

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

July 1, 2015

Council Chamber, 8th Floor

CONVENE: 1:34 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Robert Carroll, Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Stacy Crivello
Councilmember Don S. Guzman (in 1:37 p.m., out 1:50 p.m., in 2:03 p.m.)

STAFF:

Scott Jensen, Legislative Analyst
Raynette Yap, Committee Secretary

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

ADMIN.:

Michele McLean, Deputy Director, Department of Planning
Kurt Wollenhaupt, Planner V, Department of Planning
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS:

Frank DeRego, Jr.
Gene Zarro
Lucienne de Naie
Jordan Hart, Chris Hart & Partners, Inc.
Brett Davis, Chris Hart & Partners, Inc.
John Buetler, Chris Hart & Partners, Inc.
Steve Perkins, Project Coordinator, Pacific Rim Land, Inc.
Kimoqueo Kapahulehua, Hana Pono
Michael Dega, Scientific Consultant Services, Inc.
Plus (9) Others

PRESS:

Akaku Maui County Community Television, Inc.

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CHAIR CARROLL: . . .*(gavel)*. . . Land Use Committee meeting of July 1, 2015 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. And may I, first of all, may I request if anybody has cell phones or anything that makes noise, please turn it off or silence it. We have with us this morning Committee members, our Vice-Chair, Mr. Victorino.

VICE-CHAIR VICTORINO: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. And we have with us, Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good afternoon, Chair.

CHAIR CARROLL: Mr. Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR CARROLL: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good afternoon, Chair.

CHAIR CARROLL: And Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Our Executive Branch representatives, we have William Spence and Kurt Wollenhaupt, Planning Department; Rowena Dagdag-Andaya, Deputy Director of Public Works; and Michael Hopper, First *[sic]* Deputy Corporation Counsel. Applicant's representative, we have Jordan Hart and Brett Davis, Chris Hart & Partners; Darren Unemori, Warren S. Unemori Engineering Incorporated; Steve Perkins, Project Coordinator, Pacific Rim Land, Incorporated. Representing the Applicant, Thomas Holliday of Hallstrom Group; Marketing Assessment, Economic Impact, Affordable Housing Assessment, Philip Matsunaga, Parsons Brinckerhoff, Traffic Engineering; Kimokeo Kapahulehua, Hana Pono, Cultural Impact Assessment; Dr. Mike Dega, Scientific Consultant Services, Incorporated, Archaeological Inventory Survey. Committee Staff, we have Raynette Yap, Committee Secretary, and Scott Jensen, our Legislative Analyst. Today we have a single item on our agenda. Community Plan Amendment and Change of Zoning for Maui Research and Technology Park, Kihei, LU-4. Assisting us this morning from the Hana District Office is Dawn Lono. Are you there, Dawn?

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office.

CHAIR CARROLL: And from Lanai Office, Denise Fernandez. Denise?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

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CHAIR CARROLL: Thank you. And Molokai District, we have Ella Alcon.

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR CARROLL: Thank you. For individuals who'd be willing to testify in the Chamber, please sign up at the desk located on the 8th floor lobby, just outside the Chamber door. If you'll be testifying from a remote testimony location specified on the meeting agenda, please sign up with the Council Staff at that location. Testimony will be limited to items listed on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you are representing. Mr. Jensen?

MR. JENSEN: Mr. Chair, there's currently no one in the Chamber who signed up to testify.

CHAIR CARROLL: Molokai, do you have anybody signed up to give public testimony?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR CARROLL: Mahalo. Lanai, do you have anybody signed up to give public testimony?

MS. FERNANDEZ: There is no one waiting to testify at Lanai.

CHAIR CARROLL: Mahalo. Hana, do you have anybody signed up to give public testimony?

MS. LONO: There's no one waiting to testify in Hana.

CHAIR CARROLL: Mahalo. Since there's nobody, is there anyone in the gallery that wishes to sign up?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: We have one person coming forward.

COUNCILMEMBER COCHRAN: And there's another one on their way.

CHAIR CARROLL: When you finish, please go and sign, fill up the form. Proceed. Identify yourself at the microphone.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. DeREGO: Aloha, Chair Carroll, and the members of the Committee. I am Frank DeRego, Jr., Business Development Projects Director of Maui Economic Development Board. And I am testifying in support of LU-4. Once again, I want to reiterate what vice-president Leslie Wilkins of MEDB shared at this podium at the last meeting of this Committee. MEDB is very judicious about what we testify for or

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against. MEDB would not violate our mission and values which emphasizes social and environmental responsibility, economic diversification and especially respect and sensitivity as it relates to the rich heritage of our kanaka maoli, our heritage, which by the way I share. MEDB has been involved with the development of the Park since its inception many years ago and was one of the original partners in this development. MEDB's building and headquarters are, remain in the Park. It's important to note that the R&T Park is not a new development. The action the Committee is deliberating today is an update to an existing development. No additional land is being added to what has been planned since the 1980s. This is a course correction for an already existing and operational development. As you know, MEDB's mission is to encourage appropriate economic diversification. The R&T Park provides a place for that to happen. A significant number of employees in the Park are from Hawaii and the typical wage of Park workers in a diversified industry is well above average. And as you know, MEDB, over the years, has taken a lot of efforts in workforce development and education to be able to fill a lot of those jobs with our local children. It is important to have a flexible plan to, that will allow for the continued growth of the Park by being an attractive location for a diversified industry for many years to come. After evaluating the Master Plan, the MEDB Board of Directors voted and resolved to support the Maui Research & Technical Park Master Plan Update. The Board believes it is a good plan and will help economic diversification and it meets all the benchmarks I have highlighted. We hope that the Committee today will support this application. Thank you very much.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you. And let the record show Mr. Guzman is with us.

COUNCILMEMBER GUZMAN: Good afternoon, Chair.

CHAIR CARROLL: Proceed.

MR. ZARRO: Good afternoon, everyone. Thank you, Chair Carroll, for this time. Thank you, Councilmembers, for your time today. I'm here to testify on behalf of this, the merits of this project for Maui Research and Tech Park. My name is Gene Zarro and I am the CEO of the South Maui Learning Ohana. We are one of the property owners up there at the Maui Research and Tech Park and I'd like to tell you today that our project has been approved by USDA. We've hired the contractor and everything is going forward. It is a \$19 million project. This may very well be the first school ever built before the houses. So we are very much looking forward to establishing this school up at the Maui Research and Tech Park. However, if it were not for the Maui Research & Tech Park issue before you right now, we would not be able to build this school. We need the things that the Tech Park is asking for. We feel, like the previous testifier said, a course correction. When we designed this school, the very large setbacks that would've been in existence if this doesn't pass, would not work for a school. We need the empty land, the free space, behind the building, not in front of the building. We want our students collecting behind us, not out on the street in front of us. So one of the design factors that really helped us in selecting this property for this development was the fact that these new design standards were very pleasing and very, offer a

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sustainable model for us to build with. And, so, having a streetscape development that puts all of our students behind the school and takes all the free space and consolidates it into one area was very important. Also, if, I'm addicted to Yahoo News, and Yahoo News just had a article come out and here we are at Maui again at the forefront, school development is going vertical and it's going vertical for all the obvious reasons, for consolidating free space and to be in places where the population is growing that doesn't allow for 200-acre campuses anymore. So here we are in a development mode. We will be building a three-story school and the height requirement we are in need of is just a few feet higher than what's currently allowed. So it's not imposing but it is something necessary for us. So I really urge the Council to approve this. It is a great project. It could be an example of communities to come for Maui and it is necessary for South Maui Learning Ohana in order to build the building we've currently designed. Thank you.

CHAIR CARROLL: Thank you. Any clarification needed from the testifier? Seeing none, thank you. Is there anyone else in the gallery that wishes to give testimony, please come down. Seeing none, and having none at our...oh, it seems like somebody was hiding back there. When you finish, please sign up at the table outside.

MS. de NAIE: Thank you, Chair. I have signed up already but I was behind the post there so you didn't see me. My name is Lucienne de Naie. I'm testifying on behalf of the Sierra Club Maui group and I did send over two pages of written testimony. We addressed some of the historical, cultural sites last time. We sent some supplemental information to the Chair and hopefully those who were interested got copies of that. But we would like to address two other issues today as well and suggest some possible conditions that this body might consider as they move forward with the review. One deals with traffic and the traffic study is a little bit dated, it's from 2013. It makes some assumptions that may or may not be true, including that there will be some supplemental roads built out by the time that the traffic impacts of the project emerge. Of course, we all hope that this would be true, that the North-South Collector Road would be completed and so forth and so on but, you know, if wishes were horses, we wouldn't have any traffic problems, and we do and we have. We've had gridlock on Piilani Highway before it was made four lanes. So I just suggest here a condition. It's very simple. It's not my work, it came from the State Land Use Commission. They did not choose to put it as a condition of zoning but their staff very much recommended that this would be an appropriate condition and that is that there be a completion of Liloa Drive or the North-South Collector from Kaonoulu Road to Keonekai Road prior to building permits being issued for this project. You might want to change the configuration of how far the road needs to exist but really there should be some incentive for that to be in place because it's going to be needed. The other topic we'd like to address is drainage. This area is bordered by two gulches. The County requires improvements only to address the drainage that's generated on site. They do not require any improvements to deal with what already flows through the property, which is considerable. We already have flooding down slope of this. When Piilani Village was built, they were given a condition that they had to address upslope drainage by installing a couple of retention basins. These were on, these exist now on the property that's in the subject, of this proposal, and if you look in the fine print of

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the deed you'll see that there's an easement to maintain these that goes through 2012. I don't think it's unreasonable to ask that further upslope, we try to keep some of the runoff that's now going into this property. No, it is not the fault of this property that is there, but that we try to keep some of that and absorb it upslope as a condition of development. Obviously there's a precedent to this because it was done once before for a project further makai. So I hope you will consider this very, very simple condition. Unfortunately, our laws just don't address this stuff and so what we have is flooding problems that no one can deny. The third thing is about the archaeological and historical and cultural resources. I just want to repeat, there are some things here that really should be protected. And certainly if this project wants to have a sense of place, this is a very important ahupuaa. There's fishponds at the coast. There was a large settlement just to the south, in Kamaole ahupuaa. We really should try in our conditions to urge them to put any known cultural site even if it's interpreted as being from World War II, that's in an open space area or park area, protect it, preserve it, incorporate into the landscaping. Thank you.

