

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

November 21, 2016

Council Chamber, 8th Floor

RECONVENE: 1:32 p.m.

PRESENT: VOTING MEMBERS:
Councilmember Robert Carroll, Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Stacy Crivello

EXCUSED: VOTING MEMBERS:
Councilmember Don Couch
Councilmember Don S. Guzman

STAFF: Scott Jensen, Legislative Analyst
Raynette Yap, Committee Secretary

ADMIN.: Michele McLean, Deputy Director, Department of Planning
Danny Dias, Planner V, Department of Planning
Pat Wong, Corporation Counsel, Department of the Corporation Counsel
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Grant Chun, A & B Properties, Inc.
Michael Munekiyo, Munekiyo Hiraga
Plus (16) Others

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

CHAIR CARROLL: . . .(*gavel*). . . This Land Use Committee meeting, recessed meeting, will now reconvene. It's March 21st...excuse me, November 21, 2016. First, before we begin, if anybody has anything that makes noise outside there, cell phones or otherwise, please turn it off. And we have with us this afternoon, the Vice-Chair of the Land Use Committee, Mr. Victorino.

VICE-CHAIR VICTORINO: Aloha and good afternoon, Chair.

CHAIR CARROLL: Ms. Crivello.

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COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: Ms. Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR CARROLL: And Ms. Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

**ITEM NO. 23: COMMUNITY PLAN AMENDMENT, ESTABLISHMENT OF
PROJECT DISTRICT, AND CHANGE IN ZONING FOR THE
WAIALE DISTRICT SOUTH PROJECT (WAIKAPU)**
(CC 16-218)

CHAIR CARROLL: We left off, the last time, with a discussion about them being prequalified by the lender of their choice. I'm going to hand out now four amendments...excuse me, four conditions that I drafted and one of them addresses that. We talked a lot about what was done before, but I am concerned and the Committee needs to be concerned what is going to transpire with this application. And I hope that what I had drafted up will cover the concerns that the Committee had. And I'd like to get into the conditions right away, as soon as they're distributed, I'll give you a few minutes just to look at them. And as we discuss the conditions, we'll be asking our applicant to come down and make comment. Alright, I'd like to start with the first one. What I'd like to do is I'm going to ask for a motion on the floor for each condition as we go down, a first and a second, and then go into discussion. The first condition, I'd like to ask for a motion for a condition that reads, that residential workforce housing units shall be made available for occupancy either before or concurrently with market-rate units at a one-to-one ratio required of the development, in accordance with Chapter 2.96, Maui County Code.

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

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: I have a...moved by Mr. Victorino, seconded by Ms. Baisa. Mr. Victorino, discussion?

VICE-CHAIR VICTORINO: Chair, no, I have no discussion. I think this is very appropriate for...and it is part of the Chapter 2.96, Maui County Code; so I think this condition reinforces what we intend...what the intent of this workforce housing ordinance was all about. So I have no problem with that. Thank you, Mr. Chair. I support it wholeheartedly.

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CHAIR CARROLL: Thank you. Further discussion before...I'm going to call the applicant down. Could the applicant please come to the podium and identify yourself at the podium?

MR. CHUN: Good afternoon, Mr. Chair. Grant Chun here on behalf of the applicant.

CHAIR CARROLL: Anybody have any questions or any compliments...ah compliments.

VICE-CHAIR VICTORINO: Comments you mean, yeah?

CHAIR CARROLL: Well, it's been a long day already.

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: Any comments or questions of the applicant?

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: Mr. Chun, do you have any comment on the proposed condition?

MR. CHUN: Thank you, Mr. Chair. My only comment is just a drafting comment. The second clause of the sentence is actually repeating the provision of Chapter 2.96 from the word "either" to the word "development." It repeats that, and generally, as a drafting matter, sometimes it's better not to repeat what's...language that's specifically in an ordinance just because...to the extent the ordinance gets amended over time, there's discrepancies. But I mean it's the call of the Committee and we're comfortable with it as written.

CHAIR CARROLL: Thank you. Members, any comment or any questions for the applicant? Hearing none, all in favor of the motion, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, four "ayes"...Corporation and...I saw Corporation...somebody was raising their hand over here. Alright, I have not approved the motion yet, the motion's still on the floor. Do you have comment?

MS. McLEAN: Thank you, Chair. Yes, just as a general comment, when there are requirements that are enforced by other agencies or that fall under the purview of other agencies that are already in the Code, typically, it's not desirable to also make those Conditions of Zoning. In this particular case, given the discussion from the last meeting and given the first and fourth conditions, if there is a concern that somehow those existing codified requirements aren't being followed, then certainly it's a call on the Council's behalf to add those as a zoning condition. Zoning conditions are supposed to be unique to that property that goes beyond the zoning that you're considering establishing for it. So that what's in Title 19 of the County Code and the Zoning ordinance isn't sufficient to control density or heights or things like that. Or

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there are potential impacts that other laws do not govern, then you place a condition on the zoning to make sure that those things are satisfied. So the first condition is an existing requirement in the Code, and we believe that condition needs to be followed not because of zoning, but because it needs to be followed through the agreement that the applicant would make with Department of Housing and Human Concerns. Having said that, I'll footnote that because this issue, and compliance with 2.96 was discussed at the last meeting, it seems to be a concern then the Council at this point might move forward with those conditions for this particular project because there may be concerns that they wouldn't be complied with as a regular course of business and so therefore, they're going to be complied with through zoning rather than through the regular administrative process. Thank you, Chair.

CHAIR CARROLL: Thank you. Any comments? The motion is still on the floor. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. Thank you, Deputy Planning Director. I completely concur and agree with your points. So thank you. And that was some of my comments, Chair, in looking at some of your conditions of zoning that these already exist and ought to be followed as written already, so just curious. I mean I see what you're trying to do, but I mean if people aren't following existing laws and rules then I don't understand what's happening here in regards to, you know, people who are supposed to be enforcing it already. So thank you. Number one, we can go with it.

CHAIR CARROLL: This was brought up because of concerns of the Members and it would seem that the Members did not have much faith in the organization that did the enforcement, and it was indicated that before and the other meetings that we had that they wanted a condition, and that's why that condition is there. Whether you like...if you feel it's necessary, the motion's on the floor. If you do not feel it's necessary, and you think it is redundant and then, well, we have a no vote. So you can make the choice now. If you think it's necessary. Mr. Victorino?

VICE-CHAIR VICTORINO: Wait, Ms. Oana was raising her hand before she interrupted me, so go ahead.

