybody's connected with in here and so there's going to  
27 be some kind of a complaint later on and it's better to do things open eyes, one time instead of  
28 later on we find out this guy had this connection. You know, it's Hawaii everybody's connected  
29 somebody.

30

31 Mr. Tackett: Everybody's connected to somebody.

32

33 Mr. Robinson: Yeah.

34

35 Mr. Carnicelli: I mean if that's what this body desires to do is say okay...then if we're gonna do  
36 that, if we're gonna hit the pause button and we're gonna defer this decision my request would  
37 then be is to get their two names, might as well because now and then we might find out okay  
38 do they qualify or not.

39

40 Ms. Pali: You have a motion on the floor.

41

42 Mr. Carnicelli: I know we have a motion on the floor, but I'm just saying, but we could also vote  
43 and approve Judge August and then this conversation doesn't happen, right because we've  
44 already moved forward. So I mean I guess then I'm not really speaking to the motion in that if  
45 we...I'll speak to the motion in that if we are going to say no, I want everybody's resume then  
46 I'm gonna vote no on this motion. But the other part of this I'm going to throw out there is I'm  
47 gonna look at these resumes and I don't know if I'm gonna know anything about them. I'm not

1 an attorney, I don't know any...I mean it's like I don't know law so I don't know if it's going to  
2 help me or not. It might, it might not. So am I allowed to do a straw poll? Okay, is just kind of  
3 through who, who wants more information? Who wants to go ahead and hit pause, defer this  
4 and get everybody's resume? I know...okay go ahead Corporation Counsel.

5  
6 Mr. Galazin: I don't want to necessary get too off tangent but I think this is something that has  
7 come up before this body before in that as a commission you also have to at times rely on the  
8 Department as your support staff which they are and they've screened this list for you. I think  
9 going through the process of trying to independently evaluate everybody is more likely to  
10 introduce bias than it would be in just understanding that these are five people who should be  
11 theoretically interchangeable in terms of their ability to understand the issue and provide a  
12 report and rule on evidentiary matters and all those things. So I don't know that it would  
13 behoove you to try to delve into something that the Department already takes care of. It's one  
14 of those things they already do that work so that you don't have to and you know, I personally  
15 know Judge August has done a lot of mediations that I've been involved with, only one hearing  
16 that I recall, but I think I would caution you not to try and drag this out in order to try and get it  
17 exactly precisely right. I think that's just inherently a fiction. You gotta treat this list as any one  
18 of these people would be qualified.

19  
20 Mr. Carnicelli: Thank you. Commissioner Freitas.

21  
22 Mr. Freitas: I would like to say that we not, I know you kind of made that suggestion I'm not in  
23 favor of putting their name, their person's name on this list because I believe Mr. Meheula did  
24 not pick these people it was from the County just to be, just to be fair. I think what we gotta do  
25 is go more of a process of elimination and, and, how did, how did Planning Director come up  
26 with these five names of people that are available only to find out that Gilbert is gonna be out for  
27 four months. What availability were you thinking like a year? Who was available for the next  
28 year?

29  
30 Ms. Cua: Okay so when we send out the list to people we let them know that we have this  
31 application and that we have a petition to intervene and we ask very generally you know are you  
32 willing to serve and you know we trust their judgment that then they come with something you  
33 know they've looked at the parties, they've looked at the case, we don't, we don't indicate any  
34 dates in there because we don't know when this is gonna go on the agenda. So...and pretty  
35 much, I mean all of these are attorneys so they know process in terms of things take a long  
36 time. So anyway we just send out the list, we throw out the net, and we see who's gonna say  
37 that they can serve, that they have the ability to serve and that they don't conflict out, and based  
38 on that sometimes we get three names, sometimes we get four, sometimes we get six, it really  
39 depends, so this time we got five.

40  
41 Mr. Freitas: Okay, I'm in favor of the motion. I'm in the favor of the motion.

42  
43 Mr. Carnicelli: Okay, Commissioner La Costa.

44  
45 Ms. La Costa: Thank you Chair. So it's my understanding that all of these have been vetted so  
46 they're not uncles, aunties, cousins, ex-wives, ex-husbands, whatever of any of the parties and  
47 they know all of the parties that are in this case is that correct?

1  
2 Ms. McLean: That's correct.

3  
4 Ms. La Costa: Thank you.

