

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

August 17, 2016

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 Don S. Guzman (in 1:50 p.m.)

EXCUSED: VOTING MEMBERS:
Councilmember Stacy Crivello

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.: William Spence, Planning Director, Department of Planning
James Buika, Planner V, Department of Planning
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Jordan Hart, Christ Hart & Partners, Inc.
Raymond Cabebe, Chris Hart & Partners, Inc.
Jacqueline Scheibel, Kahana Sunset AOA

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

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CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting of August 17, 2016 will come to order.

COUNCILMEMBER COUCH: You've got to turn on your mic. Bob, you've got to turn on your mic.

VICE-CHAIR VICTORINO: Bob, your mic, mic.

CHAIR CARROLL: Oh. Now, in case anybody couldn't hear that with my mic off, we will start one more time. This Land Use Committee meeting of August 17, 2016 will come to order. I'm Councilmember Robert Carroll, Chair of the Council's Land Use Committee. First, may I request, anybody has anything that makes noise, please turn it off. With us this morning, we have voting Members, Vice-Chair of the Committee, Mr. Victorino.

VICE-CHAIR VICTORINO: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. And we have our Members, Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR CARROLL: And Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: And excused at this time are Stacy Crivello and Don Guzman. The Executive Branch, we have Mr. Will Spence.

MR. SPENCE: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. And James Buika, Planner.

MR. BUIKA: Good afternoon, Chair.

CHAIR CARROLL: For Corporation Counsel, Jennifer Oana, Deputy Corporation Counsel.

MS. OANA: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. We have with us, too, Jordan Hart, Chris Hart & Partners; Raymond Cabebe, Chris Hart & Partners, consultant for the applicant. Committee Staff we have Raynette Yap, Committee Secretary and

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Scott Jensen, our Legislative Analyst. Today, we have a single item on our agenda, a proposed Community Plan Amendment and Change in Zoning for 4.467 acres known as Kahana Sunset Condominium at 4909 Lower Honoapiilani Highway, Lahaina, Maui. Assisting us this morning from Hana District, we have Dawn Lono. Dawn? Hana, are you there? Alright, we will go to Molokai. Molokai, are you there?

COUNCILMEMBER BAISA: Nobody.

CHAIR CARROLL: We're going to call just for a very brief recess. Recess.
. . .(gavel). . .

RECESS: 1:36 p.m.

RECONVENE: 1:38 p.m.

CHAIR CARROLL: . . .(gavel). . . Assisting us from the District Offices we have Dawn Lono in Hana. Are you there, Dawn?

MS. LONO: Good afternoon, this Dawn Lono at the Hana Office.

CHAIR CARROLL: Thank you. From Lanai District Office, Denise Fernandez.

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

CHAIR CARROLL: Good afternoon. And from Molokai District Office we have Ella Alcon.

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

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

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

CHAIR CARROLL: Hana, do you have anybody waiting to give testimony?

MS. LONO: The Hana Office has no one waiting to testify.

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

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

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

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

CHAIR CARROLL: Thank you. Members, since we have nobody coming forward to give testimony, if there's no objection, I will close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

ITEM NO. 19: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE KAHANA SUNSET CONDOMINIUM AT 4909 LOWER HONOAPIILANI ROAD (LAHAINA) (CC 16-39)

CHAIR CARROLL: We have with us this morning only one item on the agenda, Community Plan Amendment and Change in Zoning for the Kahana Sunset Condominium at 4909 Lower Honoapiilani Highway [sic], Lahaina. I'd now like to turn over the presentation to the applicant's consultant Jordan Hart to provide a brief presentation of the Committee meeting to the Committee. We will recess for 2 minutes while we lower the screen. Standing in recess. . . .(gavel). . .

RECESS: 1:39 p.m.

RECONVENE: 1:41 p.m.

CHAIR CARROLL: . . .(gavel). . . The Land Use Committee is now back in session. We will now hear a presentation from Mr. Hart.

MR. HART (*PowerPoint Presentation*): Good afternoon, Chair and Members. My name is Jordan Hart of Chris Hart & Partners. Thank you very much for the opportunity to speak. Today I'm here to present the Kahana Sunset Project. This is a request for Community Plan Amendment and Change in Zoning.

COUNCILMEMBER COUCH: Can you get closer.

CHAIR CARROLL: Can you speak a little louder or?

MR. HART: Thank you.

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CHAIR CARROLL: Please, we can hardly hear you.