CHAIR CARROLL: Oh.

VICE-CHAIR VICTORINO: No, you go ahead, Ms. Oana. I will let you go first, go ahead.

CHAIR CARROLL: Proceed, Corporation Counsel.

MS. OANA: Thank you, Chair. I'm just reading condition number one, and it does, as Mr. Chun pointed out, differ from the Code; and I just wanted to make sure that the Committee understood what they were voting for. Basically, the Code says, residential workforce housing units shall be made available for occupancy either before or concurrently with market-rate units at the same ratio required of the development.

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And in your conditions it says, at one-to-one ratio required of the development. So I just wanted to make sure that everybody's understanding what your condition is.

VICE-CHAIR VICTORINO: Chair?

MS. OANA: If anybody wants to explain it.

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you, Ms. Oana, 'cause that's exactly what I was going to say. It changes it. It is not the same. You know, similar but it's a one-to-one, not percentagewise. So that's why I think I can support this and I hope the developer understands that it's not a matter of them, but I think that I'd like to see that happen more often in future developments especially for our affordable housing units. So I'm ready to vote any time you call for the vote, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. Victorino. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you, Chair. And though it may seem to be redundant, I think it's a good idea because we wanted an emphasis on it and so here it is. I'm okay.

CHAIR CARROLL: Any further discussion to the motion on the floor?

VICE-CHAIR VICTORINO: Wait, Mr. Chun is running up like a gazelle so maybe he has something he wanted to add.

CHAIR CARROLL: Do you have comment that you wish to make before we have the...I call for the question?

MR. CHUN: Just a point of clarification. The question that's arisen from our side is whether the reference shouldn't be a one-to-four ratio since the 2.96 calls for a 25 percent requirement? Or if the one-to-one ratio means, you know, one affordable for each market or whatever. But I think it might create some ambiguity as drafted and that's why I wanted to call that to your attention. So I think that's why the ordinance, as Mr. Victorino mentioned and Ms. Oana mentioned, says the same ratio required so that there's not that confusion.

VICE-CHAIR VICTORINO: Mr. Chun? May I ask Mr. Chun a question please?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: Yeah, Mr. Chun, I understand...but you understand the desire of this Council as far as affordable housing is concerned, you understand our really deep desire to get this off the ground and get that done. And would you be--and I don't know, Ms. Oana, you're going to have to answer this question, also, with Mr. Chun--would you be amenable if we changed that ratio, instead of one-to-one--with your

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permission, Chair—maybe a one-to-two. In other words, for every two market, one affordable, that way, even though it's different than the Code, which this one is different than the Code because we're talking ratio one-to-four, would you be amenable to something like that? Would you be amenable, Mr. Chair? And then I guess we'll have to ask the rest of the Members. But, Ms. Oana, would that be a real problem in putting something like that, 'cause conditions run with the project and the land on that project, is that correct?

CHAIR CARROLL: Corporation Counsel?

MS. OANA: That's correct. And I think it's doable. However, I don't know if you'll kill the project. I think you'll have to ask Mr. Chun.

VICE-CHAIR VICTORINO: Well, that's why I'm asking here. I just...I wanted to ask you first, then I will turn to Mr. Chun.

MR. CHUN: Yeah, if I think I understand your question correctly, Mr. Victorino, yeah, that would not work for the project. The...if you're asking whether the language, as indicating here...if your assumption is that the language, as indicated here, is written for the purposes of changing what's required by the Code, then there would be a difficulty I think in making that happen, you know, in terms of feasibility for the project. If the intent here is simply to ensure that to the extent that a certain number of affordable units are required by the Code and that they will be produced at the same time or concurrently with that similar number of market units then that's fine, but if your question is...if that's not your question, then I think there'd be some difficulty. Yeah, I'm not completely clear on...

VICE-CHAIR VICTORINO: Okay. So let me make it perfectly clear, Mr. Chun. You don't have to run away from the mic, I promise I won't bite you. Basically, right now, it's pretty much a one-to-four ratio when you talking the law reads right now, right?

MR. CHUN: Right.

VICE-CHAIR VICTORINO: And so what we're saying for the anxieties and the people wanting, needing, really desiring affordable units, right, would you consider, for a condition instead of—and I haven't asked the Chair yet, you know—but changing that from a one-to-four to a one-to-two. In other words, you build two market for one affordable, that's what I'm asking.

MR. CHUN: I see.

VICE-CHAIR VICTORINO: Yeah, that's exactly where I'm going with this. I'm not going anywhere else except, where every two market you build, we get one affordable house...or unit available for that purchase. So that's what we're asking. So, you know, if it's 210 and you build 420 and 210 are done, then everything after that is...it's done. We don't have to wait till you build out the 900 units to get the

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affordable units; that's what I'm asking you. Would that be a deal breaker in this respect?

MR. CHUN: I'm sorry, I think it would be, from what you described. I'm not completely clear on what you're...so are you saying then that the...are you asking that this provision create a scenario where a greater number of affordable units...

VICE-CHAIR VICTORINO: No, no.

MR. CHUN: No, you are not, okay.

VICE-CHAIR VICTORINO: No. So in other words, the 200 and something that you're committed to build under the workforce housing...

MR. CHUN: Out of the 2.96, yes.

VICE-CHAIR VICTORINO: Right. It's still the same --

MR. CHUN: Okay.

VICE-CHAIR VICTORINO: --but instead of waiting for four to be built and then one to be built, affordable, I'm asking for every two that market price, one affordable becomes available in concurrency.

COUNCILMEMBER BAISA: Simultaneously.

MR. CHUN: Oh.

COUNCILMEMBER BAISA: Yeah.

VICE-CHAIR VICTORINO: Yeah, it's not really rocket science, I promise. But maybe I confuse you the way I presented, I apologize.

MR. CHUN: But I think that, with all due respect, I think that what's required by the ordinance is actually better for the market because it requires that for every time...if you're required to provide, say, 150 affordable units, then on a one-to-one basis, you have to do that all the way up to the 150. The one-to-two ratio would create a scenario where actually fewer affordable units would get produced per...for the market.

VICE-CHAIR VICTORINO: Okay. So you're amenable to what he's saying now, one-to-one, what the Chair is...

MR. CHUN: Yeah.

VICE-CHAIR VICTORINO: So if that's the case, then I withdraw anything else. I thought you were not amenable 'cause you were saying, one-to-four ratio.

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MR. CHUN: Oh, no. I was just trying...well, all I was trying to say is that there's some ambiguity created with this one-to-one language. But obviously, Mr. Victorino, you've clarified what is meant here.

VICE-CHAIR VICTORINO: Yes.

MR. CHUN: I'm just concerned that, you know, in working with the departments going forward in ensuring that there's compliance with the conditions that we not run into a scenario where, you know, someone on down the line looks at this and is confused, so--

VICE-CHAIR VICTORINO: Okay.

MR. CHUN: --this is a good discussion.

VICE-CHAIR VICTORINO: Okay. Yeah, so I apologize, Mr. Chair, but I just wanted...I agree with what you're trying to do, but I thought they were like, this is too much. So that's why I was looking for an alternative. But if you're comfortable with that, then I'm comfortable with it, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. Victorino. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. My understanding when I read this was they're going to build the same number of affordables as they originally have agreed to in the agreement which is one...25 percent of the total project will be affordable, okay. What I understand this says is, in order to put them out for occupancy, you've got to have an affordable unit go along with a market unit --

CHAIR CARROLL: Correct.

COUNCILMEMBER BAISA: --and they will be occupied at the same time. So that's how I understand this. There's nothing extra, it's the timing. For every market unit you put out, you've got to put out an affordable unit ready for occupancy; that's how I read this.

MR. CHUN: Okay.

CHAIR CARROLL: That is the intent of the...

COUNCILMEMBER BAISA: Can you live with that?

MR. CHUN: We can live with that, but I think that the language that's in the ordinance, which is that at the same ratio required of the development is clearer, honestly. I'm just concerned that the housing folks later will be working with us and it'll...because it's not consistent with the ordinance, this one-to-one language, although what is meant is that it be consistent with the ordinance. I'm just concerned that in the

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implementation stage there might be, you know, there might be issues presented with legal and with the Housing office, so I just wanted to make sure that's...

COUNCILMEMBER BAISA: Well, you know, judging from the fact that we have confusion right here, you may have a point. Maybe we should just leave it alone, 'cause the ordinance is very clear. I don't know, Chair, whatever you decide to do, but I'm clear as to what we're trying to do.

MR. CHUN: Yeah, I understand as well. I'm just concerned about the potential interpretation from legal that might occur later.

CHAIR CARROLL: Thank you, Mr. Chun. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And that's kind of what I was saying, your condition is stating, in accordance with Chapter 2.96. I'm reading 2.96 and that is what Ms. McLean also highlighted is that it's already existing and you're just trying to reemphasize to this applicant in a condition for their project to please follow this. But, you know what, why are we doing it like this? That is my question. It's in our law. This is what people are supposed to be following. Why is it that we need to rewrite it and...you know, I don't understand that. That's where my question arises to Corporation Counsel, to Department of Housing, to the Chair of the Committees, and what have you that have everything to do with this residential workforce housing; that's what's really, really frustrating for me.

MR. JENSEN: Mr. Chair?

COUNCILMEMBER COCHRAN: And we're trying to walk around and try and bend over backwards to try and please the developer. They're supposed to be developing housing for us, and it's already written in our Code to do and follow, and it hasn't happened. I understand that. But someone else needs to put their foot down and make it work --

MR. JENSEN: Mr. Chair?

COUNCILMEMBER COCHRAN: --and make them follow it. So I understand what you're doing, Chair, but I think if we just get our residential workforce housing ordinance and make sure the people who are applying for it follow it. And I think, number one, is to get that workforce affordable housing agreement a copy of it to this body.

CHAIR CARROLL: Correct.

COUNCILMEMBER COCHRAN: That needs to come to this body, number one, first and foremost, because that is where the discrepancy, the different translations, interpretations are occurring and it's not right.

CHAIR CARROLL: That's what the Members before ask for us to put this type of condition in.

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COUNCILMEMBER COCHRAN: And I don't see that here today. So that's what I would like to see in the end.

CHAIR CARROLL: Thank you. Ms. Cochran...excuse me. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Crivello. Councilmember Crivello, yeah Chair, thank you. Housing will...the Department of Housing and Human Concerns will have an agreement put together—or they should have one already—with the developer. So this condition, does this come in addition to what agreement is put together contrary to...and that agreement is based on 2.96, right? So why do we need to justify and I'm trying to understand, too, why is this necessary when the agreement between the builder or the developer and the Department would have to be in compliance with 2.96.

CHAIR CARROLL: Before, when we had this type of conversation with other applications, the Councilmembers desired to put it in as a condition so we would have the report come back to us and we could monitor it, and just to make sure it was done because there was some concern about it actually transpiring, and that is why I wrote this up and submitted it to the Members over here.

VICE-CHAIR VICTORINO: Chair?

COUNCILMEMBER CRIVELLO: Okay, thank you. But...

CHAIR CARROLL: Mr. Victorino...oh, sorry.

VICE-CHAIR VICTORINO: Go ahead.

COUNCILMEMBER CRIVELLO: I'm sorry. I would just like us to be consistent with the agreement in accordance to 2.96 unless we're going to make amendments to 2.96. Thank you.

CHAIR CARROLL: Thank you.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: So that we get clarification, Ms. Oana, the way 2.96 reads right now, this project with its 900 units or so, right, and they're going to have 200 and some odd units as affordable. If they build one unit affordable and one market price, is that the way the ordinance reads or the ordinance reads, from what I understand—since some people don't understand it—is that it is based upon the percentage, the 25 percent, so if it's 900 then, like Mr. Chun mentioned earlier, four would be built and one market would be accompanying that four if we use the ratio, not what is written here, but the 2.96 ratio as stated in the ordinance? Can you correct me if I'm wrong?

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CHAIR CARROLL: Corporation Counsel?

MS. OANA: Thank you, Mr. Victorino. I do not advise the Housing Department; however, that is exactly my reading, what you just stated.

VICE-CHAIR VICTORINO: So if they pay attention, this enhances the fact that we get a one-to-one ratio for the first two hundred and some units, after that they can build all the market houses they want from that point forward, but we've gotten the share of the 200 and whatever odd number we got, affordable, occupied by residents to live in. So there is nothing else to explain, right?

MS. OANA: Correct.

VICE-CHAIR VICTORINO: If you don't understand that, ask the question. Thank you, Mr. Chair.

CHAIR CARROLL: Alright Members, we do have a motion on the floor. We've had an extensive discussion. Any further discussion before I call for the question? All those in favor of the motion on the floor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed?

COUNCILMEMBER CRIVELLO: No.

COUNCILMEMBER BAISA: No.

COUNCILMEMBER COCHRAN: No.

CHAIR CARROLL: Pardon?