5  
6 Mr. Carnicelli: So...go ahead Commissioner Robinson.

7  
8 Mr. Robinson: Thank you Chair, this is the last time I'll speak to this motion.

9  
10 Mr. Carnicelli: That's okay.

11  
12 Mr. Robinson: I'd like to throw out a name it's called the Maui Planning Commission. I'd like  
13 them to be the hearings officer. I picked two hearings officer, one talked in the paper about our  
14 commission and his ruling which I thought was very unprofessional. I've never heard of a judge  
15 doing that, but yet he was vetted here, right. You know, I said, you know we can vet all we like  
16 you know but these people saw the names of the Grand Wailea and the intervenors and they  
17 chose to be involved. So to say these people are unbiased you know like I said, it's, it's, if I  
18 heard correctly they knew how this court case was and maybe they want to be part of this,  
19 maybe this five is somebody that wasn't asked to be in here, they're just asked if they're  
20 available and then they become...well, they might already have a preconceived idea because  
21 they chose this, and so that's why I'm throwing the Maui Planning Commission as the safest  
22 way with the number of bodies, the number of opinions, we have to be I think the first place to  
23 have as the hearings officer. Thank you.

24  
25 Mr. Carnicelli: I somewhat agree with him but as I mentioned in my earlier testimony we still  
26 have the final say. So this officer isn't making a ruling and we're done with it, the officer isn't  
27 doing it for us, the officer is just doing the further digging, gathering more detailed information,  
28 meeting with these people intimately both sides and then producing more evidence for us to  
29 summarize and so if...may I ask the Chair that we can continue on with the vote and if it dies  
30 then we can further the discussion please?

31  
32 Mr. Carnicelli: Yeah, is does anybody else want to speak to the motion? The motion on the  
33 floor is to accept Joel August as the hearings officer. Does anybody else want to speak to the  
34 motion? I would like to speak to the motion. I am not in favor of this motion at all. This  
35 particular hearings officer or this particular selection, we had a lot of problems with the last time  
36 that he was a hearings officer and he brought something before us, inconsistencies, I don't want  
37 to say anything other...well, I say whatever was on the record, we just had a hard time with  
38 inconsistencies of his, his, his findings of fact and conclusions of law, we had problems with the  
39 evidence that he had allowed, introduced and not. I think that this is just a really important thing  
40 and especially when we have a side that's saying hey, listen we're sensitive and the last thing I  
41 want to do is have them shut out. So I'm gonna speak against this motion because of that.  
42 Having Judge August as a mediation officer I could live with, but having him as a hearings  
43 officer who has to come back with a findings of facts and conclusions of law to this body that  
44 then if we don't like it we actually have to prove him wrong, right? It's not, oh okay we're just  
45 gonna tweak it, we actually have to come up with the reasons why he is incorrect and so I just,  
46 we have had an issue with that in the past with this particular person so that's why I'm speaking

1 against this particular motion. So anyways, so I guess at this point in time the...go ahead speak  
2 to the motion.

3  
4 Ms. Pali: So that would have probably been helpful information at the discussion and I don't...I  
5 don't...I wasn't there, right?

6  
7 Mr. Carnicelli: Right.

8  
9 Ms. Pali: So I don't have any experience with that. But if you already know that there has been  
10 an experience with potentially massive areas of improvement with the way it was handled then I  
11 would not want to support some...that as well. So I would like to withdraw my second.

12  
13 Mr. Carnicelli: Oh okay. Does anybody else want to second the motion then to move it  
14 forward?

15  
16 Mr. Freitas: I'll second to withdraw.

17  
18 Mr. Carnicelli: Okay, you're gonna second the motion then? Basically what we have is we have  
19 a motion to include him as the hearings officer with no second. So in order to take a vote we  
20 have to have a second and then he becomes...the motion starts again as him being the  
21 hearings officer so is that what it is that I'm hearing you say is that what you would like to do?

22  
23 Mr. Freitas: No.

24  
25 Mr. Tackett: We gotta—

26  
27 Mr. Freitas: No.

28  
29 Mr. Carnicelli: Okay.

30  
31 Mr. Freitas: I said withdraw.

32  
33 Mr. Carnicelli: Okay, it was your motion.

34  
35 Ms. Pali: It was his motion.

