

**MAUI PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 25, 2020**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:04 a.m., Tuesday, February 25, 2020, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Lawrence Carnicelli: . . . February 25th, 2020 is now in session. My name is Lawrence Carnicelli. I am the Chair. Also with us today is Vice-Chair Christian Tackett.

Mr. Christian Tackett: Good morning Chair.

Mr. Carnicelli: Good morning. Commissioner Castro.

Mr. Stephen Castro: Good morning Chair.

Mr. Carnicelli: Commissioner Pali. Good morning by the way.

Ms. Kellie Pali: Aloha kakahiaka Chair.

Mr. Carnicelli: Good morning. Commissioner Robinson.

Mr. Robinson: Good morning Chair.

Mr. Carnicelli: Good morning. Commissioner Thompson.

Mr. Dale Thompson: Good morning.

Mr. Carnicelli: And Commissioner Freitas.

Mr. Kawika Freitas: Aloha.

Mr. Carnicelli: Aloha. Also with us today is Corporation Counsel Michael Hopper, and Planning Director Michele Chouteau McLean.

Ms. Michele McLean: Aloha Chair. Good morning

Mr. Carnicelli: Aloha. Good morning. So for those of you that have not been with us before, we take public testimony after the public hearing item. So, instead of at the beginning like County Council does, we do it afterwards. So we also have only just one public item today and --.

Oh, the one thing I forgot to establish is that we do have quorum. P. D. La Costa is excused and so is Tina Gomes. So we do have quorum and those people are excused. So, I guess we'll just get into the agenda. Director.

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

- 1 **1. MARLA ENGEL requesting a Short Term Rental Home (STRH) Permit in**
2 **order to operate Turtle Cove, a three bedroom STRH located on a .209 acre**
3 **oceanfront lot in the R-2 Residential District. The property is located at 31**
4 **Papaua Place, Lahaina, HI 96761, TMK: (2) 4-3-007:015-0000. (STWM**
5 **T2019/0005) (J. Burkett)**

6
7 **The matter is being brought before the Maui Planning Commission for**
8 **review because there are at least two permitted short-term rental home**
9 **operations located within 500 feet of the subject property.**

10
11 Ms. McLean: Thank you Chair. The one public hearing item today is a request from Marla Engel
12 for a short-term rental home permit to operate Turtle Cove, a three-bedroom STRH located on a
13 0.209 acre oceanfront lot in the R-2 Residential District at 31 Papaua Place in Lahaina, TMK: 4-
14 3-7 parcel 15. Jared Burkett is the project planner.

15
16 Mr. Jared Burkett: Good afternoon Chair.

17
18 Mr. Carnicelli: Good morning.

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20 Mr. Burkett: Oh, good morning. My name is Jared Burkett. The owner applicant, Marla Engel is
21 requesting a short-term rental home permit to vacation rent three bedrooms in her oceanfront
22 home. There are six --. Well, there were six other short-term rental homes. We are hearing that
23 there's possibly one of the six has sold so the applicant will discuss that. But there's -- currently
24 before being approved, there's six within 500 feet of the property which is the trigger for this
25 application to come before you for your consideration. Just as a quick reminder, there are no
26 reports filed with the Police Department for this property, but there are three request for service
27 filed on the property. Two of those are open, but all of the notes in the problem codes either
28 state that the request for service should be closed or the concerns have been addressed.
29 They're included in the staff report for you to look at those problem codes. If you have any
30 questions, I can discuss that with you. There are also three support letters and no protest letters
31 that were received by the Department, so -- and the support letters were provided to you today
32 in your packet -- in addition to your packet.

33
34 The applicant's consultant has a presentation that she'll give, and then the owners and the
35 consultant will be available for questioning. So, if you are ready then the consultant, Debbie
36 Mitchell, will be able to come up to the podium.

37
38 Mr. Carnicelli: Great. Thanks Jared.

39
40 Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell, and I am here
41 as a consultant representing Marla Engel's in her application for a short-term rental home permit
42 at 31 Papaua Place.

43
44 This home is located in near Honokeana Cove in Napili. It is on a block of 11 lots behind a gate
45 which is just off Lower Honoapiilani Road. Moving in you can see how this is laid out. The large
46 green square is a tennis court. And again, there are 11 homes.

1 Moving in for the aerial view, you can see the Bay Course, the Bay Golf Course there to the
2 north. And again, the location of the property.

3
4 And a little closer view as well. You can see the tennis court from there, and the empty lot.

5
6 The home itself is set well within -- it has heavy vegetation around it which is good for sound
7 abatement, and it has an open area to the ocean in the front of the house.

8
9 The driveway and parking areas are can be seen here. There are two spots in the garage which
10 for a three bedroom is all that's required. But there's an additional space to the right side of the
11 garage there on the outside, so providing three total required parking spaces. This is the garage
12 where the additional parking is located.

13
14 The exterior of the home; all four sides as you can see. And the views from the outside of the
15 house looking all four directions. The bottom left, you can see it's a gathering place for turtles.
16 It's really an amazing place there.

17
18 The layout of the house, it is a two-story house with a much small first floor plan which are the
19 living areas. And then the three bedrooms are located on the second floor. The entry to the
20 house. The kitchen. Living room. There are three large bedrooms, all with the proper egress as
21 required by the ordinance. And four bathrooms. And there are some additional areas; a spa and
22 sauna, and a laundry that will be for the guest's use as well.

23
24 Also a little administrative news. All neighbors were notified twice that are within 500 feet. They
25 were notified about the permit application, a sign was posted, and the public hearing was also
26 noted. We did receive three support letters which you received this morning from neighbors
27 within the 500 foot radius. We did not receive any protest letters at all in or outside of the 500
28 foot radius. As Jared mentioned, one of the homes has sold, so now there are only five other
29 short-term rental homes, permitted homes, within 500 feet. There are no bed and breakfast.

30
31 Here's a map of the permitted homes of support and the location of the subject property. The,
32 the -- you'll see the red dot which is the subject property. The yellow dot above it, and then the
33 blue dot above that, that is the home that is sold so that permit will go away.

34
35 So that is our presentation. The owner Marla Engel is here to answer any questions that you
36 might have, and we hope that you will see fit to grant us this short-term rental home permit.
37 Thank you very much.

38
39 Mr. Carnicelli: Thank you Debbie. So at this point in time what we'll do is open up the floor for
40 public testimony. Kellie, can you see if anybody signed up please? No? Is there anybody who
41 would like to come forward and testify on this particular agenda item? Going once, going twice.
42 Okay, if there are no objections, we'll go ahead and close public testimony. No objections. So I
43 guess at this point in time we will start with questions and or comments from the
44 Commissioners. I'll start with you, Commissioner Pali, do you have any questions for the
45 applicant or for Jared at this time?

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47 Ms. Pali: I knew you were coming to me first.

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Mr. Carnicelli: Well P. Denise sits there so I automatically kind of gravitate that way.

Ms. Pali: I'm ready. I'm ready. I have in representation of one of our missing Commissioners I have two questions...for the applicant please.

Ms. Marla Engel: You'll have to bear with me, I am hearing impaired. I look fine, but I'm not. Okay, I'll do my best.

Ms. Pali: So first question is have you ever, up until today, in the past, rented this home out for short-term rentals to anyone before?

Ms. Engel: We did and when they first were available. I'm not sure if available is the right word. Well, when people started doing that. Yes, we did and that was a number of years ago. We were notified that it was illegal which we took -- we thought we had taken all of the notices down anyway and somewhere one was found. And honestly, my husband had it taken down. And honestly, it was even a company that we didn't even do business with.

Ms. Pali: Okay, so since then, no illegal renting then?

Ms. Engel: No.

Mr. Pali: Okay, great.

Mr. Carnicelli: So actually I just have -- just for the record please state your name.

Ms. Engel: My name is Marla. M, A, R, L, A. Engel. E, N, G, E, L.

Mr. Carnicelli: Thank you.

Ms. Pali: And it may not pertain as much to this smaller project as bigger, but do you have photovoltaic on your home?

Ms. Engel: Pardon?

Ms. Pali: Do you have photovoltaic panels on your home?

Ms. Engel: I'm sorry.

Ms. Pali: Do you have panels?

Ms. Engel: Solar?

Ms. Pali: Yes.

Ms. Engel: Yes, yes.

1 Ms. Pali: Sorry. Layman's term, solar panels.
2
3 Ms. Engel: Yes we do. We just put a new roof on, and at the time, yes, we put in solar panels.
4
5 Ms. Pali: Okay, thank you. Very good. No further questions.
6
7 Mr. Carnicelli: Commissioner Castro, do you have any questions for the applicant or the
8 Department?
9
10 Mr. Castro: No she just answered what I was going to ask. Thank you.
11
12 Mr. Carnicelli: Okay. Commissioner Tackett, do you have any questions or comments at this
13 time?
14
15 Mr. Tackett: None at this time.
16
17 Mr. Carnicelli: Okay. Commissioner Freitas.
18
19 Mr. Freitas: Yes I do. This question is for your manager. Is that Debbie Mitchell? It requires that
20 you be accessible within an hour, and I do see that you have an office on the west side.
21
22 Ms. Mitchell: I do. I'm in Kahana Ridge.
23
24 Mr. Freitas: Okay. And you work seven days a week?
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26 Ms. Mitchell: Yes I do.
27
28 Mr. Freitas: You do?
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30 Ms. Mitchell: Yes I do. I manage other homes as well so it's just part of the deal.
31
32 Mr. Freitas: Alright. Okay.
33
34 Ms. Mitchell: I'm about ten minutes away max.
35
36 Mr. Freitas: Okay. Thank you. That's all.
37
38 Mr. Carnicelli: Thanks. Commissioner Thompson.
39
40 Mr. Thompson: How long have they owned the home? How long have you've owned the home?
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42 Ms. Engel: 20 years.
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44 Mr. Thompson: 20 years. Okay, thank you.
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46 Mr. Carnicelli: Commissioner Robinson.

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Mr. Robinson: I have a question for Jared please. Aloha Jared.

Mr. Burkett: Aloha.

Mr. Robinson: Jared, I just want to reconfirm the, the RFS's that we had, where the advertises were, there and then, it was reconfirmed that it was taken down a few years ago.

Mr. Burkett: Yes, the notes that were in the system, they state that there were advertising. They were taken down. That was quite a few years ago. The applicants, I believe, first applied in 2012 for their permit, so that's -- and then there were some issues so it took them that long to come back and get their permit. But I don't think in that time the problem codes state that they were -- they couldn't find the ads anymore and they were taken down.

Mr. Robinson: Thank you Jared. Thank you Chair.

Mr. Carnicelli: You bet. Does anybody else have any other questions at this particular time? Commissioner Pali.

Ms. Pali: Just for clarification, Jared. So the code or the regulation when it says that they're not allowed to rent illegally, is there like a time frame, like, within the last three years or within the last five years, just for my own knowledge?

Mr. Burkett: Well, there is a kind of a band that is in the Code so if they have been noticed for that they would be kind of not allowed to reapply for five years if it's for illegal advertising.

Ms. Pali: Okay, so since they applied in 2012, we're passed the five year mark and it's clear.

Mr. Burkett: Right.

Ms. Pali: Okay, thank you.

Mr. Carnicelli: Anybody else have any other questions at this time? Seeing none, then Jared, I'll go ahead and take your recommendation please.

Mr. Burkett: So the Department has determined that the short-term rental meets all the criteria to be eligible for approval, and including getting all their building permits and SMA permits. Thus, the Department recommends that the Commission approve the Short-Term Rental Permit until March 1st, 2023 with the standard conditions outlined in the Department's report and recommendation. And again, if the Commission chooses to approve the permit, then we just would recommend that the Commission adopt the report and recommendation as the Findings of Fact, Conclusions of Law, and Decision and Order, and authorize the Planning Department to transmit that on behalf of the Planning Commission.

Mr. Carnicelli: Great. Thank you. Do I have a motion?

Mr. Freitas: I'd like to motion to accept the application approve.

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2 Mr. Carnicelli: Okay, so we have a motion to approve as recommended by staff by
3 Commissioner Freitas. Do I have a second?

4
5 Mr. Castro: Second.

6
7 Mr. Carnicelli: Seconded by Commissioner Castro. Would anybody like to speak to the motion?
8 Commissioner Freitas.

9
10 Mr. Freitas: I would like to say that this application, I want to approve it based on there's no
11 opposition, a very good presentation, pretty much answered all of our questions to the T. I think
12 it's all good.

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

15
16 Mr. Robinson: I am, I am opposed to this rental. We actually -- I actually granted permits in this
17 street, and my, my philosophy was that we'll put all of the rentals in one street, and you know,
18 kind of keep in that area. And I think that thought process was flawed on my part. I, I'm just not
19 comfortable giving any more hotel rooms when our shortage of housing and our ratio is off. I
20 know short-term rental is not a hotel, but it's still considered a vacation location for a room. I
21 have nothing against the applicant. I can see that there is a -- there is reasoning to want to put it
22 in one area, and there's one reason to not cluster it. And I think one of the criteria for us to be
23 able to reject it is clustering. Having that said...if it does pass, it's not the end of the world.
24 Thanks.

25
26 Mr. Carnicelli: Commissioner Pali.

27
28 Ms. Pali: Not that he just stole my thunder or anything, but I think my only opposition would be
29 clustering. We had a street in Kihei, and we had a family that tried to make a family life home
30 out of one unit on a street that had 11 vacation rentals, and it forced them to have to move
31 because their kids couldn't have other kids to play with because the transient people coming in
32 and out. And so there is -- we're learning that there is a lot of danger in just clustering, and I was
33 trying to circle. You know, you've got no permit, then a vacation rental permit, and then no, and
34 then permit, permit, no, and if we grant this one, it's basically every other home is a permit. And
35 we're going to start to really squeeze out the families per se. So, although the applicant has
36 done everything they could and they've done a really great job in waiting their time, I'm not sure
37 how I feel about it because I don't want to be a part of a commission that contributed to the
38 clustering.

39
40 Mr. Carnicelli: Would anyone else like to speak? Commissioner Freitas.