COUNCILMEMBER BAISA: No.

CHAIR CARROLL: You said, "opposed"?

COUNCILMEMBER CRIVELLO: Yeah, "no."

CHAIR CARROLL: Okay.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR CARROLL: We have –

COUNCILMEMBER BAISA: No.

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CHAIR CARROLL: --one, two, three, four. The motion is carried...

COUNCILMEMBER BAISA: No.

VICE-CHAIR VICTORINO: No, Mr. Chair, no.

COUNCILMEMBER BAISA: No.

VICE-CHAIR VICTORINO: I said, "yes," the three of them are saying, "no."

COUNCILMEMBER COCHRAN: Do roll call.

COUNCILMEMBER BAISA: You need roll call.

VICE-CHAIR VICTORINO: You want a roll call?

CHAIR CARROLL: Okay. Roll call.

MR. JENSEN: Sure. Councilmember Baisa?

COUNCILMEMBER BAISA: No.

MR. JENSEN: Councilmember Cochran?

COUNCILMEMBER COCHRAN: No.

MR. JENSEN: Councilmember Crivello?

COUNCILMEMBER CRIVELLO: No, on the basis that we already have an agreement.

MR. JENSEN: And Vice-Chair Victorino?

VICE-CHAIR VICTORINO: Yes, on the amendment as worded.

CHAIR CARROLL: Chair votes "aye."

MR. JENSEN: Motion fails.

VOTE:	AYES:	Chair Carroll and Vice-Chair Victorino.
	NOES:	Councilmembers Baisa, Cochran, and Crivello.
	ABSTAIN:	None.
	ABSENT:	None.

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EXC.: Councilmembers Couch and Guzman.

MOTION FAILED (Condition 1).

VICE-CHAIR VICTORINO: Okay.

MR. JENSEN: And, Mr. Chair, the staff would just like to point out that the first two conditions were similar to those recommended by the Department of Planning and the Maui Planning Commission. So the legislation arrived to this Committee with the two conditions attached in correspondence dated November 4th from the applicant, they suggested that the middle clause in that condition that was recommended by Maui Planning Commission be deleted and the version handed out today added one-to-one as an attempt to clarify same ratio. But the condition itself is similar to that that was forwarded to the Council with the recommendation of the Maui Planning Commission; so it wasn't of the Committee or the Committee Chair's invention.

CHAIR CARROLL: Alright, is everybody clear how this condition was brought forward? And what was the vote?

VICE-CHAIR VICTORINO: Two to three, Mr. Chair.

MR. JENSEN: Yeah. Two in favor, three against.

CHAIR CARROLL: Pardon?

MR. JENSEN: Two in favor and three against.

CHAIR CARROLL: Motion fails. Alright, we'll move on to the next item. Number two, that an archaeological monitoring plan for the Waiale South project area shall be submitted to the State Historic Preservation Division for review and approval prior to commencement of any construction work within the project area.

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

CHAIR CARROLL: Been moved by Mr. Victorino.

COUNCILMEMBER CRIVELLO: Second.

CHAIR CARROLL: Seconded by Ms. Crivello. Discussion?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

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COUNCILMEMBER COCHRAN: For the Waiale South project, isn't this already condition two for them? Is this...isn't this already an existing...Ms. McLean is shaking her head. I thought I read this somewhere already in their application.

MR. JENSEN: Mr. Chair? And, again, just to reiterate, the first two conditions, basically, repeat those that were attached to the legislation; so the Committee has voted to delete the first condition as it was recommended. The second one looks familiar because, yes, it was one that was made by the Maui Planning Commission and is in the version recommended here. So the Chair's transmittal today just repeated the two that were already there and added two.

CHAIR CARROLL: Okay?

COUNCILMEMBER COCHRAN: And...okay.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR CARROLL: Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. So, just for clarification purposes, this is a recommendation that is coming from the Maui Planning Commission through this Committee to take...

CHAIR CARROLL: Correct, both of them were.

COUNCILMEMBER CRIVELLO: Okay.

CHAIR CARROLL: The first one and this one.

COUNCILMEMBER CRIVELLO: Okay. And we're handling this separate, of course, from...alright, thank you.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'd like to hear from the Planning Department. Considering the...what we went through with the first one, what's the story on the second one, is it in there already, too?

CHAIR CARROLL: Planning?

MS. McLEAN: Thank you. That is something that did come through the Planning Commission. And, yes, it is also something that would otherwise be required by probably Public Works before any sort of grading permits were issued for the property. The State Historic Preservation Division has been short staffed here and there. Typically, these plans are finalized before the Commission takes action. In this particular case that wasn't able to happen due to the timing of SHPD's review. And so, to ensure that that loop was closed, the condition was recommended. Having said

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that, if this condition weren't in there, this would still have to occur anyway; so that does become the Council's call of whether you want to have it as a condition of zoning or just rely that it would be complied with on its own.

COUNCILMEMBER BAISA: Thank you very much. In my opinion, nothing's changed with SHPD since I've been here. I've been hearing this from when we were dealing with Wailea 670 ten years ago. So this place needs to be beefed up a lot, because they seem to be hold up everything or just not get to it. But if it is already a requirement, then to me I see the same situation we had with the former. So I'd like to hear from A&B, Chair, if you don't mind?

CHAIR CARROLL: Mr. Chun?

MR. CHUN: Thank you, Mr. Chairman. You know, we are comfortable with the language in the condition. We have, actually, just to update you, submitted a monitoring report to SHPD back in March, actually; so it's with them and we'll work with them to ensure that review and approval occurs per the condition.

CHAIR CARROLL: Thank you. Any further discussion to the motion on the floor?

COUNCILMEMBER COCHRAN: Mr. Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. So by...I'm just trying to figure out if this is already existing and it's already been discussed and agreed upon and now you're trying to create a Condition of Zoning on the project, but it's just restating what's already been stated. By deleting it out of this, is it deleting it and taking it away from it already being written previously? Is there any bearing on, because we're not supporting it here via your route, is there any bearing on the existing language that's currently sitting from Planning Commission and...whatever? Is this going to...I don't know. I'm just trying to reason out why we're doing this when it's already existing as your stating and something that has to be done anyways.

CHAIR CARROLL: Planning Commission...ah, excuse me, Planning Department?

MS. McLEAN: Thank you, Chair. The prior condition dealt with a Maui County Code requirement. This condition deals with a State law. And so by having it via zoning condition, it gives the County some sort of enforcement authority that if that condition weren't there, then it would be up to the State to enforce. Typically, that does happen when the Public Works Department would be processing a grading permit. They would look to see before ground altering activity's conducted that SHPD has signed off. But, again, because this isn't a requirement of the County Code, zoning or Public Works would be either through a zoning condition and Planning enforcing it or Public Works ensuring it through the grading permit process. So, yes...the answer to your questions is if this weren't here, would this still happen? And I would say, yes. The difference is that it would happen because the County ensures compliance with the

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State requirement not because it's an existing County requirement that County departments administer.

COUNCILMEMBER COCHRAN: A follow-up, real quick?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: So it's just, I guess, another layer of reinforcement, I guess, of sorts to make sure, double make sure, that this is going to occur. But, as you stated already, we'll do to the Public Works' review and the steps they'd have to go through anyhow. But...

MS. McLEAN: This would be a backup, if you will.

COUNCILMEMBER COCHRAN: Okay. Thank you, Ms. McLean; thank you, Chair.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Ms. Crivello, do you have something?

COUNCILMEMBER CRIVELLO: No. It may sound like you're duplicating, but you're actually presenting this for us in regards to Conditions of Zoning. So I just wanted to get that complete understanding and get it out there; so thank you.

CHAIR CARROLL: Yes, 'cause Conditions of Zoning are different.

COUNCILMEMBER CRIVELLO: Right. Thank you, Chair.

CHAIR CARROLL: And this Council can put any conditions that they feel is appropriate. Mr. Victorino?

VICE-CHAIR VICTORINO: Again, I just wanted to address this to Ms. Oana because what you said, Ms. McLean, that this actually gives the County some enforceability because of a condition not a State law. Am I correct in what I heard?

MS. OANA: Correct.

VICE-CHAIR VICTORINO: Thank you very much.

CHAIR CARROLL: And, again, these first two conditions were drafted by the Planning Commission and we are bringing them forward, they were suggested. Alright, any further discussion? All those in favor to the motion on the floor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Couch and Guzman.

MOTION CARRIED.

ACTION: APPROVED (Condition 2)

CHAIR CARROLL: Number three. I'll accept a motion to...for the condition number three that Alexander & Baldwin LLC shall provide an annual compliance reports to the Department of Planning and the Maui County Council. The reports shall include the status of the project and Alexander & Baldwin LLC's progress in complying with the Conditions of Zoning, commencing within one year of the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by the Department of Planning and the Department of Public Works. Alexander & Baldwin LLC shall also provide to the Department of Planning and the Maui County Council a copy of its annual compliance report to the State Land Use Commission, relating to the conditions set forth in the Decision and Order for the development.

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

COUNCILMEMBER BAISA: Second.

COUNCILMEMBER CRIVELLO: Second, Chair.

CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Ms. Baisa. Maker of the motion, Mr. Victorino, any discussion?

VICE-CHAIR VICTORINO: I'll let my colleagues go ahead first.

CHAIR CARROLL: And, again, this is one thing...first two over there, because the first two...the one we didn't pass and the one we passed are Conditions of Zoning and that we have the reports coming inside, and that was intent of those first two. Any further discussion? Mr. Chun, do you have any comment?

MR. CHUN: No, sir.

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CHAIR CARROLL: Thank you. Hearing none, all in favor of the motion signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, five "ayes," no "noes," two excused.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Couch and Guzman.

MOTION CARRIED.

ACTION: APPROVED (Condition 3)

CHAIR CARROLL: Number four, that to be eligible for a residential workforce housing unit, pursuant to Section 2.96.090(B)(6), Maui County Code, the applicant shall pre-qualify for a loan with the applicant's choice of lender. Alexander & Baldwin LLC shall market the residential workforce housing units in accordance with this requirement.

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

COUNCILMEMBER BAISA: Second.

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

VICE-CHAIR VICTORINO: Again, I guess we've not received the...a response from Corporation Counsel upon what we requested on...was it Thursday's meeting? I cannot remember what day it was. It's just kind of blending together. And the only challenge I have with this, and I think the challenge I have with the ordinance itself and maybe the ordinance needs to be changed, I would like to have seen somebody who is a qualified lender with our workforce housing development, someone who understands what that is. Because, in going out there, and I spent time walking around talking to the people, I have found that there are some foreclosures that are occurring right now because of jubilant lenders who just went out there, said anything you want: we'll get it for you, we'll qualify you for it. And at the end product is the

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person who ends up holding the bag, who cannot pay, who cannot fulfill the obligation; their credit is destroyed, not the lender. And that has happened. It happens all too often. And so that would be my only take on that that somehow if not here, but down the road, that lenders who are going to be qualifying these applicants, that they also are trained and equipped to understand what the workforce ordinance is all about. I think that's important and I challenge anyone to tell me differently when it comes to that. Pick anybody you want, that's fine. But so long as that person is adequately trained and understand what workforce housing and our ordinance deals with: incomes and all the other aspects that have to be included in that. That's my only take on that. Other than that, a lender of your choice, I have no problem. No one should be forced to going to one lender or even the developer's lender. But whoever is qualifying that person, understands what the workforce housing ordinance is all about and the requirements that are put upon the applicant, because it's the applicant at the end that could be the one that hurts the most. Thank you, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. Victorino. We cannot get into that, obviously, in this venue right here, but that's something in the future maybe you could approach.

VICE-CHAIR VICTORINO: Unfortunately I not going be here in enough time to do it, but I hope my colleagues have heard what I said and they take a good look at it, also.

CHAIR CARROLL: Work fast. Ms. Crivello?

COUNCILMEMBER CRIVELLO: You know, I'm agreeing and understanding where Mr. Victorino is coming from because it states in the 2.96 and I think that's what we were trying to clarified at our prior meeting is that it's not just qualifying for the loan and the prequalification includes what Mr. Victorino mentioned: income, citizenship, ownership restrictions of other properties or other homes. So that's where all the prequalification comes in. And the applicant is, how I understand this to be at 2.96, the applicant is free to choose a mortgage lender at their choice or whomever they qualify with. But it includes more than that. So I guess what this item with...for. So with your actually it's just conditioning that the applicant be...shall qualify for a loan with the applicant's choice of lender. Again, that's already exist...but you don't find it necessary then to list the other pre-qualifications because it's already in there?

CHAIR CARROLL: Well, this is in here to ensure that the applicant does have that right and it's a Condition of Zoning, so the Council will have some say over it. It gives us the authority to follow this, because it would be a Condition of Zoning. We discussed this at the last meeting for, what, over an hour? And that's why this is in here. It was a concern.

COUNCILMEMBER CRIVELLO: Mr. Chair? I'm concerned that it's only specifically for the loan because there are other prequalification, you know, listings with the 2.96.

CHAIR CARROLL: Right.

COUNCILMEMBER CRIVELLO: But for this, it's you're just going to list just the loans?

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CHAIR CARROLL: Just the loans.

COUNCILMEMBER CRIVELLO: Okay.

CHAIR CARROLL: Thank you.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: I was wondering if the A&B representative had any comments based on all the conversation at the last meeting.

CHAIR CARROLL: Most certainly. Mr. Chun?

MR. CHUN: Thank you very much, Mr. Chair; and thank you so much for your diligence in delving into this issue. As far as the condition's concerned, you know, we're happy to comply with the condition. And I just...since I have this moment, I want to make sure to apologize for any confusion that, you know, our practices or our language or our marketing might have caused in the marketplace. We've since made some changes to make it clear that we really we want to appeal to as many buyers we possibly can. And so an applicant is indeed at liberty to prequalify with any lender at his or her choice. And that's our practice and we're very comfortable with the language that you all are discussing.

CHAIR CARROLL: Thank you. Any further discussion on the motion on the floor?

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And so if any of these Conditions of Zoning are not met, can we strip the zoning?

CHAIR CARROLL: You want Department of Planning or Corporation Counsel? Planning?

MS. McLEAN: If we find that a zoning condition or other type of terms of zoning have been violated or first action would be to issue a notice of warning that would state the violation and give a prescribed amount of time for the alleged violator to come into compliance or to tell us if our notice was inaccurate or wrong. If that does not happen and we find that a violation persists, then we would issue a notice of violation which would include an initial fine and then daily fines that would accumulate each day until the violation was cured. It would not result in reverting the zoning or anything else, we don't have that authority only the Council would have the authority to change zoning.

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COUNCILMEMBER COCHRAN: Thank you. And what...so, Chair, your number four, I see what you're doing here and, again, this is something that's already in the Code. And so what happens when that Code has been broken? That law has been reworded and that was one of my questions and we haven't gotten that answer from our Corporation Counsel or anybody here today. So, to me, this is no bearing really that on the point that 2.96 was rewritten, was utilized in an illegal way, and now we're trying to just codify in some Condition of Zoning to make it all okay? You get a DUI, you don't get let off of that DUI because you didn't get into an accident or because you didn't kill somebody on the streets, you still get a DUI 'cause you broke the law. So to say somebody needs to follow 2.96 in a Condition of Zoning, to me, is totally ridiculous. I understand, Chair, what you're trying to do, but my point going back to the original question on this floor and why this meeting was recessed is because 2.96 was broken, is rewritten by this Corporation Counsel for the developer and nobody's even talking about it. Why?

CHAIR CARROLL: That's what we're doing right now, Ms. Cochran.

COUNCILMEMBER COCHRAN: No we're not. We're just sweeping it under the rug and saying that we can put a Condition of Zoning in in order to make it all okay for their past practices. I beg to differ, and I don't have a straight answer.

CHAIR CARROLL: Ms. Cochran, their past practices are not on the agenda for the discussion today. We're just...I brought this up before, the discussion today is the agenda item, what is before us. That has nothing to do with past practice. We are looking at the future and what this item is right now and how we are going to make it effective, and that is what we're looking at.

COUNCILMEMBER COCHRAN: And your number four, it's the prequalification letter that ought to be from the applicant's choice not the loan. It's already in there and, yes, they've been following that one; but it's the other part of the Code they haven't been following. So this does not rectify what you think you're trying to do.

CHAIR CARROLL: That is your opinion and you're welcome to it.

COUNCILMEMBER COCHRAN: Oh, it's the truth.

CHAIR CARROLL: I already told you and that's why it's on there. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, I see that Corporation Counsel Wong is here and I'd like to hear what he has to contribute, with no objection.

CHAIR CARROLL: No objections? Corporation Counsel? Thank you for coming down, Mr. Wong. Could you please identify yourself at the microphone?

MR. WONG: Chair, Pat Wong, Corporation Counsel.

CHAIR CARROLL: You've heard the discussion. Do you have comment?

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MR. WONG: Unfortunately, last time I appeared before this Committee, I was not aware of the full context within which the question was posed, and quite frankly I was ill-equipped to respond. Had I known that the context within which it was posed, I would have brushed up on the materials provided by the developer in its marketing materials and the workforce housing agreement. Since then I have read the materials. I've read the marketing materials from the developer in that particular project, the Kamalani project, I didn't read anyone else's one. I read the workforce housing agreement. And based on my review of the agreement and the Code, I did not find anything that would lead me to conclude that the agreement or the materials were in contravention to 3.96.090(B)(6) [sic], which reads, pre-qualify for a loan with the applicant's choice of lender. So that's my opinion.

CHAIR CARROLL: Thank you. Ms. Cochran, do you have comment?

COUNCILMEMBER COCHRAN: What's that word mean?

MR. WONG: Does not contradict.

COUNCILMEMBER COCHRAN: Oh, you said, contradict.

MR. WONG: Correct.

COUNCILMEMBER COCHRAN: Okay. I thought it was another word that I never heard of before. I thought it was a legal...

MR. WONG: I said, in contravention, so does not contradict...

COUNCILMEMBER COCHRAN: Yeah, contravention, there you go.

MR. WONG: It does not contradict 3.96.090(B)(6) [sic].

COUNCILMEMBER COCHRAN: So it means contradict, okay. That's my question.

CHAIR CARROLL: Any further discussion?

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: You have a hard time recognizing us, you know. Been here ten years, you know, I thought you'd get to know me by now. I'm looking at the workforce housing ordinance. I'm looking on...well, actually, page 12 of 18. And number six, it says, prequalify for a loan with applicant's choice of lender. Because Ms. Cochran said about a loan...a letter...a loan letter or a preauthorized loan letter. I can't find it so I'd like her to tell me where she saw that and where was that put in this ordinance 'cause I cannot find it. That's my question.

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CHAIR CARROLL: Does Planning...are you able to answer Mr. Victorino's question? Could you repeat that?

VICE-CHAIR VICTORINO: Again, the statement was made earlier about a pre-qualified letter or loan letter. And, if you want, I will ask for the exact verbiage, but our ordinance says, pre-qualified for a loan with an applicant's choice of lender, as stated by you, Mr. Chair. 'Cause I was told that that didn't answer the question but I read what you said, I read the ordinance and I think I got the answer. But I'm asking if there's something I don't read here, then show me where I missed it.

CHAIR CARROLL: Planning, do you have comment?

MS. McLEAN: Chair, I don't believe that's a question for the Planning Department.

VICE-CHAIR VICTORINO: And it wasn't a Planning question...Planning Department. It was a statement made my colleague and I want her to show me where it says, in the ordinance itself; that's what I'm asking.

CHAIR CARROLL: Well, that's why I was asking if the Department would happen to know where that was to try to expediate [sic] this over here. Ms. Cochran, could you point out where that is please?

COUNCILMEMBER COCHRAN: I'm trying to get the Code right now. The...it's that one sentence. Where is all my paperwork? And it was the difference between the word applicant and developer, and that totally changed the meaning. And now Mr. Wong is saying that he sees no difference, no contradiction between switching out those two words. And a clarification question, too, Mr. Wong, I believe you are referring to 2.96, but I thought I heard 3.96. Did you just state on the record 3.96 but you meant 2.96?

MR. WONG: If I misspoke, then I stand corrected. I'm sorry, 2.96.090(B)(6).

COUNCILMEMBER COCHRAN: And, okay, and so right now, Chair Carroll is looking to, again, restate exactly what is already stated in item 6, pre-qualify for a loan with the applicant's choice of lender, which, yes, we all agree, yes, yay, let's do this, it should have been done. And the question on the floor from the other day was, it was not done. And now you're stating that you see no difference between all the verbiage the literature, pamphlets, whatever, all the advertisement of the developer where they change the word applicant to developer's choice. That one word, it was switched out. And to me and many other people in this community feel like there's a huge, huge difference when you just take that word "applicant" out and insert the word "developer." But you're finding you see no difference. I just...that's the simple yes or no question that I asked the other day.

MR. WONG: Chair if I may?

CHAIR CARROLL: Mr. Wong?

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MR. WONG: Thank you. Can I ask you to identify? 'Cause I looked at the Kamalani materials. Can you show me where in the Kamalani materials?

COUNCILMEMBER COCHRAN: Yeah.

MR. WONG: 'Cause I couldn't find what you're referencing at all.

COUNCILMEMBER COCHRAN: You want me to walk this to you?

MR. WONG: Sure.

CHAIR CARROLL: Yeah. Mr. Jensen will come and get it for you. Thank you.

COUNCILMEMBER COCHRAN: And the rest are coming.

COUNCILMEMBER CRIVELLO: Mr. Chair, Mr. Chair?

CHAIR CARROLL: Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: As we're waiting for a response, what is our agenda on today, is it Kamalani or is it the Waiale Project for A&B? What's the agenda...

CHAIR CARROLL: This is the Waiale Project District South for property situated at Wailuku.

COUNCILMEMBER CRIVELLO: We occupied most of our discussion last Friday, which we still need to have some clarification to come through, and it had to do with Kamalani. So I'm asking you, Mr. Chair, if we could stick to the agenda item. So some of us will have to leave at a certain time, and I would like to know...

CHAIR CARROLL: Thank you, yes, this is not for Kamalani –

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR CARROLL: --this is only for that side.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: It's that portion. They only asking for this one portion.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: In number four, your condition states, again, so that there would be no chance of ambiguity because of the zoning aspect that it would read, applicant shall prequalify for a loan at applicant's choice of lender. That's not a loan, not a

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letter, whatever. It clearly states what the ordinance states, you're reinforcing that in your condition number four, is that correct, Chair?

CHAIR CARROLL: That is correct.

VICE-CHAIR VICTORINO: So whenever everybody's ready, I'm ready to vote on this because I think you've just done what everybody wanted to see done. She wants to go back to Kamalani, then bring up Kamalani at a different meeting, and I have no problem with that.

CHAIR CARROLL: Kamalani is...that is really not a matter for discussion as I have said before. Ms. Cochran? I'm sorry, Ms. Baisa then Ms. Cochran. She's been waiting awhile over there.

COUNCILMEMBER BAISA: I think Mr. Victorino expressed my position as well as Ms. Crivello. Thank you.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: And thank you, Chair, and I concur and that's fine. This may not be, well obviously, not the venue in order to discuss this matter. But I'll tell you what, this matter is not over. So we shall figure out when the proper time and place is in order to hash this out and get to the bottom of it. And the only reason why I brought it up and felt it very relevant is because it's the same developer for both projects, and I didn't want to see...or I wanted to make sure that what was done at that project isn't carried through here and so I see your point, Chair, in your item number four, but, you know, what really gets me is that it's already written in our Code.

CHAIR CARROLL: Alright. In the end...

MR. WONG: Chair, if I may?

CHAIR CARROLL: I'm sorry, Mr. Wong?

MR. WONG: I understand the body's current movement, and I'd not like for the documents to be presented and to be left unanswered. I'd like one real quick opportunity to put in context the language and the highlights that are in here. And it may assist the body in moving forward with its decision-making process, if you don't mind. First of all, I appreciate Member Cochran's concerns, and I also appreciate the developer's representatives making the representation that they have clarified their marketing materials for the general public. If you look at the documents that I just received, I can agree with Member Cochran that there are areas in here that may cause confusion, I can agree with that. But I maintain my position that in reviewing these materials, there is language in here—and I'll read it verbatim—that is not in contravention to the Code. And I'll read from this first one where it says, "applicants are free to seek a mortgage loan from the lenders listed or any other lender they

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choose; that is consistent with the Code. This document, which was also handed to me and highlighted, it also reads, verbatim, developer—and I agree with Ms. Cochran here—developer reserves the right to require that the applicants obtain the prequalification letter from a list of developer-approved lenders; provided however, -- this is very, very significant because it's consistent with the Code—the applicant may obtain the loan for the purchase from the applicant's lender of choice; that is consistent with the Code. So if you want to raise these issues, I think in fairness, you need to raise it in its complete context and not carve out areas that are negatively shed on this project. That's my opinion, I did review these materials and I remain firm that it is consistent with the Code which reads, prequalify for a loan with the applicant's choice of lender. There is nothing in these materials that cause me to render any other opinion. The information's still there, the applicant is still allowed, whether or not an individual applicant or the developer has decided that an applicant is not qualified, it's not for us to say. And if there are any—and I've offered this, if you've read about it in *The Maui News*, I've offered this. If there's any applicant that's out there that believe that they have been maltreated by the way this is written, please come and report it to our office, and the process will not be unfair, it has to be that we take into consideration everything that's in front of us; that's how it's going to play out. If there's any litigation that develops from this, we must read it in its complete context, not in isolation, I'm sorry.

CHAIR CARROLL: Ms. Cochran to finish, followed by Ms. Crivello, followed by Ms. Baisa.

COUNCILMEMBER COCHRAN: And thank you, Mr. Wong. So tell me, you see a difference and prequalification letter? There's two different things in their literature that states, first, please come to get a prequalification lender of the applicant's choice, and then, yes, you are allowed to get a loan, mortgage, whatever, of applicant's choice. So that prequalification letter section, if you can't pass Go, you do not continue on; and that is where the restrictiveness and the hardship has occurred for people in even going to part B of that. So they can't even get to the go get a loan mortgage thing, they can't even get out of the first gate which was change to only go to developer's choice, not applicant's choice. So there's a difference. And so to just combine all that and say, you don't see any contradiction or difference. My question is, why? Or do you see the difference between the prequalification letter stage and the getting a loan stage for the applicant?

CHAIR CARROLL: Mr. Wong, any comment?

MR. WONG: Thank you, Chair. Chair, I'm going to again read the Code, pre-qualify for a loan with the applicant's choice of lender; that's what the Code requires. If you want to pose a question as to distinguishing between a prequalification letter, I'd suggest you pose that question to the developer in its practice and how they handled the loan application process. The Code requires prequalify for a loan with an applicant's...the applicant's choice of lender.

COUNCILMEMBER COCHRAN: And so I'll be changing the Code.

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CHAIR CARROLL: Ms. Crivello --

MR. WONG: That, I'll leave that to this body.

COUNCILMEMBER COCHRAN: That's right.

CHAIR CARROLL: --followed by Ms. Baisa.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Thank you, Mr. Wong. We appreciate your clarifications. I would like for us to get back to the agenda, and in reference to the actual project itself. I have a question for the developer or for you. Is there a residential workforce housing agreement in place today for this particular project, for the Waiale project?

CHAIR CARROLL: Mister...

MR. CHUN: Chun.

VICE-CHAIR VICTORINO: Chun.

MR. CHUN: Yeah.

CHAIR CARROLL: Mr. Chun.

MR. CHUN: The other pake in the room. No, ma'am, there is not yet an affordable housing agreement for this project.

COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR CARROLL: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: No, I think that my point was already addressed and that is that what I read in this ordinance is that it talks about getting a loan from the applicant's choice. It does not talk about the prequalification letters. So I think we're pretty clear. And I'm sure that my colleague here will make sure that this is changed. But today we're talking about Waiale and what is before us. And I think it's pretty clear what is before us. So I'm okay.

CHAIR CARROLL: Thank you.

VICE-CHAIR VICTORINO: I'm clear.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And so for the applicant, the affordable housing agreement happens when?

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MR. CHUN: The affordable housing agreement will happen later through the process after we get through Project District Phase II, Phase III; and then when we're in subdivision, we'll start working with the Department on an agreement.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: We haven't voted on number four yet, by the way. Okay, so that's still a motion on the floor.

CHAIR CARROLL: The motion is still on the floor –

VICE-CHAIR VICTORINO: Okay.

CHAIR CARROLL: --for number four.

VICE-CHAIR VICTORINO: Well, I just want one clarification from Corporation Counsel, Ms. Oana or Mr. Wong. By putting number four in there, it just makes sure that this project, this Waiale South project, would have to comply with that part of the ordinance which says, they have to qualify through a lender of their own choice. I just want that clarification. I know what you said, I'm just wanting...because we're putting the condition now on the land itself.

CHAIR CARROLL: Mr. Wong?

MR. WONG: Chair, it's actually redundant because the Code already provides for it, and so –

VICE-CHAIR VICTORINO: Just wanted clarification.

MR. WONG: --if you want a belt and suspenders, you know, they're going to have to comply with the Code anyway.

VICE-CHAIR VICTORINO: Yeah, well some of us need both, but that's another story, okay. Thank you, Mr. Wong.

CHAIR CARROLL: Any further discussion before I give my recommendation.

COUNCILMEMBER BAISA: Recommendation?

VICE-CHAIR VICTORINO: No, we gotta vote on this last one.

COUNCILMEMBER BAISA: We have a motion on the floor.

VICE-CHAIR VICTORINO: Yeah, we gotta vote on the motion.

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CHAIR CARROLL: Oh, yes, we have a motion on the floor. Alright, that was a long discussion. Alright, to the motion on the floor, which is number four in the handout, all those in favor, please signify by saying, “aye.” Opposed?

COUNCILMEMBERS: No.

CHAIR CARROLL: Okay, four “noes”?

COUNCILMEMBER CRIVELLO: Four “noes.”

CHAIR CARROLL: Okay. Motion fails.

VOTE:	AYES:	Chair Carroll.
	NOES:	Vice-Chair Victorino and Councilmembers Baisa, Cochran, and Crivello.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmembers Couch and Guzman.

MOTION FAILED (Condition 4).

CHAIR CARROLL: Now, are you ready for my recommendation?

COUNCILMEMBERS: Recommendation?

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 Wailuku-Kahului Community Plan and Land Use Map from Agricultural District to Waiale Project District South for Property Situated at Waikapu, Wailuku, Maui, Hawaii.” Passage on first reading of the proposed bill entitled, “A Bill for an Ordinance Amending Title 19, Maui County Code to Establish Permissible Land Uses, Standards of Development, and Allocations of Land for Waiale Project District South Situated at Waikapu, Wailuku, Maui, Hawaii.” Passage on first reading of the revised proposed bill entitled “A Bill for an Ordinance to Change Zoning from Agricultural District to Waiale Project District South (Conditional Zoning) for Property Situated at Waikapu, Wailuku, Maui, Hawaii,” incorporating any revisions made at today’s meeting and nonsubstantial revisions and filing of County Communication 16-39 [sic].

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

COUNCILMEMBER BAISA: Second.

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CHAIR CARROLL: Been moved by Mr. Victorino, seconded by Ms. Baisa. Discussion?
Hearing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Couch and Guzman.

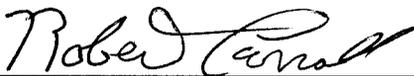
MOTION CARRIED.

ACTION: FIRST READING of bills and FILING of communication.

CHAIR CARROLL: Opposed? Motion carried, five "ayes," no "noes," two excused. I would like to thank the Members for their attendance today. I would like to thank the audience and everyone that has participated. Mahalo, and this meeting stands adjourned. . . .(gavel). . .

RECESS: 2:40 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:161121r:ry

Transcribed by: Raynette Yap