

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

January 20, 2010

Council Chamber, 8th Floor

CONVENE: 10:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Sol P. Kaho'ohalahala, Member (In 10:33 a.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Jo Anne Johnson, Member

STAFF: Kirstin Hamman, Legislative Analyst
Camille Sakamoto, Committee Secretary
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros
Kathy Kaohu, Executive Assistant to Councilmember Sol P. Kaho'ohalahala

ADMIN.: Jeff Hunt, Director, Department of Planning
Milton M. Arakawa, Director, Department of Public Works
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Chip Doyle
Pam English, Development Manager, Maui Land & Pineapple Company, Ltd.
Charlie Jencks
Megan Wells
Irene Bowie, Executive Director, Maui Tomorrow, Inc.
Kaniloa Kamaunu
Johanna Kamaunu
Lucienne deNaie
Howard Hanzawa, Vice-President, Kaanapali Land Management Corp.
Gwen Hiraga
Bruce U'u
Bill Kamai
John Rapacz
Christopher Hart
Five (5) additional unidentified attendees

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PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MOLINA: . . .(*gavel*). . .The Committee of the Whole meeting for January 20th, 2010 is now in session. For the record, we have in attendance the Committee Vice-Chair Danny Mateo. Good morning.

VICE-CHAIR MATEO: Good morning, Chairman.

CHAIR MOLINA: Good morning. And we have Committee Member Gladys Baisa, good morning.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MOLINA: As well as Baisa, we have Committee Member Bill Medeiros, good morning.

COUNCILMEMBER MEDEIROS: Aloha. Good morning, Chair.

CHAIR MOLINA: Good morning. And Committee Member Wayne Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MOLINA: And Committee Member Joe Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: And Committee Member Mike Victorino.

COUNCILMEMBER VICTORINO: Good morning and aloha, Chair.

CHAIR MOLINA: Good morning. And Committee Chair Mike Molina. Good morning, all. Excused this morning we have Committee Members Jo Anne Johnson and Sol Kaho'ohalahala. Members, we have one item on our agenda, but before that, I want to thank all of you for showing up here on an off-week. For those in the public who are not aware, typically during the off-week, Council Members are meeting with constituents or attending community functions, and I understand all of you had to make some adjustments in your schedule in order to hear this proposal from the Administration. So, as the Chair of this Committee, I want to thank you all for taking time out of your schedules to hear this consideration.

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ITEM NO. 23: BILL TO REQUIRE LAND USE AND ZONING CONSISTENCY FOR PROPOSED SUBDIVISIONS (C.C. No. 09-258)

CHAIR MOLINA: Members, we have of course one item on the agenda, which is a bill to require land use and zoning consistency for proposed subdivisions. The Committee is in receipt of County Communication No. 09-258 from the Planning Director and Director of Public Works transmitting a proposed bill entitled, A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS. The purpose of the proposed bill is to establish that land uses within a proposed subdivision shall be consistent with, even if they do not necessarily conform to, State zoning, the County General Plan, and County zoning as determined by the Planning Director. Now, Members, typically what we always do in Committee is take testimony from the public before we delve right into the subject matter; however, I would like to ask you for your consideration to have the Administration do a presentation first, not only for you, but for the public, and once the presentation is done, then the Chair will open it up for public testimony and then we'll open up the floor for questionings from the Members. Any objections to proceeding in that fashion today, Members?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you, Members. And oh, by the way, I forgot to recognize our hardworking Committee Staff here with us. We have Committee Analyst, Kirstin Hamman, as well as Committee Secretary, Camille Sakamoto. And from the Administration, we have the Director of Planning, Mr. Jeff Hunt, and our Public Works Director, Mr. Milton Arakawa, and from the Corporation Counsel, we have David Galazin. So, Members, we shall--

COUNCILMEMBER NISHIKI: Chair?

CHAIR MOLINA: --proceed. Yes, Mr. Nishiki?

COUNCILMEMBER NISHIKI: I want to be able to ask questions also.

CHAIR MOLINA: Yes.

COUNCILMEMBER NISHIKI: You're gonna allow them to do it, then I want to be able to ask questions also.

CHAIR MOLINA: Yes, once the presentation is done--

COUNCILMEMBER NISHIKI: But also, I want them to tell me who initiated this.

CHAIR MOLINA: You will have--

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COUNCILMEMBER NISHIKI: Okay?

CHAIR MOLINA: --that opportunity.

COUNCILMEMBER NISHIKI: I, I really want you guys to be able to be honest about it. I want to know who initiated it.

CHAIR MOLINA: Alright. Thank you, Mr. Nishiki. Not only for you, Mr. Nishiki, but all Members will be given that opportunity to ask questions of the Administration. And I would ask, as the Committee Chair, that we be civil in this whole matter today. I know this is a sensitive issue for some, so I will *expect* that decorum in these Chambers will be maintained. Okay?

Members, we shall prepare the Chambers for a presentation. We shall take a brief recess. Committee Staff, how much time do you think we need? Maybe three minutes? Five minutes?

COUNCILMEMBER VICTORINO: . . .(*inaudible*). . .

CHAIR MOLINA: Okay, three-minute recess subject to the call of the Chair. . . .(*gavel*). . .

RECESS: 10:05 a.m.

RECONVENE: 10:12 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for January 20th, 2010 is now reconvened. Members, we will have a presentation done for us on Committee of the Whole Item 23 by the Director of Public Works, Milton Arakawa. Mr. Arakawa, you have the floor.

MR. ARAKAWA: Thank you, Mr. Chair. And thank you for the opportunity to be here this morning. We have a proposed bill before the Committee which is entitled, A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS. And this bill pertains to how State land use, community plan, and zoning must relate to each other in the case of a proposed subdivision of land.

First of all, what are the current provisions of the Code? We're just talking about a portion of Section 18.04.030, which reads in pertinent part: The Director--and this means the Public Works Director--shall not approve any subdivision that does not conform to or is inconsistent with the County General Plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land. What we've been working with all these years is that they have, there really has been no Code

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definition of “conformity” or “consistency”. So over time, “conformity” has been interpreted to mean that the three designations--State land use, community plan, and zoning--must match. For example, if you have a State land use classification of Agricultural, you have a community plan designation of Agricultural, and you have County Agricultural District zoning, this would be considered conforming or matching. But if the three designations do not match, then one or more of the designations would need to be amended before an applicant can obtain subdivision approval. Let’s go over some examples. If you have a school, for example, that is proposed on land which is State land use Urban and the community plan designates that same property Public/Quasi-Public but the zoning is R-1 Residential District zoning, then this is not considered conforming or matching. However, a school is permissible in the State Urban District; it’s also permissible in the Public/Quasi-Public District in the community plan, and a school use is also allowed in the R-1 Residential District zoning. So, although school use is allowed within all three designations, a conformity requirement would not allow a subdivision to be approved. Another example, if you have single-family residential, which is proposed on land which is State land use urban, the community plan designates that same property as Single Family Residential, but let’s say the zoning is A-2 Apartment District, this is also considered not conforming. However, if you look at Single Family Residential use, it is permissible in the State Urban District, it’s permissible in the Single Family Residential District, and it’s also permissible in the A-2 Apartment District zoning; however, although Single Family Residential is allowed within all three designations, a conformity requirement would not allow a subdivision to be approved. Let’s look at another example, and this is common in some areas of the County. If you look at the upper left portion of the graphic, there are many properties, for instance here where, let’s imagine this is a flatter portion of the property, and many properties extend down to the invert or the bottom of a stream or a gulch. . .like, like so. Now, let’s imagine that the State land use, maybe it’s Urban for the entire tax map parcel, but in many cases the community plan recognizes the flatter portion as a developable portion, and they recognize the stream or gulch portion as open space. But let’s say the zoning recognizes the entire parcel as B-2 Community Business District. Here, you would have a nonconformity between the Open Space designation here and a portion of the B-2 Community Business District here. So, in this particular case under the current provisions, a conformity requirement would not allow the subdivision to be approved. The crux of the matter is that zoning districts allow a variety of uses, or to put it another way, individual land uses may be permissible in *several* zoning districts. And again, some examples, if you take a look at park use. Parks are allowed in the PK-1, PK-2, and PK-3, the Park Districts. Parks are also allowed in the Open Space Districts, OS-1 and OS-2. Parks are also allowed in the Residential Districts, R-1, R-2, and R-3. It’s allowed in Duplex; also allowed in the Rural RU-0.5 and RU-1 Districts. General commercial use, of course, would be allowed in the B-2, B-3, Business Country Town Districts, Business Residential Districts, M-1 and M-2 which are the Light Industrial and Heavy Industrial Districts, and it’s also allowed in the Hotel District as an accessory use. Public parking is allowed in the Public/Quasi-Public Zoning District. It’s also allowed in the B-2, B-3, Business Residential Districts, and also allowed in M-1 and M-2 Light

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Industrial and Heavy Industrial Districts. Apartment use is allowed, of course, in the A-1 and A-2 Apartment Districts. It's also allowed in the Business Country Town District, except on Molokai. Apartments are also allowed within the B-2 and B-3 Districts and also allowed in M-1 and M-2 Light Industrial and Heavy Industrial Districts. And Single Family Residential is allowed in the R-1, R-2, R-3, R-0, in the Duplex District, also in A-1 and A-2 Apartment Districts, and it's also allowed within the B-1, B-2, and B-3 Zoning Districts under certain conditions. And in some cases, we've had difficulty to determine what constitutes conformity. There are some community plan designations, for example, such as Business Multi-Family or Business Industrial and Service Business/Residential which currently do not have a corresponding zoning category. And for some community plan and zoning designations, it is unclear as to what constitutes a "match". For example, what community plan designation would match B-R, the Resort Commercial zoning, or Duplex zoning? For example, in the B-R case, would the community plan designation be Resort or would it be Business Commercial to be the matching? In the Duplex case, should it be Single Family Residential or should it be Multi-Family, which is the conforming community plan designation?

So, if . . . if the three land use and zoning categories do not match, then a conformity requirement would require, would mandate a State Land Use District Boundary Amendment, Community Plan Amendment, and/or Change in Zoning. And if a Community Plan Amendment is needed, this also triggers environmental review requirements of Chapter 343, Hawaii Revised Statutes. Basically, this would require either an Environmental Assessment or an Environmental Impact Statement. I would note that this conformity requirement affects not only large developers, but it also affects many smaller subdividers as well. We have . . . where you have a number of families which may have smaller land holdings, but if you have a nonconformity in the three land use designations, your subdivision will not be approved. So, conformity mandates that many subdividers would need to complete a lengthy and costly permitting process before their subdivision is approved. And again, conformity may require State Land Use District Boundary Amendment, Community Plan Amendment, or Change in Zoning applications *even if* a subdivision may otherwise comply with all other requirements. The proposed amendments which you have before you would require *consistency* instead of conformity. And for the first time we are proposing a definition of consistency, and that's on the screen there. It would mean that land uses that are proposed within the subdivision are permitted by the County General Plan, Community Plan, State Land Use Classification, and Zoning for *that* portion of the site where each land use is proposed. So, as long as the land uses are *consistent*, a subdivision may then be approved under the proposed bill if it passes. And since the Planning Department is intimately involved with the State Land Use, Community Plan, and Zoning processes, the Planning Director should be the appropriate authority to determine consistency.

One part of the current process that needs to be changed is that subdividers do not normally declare a proposed use as part of a subdivision application. That's under the current process. So to ensure that subdividers comply with a proposed use requirement,

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the Code amendments allow the Planning Director to impose conditions to ensure consistency. For instance, conditions may be attached to Special Management Area permits or project district approvals. And the proposed bill also allows that the Planning Director may also require that a unilateral agreement be executed and recorded, thus subdividers and any subsequent purchasers of property would be bound by these declarations of use. So if we go back to our examples, the school use would be permissible in the State Urban District, Public/Quasi-Public community plan district, and the R-1 Residential zoning District. This would meet the test of consistency. Also, for Single Family Residential use, this would be permissible in the State Urban District, permissible in the Single Family Residential District in the community plan, and within the A-2 Apartment District zoning. And this would also meet the test of consistency.

And where there may be more than one of each State land use, community plan, or zoning designations for a proposed subdivision, the proposed amendments state that consistency can be determined for that portion of the site where each land use is proposed. And a subdivider would be bound to the proposed uses through conditions of approval or through a unilateral agreement. And this would apply in the previous case that I talked about where there may be more than one community plan or even if more than one zoning district on a particular piece of property. So if the applicant has a condition of approval or executes a unilateral agreement, it could be consistent.

I would note that this is an amendment to Title 18 of the Code and these are not normally reviewed by the planning commissions; however, since this proposal involves planning and land use, it was circulated to the three planning commissions for review and comment. And you have all of the minutes in your binders for you today. The Lanai and Molokai, the Lanai and Maui Planning Commissions recommended approval of the proposed bill. And the Molokai Planning Commission felt that it should make the consistency determination; however, if they did not make that determination within 45 days, it would revert to the Planning Director.