41
42 Mr. Freitas: I'd like to speak on that. I thought of that as well. I also thought that it's actually a
43 perfect place to create a clustered type of short-term rental with a gated area. I don't see any
44 traffic problems. I don't think there are families there that have children that want to go out and
45 play with other visitors or other family members in that area. I thought about it, and you know,
46 actually it was when we had one in Paia where there was six in one area, I really didn't want
47 that one because the road, the parking was really bad there. But, we went ahead because of

1 the, the, those that were for it. Since again, we had no opposition by those that live there, it is a
2 clustered area; I still stand by wanting to approve this.
3
4 Mr. Carnicelli: Thank you. Would anybody like to speak to this? Commissioner Thompson.
5
6 Mr. Thompson: Sure. I maybe have a question too for Debbie. Yeah, it seems like we've turned
7 it into a hotel street. What's the rent for? Is it rent to only one party at a time?
8
9 Ms. Mitchell: Yes it does. They have a two week minimum and one party at a time only.
10
11 Mr. Thompson: Okay.
12
13 Ms. Mitchell: And a maximum of six people.
14
15 Mr. Thompson: Alright. And what do they get? What's a two week rental on that?
16
17 Ms. Mitchell: We actually haven't talked price there, but I -- it's going to be something in a
18 nightly rate of around \$1,800 to \$2,400 a night.
19
20 Mr. Thompson: Okay, thank you very much.
21
22 Mr. Tackett: I, I have a question.
23
24 Mr. Carnicelli: Commissioner Tackett. Let's be careful because we do have a motion on the
25 floor. We kind of --. No. I'm saying go ahead. I mean, if you've got, if you've got a question, I
26 want it to get answered before you --. I'm just saying, let's just be careful that we don't turn it
27 back into Q&A. Debbie, I believe Christian has a question for you.
28
29 Mr. Tackett: My only question was about all the RFS's including the spa. Is there still a spa, or is
30 there not a spa?
31
32 Ms. Mitchell: There is a spa.
33
34 Mr. Tackett: And is it a permanent? Did it ever get -- it got brought up to code and --
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36 Ms. Mitchell: Yes.
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38 Mr. Tackett: -- it got, it got approved by Planning?
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40 Ms. Mitchell: They did after-the-fact. They did.
41
42 Mr. Tackett: But it is up to code, like, we don't have to worry about anybody getting electrocuted
43 or anything like that?
44
45 Ms. Mitchell: No, no.
46
47 Mr. Tackett: That's what I wanted to know.

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2 Ms. Mitchell: You're okay.

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4 Mr. Carnicelli: Jared.

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6 Mr. Burkett: And I can elaborate on that. There wasn't, for some reason, building issued an
7 after-the-fact building permit for the, the porch area and there was no after-the-fact SMA, so the
8 Department just issued that after-the-fact SMA on that as well.

9
10 Mr. Carnicelli: Thank you. Anybody else would like to speak to the motion? Then I guess I'll just
11 go last, and I think that, you know, I understand everybody's concerns. I think that clustering is
12 one of those questions that as long as we're approving STRH's it's always going to come up,
13 right. It's just like, is it a good thing or not? I think in certain situations clustering is detrimental. I
14 think in others it's, it's actually a positive thing. If we're only going to have so many permits in a
15 particular area, like, the west side, then it makes sense to say have them on a street like this
16 versus up Lahainaluna Road or someplace like that. The end of Front Street we've got some
17 clustering going on. It seems to gravitate towards this.

18
19 The other part of, you know, Commissioner Pali, you brought up the people in, in Kihei. They
20 bought into a neighborhood like this thinking that it was like, oh, okay I'm going to play with my
21 kids. And they're like, oh wait, this isn't a kid's neighborhood. If we deny this, I would bet that
22 this isn't going to be a rental of any kind. Like this isn't going to add to the housing stock if we
23 deny this permit. So while I understand the concerns, you know, and they need to be there and
24 we need to revisit it with each and every application, I think that, you know, some of the
25 comments that we made in the last STRH that came to us which is next door, or a couple of
26 doors down or something to that effect, we kind of, you know, it was the same conversation
27 where it's a street that's sort of, I guess, lends itself to, if we're going to have STRH's and
28 they're going to be legal here on Maui, then this is one of those streets that maybe we do
29 cluster. So...that's my two cents. Anybody else want to go again? Commissioner Pali.

30
31 Ms. Pali: So I am on the fence about it. I do like that there is a gate. I feel like that if there's a
32 gate, they probably have their own little mini association. Is that an assumption?

33
34 Ms. Mitchell: Yup.

35
36 Ms. Pali: So I do like that. It's just hard because all of Maui was once a community, and when
37 you do decide to allow pieces of it that are no longer local communities, we're losing parts of our
38 island. That's what, that's what -- it feels that way. But certainly we're allowed to have so many.
39 There is a balance there. I do like that there is a gate. And sometimes when you purchase a
40 home, especially if you don't live here -- that couple didn't have local ties so they didn't really
41 know the scope -- I don't know that a buyer when they come to Maui know that should look up if
42 to see if their neighbors are vacation rentals. I don't even know when they bought that they
43 knew that that even existed to be fair to them. But certainly within the few months they found out
44 that it was not something that fit them. And so, yeah, I definitely think that I'm still tossed, but I
45 wanted to voice my opinion so as we vote at least I've stated where I am.

46

1 Mr. Carnicelli: Yeah, no, I appreciate that. And the other part too that I think Commissioner
2 Freitas brought up was in situations like this, I think that it's really important that we listen to the
3 community, you know, their community. Like no one opposes this in their community. When we
4 go to Halama Street, it's kind of a toss-up at times, right? You know, we go different places and
5 it does.

6
7 Ms. Pali: There is no more community anymore in this neighborhood, you know.

8
9 Mr. Carnicelli: They're their own community.

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11 Ms. Pali: I wanted to ask -- I wanted to ask on the opposition letters, were they from other
12 vacation rental holders or did you get -- I mean, support letters, sorry. In the support letters,
13 were any of the support letters from a current owner that does not have a permit for vacation
14 rentals? Do you know that answer? Because that would show me if the people who live there
15 that don't have vacation rentals do they also support it?

16
17 Ms. Mitchell: There were two. If you refer to the slide, there is actually is the one that is right
18 next door. Do you see the red dot and the yellow dot? The yellow, he is just an owner.

19
20 Ms. Pali: The yellow. Okay. So you've got one.

21
22 Ms. Mitchell: The other two. And he's an adjacent neighbor.

23
24 Ms. Pali: And the other one was a permit owner?

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26 Ms. Mitchell: Yes.

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28 Ms. Pali: So sometimes that makes it look different when you hear you have support letters, but
29 then in fact they're from people that don't even live there because they're vacation rental out
30 their house. So I'm not sure if that's even a valid support to me. But the neighbor next door,
31 that's a valid support, so I like that too.

32
33 Mr. Carnicelli: Okay. So I think that we --. Commissioner Robinson.

34
35 Mr. Robinson: I just want to and stress again that this is, this is not an owner base, or this unit
36 base, or this current property, and what they is to be my issue is more of we have to as a, as a
37 County have to understand one way or another clear cut where we are with the ratio of tourists
38 and locals. And we have over 150 more STRHs that we can permit out two or three rooms a
39 piece. That's a hotel right there. We've got bed and breakfasts, we have different things, and,
40 and you know, it's not so much as denying a permit, but, you know, trying to pause and, and
41 somebody you know, get their abacus out and figure out where we're at and making sure that.
42 Like we say, we're talking about community, but you know, these are speculators. That's why
43 their renting their houses out. And there's nothing with that. You know, that's the American way,
44 capitalism. But when we're talking about communities and the things that are affecting us, I
45 think, any STRH at this time is going to affect somewhere. And again, I was with the thinking to
46 put them all in one area because at least that way, you know, the neighbors were doing. But I
47 also do recall that we denied one across the street, and there was like three or four protest

1 letters because they were the other side of street, they were way back in the way. And that's
2 why there's none on the opposite side of the street, but they are inside of that cove. Thank you
3 Chair.

4
5 Mr. Carnicelli: Thank you. Yeah, I do believe that the Mayor and the Council have some
6 decisions to make when it comes to how we're going to move forward as an economy. So I think
7 we've all expressed everyone. Director, do you want to restate the motion for us please?
8

9 Ms. McLean: The motion is to approve the issuance of the permit subject to the conditions in the
10 staff report and recommendations.

11
12 Mr. Carnicelli: All those is favor, please raise your hand. That is one, two, three in favor.
13 Opposed? One, two. So we have three in favor, two opposed, one abstaining. So then it falls to
14 me. So wow, okay. I'm going to go ahead and vote in favor of the motion to pass. So that is five.
15 Technically it's five ayes. Yeah, is, is when you abstain, it's actually by our rules, it's an
16 affirmative, it goes down as an affirmative on the record so that would be -- that goes down then
17 as five ayes and the motion passes. And Jared you can go ahead and do your thing; process
18 the permit.

19
20 **It was moved by Mr. Freitas, seconded by Mr. Castro, then unanimously**

21
22 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
23 **by the Department.**

24
25 **(Assenting – K. Freitas, S. Castro, D. Thompson, L. Carnicelli,**
26 **C. Tackett – Abstained)**

27 **(Dissenting – K. Robinson, K. Pali)**

28 **(Excused – P. D. La Costa, T. Gomes)**
29

30 Mr. Carnicelli: Moving on. We're going to do a quick recess.

31
32 Ms. Mitchell: Thank you Commissioners.

33
34 ***(The Maui Planning Commission recessed at 09:21 a.m. and reconvened at 09:42 a.m.)***

35
36 **With no objections by the Commission, Items D.1 and D.2 was taken up before Item C.**
37

38
39 **D. REVIEW OF PROPOSED RESOLUTION AND SETTLEMENT AGREEMENTS**

- 40
41 **1. Proposed Resolution Agreement between the COUNTY OF MAUI and**
42 **PAUL D. GOSSMAN for converting a garage into a habitable dwelling and**
43 **construction of an observation deck and related improvements within the**
44 **Special Management Area and Shoreline Setback Area without first**
45 **receiving SMA and Shoreline Setback determinations or permits for such**
46 **improvements on property located at 1047 Front Street, Lahaina, Island of**

1 **Maui. SMA Notice of Violation: NOV 2013/0004; Shoreline Setback Notice**
2 **of Violation: 2013/0005.**

3
4 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO**
5 **CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO**
6 **THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES, AND**
7 **LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.**

8
9 **The Commission may take final action on the proposed Settlement**
10 **Agreement pursuant to the provisions of Section 12-202-23(d)(3) of the**
11 **Maui Planning Commission's Special Management Area Rules and Section**
12 **12-203-17 of the Shoreline Rules for the Maui Planning Commission.**

13
14 Mr. Carnicelli: The Maui Planning Commission meeting of February 25th, 2020 is now back in
15 session. If there is no objections we're going to go ahead and skip over C.1., if the Commission
16 is okay with that, and so then Director.

17
18 Ms. McLean: Thank you Chair. Next up you have two proposed resolutions or settlement
19 agreements. The first is a proposed resolution agreement between the County of Maui and Paul
20 D. Gossman for converting a garage into a habitable dwelling and construction of an
21 observation deck and related improvements within the Special Management Area and Shoreline
22 Setback Area without first receiving SMA and Shoreline Setback determinations or permits for
23 such improvements on property located at 1047 Front Street, in Lahaina. The SMA Notices of
24 Violation or NOV 2013/0004, and Shoreline Setback NOV 2013/0005. And presenting this
25 agreement is Administrative Planning Officer Jacky Takakura. And this is presented to the
26 Commission for approval pursuant to your rules.

27
28 Ms. Jacky Takakura: Good morning Chair and Commission Members.

29
30 Mr. Carnicelli: Good morning Jacky.

31
32 Ms. Takakura: So we're here today to try to bring some closure to this item. If you look at your
33 transmittal, this is for two notices of violation. One is for a Special Management Area and the
34 other is for Shoreline Setback.

35
36 So back in 2011 the Department was notified of some construction work at this property which is
37 right on the shoreline at 1047 Front Street. The work included the expansion and conversation
38 of a garage into a habitable dwelling unit. And then also an observation deck on the roof. And if
39 you look in your packet there's some photos of these...the work that was done. And it's right on
40 the shore. So for this, Notices of Warnings (NOW) were issued, and with dates of when
41 compliance needed to be completed. Because nothing was done, Notices of Violations (NOV)
42 were also issued in 2013. And with the NOV's fines began accruing. Because there was no
43 action by the property owner, the fines grew and grew. I mean, this is from 2013, so five years
44 later, in 2018, it's over \$10 million in fines.

45
46 Fast forwarding to 2015, though, getting some attempts at resolution here, we did get an SMA
47 Assessment to remove the unpermitted observation deck, and then last February we got

1 another SMA Assessment to remove the deck and restore the area to a garage, to bring it back
2 to what it should be. So now we're here, and we're able to settle the fines and bring the property
3 into compliance. We do have a remediation plan that the Department has reviewed with the
4 architect that we're both in agreement with. And we would like to have the fines be reduced to
5 \$50,000 for the shoreline setback, and \$25,000 for the SMA for a total of \$75,000. So we have
6 the resolution agreement before you for your review and approval.

7
8 Mr. Carnicelli: Jacky, just a quick question. It's not really part of the actual settlement itself, but
9 these fines, I believe that there's a separate fund setup and so -- is that why we separated them
10 out and they go into different pots?

11
12 Ms. Takakura: Well, the fines are separated here because well, we do have the SMA Rules, but
13 because there were two Notices of Violation, one for shoreline and one for SMA, that's why
14 they're both separate. But in terms of where they go, in terms of the fund, starting in this fiscal
15 year we do have an SMA fund as compared to General Fund where all of our fines and
16 payments have gone. So any payment we receive that are for SMA will go to the SMA fund.

17
18 Mr. Carnicelli: Good.

19
20 Ms. McLean: And Shoreline as well.

21
22 Ms. Takakura: And Shoreline, yes.

23
24 Mr. Carnicelli: Oh, okay. So both goes into the special fund. Then so not just into this big pot of
25 \$800 million that we spend.

26
27 Ms. Takakura: Correct.

28
29 Mr. Carnicelli: Okay. Commissioners, I'll start with you Commissioner Robinson. Do you have
30 any questions at this time?

31
32 Mr. Robinson: Hi Jacky.

33
34 Ms. Takakura: Hi. Excuse me. For the details, I also have planner, Keanu, who may have more
35 information because she actually has been out there more so. Maybe she wants to come and
36 sit. So in case I can't answer, she's in the back of me. Thank you.

37
38 Mr. Robinson: Okay.

39
40 Ms. Takakura: Thank you.

41
42 Mr. Carnicelli: You know what, actually, hang on Keaka before you go, is Commissioner Pali.

43
44 Ms. Pali: Yes, I just want to bring up and we can determine -- I believe I have a conflict with the
45 applicant.

1
2 Mr. Carnicelli: Do you want to state that on the record, or do you just want to recuse yourself
3 straight away?