CHAIR CARROLL: Thank you.

MS. de NAIE: Sorry. It's a lot to say in three minutes.

CHAIR CARROLL: Any clarification needed from the testifier?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Ms. de Naie, for being here. Looking at your, the historical, cultural resources section of your, and it says proposed condition, are you saying all four of those items below?

MS. de NAIE: Yes. I think all four of those should be, they're pretty related. First of all, the boundary wall, I think you were told that it's going to be preserved as a result of Land Use Commission conditions. I sent that particular condition over to Chair Carroll and it was left out of that condition so it should be put in your condition. And then the walled side I sent you guys a picture of, it's true that it is not in the project site but the project has a proposed access road that goes somewhere very near it. It's just kind of a dotted line on the map. So just in case we don't know where that alignment should be, we should just make it clear that alignment shouldn't impact that site and even though it's not on the subject property, neither is the access road on the subject property. So since there's going to be an offsite impact, we should consider that offsite cultural resource in that impact, and then, you know, if there are other cultural sites that are located, which it appears from the map, in areas that might be open space or park, let's just say that, you know, that they be protected as part of the Park design. Usually it's pretty easy to fit those kinds of things in, and then the historic road, it needs to be determined which portion goes through the property. There's different maps in their EIS and the archaeological maps shows clearly two sections of the road passing through but the other maps don't match that particular map. So that would

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require a little bit of work. I sent Chair Carroll a whole series of maps that show the location of the road on USGS maps, but we'd need to the project on a USGS map to see where what happens when. And you can see the road on Google Earth. It is there.

COUNCILMEMBER COCHRAN: Okay. Thank you very much for your time, Ms. de Naie. Thank you, Chair.

CHAIR CARROLL: Anybody else have any clarification from the testifier? Hearing none ...

MS. de NAIE: Thank you for this opportunity.

CHAIR CARROLL: Thank you. Is there anyone else wishes to come down and give public testimony? Hearing none, we'll check one more time with Hana. Hana, do you have anybody waiting to give public testimony? Hana? Let's try Molokai. Molokai, do you have anybody waiting to give public testimony?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR CARROLL: Thank you. Lanai, do you have anybody waiting to give public testimony?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR CARROLL: Hana, one more time. Do you have anybody waiting to give public testimony? Hearing none, if there's no objection, we will close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

. . . END OF PUBLIC TESTIMONY . . .

ITEM NO. 4: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE MAUI RESEARCH & TECHNOLOGY PARK (KIHEI) (CC 14-311)

CHAIR CARROLL: The Committee will, today, continue the discussion of this item, LU-4. First discussed in the meeting of June 17, 2015, the Committee is in receipt of County Communication 14-311, from the Planning Director, transmitting the following: a proposed bill entitled A Bill for an Ordinance Amending Ordinance 2641 (1998), Kihei-Makena Community Plan and Land Use Map, from Project District 6 (R & T Park), Public/Quasi-Public, and Agriculture to Maui Research & Technology Park for Property Situated at Kihei, Maui, Hawaii. The purpose of the proposed bill is to grant a request from Planning Director, on behalf of Maui R&T Partners, LLC, to change designations in the Kihei-Makena Community Plan and Land Use Map to Maui Research and Technology Park for 406.009 acres located mauka of Piilani Highway,

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adjacent to Lipoa Parkway in Kihei, Maui, Hawaii (“subject property”), consistent with Maui Island Plan. The planning guidelines for MRTTP designated include approximately 1,250 dwelling units, with a balance of single-family and multifamily units; up to 2 million square feet dedicated to “knowledge based employment” in fields such as scientific research, education, health care, and media production; and approximately 35 percent of the acreage dedicated to other purposes, including parks, civic, residential, and commercial uses. A proposed bill entitled A Bill for an Ordinance Amending Chapter 19, Maui County Code, to Establish a New Chapter 19.38, Maui County Code, for Maui Research and Technology Park Situated in Kihei, Maui, Hawaii. The purpose of the proposed bill is to establish Maui Research and Technology Park District in the Comprehensive Zoning Ordinance, with the stated intent of creating “opportunities for a broader range of desirable knowledge based and emerging industries” and provide “diverse housing options.” Number three, a proposed bill entitled A Bill for an Ordinance to Change Zoning from Kihei Research and Technology Park District and Agricultural District to Maui Research and Technology Park District (Conditional Zoning) for Property Situated at Kihei, Maui, Hawaii. The purpose of the proposed bill is to grant a request from the Planning Director, on behalf of Maui R&T Park, Partners, LLC, for a Change in Zoning in Maui Research and Technology Park District for the subject property. The Committee may consider whether to recommend passage of the proposed bills on first reading with or without revisions. The Committee may also consider filing of County Communication 14-311 and other related actions. Members, I have circulated a revised list of proposed conditions of zoning that address some of the concerns that were raised at the last meeting and particularly the protection of archaeological features and assurances regarding remedial action addressing traffic impacts. What Ms. de Naie brought before us today touches on, I’ve tried to address over here. I’m going to bring these bills, the ones I have before you, I’d like to bring them forward one by one and if they are satisfactory, if you feel they have addressed it, or if you’d like to make changes, we can make amendments on the floor. But I’d like to do it this way ‘cause there’s a really good start to work on. Oh, and I need to clarify something. If people have noticed, I said that Will Spence was here from the Planning Department, this is not Will Spence, this is Michele McLean. And they do look a little different, I don’t know how I made the mistake. Alright. Members, the first one I’m going to ask for a motion on--and you have all this, you have them, everybody has this before them, do they not?

VICE-CHAIR VICTORINO: Yes.

CHAIR CARROLL: Okay. That the Maui R&T Partners, Incorporated shall provide, in a timely manner, to the Department of Planning, without any written prior notice, copies of any reports sent to the State of Hawaii Land Use Commission in connection with the status of the development of the Petition area and Petitioner’s progress in complying with the conditions imposed under the Decisions and Order for Land Use Commission Dockets A10-787 and A84-585 approved as to form, November 22, 2013.

VICE-CHAIR VICTORINO: So move, Mr. Chair.

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COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Mr. Couch. Discussion?
Mr. Victorino?

VICE-CHAIR VICTORINO: I'll allow Mr. Couch. I'll let him start since he's the area representative.

COUNCILMEMBER COUCH: Thank you, Mr. Chair and Mr. Victorino. That condition's already there. The only thing that's different is you changed the applicant to Maui R&T and Partners, Inc. Is that correct, Mr. Chair? That condition's already in our Exhibit "B." It's just the --

CHAIR CARROLL: Yeah.

COUNCILMEMBER COUCH: --name is changed. Okay. I just wanted to double check.

CHAIR CARROLL: Any objections?

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Thank you. Anything further to the motion on the floor? Hearing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, six "ayes" and one excused.

VOTE: AYES: Chair Carroll, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: APPROVED.

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CHAIR CARROLL: The next one, No. 2. That the Maui R&T Partners shall provide their pro-rata share of traffic improvements as determined by the project's Traffic Impact Assessment Report and to the satisfaction of the Department of Public Works.

VICE-CHAIR VICTORINO: So move, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Mr. Couch. Discussion?

VICE-CHAIR VICTORINO: Mr. Chair? Oh, I'll let the representative go first.

COUNCILMEMBER COUCH: Thank you, Mr. Victorino.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Have you run this by the Applicant? I was just curious what their thoughts were on this.

CHAIR CARROLL: No, I haven't.

COUNCILMEMBER COUCH: May we?

CHAIR CARROLL: We may.

COUNCILMEMBER COUCH: Thank you.

CHAIR CARROLL: Could the Applicant, you have heard the proposed resolution. Could the Applicant or their representative come down? Please identify yourself at the microphone and your position.

MR. PERKINS: I'm Steve Perkins. I'm the Project Manager for the Maui Research and Technology Park. And we have no issues with the proposed condition.

COUNCILMEMBER COUCH: Okay, thank you. Thank you, Chair.

CHAIR CARROLL: Thank you.

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Oh, wait, one moment.

COUNCILMEMBER COCHRAN: Sorry, Mr. Perkins, sorry.

CHAIR CARROLL: Ms. Cochran?

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COUNCILMEMBER COCHRAN: Is there, Mr. Perkins, not sure if you caught one of the testifier's proposed condition in regards to traffic, Ms. de Naie's, and I'm not sure if you heard what that is. I'll read it to you and if I can get comments from yourself if you're able to comment at this time.

MR. PERKINS: Sure. And I may, ma'am, I may defer to our traffic engineer.

COUNCILMEMBER COCHRAN: Okay, that's fine, as long as, you know, I can get a yay, you like it or that's totally not happening or. Proposed condition is saying Liloa Drive extension from Kaonoulu to Keonekai Road be completed prior to any building permits being granted for Phase I of the R&T Community.

MR. PERKINS: Yeah, that would be a non-starter from our position. We already have a list of 28 conditions imposed by the Land Use Commission. One of them being that we have to have a Memorandum of Agreement in place with the Department of Transportation and all the improvements we have to have and what our contributions will be before we can go to final subdivision approval. We also, just, we just discussed the proposed condition that we also have an agreement with the Department of Public Works. They're getting ready to kick off a regional traffic study here in the near future that will hopefully quickly address the issue surrounding the makai collector, the North-South Collector Road in Kihei, and, you know, we would like to have the ability to continue to build and not be, you know, basically dead in the water until that road's in place for a number of miles.

COUNCILMEMBER COCHRAN: Okay, well, I appreciate your comments. Thank you. Chair, thank you.

CHAIR CARROLL: Thank you. Anything further while I have him up here? Hearing none, thank you, sir.

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: He might as well stick around 'cause you've got two more. Unless you want to go sit down and come back and forth.

MR. PERKINS: That's fine. I'm --

CHAIR CARROLL: If you don't mind, if you could just stand by over there.

MR. PERKINS: --at your disposal.

CHAIR CARROLL: Alright. Any further discussion to the motion on the floor? All in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

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CHAIR CARROLL: Opposed? Motion carried, six “ayes,” one excused.

VOTE: AYES: Chair Carroll, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: Number 3, Maui R&T Partners, Incorporated shall preserve SIHP Site 6241 from any construction-related activities. A report of monitoring activities shall be submitted to the State Historic Preservation Division upon completion of the fieldwork.

VICE-CHAIR VICTORINO: So move, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Mr. Couch. Discussion?

VICE-CHAIR VICTORINO: I guess since he’s there and I will start this time. Steve, how do you feel on this particular preservation of this area that no construction-related activities would occur?

MR. PERKINS: That, we’re, that’s good with us. We’re, that’s an acceptable condition.

VICE-CHAIR VICTORINO: You can handle, and that’s not going to interrupt --

MR. PERKINS: No, sir.

VICE-CHAIR VICTORINO: --the overall. I didn’t think so but I just wanted to hear it from you. So, Mr. Chair, with that in mind, I have full faith and support in that. Thank you, Mr. Chair.

CHAIR CARROLL: Any further discussion to the motion on the floor? All those in favor, please signify by saying, “aye.”

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COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven “ayes,” no “noes.”

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, Couch,
Crivello, and Guzman.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: Number 4, that Maui R&T Partners, Incorporated shall identify and preserve traditional beach and mountain access trails which may be required for public access to the beaches, mountains, and, if applicable, prepare a preservation/mitigation plan after consultation with the State Department of Land and Natural Resources and the Office of Hawaiian Affairs.

VICE-CHAIR VICTORINO: So move, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Mr. Couch. Discussion?

VICE-CHAIR VICTORINO: Go ahead, Mr. Couch.

COUNCILMEMBER COUCH: Thank you.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: The question.

MR. PERKINS: Is this the, well ...

COUNCILMEMBER COUCH: I'm just curious what, certainly, what traditional beach access. But mountain access trails, I'm not sure which are there either, so.

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MR. PERKINS: I'm not aware of any. I'd like a moment to confer with our archaeologist, if I may. It might not be an issue but I, you know, I'm not aware of any sites that, you know, that would meet that condition.

COUNCILMEMBER COUCH: Okay.

VICE-CHAIR VICTORINO: If that would be allowed, Mr. Chair, to consult with their, with his archaeologist?

CHAIR CARROLL: Yes, please.

MR. PERKINS: Just one moment, please.

MS. McLEAN: Chair? Chair?

CHAIR CARROLL: Oh, Ms. McLean?

MS. McLEAN: If we can just comment in the meantime. Through the process, they did their archaeological work as well as Cultural Impact Assessment as part of the environmental review process and such accesses should have been identified during that process. So if they haven't been identified yet, it's not clear what steps this condition would require for them to attempt to identify them again. So when we're looking at conditions, we look at how they need to be complied with. And so, essentially they would just tell us we've sought to identify such accesses and haven't found any and then the condition would be fulfilled. So if they will tell us today that they haven't identified any trails through the archaeological and cultural work that they've done, I don't know what else is expected of them to go and essentially look again. So we're not really clear what's expected of them beyond the work that they've already done.

VICE-CHAIR VICTORINO: Mr. Chair? Mr. Chair? You know, Ms. McLean, and thank you, but, you know, this one, when I read is shall identify and preserve traditional beach and mountain access which may be required for the public access of the beach and mountain, and, if applicable, prepare a preservation and mitigation plan, but the word that stands out is shall identify. If it ain't identified, they gotta identify it, shall identify it, it's not may identify it, it's shall identify it. Now, Mr. Chair, I think that's what your intent was, but I would say, for me, because you put the word "shall," it's a has to be done. It's not something that, oh, I haven't done it, so I'm going to do it and there's nothing there, but I will ask their, if we can, Ms. McLean, to ask them what they take on this. And, Mr. Chair? Mr. Chair?

CHAIR CARROLL: Yes?

VICE-CHAIR VICTORINO: Is that your intent when you put the word "shall" identify?

CHAIR CARROLL: One moment.

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VICE-CHAIR VICTORINO: That's number 4, first line. That's what I interpret it as but, again, interpretations is a matter of who's reading it, right?

CHAIR CARROLL: The way it reads...

VICE-CHAIR VICTORINO: Maybe Mr. Hopper can help us too, Mr. Chair. I'm sorry.

CHAIR CARROLL: The way it reads over here, Maui R&T Partners, Incorporated shall identify and preserve traditional beach and mountain access trails which may be required for public access. We are saying "shall."

VICE-CHAIR VICTORINO: Yeah.

CHAIR CARROLL: You know, if they're required for public access.

MS. McLEAN: Right. But which may be required for public access. So if there aren't trails that are required for public access, what are they being required to identify? That's what I'm stuck with.

VICE-CHAIR VICTORINO: Maybe we can ask Mr. Hopper. What do you think of that, Mr. Hopper?

CHAIR CARROLL: Corporation Counsel?

MR. HOPPER: I'm not exactly sure. I mean, I understand what the Deputy Director's point is is that generally for these types of, you could call them PASH rights or gathering rights, they would need to be identified before the approvals are given, meaning that you would want to have a, that done as part of the archaeological survey so that when making the decision whether or not to grant the zoning, you would impose the required easements or trail maps prior to actually imposing the condition. I guess the question's being asked and I don't think we've heard from the Applicant, today anyway, on this condition and whether or not there has been a survey that would have identified or a thorough enough survey that would've identified all of these accesses because that's generally something that needs to be done prior to any approvals being granted rather than after the fact. I don't necessarily think it's a, you know, it's a, it could be a redundant condition. I don't necessarily think it's an unlawful condition. And maybe would read more like if, I don't know, if something's identified later on that could not have been foreseen, I suppose, but generally laws would be in place to protect that anyway so. I think it's a valid question to just confirm if there has been anything found. And if so, where are they located? And if so, what, more specific conditions as to those trails should be imposed right now, prior to granting the zoning, so that those trails are preserved. And if the survey, if the, you know, adequate research hasn't been done then generally that needs to be done prior to making the decision to rezone the property and presumably with the Land Use Commission approval, that's already been done at this point, and it would be helpful to hear from the Applicant. But I think that the issue is not that, is not necessarily the "shall" language because that's generally something that has to be done prior to the

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entitlement, can be granted. I think the point is, is being discussed, is was this already done and if so, if there's no trails identified, what further action is required at this point? Whether, is there a need for additional surveying? Is there a need for marking out these trails and putting them in a condition or is there, I mean, is there some reason to have this on here where if in the future something happens, that there be a protocol in place, which generally the State would have to follow, would require them to follow anyway. But I think more information from the Applicant would be helpful at this stage along those lines.

VICE-CHAIR VICTORINO: Okay, thank you. And, Mr. Chair, if we could hear from the Applicant with those questions in mind?

MR. PERKINS: Certainly. We've completed a very comprehensive archaeological study of the site and I'd like to defer to our archaeologist who's here today and have him explain, you know, the process that they went through in evaluating the site, if I may, sir?

CHAIR CARROLL: Thank you.

VICE-CHAIR VICTORINO: I would like that, Mr. Chair, please.

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: Any further discussion?

COUNCILMEMBER COUCH: We'd like to hear from the architect.

VICE-CHAIR VICTORINO: Archaeologist.

CHAIR CARROLL: Oh, I'm sorry.

VICE-CHAIR VICTORINO: Yeah.

COUNCILMEMBER COUCH: Or archaeological.

VICE-CHAIR VICTORINO: Archaeologist.

COUNCILMEMBER COUCH: Archaeologist.

MR. PERKINS: I'll bring our, Dr. Mike Dega up.

MR. DEGA: Mr. Chair and Committee Members. Mike Dega, SCS Archaeology. The legal stuff confused me a bit but simply, in our full survey of project area, there's no traditional beach and mountain access trails through the project area at all. I talked with Kimokeo, who also did the Cultural Impact Assessment and he came up with the same results. Lucienne is correct, there is a historic road segment in the project area. Unfortunately, she's totally incorrect in that it is not the Kanaio/Kalama Road. It's a army road that was constructed in the 1940s as the military used that area for

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training. It goes about 140 meters through the northeastern section of the project area. It's been listed as Site 6485 and was recommended for adaptive reuse by the State Historic Preservation Division. That's the only road, trail access, anything else in the project area, that one segment.

VICE-CHAIR VICTORINO: Okay.

CHAIR CARROLL: Any further clarification?

VICE-CHAIR VICTORINO: Well, for myself, I think he's clarified what I, my questions I had. I still am, with this condition, I agree with our legal people that maybe something has to be put in that, if anything is found, that immediate stopping of construction in that particular area. But they've done their work and so I just want to make sure this language is enforceable should something come up, Mr. Vega [sic]. That's what I'm looking for. If something does come up, yeah.

MR. DEGA: Like an inadvertent discovery --

VICE-CHAIR VICTORINO: That's correct.

MR. DEGA: --in the future, okay.

VICE-CHAIR VICTORINO: That is correct, you know, so maybe some kind of language putting in here that, shall an inadvertent discovery be found on the property, that it be reported and that the corrective measures be taken or something like that. I'll let the legal people figure that one out. Okay, Mr. Chair, but your intent is good. Thank you, Chair.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I note that this condition talks about traditional beach and mountain access trails. Traditional to whom or what? Cultural? I mean, pre-contact?

MR. DEGA: We use the word traditional to mean pre-contact Hawaii, before 1778, traditional period. That's the way we use the word. I'm not sure how it's used here.

COUNCILMEMBER COUCH: And I guess that's my question for the Chair is, is that your intention on the use of the word traditional as well? I don't know that any beach access has been preserved because you've got a Piilani Highway running straight across any potential old beach access. So that, I'm not quite sure how that would work. And I'm assuming, you know, without, not hearing anything, any kind of objection from the Chair that that's what he means is for traditional mountain access trails. And to me, an old World War II road is not a traditional mountain access trail. But if there are others, which they said that they, you didn't find any others, right?

MR. DEGA: We did not, no.

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COUNCILMEMBER COUCH: How likely is it to find an, inadvertently find one?

MR. DEGA: I would say very low 'cause we surveyed the whole area at this point and we've done archival research. Kimokeo's also looked at the maps, archival maps. They just don't show up.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And, Chair, so this condition that your office came up with, right, No. 4, your office?

CHAIR CARROLL: These are the conditions that my office came up with from the public testimony received at the last meeting.

COUNCILMEMBER COCHRAN: Right.

CHAIR CARROLL: I did not have Ms. de Naie's one at that time until today.

COUNCILMEMBER COCHRAN: Okay.

CHAIR CARROLL: But this is her concerns and some of the other concerns that these four conditions address from the last meeting.

COUNCILMEMBER COCHRAN: Right, and so that's kind of my question, is this to address, 'cause she just sent us, gave us this testimony today with some proposed conditions. So I'm wondering if some of these in here, you're trying to address in this No. 4 and how, and Ms. de Naie is still here if we can maybe use her as a resource person, I think, 'cause she has, I believe, a good point here and if there's a way to word what we're looking at to address. 'Cause I get the gist of what she's trying to say and what we're all sort of trying to come together to say if there's something there. I know archaeologist is saying no, they've done a thorough enough job, that, no. This army road, regardless, I believe, and the community Plan states you need to preserve any roads 50 years or older and things of that nature, and I believe at times roads can be from a traditional road, Ala Loa Trail, what have you, some of our asphalted roads have followed that. Unfortunately, got paved over but. So, you know what I mean, Chair? And in some of her points, it's recorded or unrecorded and basically it's, have it in place that the company, the developer protects these, right? You don't know it today, but you come across it under construction and I like that idea. You know, I think we should look at that. So if, and even though Elleair Golf Course, you know, may impact something upon these people's property, then it should be understood that this entity and the other entity agree there's such a site that it needs to be preserved and they'll work hand-in-hand and it's not forgotten and it's, you know, they're sort of working with. So I like her proposed conditions and I know you

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addressed No. 1 but I'm trying to see how 2 to 4 can be incorporated in this No. 4 we're now looking at. Do you know what I mean, Mr. Chair?

CHAIR CARROLL: No, I do. And Like I said at the beginning as we went through these conditions, we can either pass these conditions out as --

COUNCILMEMBER COCHRAN: Right.

CHAIR CARROLL: --I've submitted them to you or we can make amendments to these conditions or when we're finished with these, we can also add conditions.

COUNCILMEMBER COCHRAN: Right.

CHAIR CARROLL: So it's really how you wish to structure it.

COUNCILMEMBER COCHRAN: Okay. But, Chair, if you don't mind, can we use Ms. de Naie as a resource person? Ms. de Naie, have her ...

CHAIR CARROLL: Oh, you mean bring Lucienne down?

COUNCILMEMBER COCHRAN: Yes.

CHAIR CARROLL: Yeah.

COUNCILMEMBER COCHRAN: If you don't mind, Chair.

CHAIR CARROLL: Well, is there --

COUNCILMEMBER COCHRAN: Or no objections.

CHAIR CARROLL: --any objections to bringing Ms. de Naie down to the podium?

COUNCILMEMBER COUCH: Just wanna know the qualifications.

CHAIR CARROLL: Yes.

COUNCILMEMBER COUCH: I mean this gentleman's a certified, I mean archaeologist and whatnot.

CHAIR CARROLL: Yes. And, Ms. Cochran, what it is, is when we call somebody down over there that's after public testimony, usually they have to be qualified, you know, to give comment on what you're asking, if they are qualified to give answers to the Council. And that's one of the, that's what Mr. Couch is asking because ...

COUNCILMEMBER COUCH: I'm just curious what the qualifications are, that's all.

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CHAIR CARROLL: Okay. The only way I can do that is to get her down here and ask her. Okay, Ms. de Naie, could you please come to the microphone? No objections?

MR. DEGA: Can I clarify point 4 after, if you don't mind?

CHAIR CARROLL: Yeah, if you could stand by afterwards?

MR. DEGA: Of course, thank you.

CHAIR CARROLL: Ms. de Naie, you heard the questions about qualifications? And that is necessary so, for the record, that we know what your qualifications are when you're commenting on what's under discussion on the floor at this time.

MS. de NAIE: Thank you very much, Chair Carroll, and members of the Committee. My qualifications are I was trained by kupuna, by Uncle Rene Silva, Uncle Ed Lindsey and others, taken to show cultural sites and taught the ways to find them and identify them. I've worked with Maui Cultural Lands to identify hundreds and hundreds of sites on many different locations. Boyd Dixon used to call Ed and I up and say, hey there's been a fire, let's go and check out and see if we find some sites. He was the head of archaeology here in Maui. I'm the author of a book on the history of the Makena area, under a commission of a OHA grant. I was chosen by the Luuwai family to do the research on this, so I have done a lot of research personally in writing this 200-page plus book on the history of South Maui. And working with Maui Cultural Land volunteers, we have identified hundreds of sites in the South Maui area, Wailea 670, Makena and so forth, that had not been documented by archaeologists and we appeared before this Committee and said that there were sites there. This has now been proven by Mr. Dega's work. So I don't know, I think we have a pretty good track record as citizens trying to follow in the steps of our kupuna. I do not have a degree in archaeology. I've taken one anthropology class. I'm an English major so, but I have walked and documented and talked to many kupuna about their memories. So that's what I kind of base my expertise on.

CHAIR CARROLL: Thank you. Any objections to Ms. de Naie's qualifications? If not --

COUNCILMEMBER COCHRAN: No objection.

CHAIR CARROLL: --Mr. Victorino?

VICE-CHAIR VICTORINO: No.

CHAIR CARROLL: Mr. Couch? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you, Ms. de Naie. Yeah, I'm looking through your conditions once again in regards to the archaeological aspects of this and not sure if you had a chance to see condition 4. I'm trying to see how to incorporate the types of protections you're looking for within this No. 4 and if it does address it. I'm trying to determine preserving traditional beach and mountain access

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trails, prepare a preservation/mitigation plan and things of that nature and condition 4 would help address, you know, what you have proposed here.

MS. de NAIE: Thank you, Councilmember Cochran, and thank you all for this indulgence. Hopefully it will prove beneficial. The, I have not had a chance to see any of the conditions yet. I asked if they were available and I was told they'd be made available today. So today is today and I still don't have a copy of them so I'll just speak to what I've heard. The language that I heard appeared to be pretty much an exact quote from County law. It's Title 19.50 something, it's the Change in Zoning requirements for the County of Maui. I've found that when you're considering a Change in Zoning that it's good to look down the list of what's required, and this is one of the things that's required. Now it is a very good point of what is the definition of traditional mountain/beach access. I don't dispute that the historic road that passes through this property, I have no absolute proof that it was traditional mountain/beach access. It does go to the mountains. It continues all the way, it joins in to the Kalama/Kanaio Road and I sent a series of maps to Chair Carroll that showed this very clearly. It goes all the way to Ulupalakua, which I guess you could say is the mountains, and it has many spurs that go down to the ocean, off the road, including to Kalama Park and Kalepolepo area. So it was used by folks after the military built it. It was used by horses. I know this from speaking with kupuna that I interviewed for my book. The road to Kihei was so bad that people did not go along the shoreline, they took that upper road and cut down after the war, and so this road has historic significance. So putting together the requirement of the Kihei-Makena Community Plan that says, identify, that development projects shall identify and preserve all historic roads, this is a historic road, it's on maps from the 1940s on. It was built by the military or was improved by the military. It might've been based on some traditional route. It has kind of a weird pattern of how it goes, which usually indicates it wasn't a military design, it was a design that was maybe more traditional than the military just improved. I don't see the harm, as Mr. Dega says, it has an identified site number. It goes through many different properties. If it has a site number and the idea is to incorporate it or avoid it, I think that that would be very nice, if it's incorporated as part of a bikeway or a greenway or something like that. I don't think anyone could object to it. It may be that this property, because it contains a major gulch, Waipuilani Gulch, that goes to a major fishpond, had traditional access along that gulch. Traditional access can be disrupted, you know, the evidence of it can be disrupted by many activities, including bulldozing and, you know, floods and so forth. But the concept that there is a historic road that passes through and that the Change in Zoning requires identification and protection of any traditional mountain and ocean access, I think, you know, kinda combine the two in this condition. I don't think this condition would do any harm to the Applicant. It basically just says, you know, if there is something to protect there, do your best to identify it and protect it. And since they want to create this sense of place, it seems like this would be right in keeping with their mission statement. As for incorporating the other conditions, I think you'd have to, if you wanted to suggest that they incorporate other sites into their open space and so forth, I think that would be a separate condition that someone would need to propose as part of this process. Thank you. I hope that answers your question.

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COUNCILMEMBER COCHRAN: Thank you --

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: --for your time, Ms. de Naie, and suggestions.

CHAIR CARROLL: Any further questions for Ms. de Naie? Seeing none, thank you.

MS. de NAIE: Thanks for this opportunity.

CHAIR CARROLL: Alright, Members, to the questions over here that we have ...

COUNCILMEMBER BAISA: Mr. Chair?

COUNCILMEMBER COUCH: Mr. Chair?

COUNCILMEMBER BAISA: Mr. Chair?

CHAIR CARROLL: We can ...

COUNCILMEMBER BAISA: Mr. Chair?

COUNCILMEMBER COUCH: Mr. Vega [sic] ...Mr. Vega [sic] had requested --

COUNCILMEMBER BAISA: Wasn't finished.

COUNCILMEMBER COUCH: --to...yeah.

CHAIR CARROLL: Yes?

MR. DEGA: Just to clarify a couple of points. The road that Ms. de Naie just talked about was not actually used after the war. She's confusing the roads, just like she confused this as being the Kanaio/Kalama Road, it's not. So that's, the errors are just being compounded here. Let's just call it the Army road that was built in the 40s and not used after that. It was probably used by the ranch people but not publically after that point, just to clarify. As far as the condition No. 4, maybe I can help just a little bit, having written a lot of preservation plans and monitoring plans and things. Under the HRS 13, I think your attorney could look this up, there's a section on the inadvertent discovery of historic property that occur after inventories or data recoveries or other things. You could simply phrase, if an inadvertent discovery is found of a trial or other significant historic property, then the next phase is to call the State Historic Preservation out immediately to evaluate the property for significance and make recommendations. All work in the area does stop at that point for the evaluation and then you move on from there. If it is significant, a preservation plan will go in place. If not, then the development continues on. That's just one final catch we have usually.

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COUNCILMEMBER BAISA: Chair? Chair? Chair?

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much. Thank you, Mr. Dega, for being here. I'm trying to make sure that I understand how this works. It was my understanding before I sat in this chair this afternoon that when we are doing excavation or, you know, disturbing land in any way, and we inadvertently come across something, that automatically, this gets taken care of, everything stops and you have to take care of that or do we have to state this in the conditions?

MR. DEGA: In this ...

COUNCILMEMBER BAISA: What is your protocol?

MR. DEGA: It depends on the phase of work. In this case, you would stop the work and call the SHPD because an archaeologist is not on site.

COUNCILMEMBER BAISA: I see.

MR. DEGA: If we were on site and we had an inadvertent discovery, then we would record it and do a significance assessment on site and call the State Historic Preservation and just deal with them directly.

COUNCILMEMBER BAISA: And this is your standard protocol?

MR. DEGA: Yes.

COUNCILMEMBER BAISA: Okay.

MR. DEGA: It's in the HRS.

COUNCILMEMBER BAISA: I thought so. Thank you.

MR. DEGA: Thank you.

CHAIR CARROLL: Thank you, Ms. Baisa. Any...Mr. Couch?

COUNCILMEMBER COUCH: You know, the Planning Department deals with stuff like this all the time. I was wondering if they had any comment on this.

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: Thank you, Chair. Just hearing the, all of the discussion, Mike Hopper and I talked a little bit and if the Committee does want to move forward with a condition in this regard, which we're not certain is necessary, but, just to slightly modify the

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condition proposed by the Chair to say, in the event that any traditional beach and mauka access trails are found, Maui R&T Partners shall identify and preserve such trails and, if applicable, prepare a preservation/mitigation plan. So it's, the way it's phrased now suggests that such trails exist and that's what we're not sure about. So the suggested rewording would say, if they are found then they have to be preserved, the way that the condition requires. So that's just a suggested --

VICE-CHAIR VICTORINO: I like that idea.

MS. McLEAN: --modification that ...

COUNCILMEMBER BAISA: Me, too.

VICE-CHAIR VICTORINO: Mr. Chair? Would you...Mr. Chair?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: Would you mind if that change was incorporated, you know, instead of your 4, use her, what she just, what Ms. McLean just put there, and use that as No. 4? I think that language she just brought up, I think would be more applicable.

CHAIR CARROLL: To my No. 4?

VICE-CHAIR VICTORINO: Mr. Couch, what do you think? Mr. Hopper has something he wants to add.

CHAIR CARROLL: Corporation Counsel?

MR. HOPPER: Well, just to comment. I don't think the condition that was originally proposed is necessarily a legal problem --

VICE-CHAIR VICTORINO: No, no.

MR. HOPPER: --but it's just that it's, it says shall identify and preserve, and I think Ms. de Naie was correct, that's kind of part of the application requirements.

VICE-CHAIR VICTORINO: Right.

MR. HOPPER: It says, one of the application requirements is preliminary archaeological and historical data and comments from the Department of Land of Natural Resources and Office of Hawaiian Affairs of the State and, if applicable, a preservation/mitigation plan which has been reviewed and approved by the Department of Land and Natural Resources and Office of Hawaiian Affairs of the State. And so that's why the wording was a bit odd 'cause that's something that should've been already done and it looks like this may suggest that wasn't done already. And so I think the idea of the condition would be if any inadvertent, and inadvertent discoveries are different here,

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this is for roads and beach accesses only. Other discoveries of a different type are separately covered in HRS and those can be different than this. But I think that's the reason for maybe the wording, the change in wording may be to deal with any possible confusion of, that this wasn't done already. And I think what the Applicant is saying is that, and maybe they can comment on what SHPD's review found, but I think what they're saying is that they've done this review and have, or deciding that there are not trails that they are going to be preserving --

VICE-CHAIR VICTORINO: Uh-huh.

MR. HOPPER: --and the Council has that information before it and this condition would deal with if there's anything that was not known at this time, that would come up later as a possible trail. And, again, I did not draft this condition and I'm not sure of the intent of it, but I think that may, those alterations may make it a bit clearer.

VICE-CHAIR VICTORINO: Well, I think...thank you, Mr. Hopper. And I think you've got the gist of it. We want to alter it to make it applicable to what we're trying to achieve. I think what we're trying to achieve here is the fact that if something is found, we want it preserved. I think we've gone in lots of circles and I'll ask the developer, if that's alright with you, the representative, if he's okay with that intent and let us put the wording together.

MR. PERKINS: Yes, sir. We're agreeable to the verbiage that Deputy Director provided.

VICE-CHAIR VICTORINO: I would be if you are, Mr. Chair, if you'd let the Deputy Director bring that forward to us, her verbiage.

CHAIR CARROLL: Okay. Ms. McLean?

MS. McLEAN: I'll read it in its entirety. In the event that any traditional beach and mauka, excuse me, in the event that any traditional beach and mountain access trails are found, Maui R&T Partners, Inc. shall identify and preserve such trails and, if applicable, prepare a preservation/mitigation plan after consultation with the State Department of Land and Natural Resources and the Office of Hawaiian Affairs. So the latter half of the condition remains the same.

VICE-CHAIR VICTORINO: The same, yeah. I'm okay with that if Mr. Couch is.

COUNCILMEMBER COUCH: Yeah. That's fine. Mister ...

CHAIR CARROLL: Corporation Counsel?

MR. HOPPER: Just to comment. This just deals with the trails issue in No. 4. If there's additional conditions that Ms. de Naie had provided, I haven't seen those yet, but I think it sounds like those deal with additional issues in addition to these trails but I haven't seen them yet. So just a note that this is for the existing No. 4 that was original 4 conditions that you were reviewing.

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VICE-CHAIR VICTORINO: Okay, thank you. I think that's, if I'm not mistaken, that's what our intent is right now. We're working off of No. 4, trying to get that strengthened and really trying to achieve what the testifier has brought forward and at the same time what Chair is trying to prepare and bring forward also. So, Mr. Chair?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Mr. Hopper. What I've been trying to speak to is the comment you just brought up because I'm wondering within this current No. 4 condition we're discussing, if it can be expanded to the wording about cultural/historic sites or would those words include trails, traditional trails, if you use the words cultural and historic sites? 'Cause I want to make sure that it's all protected if something inadvertently is found but it has a cultural/historical significance. So, not just yeah, trails, but not just trails. And I think the words in Ms. de Naie's No. 3, stating recorded or unrecorded cultural sites seems to be in line with your inadvertent finds of historical trails.

VICE-CHAIR VICTORINO: Mr. Chair? I would like to make a point of clarification. I'd like this done this way. Ms. Cochran wants to make another amendment, make a No. 5, or whatever, I have no problem, but I'm keeping the two separate, okay? That it my intent --

COUNCILMEMBER COCHRAN: But ...

VICE-CHAIR VICTORINO: --to keep it separate.

COUNCILMEMBER COCHRAN: Chair? Sorry, Chair, I have the floor and I would like a response from Planning because I don't think this is totally out of line. I think there's something that can be incorporated and not have it blown into something that it's not intended to be.

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: Thank you, Chair. As Corp. Counsel said, there are different State laws relating to inadvertent finds of cultural and historic properties. That doesn't mean that that can't be repeated in a zoning condition. We see that, often times we see existing laws reestablished in zoning conditions just to emphasize the importance of compliance. Kurt, who's the Staff Planner on this project pointed out that the Land Use Commission Decision and Order, which governs this property and which is tied into the first zoning condition that you've already approved, relates to previously unidentified burials and archaeological historic sites. This is condition No. 9, it's not very long so I'll just read it. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find. The find shall be protected from additional

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disturbance and the SHPD Maui Island section shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigations measures have been implemented to its satisfaction. So that's an existing LUC condition and you have a zoning condition relating to compliance reports of the LUC conditions. So you're connecting your zoning conditions to this condition and all the others that are in the LUC Decision and Order.

COUNCILMEMBER COCHRAN: Okay.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Okay. I mean, I know that, you know, we don't want to be overly redundant but it's so, I mean, I'm glad that that's there and I just want to make sure that it's followed through. And sometimes, you know, we have to keep saying it in all forms in order for it to be remembered. But I understand where you're going with this and I do like Planning Department's adjustment to it. Thank you, Chair.

VICE-CHAIR VICTORINO: Mr. Couch.

CHAIR CARROLL: Members, we have a motion on the floor. We still have the original motion on the floor even though we've had some discussion about changes or what to add or what but we still have the original, unchanged motion on the floor. Are there any amendments to that?

VICE-CHAIR VICTORINO: Yeah.

CHAIR CARROLL: Or do you want to start over again?

VICE-CHAIR VICTORINO: Well, I'd like to withdraw the motion and start all over again.

CHAIR CARROLL: You'd like to redraft this?

VICE-CHAIR VICTORINO: Yes.

CHAIR CARROLL: Alright. If there's no objections --

COUNCILMEMBERS: No objections.

CHAIR CARROLL: --we will withdraw the motion from the floor.

VICE-CHAIR VICTORINO: Thank you.

CHAIR CARROLL: The motion is now withdrawn. Mr. Couch?

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COUNCILMEMBER COUCH: Prior to Mr. Victorino's suggestions, you know, the fact that it's in the Decision and Order, I mean, that goes with the land as well, I'm fine with just having it in the Decision and Order. I'm okay, too, with putting it in there, I would say, word for word, if that's the case. We're going to do it word for word there but that's kind of redundant in my opinion. So just, you know, we can refer to that if you'd like as a condition or something like that but either the exact words there that she just read from the Decision and Order or a reference to that Decision and Order condition is the only thing I --

CHAIR CARROLL: I would --

COUNCILMEMBER COUCH: --would support --

CHAIR CARROLL: --hope we would be --

COUNCILMEMBER COUCH: --at this time.

CHAIR CARROLL: --referring to that.

COUNCILMEMBER COUCH: Pardon?

CHAIR CARROLL: Referring to.

COUNCILMEMBER COUCH: Correct.

CHAIR CARROLL: Yeah.

COUNCILMEMBER COUCH: Yeah, a condition referring to that condition.

CHAIR CARROLL: Yeah.

VICE-CHAIR VICTORINO: Yeah. And, Mr. Chair?

CHAIR CARROLL: 'Cause that's an awful lot to put down inside there. It would be ...

VICE-CHAIR VICTORINO: Mr. Chair? The intent is, this is traditional beach and mountain access, which wasn't covered under the cultural and areas that, you know, that was brought up earlier under the land use. So this is just an addition to and I would like to move that this will be changed according to miss, and I don't have all the words, I was trying to write, I don't write as fast as you talk. And if the Staff would like to read the amendment, I mean, the new motion as stated by Ms. McLean, I would like that. That is my motion. But I would like it read so that it would be entered into the record.

CHAIR CARROLL: Are you prepared to do that, Mr. Jensen?

MR. JENSEN: Yes, Mr. Chair.

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CHAIR CARROLL: Proceed then.

MR. JENSEN: The condition as proposed reads, in the event that any traditional beach and mountain access trails are found, Maui Research and Technology Partners, Inc. shall identify and preserve such trails and, if applicable, prepare a preservation/mitigation plan after consultation with the State Department of Land and Natural Resources and the Office of Hawaiian Affairs.

VICE-CHAIR VICTORINO: So, Mr. Chair, that's my motion.

CHAIR CARROLL: Is there a second?

COUNCILMEMBER CRIVELLO: Second.

CHAIR CARROLL: It has been moved by Mr. Victorino, seconded by Ms. Crivello. Discussion? Mr. Victorino?

VICE-CHAIR VICTORINO: And, again, thank you. I just, what your intent was and what Ms. de Naie had brought forward, I tried to incorporate both. And, again, this is for traditional beach and mountain access trails. Again, they claim they've gone through a complete study and nothing was found. However, this condition ensures that if something is found at a later date in that particular area, then it has to be complied with. It's there and it runs with the land. So it's up to my Members whether they would like to support it or not. I know the other one was done with the land use and, again, I'm comfortable with that but it doesn't specify preservation of traditional beach and mountain access. This does specify and I think that's very important. Thank you, Mr. Chair.

CHAIR CARROLL: Further discussion to the motion on the floor? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes."

VOTE: AYES: Chair Carroll, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Couch, Crivello, and Guzman.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

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MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: Members, do you have any further amendments or discussion?
Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. At the last meeting, I suggested a condition and I've worked out the language and I handed it out, it's at the top of the handout dated today from me. And I move to add the following condition. One hundred of the residential workforce housing units produced shall be for rent for a duration consistent with the Residential Workforce Housing Policy, Maui County Code, 2.96.070.

VICE-CHAIR VICTORINO: I second for discussion purposes, Mr. Chair.

CHAIR CARROLL: Moved by Mr. Couch, seconded by Mr. Victorino. Discussion?
Mr. Couch?

COUNCILMEMBER COUCH: Yes. I really wanted to make sure that, you know, every time we put affordable housing in, even with the Workforce Housing Bill, if they build houses, they're only affordable for a short period of time. We do need rentals and we talked to the Applicant at the last meeting and they said that they're fine with the 100 rentals and I'm adding that the duration is consistent with the Residential Workforce Housing Policy, which I believe is 30 years now at this point. And it can be single-family or multi-family, whatever's most cost effective for them.

CHAIR CARROLL: Applicant, do you have anything to say?

MR. PERKINS: I don't have anything to add other than we're agreeable to the proposed condition.

CHAIR CARROLL: Thank you. Further discussion to the motion on the floor? Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I have an inquiry as to how will you keep those rental, you know, fees or monthly rents low, as affordable? Who will be the, are you going to sell each unit to a person that's going to be renting those out as the owner of that unit? I just, posing that question to Mr. Couch in terms of the clarification of the condition.

COUNCILMEMBER COUCH: It's the same as any workforce housing, Chapter 2.96.

COUNCILMEMBER GUZMAN: Yeah.

COUNCILMEMBER COUCH: It's whoever buys the property. Or I thought you posed that to me? I'm sorry.

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COUNCILMEMBER GUZMAN: Yeah. Either one, or Mr. Hart.

MR. HART: As Mr. Couch began...Jordan Hart, Chris Hart & Partners. As mister, or Councilmember Couch began, the project will execute a Residential Workforce Housing Agreement with the Department of Housing and Human Concerns for residential workforce housing units. That agreement would govern these kinds of details.

COUNCILMEMBER BAISA: Chair?

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. And so that essentially implies that the assurance of affordable rentability will rest with whom?

MR. HART: I'm sorry. I believe HUD establishes rates with Department of Housing and Human Concerns.

COUNCILMEMBER BAISA: So it will be administered by the Department of Housing and Human Concerns?

MR. HART: The rates will be established, yes.

COUNCILMEMBER BAISA: And they will be the ones to monitor that that doesn't get off?

MR. HART: That's correct.

COUNCILMEMBER BAISA: Okay. Important because, you know, we really need affordable rentals and it's, if we don't have enforcement, we can pass all the conditions we want but somebody better watch the hen house. Thank you.

MR. HART: Thank you.

CHAIR CARROLL: Thank you, Ms. Baisa.

COUNCILMEMBER GUZMAN: Thank you, Chair. Thank you also, Ms. Baisa, for clarifying my question.

CHAIR CARROLL: Alright.

MR. HOPPER: Mr. Chair? Mr. Chair?

CHAIR CARROLL: Any...yes, Corporation Counsel?

MR. HOPPER: Just a comment. I'm not sure if this is typically done in other workforce housing conditions but citing the law down to the subsection, I'd only be concerned if,

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I don't know, if the County at some point amends the law and changes the subsection. Maybe you just want to say, consistent with the Residential Workforce Policy in the Maui County Code or something like that, or in 2.96 maybe. I just, sometimes when you're looking at something that's not going to happen for a substantially long time, if the law changes, you may just want to make sure that you reference maybe Residential Workforce Housing Policy within the Maui County Code.

COUNCILMEMBER COUCH: That's fine.

MR. HOPPER: 'Cause you're saying it has to be rental and the duration consistent with the law. I mean, the Council could amend that law and change the subsection so.

COUNCILMEMBER COUCH: Okay. I'm fine with that if that's alright with the seconder.

VICE-CHAIR VICTORINO: Yeah, no problem.

CHAIR CARROLL: Alright. We have a motion on the floor. I'm going to ask Mr. Jensen to restate the motion since we don't have it written before us. Or, Mr. Couch, could you please restate the motion?

COUNCILMEMBER COUCH: Fine. We all have a copy and I'll just do it. One hundred of the residential workforce housing units produced shall be for rent for a duration consistent with the Residential Workforce Housing Policy, Maui County Code. Is that, Mr. Hopper, is that fine?

MR. HOPPER: Or ...

COUNCILMEMBER COUCH: Is it okay to put at least 2.96 in there?

MR. HOPPER: Maybe as required by the Maui County Code or for a duration consistent with the Residential Workforce Housing Policy as required by the Maui County Code.

COUNCILMEMBER COUCH: As required by the Maui County Code.

MR. HOPPER: Maybe that.

CHAIR CARROLL: Any problems to amending the motion as stated?

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Okay. We're back to the main motion on the floor with a friendly amendment, so we won't consider it amended. Any further discussion? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes."

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VOTE: AYES: Chair Carroll, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Couch, Crivello, and Guzman.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: Members, we're still under discussion. We're still accepting motions, if appropriate, before we move on.

COUNCILMEMBER COUCH: Mr. Chair, I have some changes to the actual bill but I was going to do that when we ...

CHAIR CARROLL: To the zoning bill?

COUNCILMEMBER COUCH: To the zoning bill, correct.

CHAIR CARROLL: Proceed.

COUNCILMEMBER COUCH: You want that ...

MS. McLEAN: Chair, excuse me? Excuse me, Chair?

CHAIR CARROLL: Yes?

MS. McLEAN: I'm sorry, before we move on to that, because there are now five zoning conditions --

CHAIR CARROLL: Yeah.

MS. McLEAN: --we would typically have an additional zoning condition requiring annual compliance reports. As the project was transmitted to Council, it just had the single condition that we get copies of the Land Use Commission compliance reports and that was satisfactory. We didn't need a compliance report condition on top of that. But now that we have four additional conditions that wouldn't have any other monitoring because they're separate from the land use condition, Land Use Commission

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conditions, we would like to propose an additional condition that R&T Partners submits annual zoning compliance reports to the Planning Department.

VICE-CHAIR VICTORINO: So move, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Discussion? Mr. Victorino, maker of the motion?

VICE-CHAIR VICTORINO: No, I clearly understand what the Department is saying and it's morphed into something much bigger than it originally was brought out at. So I have no problem in adding that condition. Thank you, Chair.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Might it be more efficient to just include some language in the first condition to, or do you need a separate condition for that, Department?

CHAIR CARROLL: Ms. McLean?

VICE-CHAIR VICTORINO: Safer, I think, if separate, yeah?

MS. McLEAN: I like the idea but I think it would be cleaner to keep them separate --

COUNCILMEMBER COUCH: Okay.

MS. McLEAN: --just because that goes into a bit of detail about the --

COUNCILMEMBER COUCH: Okay.

MS. McLEAN: --LUC.

COUNCILMEMBER COUCH: No worries.

CHAIR CARROLL: Further discussion? Seeing none, all in favor of the motion on the floor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes," no "noes."

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, Couch,
Crivello, and Guzman.**

NOES: None.

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ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: Floor is still open if anybody has anything to bring up, because right after this, I will be giving my recommendation. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And in the, I guess it's the, I said it was the Change in Zoning code, it's the actual code that creates the new chapter in Title 19. It's entitled A Bill for an Ordinance Amending Title 19, Maui County Code, to Establish a New Chapter, 19.38. I have some questions of the Applicant.

CHAIR CARROLL: Could, oh, proceed. The Applicant is forward.

COUNCILMEMBER COUCH: And also some proposed changes.

CHAIR CARROLL: Do you wish to ask the Applicant now or ...

COUNCILMEMBER COUCH: Well, I'll do the proposed changes and ask them if that's alright.

CHAIR CARROLL: Proceed.

COUNCILMEMBER COUCH: On Page 3, No. 6, it says deliveries and pickups by package services must be done with residential common carriers, then in parenthesis, i.e. United States Postal Service, United Parcel Service, Federal Express. I would like to amend that to take out the "i.e." and say "including but not limited to" and then continue. And my concern there is that, you know, somebody could look at this a little bit later and say well those three are the only ones that are limited, that it's limited to when we have DHX and a few other, we have some local Hawaii ones. And some of these might go out of business and not be there, I don't know, I just want it to say, "including but not limited to" to make it clear that others are allowed as well.

VICE-CHAIR VICTORINO: Department?

CHAIR CARROLL: Applicant?

MR. HART: We support the clarification.

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CHAIR CARROLL: You heard the question?

MR. HART: Yes.

VICE-CHAIR VICTORINO: Mr. Chair? I would like to hear from the Department, please.

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: Yeah. We have no objections to the amendment.

COUNCILMEMBER COUCH: Okay, so would you, are you okay for a consensus or are you want a complete motion?

CHAIR CARROLL: I'm fine.

COUNCILMEMBERS: Consensus.

VICE-CHAIR VICTORINO: Consensus be fine, Chair.

COUNCILMEMBER COUCH: Consensus, thank you. The next one is on Page 4, Members, down where it says office over retail and it says, "means a combined use building with office above and ground floor retail use, including eating and drinking establishments." Having visited a couple of other locations around the country that has Form-Based Code, some of the things that they've run into is language like this that kind of can imply that the eating and drinking establishments can be on the second floor. So I propose to make the change to say, "office over retail means a combined use building with office above and retail uses, including eating and drinking establishments limited to the ground floor." That way, it's saying that the ground floor can be the retail units and the eating and drinking establishments, everything else has to be offices.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'd like to ask Member Couch if he could explain, what's the problem with going to the second floor? Might be a better view, might be cooler.

COUNCILMEMBER COUCH: And that's fine too. The issue is the, I think the height restrictions in this Form-Based Code, so therefore the whole idea is to have retail down below, office space above or retail down below and residential above. That's the mixed use kind of thing as opposed to two or three stories of nothing but retail or resident, I mean, eating and drinking establishments. I believe that's the intent of the, the Form-Based Code here and the intent of the Applicant.

COUNCILMEMBER BAISA: I appreciate the explanation but I don't understand it. Thank you.

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COUNCILMEMBER COUCH: Can we have the Applicant?

CHAIR CARROLL: Could you comment please?

MR. HART: If I...thank you.

CHAIR CARROLL: Please identify yourself at the microphone?

MR. HART: Jordan Hart, Chris Hart & Partners. We have a copy of both this current and the next proposed revision from Councilmember Couch and the project is supportive of either in their current existing language, as they're written in the proposed ordinance or as Councilmember Couch proposes. We feel that it's a slight clarification, which we support.

COUNCILMEMBER COUCH: I guess my question to you is, is the intent of this Form-Based Code, for this Mixed-Use District to have one, the bottom, the ground floor be retail and/or restaurants and then the rest be either office or residential? Is that the intent?

MR. HART: That is the intent for these sections.

COUNCILMEMBER COUCH: Okay. And that's why I wanted to clarify that in there.

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: Thank you, Mr. Couch. Mr. Victorino?

VICE-CHAIR VICTORINO: So, and, Mr. Hart, if I agree, I mean, what you're saying, you have no problem with this but does this just limit it, nothing else can done on the second floor other than residential?

COUNCILMEMBER COUCH: Or office.

VICE-CHAIR VICTORINO: Or office, yeah? Because, let's say somebody, you know, like Ms. Baisa mentioned, and I have been around the country too and a lot of places build on the second floor and, you know, I don't want to limit something yet I don't want it to proliferate into something we don't want, but I'm trying to get a real good feel of this because I'm not exactly sold on the idea at this point. So please explain to me what the, what your major intent was and what challenges you see if we don't put that there. Would there be a lot of people saying I want to build a restaurant on the second floor?

MR. HART: If I may?

VICE-CHAIR VICTORINO: Yes, please.

MR. HART: Councilmember Couch established that concern based on some travel and project reviews that he's done. It's our understanding that the ordinance as is drafted

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currently establishes that intent; however, if Councilmember Couch proposes a clarification, we completely support that.

VICE-CHAIR VICTORINO: Okay.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: And maybe if, you know, if we can get a word from the Department or Corporation Counsel, if I'm being overly cautious, that's fine. Could that mean that it could be multiple stories for eating and drinking establishments?

CHAIR CARROLL: Any comment from Planning _____ discussion or Corporation Counsel?

MR. HOPPER: I mean if the intent is to be very clear, I mean, if the name of the use is office over retail or residential over retail use, if there's clarification needed to make sure that you do not have, for example, if it's residential over retail, having retail over residential or something like that, or retail and retail. I mean it sounds like it's, if it's supposed to be that the retail, that the residential use as in the proposed change, that the retail use is limited to the ground floor. I mean, if that's supposed to be what it is, then I don't think there's necessarily a harm in stating that, you know, very clearly. There's one, I think, typo in one of these and that can be fixed, but, you know, it's, it depends on what the Council wants to allow as these uses and if their designed to be residential has to be over the retail then, you know, any clarification, I suppose, would be helpful. Currently it says, "residential over retail use means a combined residential and retail use of a single-family, two-family or multi-family dwelling with a ground floor retail use, including eating and drinking establishments." So, I mean, I think this clarifies that the eating and drinking establishments are limited to the ground floor and you can't combine them any other way. You couldn't have the residents on the bottom, or on the bottom and then the retail on top or something like that. If that's the intent, and it sounds like that's the intent based on the title of residential over retail use, then I don't think it's necessarily a problem to make the change.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: And, Mr. Chair and Members, if you guys are fine with the existing language and with the potential of it going to a second story, I guess my thought was that, you know, you have a restaurant on the bottom and then they want to expand to the second floor and then they have the offices or retail on the third. I think we're only allowing, I forgot how many floors in this district, but it will limit it the residents or the office, but I'm fine if everybody wants it that way.

CHAIR CARROLL: The Chair would say that from his experience with that language, I am satisfied with the existing language.

COUNCILMEMBER COUCH: Okay. That's fine.

CHAIR CARROLL: Further discussion? Ms. Baisa?

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COUNCILMEMBER BAISA: Yes. Last I have to say on this matter. It's clear to me that the developer is comfortable with the limitation and has no problem with it. I personally don't like it but if that's what they want then okay, we'll put it in the conditions and they live with it.

COUNCILMEMBER COUCH: Yeah, I withdraw, I mean, I never really made a motion. I was just bringing it up for discussion. I'm not going to make a motion.

VICE-CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: I'll leave it like it is.

MR. PERKINS: Mr. Chair, if I may?

CHAIR CARROLL: Proceed.

MR. PERKINS: It would be our preference to maintain the language as presented in our draft, in the draft bill, but if there was going to be any great issue with the Council on that, we're willing to defer and make that distinction but we would prefer to maintain the flexibility. There's a cap on the amount of these type of services that are allowed in the development overall. It's, would not be our expectation that it's going to predominate.

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: Ms. Baisa? You were the one ...

COUNCILMEMBER BAISA: I'm done.

COUNCILMEMBER GUZMAN: Chair? Chair?

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah. I would rather see it stay as is in a more general form --

CHAIR CARROLL: Yeah.

COUNCILMEMBER GUZMAN: --and allow flexibility. On a practical purpose, some families have seniors and disability --

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER GUZMAN: --people that need to be on the ground floor but I would rather it stay as is and --

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UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER GUZMAN: --keep it general.

COUNCILMEMBER COUCH: Yeah.

COUNCILMEMBER GUZMAN: Thank you, Chair.

COUNCILMEMBER COUCH: I withdraw my suggestion.

CHAIR CARROLL: Corporation Counsel?

MR. HOPPER: Thank you, Mr. Chair. So you'd have to meet the basic requirements of it does have to be a combined residential and retail use and a ground floor retail use, including eating and drinking establishments. So you do have to have a combined use, so it can't be all retail and you have to have a ground floor retail use. So that would be the requirements as stated in the residential over retail use, and then office over retail means you have to have a combined use of business, or of office and ground floor retail use. So it's, you have to have the combination of the two and the ground floor has to have the retail use right now and that's how it looks like it's defined. So if there's problems with that or confusion then that can be clarified.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Yeah, that brings up another question for the Applicant, and to go on what Mr. Guzman said, if you have elderly folks that you want a ground floor apartment on, then what Mr. Hopper says, you can't do that, you have to have retail down below. Is it your intent to have retail only down below or ...

VICE-CHAIR VICTORINO: I think...yeah, let Mr. Hopper answer that.

COUNCILMEMBER COUCH: I'm sorry.

MR. HOPPER: Just to clarify. It means you have to have a retail use on --

VICE-CHAIR VICTORINO: Yes.

MR. HOPPER: --the ground floor and I suppose you could have an apartment with that. I mean, if...

COUNCILMEMBER COUCH: Oh, so you can, like ...

MR. HOPPER: I mean it's not...you have to have a retail use on the ground floor period, I think once you have that, so you can't have it all residential. And, I mean, I'm not sure how this is all going to get enforced and people look at that. Hopefully it's in CC&Rs or something like that too. But, yeah, it says with a ground floor retail use. That doesn't mean the exclusive use of the ground floor is only retail necessarily.

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COUNCILMEMBER COUCH: Okay.

MR. HOPPER: I mean, unless --

COUNCILMEMBER COUCH: Then I'm fine.

MR. HOPPER: --this is something that I'm not getting but it says ground floor retail use, including eating and drinking establishments.

COUNCILMEMBER COUCH: I'm good.

MR. HOPPER: So, now it does, the title of it is residential over retail use so generally you're going to need residential over that as well but does that prohibit a combination of them and maybe this is what you were getting at in your --

COUNCILMEMBER COUCH: Right.

MR. HOPPER: --in your change, but right now I think it wouldn't prohibit a combination as long as you had a ground floor retail use and you had residential use on the top floor if it's called residential over retail. I mean, if you're gonna, so, I mean, I think that's what the definition says.

UNIDENTIFIED SPEAKER: Yeah.

MR. HOPPER: Yeah, I mean, it seems like you could have both and both and not be a problem. Although the title there may be a little deceptive because residential over retail strictly may seem residential and retail but the definition itself doesn't prohibit the combination as long as you meet the retail on the ground floor and the residential above.

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: Mr. Victorino, then followed by Mr. Guzman.

VICE-CHAIR VICTORINO: Well, and he answered the question. And I think if Mr. Couch's language went that way, we may have a problem in putting something like that downstairs, like a little room for the elderly or something like that. So I think what Mr. Guzman said was absolutely correct and if we leave the flexibility, we done.

CHAIR CARROLL: Mr. Guzman?

VICE-CHAIR VICTORINO: I'm sorry.

COUNCILMEMBER GUZMAN: No, that's exactly what I was going to point out. But in furtherance of that is that, I think you would do well with Mr. Couch's business, Residential Business Ordinance that we recently passed where you can have the

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ground floor as part of your residence as well. So, yeah, I mean, the business/residence, you can live in your house and have a business there too. So it's a very good combination. So thank you, Chair.

CHAIR CARROLL: Any further discussion? We have no motions on the floor at this time. Any further discussions? Mr. Couch?

COUNCILMEMBER COUCH: Yes, on Page 6, this is more for the Applicant but on the first paragraph in 19.38.050A it talks about, you know, two-thirds of the way down it says, uses in the employment campus district are predominantly knowledge industry employment uses. We have some of that kind of language in our existing zoning ordinances and we're having some issues with that right now. So my concern is what does "predominantly" mean and now I understand if you look back in, I believe 080 or 090, I think it's 090 in here, it actually has some standards that has some maximums but I just want to get that clarified from you.

MR. HART: Jordan Hart from Chris Hart & Partners. Yes, thank you, Mr. Couch, Councilmember Couch. As noted, additional standards for all districts established is square footage development caps for these various areas and this is also reflected in the State Land Use Commission Decision and Order.

COUNCILMEMBER COUCH: Okay, so if somebody wanted to go in in there and buy a section, a big section of this employment campus district and decide to put in, you know, a big box store, that couldn't happen?

MR. HART: No, that couldn't happen. And then they would have to comply with the development cap as proposed in the Maui County Zoning Ordinance as well as the existing caps that are in the approved State Land Use Commission Decision and Order for the project.

COUNCILMEMBER COUCH: Okay. Thank you, Chair, that's the question I had about that.

CHAIR CARROLL: Any further discussion before the Chair gives his recommendation?

VICE-CHAIR VICTORINO: Recommendation, Chair?

COUNCILMEMBERS: Recommendation?

CHAIR CARROLL: The Chair will first entertain a motion to recommend passage on first reading of the proposed bill, A Bill for an Ordinance Amending Ordinance 2641 (1998), Kihei-Makena Community Plan and Land Use Map, from Project District 6, (R & T Park), Public/Quasi-Public, and Agriculture to Maui Research and Technology Park for Property Situated at Kihei, Maui, Hawaii, incorporating any nonsubstantive revisions.

VICE-CHAIR VICTORINO: Go ahead, Mr. Couch.

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COUNCILMEMBER COUCH: Thank you, Mr. Chair. I move that we pass that proposed bill as you read it.

VICE-CHAIR VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Been moved by Mr. Couch, seconded by Mr. Victorino. Discussion?

VICE-CHAIR VICTORINO: Chair?

COUNCILMEMBER GUZMAN: Discussion? Oh, yeah. Yeah, Chair, I look forward for this project to be built in terms of the public looking forward to seeing the Form-Based Code in action. Hopefully, this will have its timeline and it would be completed in time for all of us to take a look at how this actually is implemented. . . .(inaudible). . .

CHAIR CARROLL: And, excuse me, and it's supposed to be as amended and incorporating any --

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: --nonsubstantive...

COUNCILMEMBER COUCH: Yeah, that's fine.

COUNCILMEMBERS: No objections

CHAIR CARROLL: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: I just want to remind the Members that this is just, this one is the community plan amendment, then we got two more. Three more?

CHAIR CARROLL: Yes, this is the one with the changes, the zoning part --

COUNCILMEMBER COUCH: Three more, two more to go.

CHAIR CARROLL: --is the one that have all the changes.

COUNCILMEMBER COUCH: Right. Two more. Thank you.

CHAIR CARROLL: Any further discussion? Hearing none, all those in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes," no "noes."

VOTE: AYES: Chair Carroll, Vice-Chair Victorino,

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Crivello, and Guzman.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FIRST READING of revised bill.

CHAIR CARROLL: Finally, the Chair will entertain a motion to recommend passage on first reading of the revised proposed bill entitled, A Bill for an Ordinance to Change Zoning from Kihei Research & Technology Park District and Agricultural District to Maui Research and Technology Park District (Conditional Zoning) for Property Situated at Kihei, Maui, Hawaii, incorporating revisions made at today's meeting to the conditions of zoning as well as any nonsubstantive revisions and to file County Communication 14-311.

VICE-CHAIR VICTORINO: Go ahead, Mr. Couch.

COUNCILMEMBER COUCH: Mr. Chair, I move to pass the proposed bill as you read it and to file County Communication 14-311.

VICE-CHAIR VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Been moved by Mr. Couch, seconded by Mr. Victorino. Discussion?

VICE-CHAIR VICTORINO: Mr. Chair? Since Mr. Couch has already had enough minutes already ...

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: Really, you know, all joking aside. I want to thank the developer and, you know, this R&T Park has been around before I even walked into this Chamber and it's about ready to walk out and, you know, it's still here. And I'm glad that they've not only incorporated the form-based planning in this project, but I like the idea that Mr. Dega and Kahu Kimokeo have been actively involved in all the process, you know, and preserving and protecting traditional sites and cultural sites and trails, and, you know, we can go on and on. But I really felt that they have done, what I call, a yeoman's job and in totality and I want to thank them. And, you know, I hope to be around to see this final product come to fruition over the next years of our lifetime. And I think this will be a shining example of what can be done when you

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work together to make both a, what I call, one-stop shop community where everything going be really self contained and they don't have to really leave their community very often to do anything. And then when they do, Safeway and everything is just right down the road, you know, so I think this is a great step in the right direction, Mr. Chair. Thank you.

CHAIR CARROLL: Any further discussion? Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. I'd like to thank everybody who's been involved in bringing this to this point today. You know, when the R&T Park was first created, it's very interesting what we're looking at today and how that vision has changed. But I think it's very positive. I think it's a very beneficial use of land. I think the location is very good and it's a really good use of building in one spot with everything around it to make things convenient. And we certainly can use the housing that's included in this project and I think it's a wonderful piece of economic development. So my best wishes to those that are going to carry this forward, and we hope, like Mr. Victorino says, in my case, I hope I'm around when it happens. Thank you.

CHAIR CARROLL: Thank you. Any further discussion? Hearing none, all those in favor of the motion on the floor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes," no "noes."

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, Couch,
Crivello, and Guzman.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

**ACTION: FIRST READING of revised bill, RECORDATION of
unilateral agreement, and FILING of communication.**

CHAIR CARROLL: This comes to the end of our business today. Thank you all for attending. And thank you all in the audience and the Applicant and also all those out there in

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television land for being with us today. This Land Use Committee meeting of July 1st stands adjourned. . . .(gavel). . .

ADJOURN: 3:15 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:150701:alp

Transcribed by: Annette L. Perkett

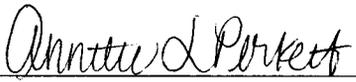
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CERTIFICATE

I, Annette L. Perkett, 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 the 17th day of July, 2015, in Haiku, Hawaii.


Annette L. Perkett
Annette L. Perkett