So, our recommendation is that the...of both the Department of Planning and the Public Works Department...is that we recommend approval of the proposed bill, and we believe that the amendments provide much needed clarification as to how State land use, community plan, and zoning must relate to each other in the case of a proposed subdivision. And we believe that *consistency* is a fair and reasonable basis on which to approve subdivision of land in the County of Maui. So, with that, that concludes my presentation, Mr. Chair.

CHAIR MOLINA: Alright, thank you very much, Mr. Director. Alright, Members, we're going to take a short recess, open up the Chambers again for public testimony, and also brief comments from the Planning Director, then public testimony, and then the Chair will open up the floor to you to ask the Administration questions regarding Committee of the Whole Item 23. Meeting in recess. . . .(gavel). . .

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RECESS: 10:25 a.m.

RECONVENE: 10:27 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for January 20th, 2010 is now back in session. Members, before we open the floor up for public testimony, I'd like to give the opportunity for the Planning Director to give a few brief remarks before we go into public testimony. Mr. Hunt?

MR. HUNT: Thank you, Mr. Chair. The Department's mission statement is to manage growth in a sustainable manner that balances our economy, culture, and environment. A common complaint that I hear from the citizens is that our permitting process is too burdensome. The Department, in response to this, continually seeks methods to balance the streamlining of permitting to provide for economic development while still protecting our environment and our culture. Specifically, the bill before you today, the overall intent would be to streamline the subdivision process while still providing for adequate regulations of subdivisions. It'd still require compliance with the State Land Use Designation, the Community Plan, and Zoning. In those few instances where the State, Community Plan, and Zoning don't exactly match, a subdivision could still be *approved* but only if the proposed *uses* are allowed by the State, Community Plan, and the Zoning. This is similar to how proposed land uses are right now if no subdivision is requested. We look at the three levels of entitlement and if the proposed use is allowed in the State, the Community Plan, and the Zoning, then the Planning Department signs off on it. It's just that when it gets to a *subdivision*, there's this issue of conformity and that's what we're trying to address today. The bill would still provide for review of projects; most of these major projects require SMA, project district, planned development. The bill specifically has a prohibition against further subdivision of Interim zoned land. We've heard from the Council and from others that Interim zoned land should be phased out and it shouldn't be subdivided. The bill also provides for conditions of approval and/or an agreement be recorded to assure that future use of the land continues to be consistent. This would be required, it is envisioned that this would be required for those cases where there is no SMA or project district or planned development. But the bill does not add any new requirements to the permitting process in that regard. The Department already has the authority to place conditions of approval on subdivisions. We, on average, place six conditions, according to our staff, sometimes more. We also commonly require a *use* agreement, particularly for agricultural land. I shouldn't say "commonly", we do on every agricultural subdivision, we require a use agreement so that the future use of that agricultural land within a subdivision will be consistent with the Agricultural zoning. So, the concepts of conditions of approval and use agreements for subdivided land is not new. As the Director of Public Works mentioned, the bill was reviewed by all three of the planning commissions. We felt that was appropriate because it affects land use. The Maui Planning Commission recommended approval of the bill as drafted. The Lanai Planning Commission recommended approval of the bill as drafted. The Molokai Planning Commission recommended approval of the bill but with the provision that

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rather than the Planning Director determining consistency, that the Planning Commission on Molokai determine consistency within a 45 day period, otherwise it would default to the Planning Director's recommendation. So, in summary, we believe the bill would help provide for economic development. There are several projects that are stalled right now because of this subdivision issue, and we believe the bill would streamline the process for these projects to move along as well as others in the future, but only if the proposed uses are consistent with the State, Community Plan, and Zoning.

CHAIR MOLINA: Okay--

MR. HUNT: Thank you.

CHAIR MOLINA: Thank you very much, Mr. Hunt. And Members, again, I will give you the opportunity to ask questions of the Administration once we give the public the opportunity to testify. These are the people that we serve, so that is why I would like to give the public the chance to speak first, and of course, as we all know, members of the public have a limited amount of time to park their cars, so that is why I would like to give them a chance to speak first.

COUNCILMEMBER NISHIKI: Chair?

CHAIR MOLINA: Yes, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, you know, you take a new twist by allowing the Administration to come in and, and give their spiel rather than the public commenting on the bill. But now, when I ask you about asking Administration, and again they are allowed to give their spiel, I would like the opportunity to ask them a few questions prior to the public giving testimony. I just feel like you've changed the rules here in how you handle it, and, and, and yet now when the, many of us want to ask questions, we're disbarred.

CHAIR MOLINA: No, there's no disbarment going on, Mr. Nishiki. There...

COUNCILMEMBER NISHIKI: Okay, then can I ask a question?

CHAIR MOLINA: No, not until the public has their chance to speak and that's it, okay? Members of the public, you'll have three minutes to testify with one minute to conclude, and please state your name or any organization that you may be representing. And again, we have eight members of the public who have signed up to testify. And again, I would like to yield to the public first to speak, and then Members we will have *all* the time in the world to ask questions of the Administration. I do want to emphasize we do have an evening Planning Committee meeting tonight. The Chair's intent is to take this up to no later than one o'clock today. Of course, I know some of you may have other plans, you may have appointments. So, we will see how long we can go, but no later than one

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o'clock, Members, okay? Alright, we have Chip Doyle to speak, to be followed by Pam English on Committee of the Whole Item 23.

NOTE: Pause while Mr. Doyle approached the podium.

CHAIR MOLINA: And before Mr. Doyle speaks, the Chair would like to recognize Member Kaho'ohalahala to our proceedings this morning.

...BEGIN PUBLIC TESTIMONY...

MR. DOYLE: Good morning.

CHAIR MOLINA: Good morning.

MR. DOYLE: My name is Chip Doyle. I am a small business owner here in Hawaii. My company is called Group Pacific Hawaii and we provide project management, construction management services to landowners throughout the State. We are currently building the Yokouchi family pavilion at Maui Arts and Cultural Center, and we are the project managers for the Hyatt Regency timeshare development in Kaanapali. My business, as well as other businesses in the architectural engineering and design community, as well as contractors, are being hurt because our clients cannot subdivide their parcels. I understand this glitch in the interpretation on the current ordinance is being addressed by both the Directors of Planning and Public Works and . . .and that this language and proposed change has been endorsed by Corp. Counsel. And now it's before you to take action as far as moving things along. I'm asking that you take action. Take action today. Put people back to work. We've had a lot of projects stalled, and by approving this change, it will create thousands of jobs, spark investment in affordable housing projects, secure funds, and secure funds for much needed improvements to Maui's infrastructure. So, I'm asking you to please take action today and accept these ordinance changes as proposed. Thank you very much.

CHAIR MOLINA: Okay, Mr. Doyle. Committee Members, questions for the testifier? Seeing none, thank you, Mr. Doyle. Next to testify we have Pam English, and she'll be followed by Charlie Jencks.

MS. ENGLISH: Aloha, Chair and Members of the Committee. My name is Pam English with Maui Land & Pineapple Company. I'd like to testify in *favor* of the zoning consistency bill before you today. I understand that the purpose of the proposed bill is to establish that land uses within a proposed subdivision shall be consistent with, even if they don't necessarily conform to, State zoning, County General Plan, and County zoning as determined by the Planning Director. This is an important delineation, albeit semantic, but the verbiage in the current ordinance has caused an enormous amount of unnecessary paperwork. One specific example that I've been working on is the paper subdivision for Maui Preparatory Academy. The reason for the subdivision is to separate the existing

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TMK so that we can gift land to the Maui Preparatory Academy for their school. Since we came to agreement with Maui Prep, we've completed a Change in Zoning to allow school use, renovated existing plantation dormitories to school facilities, opened the school, and added grades each year so that we're now serving K through 12. The facility is now in its fifth year of operation and we still haven't received subdivision approval. So we haven't been able to deed the land to MPA. Today, MPA desperately needs control of the deed so they can float debt on the land and keep the school operational. One of the major stumbling blocks has been the conformity to the West Maui Community Plan in accordance with the current interpretation of this ordinance. Because the Community Plan included the designation of Open Space along the highway frontage, the subdivision is seen as being in nonconformance. The Open Space delineation even goes through some existing buildings on the site. The mapping was imprecise and the practical benefit to this designation is nonexistent. The amendments suggested today will allow staff to use common sense in regulating consistency with the community plans and the County's and State zoning. We've worked with the staff on a few verbiage suggestions that I am here to support. One, clarify the language to state consistency with the *County* General Plan's Land Use Map Designations in lieu of, quote, general plan, comma, community plan. This helps clarify that every goal, objective, and policy does not need to be reviewed, but just the maps. Semantics have proven to be extremely important in this bill. And two, remove the language allowing the Director to impose conditions. Land use conditions should be left to the Council. Thanks for all of your work on the ordinance. This will go a long way to clarifying the intent of some conflicting legislation. We support the bill before you today. Mahalo.

CHAIR MOLINA: Okay. Thank you, Ms. English. Committee Members, questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Pam. Thank you for being here. I know this is near and dear to you and I'm sorry to hear about what's going on with Maui Prep. But you mentioned a couple of amendments that you'd like to see, and I'm particularly interested in your comments on allowing the Director to impose conditions. When I listened to the Director's presentation, he mentioned that he already does that. Do you see a difference? I mean, what is the fine difference?

MS. ENGLISH: I believe that the difference in this case is at *subdivision*, at the point in subdivision where it's *very* uncommon to have specific land uses already delineated, and I believe what the bill is trying to state is that he'll be allowed, or the Administration would be allowed to impose conditions to . . .to signify uses. Sometimes, when you're just doing the paper subdivision or a large lot subdivision say, you may not know specifically, *exactly* I'm going to do apartments here, open space here, or things like that. So, that's one of the, the fine lines that, that we've been very concerned about.

COUNCILMEMBER BAISA: Okay, I understand now the concern. Thank you very much.

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MS. ENGLISH: You're welcome.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Member Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Good morning, Pam.

MS. ENGLISH: Good morning.

COUNCILMEMBER PONTANILLA: Interesting. On your second bullet point--and remove language allowing for Director to impose conditions, land use conditions should be left to the Council. Can you give us a reason why?

MS. ENGLISH: I think that the Council, when they are looking at imposing conditions, have given a much broader background to the, to the submittal before them. I think that this bill is talking about a specific point in time, at the subdivision point in time. And if we're doing a planned development or something other, or something like that, that the Council has or will have *plenty* of opportunity to, to impose conditions. So, I think it's just the wrong period of time. And I think that answers it.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Committee Members, questions for Ms. English? Seeing none, thank you for your testimony.

MS. ENGLISH: You're welcome. Thank you.

CHAIR MOLINA: Next to testify on Committee of the Whole Item 23, we have Charlie Jencks, followed by Megan Wells.

MR. JENCKS: Thank you, Mr. Chair.

CHAIR MOLINA: Good morning.

MR. JENCKS: Members of the Council, good morning. I am having a letter hand, handed out to you that I wrote that supports my testimony this morning. Briefly, the Director of Public Works did a good job describing the issue. The thing that he left out, however, is the definition of a subdivision in Title 18, which is, the definition of subdivision is the subdividing of land into two or more parcels. That's *all* it is. It's not a land use discussion, it's a, it's, it's an application that's an administrative procedure to simply divide land into two or more parcels. And in the letter that I've handed out, it, I've provided to you the definition of subdivision. In many ways, looking at the PowerPoint, what came to my mind is the title of a book that I read a couple of years ago. It was called *The Death of Common Sense*. We have taken the subdivision process and, and, and, and extrapolated that into, into a discussion on land use designations on a

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community plan map that were never zoned, never defined, or never shown in any detail as to how they would impact property. And the, and the example that's in my letter is the property that's North Beach Makai where the Kaanapali Ocean Resort and the Intrawest Honua Kai projects are being built. We have open space corridors adjacent to the highway and the ocean, and the subdivision requests are being held up because of the inconsistency of the nonconformity between the community plan map and the zoning map. It's zoned Hotel, but you have these small perimeter pieces that are shown on the community plan map that were never zoned, never defined, and these designations are holding up jobs and investment in Maui County. So I, from a practical matter and having experience with the applications we're talking about today in Title 18. . .during my tenure here, this is truly a lack of common sense, a death of common sense. With regard to the bill that's before you today, my letter also provides an attachment that has comments on the bill, and I would refer you to the section that Ms. Baisa was just talking about. It's the section that allows the Director of Planning to levy conditions on a subdivision application. Once again, this is Title 18. It's an administrative procedure. I personally feel that the levying of conditions on a project is really the purview of this body. It comes in the form of land use applications, not a subdivision application. It's true that the Planning Department and the Public Works Department and a myriad of other agencies comment on subdivision maps. Those comments have to be in the context of the code sections they control--zoning, Title 18, flood hazard, et cetera. I don't encourage you to allow anyone to go beyond what they're actually controlling by the Charter and getting into areas such as building height, massing, or uses when this is simply a division of land. The influence on land of, let's say building height or density massing will come as a part of the zoning process. . .when you evaluate a specific project on a specific piece of land, is it going to be, is it going to create view issues, is it going to create environmental issues?