4
5 Ms. Pali: Yeah. I think if it's okay, I'd like to recuse myself.

6
7 Mr. Carnicelli: You're just going to recuse yourself.

8
9 Ms. Pali: I haven't contact in eight years, but there was a very close relationship even when the
10 house was purchased and things, and so I think it would just be fair that I recuse myself from
11 this particular item.

12
13 Mr. Carnicelli: Okay, thank you very much. Commissioner Robinson.

14
15 Mr. Robinson: Jacky, I have -- I have just an obvious question which is we went up to \$10
16 million...and then, and we're down to the initial fine. And I guess the -- it's -- were, were our
17 NOVs not, not correct? Was the law not clear? Was somehow this person who got fined, did we
18 have some gray area to where they wouldn't understand what their penalty is. That's my first
19 question.

20
21 Ms. Takakura: As far as I know --

22
23 Mr. Carnicelli: Jacky, I think, I think the Director wants to answer this one. Sorry to cut you off,
24 but I think that she'd like to answer that.

25
26 Ms. McLean: The initial and daily fines in, in my opinion, were pretty significant. And once the
27 construction was completed which it was before we cited them it wasn't as if there was an
28 ongoing violation like an activity or construction work that continued. So, the daily fines are
29 leveed because it forces people to come into compliance as they see those fines racking up.
30 And, I don't think anyone would look at this situation and, and think that \$10 million was a
31 reasonable fine to levy against them. And so it's -- you know, the initial fines were substantial.
32 We feel comfortable sticking with those, and then in order to achieve resolution and to keep the
33 property owner engaging with us to come in to the compliance, the daily fines accrued. But
34 there wouldn't be a settlement if, if those daily fines couldn't be, couldn't be waived.

35
36 Mr. Robinson: Thank you Director. Well, I mean, nine years of people not obeying our County
37 Rules, not responding to us, of, of taxpayers having to pay for the staff to continually fine these
38 people, send notices out. Nine years of having to negotiate and do these things. And the worst
39 case scenario which precedence because I see upsetting is it's back to the original fine eight
40 years ago. So, you know, if I'm, if I'm an attorney and I don't have any attorney bills, then I can
41 just fight everything forever no matter what it cost, and then I always try to go back and deal
42 with the precedent. I mean, you know, if we don't pay our taxes, they're always going to find
43 out. But there's a penalty when we don't pay our taxes. There's a percentage. There's an
44 interest rate. There's something. But, for us to just go back, in my feelings, just to go back to the
45 original fines when there, when there hasn't been anything. I mean, we've seen cases where,
46 where they've gotten a stay on the fine to say, you know what, hey let's just check this out, can
47 we agree to stay? You stop fining me. I'm going to come in with good faith and I'm going to try

1 to figure out this process. But to have somebody, seven years later, take care of something with
2 the NOV, to me, it's, it's -- I don't see how as a County if it's going to help us in the future. I
3 mean, the fines great, but they have to pay the fine because they did it illegally.

4
5 And the second thing I keep going back to is are these people using licensed contractors?
6 Because licensed contractors doing these work again and again, and a homeowner, you know,
7 hiring somebody to do something that says, yeah, we've got a permit or we don't, you know, it's,
8 it's that, it's that education part. You know, but, in this, I don't see any of that. And so that's what
9 my concern is.

10
11 And we have, we have a couple of these on our docket that just happens to be, you know, in a,
12 in a manapua throw from each other. And to think that neighbors two houses away don't talk or
13 whatever it is, you know, that's also another challenge. And so, you know, we, we spend
14 money on County employees, you know, enforcing this law. But we got to get paid for that, you
15 know, and, and I think, and I think that's where it is. So I think I understand there's a process,
16 but nine hours, I mean, nine years, that's an abuse of this process. Thank you.

17
18 Mr. Carnicelli: Commissioner Thompson. Commissioner Freitas.

19
20 Mr. Freitas: I agree with Commission Robinson. So from 2011 the person didn't really submit
21 any type of application till 2015. That's four year, yeah. Is that right? Is there something that
22 held them back? Was someone was sick? Was it, was it paperwork on the County side? What
23 held that...held them?

24
25 Mr. Carnicelli: Hang on, hang on, hang on. You can't just yell from the back of the room. Are you
26 the applicant, or I mean, are you Mr. Gossman? You can go ahead and come forward then and
27 state your name on the record, and then he'll ask you your question please.

28
29 Mr. Steve Herbert: My name is Steve Herbert. I represent Mr. Gossman who is ill with cancer.

30
31 Mr. Carnicelli: Cool. Thank you. So I guess the question is in what capacity do you represent
32 Ms. Gossman?

33
34 Mr. Herbert: I have a power of attorney to help him in this matter.

35
36 Mr. Carnicelli: Okay.

37
38 Mr. Herbert: That's been provided to the Planning Department.

39
40 Mr. Carnicelli: Okay. Thanks.

41
42 Mr. Freitas: So in 2015, who initiated the application? Was it him or you?

43
44 Mr. Herbert: Well, actually this has been ongoing for over ten years. Mr. Gossman is, first of all,
45 never did the work on the property. It was acquired that way. And Mr. Gossman spent over ten
46 years with Planning trying to resolve this situation. Just to get a return e-mail, or return phone
47 call is actually an act of God, in this case. After about seven years of him working it through with

1 architects, Planning, plumbing, electrical -- try to put all those three together in one day -- he
2 became ill with cancer and, you know, lost a little bit of direction. I came in over two years ago
3 to help him as a friend expecting, gees, it must have been him. That gees, Steve, why don't they
4 return calls or e-mails? Well, I discovered that I was in the same boat. Over a year and a half, of
5 over thousands of e-mails and phone calls, \$25,000 with an architect to fix 180 square foot lot
6 that the owner has been wanting to do for years. To also charge \$10 million in fines, what an
7 abuse of power to people to put them on edge to do that. To allow them to run instead of handle
8 the problem. I think it's an abuse of power. I think it's an atrocity to do that to the people in
9 Hawaii, and I think that system needs to be changed and do a better manner. It has been
10 address for over eight years. I think you might want go back in your system to why plumbing,
11 electrical and planning actually handle this problem as everything was submitted. So very
12 frustrating situation and I don't see how it can be \$10 million. How you can charge somebody
13 \$75,000 for something he's tried to fix with a lack of response from . . . (inaudible) . . . What
14 about the time that I put in? I put in over a thousand hours in something so simple. Very, very,
15 you know, disappointed. I don't know how many other people go through this, but what a very
16 difficult disappointing system that this County of Maui has. Thank you.

17
18 Mr. Freitas: Thank you Steve. What he's saying kind of frustrates me. To try to sit here and
19 make a decision and figure out that this person has been trying. I mean, even \$75,000, I'm
20 starting to think if that's too much.

21
22 Mr. Herbert: Well, and you know --

23
24 Mr. Carnicelli: Hang on. Hang on, hang on. So my question follow up to Commissioner Freitas's,
25 I see that Mr. Gossman has signed this.

26
27 Mr. Herbert: Correct, under duress.

28
29 Mr. Carnicelli: So he --. Under duress.

30
31 Mr. Herbert: Yeah, I mean --

32
33 Mr. Carnicelli: So he's actually not okay with this then?

34
35 Mr. Herbert: He's --. I mean --.

36
37 Mr. Carnicelli: Is he okay with this or not?

38
39 Mr. Herbert: Well, he's not okay with it, but it was a choice of \$700 a day or not get your permit.
40 So what --. How are you okay with something like this?

41
42 Mr. Carnicelli: Okay, so then I'll back --. Then I'll back up and ask --

43
44 Mr. Herbert: I mean, how can somebody say they're, they're happy to take \$10 million and move
45 it to \$75,000? And again, I get the question is, what is the formula? Is there a formula for each
46 person? Is it different for everybody? You know, I just think, you know, even \$75,000 for
47 somebody who's trying to fix something is, is well beyond what a norm would be in any area.

1
2 Mr. Carnicelli: Okay, so Steve, you've said on the record that Mr. Gossman knew about this
3 when he purchased the property.

4
5 Mr. Herbert: No. It was already completed when he purchased this property.

6
7 Mr. Carnicelli: So it was in this condition when he purchased the property.

8
9 Mr. Herbert: Correct.

10
11 Mr. Carnicelli: Was it disclosed to him that this was nonconforming at the time of purchase?

12
13 Mr. Herbert: I can't answer that question. I'm not aware of that.

14
15 Mr. Carnicelli: Okay.

16
17 Mr. Herbert: I'm not aware of that. I do understand from --

18
19 Mr. Carnicelli: Okay, you answered the question. That's cool. Commissioner Tackett, do you
20 have any questions or comments at this time?

21
22 Mr. Tackett: No. I have nothing at this time.

23
24 Mr. Carnicelli: Okay. Commissioner Castro.

25
26 Mr. Castro: Just a couple of things. For it to go on so long that \$10 million fine, I find it to be a
27 little excessive. But also...what did the County do all this time, you know, to remedy the
28 problem. That's the issues that I have.

29
30 Mr. Herbert: There are records going back over ten years on this, of thousands of e-mails going
31 to the planning.

32
33 Mr. Carnicelli: I'm sorry. I'm sorry. Commissioner Tackett, I was side bar over here. I should've
34 been paying attention.

35
36 Mr. Tackett: I think, I think we're all kind of stuck because we don't know how to substantiate
37 what we're getting, you know. I mean, that's where I'm at.

38
39 Mr. Carnicelli: Commissioner Robinson.

40
41 Mr. Robinson: I'm speaking of -- I have multiple properties on Maui, done business in Maui, and
42 I got electrical permits, I got building permits. I got every single permit that you need to get
43 because I went and got it. I didn't send an e-mail and hope that oh, gees. You know, it's kind of
44 like, you know, if you got a bill and you think it's just going away if you don't deal with it. And,
45 and, and to hear that for seven years before you got involved that the County did nothing
46 towards the resolution. You know, there's always two parties. There's always two parties. And
47 when one party wants something that's getting fined for something, it's usually upon them to

1 remedy it. It's not the government's job to call you up and go, hey, by the way I e-mailed you
2 last month, but they keep on giving you a fine. Their offices are open for business almost every
3 single day. I've walked into electric people, plumbing inspectors. I've walked into these places.
4 I've walked into --. I've set up meetings with, with Planning Department people. And if I was
5 getting fined \$10,000 I would have been a little more proactive and it wouldn't take me --
6 wouldn't up to \$5 million.

7
8 I've purchased home that have been non-conforming, and I understood that buyer beware. And
9 I understood that it's on top of me to go ahead and make sure that I have an after-the-fact
10 permit or remove what it is. I think, I think we can't make excuses, and we can't stop saying
11 after nine years that it's the County's fault. The County can be complicit with it. They can be,
12 you know, a part of the problem, but at some point, you know, homeowners have, you know,
13 homeowners have to, all homeowners have to follow the rules, and all homeowners have to do
14 it. And, and I, I wish, you know, we don't have the stack of information you have. All we're
15 talking about here is the settlement amount and what has happened. And I, I don't -- it's hard for
16 me to think that the County is at fault for a non-conforming to be up for eight years after the first
17 NOV. That's just my feelings. Thank you.

18
19 Mr. Carnicelli: Thank you. Commissioner Freitas.

20
21 Mr. Freitas: It says here that the property owner and the department sat down and settled the
22 fines. So the 10,000 communication attempts that this -- are you an applicant? -- is mentioning,
23 was that presented in the meetings that helped you folks determine the fines? Because maybe
24 what he's talking about you folks have already heard about it, and that's how you came up with
25 \$75,000. Where are we with what he's saying? How do we prove he really did try 10,000 times
26 through e-mail or phone call?

27
28 Ms. McLean: I was not personally involved in the settlement discussions. Corporation Counsel
29 was involved, our staff was involved, our zoning inspectors. I don't know if Keanu was involved,
30 but the --. So to get to a settlement --. So there --. Let me back up a little bit because this
31 pertains to the next item as well. When there are SMA or Shoreline violations and the Planning
32 Department issues a Notice of Violation, the recipient of that can file an appeal, can request a
33 hearing with the Director which is sort of a first step before coming to the Commission, and/or
34 they can proceed to settlement discussions. Generally you proceed to settlement discussions
35 when there really isn't a significant dispute over what actually happened. This isn't a case when
36 the person is saying, no that's not illegal. It's yes that that work is unpermitted, and apparently it
37 was like that when, when Mr. Gossman purchased the property. So there is not a dispute over
38 what happened.

39
40 If the County and Mr. Gossman weren't able to come to an agreement, then the matter would
41 have been presented to you as full-on appeal, and you folks could have conducted that hearing
42 where you would have had that evidence and so forth. But because we were able to agree -- I
43 don't know how much detail each side got into, but fundamentally they agreed that paying the
44 \$75,000 was a compromise that both sides could live with and we can move forward and get
45 this into compliance. And so that's, from the Planning Department's perspective because this is
46 SMA and shoreline, we look at making sure what if any impacts there were to the coastal zone.
47 That those get mitigated. That's not really germane to this case. And we look for compliance.

1 And so compliance means getting the permits or returning the property to a lawful condition and
2 then payment of whatever fines are agreed to and approved by this commission.

3
4 So all of that detail could have gone -- we could have gone through in discussions. I wasn't in
5 those, so I don't know. But because the two sides ended up agreeing, either they went through
6 that and that was something working in Mr. Gossman's favor, or they didn't have to get into that
7 detail and were just looking for a resolution.

8
9 Mr. Freitas: So can someone from the Department answer that question if those, the
10 communications, the numerous communications fell to deaf ears because then I really don't see
11 why we're -- we have to sit down and discuss this it, we should approve it because it was
12 already set, pre-settled ahead of time. But if we have questions and no one here to answer what
13 this gentleman is saying, you know, it's kind of not fair to him and whoever is applying for this.

14
15 Ms. McLean: We'll see if one of our shoreline planners, Keanu Lau Hee, might be able to
16 answer that.

17
18 Ms. Keanu Lau Hee: Hi, I'm Keanu Lau Hee, shoreline planner. Hi. So I've only been brought
19 into this project from 2019 when they submitted another SMX application in February. At that
20 point I reached out to the zoning inspector who is not with the Department at the moment to do
21 a site visit. Because any after-the-fact permit we like to see what's going. At that point, I was
22 under the impression that there had been ongoing discussions between the Department and the
23 property owner and I think yourself, Mr. Herbert. And so at that point I had already been brought
24 up to speed that they were kind of working through a financial agreement, and the zoning
25 inspector wanted to make sure I was okay with the plans they were presenting. So that point,
26 we started going back and forth with the architect that they hired to take out more things out of
27 the shoreline setback area and revise the plans. We got those revised plans in May. At that
28 point they had to get a flood development permit as well, and so, they, they just received their
29 flood development permit, and now we're waiting on this to be settled so that we can go ahead
30 and issue the permit.