MR. HART: Yes. The project team here today is Ms. Jacqueline Scheibel, she is head of the long range planning committee for the Kahana Sunset. She has been participating in the project for the duration which has been a significant amount of time. Also here today is Raymond Cabebe from Chris Hart & Partners, he's been a lead planner for this project. This is a location map of the project site in red. It's located on Keonenui Bay in West Maui. It's an existing developed condominium complex. This is an aerial photograph of the project site. The project site is developed with six residential buildings, one accessory building. You have the Alaeloa Condominiums to the north, you have the Napili Villas to the east. Single-family development to the south. This is the tax map key for the parcel, it's 4.46 acres in size. There are 79 condominium units. They have been operating as transient vacation rentals or short-term rentals since their initial construction in 1971. There are also onsite amenities consisting of pool, cabanas, gazebo, barbeques, outdoor showers and parking. This aerial photograph indicates how the buildings are identified, it's basically a horseshoe starting with building A and proceeding down to building F with the manager's office. The project was initially approved by variance in 1968 on Residentially-zoned land and it was constructed in 1971. In 1971 there was no differentiation between short-term and long-term rental for multi-family developments. Back in 1989 was the first delineation between short-term and long-term rental for the Apartment District and so in that context this property has been operating as an effective hotel since its construction in 1971 and so this request is to take the project out of the Single-Family designation and to put it in the Hotel designation which is what it has been operating in. As part of the project there was a suggestion by the County of Maui Department of Planning for the addition of a shoreline access path because there is currently no pedestrian access for the general public into Keonenui Bay. The applicant reviewed the proposal and has graciously agreed to supply the land and construct the infrastructure. That construction is almost completely done at this point. It's my understanding that fencing is being completed now. This consists of approximately 250 lineal feet of shoreline access from the Lower Honoapiilani Road down to the shoreline at Keonenui Bay. This is a zoomed-in diagram of the beach access path. There's approximately 49 feet of elevation that are crossed in this 100, or sorry, 250 foot length. This is a photograph of the makai exit of the beach access path prior to construction. This is a photograph under current conditions and so basically there was some significant demolition and excavation of concrete and then the construction of stairways. I would like to say into the record the proposed function of the beach access path is to be open from 7:30 a.m. till 7:30 p.m. every day. This is consistent with the operational hours of a normal County park. The beach access path is completely on private property. The land use applications that are being requested today are West Maui Community Plan Amendment from Residential to Hotel. The Community Plan was adopted in 1996, and a Change

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in Zoning from R-3 Residential to H-M Hotel and we basically came up with the proposal for H-M Hotel by looking at the existing uses and the existing scale of development and matching those most accurately to the current County zoning designation; that would be H-M Hotel. Some of the things that were discussed previously but should be recapped at this time. The project was originally approved on Residentially-zoned land under a variance. The existing non-conforming short-term rental use has been occurring at the site since 1971. This is a community plan map for West Maui identifying the parcel. This was adopted in 1996. So some of the back story, well not back story, but things to consider is that the condominium complex had been constructed in '71 and the community plan was adopted in '96, while the multi-family development was existing, it was designated as Single-Family. So in some ways we do feel like this is, may have been somewhat of a mapping error or oversight in that context. This is a zoning map, remains Residential. The project was developed under a variance. Variances are not an appropriate substitute for a Change in Zoning, and so we're here today to correct that configuration. The following matrix just analyzes the density of existing development and uses and the County zoning designations and their restrictions and basically identifies that the H-M Hotel is the most accurate designation to propose to put the existing development into. Some of the Change in Zoning criteria to discuss, the proposed request meets the intent of the General Plan and the objectives and policies of the community plans of the County; the proposed project does. the proposed request is consistent with the applicable community plan and land use map of the County. We are requesting...first of all, it is consistent with the community plan language but we are requesting a Community Plan Amendment to the map and to designate this as a hotel development. The proposed request meets the intent and purpose of the district being requested, it certainly does. The application if granted would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, and other public requirements, conveniences and improvements. So to reiterate, this project has been developed and it's in its current condition and scale since 1971 and so we do feel that there would be no change to any impacts and we also feel that all potential impacts have been mitigated by the development of infrastructure that is serving the site currently. Through the environmental review process potential impacts were identified and mitigation measures were provided. The project did conduct an Environmental Assessment. A Findings Of No Significant Impact was identified and accepted by the Maui Planning Commission. The Maui Planning Commission did review the proposed Community Plan Amendment and Change in Zoning and provide a recommendation for approval to the Council with conditions pertaining to heights. One thing I would like to bring up is that there was discussion of the concern of the redevelopment of the project site after the Change in Zoning to Hotel and so the applicant in response to that made clear in their application documentation that there is no intent to redevelop or increase the height of the project. There was a condition of height recommended and the applicant is

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supportive of that height limitation and so we feel that that is an adequate way of mitigating any concerns of potential view impacts from development through increase in height. The Planning Commission happened on July...the Planning Commission happened...meeting happened on July 22, 2014. As discussed, there was height condition proposed. It's our understanding, in consultation with Council Land Use Committee Chair and Staff, that there is a request to further define the height limitations because the community plan...or sorry, the Planning Commissions recommended condition is more general and so there's a discussion of defining the height more accurately and we are supportive of that. So with that I think that really concludes my proposal or not proposal but presentation on the background information for the project. Thank you.