36  
37 Mr. Carnicelli: I thought it was your motion? Right. Are you withdrawing your motion or you're  
38 keeping it?

39  
40 Mr. Tackett: Yeah, yeah.

41  
42 Mr. Carnicelli: Okay, you're keeping your motion. So then are you gonna second his motion I  
43 guess is the question.

44  
45 Mr. Freitas: To withdraw.

46  
47 Mr. Tackett: No, he wants to withdraw.

1  
2 Mr. Carnicelli: No, no, no, hang on, hang on, hang on, so here's what it is, is when you're on  
3 the floor you have a motion. It's not technically a motion until it gets seconded, right. So Kellie  
4 seconded it so it was officially a motion. She then took her second away. Christian's motion is  
5 still there, but it's not official until somebody seconds it. So that's where we are right now. So if  
6 no one seconds Christian's motion then it just dies without a second.

7  
8 Mr. Tackett: So I have no second at this time, correct?

9  
10 Mr. Carnicelli: Correct.

11  
12 Mr. Tackett: And I tried the biggest name I knew and I tried the first name on the list so, I'm out,  
13 you know what I mean, I'm out.

14  
15 Mr. Carnicelli: Commissioners so the motion fails or motion dies.

16  
17 Mr. Tackett: It's withdrawn.

18  
19 Mr. Carnicelli: Okay, withdrawn. Thank you very much Commissioner Tackett.  
20 Commissioner Pali.

21  
22 Ms. Pali: So I say with a really a heart that is filled with excitement because we are taking this  
23 so seriously and I hope both parties see how seriously we're taking this I would like to just take  
24 a chance and I would like to put a motion to then maybe elect Linda H. Joesting as the hearings  
25 officer.

26  
27 Mr. Carnicelli: Linden.

28  
29 Ms. Pali: Linden.

30  
31 Mr. Robinson: Second.

32  
33 Mr. Carnicelli: Okay, moved by Commissioner Pali, seconded by Commissioner Robinson to  
34 have Linden H. Joesting as the hearings officer. Discussion to this motion?

35  
36 Ms. Pali: You can go first if you got something to say.

37  
38 Mr. Robinson: I chose this person 'cause it's the last name on the list. Thank you.

39  
40 Mr. Freitas: I recommend we take the vote.

41  
42 Mr. Carnicelli: Okay, call for the question is all in favor of having Linden H. Joesting as the  
43 hearings officer please raise your hand. That is unanimous, seven ayes.

44  
45 **It was moved by Ms. Pali, seconded by Mr. Robinson, then unanimously**

46  
47 **VOTED: To Have Linden H. Joesting as the Hearing Officer.**

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

6  
7 Mr. Carnicelli: Okay, now mediation. Mediation, I'll entertain a motion. Commissioner Pali.  
8

9 Ms. Pali: So it is my opinion that the mediation is really just an intimate talk story kind of  
10 gathering, it's where you can hear the other person without formulating your own response as  
11 you're listening, like truly hear the other side and be able to sort of relate, I'm sorry would...is  
12 there a side, should I stop, oh okay. Like ho'oponopono it's the idea that you listen to the other  
13 side without formulating your answers in rebuttal. A real true opportunity to wear one's shoes  
14 per se and so I would like to just throw it out there that if I recall Corp. Counsel you said that if  
15 an eight-hour mediation fails, then they go to the hearings officer is that correct?  
16

17 Mr. Galazin: Chair?

18  
19 Mr. Carnicelli: Go head.  
20

21 Mr. Galazin: Yes, under the rules the parties are entitled to a one full day mediation.  
22

23 Ms. Pali: That's required.  
24

25 Mr. Galazin: Yeah, anything beyond that are voluntary.  
26

27 Ms. Pali: Voluntary. And then if it fails though then they're forced to go to the hearings officer.  
28

29 Mr. Galazin: That is correct.  
30

31 Ms. Pali: Okay. So would it be terrible that my motion on the floor recommend that the  
32 Grand Wailea use their selected mediator even though he's already disagreed?  
33

34 Mr. Carnicelli: Well, I believe that they have two.  
35

36 Ms. Pali: Okay.  
37

38 Mr. Carnicelli: I think that they have two names. Mr. Meheula, I'll just call you Bill it's much  
39 easier for me.  
40

41 Mr. Meheula: Yes, that's fine.  
42

43 Ms. Pali: Bill do you, since you're not bound other than just time and time is money I  
44 understand and respect that greatly, but as a token of good faith which I believe you've already  
45 started to show that in my opinion from what I've seen with the alterations but as a continued  
46 token of faith would it really be awful to spend eight more hours with a mediator of their choice

1 to be able to try to see the situation through their own lens because you're not obligated at the  
2 end but it does show that you're willing to just listen the way they need it to be spoken?