31
32 So I'm not aware that there had been delays between the time I've had this permit and now of
33 communication with the applicant on our side.

34
35 Mr. Freitas: So you weren't in the meeting that settled the fine?

36
37 Ms. Lau Hee: No.

38
39 Mr. Freitas: Were you Mr. Herbert?

40
41 Mr. Herbert: I was not aware there was a meeting.

42
43 Mr. Carnicelli: You got to speak into the mic if you're going to -- so it's on the record.

44
45 Mr. Herbert: We were not offered to attend any meeting. There was no evidence per that
46 presented. There was no communications. It was this is what we're doing, pay 75 grand.

1
2 Mr. Freitas: Thank you. Thank you.

3
4 Mr. Carnicelli: Keanu, come, please come back up please. So I know we recently had a
5 settlement agreement that part of the equation was the inspector whose job it is to do this, are
6 they okay with? I see that Kai is the inspector on this, and I know he may or may not be around.
7 Anyways, is he okay with this, that you know of?

8
9 Ms. Lau Hee: From our discussion while we were on the site visit, he was more so looking for
10 concurrence from the shoreline planner to see that we were happy with what the applicant had
11 proposed. And at that time from the analysis that I made there wasn't enough of a plan to
12 remove the structures out of the setback area. And so we went back to the architect ask for a
13 revision of the plans. So now it's, it's acceptable.

14
15 Mr. Carnicelli: Okay. So I don't know this next question is for you Jacky or the Director, but I see
16 that the remediation plan has to be committed, or completed within 12 months. What if it
17 doesn't, then what?

18
19 Ms. Takakura: They can work with us and ask for an extension.

20
21 Mr. Carnicelli: Okay. I mean, let's go worst case scenario that they're just going to say, okay we
22 paid of fine, and you know, we're working on it but we're not. Or I'm just saying is, you know,
23 cause we're trying to --. Oh, here it is. Okay, so then the daily fine just start to resume which
24 then we go to \$10 million, it goes to \$75,000 again. I'll say that, you know, when you say
25 \$75,000 in comparison to \$10 million, it seems like a very, very small amount. But when you say
26 \$75,000 as a fine, it seems like a very large amount. I think that the part that we're saying but
27 we're not saying as Commissioners, and we'll probably going to do this each time one of these
28 comes up is...just the process. This isn't personal, you know, or person specific. The process is
29 one with which we accrue \$10 million worth of fines and we settle it out. We accrue \$5 million
30 worth of fines we settle it out. I mean, you know, and I get part of the reason why you've
31 explained that to us before, like, you know, why that has to happen. But it just seems like, you
32 know, we're going to continuously be sort of stuck with this, like, what is it or not. And so
33 Director I don't know I don't know if you want to kind of --. I mean, I get that this is the system
34 that you inherited, but it's just we're kind of sitting here, hum, how do we, how do we deal with
35 this other than saying, guess what, both sides agreed, we can just say, you know what,
36 everybody else is good with it, why are we not? So I don't know if you have any comments to
37 my little rant there, Director, or not.

38
39 Ms. McLean: I do have a comment to Mr. Herbert which there's a paragraph in the settlement
40 agreement that says the parties have been represented by attorneys so you may not have been
41 invited, but Mr. Gossman obviously retained Counsel to represent him in this matter.

42
43 Mr. Herbert: I, I don't believe that is true. I don't --. Mr. Attorney did not have --. Mr. Gossman
44 did not have an attorney. I've been representing Mr. Gossman for the last two and a half years.

45
46 Mr. Carnicelli: So then Steve while you're here, I've got one other question for you. Since you
47 have power of attorney.

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Mr. Herbert: Yes sir.

Mr. Carnicelli: And we have an executed page with Paul D. Gossman's signature as an individual and trustee. If you had to sign this as power of attorney would you?

Mr. Herbert: I would not sign that without communication and showing, you know, what he and I had to go through the last ten years in order to achieve this improvement.

Mr. Carnicelli: He's already signed it.

Mr. Herbert: Well I appreciate that.

Mr. Carnicelli: So you're saying that you would not.

Mr. Herbert: I would not sign it on his behalf, no, because I don't --

Mr. Carnicelli: Okay. Corporation Counsel.

Mr. Herbert: I don't believe \$75,000 is --

Mr. Carnicelli: Okay, Steve.

Mr. Michael Hopper: I want to get this just clarified for the record because we've got a potential issue here.

Mr. Carnicelli: Right.

Mr. Hopper: If this settlement agreement is not agreed to by one of the parties, then the Commission can't, can't vote on this today. And that's what it seems like the authorized representative is representing today. So I don't know if you need to defer action to get this confirmed or not, but some of the statements of record lead me to believe that there are some concerns here that would prevent the Commission from acting on this today. If there's a representation that --. I mean, this is, this was represented as being completed and agreed to by the property owner. And now my concern is there's a representative of the property owner saying, first, it was signed under duress, and second, that he wouldn't sign this as power of attorney. So I think that at this point you may want to defer action unless you can get a more clear communication on that and maybe move this to the next, to another meeting with that clarification just because of the statements there.

Mr. Carnicelli: I think that I would probably agree with that. Director.

Ms. McLean: I don't have any objections to that.

Mr. Carnicelli: Okay, so if there are no objections, we're going to go ahead and defer this item to a later date. Any objections?

1 Mr. Herbert: May I object?

2

3 Mr. Carnicelli: No. You're done. Thank you. So, if there are --

4

5 Mr. Hopper: . . . (Inaudible) . . . clarify. Did he say something differently? Are you saying -- what
6 did you want to clarify here?

7

8 Mr. Carnicelli: Okay, come back Steve.

9

10 Mr. Hopper: It sounds like there's an objection.

11

12 Mr. Carnicelli: You have to speak into the mic Steve.

13

14 Mr. Herbert: So I wanted to clarify that Mr. Gossman is ill, and he wants this behind him. The
15 amount of time that it took to get to this, a year and a half here, he doesn't have that type of
16 time. And what I would appreciate is, you know, two fold. If the fine is got to be the fine, it's not
17 my money, it's his money. I'm just trying to be a helpful soul is that you issue the permit so the
18 work can be done. Let's get this behind us so the work can be done. Issue the permit, let's get
19 the work done, so I can pick it up today.

20

21 Second, second item is if the fine has to be \$75,000, it has to be \$75,000. I don't control your
22 process. But what I would appreciate is that fine is deferred until sale of the property which
23 would be done on April 30th.

24

25 Mr. Carnicelli: Thank you. I appreciate it.

26

27 Mr. Herbert: Thank you.

28

29 Mr. Carnicelli: Okay. So at this point in time, I'll go ahead and entertain a motion to defer.

30

31 Mr. Robinson: I have a question for Corporation Counsel.

32

33 Mr. Carnicelli: Sure.

34

35 Mr. Robinson: Counsel, what is having somebody's power attorney mean? Can there be more
36 than one person deciding on their faith?

37

38 Mr. Hopper: You would want to review the power of attorney and see what authority that would
39 give. But normally that would only be significant if that person signing is not the owner here. And
40 from the document it appears that the person who signed this was in fact the owner. So whether
41 there's a power of attorney or not, that wouldn't make a difference because the person signing
42 is actually the owner. However, there's been some statements today by someone who does
43 have power of attorney that seems to say --

44

45 Mr. Robinson: Who claims -- who claims to have power of attorney.

46

47 Mr. Hopper: Well, we have not seen the power of attorney.

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Mr. Robinson: Yeah, right.

Mr. Hopper: But that in the representation. So my suggestion was, I suppose in addition to verifying the signature and other items, we could also verify the power of attorney. But, you know, at this point, if, if there are questions as to whether this is the actual signature, or you know, there's, there's consent to the applicant here, then you know, you can defer. Or, do you want to take a recess and try to get those clarified as well, but the Commission has been represented? I don't know if there's just basically frustration. I understand there's frustration here, but if there's an issue with the, you know, authenticity of the signature, or of the consent of the, of one of the parties to this agreement, we need to get that clarified before, before acting. If we can do that now, that's fine. If we can do that at a future meeting, that's fine too.

Mr. Carnicelli: Jacky?

Ms. Takakura: Chair, I'd just like to point out that the settlement agreement I prepared it with the advice of Corporation Counsel, and I gave it to Mr. Gossman's son who then took it to his father for signature. And son, Troy, brought it back with me, not with the, Mr. Herbert.

Mr. Carnicelli: Okay.

Ms. Takakura: I worked with the son to get the agreement to where it is.

Mr. Robinson: Chair, I'd like to make a motion to defer.

Mr. Carnicelli: Okay. There's a motion to defer on the floor.

Mr. Freitas: I didn't get my question.

Mr. Carnicelli: Go ahead.

Mr. Freitas: I had a question prior to any motion.

Mr. Carnicelli: Yeah, yeah. Go ahead.

Mr. Freitas: My question is if Mr. Herbert said he is the power of attorney, why didn't --. Do you have any papers with you now that show that you're the power of attorney because if not, we should go with the signature and make a decision on this. Because anybody can come and say they're a power of attorney and delay things, right? Now, now, Jacky here says this person wasn't even in the meetings, and wasn't even involved. If he was power of attorney he would have been in the --. In fact when was this, this settlement meeting? Was it years ago or more recent? Because Mr. Herbert said he's been speaking on his behalf for two years.

Ms. Takakura: I'm sorry, I'm also one who kind of got involved after-the-fact. By the time I got involved the settlement agreement had already been agreed upon. And my understanding is that because of the non-response from the property owner, we sent the NOV's to Corporation Counsel for collections. That's our standard process when we don't get any response from

1 people, we send it to Corporation Counsel who then did, had meetings, I believe. Remember,
2 I'm getting involved after-the-fact. But then I received the settlement agreement document from
3 Corporation Counsel, which I then transferred, worked with the son to secure the signature. So I
4 didn't have any meetings myself, so I can't speak on what transpired or who was in on those
5 meetings. Sorry.

6
7 Mr. Freitas: So my question was for our Corporation Counsel. Do you agree with me or do we
8 take a break or get this clarified?

9
10 Mr. Hopper: My suggestion was to defer to get this clarified. If we can do it now, we can attempt
11 to do that. I guess one of the questions would be -- so this is, this is signed by the property
12 owner. If you're saying you have power of attorney to, to essentially oversee. I don't want to
13 speculate what your power of attorney says, but it sounds like there is -- it's worth reviewing to
14 make sure among other things if you should be signing this on his behalf or just to confirm that
15 this, this is his actual signature just because we --. And that, you know, you had said he had
16 signed under duress and these other things, and it would be a good idea, I think, to just confirm
17 that, you know, before voting.

18
19 Now the Commission, I suppose, could take action to approve the settlement agreement, you
20 know, subject to verification of the, of the signature. That's an option as well. But, you know, that
21 was one of the options is, based on the representations, is to have this all clarified before,
22 before action. I think you could take action and say that it's subject to that verification is an
23 option.

24
25 Mr. Carnicelli: Thank you. Director.

26
27 Ms. McLean: In this regard, the only thing I have to contribute is that the drafting of the
28 agreement went back to early 2019 or late 2018, and the delay in moving it forward at that time
29 was getting the remediation plan. And remediation plan is short, but as you can see it reflects
30 plans that were stamped by the applicant's architect in May 2019. So, I think the terms were
31 agreed upon back in 2018, early 2019. But it's been held up pending the plans from the
32 architect so that we could have the remediation plan to attach as the exhibits. I emailed the
33 Corporation Counsel who was involved in this. I haven't received a response to see if she was
34 available to come down because she was the one who was involved in the discussions
35 representing the Planning Department.

36
37 Mr. Hopper: Yeah, she's off island right now.

38
39 Ms. McLean: Oh, she's off island. Okay. So, you know, again back to, back to the Department's
40 feeling that the resolution agreement was agreed to by the parties and -- but whether you defer
41 or approve it -- we're not in the position to change the terms today. We could go back to the
42 table if you wanted, you know, if you're saying that Mr. Gossman wants different terms now
43 even though he signed this. And looks like he signed it just last month...yes, with a notary. You
44 know, I feel comfortable moving forward with this today. But if the Commission isn't certain and
45 wants more information and background, it's perfectly fine to defer and we can get that for you
46 the next time.

1
2 Mr. Carnicelli: And so here's my concern. My concern is as Corporation Counsel said, on the
3 record, we have representation from someone who claims to have power of attorney, that it was
4 signed under duress, and that as power of attorney he would not forward on this. He also made
5 representation that this property is escrow and is about to sell. If this remediation plan doesn't
6 get taken care of before the sale is completed, this whole thing transfers, I'm assuming, it would
7 be deed restricted and it would transfer to the, to the new buyer. We don't know if this was
8 disclosed to the current buyer. I don't know if it's going to be disclosed to the buyer that's in
9 escrow that's going to be the new owner as of April. Right? So suddenly, and if that happens,
10 we have a new buyer, new fines accrue, right? I believe that we don't go back to \$10 million.
11 We, we --. It starts all over again because it's a new owner, I believe. Is that correct? It would
12 transfer of the sale. So to me, these are questions. So the fact that we have representations
13 made on the record, I would be in favor of the motion that we need a second to. Jacky?
14

15 Ms. Takakura: I'd like to speak that as a notary, I would never notarize something that was
16 signed under duress. And you can see on the notary form that it does state that it's free act and
17 deed. And so, as a notary, we have a responsibility to not notarize things that are signed under
18 duress and it states it right there.
19

20 Mr. Carnicelli: Okay.

21
22 Mr. Robinson: Can we get a second at least for discussion?
23

24 Mr. Carnicelli: I'll second your motion for discussion.
25

26 Mr. Robinson: Speak to the motion please?
27

28 Mr. Carnicelli: Yeah go ahead Commissioner Robinson.
29

30 Mr. Carnicelli: Okay, the second is withdrawn, withdrawn by the Chair. Second is now by
31 Commissioner Thompson.
32

33 Mr. Robinson: My concern is this isn't valid. My concern is that, you know, we talked about the
34 next owner of the property. There's been a lot of statements being heard today, you know, and
35 we have to take them as fact until proven otherwise. Also said that the son took the paper to the
36 father, but yet he's at a notary, so I don't --. You know, there's a lot, a lot of things that I think we
37 need to get right. If they don't disclose it to the new owner that's, that's on them. That's not on
38 us. I think our side is to get it right with the information that we have in front of us. The
39 information we have in front of us is somebody claiming to be a power of attorney of somebody
40 who signed something under duress which makes this properly invalid. So if we vote to make
41 this invalid and it goes through, this might take another three to six months to do it. But if it's not
42 passed yet, and if we're able to, if Corporation Counsel is able to confirm the eligibility of the, of
43 the testifier maybe we can do it. I mean, to me, it's, we can do it right once or we can do it, you
44 know, twice hopefully, you know. But I rather do it right once and . . . (inaudible) . . . Thank you.
45

46 Mr. Carnicelli: Thank you. So question based on the motion to Corporation Counsel, if we were
47 able to --. Okay, Commissioner Tackett.