CHAIR CARROLL: Thank you. We will now lower, take a two minute recess while we lower the screen. Standing in recess. ...*(gavel)*...

RECESS: 1:51 p.m.

RECONVENE: 1:53 p.m.

CHAIR CARROLL: ...*(gavel)*... Land Use Committee meeting will come back to order. Planning, do you have any comments?

MR. SPENCE: No comments, Mr. Chairman. When we get to your recommendation we can discuss whatever conditions.

CHAIR CARROLL: Thank you. Members, I'm circulating a copy of a proposed revised condition that attempts to clarify the condition currently attached to the proposed Change in Zoning. I've indicated a maximum height in feet for the three stories currently cited in the condition and I will now open the floor for discussion after you have received. This was an attempt to make sure that the height limit was adhered to. With my staff, I did a site inspection two days ago to really get a good idea of how the view plain was from the road and also from the buildings on the apartments on the other side and addressing the concerns that they had about the view plain and this condition is hopefully to clarify and address that. Oh, and excuse me, Mr. Guzman, welcome.

COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR CARROLL: The floor is now open. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. My question is, you know, we had this discussion in my Committee about stories, there's no real definition of stories. So I can understand where it says, in no case that the total height of any structure exceed 45 feet. Does that include the alternative energy devices approved by the board of directors? 'Cause the way Condition 1 reads it seems like it includes the, any alternative energy devices.

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CHAIR CARROLL: This was an attempt to make sure that they would continue to have the view plain; otherwise, it would come up, it could possibly come up to 55 feet.

COUNCILMEMBER COUCH: No, I understand that, that portion. But what about, for instance, if they decided to, the board of directors, decided—and the County agreed—to put on wind turbines that exceeded 45 feet? The way...and correct me if I'm wrong, Corp. Counsel, the way this condition reads that including any structures, any, you know, alternative energy structures, you can't go higher than 45 feet.

MS. OANA: We were going to discuss a change to these conditions. And instead of the last sentence for both conditions, the sentence, in no case shall the total height of any structure exceed 45 feet, we were going to propose a change for both conditions. Take out that last sentence and put, no building shall exceed 45 feet in height except that vent pipes, fans, elevator, and stairway shafts, chimneys, cell or antennae, and equipment used for small scale energy systems on roofs may extend an additional 10 feet above the building roof. And that is language taken from Chapter 19.14 --

MR. SPENCE: Right.

COUNCILMEMBER COUCH: Right.

MS. OANA: --with regard to Hotel Districts.

MR. JENSEN: Mr. Chair, if I may, we do have that in writing to distribute, it's just presented as if it were a separate condition.

CHAIR CARROLL: Yes.

MR. JENSEN: And I think the way the Deputy is proposing is that this written condition would just replace the last sentence of both Condition 1 and Condition 2.

COUNCILMEMBER COUCH: Oh, is that...

MS. OANA: Yeah, so for both conditions, we would delete the last sentence for Condition 1 and 2 and instead --

COUNCILMEMBER COUCH: And replace it with the language that is now coming down?

MS. OANA: --I just read. Uh-huh.

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COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: And what is being distributed now --

COUNCILMEMBER COUCH: Thank you.

CHAIR CARROLL: --was received after I drafted that condition --

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: --from the Planning Department.

MR. SPENCE: And, Mr. Chairman, if I could ask, it's really the...

CHAIR CARROLL: The one that's being distributed now, is, that Mr. Jensen is distributing. That coming before you is the Planning Department's recommendation.

COUNCILMEMBER COUCH: Well...

CHAIR CARROLL: And Mr. Spence can comment on that if he wishes. Mr. Spence?

MR. SPENCE: Sure. Mr. Chairman, we understand the concern about building higher than, you know, and blocking views, et cetera, and we understand Mr. Couch's concerns about naming stories. There's no good definition of a story. So this is the way we had proposed it and if you had one condition it's going to deal with existing buildings or future buildings, you don't, my thought is you really don't have a need to address existing and future, just one condition would handle it all. And also yes, we, the last part of this, vent pipes, fans, et cetera, et cetera, may extend an additional ten feet, that's consistent with Title 19. We don't want to just limit something and then exclude something that the zoning district would allow anyway.

CHAIR CARROLL: Yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. So your recommendation is a little bit different from Ms. Oana's. Your recommendation is to have just this one condition and that's it and that would take of the care of pretty much everything in these other two conditions except for the part that where it says accepting alternative energy devices approved by the board of directors of the Kahana Sunset AOA and by the County of Maui if required and accepting any new configurations as may be required by the County. That last phrase I'm not sure why that's in there. But the other phrase reads to me that the County and the AOA have to agree on what energy devices are allowed. That would go away if we use just the one condition as you're suggesting.