3  
4 Mr. Meheula: Let me speak to my client. I'll go outside.

5  
6 Mr. Carnicelli: Sure. Brief recess to allow counsel to confer with his client.

7  
8 A recess was called at 2:52 p.m., and the meeting was reconvened at 2:55 p.m.

9  
10 Mr. Carnicelli: Maui Planning Commission of January 28, 2020 is now back in session.  
11 Mr. Meheula, Bill, thank you.

12  
13 Mr. Meheula: Yes sir, you know the rule says ...(inaudible)...shall be done within  
14 30 days...(inaudible)...

15  
16 Mr. Carnicelli: You know, I don't know if your mic is on, go...

17  
18 Mr. Meheula: Can you hear?

19  
20 Mr. Carnicelli: No. I mean, we can hear you but I want it to be on the record.

21  
22 Mr. Meheula: Hello, okay. Does that work? Yeah, so the rules says that the mediation shall  
23 occur within 30 days of the granting of the petition to intervene which is today and so if Mr. Lam  
24 is, Judge Lam is available within that period I believe he is then we're agreeable.

25  
26 Mr. Carnicelli: Thank you.

27  
28 Mr. Robinson: Thank you, thank you, thank you.

29  
30 Ms. Pali: So to reiterate my motion.

31  
32 Mr. Carnicelli: Do we have a motion then?

33  
34 Ms. Pali: Yep. Motion on the floor that recommend the intervenor's choice of mediator which is  
35 Gerald Lam, and I need a second.

36  
37 Ms. La Costa: Second.

38  
39 Mr. Carnicelli: So moved by Commissioner Pali, seconded by Commissioner La Costa. Do we  
40 have discussion to the motion?

41  
42 Ms. Pali: Yeah, I just wanna say that we went in circles for quite a while today but I really do  
43 appreciate the applicant being willing to take this first step with giving because all things  
44 received really through giving and so I just appreciate giving this first step towards using  
45 Gerald Lam and hoping that it really does help draw the two parties together and I really  
46 appreciate that.

47

1 Mr. Carnicelli: Would anybody else like to speak to the motion? I would just like to say I think  
2 that all of us are trying to understand where all parties are coming from, we're trying, we  
3 can...as Commissioner Robinson said, we only come from our own lens. So we're trying to do  
4 the best we can and like I said, is I don't know if everybody's gonna walk out of here happy or  
5 sad. I would hope that the intervenors won't walk out of here too terribly upset. We did grant  
6 the intervention. You got what you wanted, you may not have gotten exact hearings officer that  
7 you wanted but hopefully you know things will unfold in a manner with which is is right for you  
8 and everything that you believe in. I guess I'll just stop at that.

9  
10 Ms. Apana: Thank you very much for your time today and it was—

11  
12 Mr. Carnicelli: Hang on Clare, let me just is we're gonna do the motion and then I'll let you  
13 speak how about that?

14  
15 Ms. Apana: Sorry about that.

16  
17 Mr. Carnicelli: No, cause I'll let you say something after we vote. So the motion on the floor is  
18 to accept Gerald Lam as the mediation officer. All those in favor. That is unanimous 7-0.

19  
20 **It was moved by Ms. Pali, seconded by Ms. La Costa, then unanimously**

21  
22 **VOTED: To Have Gerald Lam as the Mediator.**

23  
24 **(Assenting – K. Pali, P. D. La Costa, D. Thompson, K. Freitas,**  
25 **K. Robinson, C. Tackett, S. Castro)**

26 **(Excused – T. Gomes)**

27  
28  
29 Mr. Carnicelli: So Clare before we move onto the next item I will let you have the last word.

30  
31 Ms. Apana: Thank you for your time, consideration and seeing how important it is to have a  
32 person who can understand the laws governing the rights of Kanaka Maole, Native Hawaiians,  
33 traditional practices it is for us as important as the shoreline laws and most important is that we  
34 found somebody who could do both. So that's all we were trying to do.