MS. HAMMAN: Three minutes.

MR. JENCKS: That's when you have those discussions, not in the context of an administrative procedure where it simply divides a parcel of land into two or more parcels. There are other comments on the bill; they're common sense. That's the only area that I think you really need to take a look at. And I, and I, I think if the bill passes it'll help a lot of folks, especially, by the way, there is a new high school in South Maui. That high school it's up, that will be subdivided out of land owned by Haleakala Ranch and Ka Ono Ulu Ranch will have the same issue. There's an open space corridor, it's Waipuilani Gulch that comes down adjacent to the school campus that will delay the project if you don't deal with this issue in a timely manner. So, I urge you to do that so that we can expedite the subdivision for that, for that application as well. I'll take any questions you may have and be happy to answer them. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Jencks. Committee Members, questions for the testifier? Seeing none, thank you for your testimony, Mr. Jencks.

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MR. JENCKS: You're welcome.

CHAIR MOLINA: Next to testify on Committee of the Whole Item 23, we have Megan Wells, to be followed by Irene Bowie.

MS. WELLS: Hi, my name is Megan Wells. I'm here on behalf of myself as a resident of Waiehu. I would just like to see that the consolidation and re-subdivision be included in this bill. I think that's a problem because, for instance, there's 553 acres being subdivided right now in Waiehu that has had no requirements whatsoever, not for water, not for access. The community doesn't know it's being subdivided, and I think that there needs to be some way of remedying that problem. And I think if that's excluded from this, it will be worse. So that's...and this parcel actually was...separate lot determinates where done, reconsolidation--but of the eight lots they're trying to get, four of them were Conservation zones that gave them this exemption. And I just thought there's something wrong that they could actually qualify for exemptions from water, access, notifying the community, the neighbors, using Conservation zoned lots to qualify for Ag zoned lots. Something...that sounded strange to me. But it is the case and I think it would get worse if this was excluded from this bill.

CHAIR MOLINA: Okay. Thank you very much for your testimony, Ms. Wells. Committee Members, questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Thank you very much. And thank you, Ms. Wells, for being here. I wanna really understand what you're trying to tell us and I don't. As the bill exists, are you in support or nonsupport, and if you're not in support, any amendments you want to make, can you just kind of state them for us?

MS. WELLS: The only amendment is C, where reconsolidation and subdivision is excluded.

The fact that this consolidation and re-subdivision loophole, I guess is what it is, could allow for a 553-acre subdivision to go down without any requirements, with nobody in the community being notified. Not even the homeowner who has the access going through his property was notified. And I'm told by subdivision and Public Works that this subdivision is going to be approved. The . . .it's exempt from water. I was told if they had one inch a year with catchment it would be approved. There's a 24-foot easement going through a private lot, that's approved, doesn't matter. Just doesn't seem right. So I think that if that's included in this bill, it would be a benefit to preserving our farm land, if nothing else.

COUNCILMEMBER BAISA: Okay. So I understand that you'd like that to be included rather than excluded.

MS. WELLS: That's correct.

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COUNCILMEMBER BAISA: Okay. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee Members, questions for the testifier?

COUNCILMEMBER KAHO‘OHALAHALA: Yeah.

CHAIR MOLINA: Mr. Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: More for clarification, yeah. I, I’m just curious, can you identify the area you’re, you’re speaking of--

MS. WELLS: It’s--

COUNCILMEMBER KAHO‘OHALAHALA: --that’s being currently subdivided?

MS. WELLS: --Waiehu. And it’s--

COUNCILMEMBER KAHO‘OHALAHALA: Waihee?

MS. WELLS: --the Bragg subdivision.

COUNCILMEMBER KAHO‘OHALAHALA: The what?

MS. WELLS: Living Waters Land Foundation subdivision.

COUNCILMEMBER KAHO‘OHALAHALA: Living Waters Foundation.

NOTE: Silence.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Thank you very much for that.

CHAIR MOLINA: Okay. Thank you, Ms. Wells. No other questions, Members, for the testifier? Thank you for your testimony. Next to testify on Committee of the Whole Item 23, we have Irene Bowie, followed by Kaniloa Kamaunu.

MS. BOWIE: Good morning, Chair and Council Members. Irene Bowie, Executive Director of Maui Tomorrow Foundation. I’m here today to state concerns that we have with this bill. While it may seem to make sense to streamline the process towards the language of consistency, we need to be very careful to keep important checks and balances in place. Even with the amount of scrutiny allowed in the current process, there are occasions when things slip by and projects get approved by accident, by error, or by omission creating vested rights that once established are very hard to correct. Just look at the Palama Drive case to see how things can go very wrong. By approving this bill, Council

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could be lowering the level of scrutiny, and with the added pressure of a 45-day deadline, you'll be making it even easier for these types of situations to develop. What best manages, management practices will be in place to prevent mistakes from being made? If the proposed bill is designed to make the process more efficient, especially for small projects, are we also looking at examples from other communities where the process has been streamlined by creating more of a one-stop-shopping experience for building permits? An audit of the Maui Planning Department in 2006 showed that a great deal of the public's time could be saved just by an applicant learning at the start of the process what is required from each department--Water, Fire, et cetera--rather than spending days going from department to department. The number three goal in the Countywide Policy Plan is to improve the stewardship of the natural environment by improving communication, coordination, and collaboration among government agencies, nonprofit organizations, communities, individuals, and landowners that work for the protection of the natural environment. Does the amended language in this bill accomplish this goal or move us farther away from it? The definition of "conform" is to act in accord with the prevailing standards and practices, as in conforming with our community plans. These were created with detailed information as to what and where development should occur. The definition of "consistent" is to be compatible or, in terms of our community plans, will this be just close enough? Please look closely at this bill before passing it as potential loopholes in the amended language could lead to unintended consequences. Thank you.

CHAIR MOLINA: Thank you, Ms. Bowie. Committee Members, questions for the testifier? Seeing none, thank you very much for your testimony, Ms. Bowie. Next to testify on Committee of the Whole Item 23, we have Kaniloa Kamaunu, followed by Johanna Kamaunu.

NOTE: Pause while Mr. Kamaunu approached the podium.

MR. K. KAMAUNU: Good morning, Council. My name is Kaniloa Kamaunu. I come from Waihee. My concern on the bill, it excludes, I think to me a very important part of the whole process. You know, for the last year, I've been coming to talk to you about my position as a kuleana owner. And in this process, it excludes me from that. Meaning that, as I have testified before, and my vested rights in the water, in the land...these things are still active but yet we're excluded, kuleana owners are excluded from this process because there's a lot of things culturally--and you guys are the ones using that word, culturally--involved here. The burial sites that are located in these areas...there is a law that already protects these sites. It was okayed in 1850. The King and his, and his...the Monarchy already had protected them from being removed. It asked one question, if you have the authority, where is the authority to move the bodies? So these subdivisions intrude on these things. The water use--they're looking at water use from where I live, and in actuality, and if you want to go and read all this stuff, you can look online, I have titles to the water. The State and County does not have title. They use public, for public purposes or whatever the wording you use, which gives you right to

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delve into the water. But I *have* rights. They're already in my Palapala Sila Nui. These people you see here, you guys want to streamline this application for them, it's incorrect because you have to take into consideration everything. So, if you're going to take in consideration these things, then take me into consideration and all kuleana owners. I not talking about the kuleana users, those that purchase kuleana lands. I'm talking about those who are heirs to the LCA's that belong, and RP's, that belong to these lands. We have to be incorporated, that's by law. If you continue to dismiss us, then you're breaking the law. Okay? So, I give you notice that I stand by the laws that are afforded to me to protect my rights. You are there to protect those rights. If you fail to do so and continue to let these things happen to myself and others like me, then you're breaking the law, too. You need to know law. Like you said, just because you don't know the law doesn't mean you have no responsibility. Okay? Not knowing the law is no excuse.

MS. HAMMAN: Three minutes.

MR. K. KAMAUNU: And your attorney can tell you that. So I plead with you guys, if you're going to look at this, then you guys have to look at me because I have title. Corp. Counsel knows that was given to me as of 1850. You have it, HRS 7-1, the Kuleana Act. The exemption you gave us this year because it's true, it's a law. So, I leave you with that. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Kamaunu. Committee Members, questions for the testifier? Seeing none, mahalo for your testimony. Next to testify on Committee of the Whole Item 23, we have Johanna Kamaunu, followed by Lucienne deNaie.

NOTE: Pause while Ms. Kamaunu approached the podium.

MS. J. KAMAUNU: Aloha. I'm Johanna Kamaunu. I'm from Waihee. And I'm not happy . . .(laughter). . . And I realize that's not your concern but I'm concerned as to this law and what it's proposing. You know, like my husband said, our community has been really active in seeing to how the land is being used in our area. It's true, we don't want development in there but we realize there's some changes that we have to make and we're willing to sit down and work on that. However, we came across a project that kind of went in, or came in under the radar...this Bragg property. And . . .(laughter). . . I'm sitting here trying to figure out how this all happened. And now, I come before you because I hear about this, I'm, I'm. . .being made familiar with what you're proposing, and I'm realizing that our community is not familiar with your proposal. Is it our due diligence? I don't know. But I really believe that this issue would be of major concern to my community and we're not getting it out there. I can tell you this much, Kani and I are the *only* ones that know today. How come it hasn't come to our community first? Did it go before another committee? Did it come before the, the. . .the Planning Commission? I don't know where it was, and here it is. And I'm, I'm sorry that I don't follow this more closely. . .but I'm concerned. Things are happening, things are changing without us knowing. We also found out about another project, affordable housing that's coming up,

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and we had no control over that. It's like done already. They're gonna build it. And we had no chance to comment on it. We did find out, hear about it in December, but by then it's too late for us to communicate to our community and take action on it. So, you know, there's, there's quite a few things happening here even though we're trying to keep abreast of the issues. I don't know if it's the process. I don't know who's doing this, but you're making it really *difficult* for us to participate, to be included. So, if anything, I would ask that you defer this and at least give Waihee an opportunity to study the issues here and comment on it. Mr. Nishiki asked for, I guess, having time to, for the commission, for the Members of the Council to talk with Mr. Hunt, and you know what, I always find that a lot more informative, as I'm sitting here in the gallery trying to figure out what's going on. When I have to come and testify before he makes his comments and before you ask your questions, I have no chance after that --

MS. HAMMAN: Three minutes.

MS. J. KAMAUNU: --to comment. So, that's why, if anything right here, right now, I really need a *fair* chance to communicate. I really need a *fair* opportunity to participate, and not just for me, but for my community. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Kamaunu. Committee Members, questions for the testifier? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. And, and, and you are really right. It, it, it was...and I'll ask the question, Mr. Chairman, so please don't rule me out of order...I am really trying to be nice to you today--

UNIDENTIFIED SPEAKER: ...*(laughter)*...

CHAIR MOLINA: Me, too.

COUNCILMEMBER NISHIKI: --*(laughter)*... really trying my best.

UNIDENTIFIED SPEAKER: ...*(laughter)*...

COUNCILMEMBER NISHIKI: Normally, this is not the process that occurs. Today, the process was a little, not "a little bit"...we've got a couple of people that, what I consider to be "emperors"--and this is not happening in Maui County, to be able to push their agenda, and again you heard, not against you Michael, but I just felt it was fair that if they're going to push their agenda, then let me ask the questions so that people can hear answers as to how this whole thing came about. Of course, this wasn't...allowed. So, I wish that you would, if you're going to change how the process is, that you take into consideration what I have to say. And normally, *if* someone asks a question, say a person like myself, not that I'm so bright, but I care, and you hear, perhaps your testimony may change. But in today's situation, that didn't happen. And, is *that* what you're trying to

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say--that someone may be pushing their agenda but because you don't hear two sides of the coin, you could be brainwashed by these individuals? Is that what you're trying to say to this Committee?

MS. J. KAMAUNU: . . .*(laughter)*. . . Not quite as eloquently . . .*(laughter)*. . .

COUNCILMEMBER NISHIKI: . . .*(inaudible)*. . .

MS. J. KAMAUNU: But . . .*(laughter)*. . . but, I'd like to save Mr. Victorino from being cornered by the Waihee Community Association and browbeating him for not bringing all this stuff to our attention. I don't think it's his fault. But there's some way, there *has* to be some way for us to get this information before it comes to you so that we *can* participate. And if you are going to have just the discussions here, then I think it's only fair that we participate *after* you have your questions asked of them.

NOTE: Silence.

MS. J. KAMAUNU: Okay?

CHAIR MOLINA: All right, Mr. Nishiki, another question?

COUNCILMEMBER NISHIKI: Yeah. And if I were to tell you that this is a power play, taking away some of the responsibilities from the Council where you have in this form of government, administrative, legislative, and judicial. If they're trying to again make this power play to *take* this away from the Council, is that something that you want to see Maui County government participate in? And, and, and I will bring this out later on, but is that something that you would like to see, a certain branch of government becoming almost dictators?

MS. J. KAMAUNU: Well, that's a lot of words to put into my mouth, but . . .*(laughter)*. . . I want to be able to participate. I want to be able to engage. And right now, *you* are the only ones being allowed to *engage*. And unless Mr. Victorino comes to my house every day after he has a meeting like this, I'm not going to be able to engage. I don't mind, I would love to have him come to my house.

COUNCILMEMBER NISHIKI: Yeah. He's, he's real good at that and you should thank him. But anyway, the, the question that I was trying to make a point of--

MS. J. KAMAUNU: Yes, you're right.

COUNCILMEMBER NISHIKI: --I think that . . .*(inaudible)*. . .

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MS. J. KAMAUNU: I wouldn't like to see authority taken away from the Council or...I mean, you're here representing us, representing the people of Maui, and I would be very concerned that you don't have the ability to represent us properly.

COUNCILMEMBER NISHIKI: And if a law that is pretty tight now is being loosened, a law that is real *tight* now where there is no escape clause and there has been also court cases, and that's the reason why I'm concerned about Mr. Galazin, but I'll take him to a question and answer. But if that law is now being stretched, do you think that's a good situation? *And*. . .someone here is now going to be in charge of it. The Council is given that opportunity, but now, to them the law being able to stretch and, and not so tight, and now we're going to allow...and I'm not saying these people are bad people. Get that clear, that they're not bad people but would you want *them* to be making these kinds of decisions? And again, leave you out of the process...would you want that?

NOTE: Silence.

CHAIR MOLINA: Ms. Kamaunu, tough question, yeah?

MS. J. KAMAUNU: I know . . .*(cleared throat)*. . . No, I wouldn't want that.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MOLINA: Okay. Any other questions, Mr. Nishiki? No?

COUNCILMEMBER NISHIKI: No.

CHAIR MOLINA: Okay. Committee Members, other questions for Ms. Kamaunu? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Ms. Kamaunu, aloha. Thank you--

MS. J. KAMAUNU: Aloha.

COUNCILMEMBER MEDEIROS: --for being here. Let me ask you this, because, you know, a good part of your testimony was not being informed of the processes. And you and your husband probably take the most effort to be . . .*(laughter)*. . . informed. But regarding the community of Waihee, is somebody with the Association monitors the County's website when they post the meetings for Planning, for the planning commissions, for the Council Committees, for the Council? And usually those postings will have the items that are going to be discussed in the meeting on it, does...anybody assigned from the Association to monitor that?

MS. J. KAMAUNU: I can't speak for the Association for sure. I know that a member of the Association's presence, he does monitor and communicates some things to us.

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But . . .they're new. This is their first year. They haven't completed their first year yet. So I think they're just getting their feet wet on this, as we all are. But it's as you say, Kani and I have been coming here this past year never thinking that this would be our life now. But . . .(laughter). . . we've been coming here and testifying, and I would have thought we were more aware of the process and what's happening, but something always catches us. Something always slips by us. And I guess I haven't gotten used to finding where all the documentation is for these amendments on, on the website because I'm still finding it difficult to find all of them. And unless I come here to the Clerk's Office and ask for those folders, I'm not going to get it.

COUNCILMEMBER MEDEIROS: Okay. Thank you. Yeah, I just wanted to be sure you and the Waihee community were aware that they can monitor when the meetings are going to be and on what items. So, it'll be helpful to you to be informed. But thank you for being here this morning.

CHAIR MOLINA: Thank you, Mr. Medeiros. Ms. Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. And thank you, Johanna, for being here again. You and your husband are amazing, the time that you donate to be here, and, you know, I really admire that because it is people like you who step forward, that participate, that, you know, help us make decisions. I wanted to offer you some, just, you know, I hope it's helpful. You know, I participate heavily with the Kula Community Association, and they are pretty much on top of whatever's happening. In fact, I'd be surprised if there's nobody here today to talk about this, and if they aren't here, I'm sure there'll be something in writing coming very soon. You might want to have a conversation with Dick Mayer. You know, Mr. Mayer has, for many, many years, monitored *very* closely what goes on here at the County Council, and he always knows what's going on. He must have a secret. And I don't know if it's just that, you know, he's very diligent about checking everything every day or whatever it is. He checks our agendas. But they're really on it and they're a community association, also, where they don't have any paid staff. So, I think it's finding somebody who's going to make it their kuleana, you know, to kind of track these things. I think what may have thrown you off this week too is that we are having an off-week meeting. You know, we tend to have these meetings on the second [sic] and last [sic] week of the month, but this is an extra meeting that was thrown in because this is an important matter, and our Chair is trying to get us through things before we go into budget. But I'm sure that if you were to call Dick Mayer and talk to him, he might be able to give you some clues or some ideas about how to monitor what's going on over here and find what you need. I'm speaking on, you know, very...offering Dick's services but I know him well enough and I know he really cares. I'm sure he would be willing to help you. He's in the phone book. And if you can't find him, call my office and I'll help you.

MS. J. KAMAUNU: Okay.

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COUNCILMEMBER BAISA: Thank you.

MS. J. KAMAUNU: Will do.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Okay. Thank you, Member Baisa. Mr. Victorino?

COUNCILMEMBER VICTORINO: And thank you again, Johanna, for being here. And I try my best to make sure you guys get all the information but there's things that even I slip by. I'm curious...this, this Living Water, the Bragg subdivision...where's that? I didn't know about this. This is something new to me today. So something sliding...you're not the only one get slipped into. So, where's this area?

MS. J. KAMAUNU: You know, I'm not really sure myself.

COUNCILMEMBER VICTORINO: Okay.

MS. J. KAMAUNU: I, I just found out about the, the project, and evidently it's gotten it's permits but it's supposed to be up by John Vorel's(?) property. If I'm not mistaken, Vorel's property extends from Waihee Valley over towards the school and then somewhere up there behind the school I know Peter Nguyen(?) has property, and I believe the Bragg property comes from somewhere around there and goes into Waiehu.

COUNCILMEMBER VICTORINO: Okay. I'll go and check with the Planning Department to get more information and get it to you. And the other thing I wanted to mention is make sure that you're on the mailing list for these kinds of items, for planning. Anything that you think that you guys need information on, make sure your name is there so that we send you the agendas, that you will get information relevant when these meetings are being scheduled. That's another important aspect that, since you brought up the subject, let's keep you and your husband, if one of you at least, on that mailing list. And I think that will be important. So, contact my office and I'll make sure that you get on that mailing list, and we'll help you get that. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. And the Chair would like to offer. . .well, express a mahalo to you, Johanna, for coming here. I know Ms. Yagi-Buen, I think, was the past president of the Waihee Community Association. I don't know, I mean, you mentioned, thank you for sharing with us that you have, there's some new folks now, and I guess with your help if you could let them know. And thank you for coming out, because I think, you know, for many of us, you and your husband are the ones that we see mostly here from Waihee. So, I'm sure, you know, there's ways to, other ways that we can, like what Member Baisa had suggested. Also, I'd like to mention the Kihei Community Association. They might be able to offer you some suggestions as well...the West Maui Taxpayer's Association, because it is sometimes a cumbersome process to

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come out and get information, especially when it's something that affects your immediate community. So, thank you for making us aware of this concern.

MS. J. KAMAUNU: I still appreciate the process because as we are learning our kuleana, it's giving a chance for us to get really grounded in how this process works and how we can participate. And I know that there are people who stop us now and say that they have seen us testifying and they want to know what the issues are, and so Kani talks to a whole bunch of people and they say well we want to hear some more, we want to know how this is working out. . . .(inaudible). . . oh wow, I guess somebody's paying attention out there. So, I thank you.

CHAIR MOLINA: Okay. Thank you. Committee Members, any other questions?

COUNCILMEMBER KAHO'OHALAHALA: Yes.

CHAIR MOLINA: Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you. Johanna, I just wanted to clarify. One is you were made aware of today's meeting but did you have also information on the proposed ordinance? Did you have information on that, of what is actually being heard and what ordinance is being considered for change?

MS. J. KAMAUNU: You mean today's ordinance?

COUNCILMEMBER KAHO'OHALAHALA: Yes.

MS. J. KAMAUNU: Yes.

COUNCILMEMBER KAHO'OHALAHALA: You have a copy of that?

MS. J. KAMAUNU: I just have what was outside here for us, the wording of the ordinance, but I don't have the support documents. We can only get that if we go down to the County Clerks.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So, your interest today was really only in part fulfilled by your coming, your *presence* here today and getting these copies so that you understand what the Council is deliberating then?

MS. J. KAMAUNU: Yes.

COUNCILMEMBER KAHO'OHALAHALA: And had you not come then you would not have had any of this information or . . .(inaudible). . .

MS. J. KAMAUNU: That's correct.

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COUNCILMEMBER KAHO‘OHALAHALA: Okay. Thank, thank you for that clarification.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho‘ohalahala. Committee Members, any other questions? Seeing none, thank you, Ms. Kamaunu.

MS. KAMAUNU: . . .(*inaudible*). . .

CHAIR MOLINA: Next to testify on Committee of the Whole 23, we have Lucienne deNaie, followed by Howard Hanzawa.

NOTE: Pause while Ms. deNaie approached the podium.

MS. deNAIE: Thank you, Chair Molina and Members of the Council. Lucienne deNaie testifying as a person who follows this kind of stuff. And I have to say, this bill is confusing. And I served on GPAC, and I know we want to, you know, make things clearer and better but it’s very confusing. The confusing thing to me is that when you pick up the copy outside, the deleted language is not left in it, so you don’t know what was changed. And to me, the devil is in the details. Now, I want to say first to the good, that the bill has some good intentions but as all things, one size may not be the best fit for all, and this is a very good example of that. First of all, I think we should have a printout with the deleted language because there are some important things in the deleted language that we may not want to delete. I agree that when property is going to be given for public use, we should have a way to make it easier. But on some of these other cases, there’s checks and balances in place. The reason we have a community planning process is so people can weigh-in and some credence can be given to their thoughts. These are not ignorant people that just make mistakes, they’re people that really are trying to do the best for their community. And I think that those things, sometimes, you know, are really overlooked, and I’m worried about the idea, it’s not very clearly defined how “consistent” and “conforming” are really going to be interpreted. To me, consistent is, ah, it’s kinda close, yeah that, you know. Is it consistent with the land use someplace or for that particular property? I mean, it’s really not defined. There’s no *definition* of *developable* lot in the reconsolidation and *subdivision* exemption. In my neighborhood, someone took a gravesite and made it into a developable lot by consolidating and re-subdividing. I mean, this happens and it can be very abused. So, I agree with *Ms. Wells* that this is something that should *have* more scrutiny, not *less* scrutiny. I would like to just say that the language that was left *out* referred to the fact that actions in the subdivision need to be consistent with some of our laws and ordinances besides just the community plan, the General Plan, zoning, State. . .State designation. I think this is very important. You know, as Kani said, what about our State Historic Preservation laws? A subdivision doesn’t have to conform to those? What about our laws that have to do with grading ordinances? That’s what happened with Palama Drive--it was in conformance with *all* of these *zoning* laws but it really was not in a correct alignment with our grading ordinances as they. . .as they then stood and so those folks had to go to court. So, let’s

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not make it *harder* for people, let's make it *easier* for people. And if you have any questions about Living Waters. . .I know a lot about it. I've hiked that land and if people want to know sort of what's going on, I'd be happy to answer that. I just want to point out that, I believe about ten years ago. . .Mr. Nishiki produced a--

MS. HAMMAN: Three minutes.

MS. deNAIE: Okay . . .(laughter). . . Shall I, shall I wrap up?

CHAIR MOLINA: Yeah. Go ahead.

MS. DeNAIE: He introduced an amendment to this consolidation and re-subdivision ordinance that made it so you couldn't do this in the Coastal Zone. I *think* that passed. I hope it did because it was so abused. This is why he introduced that. And just the fact that, that this has been abused, I think, if you pass any bill like that, this should not be an exemption, it should definitely have greater scrutiny. Thank you.

CHAIR MOLINA: Thank you, Ms. deNaie. Committee Members, questions for the testifier? Seeing none, thank you very much for your testimony, Ms. deNaie. Next to testify on Committee of the Whole Item 23 is Howard Hanzawa, and Mr. Hanzawa is the last person to have signed up. The Chair will give anyone in the gallery an opportunity to testify on this matter if you haven't already. Mr. Hanzawa?

MR. HANZAWA: Good morning, Council Chair and Committee Members. My name is Howard Hanzawa. I'm with Kaanapali Land Management Corp. Thank you for this opportunity to testify on the proposed amendments to Chapter 18.04 of the Maui County Code. I do agree with Lucienne that the subject is confusing. I've been *puzzled* as to why recent interpretations of the Code have prevented several projects and Kaanapali Resort from obtaining building permits or subdivision approvals. These provisions did not create obstacles to the approvals of permits or subdivision applications in the past. As I also understand the situation, several of these projects have received SMA approvals, which are a major entitlement in the land use process as administered through the Planning Department. But even after the SMA permits were issued, the building permit applications to the Department of Public Works have been held up due to the provisions of Title 18, the Subdivision Code related to consistency and conformity in land use classifications. If land use classifications was a problem to begin with, then I would have to think that the matter would have been discussed and resolved during the SMA process. But the SMA applications were processed and approved, yet the building permits still cannot be issued due to the land use provisions in this Subdivision Code. It is also puzzling that even though the areas designated as Open Space in the community plan will *remain* in open space as shown on the construction plans of the projects, the building permits still are not able to be issued. If the designated areas will remain in open space as shown on the project plans or even through a unilateral agreement, why can't the permits be issued? Permits were previously issued for other structures in these projects

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as for the, such as for the Honua Kai project in Kaanapali. However, it's only been in the last few years that a re-interpretation of the code prevents other building permits to be issued. Of course, this problem comes at absolutely the wrong time, when construction workers are losing their jobs and the economy is in dire need of any kind of an uplift. I would recommend that the problematic provisions be amended to make *sense* of the situation. I am hopeful that the recommended amendments, as proposed by the Administration and with the inclusion of other revisions as recommended previously by Pam English and Charlie Jencks will help to resolve --

MS. HAMMAN: Three minutes.

MR. HANZAWA: --the current situation, the current problem. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Mr. Hanzawa. Committee Members, questions for the testifier? Mr. Nishiki?

COUNCILMEMBER NISHIKI: . . .You. . .I respect but I'm going to now ask you some questions because I know that you were an insider, Mr. Hanzawa, being that you worked for the County. And under this policy change, the Planning Director now would have. . .100 percent authority to impose, I guess subdivisions conditions, as Mrs. Kamaunu said, without any public scrutiny or review. Now it comes to the Council and then perhaps we may create conditions or whatever but at least it's not given to what I allude to as a dictator. *Unelected*, okay? Your thoughts about that, and with no public review, anything, you know, Council review, putting conditions.

MR. HANZAWA: Well...

COUNCILMEMBER NISHIKI: I mean, take off that company that you're working for . . .(laughter). . . Mr. Hanzawa, and if, if you may, and, and give me your insider gut reaction to this type of power grab and perhaps . . .(sigh). . . no ability for this community to have any comment.

CHAIR MOLINA: Mr. Hanzawa?

MR. HANZAWA: Yeah. Thank you for your words.

COUNCILMEMBER NISHIKI: Thank you.

MR. HANZAWA: Uh. . .you know, the provisions as currently written, actually, do not affect any of my projects, *as of yet* anyway . . .(laughter). . . Let me say that first of all.

COUNCILMEMBER NISHIKI: Yeah.

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MR. HANZAWA: But I am concerned as I previously stated because it's holding up projects and we do need this kind of project right now to bring jobs back to our island. As far as your concern about the provision whereby the Planning Director will have say in imposing conditions, I also share your concern. I would actually like the, the, any kind of legislation to be clear enough so that everybody knows what's going to be happening rather than have one or two individuals make the decisions in the future.

COUNCILMEMBER NISHIKI: Yeah. And, and, and, Mr. Galazin, I think this may be of a concern--and I'll use these terms so you can think about it. Howard, you know, it really gives the Planning Director what they call unfettered discretion, and, and this is my concern with due process. And, and so, you know, there belies the concern for all of us that live in Maui County. Hey, you know, I like talk but I cannot because I don't have that ability now in government that was *afforded me*. *That was afforded me!* You know, and that's like. . .that's why I said imperialistic kind of action today. And, and that, that kinda hurts me, I mean . . .*(sigh)*. . . you know, we've got . . .*(sigh)*. . . people that are fighting wars out there for this very *American* policy, giving their lives, and yet, in one fall [*sic*] sweep today, you take that away from me, Howard, and *that* is my concern. So thank you.--

MR. HANZAWA: I understand.

COUNCILMEMBER NISHIKI: And thank you--

MR. HANZAWA: Thank you.

COUNCILMEMBER NISHIKI: --for being here.

CHAIR MOLINA: Okay. Any other questions for Mr. Hanzawa? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Mr. Hanzawa, for being here. Just a fast question. So you think that the County Council should be the ones that oversee this particular ordinance?

MR. HANZAWA: Well--

COUNCILMEMBER PONTANILLA: In other words the approval process?

MR. HANZAWA: You know, as written. . .I guess as interpreted now, it's been a problem, and I would not like the problem to be passed on due to some word changes but still remain a problem in the future. So, I would like the Council to take a look at the recommended provisions and also to look at the provisions as previously stated for further revision by Pam English and Charlie Jencks to...you know, I think they also recognize that if the powers to make amendments or to make conditions remain in the hands of one person, that itself would be a problem. So...

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COUNCILMEMBER PONTANILLA: Yeah. Thank you for that information because when Pam gave her testimony that, you know, caught my ears, yeah, in regards to the approval process. So, thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Committee Members, questions? Mr. Victorino?

COUNCILMEMBER VICTORINO: And thank you, Howard, for being here. Howard, also you mentioned because of the challenges we've been having right now, there are a number of projects that are, you know, in essence stuck in the process, right?

MR. HANZAWA: Yes.

COUNCILMEMBER VICTORINO: Do you think, in general, what we are, what was introduced by the Planning Department and as well as the other improvements both from Charlie and Pam, that we could craft a bill that could not only move this but make sure that the future engagement with the public would still be there, that we would not supersede this and all of a sudden bam, it's a done deal as some of the testifiers have been acknowledging?

MR. HANZAWA: Well, you know, the projects that are held up had to go through the SMA process, so that involved public hearings. And the public should have been given the opportunity to say their piece on those projects during the public hearings. So at this point, I, I, I don't really...I haven't followed those projects through the process, and I don't really know what the discussions were as far as the land use entitlements.

COUNCILMEMBER VICTORINO: Okay. You know, and I guess the question I have for you is these projects, if they're not compatible with the general or the community plans, you know, do you feel that we should be the last stop so that this makes sure it doesn't get through, that we make sure it conforms or doesn't go forward? Would you think that would be a, like what Pam is saying, that the land use conditions should be left up to the Council? Do you agree with that statement?

MR. HANZAWA: Well, I think it should be clear enough so that a project would conform to the land use provisions. So, the problem is with a consistency issue--

COUNCILMEMBER VICTORINO: Yeah.

MR. HANZAWA: --whereby the zoning is inconsistent with the community plan, but the project *itself* is consistent with each of those things. So, you know, that's something for the Council to look at and make common sense out of this situation. Right now it doesn't make sense.

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COUNCILMEMBER VICTORINO: Okay. Thank you. Thank you for that. . .that help, Howard. Appreciate it. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Committee Members, questions?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: Maybe you don't know, and that's okay but, you know, you mentioned about conformity and consistency and I think that the, the Planning Department's current practice is to use the word consistency and conformity to really mean like different things. So shouldn't we be looking at, in Title 19 under the zoning ordinance, to address this? I guess my, my concern is, I don't know if you remember the Gatri case, but even the courts have, have looked at this and, and, and have ruled on it. So, Mr. Galazin, maybe, Mr. Chairman, maybe we ought to be looking at Title 19 to, to have some clarification within that, the Zoning Ordinance. And it's something that I pose to Mr. Hunt and Milton for you guys to think about.

MR. HANZAWA: That is a thought.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MOLINA: Okay. Committee Members, any questions for Mr. Hanzawa? Seeing none, thank you for your testimony, Mr. Hanzawa.

MR. HANZAWA: Thank you.

CHAIR MOLINA: Committee Secretary, have we had any additional sign-ups for testimony for Committee of the Whole Item 23?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Chair has made a one last offer to members of the gallery. Seeing no one approaching. If there are no objections, Members, the Chair will close public testimony for Committee of the Whole Item 23.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: Okay. So ordered by the Committee. Testimony is now closed on this item. Members, Chair is going to call for a ten-minute recess and when we come back, the

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Administration please be prepared for questions from the Committee. Meeting in recess 'til 11:40 a.m. . . .(gavel) . . .

RECESS: 11:29 a.m.

RECONVENE: 11:43 p.m.

CHAIR MOLINA: . . .(gavel) . . . The Committee of the Whole meeting for January 20th, 2010 is now back in session. Thank you for that recess, Members, and again thank you for taking time out of our busy schedule during this off-week to hear this consideration from the Administration. We are on Committee of the Whole Item No. 23, a bill to require land use and zoning consistency for proposed subdivisions. At this point, Members, the Chair will turn matters over to you, the Committee Members, to ask the Administration questions, as well as our Legal Counsel as well. Mr. Nishiki, followed by Mr. Medeiros and Ms. Baisa.

COUNCILMEMBER NISHIKI: Yeah. Thank you.

COUNCILMEMBER VICTORINO: . . .(inaudible) . . .

COUNCILMEMBER BAISA: . . .(laughter) . . .

COUNCILMEMBER NISHIKI: And, and, and, and for you, David, these are Charter concerns that I have. So, I'll just read verbally. Under the Charter, the Department of Public Works has sole authority over the Subdivision Ordinance. The Charter reads under Section 08.05.003 of the Charter, it says: The Department of Public Works shall, the Director, shall number one, administer the building, housing, and *subdivision* ordinances and rules adopted there under; number two, approve proposed subdivision plans which are in *conformity* with the subdivision ordinance. The proposed bill would give the Planning Director authority to impose subdivision conditions. Can the Director of Public Works' responsibility to administer the subdivision ordinance be *delegated by ordinance* to another entity? And I think that we've had Department of Corporation Counsel in the past opine that the *Council* could not act an ordinance giving itself in a role in approving subdivisions because of the Director of Public Works' unilateral authority under the Charter. So, can an ordinance establish a standard of consistency when the Charter calls for conformity?

CHAIR MOLINA: Mr. Galazin?

COUNCILMEMBER NISHIKI: That's one...the constitutional concerns. The proposed bill gives the Planning Director--again I'll use the word--unfettered discretion to impose conditions without specific standards, which raises, again, the due process concern. And then finally under the County Code concerns, the Department of Planning's current practice is to use consistency and conformity to mean different things, with conformity

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posing a stricter standard than consistency. The terms are not defined in the County Code or the Charter. If these terms are to be defined, should their definitions be explored within Title 19 rather than Title 18? Consistency and conformity are used interchangeably in everyday use and by courts--I think you need to look at that Gatri opinion--and does creating a legal distinction between the two terms create, even Howard said, confusion?

CHAIR MOLINA: Okay. Mr. Nishiki, can I let Mr. Galazin answer the first three questions that you have? And then I'll let you continue asking more questions.

COUNCILMEMBER NISHIKI: Okay. Okay, if he wants to answer.

CHAIR MOLINA: Yeah. It's a lot--

COUNCILMEMBER NISHIKI: I thought maybe . . . *(inaudible)* . . .

CHAIR MOLINA: Okay. If he's, if he's available to answer, if you're prepared?

MR. GALAZIN: Yeah. I, I can certainly give, give brief answers to, to start out the discussion with this. If you're looking at the Charter, yes, certainly Chapter 5 does delegate the authority to the Director of Public Works to administer the subdivision ordinance. The Director of Planning is involved in planning determinations. However, nothing *prohibits* an ordinance from having another director weigh-in on this kind of matter because the Director of *Planning* is not the one going to be *approving* the *subdivision*. The Public Works Director still approves the *subdivision*. It's quite *common* for other departments to make comments on any proposed subdivision, no matter big or small. You know, the Department of Public Works does *route* out the subdivision application for certain comments. Other agencies will make comments, requirements. This would be certainly analogous to the same kind of process even though it's *codified* within an ordinance as opposed to a departmental policy. So, on the surface there wouldn't seem to be any, any Charter problem with the way that, that it's set forth in the proposed bill today. Now, the second question you asked was about...sorry, refresh my memory. What was question two of your three questions?

COUNCILMEMBER NISHIKI: Constitutional concerns.

MR. GALAZIN: The bill also, as you mentioned, you were afraid that it would give unfettered discretion to the Planning Director in imposing these conditions. Actually, it's pretty *narrow*. The conditions can only be imposed to *ensure* the consistency of *land uses*, so you're within a very narrow realm to begin with. The other thing, the other thing to consider is that, I think it's a piece that hasn't really been brought into the argument yet either by people who are in favor of it or people who are against it. But the way that it works right now is that if a subdivision comes in and its land use designations don't match, they would have to get a rezoning or a community plan amendment. This is still

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open and readily available to anybody even with this amendment. If somebody feels that the conditions that would be imposed would be too onerous for example, they could certainly come in, see you folks, and ask for an amendment to their land use designations. And *that's* always been an option, always will be an option for them to avoid this. And again, with due process concerns, you know, a Director's decision is fully appealable to the Board of Variances and Appeals. The BVA is our review body for those decisions, that they not be arbitrary and capricious or an abuse of the discretion that is provided to the Director. It's fine to have directors provided with discretion and there is a check on that to the BVA to see if he's abused that discretion. Okay, question three, now, was...

COUNCILMEMBER NISHIKI: Due process.

MR. GALAZIN: Oh, okay. Well, I guess I got it then. So--

COUNCILMEMBER NISHIKI: And, and, and--

MR. GALAZIN: --we can start with that and...

COUNCILMEMBER NISHIKI: And finally, under the County Code 19.04.020, states that...

MR. GALAZIN: Oh. Well, this, this amendment actually would take out conformity. So we'd just be dealing with consistency. So there wouldn't be an issue with the fact that conformity and consistency are interpreted differently. And yes, I, I agree that there is a problem that these terms aren't defined in --

COUNCILMEMBER NISHIKI: Title 19.

MR. GALAZIN: --in the Code. Well, they're defined in the Subdivision Ordinance, which is, you know, kind of where we're stuck right here on our discussion today. So that is an issue, and that's one the reasons why, you know, both departments, I think, looked at just going with a consistency method, which is the same method that applies for an SMA determination, which the Planning Department does on a daily basis...looking at whether the development that's in an SMA is consistent with these land use designations, which would be more or less the same thing that we're looking at if you wanted to pass this amendment today.

COUNCILMEMBER NISHIKI: Okay. Let me, let me read what 19.04.020 states: No land shall be subdivided unless the subdivision *complies* with the provisions of this Title, meaning the Comprehensive Zoning Ordinance, okay? So, now, with the compliance, how would this compliance be determined under Title 19, and would the Department of Planning apply compliance to meaning "conformity", "consistency", or both? And I guess the bill itself now, if we pass it, would it, wouldn't it be establishing. . .how would I say it, lower standards? Lower standards.

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MR. GALAZIN: Well, I mean, I guess I would let the Planning Director speak to how the Planning Director would, would implement it, but I, from a legal standpoint, don't see that it would be lowering any standards at all. What it basically does is to say that if you have a piece of land, a parcel that, that happens to have a community plan designation, for example, that doesn't match its zoning but somebody wants to propose a project that does conform on the half that has it community planned Open Space, they want to do open space, and on the half that has Resort if it's all zoned Hotel, they want to do a hotel, this would allow the flexibility for that to go forward without them having to come through and ask you guys to rezone the part that is community planned Open Space, zone it Open Space. Which, if you want to keep that, that's certainly, you know, up to you. I don't think it lowers the standards, though, because we have these checks in place for the Planning Director to impose those conditions to make sure that we basically hold people to their promises. If they say that they're not going to build anything on that half, well fine, sign an agreement that says you won't.

COUNCILMEMBER NISHIKI: And then finally, which I think is the most important thing for this Council, this Planning Director would have the authority to impose subdivision conditions with no public comment or review. And, and, and this is, for me, Mr. Chairman, very important in the fact that if this Council is to set policy, then why are we giving it to them? And, and, and this is where our concern is, that policy question. I don't think it's something that Corporation Counsel has to answer. It's like, are you going to give this away and also take away the ability for the general public to get involved in it? So . . .

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: --my case is rested.

CHAIR MOLINA: Okay.

MR. GALAZIN: Actually, Chair, I would like to answer if...

CHAIR MOLINA: Alright. I'll give you a chance to respond.

MR. GALAZIN: Again, just to be clear, this is a very different situation than when you as a body are imposing conditions on the developer as a condition of a rezoning. This is, when we say *conditions*, the way it's written in the Code, it's just to *ensure* that if they are proposing--a developer or a homeowner or whoever is doing a subdivision, is proposing something and they don't want to go through this rezoning but they want to say, look, my project is going to comply with the community plan and it's going to comply with the zoning, even though they're different and I *promise*. . .this just allows the Department to say we're going to hold you to that and we're going to put that promise in writing. They're not going to impose conditions to, you know, have them do anything along the lines of when you're doing a rezoning...oh, you've got to dedicate this, you've

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gotta do this offsite improvement. This is just to say, if you tell us this is what your project is, okay, this is what your project is, you can't do anything else. *That's* the kind of conditions that are, that are allowed here and it's constrained within the fact that it's, the conditions are *only* to ensure consistency of land uses, that's it. The conditions are not unfettered, it's actually pretty narrowly constrained.

COUNCILMEMBER NISHIKI: I, I think, he may, he may want to defend it from that point. I'm just saying that it's taking it away from us. That's all.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: He doesn't bring that point up. And say, oh well, you guys want to give that up? That's what is occurring, you know. You know, you might be in the same coup as the other two next to you, not that it's good or bad, but I'm just saying that I had expected because you serve both bodies. Don't ever forget that. That your legal interpretations, or statements, should also look at what we're trying to achieve. And I don't want you to look at me just because I give you a hard time and, and come out with these statements like this, is all I'm saying, okay? I, I just feel as someone asking a question that you don't take me to be your enemy and serve this Council in the appropriate manner please. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Mr. Medeiros, followed by Member Baisa.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. In listening to Director Arakawa's presentation and then comments made by Director Hunt, I'd like to have both of them respond...and then listening to statements made by, or replies rather, made by Corp. Counsel, Mr. Galazin. I, I want to find out, because what we heard earlier was that both words were part of the information we got--both consistency and conformity. And then Mr. Galazin just talked about that, the way this ordinance is working and what we are considering and reviewing, is that it'll be brought down to one term, and that's consistency. Mr. Galazin, is that correct?

MR. GALAZIN: Yes, that's correct. That's the intent of the proposal, just . . . *(inaudible)* . . .

COUNCILMEMBER MEDEIROS: Okay. So, Director Arakawa, maybe you first. So, is it your position that consistency is what you support in this ordinance.

CHAIR MOLINA: Mr. Director?

MR. ARAKAWA: Councilmember Medeiros, we've worked cooperatively with the Planning Department as well as Corporation Counsel's office in coming up with this bill for the better part of I would say the last year or so, and we are in agreement that this is what we want to present to the Council. We feel it's a...we believe it's a fair and reasonable way to deal with an existing ordinance which, maybe, is not as clear as it should be.

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COUNCILMEMBER MEDEIROS: Right.

MR. ARAKAWA: And we believe it will clarify a, a lot of potentially ambiguous type of situations. So, we are in support of the bill--

COUNCILMEMBER MEDEIROS: Okay.

MR. ARAKAWA: --and we are in support of the concept of consistency being defined in the code.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Director Arakawa. Director Hunt, would you want to add any further comments to that? Are you in agreement with that?

MR. HUNT: Yes, I agree with Director Arakawa's comments. The issue with subdivisions, and originally the discussion centered on, well, how can we interpret conformity? And based on discussion with Corporation Counsel and the departments, there was concern that you couldn't just miss, or you couldn't just reinterpret conformity and that the solution then was to amend Title 18. And then because land use was involved in the determination, the Planning Department became involved. So, this was not anything initiated by the Planning Department. It's certainly not a power grab or attempts to become an *emperor* or a *dictator*. I mean, we're trying to do constructive *problem* solving and I don't believe personal attacks or *name calling* is really. . .constructive problem solving. We're here to try and address an issue; the issue is that some projects are being held up because they can't subdivide their land.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. HUNT: So we, we had discussions and we've come back with a potential solution. If Council is unhappy with that solution, that's fine, but we're trying to come up with a solution where these projects can move along without having to go all the way to a Change in Zoning or community plan amendment. They're still going to get review, the same review, it's just that this would expedite these projects and get some jobs going in our economy at this very crucial time. The issue of conditions, the Department has the ability to place conditions on subdivisions right now. We do it as a matter fact; standard operating procedure. We're not changing that.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. HUNT: We're not adding any authority to the Planning Director. The. . .the clause that. . .that is in Title 18 that refers to the Planning Director will determine consistency, that was suggested by the Planning, pardon me, by the Director of Public Works. The Public Works Director said well, logically the Planning Director should be determining consistency with land use because the Planning Director is in charge of zoning. It was

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his suggestion. He didn't feel it was appropriate, and he didn't want that responsibility. So again, it's, this is an attempt to solve a problem with a solution and get jobs going in our economy.

COUNCILMEMBER MEDEIROS: I see. Okay, and...

MR. HUNT: I apologize for the long answer.

COUNCILMEMBER MEDEIROS: No . . . *(laughter)*. . . Was, was it . . . a collaboration among the three of you to come up with as clear as possible a definition of consistency?

MR. HUNT: Yes, it was.

COUNCILMEMBER MEDEIROS: Okay, because I think that was part of the problem, was that the interpretation of consistency or conformity left some people with different interpretations. So I'm glad that was done. In listening to three of the testifiers this morning, I heard from them that they would still want this body to have some role in the review and the approval of the process, that it wouldn't be left only to the Director of Planning. So, Mr. Chairman, you know, in hearing that, and I think that continuing to allow the Director of Planning to have some role in imposing conditions with this legislative body still having a review and approval of it, I think would satisfy some of the testifiers this morning on what they brought forth because I think Mr. Nishiki, you know, he raises some good points. But I think the one that I share with him is we're the elected body, and we are the ones that have to answer to the constituents. So if we're still part of the process without taking away what already exists for the Planning Director, I think that's a good settlement to come up with. So, thank you, Mr. Chairman, for this opportunity.

CHAIR MOLINA: Okay. Thank you very much, Member Medeiros. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you, Chair. Obviously there's a need for this change. It's disconcerting to me to hear that we have four major projects that mean a lot to this community in terms of our economic restoration here that are being held up and that this appears to be one of the ways that the folks that run things feel this can be fixed. I'm hearing that people support the idea, but I also heard concerns about the Director having the discretion to impose conditions and I think we need to deal with that if we're gonna be able to not throw the baby out with the bathwater because there seems to be some good reasons to do this and yet there is concern. I'm wondering, is there a way that we can rewrite this section where we talk about the Director being able to impose conditions to somehow have some further check on that, like he can, he can draft conditions and make a proposal that we can take a look at and say yes or no and move things on? Would that be a compromise that would, you know, give everybody a little bit of what we're concerned about, Mr. Director?

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CHAIR MOLINA: Which Director, is it the Planning Director or Public Works?

COUNCILMEMBER BAISA: I refer to Mr. Hunt please --

CHAIR MOLINA: Okay. Mr. Hunt?

COUNCILMEMBER BAISA: --since it looks like the ball's in your court . . . *(laughter)*. . .

MR. HUNT: What the bill would do would no longer require a Change in Zoning or . . . or a Community Plan Amendment--

COUNCILMEMBER BAISA: Right.

MR. HUNT: --to get all three of the entitlements to match exactly.

COUNCILMEMBER BAISA: Right.

MR. HUNT: That, that would remove the authority from the Council to review those Change in Zonings and Community Plan Amendments. So that's, that's the removal of the authority. The subdivision process itself, I don't believe you should be getting your hands involved in reviewing subdivisions in and of themselves. *I* would even question, as has been brought up, whether that's allowed by the Charter. You know, that's an administrative action. Clearly a Change in Zoning and a Community Plan Amendment is in your purview.

COUNCILMEMBER BAISA: Correct.

MR. HUNT: If you want to retain the power to review these projects, then you need to retain that power to review the Community Plan Amendment and the Change in Zoning. And, and we respect that. You have to realize at the same time that is counter to the attempts to streamline this process and it holds up those projects. So that's, *that's* where your power lies, not, not at the subdivision.

COUNCILMEMBER BAISA: I hear what you're saying, but it *appears* that there is some discomfort, even though I think everybody is comfortable, or I mean I haven't heard anybody say this is not a bad thing, that we don't need to have this consistency and conformity and all this red tape that is holding up so much...people are trying to find a way to *facilitate*, you know, being able to move ahead but yet I hear discomfort about, you know, vesting that ability to do *conditions* in your hands. And they want some kind of a check of...it's either not all of one or all of the other. Can we find a middle ground?

MR. HUNT: The Molokai Planning Commission suggested that that determination be made by the Planning Commission. As a compromise, I would suggest that you explore that perhaps. If there's concerns about me becoming a dictator or an emperor, perhaps you

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could provide that review for subdivisions where the three do not line up. I don't think you want to start getting to the point where *any* subdivision consistency has to go to the planning commissions, 'cause we have many, many subdivisions and that would *literally* bog down the system; it would grind to a halt.

CHAIR MOLINA: Okay, Mr. Hunt...

MR. HUNT: So perhaps for instances where the three do not align, the determination could be made. Again, it's gonna be, there's gonna be ramifications. There has to be staff reports written up, it'll take up more time on the Planning Commission's agendas, it will have an extra step so that these projects wouldn't be approved administratively by the Department. But if that's where the comfort level is...I'm just trying to find a solution of comfort for you folks.

COUNCILMEMBER BAISA: Yeah. I think we're both trying to do the same thing. I think it's important that when we look at things that we always try to find a win-win if we can. And if the *goal* is to expedite projects that are...are okay and they're good projects except for legal glitches or, you know, things that don't make any sense to me, we gotta find a way. We *need* to find a way. You know, we cannot be caught up in red tape here and just hold up everything, particularly right now when our economy is in such a mess. And, but yet we have to be careful because a we have to preserve the public process and, you know, the comment was made, well, if we let the Director do the conditions, then there's no public review and comment. Now, if we were to allow that to go to the Planning Commission, then the public *does* know about it, does have an opportunity to go to the meetings, testify and, and have input. So I'm trying to find something. Thank you.

CHAIR MOLINA: Ms.--

MR. ARAKAWA: May I make a comment to that?

CHAIR MOLINA: --Baisa, yeah, I'm gonna let the Director to further expound on your question.

COUNCILMEMBER BAISA: Sure.

CHAIR MOLINA: Mr. Arakawa, go ahead.

MR. ARAKAWA: Councilmember Baisa, one comment that was made in the testimony was that there was some concern about the Planning Director imposing perhaps a wide variety of conditions as part of the subdivision process, and you heard Deputy Corp. Counsel basically saying it is fairly narrow. But that could be clarified in the bill to explicitly limit the Planning Director's discretion. And you could do it, as an example, in...Section 18.04.030, letter D...

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COUNCILMEMBER BAISA: Uh-huh.

MR. ARAKAWA: . . . right after the language that mentions--as the case may be, a unilateral agreement incorporating such conditions. . .that last phrase in about the middle of that paragraph?

COUNCILMEMBER BAISA: Uh-huh.

MR. ARAKAWA: You can add...“regarding the proposed land uses” so it’s clear that the conditions only can relate to the proposed land use that the subdivider is basically coming forward with.

COUNCILMEMBER BAISA: Thank you very much. I think we need to look at all the possibilities before we make a decision. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Baisa. Mr. Victorino?

COUNCILMEMBER VICTORINO: And thank you, thank you, Milton, for that clarification. However, I, too, share the same concerns, you know, to totally turn everything over. And not to say anything about you or any future directors. . .obviously, the concern is if we allow broad power that kinda is like is being said right now, even though you’re trying to say with land use, sometimes, sometimes makes it uncomfortable for the public at large, yeah? And I think you agree with that. You know, both of you would agree with that. So, you know, going back to the language that Ms. English brought up where we would remove the language allowing the Director to impose conditions and that all land use conditions should be left up to the Council, are you trying to say if we put that language in there, Mr. Hunt, that would bog-down the whole system? ‘Cause you mentioned the words bogging down the *system*. Again, we’re trying to streamline it to make it fair, to make it equitable but never losing sight that the public, and as well as this elected body has, Mr. Chair, some sort of say. Again, I guess that’s what we’re looking for. And Ms. Baisa and others have mentioned about the balance of trying to find, making it a win-win, or whatever words you want to use, I have no qualms with it. But we’ve gotta make it where this body, or, has that, somehow, that check. You know, that’s what we are, we are the *legislative* check of this whole system. Administration can do whatever they want, propose whatever they want, but we’re the one that checks and balances that. That’s the way the Federal, State, all government entities have that legislative and administrative. Okay, so we want to keep that separate if we can, yet allow you to streamline and do the work you need to do, Mr. Hunt, Mr. Arakawa. You know, I don’t want to inhibit you. But where would we, how can we incorporate language that would give us that flexibility to make it feasible and get this process moving, get those projects done now?

CHAIR MOLINA: Okay. . .Mr. Hunt?

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MR. HUNT: Well, it sounds like several options are, are rising to the table.

COUNCILMEMBER VICTORINO: Okay.

MR. HUNT: One would be to put language in there that says “as determined by the Planning Commission” --

COUNCILMEMBER VICTORINO: Okay.

MR. HUNT: --and that would give a public hearing.

COUNCILMEMBER VICTORINO: Okay.

MR. HUNT: Many of these projects go to the Planning Commission anyways--if they need an SMA major, a project district, planned development, et cetera.

COUNCILMEMBER VICTORINO: Okay.

MR. HUNT: So *that* wouldn't be that burdensome on most projects. I don't. . .I don't think it would be a streamline for the *existing* projects that have gone *through* the process and now are jammed up. They would have to then go back through to the Planning Commission again. But I don't think that would be, *overall* that would be that onerous of a condition. Another suggestion would be to put some limitations, or some language on there saying that the Director's determination or conditions are restricted in accordance with land use plans and land use regulations so that the Director doesn't start putting civil rights issues on a . . .on a subdivision--

COUNCILMEMBER VICTORINO: Right.

MR. HUNT: --or whatever.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. HUNT: The third one would be for the Council, for that determination to be made by the Council--and I would really caution you against that. I would recommend against that.

COUNCILMEMBER VICTORINO: Okay. Well, at least you gave...and I'm glad to hear there's possibilities, Mr. Chair, where we're now, opened the dialogue. At first, I kinda heard no, there was no possibility, and I think we're starting to move into the area of possibilities. And I'm not trying to knock anything, I'm just saying the door has to be open before we can make changes. And I think you've just opened the door. So, I'll let my other colleagues speak, and I'd be open to suggestions. I'm kinda like Planning. . .somebody, somewhere that the public is engaged and make sure that nothing, not nothing, that most of this cannot slide through and then have something done without

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the *public's* input. I think this is kinda like where we've been going with all of this, you know. And I don't know if Mr. Hunt wants to comment, Mr. Chair?

CHAIR MOLINA: Okay, Mr. Victorino. Thank you. Mr. Hunt, go ahead and respond to Mr. Victorino's comments.

MR. HUNT: And again, I think we need to make sure that that language reads that that *review* would only happen for subdivisions where the three entitlements don't match. We don't want *every* subdivision to have to go to the Planning Commission

COUNCILMEMBER VICTORINO: Okay.

MR. HUNT: . . .or the . . .(*inaudible*). . .

COUNCILMEMBER VICTORINO: And I agree with that, Mr. Hunt. I mean again, I think we're...let's stay on that subject of conformity, you know, getting all three to, that are not inline in line--and that's what this discussion has been all about. I mean, I don't wanna get into other areas 'cause maybe somewhere along the line we may look at some of these other areas, yeah? But that's fine. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you very much, Mr. Victorino. Before I recognize Mr. Pontanilla, to the Directors and also Mr. Galazin, I take it from the Mayor, this has been supported by the Mayor. Can you share with us any views that she may have had on this, anything that could be added?

. . . Any one of you. I mean, I certainly can respect the sense of urgency to get certain projects moving because of what's occurring in the economy. I bring this up because I have, there were several ads on the radio that were reported to me by, I guess labor organizations, expressing concern about the bill as currently written. So, and make no mistake about it, Members, this is a very complex bill. Can you add some further insight on this as far as the Mayor, and. . .I'm not going to ask you to comment on the radio ads, but can you share your thoughts on this, gentlemen?

MR. ARAKAWA: Mr. Chair, the Mayor is quite aware of the proposed bill and we have run various drafts of the bill by her, so she is fully aware of the. . .the issues that are involved with. . .consistency and conformity. I do want to mention, you know, that although the testimony here has been largely confined to larger developers as well as. . .more of a pro-development versus anti-development type of scheme, I also wanna mention that this whole issue of consistency and conformity affects not only *large* landowners but it affects everyone who owns land within the County. That's, you know, also small landowners as well. And there we have a *number* of smaller subdivisions where this issue of conformity has come up and they are faced with basically not being able to get their subdivision approval. So, it runs across the board, and I think the bill that you have

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before you, while it would also streamline the process, it simply makes the Code a lot clearer and more predictable for those who want to obtain a subdivision approval.

CHAIR MOLINA: Okay. Mr. Hunt, anything else to add before I recognize Mr. Pontanilla?

MR. HUNT: No.

CHAIR MOLINA: Okay. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, I agree with Mr. Hunt that for public involvement that the Planning Commission is one avenue but I want to question him, why not the Council? Why, you know, you say you were against the Council being the review, the last review entity? Can you give me some comments in regards to your comments regarding not the Council?

CHAIR MOLINA: Mr. Hunt?

MR. HUNT: The Council would take an extra step. It would, normally the Planning Department would make a recommendation. Under a scenario where the Planning Commission had that authority, we would make a recommendation and a staff report and represent it to them and then they would make that decision. If it's a Council recommendation, I would envision that then it'd have to be a recommendation from the Planning Commission to the Council. So it's an extra step. I think in terms of finding a compromise, in terms of *streamlining* the process, the Planning Commission holds public hearings. There's, it's a body of people. They're familiar with the land use laws. It seems like an appropriate body, you know, to make that determination if that's, if that's where we want to go.

COUNCILMEMBER PONTANILLA: So the existing process from the Planning Commission to the Council is that extra time that it takes for the Council to decide on a particular project. And I know, you know, as a Council Member, you know, we haven't been hold *[sic]* to any timeframe in regards to scheduling and completing a public, or approval of a project. And I can see your point. Just to clear my mind though, you know, what Mr. Galazin had said earlier in regards to consistency...so if the zoning is Open Space, the community plan is Hotel, then it meets both consistency in regards to a particular project. You know, we had testifiers that were testifying in regards to the projects in Lahaina. You know, you have designated Open Space and then you have designated Hotel. I'm taking that, you know, the community plan is Hotel and the zoning is Open Space for that particular project. I, I don't know. Can you elaborate on that if you can?

CHAIR MOLINA: Mr. Hunt?

MR. HUNT: Could you repeat the question? I'm sorry.

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COUNCILMEMBER PONTANILLA: Yeah. Some of the testifiers talked about some of the projects that are being held in the Kaanapali area in regards to not being consistent. And the existing process, to be consistent, all three gotta match. But in this case here what Mr. Galazin had spoke earlier, one of the consistency may be, like in the community plan it states Hotel but in the zoning it states probably Open Space, so the consistency would be the Open Space on the zoning and the Hotel on the community plan. Am I on the right track on that?

MR. HUNT: It's. . .you're...Mr. Chairman?

CHAIR MOLINA: Sure, Mr. Hunt.

MR. HUNT: You're getting at one of the issues that we're trying to resolve. There are several projects in West Maui--and it will likely come up in other projects--where there's an Open Space strip, either along the highway or along a gulch or perhaps along the beach. But the community...and that's--

COUNCILMEMBER PONTANILLA: It's only the small segment?

MR. HUNT: That's the...

COUNCILMEMBER PONTANILLA: In all probability?

MR. HUNT: It's, it's a small strip and that's in the community plan. So there's a community plan designation of Open Space, a strip. The zoning is Hotel, and so *because* of that nonconformity, the *subdivision* cannot be *approved*. The SMA permit, when it came through for *review* at the Planning Commission, they felt *comfortable* with the SMA permit because the *uses* proposed in those open space strips were Open Space uses. So they were comfortable with the SMA permits. So, so that's an example of what we're trying to solve--is, is we're saying, given that *fact*, why, why should we then make that development go through a Change in Zoning when the uses are consistent with the zoning and the, and the community plan.

COUNCILMEMBER PONTANILLA: Okay.

MR. HUNT: So that's, that's really what this bill is. . .is trying to do.

COUNCILMEMBER PONTANILLA: Okay. Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Any other Committee Members who have not asked questions yet that would like the opportunity to ask? Chairman Mateo?

VICE-CHAIR MATEO: Chairman, thank you very much. Chairman, my first question is going to be to the Committee Chair and just ask the Committee Chair his *intentions* with this

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bill so that, you know, we're also watching the clock. And if the Chairman's intention is just to have the initial discussion and to go over some of the parameters of the bill, then fine. But if the Chairman's intentions is to move this out of Committee, then that's not fine . . .(laughter). . . So, can you please share your intentions before I continue my comments, Mr. Chair?

CHAIR MOLINA: Sure. Thank you, Mr. Mateo, and thank you for putting me on the spot. But, no--

VICE-CHAIR MATEO: Yeah. . . .(laughs). . .

CHAIR MOLINA: It's, it's a legitimate question.

UNIDENTIFIED SPEAKER: . . .(laughter). . .

CHAIR MOLINA: You know, I think we've heard a lot from both the community as well as concerns expressed from the Members. In terms of the economics, I think it's safe to say we want to get our people working, but at the same time at what cost in terms of the process itself and the role of the Council. I appreciate the Administration throwing out, putting out a proposed solution to this dilemma that's being faced by some of our landowners in terms of improving their properties. And like I stated before, this is a very complex bill, Mr. Mateo, and I'm sure as many of the other Members can agree with, I would like to, it is my intention today to ask the Administration to come back with a proposal that addresses the concerns that have been expressed by the Members. I cannot at this time...I guess I'm sort of letting the cat out of the bag because after hearing all of the concerns expressed by the public, those for and those with concerns, I cannot at this time give a timetable to you, Members, or the Administration, as to when we'll have this matter heard again. But I assure you that we will hear it again before this term ends. So, that is where I'm, what I'm looking at, and again because of the time constraints, and I'm sure this would not be enough time for any of you, if it was the Chair's intent to pass this out today, I would expect all of you to come up with amendments. But amendments do take time to put together and so forth. So, being that this *is* such a complex bill, I believe it does merit more than one hearing of it. So, that's where I'm coming from today. Mr. Mateo? So please go ahead.

VICE-CHAIR MATEO: Yeah. Chairman, thank you. Thank you very much. It kinda makes me a lot more comfortable in just having the discussion continued. I, I share a lot of Mr. Nishiki's concerns, and the concerns, to me, was just one based on authority. The Molokai Planning Commission in their discussion and review of this particular bill did, in fact, come up with the, with the idea that it should be the planning commissions who make the final determination. And it's not only because they're engaged in the zoning processes and understands law, they're also *residents* of this particular district who are more *familiar* with the island's needs and directions it should be heading towards. And of course they did attach the clock to it as well. But I think this morning when we

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listened to a lot of the testimony, it was interesting to, to listen to the need for us to move in this direction, and that comes without any kind of a logical explanation. We're *stuck*. This County is *stuck* at this particular point. And anything that can *help* us move forward is needed. But the warning of unintended circumstances, the, the reality that there is a lot of confusion in the existing language in the bill, the understanding that the bill comes with a lot of good intentions, perhaps the discussion should have gone a little farther than just between Public Works and the Planning Department. Perhaps the discussion should have been extended to the people who are directly more *impacted* by change. So, I'm hoping that, with today's discussion I'm hoping that with submission of some recommendations for consideration, I'm hoping that it just helped to create a better bill as we, we move forward. Because if there's anything we need to do is move forward. And I'm really glad to have heard that someone asked what the Mayor's or this Administration's recommendation was, because I'm still looking at a *\$10 million* project on my island that is still *stuck*. So talk to me about this Administration's need to move projects forward. Mr. Chairman, I thank you for this opportunity, and I'm looking forward to another submission of a more technical bill that will be able to provide a lot more comfort for all of us in moving legislation forward. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Any other Members with comments or questions before the Chair makes his recommendation?

COUNCILMEMBER PONTANILLA: I get one.

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Just a comment from me in regards to this particular legislation. You know, I've heard the Planning Director provide us with a solution in regards to having the Planning Commission do the review since they review all land-use issues, and maybe, you know, looking at the legislation itself, impose a sunset date in regards to, you know, try it out and maybe two years from now or one year from now review this thing again and, to see if it's working they way we say or they say, you know, they want this thing to work to move forward. You know, the . . .

. . . enhancing our economy here in Maui County, moving forward on one of the things we all talk about is construction. So, that's my comment. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Okay. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you, Chair. And I think that your suggestion is a good one. But while we're hoping for a revised bill to come back with different amendments or different proposals, I hope that we won't forget the second comment that was made by Ms. English, and that was the reference to the General Plan, a consistency with the General Plan map, land use map designations. I'd also like them to take a look at that in submitting revisions. Thanks.

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CHAIR MOLINA: Okay. Thank you. Staff will make note of that suggestion. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and thank you for explaining your intention here. I just wanted to find out one thing because we constantly talk about consistency, and in the bill itself, the ordinance, 18.04.109, Mr. Chairman, I'm assuming that we're looking at the bill as it is attached to the September 10, 2009 correspondence from the Department of Public Works?

CHAIR MOLINA: I believe that is correct.

COUNCILMEMBER MEDEIROS: Okay. And then when we go to the, that section I just cited, 18.04.109, consistent, it gives a definition and . . .of what consistent means. And Mr. Galazin gave us, you know, a response on the parameters of the Director of Planning's authority to impose conditions. And under his assessment, Mr. Galazin said it was actually, you know, fairly narrow. My question for Mr. Galazin is under this section, would this set the parameters of the authority of imposing conditions by the Director of Planning, kind of spelled out in this definition?

CHAIR MOLINA: Mr. Galazin?

MR. GALAZIN: Councilmember Medeiros, that is correct to a large extent. The, that any conditions that would be proposed as is drafted now would have to deal with whether or not the project is proposing something that's *permitted* by all the levels that are listed there and also that they are not allowed in the future to suddenly do something that is not permitted by, within all those levels. So it's really a question of what are they allowed to do, what are they not allowed to do.

COUNCILMEMBER MEDEIROS: Okay. And a follow up is for you, Mr. Galazin, is . . .

. . . in, in the final version of this bill. . .that okay, the Director of Planning is able to impose, and this is a scenario, impose the conditions and if there is a review by this body, and then okay, it's, you know, approved, will there be any kind of legal problems for the property owner or developer down the road, saying that okay, well, you know, this was approved back then, but now we find, you know, there's some problems with this, or are we really clear on, in the version we're looking at, legally, you know, it'll be consistent with what Corp. Counsel feels is legal to put in this ordinance?

CHAIR MOLINA: Mr. Galazin?

MR. GALAZIN: Well, Council Members, that's, that's a good concern and the way it would be addressed is through the actual form of the unilateral agreement, if any were required itself.

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COUNCILMEMBER MEDEIROS: Okay.

MR. GALAZIN: And, you know, I think Planning is pretty familiar with how they are drafted and how they are imposed--

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. GALAZIN: --to begin with, but those agreements *themselves* would also be reviewed again by the Department of Corporation Counsel before they would be imposed.

COUNCILMEMBER MEDEIROS: Okay. Because yeah, I think the developers want to know that, you know, if they go through this process, they wanna be sure legally they don't have any concerns down the road, and I think you explained it fairly well. Thank you. But, Mr. Chairman, yeah, you know, we, we certainly need to un-stuck the projects that are stuck right now. . .especially when you look at projects that maybe were built in different phases and phases completed were approved and then all of a sudden you, we can't approve another phase because of some different perspective or interpretation. So I think we need to somehow bring this to a resolution so that we can move on with the projects. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Members, any other considerations? Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Thank you, Chair. I appreciate having had the chance to just pretty much try to comprehend this whole item before us in light of community input. And my only thoughts are, one, is that we are currently in the community planning process and part of the bill will have an impact on what that is, and it would *be* important for us as we engage those volunteers who have spent countless hours in putting together community plans to understand the impact of their *work* if it's going to come to this kind of juncture and then all of a sudden it's going to be perhaps to the discretion of a department director to make those changes irregardless [*sic*] of what the volunteer hours and, and, and, and visions have been, in terms of creating a, a general plan and a community plan. So, that would be one. . .one concern I think that needs to be given a little bit more discussion and thought. The second is that the examples that were provided to us and scenarios are very *simple*. It does not speak to some of the complexity as, as has been shared by the departments as this issue is a complex one but we don't provide examples of the complexity and some of those *unintended* outcomes that perhaps might also be available with such a policy change in the law or direction. And then it's that unintended consequences that I am also interested in understanding in terms of when we move forward there is going to be some unintended consequence, and I want to be comfortable that we've explored what some of those may be in light of what we're being asked to do. So, so I think I appreciate the fact that you'll continue to have further discussions on this so that we can explore some of those other unknowns. And for me that would be important. Yeah. Thank you.

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CHAIR MOLINA: Okay. Thank you, Mr. Kaho'ohalahala.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: You know, and I can appreciate my colleagues' comments and I agree, you know, that this is a lot more complex than meets the eye, and so we want to do this right. However, on the other side, I would like you, Mr. Chair, to have some assurances that this will, at least if you can attempt to bring this back, if the Departments and the Administration can answer our concerns, which, on our behalf, if you would address those letters, a letter to the department, I mean not to the department, to the Administration about our concerns about the final say, conditions, and some of the other concerns that was brought up both by the public and by ourselves, and that we could do this before we enter budget so that if there is a possibility of something coming forward that *would* be fair, that would be accommodating and get these projects up and running. Because again, if we wait 'til June or July, hey, you know. But it has to be done right. It just cannot be *done*. It has to be done *right*. So, Chair, you know, again like I made ourselves available to Planning, these are very important issues to our community and if we have to have extra days of meetings, off-week meetings, I make myself available if at all possible. Can we do that? I would be very, very, . . .gratified for those, especially our working force that's out there waiting for some of this to occur. I don't want the working force to be the *only* reason we do this. It's gotta be one of many reasons. The community, our General Plan, all the things we're working on all has to be incorporated. And lastly, that either the Planning Commission and/or ourselves would have the last review to make sure that this is done in a fair and equitable manner. That's gotta be there because we are, our constituents come to us, and we need to have some kind of knowledge and ability to say yea or nay especially if it's gone maybe where it need not go. Yeah? So, Mr. Chair, that would be my only request. I mean, I'd like to see this completed. I would like to see the concerns and I think a letter from you on behalf of the Committee and something coming back by no later than the 15th of next month. I mean put some definitive timelines because if it's so important, and I hear it from the department right, Mr. Arakawa and Mr. Hunt, that this is very important, well, let's get some timelines, let's try to get these things resolved or at least some solutions or some alternatives offered. Bang, let's get it done. And I cannot see waiting until June or July. Again, I don't think we need to do that. But, I leave it in your hands, Mr. Chair, and I leave it in the Administration's hands, and I leave it in the department hands. Bring it back to us and I will make myself available whenever you call on us, Mr. Chair. Thank you.

CHAIR MOLINA: Alright, thank you very much, Mr. Victorino. Any other comments before the Chair makes his recommendation and a few brief comments?

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COUNCILMEMBER PONTANILLA: I get one fast one.

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Members, I think all of you have a copy of what was presented as written testimony by John Rapacz. It's very interesting reading.

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER PONTANILLA: So, I would suggest that you take a look at it. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla.

COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . .

CHAIR MOLINA: Well, Members, first of all thank you for your comments and for your being here. And Mr. Victorino, the Chair will certainly entertain your suggestion, like Mr. Kaho'ohalahala had mentioned for his matters. . .we will certainly, you know, we have scheduled three more Committee meetings prior to the budget session. If, depending on the Administration if, they've heard a laundry list of concerns, not only from the general public but also from you as well, if they can get a revised bill or consideration to us prior to us going into the budget session then the Chair is open to meeting in an off-week. But of course that depends on you as well. We do need quorum, so I will be open to that. If it is deemed such a time-sensitive matter, if we are in the budget session and it's deemed such a time-sensitive matter by you and if the Chairman, Council Chair, and the Budget Chair are open to it then. . .and the time is available to me during off week after March 15th, well, the Chair of *this* Committee is open to that suggestion as well. But again I wanna thank the Administration. You've heard a load from us as well as the members of the public and I wanna thank you for at least proposing a solution to this concern from...and I'm glad Mr. Arakawa made the point about this is not only just the large landowners, this is the, those who would have *family* subdivisions as well, Upcountry or wherever, yeah. And also, for me as the Chair having, hearing about ads on the radio from those in the trades industry expressing some concerns about the bill as currently proposed, that sort of raised a flag as well. So, there's a lot of give and take with this. There's, I guess in general, there's appreciation for the solution but there are some concerns. And also the issue that you've heard about the distribution of power amongst the directors, I think that's going to come into play. That's something the Administration when they come back with their revised proposal, that they'll have to look at. And also, Mr. Galazin, I think Mr. Nishiki made the point that, you know, you're in a, you have to walk a . . .a tightrope in terms of representing both the, the Administration's concerns as well as the Council's concerns. So that's just how the system works where Corporation Counsel, you have to be sort of, give an open ear to both the Administration and the Council, the legislative branch. So, I think I have had enough to say. Members, you are

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again free to submit any other questions to the Committee Chair or Committee Staff that we can forward to the Administration. And again I will try to bring this matter back this term in an expeditious manner--again depending what the, when the Administration can get a revised proposal to us and then we shall work from there. So if there are no other questions or comments for the Administration, the Chair's recommendation will be to defer this matter.

COUNCILMEMBER VICTORINO: No objections.

CHAIR MOLINA: Any objections?

COUNCILMEMBER BAISA: . . .*(inaudible)*. . .

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, thank you.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: JJ)

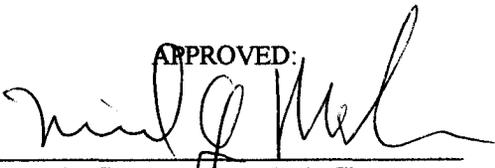
ACTION: DEFER pending further discussion.

CHAIR MOLINA: Chair would like to remind everyone tonight we have a Planning Committee hearing under the leadership of Mr. Kaho'ohalahala, and that is in Mr...in . . .*(inaudible)*. . . in Pukalani. Mr. Kaho'ohalahala, am I correct?

COUNCILMEMBER KAHO'OHALAHALA: Yeah, carrying on the confusion . . .*(laughter)*. . .

CHAIR MOLINA: Okay. Six o'clock tonight. So, Members, people, all of you out in the public and viewing, if you would like to share your mana'o with regards to the island plan, please come on out to Pukalani, the Tavares Community Center this evening. So with that being said, it is 20 minutes to the hour of one o'clock. This Committee of the Whole meeting for January 20th, 2010 is now adjourned. . . .*(gavel)*. . .

ADJOURN: 12:41 p.m.

APPROVED:


MICHAEL J. MOLINA, Chair
Committee of the Whole

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Transcribed by: Kekai Robinson

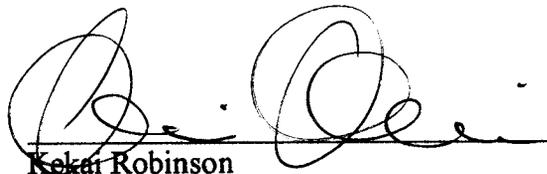
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CERTIFICATE

I, Kekai Robinson, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 10th day of February 2010, Wailuku, Hawaii.



Kekai Robinson