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MR. SPENCE: Well, small scale energy devices are defined in Title 19. If...I think it will include all that.

COUNCILMEMBER COUCH: I understand the definition, it's just that this condition appears to be allowing that, saying that the board of directors of the AOA and the County of Maui have to agree on whatever alternative energy devices.

MR. SPENCE: Yeah. I'm not sure the purpose of that. I would just remind the Committee Members that this property is in the Special Management Area, they're going to be coming in and applying anyway.

COUNCILMEMBER COUCH: Okay.

MR. SPENCE: Whether it's a condition or not, they have to come in --

COUNCILMEMBER COUCH: They have to come in. Okay.

MR. SPENCE: --and apply for permits.

COUNCILMEMBER COUCH: Then, Mr. Chair, I'm fine with making what was handed out here as the only condition 'cause it essentially covers all of this.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Oh, yeah, thank you, Chair.

CHAIR CARROLL: Followed by Ms. Baisa.

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. I agree with the Planning Department's recommendation on the condition of zoning. It's straight to the point. And I mean and also in your proposal, Chair, one is focusing on existing structures then No. 2 is for future structures. I think the wording with Planning, "no building shall," that's now existing or future.

MR. SPENCE: Correct.

COUNCILMEMBER COCHRAN: It's just building, any building. So --

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: --that section's covered and, yeah, I'm comfortable with the proposal that Department has put forward, Chair, at this time. Thank you.

CHAIR CARROLL: Thank you, Ms. Cochran. Ms. Baisa?

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COUNCILMEMBER BAISA: Thank you very much, Chair. No, I don't have any concern. I think that's...that it makes perfect sense. It kind of puts of everything together. But I'm kind of curious, has this been discussed, the change with the applicant, do they...are they okay?

MR. SPENCE: Yeah, good question.

CHAIR CARROLL: Please identify yourself at the microphone.

MR. HART: My name is Jordan Hart, Chris Hart & Partners. I'm the land use planning consultant for the applicant. There was a Board meeting yesterday by the association where they did discuss the potential conditions, including the height limitation that was being discussed and we just want to reiterate for everyone that there is no intent to proceed higher than the existing development and so we want everybody to be comfortable with what's being proposed. And so when you reach the conclusion on your language with regard to that, the applicant's comfortable with it.

COUNCILMEMBER BAISA: Okay. Thank you, Chair.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Thank you. Mr. Victorino, were you raising your hand?

VICE-CHAIR VICTORINO: Yeah, thank you. And, Chair, you know, I want to thank the applicant, too, for correcting what has been a wrongdoing for many years. Back at that time most people just never paid much attention to it. So I am very appreciative of their correcting the problem and, secondly, giving us some beach access which did not exist in that entire area. I think that was very important in this whole scheme of what they're bringing up and how they want to get this rectified. I think I, you know, I'd like to see more of that done and I hope others will see this as another plausible way of getting rectification of the zoning and other matters that land use, that we've just let slide for so many years. So I want to thank the applicant and you, Mr. Chair, for bringing this forward and waiting for your recommendation. But I'm very acceptant to what they're doing and hopefully we'll get...they'll be able to correct some of the other challenges that they've been bringing to us. Thank you, Chair.

CHAIR CARROLL: Thank you. Mr. Guzman, were you...I couldn't tell if you were raising your hand or making a motion.

COUNCILMEMBER GUZMAN: No I'm fine, thank you, Chair. I don't have any further questions. I also agree with my colleagues on this matter. It is something that is overdue, house cleaning, as well as the benefit to the community for access to the beaches. I think that is very appropriate and we thank the property owners

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for thinking about that and actually spending the monies to put in that beach access. So thank you.

CHAIR CARROLL: Thank you. Members, I now like go to suggest a condition of zoning, the one you have before you, and I'll read it. Exhibit "B," Conditions of Zoning, 1. No building shall exceed 45 feet in height, except that vent pipes, fans, elevator and stairway shafts, chimneys, cell or antennae, and equipment used for small scale energy systems on roofs may extend an additional 10 feet above the building roof.

VICE-CHAIR VICTORINO: You want a motion?

COUNCILMEMBER COCHRAN: No objections.

VICE-CHAIR VICTORINO: No objections.

COUNCILMEMBER COCHRAN: Is that a...