1
2 Mr. Tackett: My question was along those lines. If, if we defer and a sale goes through in the
3 process of our deferral, how does that does the person that owned it all this time, do they, do
4 they have any responsibility or does it, or do they just skate through all that responsibility and it
5 falls onto the next...person that isn't aware of the problem that is there? So basically do we
6 defer, he sales it, and he gets out, and then it falls on to the next person that doesn't even know.
7 That's what I'm curious as to -- because before I defer it and let something like that happen that
8 would be important.

9
10 Mr. Robinson: So say that this is invalid, it's the same thing. If we agree to this, and it's invalid, it
11 has nothing to do with the new owner because the paperwork that was agreed upon in the first
12 place. I mean, invalid is invalid, right? So if we, if we ratify something that's invalid --

13
14 Mr. Tackett: If it is valid, then, then it changes. So it's innocent until proven guilty, or guilty until
15 proven innocent, which is what you're alluding to right now that he's guilty until proven innocent.

16
17 Mr. Robinson: He's innocent. No, he's innocent until proven otherwise.

18
19 Mr. Tackett: But he doesn't have anything factual to back it up so to me it's kind of --

20
21 Mr. Robinson: Yeah, just testimony.

22
23 Mr. Carnicelli: Corporation Counsel.

24
25 Mr. Hopper: I just wanted to ask a clarification, a clarifying question to maybe, maybe help move
26 things along. So you're authorized to represent the applicant today, and you have a power of
27 attorney that you're stating you have that ability.

28
29 Mr. Herbert: That is correct. But I also want to provide some clarification.

30
31 Mr. Hopper: I just wanted to ask you a quick question.

32
33 Mr. Herbert: Okay.

34
35 Mr. Hopper: Do you have an objection --? Do you have any reason to believe that this is not
36 Mr. Gossman's signature?

37
38 Mr. Herbert: That is Mr. Gossman's signature.

39
40 Mr. Hopper: Okay. And do you have any objections as -- we just need to know if you're
41 representing him as power of attorney, do you have any objections to the Commission
42 approving this settlement agreement today?

43
44 Mr. Herbert: No I do not.

45
46 Mr. Hopper: Okay.

47

1 Mr. Carnicelli: Thank you.

2

3 Mr. Hopper: Now you had another statement that maybe the Chair would like, but I wanted to
4 get clarified. Maybe that can help, you know, move things along. I know there were statements
5 made earlier, but I wanted that clarified for the, for the record with that clarification and maybe
6 subject to just -- you know, it's notarized, so that's an important point -- but maybe subject to
7 just verification afterwards. I don't have a reason why the Commission couldn't take action on
8 that basis today. If you've got other objections to the agreement, then certainly you can discuss
9 those issues and debate them and take a vote. But having that represented, I think that, you
10 know, that that's something you could take action on today.

11

12 Mr. Robinson: Chair, I'd like to withdraw my motion.

13

14 Mr. Carnicelli: Is the second also withdrawn? Okay, so we have the motion has been withdrawn
15 and the second has been withdrawn. Just a clarifying question for Corporation Counsel, if we
16 would like --? Never mind. I'm not going to go down that -- I'm not going to go down that rabbit
17 hole. Commissioner Thompson.

18

19 Mr. Thompson: I'd like to make a motion to approve this as written.

20

21 Mr. Tackett: I still have questions.

22

23 Mr. Carnicelli: Okay. Yeah, it's okay. Commissioner Tackett.

24

25 Mr. Tackett: So, so my question is from what I see here, what is the status of the, of the
26 structure at this point. Is it still what it was?

27

28 Mr. Herbert: The structure is exactly, I was told there no work, no work can be done, so it's
29 exactly as it is.

30

31 Mr. Tackett: So, and then I did, I did the math on, on nine years if you rented that thing out, and
32 I don't know if it's been rented or haven't been rented.

33

34 Mr. Herbert: No, it has not. It's a garage literally. Unless you rent garages here on the island.

35

36 Mr. Tackett: Well, if you look inside, it looked different than a garage. It didn't look like a garage
37 at all, and I've seen people live in, in tents.

38

39 Mr. Herbert: Okay, but no, it was never rented. As far as my knowledge, it has never been
40 rented.

41

42 Mr. Tackett: So basically, the, the -- to me the \$75,000 fine is not that big, because the math on
43 a \$1,000 rental ocean front like that at a \$1,000 a month is \$108 grand, you know. You probably
44 get \$2,000 a month ocean front, that's \$216 grand so...with an observation deck. So, whether,
45 whether or not somebody did rent it, or didn't rent it, I tell you that if you look from, if you look
46 from a perspective of people on Maui trying to rent it, they'd rent that thing all day long, you
47 know. You know, all day long people will try to get in there, you know. But so, so that's what I

1 was interested in. Did, did --? Because, I mean, it's hard for us to tell whether or not you just
2 don't do it, just don't do anything and rent it the whole time, you know what I mean? And of
3 course some guy said they didn't, you know, but it's hard to, it's hard to differentiate. So from
4 that perspective, when you have something like that, it's hard to say that, that's an
5 unreasonable fine. Because if it was or it wasn't, if it had been, you still be paying less than what
6 you brought in, you know so.

7
8 Mr. Herbert: But it was not rented.

9
10 Mr. Tackett: But it was not. Yeah.

11
12 Mr. Herbert: Appreciate the thought on that.

13
14 Mr. Tackett: Yeah, yeah. But you didn't gut it either. Like you could have taken everything out,
15 throw it in the trash can, and taken a picture and said, hey, this is it.

16
17 Mr. Herbert: I'm not able to do that. I didn't do --

18
19 Mr. Tackett: Well, he was able to do that, you know, so, so that's my opinion on it. So, anyway.

20
21 Mr. Carnicelli: Do you have any other questions?

22
23 Mr. Tackett: That was my question as to the condition of it. It was still the same as the pictures
24 in the --

25
26 Mr. Carnicelli: Got you. Any other questions at this time? So I believe -- so we have a motion to
27 approve the agreement by Commissioner Thompson, seconded by Commissioner Robinson. Is
28 there any further --? Would anybody like to speak to the motion? Commissioner Thompson.

29
30 Mr. Thompson: After ten years it's time.

31
32 Mr. Carnicelli: Commissioner Robinson.

33
34 Mr. Robinson: I guess I'm hoping that there is some type of...security or something with
35 something being settled where it has to have a remediation that a new owner can't be, can't be
36 withheld from or some type of lien that can be put on through escrow to make sure the fines are
37 paid. I don't know what it is. I don't know the remedy is for that, but I just hope that this doesn't
38 become another issue and the problem has been solved by somebody trying to get out of it.
39 Thank you.

40
41 Mr. Carnicelli: Agreed. Any further comments on the motion? Commissioner Freitas?

42
43 Mr. Freitas: I just want to thank the fellow Commissioners for letting me ask that one question. I
44 really took us down that rabbit hole like you said. But I think that I'm going to agree with the
45 settlement. I'm in favor of it. Mr. Herbert did confuse me a little bit because one moment he said,
46 no, then one moment he said yes. But when you look at it, there is a signature. He said that is

1 his signature. All the work was done ahead of time. In the settlement, I think the answer have
2 been questioned, \$75,000, I'm going to go ahead and give my approval when we vote.

3
4 Mr. Carnicelli: Great. Thank you. Any other further comments on the motion? Same sentiments
5 is that if there's a way with which we can protect this in the transfer of sale. And again, I know
6 that we can't change the settlement agreement to add something like that, but I just want to, just
7 again, put that on the record. So Director.

8
9 Ms. McLean: Thank you Chair. The motion is to approve the settlement agreement.

10
11 Mr. Carnicelli: All those is favor please raise your hand. That is one, two, three, four. Opposed?
12 None opposed. So we have -- Commissioner Robinson abstaining, which goes to an affirmative
13 vote, so the settlement is approved and the motion passes. So thank you for all work Jacky. We
14 appreciate it. I do believe --. Well, we're going to have to go back to B.1., or C.1. Okay, we're
15 going to take just a quick two minute recess. Real quick.

16
17 **It was moved by Mr. Thompson, seconded by Mr. Robinson, then unanimously**

18
19 **VOTED: To Approve the Resolution Agreement.**

20
21 **(Assenting – D. Thompson, K. Robinson - Abstained, K. Freitas,**
22 **K. Pali, S. Castro, C. Tackett)**

23 **(Excused – P. D. La Costa, T. Gomes)**

24
25 ***(The Maui Planning Commission recessed at 10:31 a.m., and reconvened at 10:34 a.m.)***

- 26
27
28 **2. Proposed Settlement Agreement between the COUNTY OF MAUI and**
29 **JASON T. STURGIS, TRUSTEE OF THE JASON TIMKEN STURGIS LIVING**
30 **TRUST and JUDY P. STURGIS, TRUSTEE FOR THE WILLIAM T. STURGIS**
31 **FAMILY TRUST for renovation of a single-family dwelling within the Special**
32 **Management Area and National Historic Landmark District that exceeded**
33 **the scope of the SMA minor permit on property located at 1057 Front**
34 **Street, Lahaina, Island of Maui. SMA Notice of Violation: NOV 2019/0053.**

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

40
41 **The Commission may take final action on the proposed Settlement**
42 **Agreement pursuant to the provisions of Section 12-202-23(d)(3) of the**
43 **Maui Planning Commission's Special Management Area Rules and Section**
44 **12-203-17 of the Shoreline Rules for the Maui Planning Commission.**

45
46 Mr. Carnicelli: Maui Planning Commission of February 25th, 2020 is now back in session.
47 Director, we're going on to D.2.?

1
2 Ms. McLean: Yes. Thank you, Chair. Next is a proposed settlement agreement between the
3 County of Maui and Jason T. Sturgis, Trustee of the Jason Timken Sturgis Living Trust and
4 Judy P. Sturgis Trustee for the William T. Sturgis Trust for renovation of a single-family dwelling
5 within the Special Management Area and National Historic Landmark District that exceeded the
6 scope of the SMA Minor Permit on property located 1057 Front Street, in Lahaina. The SMA
7 Notice of Violation is NOV 2019/0053. Representing the Sturgis Family is Attorney Jack Naiditch
8 and representing the County is Iwalani Mountcastle. I was involved in these discussions. As the
9 memo and settlement agreement detailed the applicant did receive an SMA Minor Permit for
10 extensive renovations on the structure. Once the renovations were underway they realized the
11 poor conditions of their remaining structure would not allow it to be renovated and so effectively
12 the entire structure was removed. The fine was issued for that activity exceeding the scope of
13 the SMA Permit, and the initial fine was \$79,000 for that violation. And in my discussions with
14 the applicant that seemed...excessive. And so in discussing the matter with the applicant's
15 counsel and our counsel we agreed upon a reduction of the initial fines to \$26,000 and to not to
16 include any of the daily fines which accumulated to a total of about \$44,000. And I don't know if
17 the applicant's representative or the owner's representative wishes to speak as well, but we
18 would request your approval of this agreement to similarly as the last case to allow them to
19 proceed with the renovation work.

20
21 Mr. Carnicelli: Mr. Naiditch, you want to speak to this? Actually you got to speak into the mic
22 though please.

23
24 Mr. Jack Naiditch: I have no further comments to make unless any of you folks have questions.
25 Michele adequately explained the situation.

26
27 Mr. Carnicelli: Okay. Thank you. Iwa, do you have anything you want to add? Nothing further.
28 Okay. So then Commissioners, does anybody have any questions or comments at this time?
29 Commissioner Robinson.

30
31 Mr. Robinson: Director, in our SMA area are you allowed to do a tear down and rebuild, or only
32 if it's warranted like, you know, walls are all termite? Could they have just gotten a full remodel
33 or rebuild?

34
35 Ms. McLean: If they had come in initially for a permit to demolish and rebuild, yes, they could
36 have gotten that. There wouldn't have been anything preventing that from happening.

37
38 Mr. Robinson: Okay, so they're getting a fine for something that they realized in the process. So
39 if they stopped at any certain point and called the County, is that how --? I mean, so how, how
40 do people avoid having to pay this fine?

41
42 Ms. McLean: Right. If that had happened, if they had stopped and contacted us and said we
43 want to do this instead, we could have either amended the permit, which is what we'll, what we'll
44 do if, if this goes through. If we could have amended the SMA permit at that time or issued a
45 new permit for demolition and reconstruction rather than renovation.

46

1 Mr. Robinson: Okay, thanks. Too bad the other guy didn't get to see the appeal process and
2 how, how it normally works, right?

3
4 Ms. McLean: Well, they, they were responsive. I will say that.

5
6 Mr. Robinson: Yeah, normal right.

7
8 Ms. McLean: They were responsive. Right away they stopped worked and we've been working
9 with them ever since.

10
11 Mr. Carnicelli: Commissioner Freitas.

12
13 Mr. Robinson: So, so the County is not broken, then, and people don't reply?

14
15 Mr. Freitas: I don't want to --. I just need some clarification. I don't want to really compare the
16 other, the other case that we just heard. But why is it that the first case we heard they were
17 given a notice of warning, a one month notice before they were told what their violation fines
18 were going to be? And I don't see a notice of warning issued here. Am I missing something?
19 They went right to the violation notice and they started fining them right away.

20
21 Ms. McLean: Right. In the first situation, the, the work was completed and so the notice of
22 warning was the opportunity for the recipient to come in and work out compliance with us. They
23 weren't responsive to that so we proceeded with the violation. In this case, it was in the middle
24 of the work going on, and so we were able to go straight to violation to get that to stop. Because
25 if we had issued the notice of warning, their recourse, you know, the opportunity for recourse
26 they already passed since the work had been done.