35  
36 Mr. Carnicelli: And the other part of this too is this process isn't done. Unfortunately, you're  
37 gonna have a lot more of these meetings and hearings and everything like that so your work's  
38 not done. Get a good night's rest, get some good food into you tonight and we'll start tomorrow.  
39 Commissioner Freitas.

40  
41 Mr. Freitas: I just wanted to thank the applicant for reconsidering, at first they didn't want to but  
42 really showing that they're showing good faith in trying to make it work.

43  
44 Mr. Carnicelli: Okay, thank you everyone, we're gonna go ahead and move onto the next item  
45 on the agenda.

46  
47

1 **E. DIRECTOR'S REPORT**

2  
3 Ms. McLean: Thank you Chair, the next item is the Director's Report.

4  
5 **1. SMA Minor Permit Report**

6  
7 **This is for notification and review purposes. No action is anticipated.**

8  
9 **2. SMA Exemptions Report**

10  
11 **This is for notification and review purposes. No action is anticipated.**

12  
13 Ms. McLean: You have the SMA Minor Report and the SMA Exemptions Report. Do you have  
14 any questions on those?

15  
16 Mr. Robinson: So move.

17  
18 Mr. Carnicelli: If everybody could...is guys, guys if you could, we're gonna just finish up, if you  
19 could just talk in the hallway that would be awesome, thanks.

20  
21  
22 **3. Discussion of Future Maui Planning Commission Agendas**

23  
24 **a. February 11, 2020 agenda items**

25  
26 Ms. McLean: And the last item is the next meeting. You have your memo of items scheduled  
27 for the February 11<sup>th</sup> regular meeting. First an overview of the Title 19 Rewrite Project, one  
28 public hearing item, and one communication item. Are there any questions on that?

29  
30 Mr. Robinson: Yes, what is our next meeting, what's the first item?

31  
32 Ms. McLean: The first item if you remember we did the audit of our Zoning Code.

33  
34 Mr. Robinson: Yeah.

35  
36 Ms. McLean: And we now have a contract for the same consultant as it turns out to do a  
37 complete rewrite of the Zoning Code and that's going to be a four-year project and so we're just  
38 touching in with the commissions occasionally so this will be the initial presentation. They don't  
39 even have a draft yet, not anywhere close. This is just we're be stepping the commissions  
40 through the process as it goes on.

41  
42 Mr. Robinson: So Director in the, in the emails that was sent to us, I saw a proposed resolution  
43 did you see that, was that, was that somebody making like it's a resolution. I got it last week  
44 and it was read were, it was resolution with no number and no date, no name or...yeah, was  
45 that testimony that somebody was trying to...

46  
47 Ms. Takayama-Corden: That was from Mr.--

1  
2 Mr. Robinson: So it wasn't a real one, it was like a for instance—

3  
4 Unidentified Speaker: It as the Hana guy.

5  
6 Mr. Robinson: The hypothetical resolution, okay I got it. Thank you. That's all right.

7  
8 Mr. Carnicelli: So next agenda item, I guess the last thing we got left is adjournment. I just  
9 want to say thank you Commissioners, this was a thick day and I appreciate everybody's  
10 commitment and time. So anyways meeting is now adjourned.

11  
12 **F. NEXT REGULAR MEETING DATE: FEBRUARY 11, 2020**

13  
14 **G. ADJOURNMENT**

15  
16 The meeting was adjourned at 3:02 p.m.

17  
18 Respectfully Submitted by,

19  
20  
21 CAROLYN TAKAYAMA-CORDEN  
22 Secretary to Boards and Commissions II  
23

24  
25 **RECORD OF ATTENDANCE**

26 **Present**

27 Lawrence Carnicelli, Chair

28 Stephen Castro

29 Kawika Freitas

30 Tina Gomes (in attendance at 10:38 a.m. and excused at 12:13 p.m.)

31 P Denise La Costa (excused from 2:01 p.m. to 2:24 p.m.)

32 Kellie Pali

33 Keaka Robinson

34 Christian Tackett, Vice Chair

35 Dale Thompson

36

37 **Others**

38 Michele McLean, Director, Department of Planning

39 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

40 Jordan Molina, Deputy Director, Department of Public Works

41

42