CHAIR CARROLL: Thank you. Alright, Members, any further discussion? This was the only matter of real contention with...you've heard the presentation and seen everything. This was the only thing that we really wanted to really look at and address to make sure we got it right. Is there any other thing else before I give my recommendation?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you. Thank you, Chair. And I wanna highlight Mr. Jim Buika's role in this along with Tara Owens and his thinking outside the box in reference to getting additional public, well public beach access period in this area. As they know, I've been trying to figure out ways and lo and behold, the Department came up with a great idea that when people of this nature come in for these emergency permitting that upon, you know, final approval, they commit to creating this beach access, which should have been done many years ago but here we are and it's Makani Sands has complied also and now we have Kahana Sunset. So, yes, hats off to them but especially to the Department who thought to, you know, bring this up at this point in order to make this happen. And I do have a question. I was able—thank you to Jackie for touring me around the other day—to watch the completed project 'cause I was with Jim and Tara at the original, I mean the onset of this whole thing that was occurring and the walls, you know, falling in and undermine and what have you and they did an awesome job. The beach, the public access though I didn't really get a date or time when that was going to be completed. It looked like the hugest brunt and the enormity of the project was done beautifully, and but yet this one sliver almost compare...in comparison to the

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rest of their project is still kind of sitting there not done. So it just seems like it needs the chain link, and then you got to take away the tape on either side and now people can traverse through. And it just seemed like things are just kind of hung up somehow right there and...

CHAIR CARROLL: Would you like to bring the applicant forward?

COUNCILMEMBER COCHRAN: Yeah I just kind of wanted perhaps a timeline on when maybe the chain link fence is going to go in and the gate that's going to access for the residents to, you know, go out that way if they chose to.

CHAIR CARROLL: Could you please identify yourself at the microphone?

MS. SCHEIBEL: Hi, hello, and thank you very much for hearing this today. I know you all give up your time and you work so hard. I'm Jacqueline Scheibel, I co-chair the long range planning and implementation for the Kahana Sunset and have for some long time. And this has been a project that has been in planning and parts of it have been really so important. Public access to the beach I think that's a critical thing because you don't have that everywhere and nobody could get to... Keonenui Bay is lovely. So we're putting the fencing up, it's almost done. We have the insurance in process, the proper insurance that names the County as it should and I believe the State. That document all came and has got onto our insurance people. When we have the insurance that I can bring to Mr. Buika--'cause that's where I'm going to be bringing it when I have that, and it should not be very long--we would like to have a public opening where we maybe symbolically cut the ribbon across the path. It's almost finished, we've got a few more days work on the fencing. Landscaping won't hold up opening the path. We can do the landscaping as we work, but so we're looking at probably a couple of weeks. There are owners who would like to have the opening at our annual meeting which is the last Friday in September. I don't want to wait that long. We have it, I'd like it to be open the minute we've got the insurance. That's what's going to hold it up. As soon as I see the insurance, you're going to get phone calls from me. So any other questions I could answer? But I appreciate, Elle, your coming. I appreciate meeting with all of you. And I thank you all for what you've done and especially I thank Mr. Buika because he helped give me words to use with our mostly-live-on-the-mainland owners so that we could get this achieved because a lot of them did not understand.

CHAIR CARROLL: Thank you for coming, we appreciate it.

MS. SCHEIBEL: I appreciate it.

COUNCILMEMBER COCHRAN: Yeah, thank you for the opportunity. Thank you, Jackie, for that and yes looking forward to that ribbon cutting, caution tape cutting.

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CHAIR CARROLL: Any further, anything further before I give my recommendation?

COUNCILMEMBERS: Recommendation.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Yeah, thank you. I just wanted to check with the Department, we got, in the presentation we were told that the beach access was 7:30 a.m. to 7:30 p.m. but in several different locations here, in one spot, it said 9:00 a.m. to 7:00 p.m. And so where is the actual, on record what the time of access is?

VICE-CHAIR VICTORINO: Mr. Buika?

CHAIR CARROLL: Planning?

COUNCILMEMBER COUCH: Is that in the SMA?

MR. BUIKA: I do believe the...Jim Buika, Planning Department. I do believe the conditions require 9:00 a.m. to 7:30 p.m. right, Don, is that what you're reading there?

COUNCILMEMBER COUCH: Well I saw one spot where it's 9:00 a.m. to 7:00 p.m. and --

MR. BUIKA: Nine a.m. to 7:00 p.m.

COUNCILMEMBER COUCH: --they said 7:30 a.m.

MR. BUIKA: Seven thirty a.m. to 7:30 p.m. which coincides with Parks --

VICE-CHAIR VICTORINO: Parks. Yeah.

MR. BUIKA: --right, so I guess we can go with either.

COUNCILMEMBER COUCH: Well, actually...

MR. BUIKA: I believe our recommendation was the 9:00 to 7:00; but, obviously, 7:30 to 7:30 is better.

COUNCILMEMBER COUCH: Seven thirty to 7:30 is much preferred.

MR. BUIKA: Should we...

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COUNCILMEMBER COUCH: And I'm trying to find, that's in the SMA conditions though, right?

MR. BUIKA: Yes.

COUNCILMEMBER COUCH: That's not in the conditions of zoning?

MR. BUIKA: That was in the SMA condition, the 9:00 to 7:00.

COUNCILMEMBER COUCH: Right.

MR. BUIKA: Nine to 7:30 p.m.

COUNCILMEMBER COUCH: So...

VICE-CHAIR VICTORINO: Chair, can we...

COUNCILMEMBER COUCH: Go ahead.

MR. BUIKA: That was a minimum, right?

COUNCILMEMBER COUCH: Right.

MR. BUIKA: So that was the minimum hour.

MR. HART: So just to clarify, the property is proposing 7:30 a.m. to 7:30 p.m., that would be in excess of things that were discussed at the SMA level, but that's what's being proposed to the community right now and that's what they intend to do.

COUNCILMEMBER COUCH: Would you, would the applicant object to that being a condition of zoning, 7:30 to 7:30 as minimums?

MR. HART: Well there's, I guess they're not opposed it, but they're also the ones proposing it so I mean it's...

COUNCILMEMBER COUCH: No I understand, it's just that if it gets new AOA or whomever --

MR. HART: Sure.

COUNCILMEMBER COUCH: --and decide to change it to 9 o'clock.

MR. HART: No, no they're not opposed to.

COUNCILMEMBER COUCH: Okay.

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MR. SPENCE: Mr. Chairman?

VICE-CHAIR VICTORINO: Chair?

MR. SPENCE: If I could comment? We'd rather that just stay as an SMA condition rather than a condition of zoning. It's more related to the Special Management Area and the goals and policies of 205A. If something needs to change, I mean if you put it as a condition, you know, that's very rigid. If something needs to change it's easier to go back to Planning Commission and have them make the presentation and everything there, if something needs to be modified. Say if it needs to stay open later.

COUNCILMEMBER COUCH: Correct. However, what is to prevent the next AOA board which they change all the time to say well it says 9 o'clock so we're going to go to 9 o'clock. I don't want to see that happen. I want the minimum time to be 7:30 and if it's an SMA condition...

MR. SPENCE: Well, put it this way, all the hotels in Kaanapali have conditions on shoreline access and where parking is to be and all that. Those were built in, goodness, early '80s, mid '80s. We still go after 'em for conditions and those do not change and...

COUNCILMEMBER COUCH: I understand that but the condition says 9 o'clock, so they will be following the conditions if they don't open the gate till 9 o'clock. I think, I know I would I'm sure some of the other Members would like to see that early opening no later than 7:30 a.m.

MR. SPENCE: Well, up to the Committee.

COUNCILMEMBER COUCH: Where would we do that? We can't change SMA conditions can we?

MR. SPENCE: Well, certainly the board is, can extend it if they would like beyond the conditions.

COUNCILMEMBER COUCH: Huh? I guess I must not be speaking clearly. The current board can say 7:30 but AOA boards change yearly sometimes. That next board can say I'm going to go 9 o'clock. I personally—and I don't know if any of the other Members--don't want to see any later than 7:30 to be a fact of somehow that they can't do that. Now I would like that to be some sort of condition that the County puts on.

MR. SPENCE: Okay.

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COUNCILMEMBER COUCH: And can we do that at...we can't deal with SMA right? So we would have to do it as a condition of zoning here. Is that correct? I don't know, I mean I'm trying to be as flexible as possible except for the time.

VICE-CHAIR VICTORINO: Well, you're...

MR. SPENCE: Really?

MR. BUIKA: Councilmember Couch, Jim Buika, again. The condition, maybe, Mr. Hart, you can correct me if I'm wrong but I do believe the condition was part of the emergency permit for reconstruction, not the SMA. I mean we have the hours in there so we could modify the conditions in the emergency permit. I don't know if we, I don't have that with me but...

MR. HART: If I could speak just --

MR. BUIKA: Yeah.

MR. HART: --you know, the property is not opposed to it so whatever anyone is comfortable with, I would say just for clarification the body that would enforce zoning conditions or SMA conditions will be the Planning Department. There is normally a standard condition that the project's going to be developed in substantial compliance with representations made to this body. And so I think that it's in the record and the enforcement agency is here with us. But if there's another step that needs to be taken so that everybody can feel comfortable about where we are, you know, the property's indicated that they're supportive of that.

VICE-CHAIR VICTORINO: Chair? Chair? Chair?

CHAIR CARROLL: Oh, excuse me, Mr. Victorino?

VICE-CHAIR VICTORINO: Yeah, you know, and I don't want to hold up everything, you know, and what I'd like to ask if we could have their board present a letter to the Planning Department saying that their hours that they consent to is 7:30 to 7:30 and that they will not change it unless we give approval to that in the future. I, you know, I'm not a legal beagle, you know, maybe I need Mr. Guzman to help me in that area. But something that they're willing to do it, put it in writing and it cannot be changed unless they come back to this body to change it, and then have to have substantial reason to change it. You know, I don't know, Jordan, you know, just to make it easier so that we don't...I mean we're here and now we're...

MR. HART: Chair, if I may?

CHAIR CARROLL: Mr. Couch? Or...

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VICE-CHAIR VICTORINO: No, it was Mr. Hart.

MR. HART: Thank you. Thank you Chair. When we were with the Chair and Staff, there was discussion of the timing of the year and the Council that's reviewing this and the process that proceeds for the remainder of the year. And so for my understanding of how much time that the Kahana Sunset has put into this process, I would really would like to see if we can resolve this now so that we can proceed rather than going back to the board and coming up with a creative option that may or may not be suitable to everyone. So I would just like to say that.

VICE-CHAIR VICTORINO: So do you think that my suggestion would be going back to the board and redoing it or...

MR. HART: Well, I would prefer that...the duly appointed representative of the association has acknowledged that she is supportive of the condition; and so I think that if the condition was made, it would be the discretion of the landowner to execute that unilateral agreement and accept those conditions, and I expect that's that going to be what's going to happen. So I think that if there's a proposal, I understand that the Director would rather address it through SMA, and there's a level of flexibility; but I also understand that there's been a lot invested in this process and we're going into a transition, we'd just like to conclude it at this point.

VICE-CHAIR VICTORINO: So can we, I guess my question to Corporation Counsel is can we put a Condition 3 that will specify hours of operations or hours of availability to the public? Can we put that as a condition on the conditions of zoning for 3? I would ask Corporation Counsel on this one.

MS. OANA: So that would be the second condition of zoning.

VICE-CHAIR VICTORINO: Yeah on the, under No. 2, right, adding hours from 7:30 a.m. to 7:30 p.m., that it must be open.

MS. OANA: You know it's somewhat related to the Change in Zoning so I would say if that's your, the body's wishes, then you folks could do that.

VICE-CHAIR VICTORINO: So we can...

MS. OANA: But its, just to clarify --

VICE-CHAIR VICTORINO: Yeah.

MS. OANA: --this is going to be Condition 2 because --

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VICE-CHAIR VICTORINO: Under Condition 2.

MS. OANA: --there's only one condition of zoning right now.

VICE-CHAIR VICTORINO: Okay. So if we added, right after we get exceed 45 feet, that the hours of operation for this access would be from 7:30 a.m. to 7:30 p.m. You could put the wording, I'll leave it up to you but you understand what I'm trying to lead to; that way we can move on and get this done.

MS. OANA: Yeah, we could do that.

VICE-CHAIR VICTORINO: Okay.

CHAIR CARROLL: Would you like to make a motion?

VICE-CHAIR VICTORINO: Yeah, I make that motion.

COUNCILMEMBER COUCH: Mr. Chair? Hang on, if you don't mind. I can make it easier for the Department and easier for Mr. Victorino that the condition say that the gate shall not be open any later than 7:30 a.m. and closed any earlier than 7:30 p.m.; that way gives the flexibility to go earlier or later at the end and make that as Condition No. 2. If Mr. Victorino wants to make that motion go, he can go right ahead.

VICE-CHAIR VICTORINO: Make that as early, cannot be open any earlier than 7:30 --

COUNCILMEMBER COUCH: Any later than 7:30 p.m.

VICE-CHAIR VICTORINO: --and cannot be closed any earlier than...

COUNCILMEMBER COUCH: Earlier than 7:30 p.m.

VICE-CHAIR VICTORINO: Okay, yeah, okay fine, that's fine. Whatever makes it work so that we can get it done.

COUNCILMEMBER COUCH: Yes, yeah.

CHAIR CARROLL: Is there any objection to the Members about this wording? The wording suggested?

COUNCILMEMBERS: No objections.

VICE-CHAIR VICTORINO: That's fine.

CHAIR CARROLL: Alright Mr. Victorino had made the...

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COUNCILMEMBER COUCH: Oh wait, wait.

CHAIR CARROLL: Oh, wait.

VICE-CHAIR VICTORINO: Wait, wait, hang on. She's raising her hand.

CHAIR CARROLL: Corporation Counsel?

MS. OANA: So just to clarify, the gate for the public shoreline access shall not be open any later than 7:30 a.m. and shall not be closed any --

COUNCILMEMBER COCHRAN: Earlier.

VICE-CHAIR VICTORINO: Earlier.

MS. OANA: --earlier than 7:30 p.m.

VICE-CHAIR VICTORINO: That's correct.

COUNCILMEMBER COCHRAN: Right.

CHAIR CARROLL: Alright that is...do we have a second?

COUNCILMEMBER COUCH: If you wanted a motion?

VICE-CHAIR VICTORINO: Yeah.

CHAIR CARROLL: He has made the motion --

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: --for the wording that Corporation Counsel has just read.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: And seconded by Mr. Couch or Mr. Guzman.

COUNCILMEMBER COUCH: No.

CHAIR CARROLL: Mr. Couch then. Alright, it has been moved by Mr. Victorino, seconded by Mr. Couch. Discussion?

COUNCILMEMBER COCHRAN: And, Chair?

CHAIR CARROLL: Ms. Cochran?

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COUNCILMEMBER COCHRAN: I again applaud all the entities that are willing to work with to provide this public access. Unfortunately, not always is there room today for parking to go along with it, but I did go out and I took pictures of the shoulders out in front of where this access is to be and ran it by Public Works. So it's in discussion to lift the no-parking restrictions there. There is no signage but people still park. But it will make it clearly legal for people to actually park the way they are there in order to go down to the beach; so I'm in the process of working on that through IEM. Thank you, Chair.

CHAIR CARROLL: Any further...Mr. Couch?

COUNCILMEMBER COUCH: May I request a short recess please?

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COUCH: Short recess please?

CHAIR CARROLL: Recess to the call of the Chair. . . .*(gavel)*. . .

RECESS: 2:22 p.m.

RECONVENE: 2:25 p.m.

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting will come back to order.

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you for that short recess. My concern was the readability of that could have been misinterpreted another way. So I think the Department came up with what our intent is and put it into the right words. So if Mr. Spence could...

CHAIR CARROLL: Mr. Spence?

MR. SPENCE: Thank you, Mr. Chairman. The concern that Mr. Couch had at the break was that the way that the condition was written could be read a couple different ways and I see Mr. Guzman is agreeing with that. So rather if we could reword it to say that the public shoreline access shall be available at a minimum between the hours of 7:30 a.m. and 7:30 p.m. Then you're defining, saying at a minimum so you could open earlier or you could stay open later but at a, but you're also defining the hours of operation, you know, during the day time essentially in little bit earlier and little bit later.

VICE-CHAIR VICTORINO: I have no problem. Do we have to have a new motion for all of that or just...

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COUNCILMEMBER COUCH: Friendly amendment, that's friendly amendment we can change the language.

VICE-CHAIR VICTORINO: Friendly amendment?

MR. SPENCE: The intent is still the same.

VICE-CHAIR VICTORINO: The intent is still the same so okay fine, you know, so as long as the intent is the same then I have no objections.

CHAIR CARROLL: Alright we've heard the wording that we have changed slightly. If there's no objection, this clarifies the intent of the Council.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Alright any further discussion to the motion on the floor? Hearing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Crivello.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR CARROLL: Alright, Members, any further discussion?

VICE-CHAIR VICTORINO: No.

CHAIR CARROLL: If not, I will give my recommendation.

COUNCILMEMBERS: Recommendation?

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CHAIR CARROLL: The Chair will entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance to Amend the West Maui Community Plan and Land Use Map from Single-Family to Hotel for Property Situated at Lahaina, Maui, Hawaii, and Identified as Tax Key Map [sic] (2) 4-3-003:015, for the Kahana Sunset AOA. Passage on first reading of the revised proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to H-M Hotel District (Conditional Zoning) for Property Situated at Lahaina Maui, Hawaii, and Identified as Tax Key (2) 4-3-003:015 for the Kahana Sunset AOA; incorporating any revisions made in today's meeting and nonsubstantive revisions; and filing of County Communication 16-39.

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

COUNCILMEMBER COCHRAN: Mr. Chair, I second the motion.

CHAIR CARROLL: It's been moved by Mr. Victorino, seconded by Ms. Cochran. Discussion? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I want to thank the Department very much for looking into this. I had some concerns about sea walls, but having read the discussion and having discussed it with the Department yesterday, I'm fine. So they've done an exemplary job of making sure that the best of all the worlds can be done at that one location so thank you.

CHAIR CARROLL: Any further discussion? All those in favor of the motion signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Crivello.

MOTION CARRIED.

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ACTION: FIRST READING of proposed bill relating to the Community Plan Amendment and FIRST READING of revised proposed bill relating to the Change in Zoning, RECORDATION of unilateral agreement, and FILING of communication.

CHAIR CARROLL: Members, thank you very much for your attendance today. And to the applicant, congratulations and thank you for coming, being with us. And all those out in our gallery and in television land, thank you for joining us. This Land Use Committee meeting of August 17th stands adjourned. ...*(gavel)*...

ADJOURN: 2:30 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:160817:jp

Transcribed by: Jean Pokipala

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CERTIFICATE

I, Jean Pokipala, 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 8th day of September, 2016, in Kahului, Hawaii

A handwritten signature in cursive script, appearing to read "Jean Pokipala", is written over a horizontal line.

Jean Pokipala