27
28 Mr. Freitas: Also it's interesting that their daily fine was a \$150 and the other one was \$5,000 a
29 day. I mean, just like Police, I guess they've got different fines if they like you or not. I don't
30 know how they figure it out. But that seems very extreme on how they figure it. But we're not
31 here to discuss that. I just wanted to ask those questions.

32
33 Mr. Carnicelli: Is there any other questions from the Commission at this time? I guess we rode
34 that horse already, huh? So I guess we will take a recommendation or I guess questions from
35 Commissioner Tackett.

36
37 Mr. Tackett: No, I move to approve as recommended.

38
39 Mr. Carnicelli: Okay, there's a motion to approve the settlement agreement as presented. Do we
40 have a second?

41
42 Mr. Castro: Second.

43
44 Mr. Carnicelli: So moved by Commissioner Tackett, seconded by Commissioner Castro. Would
45 anybody like to speak to the motion? Commissioner Tackett.

46
47 Mr. Tackett: I'll speak to it since it's my motion. It sounds like, it sounds like both parties have,

1 have gotten together and they've, they've reached to some sort of term that is amiable to the
2 two, and, and our Director has, has, has represented that she, she has been in that situation
3 directly. And, and, and I believe that, that she probably has way more insight than, than what I
4 got here today in, in, in my packet to, to go against it, so I am in favor of it and that's why I made
5 my motion.

6
7 Mr. Carnicelli: Thank you. Commissioner Freitas.

8
9 Mr. Freitas: Compared to the two cases like night and day. I like the fact that within a month or a
10 little over the month, a new application was submitted so they moved really quickly. And so
11 because of that I, I agree that the settlement to being reduced and settled with that amount is
12 fair and I recommend that we approve.

13
14 Mr. Carnicelli: Thank you. Would anybody else speak to the motion? Seeing none. Director?

15
16 Ms. McLean: Thank you Chair. The motion is to approve the settlement agreement.

17
18 Mr. Carnicelli: All those in favor please raise your hand. That is unanimously six ayes. Thank
19 you Mr. Naiditch. Thank you everyone.

20
21 **It was moved by Mr. Tackett, seconded by Mr. Castro, then unanimously**

22
23 **VOTED: To Approve the Settlement Agreement.**

24
25 **(Assenting – C. Tackett, S. Castro, K. Freitas, D. Thompson, K. Pali,**
26 **K. Robinson)**

27 **(Excused – P. D. La Costa, T. Gomes)**

28
29
30 **C. ADOPTION OF WRITTEN DECISION AND ORDER**

31
32 **1. Proposed Findings of Fact, Conclusions of Law, and Decision and Order**
33 **denying the request for a State Land Use Commission Special Permit**
34 **(SUP2) by MICHAEL and MI RA FINNEGAN to operate Hale O Ka Pua B&B,**
35 **a two-bedroom bed and breakfast located in the State Agricultural District**
36 **located at 2350 Aina Mahiai Place, TMK: (2) 4-4-020:036, Lahaina, Island of**
37 **Maui. (SUP2 2019/0008) (J. Burkett) (Action on the application was taken**
38 **by the Commission following public hearing at the November 12, 2019**
39 **meeting.)**

40
41 **The Commission may take action to adopt, adopt with modifications, or**
42 **take some other action regarding the proposed Findings of Fact,**
43 **Conclusions of Law, and Decision and Order**

44
45 Mr. Carnicelli: So I believe at this time we're going to go back to the item we skipped over.
46 Director.

47

1 Ms. McLean: Thank you Chair. Before you for consideration is proposed Findings of Fact,
2 Conclusions of Law, and Decision and Order denying the request for a State Land Use
3 Commission Special Permit by Michael and Mi Ra Finnegan to operate Hale O Ka Pua B&B, a
4 two-bedroom bed and breakfast located in the State Agricultural District located at 2350 Aina
5 Mahiai Place, at TMK 4-4-20 parcel 36 in Lahaina. And the applicant is represented by counsel;
6 if you could introduce yourself.

7
8 Mr. Michael Carroll: Good morning Chair. Good morning members of the Commission. I am
9 Michael Carroll. I am appearing on behalf of the petitioners.

10
11 Mr. Carnicelli: Good morning Mr. Carroll.

12
13 Mr. Carroll: For the record, Mr. Finnegan is also present.

14
15 Mr. Carnicelli: Okay. Thank you. I guess at this point in time -- yeah, I want to go ahead and
16 recognize Corporation Counsel to address a couple of things.

17
18 Mr. Hopper: Just for background, this is your adoption of the form of the order. The Commission
19 voted, I believe, November 12th to deny this request for a State Special Permit. This is for
20 adoption of the form of the order. I believe yesterday the Department received a set of
21 objections filed on behalf of the applicant by the applicant's counsel objecting to a variety of
22 things including not being served with a copy of the draft D&O prior to the meeting, and raising
23 other objections. And actually asking for a reconsideration of the, of the decision.

24
25 The, I think, the Department's position has been that the -- there's not a requirement in the rules
26 to serve a draft Decision and Order on the parties until it becomes a final Decision and Order.
27 That this is not a proposed hearing's officer report. It's actually a staff draft for the Commission's
28 consideration of the adoption of the form of order. Obviously, the applicant disagrees. Several
29 options you have, you just got this yesterday. I don't know if you had time to review it. You can
30 take a recess and review it. You could adopt this decision order today. You could defer action,
31 have staff draft another D&O sort of addressing the objections that are set out, and adopt this at
32 your next meeting which is on March 10th.

33
34 The, the -- there is a 120-day time frame for you to make a decision on this application that I
35 believe would potentially end on March 11th if you considered the decision date as the date of
36 the adoption of the Decision and Order. I think our position has been that the date of your
37 decision was November 12th, but there have been arguments in the past that the 120-day time
38 frame applies to the adoption of the Decision and Order. So that would occur, as I understand it
39 on March 11th. Your next meeting is March 10th, so that would give you the opportunity to adopt
40 the Decision and Order, revised D&O then and have a chance to review this.

41
42 Again, these are all potential options and I'm sure the applicant has a position on, you know,
43 what they believe should occur. But they've raised a variety of objections including not being
44 served with the D&O prior to the meeting. And obviously, are asking for reconsideration of the
45 decision. So, that was sort of a background I thought I would give you. I did have a chance to
46 review the petition. I don't know if any of you have had a chance to review that yet. You also

1 would have the option maybe after hearing from the applicant if you would like to go into
2 Executive Session to further discuss our options as well.

3

4 Mr. Carnicelli: Thank you Mr. Hopper. Mr. Carroll, would you like to speak?

5

6 Mr. Carroll: Yes please.

7

8 Mr. Carnicelli: Okay, go ahead.

9

10 Mr. Carroll: First off I'd like to thank the Commissioners and the Chair for allowing me to speak
11 on today's agenda item. We do appreciate your time. I know you're all very busy and probably
12 look forward to getting out of this. There are essentially two issues that I wanted to raise with the
13 Commission this morning. One is a procedural issue, and two is a substantive issue. The
14 procedural issue deals with how we interpret the rules in terms of how they are required to be
15 followed. Our view is that there is a three step process that needs to be followed. Also on the
16 before the Planning Commission on any, any special permits less than 15 acres, and it also
17 applies on the Land Use Commission for properties that are over 15 acres. And in short, the
18 process requires a hearing's officer. Here in this case, the Commission acted as the hearing
19 officer. So the Commission to issue a proposed Decision and Order that includes Findings and
20 Fact. This proposed Decision and Order is supposed to be provided to the parties so they have
21 an opportunity to submit objections or exceptions to those proposed findings. After those
22 objections are submitted the matter is then set for hearing before the Planning Commission. So
23 the Planning Commission has an opportunity to not only hear the proposed findings, but also to
24 hear the objections or exceptions that were raised on behalf of the applicant, here in this case,
25 the Finnegans.

26

27 Those, those steps were admittedly were simply not followed in this case. What happened here
28 is the, the proposed Decision and Order was not served on the parties. The petitioner was not
29 allowed the 10 days to file exceptions. And the Commission did not set up a hearing to rule on
30 the proposed Decision and Order or the exceptions. Instead what happened is we had the initial
31 hearing back on November 12th, 2019. There was approximately four days -- four months
32 between that hearing and this, this, this meeting. The Commission issued an amended agenda
33 several days before this hearing that proposed adoption of the written Decision and Order. And
34 once again, the petitioners were never provided notice, nor were they provided a copy of the
35 proposed Decision and Order. I'd also note that the proposed Decision and Order also doesn't
36 even include the exhibits. It's just merely a copy without, without even the exhibits actually
37 attached. So to the extent that we could provide a complete objection, we're not able to do that
38 here.

39

40 So first with respect to the procedural issues, our position is that the Commission should not be
41 taking action to approve it at this meeting. We, we've also requested that the Commission
42 reconsider its ruling as allowed under the Administrative Rules. And in essence the decision to
43 deny the permit, it was based off of, as far as we understand it, some issues related to the
44 coffee borer beetle. There is nothing in the record or in the proposed D&O that supports a
45 Findings of Fact that the proposed use, the single bed and breakfast would have some impact
46 related to the coffee farming operations or potential impacts related to the coffee borer beetle.
47 There's nothing in the record to that. In fact, the Planning Department had previously, prior to

1 the hearing, issued its recommendations. And in those recommendations, the Planning
2 Department concluded that the proposed use is in conformance with the goals, objectives, and
3 policies of the Hawaii State Plan. The use will not adversely affect surrounding property. And
4 most importantly, there was no environmental impact associated with the proposed use. There's
5 nothing in the Planning Department's report that even suggests that there's going to be any
6 harm related to the coffee borer beetle. This report was completely unrefuted at the hearing.
7 The only testimony at the hearing in oppositions were two members of the public who were not
8 neighbors. They were just simply opposed to short-term rentals in general.

9
10 The -- turning to the proposed findings of fact, there really are no factual statements that support
11 a decision to deny the request. The only statements are statements related to questions that
12 were asked during the hearing are procedural questions. If you look at the proposed findings of
13 fact, one of the statement is paragraph 15, the applicant stated that there was no way to
14 guarantee that pest such as the coffee borer beetle will not be brought into the coffee farm. That
15 was in response to a question that in essence was that there was no way to completely protect
16 the entire area unless you were to quarantine it. I would note that, and my client, Mr. Finnegan,
17 will explain this in a little more detail, but the, the coffee farm is actually not within a gated
18 community. Only 50 percent of it is within a gated community. So there really is no way to
19 protect the, the farm unless you were to quarantine the whole area. And Mr. Finnegan can
20 explain that in a little more detail.

21
22 The second paragraph, paragraph 16, the applicant stated that they had communicated with --
23 or not received feedback with respect to any conversations with Mr. Kimo Falkner. That issue is
24 not a requirement in the application. That issue first came up at the commission meeting, and it
25 was only in response to a question from a Commissioner. And that's not a requirement for the
26 Special Use Permit, and it's not an appropriate factor for consideration.

27
28 The other point that was raised, Chair Carnicelli referred to previous conversations that the
29 Commission may have had related to this issue. The petitioner was not involved with any of
30 those communications, and we don't believe that that is appropriate findings of fact.

31
32 So in essence, we don't believe that the factual record or the proposed findings of fact support a
33 denial. We would respectfully request that the Commission take a closer look at this issue
34 today. Mr. Finnegan is also present and would like to just briefly address the Commission with
35 respect to those issues if it's okay with the Commission.

36
37 Mr. Hopper: I think we may have a concern with that as far as opening it -- are we having
38 witness testimony here. I think you can definitely make legal argument on, on these issues here,
39 but I don't want to have this considered to be a reopen hearing or anything at this point. So I
40 would want to make sure that we're not opening the -- we're not opening the hearing here. I
41 think this is legal argument on a document that you filed yesterday to help get clarification. But I
42 don't think we're to the point where we granted a motion for reconsideration and reopened the
43 record at this point. So I think we're okay with the legal argument. I mean, ultimately this is up to
44 the Commission and we can talk further in Executive Session, but I would potentially have a
45 concern if we're going to be opening this to additional witness testimony and things like that.

1 Mr. Carroll: Sure. The point of requesting that Mr. Finnegan provide some testimony is I think it
2 would be helpful to our request for reconsideration because I don't believe those issues that
3 were fully fleshed out in the initial hearing. And I would like to clarify those issues and I believe
4 would be helpful for the Commission to hear that. And I do recognize that and I do agree with
5 you on the procedural issues so I will defer to the Commission on whether they will permit
6 Mr. Finnegan to provide some further statements and clarity.

7
8 Mr. Carnicelli: Just to be clear about the clarity. What is it that he needs to draw clarity to?
9

10 Mr. Carroll: The -- that there really was no testimony at the hearing with respect to the coffee
11 borer beetle, because that issue actually came up in question from the Commission. So the
12 suggestion is to allow him to provide some context to, to explain how the proposed use really
13 doesn't have an impact on the farm operations relating to the coffee borer beetle; excuse me.
14

15 Mr. Hopper: Yeah, my concern is that we're seem to be opening up the record here and making
16 an additional record that didn't happen at the actual hearing where the vote took place. You
17 know, I understand that you're saying you wanted to respond certain things and that's, you
18 know, maybe something that if you grant a motion for reconsideration and open the record to do
19 that, you could. If there's additional legal argument you wanted to make, you could make that
20 through legal argument on this filing, I understand that. But my concern would be opening the
21 record before the Commission has taken action to actually, to actually do that. If Commissioners
22 --. You know, so I think that's a potential concern at least at this stage, so I suppose it's
23 ultimately up to the Commission, but I wanted to raise that a concern as far as, you know, the
24 hearing is sort of, sort of done at that point unless you decide to reopen it by granting a motion
25 for reconsideration or taking some other action to undo the vote that was already taken.
26

27 Mr. Carnicelli: So let's address that now as well then is on page eight of the objection is the
28 reconsideration. I believe that the reconsideration is normally after we've adopted the Findings
29 of Fact, Conclusions of Law, isn't that correct?
30

31 Mr. Hopper: That's normally when you'd have a motion for reconsideration.
32

33 Mr. Carnicelli: So the fact that they're doing this -- they're trying -- they're seeking it --
34

35 Mr. Hopper: You could potentially consider them as exceptions to the decision, the draft
36 Decision and Order I suppose. But, yeah, generally a motion for reconsideration would be made
37 after actions taken. That can be complicated by the fact that you have to file an appeal within a
38 certain period of time after, after an adopted D&O. But typically a motion for reconsideration -- I
39 suppose they could argue a motion for reconsideration would have happened after the, after the
40 oral vote. But at this point I would maybe look at treating these as exception to the Decision and
41 Order where they've got concerns with conclusions made and factual statements in the D&O.
42

43 Mr. Carnicelli: Okay. So I guess at this point in time, I won't make the decision on my own. Do
44 you guys feel that it is necessary to open up the record and have Mr. Finnegan come back and
45 speak? Commissioner Robinson.
46

47 Mr. Robinson: I wasn't here at that last meeting. But I think, I think what we're talking about first

1 of all is just the due process that about any applicant regardless of what the vote was. And if, if
2 due process was, was not properly done, then I say we start with that.

3
4 Mr. Carnicelli: Right. The procedural part of it is almost like what we can do -- well, to address
5 that -- what we could do is defer making a decision.

6
7 Mr. Hopper: See if he's finish.

8
9 Mr. Carnicelli: Okay. Mr. Carroll.

10
11 Mr. Carroll: I have nothing further at this time.

12
13 Mr. Carnicelli: Okay, thanks. So I guess what we can do right now is, you know, we have before
14 us the D&O. We could defer this to allow for proper notice to the applicant and, and potentially
15 even redraft it to address some of the concerns that Mr. Carroll has brought up to us. Yeah, go
16 ahead Corporation Counsel.

17
18 Mr. Hopper: Just to clarify for the record, what's the applicant's position on -- I think he's
19 requested the Commission not take action today. What's the applicant's position on, on a
20 deferral and a redraft of the D&O to address the concerns and then having that shared with the
21 applicant prior to the, the meeting, which next meeting which would be on March 10th I believe?

22
23 Mr. Carroll: I have no problem with that, but I'm not agreeable. I don't believe I can waive
24 requirements of the Administrative Rules in terms of deadlines.

25
26 Mr. Hopper: So I mean the deadlines being?

27
28 Mr. Carroll: The 120-day deadline.

29
30 Mr. Hopper: Right. Which would be, I believe, would be March 11th, if you consider the deadline
31 to be from the date of the Decision and Order. Again, I think the County's position is that the
32 November 12th action was a decision. I know we disagree with that with the applicant, but to the
33 extent the applicant would argue that that day is actually 120-days for you to adopt a Decision
34 and Order, that that would be -- that would occur, as I understand it from the Department, on
35 March 11th. That would be 120-days from the November 12th hearing. That's the day we're
36 looking at? Okay. So it's one day after, but it would, you know, the action taken by the
37 Commission would be a day after or the day before that potentially. So I understand you
38 wouldn't have to waive any time frames if action is taken on the 10th.

39
40 Mr. Carroll: Whatever the Commission does that's, that's obviously their kuleana. Our position is
41 that we do believe that the rules did require that ten days be provided before today's hearing.
42 We don't believe that that was followed. We also believe that the decision is in error and we
43 would like reconsideration, or would like consideration of our objections. We're obviously here
44 today to raise those issues, and we're hopeful that the Commission listened to them.

45
46 Mr. Hopper: Yeah that's not --. We can go into Executive Session to discuss options in more
47 details if you would like. But those are a variety of options for the Commission. You could defer

1 pending redraft. You could adopt the D&O today. Or you could, or you could vote, I suppose, to
2 reconsider your decision which is something that -- or at least put that on a future agenda for
3 reconsideration.

4
5 Mr. Carnicelli: Commissioner Robinson.

6
7 Mr. Robinson: Correct me if I'm wrong but I think if we, if we defer today it will give them the
8 opportunity to, to respond, which is part of the due process. And if they disagree at our next
9 meeting, they still have enough time, from today, to prepare their, their appeal. Am I, am I
10 following date lines and times correctly?

11
12 Mr. Hopper: Well, the, the appeal would be after your final decision and order if they appeal to
13 Court. I think that they're saying is that -- and again, I believe this is not the correct reading of
14 the rules, but they have argued that you are -- that the staff is required to share its draft
15 Decision and Order with them before giving it to you as Commissioners. I believe that's required
16 by a hearings officer in the case where a hearings officer allows the parties to submit proposals.
17 It's in a different section of the rules. Again, there's a dispute as to that. One way of resolving it
18 is to defer action and give additional time for the applicant to, to review a proposed decision.

19
20 Mr. Robinson: Yeah, but I guess I'm saying even after our next meeting there still is 24-hours to
21 file an appeal toward -- they would still have enough time.

22
23 Mr. Hopper: Well, an appeal would be 30-days, I believe, from the date of the final Decision and
24 Order. So they would have time to file an appeal.

25
26 Mr. Robinson: Okay, so it's, it's from the D&O, not from the, the first hearing.

27
28 Mr. Hopper: Yeah. I mean --

29
30 Mr. Robinson: 120 goes away, and then we deal with something else.

31
32 Mr. Hopper: I think there's, there's potential arguments that you can file within 30-days from the
33 November 10th, 12th deadline. But if there's a final D&O, I believe, that in general you can also
34 file within 30-days from the date of the final D&O being issued. So I don't think as far as their
35 appeal rights to Circuit Court deferral would make any difference. Their issue that they were
36 raising was 120-days expires at some point. We do have a meeting before that, so you could
37 take action on that before that, that, that argued, arguable -- or not even -- the deadline that the
38 petitioner has argued for would have elapsed. So an option would be to defer action, have the,
39 have the findings and conclusions redrafted, sent to them in advance, and then taken up on the
40 10th. Or, you can take action today, or take some other action to reopen the, the hearing, I
41 suppose. Although you would be up against the 120-day deadline in either, either case
42 potential.

43
44 Mr. Carnicelli: Okay, so I want to talk about the 120-days because I've only been here four
45 years. And as I -- I don't recall ever the timeline, the 120-day time line being to the D&O. It's
46 always been to our vote, historically. I mean, is and let the record show that the Director is
47 nodding in affirmative. Director.

1
2 Mr. Hopper: I mean, if we want to get into a lot of detail on this we should probably go into
3 Executive Session to discuss this. Again, for the record, I think you could say there's a dispute
4 between the Department's interpretation of that rule and the applicant's interpretation of that
5 rule, and we can, we can leave it at that at this point, or go into Executive Session if you want to
6 get into sort of the details of the legal arguments there. But I don't necessarily want to make that
7 further on the record than we've already gone.

8
9 Mr. Carnicelli: Commissioner Pali.

10
11 Ms. Pali: I'll move to go into Executive Session.

12
13 Mr. Carnicelli: Is there a second to go into Executive Session?

14
15 Mr. Castro: Second.

16
17 Mr. Carnicelli: Moved by Commissioner Pali, seconded by Commissioner Castro to go into
18 Executive Session to address the Commissions' powers, duties, privileges, immunities, and
19 liabilities with Corporation Counsel. Would anybody like to speak to that motion?

20
21 Ms. Pali: I think it's important that we understand our dates and time frames and our duties as
22 opposed to our obligations to the applicant and follow the rules correctly.

23
24 Mr. Carnicelli: Okay, all those in favor of the motion to go into Executive Session? That is one,
25 two, three, four, five. Those opposed? One.

26
27 Mr. Hopper: There needs to be a two-thirds vote of the members so the Chair would need to
28 vote.

29
30 Mr. Carnicelli: Okay, so I will also vote so that is six in, six in favor of motion, so we will then
31 recess this meeting and go into Executive Session. Thank you.

32
33 ***(The Maui Planning Commission recessed at 11:05 a.m., and entered into Executive***
34 ***Session from 11:05 a.m. until 11:34 a.m. The Maui Planning Commission reconvened the***
35 ***regular meeting at 11:38 a.m.)***

36
37 Mr. Carnicelli: The Maui Planning Commission meeting of February 25th, 2020 is now back in
38 session. So I guess what is before us --. Maybe coming out of this, Mr. Carroll, is there anything
39 that you would like to add to the record at this point?

40
41 Mr. Carroll: Not at this point. Thank you very much.

42
43 Mr. Carnicelli: Okay. Corporation Counsel, is there anything that you would like to add to the
44 record at this point?

45
46 Mr. Hopper: No, I think in open session we went over some of potential options for the
47 Commission.

1
2 Mr. Carnicelli: Okay, thank you. Commissioner Robinson.
3
4 Mr. Robinson: Motion to defer.
5
6 Mr. Carnicelli: Okay, motion to defer by Commissioner Robinson. Seconded by Commissioner
7 Thompson. Would you like to speak to the motion please?
8
9 Mr. Robinson: I would not; just motion to defer.
10
11 Mr. Hopper: Again, just to clarify, this is deferred to the, the next meeting.
12
13 Mr. Carnicelli: Okay so it would be --
14
15 Mr. Robinson: March 10th.
16
17 Mr. Hopper: March 10th.
18
19 Mr. Carnicelli: March 10th, 2020. Would anybody else like to speak to or have comments on the
20 motion? Commissioner Pali.
21
22 Ms. Pali: So to confirm, you put a motion on the floor to defer to the next meeting which is
23 March 10th?
24
25 Mr. Robinson: With no stipulations or preconceived notions, just moving it to March 10th.
26
27 Ms. Pali: Okay, I just wanted to clarify. That was my question.
28
29 Mr. Robinson: Yes. Yes.
30
31 Ms. Pali: Okay, thank you.
32
33 Mr. Carnicelli: Okay, anyone else? Seeing none. Director?
34
35 Ms. McLean: The motion is to defer taking action on the D&O until the March 10th meeting.
36
37 Mr. Carnicelli: All those in favor of the motion please raise your hand. That is six ayes,
38 unanimous. So the motion will be deferred. The decision will be moved to the March 10th, 2020
39 meeting so thank you Mr. Carroll. Appreciate it.
40

41 **It was moved by Mr. Robinson, seconded by Mr. Thompson, then unanimously**

42
43 **VOTED: To Defer Action on the Proposed Decision and Order to the**
44 **March 10, 2020 Agenda.**

45
46 **(Assenting – K. Robinson, D. Thompson, K. Freitas, K. Pali,**
47 **C. Tackett, S. Castro)**

1 (Excused – P. D. La Costa, T. Gomes)

2
3 Mr. Carroll: Thank you all very much.
4

5
6 **E. DIRECTOR’S REPORT**

7
8 **1. SMA Minor Permit Report**

9
10 **This is for notification and review purposes. No action is anticipated.**

11
12 **2. SMA Exemptions Report**

13
14 **This is for notification and review purposes. No action is anticipated.**

15
16 Mr. Carnicelli: And then, I guess, moving on our agenda. Director.

17
18 Ms. McLean: Thank you Chair. Under Director’s Report, we have the SMA Minor and
19 Exemptions reports. Are there any questions on those?

20
21 Mr. Robinson: So moved.

22
23 **There were no questions or comments on the SMA Minor and SMA Exemption Reports.**

24
25
26 **3. Discussion of Future Maui Planning Commission Agendas**

27
28 **a. March 10, 2020 agenda items**

29
30 Ms. McLean: Then also the memo for items for the March 10th meeting. In addition to the D&O
31 that you just deferred, there’s a public hearing on a STRH Permit, and comments on a Draft
32 Environmental Assessment for the H2-Residential Project in Makena. You folks got, everyone
33 got the flash drive for that so that is for the next meeting.

34
35 Mr. Robinson: What is this flash drive for?

36
37 Ms. McLean: This is a Draft Environmental Assessment for the H2-Residential Project in
38 Makena, 53 condominium residential lots.

39
40 Mr. Carnicelli: And I believe if you want a hard copy of this you are to contact Ann Cua.

41
42 **Ms. McLean went over the items scheduled for the March 10, 2020 agenda.**

43
44
45 **F. NEXT REGULAR MEETING DATE: MARCH 10, 2020**

46
47 **G. ADJOURNMENT**

1
2 Ms. McLean: And then Commissioners, if I could quickly ask, as you are aware the County
3 Council is discussing the idea of creating new advisory committees. And one of the issues that
4 testifiers have raised is that the Commission takes testimony only at each item and not up front
5 for folks who may not be able to stay. I think that the reason we do that is because of the new
6 contested case procedure that we have, so if the Commission would consider taking testimony
7 at the beginning we would have to make sure that the applicant for all items would be here at
8 the beginning to have the opportunity to hear that testimony and cross examine if they wanted
9 to. Would that be something you would be willing to consider?

10
11 Mr. Carnicelli: Commissioner Robinson.

12
13 Mr. Robinson: With my experience I one of the proponents to move to after the item. Testifiers
14 before they would hear an application would go on about things that weren't even relevant or
15 incorrect, and would be confusing because you know we would sit here and we would hear
16 things for sometimes an hour. They get all emotional, and all up and down, and the applicant
17 goes, no, I'm not doing any of that, I'm not doing any of that. This is what I'm focused on. And
18 so, and it's, it's not a lack of hearing them, but I also do think with the new notices and things
19 like that people are allowed to put it in writing, you know. I don't know if we're moving into the
20 future where people can record their testimonies, you know. But I mean, to me, we moved it
21 after so that it would be more accurate and that the people would be more informed before they
22 testified.

23
24 And also, there are also complaints about testifying and then seeing a different plan than what
25 was presented, and they go, oh, can I testify again because I didn't, I didn't know that. And so,
26 yeah, it's a, you know, you can never win.

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

29
30 Ms. Pali: Yeah, I agree. I think that people come here sometimes with their own assessments
31 and assumptions. And I think even when I go to testify on items and then I hear facts that might
32 have been different from what I prepared then it gives me the opportunity to consider the actual
33 evidence and then maybe reform or revisit my testimony. And think that the -- I think anyone
34 testifying should hear the application first.

35
36 The other thing which we may not think about is I'm sensitive to the applicant. I'm sensitive that
37 they have to spend all this money, they have to hire all of these professionals, they spend all
38 their time to apply, and if they make a statement, they've got to have a couple of hundred pages
39 and about \$5,000 worth of, you know, professional, you know, opinions to prove that it's fact.
40 But then the testifier comes out with no evidence, sometimes mostly just an opinion with no
41 maybe effort -- now some do great effort -- but may don't, and I feel like we are endanger of
42 catering more to the testifier than to the applicant. And I feel like we have to be careful of equal
43 rights there. And so I would -- this, to me, be like oh, more convenient for the testifier, again
44 more inconvenient for the applicant. And I think we should balance it out a little so I agree to
45 keep it the same way.

46

1 Mr. Carnicelli: Thank you. Commissioner Freitas, do you want to speak to it or --? I saw you
2 leaning in. I didn't know if you were going for the mic or not.

3
4 Mr. Freitas: No. I think...what you're saying is do all the testifying in a scheduled day all in the
5 beginning, and then we go later on to actually hear it and vote on it.

6
7 Mr. Carnicelli: To me how I would look at this is two ways -- and I'm sorry to jump on you -- is it
8 used to be all of the testimonies in the beginning, and then we'd hear everything. And then we
9 kind of did a mix; you can either testify now because you got to go to work, or pick up your kids
10 or whatever it is, or you can wait after. So we did a combination thereof, and then that wasn't
11 working, and so then we went after, completely after each item, like what we do now. And like,
12 you know, Keaka and Kelli were talking about is the good news of that is you get more relevant
13 and meaningful testimony. You don't get more testimony, but you get more relevant and
14 meaningful testimony which is really what we want. But, you know, in today's world especially
15 when people want to testify in front of politicians, they just want to be heard. They don't care if
16 it's relevant. They don't care if it's meaningful. They just want to be heard. So I think we also
17 need to be sensitive to that, and I think that there can be a balance. So I think if, for me, I think it
18 just needs to be predictable to everybody, right. It needs to be predictable for the testifiers and it
19 needs to be predictable for the, for the applicants. I think if the applicants are smart what they'll
20 do is they can prepare in a matter in which is, okay, if this person is going to go up there and
21 spew about things that are not relevant, they got to make sure that we don't get hooked in.
22 That's on the applicant to make sure that, you know, because we tend to -- I'm just as guilty as
23 everybody. If there's blood in the water we turn into sharks. And so if somebody starts to
24 chumming and all of sudden, you know. So, it's up to us to stay in check, and it's something
25 that the applicant to keep us in check if that's what we're going to do. So I think that I'm not
26 opposed to doing a little bit of both to saying okay for the sake if that's what people want to do is
27 testify at the beginning, whether it's meaningful or not, whether it's relevant or not, whether they
28 want to go talk about hoo-ha and then just go. Alright, then it's up to us to make sure. It's like
29 going, okay, that's just hoo-ha. So that's just sort of what I land on it.

30
31 Mr. Freitas: I prefer the way we do it now; presentation, then public testimony, and then we
32 discuss right after.

33
34 Mr. Carnicelli: Got you.

35
36 Mr. Freitas: So I would say just keep it the way it is.

37
38 Mr. Carnicelli: Okay. Keaka.

39
40 Mr. Tackett: I agree.

41
42 Mr. Robinson: Yeah. And, and I remember what we did kick around too is people that testified
43 before, well maybe just one minute, just to say you're for, you're against or pro, and I think there
44 was, there was more of legality of limiting only one minute . . . (inaudible) . . . Because we want
45 to say, okay, you can come and talk between 9:00 and 9:15, you know, you've got your time,
46 but we've got three minutes to hear things that might be incorrect. And so I don't know in the

1 future if that one or even 30 seconds just to say. The way I'm opposed to it because we count
2 how many is for and how many is against.

3
4 Mr. Carnicelli: Sure.

5
6 Mr. Robinson: That's one thing that we don't get when we do it this way.

7
8 Mr. Carnicelli: The other part you got to remember is the way with which we now also operate
9 which influence this is anything that we make a decision on, we do recommendations
10 sometimes, but we make decisions on a lot of things. Anything that we do a decision on we
11 considered a contested case which then means the applicant has the opportunity to cross
12 examine. Right, so that's the other piece, okay like, I'm for, not against. So again there's another
13 layer to it that's different than County Council that they don't have to consider. So anyway,
14 Commissioner Tackett, I believe you said you wanted to chime in on it that you are in
15 agreement.

16
17 Mr. Tackett: With . . . (inaudible) . . . is correct.

18
19 Mr. Carnicelli: Okay.

20
21 Mr. Tackett: So I like it --

22
23 Ms. Pali: We're the same.

24
25 Mr. Carnicelli: Okay. Same, same, same. Mr. Hopper.

26
27 Mr. Hopper: There's a mention of legality. I think for time limits, you have to impose a
28 reasonable time limit and it has to be consistently applied. So I don't necessarily know if three
29 minutes is the minimum that you can give, but it's been one that's been pretty common. The
30 other thing is that people testifying at the beginning, it's correct, if it's a contested case, the
31 applicant should be allowed to ask them questions. Another part of the issue was if people had
32 to leave early and couldn't be there for the item if they could come in and testify at the
33 beginning. I don't think there's necessarily a legal problem with that, but I know that you guys
34 may have concerns about the testifier's hearing the, the presentation beforehand. But just for
35 the legal issues for contested cases, you could probably break up the testimony provided that
36 you had a, a -- that you had an applicant there who is a representative to be able to ask the
37 cross examination questions. And those people would be sworn as well. So just to clarify that for
38 the legal issues because I heard some of that come up in the discussion.

39
40 Mr. Carnicelli: Got it.

41
42 Ms. Pali: But as Commissioner Keaka said they can do it in writing. So if they have a work
43 schedule or family issues whatever, they can simply do it on e-mail or writing the night before.
44 And I don't feel like we should change our agenda for a schedule. We all have sensitive
45 schedules. We, ourselves, are here volunteering, you know, dealing with our schedule. And so
46 when you apply it to one or two cases, then how are we consistent with that all together? I think
47 we would start to get into trouble if we try to make for exceptions for that.

1
2 Mr. Robinson: And there are other Commissions that do their work at night. Just to say
3 something.

4
5 Mr. Carnicelli: Commissioner Castro, did you want to chime in at all? No? Well, and actually, no,
6 I think that -- because that was another part of it that came up was not only taking testimony
7 afterwards, but you know, taking, do we do this at night? You know I was recently in Arizona
8 visiting my mom and dad, City Counsel meetings are at night, Planning Commission meetings
9 are at night, you know.

10
11 Ms. Pali: Are they paid?

12
13 Mr. Carnicelli: Excuse me?

14
15 Ms. Pali: Are they paid?

16
17 Mr. Carnicelli: No, the Planning Commissioners are not paid.

18
19 Ms. Pali: The City are paid?

20
21 Mr. Carnicelli: Yeah, but it's City, right, but I think it's funny. Right, I mean, the County Council
22 has a meeting at nine o'clock in the morning to discuss us having meetings at nine o'clock in the
23 morning. So, so, I just think that, you know, I mean, if we wanted to do that, you know --

24
25 Ms. Pali: Make that no.

26
27 Ms. McLean: Message heard loud and clear. I said that I would bring it up because we could
28 change it back, but it's, it's --.

29
30 Ms. Pali: I have kids and I have priorities.

31
32 Mr. Carnicelli: So one of the things that I just want to toss out there to you guys is the West Maui
33 Community Plan is currently at the CPAC level. That committee is scheduled to be through the
34 middle of April, but probably finish before April. Long Range Planning will then call of the data.
35 They will then forward. You know, we're the next step in the West Maui Community Plan
36 process. Those meetings, we have six months to deal with that. Those meetings will be
37 separate and apart from our second and fourth Tuesdays. So I know I kind of brought up this
38 before, we as a Commission are going to have to make a decision how we want to do this. Do
39 we want to do a meeting every single night for two weeks? Do we want to do --?

40
41 Ms. McLean: I would prefer that this discussion be in conjunction with our Long Range staff.

42
43 Mr. Carnicelli: Okay.

44
45 Ms. McLean: Because -- and it's not on the agenda. I mean I took liberties with the other item.

46
47 Mr. Carnicelli: Right. This is under new business.

1
2 Ms. McLean: But I, I think they have an idea of how they're going to be presenting it and how to
3 walk through it. So if it's okay with you to be more of a --

4
5 Mr. Carnicelli: I would like for us to lead and not them.

6
7 Ms. Pali: Good one.

8
9 Mr. Carnicelli: Because I've seen how they've handled it so far, so I think that I would like for us
10 to make the decision on how we would like to handle the, the -- our meetings.

11
12 Ms. McLean: Of course the decisions are yours --

13
14 Mr. Carnicelli: Okay.

15
16 Ms. McLean: -- are yours, but I would ask that they be available to participate in the discussion.

17
18 Mr. Carnicelli: Okay, fair enough. Commissioner Pali.

19
20 Ms. Pali: One more quick question on the advisory committees because I think it's kind of the
21 first time I've heard it being talked in this forum. And so is there more information to learn? Is it
22 open to the public? Are these selected people that being, you know --? I'd like to learn more
23 about that. I don't know, since it's not on the agenda, but if I could get more information on that.

24
25 Ms. McLean: And it's, it's still in the Council's Planning and Sustainable Land Use Committee. I
26 sent up a long series of questions of things for them to consider as they proceed with discussing
27 that. So it's not clear what their authority is going to be, what the membership is going to be,
28 how the members are appointed, whatever requirements there may be.

29
30 Mr. Hopper: Something you can put on a future agenda?

31
32 Mr. Carnicelli: It's at the County Council.

33
34 Mr. Hopper: Yeah, I understand but for --

35
36 Ms. McLean: To give the Commission an update.

37
38 Mr. Hopper: Yeah, if you want an update just because it's not on the agenda here. And if it was
39 people would want to come and testify.

40
41 Mr. Carnicelli: Fair enough. Commissioner Freitas.

42
43 Mr. Freitas: Maybe a three minute answer to this question. I'd like to read everything I get, and I
44 have no idea what I'm looking at when I see this guy and we always go ahead and go okay
45 everybody's saw that. Okay, boom. So it actually looks like the same -- some of the things are
46 the same on both but one is Minor project and one is an Exempted project. So is there
47 something that we should be looking for maybe a mistake or are we supposed to be questioning

1 how come you allowed this or --? Why is it even on our agenda when we just breeze right
2 through it every meeting?

3
4 Ms. McLean: Okay, it's on the agenda because your SMA Rules require or call for the
5 Commission to be notified of SMA Minor Permits or SMA Exemptions that the Department staff
6 issues because the meeting date where this notice takes place sets off the appeal time for
7 someone to challenge either the issuance of an Exemption or the issuance of a Minor permit.
8 And then, from time to time Commissioners have questions, oh, what is this permit? You know
9 what is the status? What is the scope? So from time to time, there are questions on whether it's
10 a Minor or an Exemption. You know they'll see something going that doesn't seem like an
11 exempted action to me, what's that all about?

12
13 Mr. Freitas: Looks like you have a tent on one, and then you have a tent on the other. Wouldn't
14 a tent fall under the same?

15
16 Mr. Robinson: The size.

17
18 Mr. Freitas: The size of the tent. You have one Grand Wailea tent, and then you had another
19 tent on the other page, Keysight Technology. Yeah, that's probably a small tent that's why.
20 Okay, you answered my question. Thank you.

21
22 Mr. Robinson: Commissioner, also, it's also on the website so people can see and they can say
23 something or come testify about that, about that.

24
25 Mr. Freitas: But we would open for public testimony about this?

26
27 Ms. McLean: Yeah.

28
29 Mr. Robinson: Is I think when people ask I'm here to testify or they'll start the process. There's
30 no, there's no only this dates and that's something open that they can . . . (inaudible) . . .

31
32 Mr. Freitas: Okay.

33
34 Mr. Robinson: Or they'll call one of us and say can you look into that.

35
36 Mr. Hopper: I think the list actually has certain things that are required by your rules to be put on
37 the list like certain exemptions and other things. And part of that is to give notice to maybe
38 member of the public who would want to look at that. As far as discussing fully on the agenda, I
39 think it can, for a lot of those, it can be alright I'm interested in this application, could you on a
40 future agenda give me more details or something like. But I think some of this is a public notice
41 function by your rules to require some of this stuff. And some of it is informational for you so that
42 if you see an item that you have a question on you could ask at the meeting, or if you need
43 more detail, a lot of times I've seen things asked to be put on a future agenda and discussed
44 further at that, that meeting.

45
46 Mr. Freitas: So this is a permit prior to any construction and stuff like that. Because the guy that
47 was in our, one of our settlement thing, he's on this list, the Sturgis guy, yeah.

1
2 Mr. Hopper: Well, it depends on the permit and it could be the same owner for other property,
3 but I'm not sure.
4
5 Mr. Freitas: Oh, okay.
6
7 Mr. Hopper: But yeah, I mean these are generally I think the Department can provide additional
8 info, but I think it's already things that have already been approved or issued.
9
10 Mr. Freitas: They're working on it.
11
12 Mr. Hopper: I think. I don't want to speak on a particular item because I don't have personal
13 knowledge. Jared may have additional info, generally what this is.
14
15 Mr. Burkett: Hi. That, that specific question you mentioned about Sturgis, it is a separate
16 property.
17
18 Mr. Freitas: Oh.
19
20 Mr. Burkett: I processed that permit.
21
22 Mr. Freitas: Okay. Thank you.
23
24 Mr. Carnicelli: Anything else?
25
26 Ms. Pali: What about for future agenda?
27
28 Mr. Carnicelli: Commissioner Pali.
29
30 Ms. Pali: This is circling back I think two other meetings, Director. We were going to maybe talk
31 about updating any kind of internal policies to just have a standard of measurement for
32 attendance so we could be better Commissioners.
33
34 Ms. McLean: That --
35
36 Ms. Pali: I have a couple of vacations coming up, you know.
37
38 Ms. McLean: That would be an amendment of you rules and we have to publish that at least 30-
39 days prior so that wouldn't be May 10th. That could be -- probably not May 24th either. So that
40 would be the first meeting in April we can maybe have that.
41
42 Ms. Pali: Could we put that on there?
43
44 Mr. Robinson: As well as on agenda is anything from the housing credits and their department?
45
46 Ms. McLean: I've been working with Housing to see when they're available to go through.

1
2 Mr. Robinson: Maybe second meeting in March? Send a memo.
3
4 Mr. Carnicelli: Before Keaka got to go.
5
6 Ms. McLean: Yes.
7
8 Mr. Carnicelli: Anything else? Alright, thank you everyone. This meeting is now adjourned.
9
10
11 The meeting was adjourned at 11:59 a.m.
12
13

14 Respectfully Submitted by,

15
16
17
18 LEILANI A. RAMORAN-QUEMADO
19 Secretary to Boards and Commissions II
20 *For* CAROLYN TAKAYAMA-CORDEN
21 Secretary to Boards and Commissions II
22

23
24 **RECORD OF ATTENDANCE**

25 **Present**

26 Lawrence Carnicelli, Chair
27 Stephen Castro
28 Kawika Freitas
29 Kellie Pali
30 Keaka Robinson
31 Christian Tackett, Vice Chair
32 Dale Thompson
33

34 **Excused**

35 P Denise La Costa
36 Tina Gomes
37

38 **Others**

39 Michele McLean, Director, Department of Planning
40 Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel