

# **LAND USE COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**September 5, 2018**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 1:40 p.m.

**PRESENT:** Councilmember Riki Hokama, Vice-Chair (Temporary Chair)  
Councilmember Alika Atay (out 2:50 p.m., in 3:13 p.m., out 3:38 p.m.)  
Councilmember Elle Cochran (out 4:37 p.m.)  
Councilmember Stacy Crivello  
Councilmember Don S. Guzman (in 1:44 p.m.)  
Councilmember Kelly T. King  
Councilmember Yuki Lei K. Sugimura

**EXCUSED:** Councilmember Robert Carroll, Chair  
Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
James Krueger, Legislative Analyst  
Rayna Yap, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel  
Joseph Alueta, Deputy Planning Director, Department of Planning  
James Buika, Shoreline Planner, Department of Planning  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works

**OTHERS:** Warren Watanabe, Executive Director, Maui County Farm Bureau (LU-5)  
William Jacintho, President, Maui Cattlemen Association (LU-5)  
Lawrence Carnicelli, Realtors Association of Maui (LU-5)  
Annette Niles (LU-5)  
Albert Perez, Executive Director, Maui Tomorrow (LU-5, LU-19)  
Bobbie Patnode (LU-5)  
Hugh Starr (LU-5)  
Kai Nishiki (LU-19)

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Zandra Amaral-Crouse (LU-5)  
Jordan Hart, Chris Hart & Partners, Inc.  
Raymond Cabebe, Chris Hart & Partners, Inc.  
Lawrence Ing, Ing Horikawa Jorgensen  
(1) additional attendee

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

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VICE-CHAIR HOKAMA: . . .*(gavel)*. . . This meeting shall come to order. This is the Council's Committee on Land Use. This regular meeting now 5 September, 2018. Present this afternoon, we have Committee Members Ms. Crivello --

COUNCILMEMBER CRIVELLO: Aloha, Chair.

VICE-CHAIR HOKAMA: --Mr. Atay --

COUNCILMEMBER ATAY: Good afternoon, Chair.

VICE-CHAIR HOKAMA: --Ms. Sugimura --

COUNCILMEMBER SUGIMURA: Aloha, Chair.

VICE-CHAIR HOKAMA: --Ms. Cochran --

COUNCILMEMBER COCHRAN: Aloha, Chair.

VICE-CHAIR HOKAMA: --and Ms. King.

COUNCILMEMBER KING: Good afternoon.

VICE-CHAIR HOKAMA: And we thank you for your presence. Excused are Chairman Carroll, he has some requirements he's addressing; Mr. White and Mr. Guzman are excused. This Committee has two items that we'll be discussing as we have agendized for today; we shall take public testimony before that. Each member is allowed three minutes to speak on the agendized items. State your name if you represent an entity or organization, please share that information with the Committee, will address your comments to the Chair. Decorum is enforced in this Committee; therefore any noise-making devices—including my cell—shall have it on off or silent mode.

**. . .BEGIN PUBLIC TESTIMONY. . .**

VICE-CHAIR HOKAMA: Okay. We'll start this afternoon with Warren Watanabe. Please, if you'll please come forward, share your comments with the Committee.

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MR. WATANABE: Aloha, Chair Hokama, Members of the Committee. My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau. The Maui County Farm Bureau strongly opposes the measure as amended. The Maui County Farm Bureau strongly supports the concept of ag clustering to preserve large, contiguous areas of lands for agricultural production; however, continues to have serious concerns about the details of this measure as proposed. The measure as amended does not address our concerns expressed at the July hearing. The focus of the measure continues to be the subdivision of large, agricultural parcels for housing and protections for commercial, agricultural production are not addressed. We have attached suggested amendments addressing our concern. First, the term agricultural conservation lot uses a term from 19.04.040 in a way it was not intended. Agricultural land conservation, as defined in this section, was meant to address the fallow periods following periods of commercial agricultural activity. We therefore propose that the term "commercial agricultural lot," as defined in 29.04.040, be used. This includes the fallow period as provided in the current definition while requiring commercial activity. Second, housing is a major issue for agriculture. We need affordable housing or we cannot have access to workers. The intent of this cluster housing should primarily house the farmer, rancher, their workers and other workers that are associated with ag enterprises. Third, the State developed a means to protect agricultural lands for the future. It is called, Important Agricultural Lands. We do not need to reinvent the process. The larger parcel should be designated as IAL and the farmer and landowner avail themselves to the incentives associated with such designation. State incentives exist. We strongly urge the County to develop such incentives as required by law. Fourth, houses constructed near active farmlands have been a problem. Production [sic] for these farms are needed. We have suggested language to be included in the land transaction and associated with the deed to the property. We urge the County to implement measures to ensure that these terms follow the deed and that enforcement policies are in place. Ag clusters are an important tool to meet housing needs of ag while keeping commercial agriculture viable. We're open to dialogue and changes to the amended proposal before you. We apologize for this last-minute submittal, but only received the amendments last week for our review. Thank you for this opportunity.

VICE-CHAIR HOKAMA: Thank you for your comments. Any questions for clarification, Members? Having none, thank you, Mr. Watanabe.

MR. WATANABE: Thank you.

VICE-CHAIR HOKAMA: We also recognize Mr. Guzman at the Committee meeting. William Jacintho, please.

MR. JACINTHO: Good afternoon, Committee. My name is William Jacintho, President of the Maui Cattlemen's Association, testifying on LU-5. The Maui Cattlemen's Association would like to thank you or working on this proposed subdivision bill and strongly supports clustering options and somewhat supports the bill as presented here today. However, all these restrictions just put more unjust limits on farmers because of the fears of those who abuse the rights of ag producers; that should be controlled with enforcement. There seems to be some unreasonable restrictions of the large farm lot

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that does put production limits on true farmers. Limiting the maximum developable area to 4,000 square feet is very tight. For example—and I have it on my back page to the best that I can—I live in a basic house, 50 by 30 with a U-shape, hollow center. So 1,200 square feet with a separate 25 by 20 garage work area, storage, accumulated junk, et cetera. There's about 20 feet of yard around the house and between the house and garage. Tractors, trucks, automobiles, all parked outside. Just the main living area, as called by RPT, the homesite, is about 90 by 110 equals 9,900 square foot. I would never fit my little dingy house and operation in a 4,000 square foot area. Equally important, there shouldn't be a limit to amount of commercial ag structures on the large ag lot. If it's going to be in production, then depending on what type of production, it may require more than one structure. For example, greenhouses, if fear of abuse is the reason for restrictions, then again, there needs to be strict enforcement procedures; and we're all for that. Special use and restricting opening land recreation uses may interrupt such things as gathering rights as well as community benefits if the location is suitable for such activity as long as the main function of the ag operation is agriculture production, this should be allowed as it currently is on ag. I see no reason for limiting the maximum distance of a farm-worker dwelling from the clustered lot. I think that was the 500. There may be a more suitable location for another part of the property. As in regards to family-member lots, why should the Council be the one to give the approval? If it's allowed, then that's what it is and it just should be...that section should be stricken. Equally important, do you really want the Planning Director to be responsible for making the –

MR. KRUEGER: Three minutes.

MR. JACINTHO: --determination on a more suitable location. There's more, but I'll just stand on the testimony.

VICE-CHAIR HOKAMA: Thank you. Any questions for Mr. Jacintho on his testimony provided? Thank you very much, Mr. Jacintho.

MR. JACINTHO: Thank you.

VICE-CHAIR HOKAMA: Lawrence Carnicelli, please.

MR. CARNICELLI: Aloha, Vice-Chair, Members. Lawrence Carnicelli speaking on behalf of the Realtors Association of Maui on LU-5. And we actually stand with the ranchers and the cattlemen in...not in opposition of the, you know, the concept, but just sort of what's before us today. And what sort of strikes me about this bill is it's a little reminiscent to the ohana bill that we had about three or four years ago, where it was like everybody was in favor of the concept, right. Like, oh yeah, we need to have maybe small ohanas, ohanas on smaller lots, and then we were so afraid of all of the things that it might be or could be that we put a thousand things into the bill and then the whole thing just sort of died and we never got it. So, to me, this bill sort of is reminiscent of that. One of the things that I would ask is that maybe we defer this to do some stakeholder outreach, because that's...just in the lobby earlier we were talking, and I just kind of asked around and between versions and I think this is the fourth or fifth version of this

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bill there was no outreach to any of us, you know, whether it'd be already from Maui Tomorrow to the Cattlemen, the ranchers, and whoever else it is. And so I think that maybe, you know, I'd hate to do a whole other working group or whatever, but something to that effect I think would be good, so we can kind of address, you know, and I said in my original testimony in LU-5 is, you know, what we don't want is we don't want this to turn into more fake farms where you tie a goat to a tree and call it a farm and we don't want zip lines and, you know, we want it to be what it is. But then again, farming is also an economic activity, you can't force someone to farm. You can zone it Ag, you can put it in the IAL, which I like that idea; but you can't force someone to farm. So how do we go about doing that? So then with the last minute, I'll just go over a couple of things. Restricting the ag uses and accessory uses seems to be a little bit counterproductive. There's two places, as far as maximum number of lots, it says it's basically to the sliding scale in D, and then it also says the maximum is 50. We don't know where 50 came from but those two things were in the same exact letter. One acre to one-and-a-half acres, why is that? The conservation lots' home shouldn't be near the cluster; but if that's where all the homes are, it seems like that would be more intuitive to have all the homes together rather than the, you know, the conservation lot home away. 4,000 square foot footprint, that was another one that's saying, okay. And then lastly, is to be recorded at the Bureau of Conveyances before final approval; so you're actually going to the BOC and recording a concept before you actually have the permit.

MR. KRUEGER: Three minutes.

MR. CARNICELLI: So, anyway, so those are just some of the things that we bring; and so thank you, Chair.

MR. HOKAMA: Thank you for your comments. Questions for clarification?

MS. COCHRAN: Yeah.

MR. HOKAMA: Ms. Cochran?

MS. COCHRAN: Just if...Mr. Carnicelli, you have written...did you submit?

MR. CARNICELLI: You know what, I didn't want to put something in writing –

MS. COCHRAN: Oh.

MR. CARNICELLI: --because I'm really conflicted with this because I wasn't...I didn't want to be the guy show up and kill the thing if you guys were going to do it, because, conceptually I want it. And so I specifically didn't put it in writing because of that. So if you want something, I will put something in writing for you then. Yeah.

VICE-CHAIR HOKAMA: Okay. Thank you. Anyone else has a question? Okay. Annette Niles, please.

MS. NILES: Good afternoon, Chair.

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VICE-CHAIR HOKAMA: Hi.

MS. NILES: Good afternoon, Council. My name is Annette Niles. I'm a farmer, rancher, added-value product. My take on this, it's a good thing, it's a good thing on clustering; but I had a few glitches on it. Which, one, you know, was Conservation. Conservation, to me, is forest land, not Agriculture land. And I don't think you should be having us put anything if we don't want to do it. If you want to do it, well, it's okay; but if you don't want to do it. And going on this home site being 4,000, it's ridiculous. Square foot on I live, I don't have enough room. I have my house, I have my greenhouses, I don't have enough room. I don't want to take my pastures, because it's for the animals. So I have my greenhouse and it's, I mean, cluttered. But we need to have more space. That is not for a farm. And especially like for me that do multiple things on my farm, and, you know, that was my take on it and I just...I'm for the bill but I'm just not for some of the things on the bill. And I think we should have more discussion on it and defer it, please, until we can kind of get things on the right track. Thank you.

VICE-CHAIR HOKAMA: Thank you, Ms. Niles. Any need for clarification, Members? Thank you, Ms. Niles.

MS. NILES: Okay. Thank you.

VICE-CHAIR HOKAMA: Albert Perez, please.

MR. PEREZ: Aloha, Chair Hokama --

VICE-CHAIR HOKAMA: Good afternoon.

MR. PEREZ: --Committee Members. Albert Perez, Maui Tomorrow Foundation. I'd like to testify on LU-5, as well as I have a couple comments on the Kahana Sunset. So we are happy to see that the preservation of the best ag land, that has been added to the bill. I think that's a real improvement; that would alleviate some of our concerns. So I think that's a good change to the bill. We're still supporting in concept, but I'm kind of like Lawrence—and lately, we seem to be on the same page—at least on this bill. Things are evolving on this and I keep hearing issues that I didn't notice. I would like to say that there's some confusion, a little bit, confusion about the maximum developable area; whether that applies to just the structures or to, like, an area of land. So if it's 4,000, just for a farm dwelling, I personally think that's a little high. If you're including all of the other buildings...and it says that there's a separation for the storage facilities, barn, silos, et cetera, farm labor dwellings; but it's not clear, at least to the public that that is just the area of the structure, like the footprint on the structure or the surrounding area. So that might be clarified a little bit. In general we need to remember that this is an alternative to subdivision procedure and we don't want to make it so cumbersome that it's not used. It has a potential to actually preserve ag land and we want to preserve that ag land for real farming. So we don't want to make land that would otherwise be undevelopable more easily developed. But we do want to preserve ag land and make it work for real farmers. So I will just move on to the Kahana Sunset one. I believe that

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it's LU-19. I just have a couple of comments. This is...I mean, obviously there's an existing use out there. It seems to me that there have been some violations of the spirit, if not the letter of the law in terms of shoreline access. I think that instead of signs at the front of the property that say, private property, no trespassing, there should also be a sign that says, e komo mai, there's a shoreline access here. And as part of the condition of you approving the Community Plan Amendment and the zoning that you should require some parking. Because there...it's not easy to park there. I also think this is an opportunity to require this applicant to work towards managed retreat and be involved in that. We at Maui Tomorrow are looking at trying to find some financing mechanisms that don't cost the taxpayer, but that make it easier for shoreline owners to actually retreat instead of hardening the shoreline and making it worse for everybody. Ultimately, these shoreline hardening structures don't work. They will always require more maintenance and this is a good example. And, finally, there just needs to be more enforcement, and this is like broken record, obviously. But I would like to see some allocation of resources towards enforcement. We keep getting maybe one or two positions more here and there. But if we're going to be making laws as a County, we might as well not make any laws if we're not going to enforce them, because it just breeds disrespect for the law. So thank you very much.

VICE-CHAIR HOKAMA: Thank you, Mr. Perez. Any need for clarification? Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Mr. Perez. And since you brought up the fact that you're...seem to be in agreement with Mr. Carnicelli, which I don't know if that's scarier for you or for him, but can you just give me your thoughts on his suggestion that, you know, there should be a stakeholder group that kind of looks at this and...

MR. PEREZ: I would definitely support that. I mean it's incumbent upon the public to also reach out, and I haven't reached out on this particular bill. But since we keep coming back, I think it'd be much more efficient for there to be a stakeholder group to be...convene on this and we can hash it out. We could save a lot of time, instead of waiting and coming back and talking about it every single time, so...

COUNCILMEMBER KING: Okay. Thank you. Thank you, Chair.

VICE-CHAIR HOKAMA: Thank you very much. Anyone else? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Nice to see you here.

MR. PEREZ: Hi.

COUNCILMEMBER SUGIMURA: So on your comment regarding finding outside non-governmental funding towards beach access...

MR. PEREZ: For the managed retreat?

COUNCILMEMBER SUGIMURA: Yes.

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MR. PEREZ: Yes?

COUNCILMEMBER SUGIMURA: So can you expound on that, can you share a little bit more?

MR. PEREZ: Well, I don't think that there's a lot of public support for the public bailing out people who should have known better, basically. We're building in areas that are dynamic, they're going to move. You build on the sand and this is what happens. On the other hand, the original developer typically is not the one who's left holding the bag; so we have a lot of individual condo owners and maybe that's their retirement or something. So I can sort of see both sides. But the bottom line is that these structures are going to be undermined. The seawalls that are being built are going to be undermined; so let's come up with a mechanism. We haven't found one yet. There's a lot of research that's been done. There's some mechanisms in other places that don't apply here because people can actually own the beach. So that is not true in the State of Hawaii. So we haven't come up with a solution, but we are working on it. But generally, we don't think that it's fair for the public to have to bail out shoreline property owners, except perhaps to the extent that if they were to just walk away, there would be a public expense to get rid of that structure as it falls into the ocean. So there could be some slight public investment to help protect our shoreline resources.

COUNCILMEMBER SUGIMURA: So you're talking about shoreline protection, is what you're talking about, for beach erosion?

MR. PEREZ: I'm talking about managed retreat. You're asking me about the second bill –

COUNCILMEMBER SUGIMURA: Right, right, right.

MR. PEREZ: --right, Kahana Sunset? Yeah. So that's just an aside in general that we think that this applicant should be required to engage in in those discussions and participate in any kind of managed retreat.

COUNCILMEMBER SUGIMURA: For the future? Okay. Thank you.

MR. PEREZ: Thank you.

VICE-CHAIR HOKAMA: Okay. Anyone else? Thank you very much for your testimony this afternoon.

MR. PEREZ: Thank you.

VICE-CHAIR HOKAMA: Bobbie Patnode, please.

MS. PATNODE: Aloha, Chair --

VICE-CHAIR HOKAMA: Hi.

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MS. PATNODE: --Councilmembers. My name is Bobbie Patnode. I'm speaking for myself today. I support the purpose of LU-5 and have testified twice previously in Council meetings. I'd like to share two recommendations. First, the purpose of the bill is to preserve large ag lots. The bill gives Maui a way to divide ag lots so there's a large parcel for ag. The large lot should really be called the preservation lot. The preservation lot cannot be subdivided again. This law would keep the preservation lot in Agriculture in perpetuity. There's really no need to create separate rules for this lot. It should be treated as any other lot in the ag-zoned district. The only difference is that it cannot be subdivided, it must remain in Agriculture. All the current laws and rules which pertain to Agriculture parcels are sufficient today for this purpose. We don't need to limit developable area, the uses, et cetera. There's really no need to prescribe how far the farm dwelling can be from the cluster lots as the farmer is the best person to determine where it makes sense to build their dwelling. Treat this form of ag lot subdivision the same way we treat it now and greatly simplify this bill. My second point is that we really need to discuss what's happening with the small cluster lots. This bill allows lots from one to one and a half acres, which is a change from the currently allowed two acres. Why are we doing this? We already have issues with people who buy a two-acre ag-zoned lot, find out they need to farm the land in order to build their dwelling, they put in a farm, and then they request ag water rates, they expect ag value assessment for their property taxes. These lots would be in the ag zone, the ag rules would apply. Our County departments already spent time and effort enforcing rules for those who don't really want to be farmers. I do know some people who produce ag products on less than two acres, but they're the exception. My recommendation is to create an exemption for these small lots, which are part of a subdivision which creates the preservation lot. Let's not create more problems for our County enforcement personnel. Thank you all for the work you've done to make this an option for those who want to subdivide and help preserve ag on Maui.

VICE-CHAIR HOKAMA: Thank you very much, Ms. Patnode. Mr. Guzman, question?

COUNCILMEMBER GUZMAN: Thank you, thank you, Chair. Thank you, Ms. Patnode, for testifying today. I know that our Ag Working Group, when I was Chair of the Agriculture Committee, had initiated this particular bill, which I have a copy of the original bill that was submitted to the Planning Commission which is nothing similar to what we have on the floor. But my question to you is, from the original bill in 2014, as it's gone through the process, I haven't had an opportunity to make the amendments and I don't even recognize these amendments that are on the floor today. So if we were to suggest going back to the original, which was more simple, and it was more of the intent of actually preserving the larger contiguous lot for open space purposes, how would you feel about that in terms of...because then as the Ag Working Group have you been working on this at all, 'cause I haven't had an opportunity...

MS. PATNODE: The Ag Working Group has had a lot of discussion on this, a lot of hours of discussion. And Rory Frampton has been to the Ag Working Group twice to talk about the bill and get our input on it. And he wrote up a summary of our response and the one thing that I remember that would be different, if we went back to the original bill, is that I think the lot size was only an acre in the original and I think Ag Working Group

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had all said, you know, let's leave it at two. But there is a summary of that; if you would like me to dig that up for you, I can do that.

COUNCILMEMBER GUZMAN: No, no. I have, I actually have a full case of –

MS. PATNODE: Okay.

COUNCILMEMBER GUZMAN: --big full files of stuff.

MS. PATNODE: You know, in general, the Ag Working Group is very, very much in support –

COUNCILMEMBER GUZMAN: Yeah.

MS. PATNODE: -- of creating a different way to subdivide ag parcels so that we preserve the ability for farmers who need large parcels to have a large parcel and not to continue to subdivide it into smaller ones. There's just a lot of other stuff that's been added here that is not helpful to farmers.

COUNCILMEMBER GUZMAN: Yeah, I'll find out who made these other amendments, I have questions on them as well.

MS. PATNODE: Okay.

COUNCILMEMBER GUZMAN: Thank you.

VICE-CHAIR HOKAMA: Okay. Anyone else for clarification of testimony presented? Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Bobbie. When you mentioned your suggestion about these, you know, what we're allowing as very small Ag lots for the subdivision lots, and you mentioned that...you suggested that we make those an exemption. Were you talking about like exempting them from the ag zoning?

MS. PATNODE: I'm talking about exempting them from the requirement to farm.

COUNCILMEMBER KING: Oh.

MS. PATNODE: Because these guys are going to buy a lot that's one acre, one-and-a-half acres. I don't think they really intend to be farmers, and we're going to force them to create a farm, which then creates a whole lot of other problems for our County people who have to go out and enforce, so...

COUNCILMEMBER KING: So are you...so if we're not going to expect them to farm, then are you saying that they should...the lot zoning should be changed to Rural or some other zoning?

MS. PATNODE: Well, it would be easiest if they were Rural because there would be no requirement, but I don't think we can do that. So I'm thinking that we would have to

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create a special exemption for this particular type of subdivision. Because they are connected to a large lot, which is required to farm, perhaps that requirement could be satisfied by the large lot instead of having each individual small lot have to satisfy the requirement.

COUNCILMEMBER KING: Okay, but then you're pushing your requirement off onto somebody else to...

MS. PATNODE: It would be on the large lot, yes.

COUNCILMEMBER KING: Okay. Alright. Thanks for the clarification.

VICE-CHAIR HOKAMA: Okay. Thank you. Anyone else? Thank you, Ms. Patnode. Hugh Starr, please?

MR. STARR: Hello, Chair, Members of the Council, thank you. Hugh Starr, LU-5. Actually, I want to commend the Council for your focus on this. It's a really super important bill and several I've alluded to. It really is a new way of approaching the future of our ag lands, and it's really important at this particular time; and I think we all realize that. And I like the idea of perhaps some sort of short-term conversation between—I'm not quite sure how it could be structured, Chair—but including the ag stakeholders, you know, so that we can kind of iron out some of these little, manini details, 'cause it really...a lot of this is minutia; and it's hard, of course, to do it here, hard for everybody including you. So I would encourage that if it's possible, but we all want to keep this thing moving. I do appreciate a lot of the stuff that's ended up in the proposed bill that's there now. For example, that you have included the right to be able to farm dwellings on the preservation lot of the conservation lot, and I commend you for that, that's important. I would...I have a...well, a caution...I like Mr. Watanabe's idea of IAL, but I would caution all of us about this because IAL is in and of itself a whole complicated dimension about ag land, and there's a lot of interplay between the County and the State that still needs to happen around IAL. Nothing to my knowledge, and maybe Corp. Counsel could help with this, would prevent someone who has a remainder or conservation piece committed to an easement like this, from putting it in...petitioning the State Land Use Commission and putting it into the IAL, I'm not sure if that is possible or not, but I would certainly caution us about considering using IAL as an alternative to this County legislation. I have particular concerns about the Special Use Permit process, the way the bill's proposed. We need as much flexibility, prudent flexibility. The Special Use Permit allows...used to be presented to the Planning Commission; it isn't just a knee-jerk approval or disapproval. You have to go before the Planning Commission and justify it to the community, and I think that makes sense, especially since ag is not black and white. There's a lot of gradations of grey and it's getting more so as we move into the future; so I really want to strengthen the Special Use Permit process and I feel a direction that the wording is going with this proposed draft is not going in that direction. It's more restrictive, and it's very nuanced and hard for people to understand, hard for the public to understand. So, anyway, thank you very much, I appreciate it.

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VICE-CHAIR HOKAMA: Thank you, Mr. Starr. Any questions for clarification, Members?  
Okay. Having none, thank you very much. Kai Nishiki, please?

MS. NISHIKI: Good afternoon –

VICE-CHAIR HOKAMA: Good afternoon.

MS. NISHIKI: --Committee Chair and Members. Mahalo for being here. I'm testifying on LU-19, the Kahana Sunset. There are many references in the West Maui Community Plan concerning protecting and preserving the natural environment, and I just wanted to read a certain section from there. It says, the natural environment of Lahaina region characterizes much of what is special about West Maui as a place to live and to visit. The marine and nearshore environment and open space areas are important assets of the region that should be protected and preserved for the long term. The reduction and sedimentation of nearshore waters must be pursued to protect and enhance the region's land, water, and marine environments. A few years back, thanks to the Planning Department and Jim Buika, public access was secured at Keonenui Bay, which is where Kahana Sunset is located; and I just want to thank them very much for pursuing that and for Kahana Sunset for making that possible. I really appreciate that. So while we are very appreciative of having public access to that bay, which we didn't have before, we do think that it's very important to protect public access in perpetuity and also for there to be access 24 hours a day. And some of the reasons why that's important is because traditional and customary practices for Hawaiians should be protected. And that bay, you can look in the FEA, there was a cultural assessment done in 2012; and, as part of that, there is historical evidence that that was a very popular fishing bay. So I do a lot of work on the West Side regarding shoreline access and work with a lot of fishermen, and they have brought it to my attention that they would like to have 24-hour access to this bay for the future. And also, it's great to have access, but if you don't have parking, no parking equals no access for the public. So we're just asking to possibly have a bit of parking and maybe some ADA accessible drop-off area down there. Also, I think that it's very important for us to consider that this property has had numerous fixes to their seawall since 2009, and it's my opinion that the constant fixes are a sort of segmentation to get around actually doing additional EAs, EISs, or even getting an SMA permit.

MR. KRUEGER: Three minutes.

MS. NISHIKI: And so I would like there to be some discussions and requirements regarding managed retreat for that property. Thank you very much.

VICE-CHAIR HOKAMA: Thank you, Ms. Nishiki. Any questions for clarification, Members?

MS. NISHIKI: Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you very much. Zandra Amaral-Crouse, please?

MS. AMARAL-CROUSE: E kala mai. Good afternoon, Committee Chair –

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VICE-CHAIR HOKAMA: Good afternoon.

MS. AMARAL-CROUSE: --Riki Hokama and Committee Members. My name is Zandra Amaral-Crouse testifying on agricultural cluster subdivisions in the Agricultural District, LU-5. In many ways, cluster development has been practiced since the earliest of times in communities from the medieval village to the New England town; however, it wasn't formalized as a modern concept until the onset of suburban sprawl and ubiquity of house developments. The idea of a cluster development was created as the alternative to the conventional subdivision to provide housing. Cluster development, also known as conservation development is a site-planning approach that is an alternative to conventional subdivision development. It is a practice of low-impact development that groups residential properties, in a proposed subdivision, closer together in order to utilize the rest of the land for open space, recreation, or agriculture. Cluster development differs from a planned-unit development, or PUD, due to the fact that the PUD contains a mixture of residential, commercial, industry and other uses; whereas cluster development primarily focus on residential areas. The purpose of cluster development is to promote integrated site design that is considerate to the natural features and topography of an area to protect environmental sensitive areas of the development site as well as permanently preserve important, natural features, prime agricultural land, and open spaces. To minimize nonpoint source pollution to reducing the area of impervious surfaces on site. To encourage saving cost on infrastructure and maintenance through practices, such as decreasing the area that needs to be paved and the decreasing distance that utilities need to be brought. Also, the primary purpose is to create more area for open space, recreation, and more social interactions. Thanks to there being more porous ground coverings and fewer impuritive [sic] surfaces, such as asphalt and concrete, the risk of flooding and erosion from storm water is reduced. Economical benefits of cluster development can include there being less infrastructure to build fewer roads, fewer sewer, more accessible for biking and walking. The practice of traditional development is difficult to change because of the set standard familiar to the procedure and the fear of undertaking something new. In response to this, groups such as the American Planning...

MR. KRUEGER: Three minutes.

MS. AMARAL-CROUSE: In closing, in response to this, groups such as the American Planning Association have developed a model ordinance that provides the framework for cluster development. I humbly ask you...I am so much in favor of this as someone who deals with homes and children looking for housing, but Chair and Committee Members, I humbly ask you to defer this to a group, address the concerns that you've heard from people who deal with this daily and come back with a fuller picture of exactly what the ramifications and the unintended consequences might be. But I am in support of anything that our government can do to put our children in homes. Mahalo.

VICE-CHAIR HOKAMA: Thank you. Any questions for clarification, Members? Having none, thank you for your testimony. We'll go to the district offices and ask Ms. Lono if anyone in Hana would like to provide testimony, please.

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MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

VICE-CHAIR HOKAMA: Ms. Fernandez, anyone on Lanai?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

VICE-CHAIR HOKAMA: Thank you. Molokai? Ms. Alcon, anyone wishing to provide testimony?

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

VICE-CHAIR HOKAMA: Thank you very much, ladies, for your assistance to the Committee. Members, with no further requests, we shall close testimony for today's meeting.

COUNCILMEMBERS: No objections.

VICE-CHAIR HOKAMA: Thank you. So ordered, testimony is closed.

**. . .END OF PUBLIC TESTIMONY. . .**

**ITEM LU-19: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE KAHANA SUNSET CONDOMINIUM AT 4909 LOWER HONOAPIILANI ROAD (LAHAINA) (CC 16-39)**

VICE-CHAIR HOKAMA: Okay. I'm going to direct you to LU-19 at this time. This is a Community Plan Amendment, Change in Zoning request for Kahana Sunset Condominium at 4909 Lower Honoapiilani Road (Lahaina). Okay. This is an old request, Members. This Committee is in receipt of County Communication 16-39, from the Planning Director at that time that transmitted proposed bills to grant a request from Kahana Sunset AOA for a CPA from Single-Family to Hotel and a Change in Zoning from R-3 Residential District to H-M Hotel District for 4.467 acres at 4909 Lower Honoapiilani Road, Lahaina, Hawaii. We have correspondence dated August 29, 2018 from Corporation Counsel with a revised proposed bill incorporating the proposed map as an exhibit to each bill. And this was the format which has been requested as subsequent to the 2016 transmittal of this matter to Council. Let's see, the proposed revised bill incorporates revisions recommended by a prior Land Use Committee when they met on this matter August 17, 2016. With the revisions made by then Committee, there are two proposed conditions attached to the zoning bill. Number one, the condition is 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 ten feet above the building roof. And the second condition that public shoreline access shall be available at a

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minimum between 7:30 a.m., 7:30 p.m., seven days a week. That Committee recommended passage of the proposed CPA bill and the revised Change in Zoning bill last term. However, the unilateral agreement that is required was not executed; whereby Council would then take up the matter for final consideration. Therefore, the Committee was unable to report out this matter last term and it is therefore pending before this Committee for consideration this afternoon. So, this afternoon, we are starting with the revised Community Plan Amendment bill and the revised Change in Zoning bill that contains the two proposed conditions of zoning that was recommended by the previous Land Use Committee. Okay. So, this afternoon, we do have representatives from the applicant; but, first, we'll start off with opening remarks from the Department. Planning?

MR. ALUETA: Thank you, Mr. Chair, Members of the Committee. Yes, this is an older item that was transmitted up back in February of 2016. And, again, as indicated by the Chair, was taken up. They did...this body did come up with the two conditions: one relating to heights of the building, the second dealing with public access that did not exist and was never required prior. And so this was done by the applicant in constructing a shoreline access that was discussed. Just a quick refresher, this project was originally developed within the residential district as well as the community plan single-family district, it was granted a variance back in 1968. That variance had some limitations on it. It basically...very interesting variance, if you ever read it. How they worded it was primarily they were developed as an A-1 standards, which at the time was still being proposed. It was never adopted. They also limited the construction to two stories per building with a 40 percent density, and then they were required to provide a site plan. So primarily, as indicated with some of the testifiers, there is some shoreline retreat going on. There has been some permits granted with regards to shoreline protection as well as...for some of the structures within that area. We feel that granting the zoning would allow for primarily for shoreline retreat by the developer or by the project eventually. We did meet with the...not really a developer, it's basically the homeowners association and their representative. And has indicated by their delaying, getting back the unilateral agreement, it is difficult to herd cats sometimes. And when you're dealing with multiple property owners, to get everyone in agreement, that can cause significant delay. So with that, you have your two conditions that you have before you. Department does have a proposal of another condition, but we can bring that up at the time of discussion. Thank you, Mr. Chair.

VICE-CHAIR HOKAMA: Okay. Thank you, Director. At this time, are you or your Department know of any potential either violations or requirements of the Department that has not been fulfilled or addressed.

MR. ALUETA: I've been indicated, no, at this time. Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you for that response, Director. Ms. Cochran, any questions at this time for the Department?

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair; and thank you, Department. So I'm seeing some testimony in reference to Ms. Nishiki's testimony about the public beach

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access, the hours of...or the hours that the gates locked and unlocked. And I'm reading testimony saying that multiple times it's just locked during those times. So have you folks not gotten any comments to that effect, at all? Has there been issues with the opening and closing of those gates during those hours?

VICE-CHAIR HOKAMA: Department?

MR. BUIKA: Thank you, Chair. Jim Buika, Shoreline Planner with the Planning Department. I've been dealing with Kahana Sunset for ten years on permits. And they have been very pono. They've worked with us extensively. I have gotten a couple of reports that the gate is not open at 7:00 a.m. when people jog by, but it has been a year or two, probably two years, since I've seen anything like that. I think there were maybe two instances when I got that information from a jogger that went by who is from Kahana Bay area. So that's all I know about...I'm sure they're...pretty sure they're fairly diligent in keeping the shoreline access open from 7:00 a.m. to 7:00 p.m., and it hasn't been persistent, so random one-offs.

COUNCILMEMBER COCHRAN: Okay. And Chair? Is there any possibility to the thought of it being 24 hours, 24/7 with no time limit?

VICE-CHAIR HOKAMA: Department?

MR. BUIKA: Thank you, Chair. Obviously there's a possibility. I think there are. You know, the shoreline access was developed at the edge of their property from the road. I think you're familiar with it, from the road down to the shoreline. It does abut against several condos fairly close, probably within four or five feet, two rows of condos. So there are, you know, there are people close by. It's wonderful shoreline access done totally voluntarily. I imagine the reason is they just want to eliminate middle-of-the-night traffic back and forth there. We did have a, two years ago when we had this discussion, we had a fairly robust discussion on times, open, closed, et cetera. Something that I did discuss with community member Kai Nishiki is that, you know, who would be using the access late at night? I think the conclusion is...I mean anyone can, but mostly fisherman, mostly locals. And I think historically, through Kahana Sunset, the fishermen have accessed without any objection from Kahana Sunset through the main entrance, through the road. So this access takes the traffic out of the middle of the condo to the edge of the condo. And one thought that I shared with Ms. Nishiki was if the gate is locked at 7:30, could put on the makai side of the gate, as you go up, you could say, hey, you can...you really can get out of the area through the central road or through the central part of Kahana Sunset. So I think people who are locals in the area, the fishermen, know how to get in and out of the bay. There hasn't been a formal shoreline access until now. So that was the conclusion from the Council to limit it to approximately 12 hours a day. But it could be opened and there are other solutions, and I discussed, so...

COUNCILMEMBER COCHRAN: Okay. Yeah, I think...I mean if they're technically allowing them just traipse through the inner, you know, property, why not just leave the actual

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shoreline access path open, 24/7, is how I look at it, too, so less invasive onto their own private, per se, you know, inner properties.

MR. BUIKA: Sure. Understood. I think it's probably to...yeah, I don't think the fishermen are the problem. It's probably the riffraff at 3:00 a.m., you know. I'm not going to identify any...what riffraff is, but you know what I mean. Probably eliminating, you know, nuisance in and out in the middle of the night, I'm sure is the reason. So...

COUNCILMEMBER COCHRAN: Okay. Anyways. I don't agree with that. But we'll talk more. Thank you, Chair.

VICE-CHAIR HOKAMA: Okay. Thank you. Mr. Guzman, any questions you'd like to pose? Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, I did see a testimony that was dated today that, you know, was complaining about the frequent...the gates not frequently being...or frequently not being open at those stated hours and the fact that there's a big no trespassing sign so that you wouldn't even know that you had access. So maybe that's something they could take care of. My question to you since you were talking about...I think Mr. Alueta said something about shoreline retreat is ongoing. And so what does that mean, that they've been working on it?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Thank you. With the Change in Zoning, right, this would allow for the redevelopment potential. At this time, there is no plans for any type of development, but if there was to have new construction, they could retreat back and replace the buildings that are current at jeopardy.

COUNCILMEMBER KING: Okay. But there's no discussion about that and there's no plans for that?

MR. ALUETA: No.

COUNCILMEMBER KING: Okay.

MR. ALUETA: But we have discussed it with the applicant...I mean with the representatives. But again, you're dealing with individual owners so it makes it difficult.

COUNCILMEMBER KING: Okay. I just wrote down what you said when you said, shoreline retreat is going on. So there's actually nothing going on but there's talk of what could happen.

MR. ALUETA: Correct.

COUNCILMEMBER KING: Okay. So that was my main question. Chair, thank you.

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VICE-CHAIR HOKAMA: Okay. Thank you. Ms. Crivello, any questions?

COUNCILMEMBER CRIVELLO: So you just mentioned, Mr. Director, about the potential redevelopment and setbacks. So is there a, I guess, an assigned footage for setback and what have you, you know, with beach erosion and what have you today and the climate changes. Is this what...do they have enough room to implement a larger setback?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Yes. We believe the site does have some space on the property that would allow for potential construction behind some of the existing shoreline buildings. Again, there's no specific plans. We just...based on the existing variance...and I guess that you could say it this way, right now they have buildings that are in jeopardy. And they will probably continue to come back with either some type of protection of that or continued maintenance, repair of those existing buildings as they're allowed under the law, okay. At some point, as I explained to them, you're going to have to make the call that is it viable for the continued maintenance of these structures within potential...with the concept of sea level rise, as you were given the presentation not too long ago. So these two main buildings that are on the front, on the shoreline area would be in those areas. And so I did talk with them today that, you know, once...if the zoning is granted, we want to see a condition that basically says, if sometime in the future—and it seemed very unlikely—but if there is any construction, that it'd be for the replacement. It'd be the first thing to do would be for replacement of...and a managed shoreline retreat of those structures, okay. So you're not just giving them a zoning change that allows for additional development under the zoning of H-M, but you're doing it with the idea that you're opening up land or space on their property and density within their property to potentially construct buildings to replace their existing development. And that maybe that and that so that you could open up that shoreline area eventually. Now it's kind of like, as talking with the developer...I mean talking with the applicant's representative, again, you have multiple owners, there's really no plan at this time, but you want to have that option that, you know, that the land is available on their property, it has the zoning to do that type of construction. They would still need to get an SMA, but we'd want to have that condition falling with the zoning rather than trying to get that type of timing of it during the SMA, I guess you could say.

VICE-CHAIR HOKAMA: Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. So does...sharing about access for the gathering rights for our fishing community. Have you had or are there actual complaints? When I hear Ms. Cochran says that their gates are locked and...so how are we assured that the people have gathering rights to gather whether it's fish, or opihi, or...I'm not familiar with the grounds, but I'm just thinking, you know, we should have, always have access to our gathering rights.

VICE-CHAIR HOKAMA: Department?

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MR. ALUETA: Thank you, Mr. Chair. Traditionally, the access, the shoreline accesses are established for shoreline property occur during the SMA or during the initial development, okay. It becomes extremely difficult to shoehorn in access after the fact. We saw this with the original Kaanapali development where no shoreline access was initially planned for; and then as each individual lot came in under the SMA law, we were able to shoehorn in where we could shoreline access because there was a developmental permit that came under the review part of the SMA Coastal Zone Management Program. Clear nexus, okay, between the development as well as the shoreline access. We did a better job with Wailea, with the established shoreline access points, comfort stations throughout Wailea, there was a lot. We did a better job during that SMA review, encumbrance review of that development. In this case, you have a project that's basically built in 1971 prior to the Coastal Zone Management Committee. You have an existing development. There is no new development, okay. So, as I was talking with the applicant and the representative, potentially, if there is a redevelopment or some type of construction during that SMA Permit, we will have a rational nexus to establish some type of either additional either beach parking or some type of improved access. At this time, it's difficult to say, we're going to force any landowner without some type of compensation to provide access when there is no type of developmental review that were here, okay. So, again, it's more tied...for me, it's more tied to the SMA than it is the Change in Zoning. Because, again, without this Change in Zoning, right, they're fixed, they already have their established development, per se. But, and again, this access was put in by the project on its own.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

VICE-CHAIR HOKAMA: Okay. Thank you. Mr. Atay?

COUNCILMEMBER ATAY: Thank you for sharing that. So this project was built in 1971.

MR. ALUETA: That's my understanding. It's somewhere around there. The original variance was in 1968.

COUNCILMEMBER ATAY: So this shoreline access has existed since then? How long they had shoreline access?

MR. BUIKA: The shoreline access was put in, I would say, approximately three years ago. So the entire bay had no formal shoreline access. It was identified in our 2007 shoreline access report as a bay that needed a shoreline access. So through an emergency permit to strengthen a, an at-risk building, myself as the planner asked if Kahana Sunset would voluntarily consider shoreline access, and they stepped up and they did. So that was...it was probably, I don't know if I have my day right, but about three years ago. So until then, there was no shoreline access to Keonenui Bay.

COUNCILMEMBER ATAY: And why you think they gave shoreline access?

MR. BUIKA: Why? Because I think they understood the reason for it, and agreed. I think it was...I mean they went back to their board and it cost them over \$60,000. There was

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actually some structural engineering to shore up the walls between...that they had to make it safe for the public. So it was a major effort that took several years. So I think it was a good effort.

COUNCILMEMBER ATAY: Thank you. Last week I was visited by this developer or the representatives for this project and I'm very familiar with the area, very familiar with the project. I called our community, the ohana out of West Maui. I said, eh, people still go holo holo out there? Access, traditional Native Hawaiian gathering rights no matter how they got to the coastline. Access of gathering food. That coastline could be opihi, that coastline can be pole fishing, that coastline can be black crab. If you're a constant gatherer, when the best time to go get black crab? It's not between 7:30 in the morning and pau 7:30 at night. It's at night. So this condition C, I have a hard time with that because access to the shoreline is traditionally for gathering. Access is important for the black crab guy at night. Access is important for the opihi picker if he goes to the minus tide. Sometimes the minus tide is at night. So you cannot put a condition 2 of saying, we going lock the gate and we going block your access to the shore from 7:30 at night to 7:30 in the morning. You know, I stand for traditional and customary practices way before Kahana Sunset was built, they got to the shore. Now all these technology or explanations of permits and all that, yeah, but it's...they accommodate...you're saying, oh, they can go down the middle. What about 20 years from now? The different people going be there, they going allow all those people to go down the middle? We're here to say, how do we protect the existence for the future. And I would say, if there is shoreline access, and I visited with one of the members and she said, oh yeah, we're good neighbors. I would say, we would allow them that opportunity to gather. The other part was discussed was, along the roadway where the people can park, there's a shoulder where they can park unload their gear and go through the access point, and then they were trying to say, oh, control the parking, you know, put up no parking at certain times, but it connects and comes in line with when is the ideal time for the gatherer to go park on the shoulder and go down that trail. It's a burden if they got to go someplace far. So I would...it's in line with trying to understand. For me, I would protect the gathering opportunities for the community and not to take that away from them. And visiting with one of the members, she was very open towards, you know, meeting up with the community. A second issue I have is the current zoning, what is the current zoning?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: R-3.

COUNCILMEMBER ATAY: Residential?

MR. ALUETA: It's R-3, and it's Community Plan Single-Family.

COUNCILMEMBER ATAY: R-3, Community Plan Single-Family for how long, been in that zoning?

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MR. ALUETA: Since the adoption of the zoning map, which we showed you one of the dead sea scroll, so it's one of those old '60s maps.

COUNCILMEMBER ATAY: '60s?

MR. ALUETA: Yeah.

COUNCILMEMBER ATAY: Yeah.

MR. ALUETA: So, again, they were granted a variance in '68. We believe they constructed around '71. Their uses were limited to Apartment, were those in the A-1 District. So this is basically trying to clean up the use to match what the actual zoning rather than being on a variance. Again...well, I'll just leave it at that.

COUNCILMEMBER ATAY: Yeah.

MR. ALUETA: That's what...thank you.

COUNCILMEMBER ATAY: Yeah, so that was my question, because it was zoned Residential-3 for many years and now you're asking it to go to a Hotel. And my question to the representative was, did you visit with the community, and is the community's community plan aligned with having this property being zoned as a hotel? At the same time, I was told by staff that we've been taxing this property as a hotel and not as a...I don't know what category it would go under, so I was kind of confused. If they've been all along being taxed at, but not zoned for that; and if it is also...the request for Hotel zoning, is it aligned with the current discussion of the West Maui Community Plan?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Okay. I'll try to unpack that question. Again, it's been Single-Family on the Community Plan for a number of years. It's zoned R-3. The request that you have today is for a Community Plan Amendment as well as a Change in Zoning to H-M Hotel along with some restrictions. They have been, as I explained earlier during the DSSRT presentation, the taxation office taxes you on your highest and best use. They were granted a variance in '68, which allowed at that...uses that were allowed in the A-1 District, which at that time included condo and condo hotels; so short-term rentals. So that's why they've been operating as that and therefore the Taxation Department will tax them at the Hotel rate. In talking with the consultant, they were, I guess, doing an Environmental Assessment during their SMA projects they felt, since we got to go through...and they did go through the whole entire EA process that they felt that it was a good time, since you're going to do an EA, might as well do clean up the Community Plan, clean up the zoning all at the same time to be consistent with the uses on the property today; and so that's why you're here today, and that's why I guess it was supported by the Planning Commission. And, again, the conditions that are before you that are not the Department's...from what I can tell, they're not the Department's conditions, they're the conditions that were established by the last Land Use Committee when you last left off. And so that's what your starting point is; so just to refresh. So

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that timeframe and all that is not necessarily from the Planning Departments...the Land Use Committee is what they last voted on.

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

VICE-CHAIR HOKAMA: Okay, thank you. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, from what I'm hearing then...well I want to hear what your third recommendation is for conditions of zoning. I know you started with that and you said...you went through these two and you said you had another one; so can you share that?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Thank you. Again, for discussion purposes, that any...we would add that any future units shall be constructed as replacement units as part of a shoreline retreat plan. Replacement units and any additional units shall be restricted by the zoning density. So, currently, again, the current variance allowed for an A-1 use. It had a 40 percent FAR and a two-story limit. H-M would allow, under zoning, would allow for 90 feet in height, hence you have condition one which would limit it to 45. The lot coverage under H-M is 30 percent with a floor area ratio of 100 percent. And so that's where we feel that they're gaining the zoning, they would be gaining floor area ratio from what they're currently...what is current...the current limitation on the variance. Again, no plans, but if they choose to have some type of new construction, they would still need an SMA, but we would want to see that new construction be used as part of a shoreline retreat plan so that they would...and there is some spots on the property where there is a potential for them to do a, you know, a structure of more than...of less than 45 feet high, accommodate for parking and build additional units which could then be used as replacement units.

VICE-CHAIR HOKAMA: You have that written out, Director?

MR. ALUETA: Yes, I do.

VICE-CHAIR HOKAMA: Yeah.

MR. ALUETA: And so the difficulty, as indicated by the applicant's representative as well as their management company, is that the chances of any new development occurring is difficult because you would need to have everybody agree to it. However, this is the...because it is for a Change in Zoning and a Community Plan Amendment, I felt it was appropriate to try to get something in there now at the zoning level rather than rely on...at the SMA level, at the Commission level. So I felt it more appropriate to have a zoning...a condition now. Thank you.

VICE-CHAIR HOKAMA: Ms. Sugimura?

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COUNCILMEMBER SUGIMURA: Thank you. So you will be giving us...or is it in this presentation? It's in this presentation?

MR. ALUETA: I have it written down. I can pass it over to --

COUNCILMEMBER SUGIMURA: Okay.

MR. ALUETA: --Council staff so they can have it if...

COUNCILMEMBER SUGIMURA: Please. Thank you. And I guess, connected to that, when appropriate, I wonder if the owners of Kahana Sunset or the management or Jordan Hart...

VICE-CHAIR HOKAMA: They'll have their opportunity to --

COUNCILMEMBER SUGIMURA: Yeah, if they can reply to that and...

VICE-CHAIR HOKAMA: --address the Committee. They'll come after Department.

COUNCILMEMBER SUGIMURA: Okay. And then I just want to state that because the Kahana Bay and the Special Improvement District, that whole thing that we've been hearing about since last budget year session about beach erosion and the problem. I think this is one of the properties that are involved in that whole discussion. Mr. Buika?

VICE-CHAIR HOKAMA: Department?

MR. BUIKA: Thank you, Chair. Thank you for that question. No, it is not Kahana Bay and Kahana Sunset. Kahana Sunset is in Keonenui Bay, which I think is three or four bays to the North; so they are separate.

COUNCILMEMBER SUGIMURA: So they wouldn't have the same problems?

MR. BUIKA: Well, they have the same problem and they have the same name, but they're not connected. And we...actually Kahana Sunset is working with the Department to pursue options for beach nourishment and other things besides seawalls. The sad part about Keonenui Bay is the entire bay, all the properties, are seawalled in. And so it's the end-member of what we do not want to see on Maui. So we are seeking solutions with them. Including managed retreat. So we will have some upcoming to clarify we will have some upcoming meetings with Kahana Sunset management and the board about managed retreat. And, just to clarify, there were two additional permits since the last Committee meeting to shore up the building A at the shoreline and the Department did put in a condition number four under shoreline setback approval to meet with the County within 90 days of the July permit this year to discuss potential options for managed retreat. And then within 180 days to produce at least three options for potentially where they would relocate the at-risk buildings on their property. Still very conceptual, but moving down that path in that direction.

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COUNCILMEMBER SUGIMURA: Thank you.

MR. BUIKA: Thank you.

VICE-CHAIR HOKAMA: Okay. You know, the Committee brought up some interesting questions to the Department earlier. And, again, when we doing beach access and whatnot, it's very clear in our revised constitution about gathering rights. We have a whole article in the Constitution that allows our traditional, customary rights to be protected and supported by state policies, including the County. So what does Na Ala Hele and Aha Moku programs do for this beach access programs? Because every island supposed to have it. Lanai has it, I know Molokai has it, Maui should have it. So what good are these programs if it doesn't help support the beach access that we are required to protect and enhance? You have any comments, Department, regarding those state programs that assist us for island and coastal access regarding trails and paths, mauka-makai?

MR. ALUETA: I don't have any comments on that right now. I'll look into it but...thank you.

VICE-CHAIR HOKAMA: Okay. Yes, Mr. Buika?

MR. BUIKA: I could just...

VICE-CHAIR HOKAMA: Yes?

MR. BUIKA: Chair, Jim Buika. I could just comment that I know they both do good things. We have met with the Felimon Sedang, Kaanapali Aha Moku, talking about Kahana Sunset area. Nothing's proposed, but we have consulted with them, we have met with them at their request to discuss this and Kahana Bay and the region for getting them involved. So we are involving them and familiar with their mandate and their work.

VICE-CHAIR HOKAMA: Okay. Thank you for that, Mr. Buika. But for the Department, I know you're going to ask us to consider condition regarding the subject of managed retreat. Aren't you guys more interested in us making sure that this is a general policy within the SMA area than just a condition for this one zoning request regarding managed retreat. Why wouldn't we just recommend a general policy within SMAs and do a general policy statement proposal for the Council than just a condition for each single application? I mean if it makes sense, right, why wouldn't we look at a general application for consideration than a condition for each? 'Cause I have issues about compliance of conditions, Members, yeah. 'Cause it goes back to, what, almost half the testimony we heard today was that we got to come up with enforcement. Yeah? So, okay. I mean we've heard it, enforcement is critical to policy being implemented correctly. So something we need you to think about, Department, besides just this condition for this application. Is this something we should consider more on a general application for anything within the SMA zones of the three islands?

MR. BUIKA: Thank you, Chair. Jim Buika again. We think about this question 24/7. It's...managed retreat is on the radar. We're trying to take baby steps, move in the right

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direction. When we deal with applicants and large condos with units, there's the other side of the story, it's difficult...well, we know what we want to do, how we get there is more difficult. But we at least...I know in our...we are reviewing through Michele McLean, our Director, the Special Management Area rules and our shoreline rules, and it's part of our...at least our emergency permits from our experience with the shoreline team. We are requiring for any emergency permit. These are proposed, still rules that will go to the Maui Planning Commission but to...with any protection for a structure out front, we would require within 180 days a discussion with the Department about finding other options in trying to seawall in or protect these structures. What are the other options? And if they ask for an extension on any emergency sandbag say, to protect their structures, at the end of one year, we would require them to...we would not grant it...an extension of that emergency permit without them entering into an environmental assessment to look at alternatives to solve the problem. So every problem needs to be solved at the sensitive shoreline within, you know, within an environmental setting that involves the community and the coastal ecosystem. So it just takes time. But we're pushing that whole process forward through our rules. So that's one way we are trying to implement policy. Again, you haven't seen these rules and they're just. We're, you know, doing it behind the scenes, but they're pretty much finalized. So for Commission.

VICE-CHAIR HOKAMA: And I appreciate your comment. I'm just thinking of a general ordinance not a rule.

MR. ALUETA: If I may, Mr. Chair, just...

VICE-CHAIR HOKAMA: Mr. Director?

MR. ALUETA: Yeah, just to elaborate or clarify. Again, for this project, we thought there was a unique opportunity to establish the condition just because the alternative is status quo. And so...

VICE-CHAIR HOKAMA: No, no, I understand the condition. I'm just saying that I think this is a bigger thing than just a condition or consideration, yeah. 'Cause I understand. I appreciate this, because I don't like pocket zoning through one permit, and this is what we almost did, okay. This is almost zoning through permit, done in 1960-something, okay. That's not how permits supposed to be, taking place of zoning. So I appreciate the effort to clean this up. I'm just saying that's something we need to think about, Department, that I think this is a bigger policy thing that can be addressed in more general application; and each specific case can, you know, be adjusted accordingly. But I think we're not going to dispute king tide issues and backed up drainage flows of salt water instead of fresh water coming out of the drains, you know, we're not going to argue those facts. We're just going to try and mitigate the best we can. Okay. We're going to take a short recess. Five minutes, I'm going to then have the applicant and the representative and the association make their presentation to the Committee, then the Committee will have their opportunity to question them and then we'll see where we go after that component is completed. Okay. Recess, five minutes. . . .(gavel). . .

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**RECESS: 3:04 p.m.**

**RECONVENE: 3:13 p.m.**

VICE-CHAIR HOKAMA: . . .*(gavel)*. . . Okay. We're back in order. I will continue the review of Land Use-19. Before we do so, the Chair will make a couple of comments.

**ITEM LU-5: AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO ALLOW AGRICULTURAL CLUSTER SUBDIVISIONS IN THE AGRICULTURAL DISTRICT (CC 15-152)**

VICE-CHAIR HOKAMA: Regarding Land Use-5, the Chair, upon review of the item, would agree in general that I think we should have one more opportunity of various community groups to have the ability to confer and see if they can come with additional considerations for the Committee. I am happy to do so. So, yeah, they kinda close to the touchdown, but they not that close enough yet. So we'll call a timeout, let the team get together, reassemble, come up with a game plan and see if we can come up with something even better for consideration next meeting.

COUNCILMEMBER GUZMAN: Chair?

VICE-CHAIR HOKAMA: Yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: I have a question. There's a lot of amendments that were proposed that I hadn't seen those amendments even discussed when we were at the last meeting, and now they're in the ordinance itself. Who made those amendments and who suggested those amendments to be placed in there?

VICE-CHAIR HOKAMA: Yeah, okay. You know, I don't want to screw up the records of this meeting, yeah. We should be actually on LU-19 right now.

COUNCILMEMBER GUZMAN: Right.

VICE-CHAIR HOKAMA: So I apologize, yeah. So, as your Chair, I'm going to use the prerogative of the Chair to say, as it regards to Land Use-5, what is before the Committee is what I have received through staff and Mr. Carroll, as the Committee Chair, yeah. I have made no additional...what you have is what I have –

COUNCILMEMBER GUZMAN: Right.

VICE-CHAIR HOKAMA: --from Chairman Carroll. I've made no adjustments or recommendations.

COUNCILMEMBER GUZMAN: Right.

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VICE-CHAIR HOKAMA: So I have exactly what you have. What is in the current format, I'll ask Ms. Nakata if she'll give us a general comment on the status of what is presented to the Members. Is this a recommendation from Chairman Carroll at this time?

MS. NAKATA: Mr. Chair, all I know at this time is that the further revisions subsequent to the last meeting were in line with discussions with Planning and Public Works as well as...

COUNCILMEMBER GUZMAN: Oh yeah, yeah. I apologize, Chair. I do recall now. The Deputy [sic] Director of Planning had suggestions but she did not relay them on the floor and needed more time to formulate those amendments, but apparently they're already incorporated in this version, yeah.

VICE-CHAIR HOKAMA: So we'll just say, there are...a draft proposal –

COUNCILMEMBER GUZMAN: Yeah, I...right.

VICE-CHAIR HOKAMA: --to you as a Member, nothing has been reviewed or supported by the Committee so --

COUNCILMEMBER GUZMAN: Right.

VICE-CHAIR HOKAMA: --what is before you is a consideration, Members, only --

COUNCILMEMBER GUZMAN: Yeah.

VICE-CHAIR HOKAMA: --as a proposal for consideration.

COUNCILMEMBER GUZMAN: Yeah, and so what I would...what I'm trying to relay is, I drafted the original bill in 2014 and moved it forward to the Planning Commission, and there's been various, numerous amendments to. I think this is maybe the eighth or ninth. And another revision made without consultation of myself. I'm very confused in what the intent is now.

VICE-CHAIR HOKAMA: Okay.

COUNCILMEMBER GUZMAN: So just a reminder that it has to be as proposed when we sent it through the resolution to the Commission. Substantial changes of the intent, if it does change the intent, it's got to go back to the Commission, yeah.

VICE-CHAIR HOKAMA: Understood.

COUNCILMEMBER GUZMAN: So thank you.

VICE-CHAIR HOKAMA: Yeah, we'll...I will work with the staff and Mr. Carroll and ensure that, yeah, we're within the parameters of processing, Mr. Guzman.

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

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VICE-CHAIR HOKAMA: We'll make sure we report back to the Committee membership.

COUNCILMEMBER GUZMAN: Yeah, thank you.

VICE-CHAIR HOKAMA: We'll do that. Any other questions? If not, regarding Land Use-5, 'cause I know there's people who are waiting for us to take it up today, but I'm going to be very candid, we will not take it up today. We're going to allow the groups to get together and see if they can have a good discussion on it. So with no objections, Land Use-5 is deferred, Members.

COUNCILMEMBERS: No objections.

VICE-CHAIR HOKAMA: Okay, so ordered.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: RC, MW)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

**ITEM LU-19: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE KAHANA SUNSET CONDOMINIUM AT 4909 LOWER HONOAPIILANI ROAD (LAHAINA)** (CC 16-39)

VICE-CHAIR HOKAMA: We have one more item to continue this afternoon, which is under Land Use-19. At this time, I'm going to let Mr. Hart, who is the current representative of the AOA Kahana Sunset to make a presentation to the Committee. Mr. Hart?

MR. HART (*PowerPoint Presentation*): Thank you very much, Chair and Members. My name is Jordan Hart of Chris Hart and Partners. We've already been discussing—or you have—but I'm here to do a short presentation on the Kahana Sunset request for Change in Zoning and Community Plan Amendment. Project team, we have the applicant, the association is represented by Ms. Carol Tuua, and she is in the audience with us today. We also have myself and Raymond Cabebe from Chris Hart and Partners, we're land planners. Mr. Larry Ing is the property's attorney. For some orientation, here is a map of the project site in red, kind of on the northern portion of the West Side, makai of the lower road of the Honoapiilani Highway, fronting Keonenui Bay. Here's an aerial photograph of the project site. You have the Aleloa Condominium to the north, Napili Villas is mauka above the lower road. The property is dashed in red and then you have again Keonenui Bay. This bay was represented previously...was previously landlocked. There was a inquiry by Mr. Buika who has been very helpful in the long life of this application. There's a lot of properties that are...were built on the shoreline that face consistent wave action and this is one of them, and Mr. Buika's been a lot of help on this property, on this project. But nevertheless, he inquired whether or not the Association would be interested in providing shoreline access where there had been none. The Association agreed that that was the appropriate thing to do, and did implement that. I want to clarify, that's a part of this same action. So even though we

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were granted our SMA Major Permits in approximately 2014, along with our shoreline setback variance for the work on the shoreline that's already been done, all of these applications were in together under the same environmental assessment. There was a delay for the Association in understanding and accepting the existing conditions that were recommended by the Committee. There was also a delay because there was a woman, Ms. Jacqueline Scheibel, who had basically been representing all land use applications on behalf of the Association for a very long time. She ended up selling her unit and moving to a different property; so they no longer had their wealth of knowledge and their project manager, and they needed to have some time to find their footing and get reorganized and pursue these applications again. This is a tax map. One thing I do want to point out, there was a conversation with Councilmember Atay regarding parking. And what I would like to clarify is, if you look at the lower road that is here, on the makai side of the lower road, there is a large shoulder and the shoreline access route that's been prepared locates here and it could be a perfect opportunity to have additional shoreline...sorry, roadway parking on the lower road. The way that ordinance works is that the parking ordinance, or no parking ordinance, identifies all areas on County roadways where you cannot have parking. This is a location that has an ample shoulder. The Council could open up that ordinance and remove the restriction from this location, and that would open up a significant amount of spots along this straightaway, and those people could access the shoreline access trail there. So the request before the Committee is to change from Community Plan Residential to Hotel and R-3 zoning to H-M Hotel. Now the property, as the Department explained, is legally constructed and operating under a variance that was granted by the County Board of Supervisors and it allows them to operate a condominium complex. And in the '70s, there was no differentiation between long-term and short-term rentals, so they were operating short-term rental. And in the '90s, the rules changed so they're basically existing non-conforming on the short-term basis for a...they're operating as a hotel, legally, since the '70s, and we're basically requesting an opportunity to clean up the zoning designations because we are already spending a tremendous amount...association, spending a tremendous amount of money to do the studies necessary for an environmental assessment to address their shoreline issues. It was a little bit additional for them to come and address the land use issues at the same time, to clean up the maps for everyone. Let's see. So again, 1968, a variance was granted by the Board of Supervisors to construct an apartment, a 79-unit apartment...condominium was constructed in 1971. There were no restrictions on short-term rentals so they were doing it in short-term rentals from that time. In 2012, so basically, to back up a little bit, in 2009, there began to be shoreline issues on the existing seawalls coming from the ocean damaging seawalls. But there is also a drain line that drains from mauka and it runs through the property and it outfalls on the face of one of the seawalls and flows into the bay. This is not drainage that's caused by the project, it's drainage that's caused by mauka properties and runs through the project. So that drain line was failing, and the water from the drain line was also pushing one of the walls out. So there was two reasons that they were having failure that they filed their applications. There was a significant amount of public outreach that was done at the time. Unfortunately, we had a delay so there was a bit of a disconnect from the time we did our outreach till the time we're here, again on the Land Use Committee floor. But in early 2010, the draft EA was published and we did a early notification. In

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February 2013, the Draft EA was accepted by the Maui Planning Commission in July of 2013. A community meeting was held at the Kahana Sunset. All property owners within 500 feet were invited. We presented what we were planning to do including these land use designation changes. In May of 2014, the Final EA was published in OEQC Bulletin with a Filing of No Significant Impact adopted by the Maui Planning Commission. July of 2014, the Planning Commission reviewed and approved the shoreline setback variance and the SMA Major Permit to repair seawalls as well as provide recommendations on the Community Plan and Change in Zoning. In August of 2016 we had our first meeting with the Council Land Use Committee. The conditions that were discussed were added. We needed to take those back to the Association. They mulled them over for a period of time, determined how they were going to accept them. And in that timeframe, Ms. Scheibel also left the property and so there was a little loss of momentum there, and so here we are now. The existing site is 79 hotel condominium units in six buildings. It's 4.467 acres in size, built in '71. It includes support services, office, manager's residence, laundry. There are amenities – a pool, cabana, gazebos, barbecues, outdoor showers, and parking. The buildings, Building A, on the north end, and then it goes clockwise down to Building F. Building A and Building F are the buildings that have issues with erosion consistently. Some things to talk about again, the way you access this property is that it's makai, so the land is sloping downwards toward the ocean. The mauka property is significant elevation above, then you have the lower road, and this property sits below the road, so you actually drive down a driveway into the property in order to get to the parking or get to any of the units. But the shoreline access is at the lower road there on the side of the shoulder at a significantly different elevation. This is a community plan map. I did follow up with Long Range Planning on whether or not this...how this property is treated in the update of the West Maui Community Plan. The Department let me know that they're not sharing a public version of the community plan map. They're basically working on consolidating the use designations right now, and in the future they're going to share the map. So I couldn't confirm whether or not this was shown as Hotel or not on the updated map. I inquired with the planner on whether or not they were collecting pending land use applications that were supported by the Department and implementing them, and it was a general positive statement; but no, there's no public map for me to get access to to show the Councilmembers how this is treated or how it's been discussed with the community. As to why it wasn't addressed previously, I would presume that basically it's legally operating, nobody was complaining about it or bringing it up, and so it just wasn't addressed. County Zoning Map, R-3, we're requesting a change to H-M. The reason we selected H-M is because it's the closest matching designation for the density and use. This is a table that analyzes the permitted uses and densities. So basically it's just showing that the proposed development...the existing development is consistent with what would be permitted with H-M. There are additional restrictions that are existing regarding height, and there was an additional condition that's discussed to be proposed by the Planning Department. As far as the Change in Zoning criteria, the proposed request meets the intent of the General Plan objectives and policies of the community plans. So it definitely meets the intent of the General Plan, we believe. As far as the community plans, we're requesting a Community Plan Amendment in order to have the community plan reflect this proposed action. The proposed request is consistent with the applicable community plan. Land use map, we're requesting an amendment to the

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map to reflect this. The proposed request meets the intent of the district being requested. It does, the existing use has been Hotel, which is what we are requesting. The applicant, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems. We did go through the agency review process when we were publishing our EA and obtain our SMA Major Permit. We received, generally, favorable comments from all agencies with no specific issues. To reiterate, no proposed development is occurring with this project. This is the existing development since 1971. Planning Commission reviewed the project. There was discussion of heights. The Land Use Committee came up with two conditions that were discussed previously, no building shall exceed 45 feet in height except that vent pipes, fans, chimneys, elevator, stairway shafts, cell, antennas, and equipment used for small-scale energy systems on roofs may be extended an additional ten feet above the building roof so that the building structure itself can't go beyond 45 feet, but fixtures may. The public shoreline access shall be available at a minimum between 7:30 a.m. and 7:30 p.m., seven days a week. I do want to address this. There was some comments made about, you know, gathering rights and access. It's important to point out that there previously was no public access provided before Mr. Buika inquired with the property whether or not they would be willing to do it, and the property agreed that they would make it a proposal. It wasn't a condition, it was a proposed action as part of their project. With regard to why they would want to close the access off, I'll show some photos of where the shoreline access is. It is very close to some of the units, and so there's, you know, the privacy and enjoyment portion of it. You know, there's the discussion about how is it different from walking down the center of the parking lot into the ocean, you know, the path is right next to the outside wall, which is right next to the windows of some of these units. Now the Parks Department is able to close their park facilities at night time for protection of their facilities, you know, prevention of vandalism, any other issues that, you know, the Parks Department feels is necessary for them to close their beach parks for and this applicant isn't asking for anything beyond that for this shoreline access that they're providing for the community. Excuse me. So this is a diagram of the shoreline access, and so it starts at the lower road and then there's a significant elevation drop as it goes down to the shoreline. There was significant construction of stairs that needed to happen at the shoreline. And then you can see the buildings. So these are the units, and they have windows right next to this. I'll show you those photographs as well. This is a before and after photo. You can see this is the unit that's closest, so the path cut through this area, the planter with the tree, and so that unit's just right there. So those are some of the reasons they would like to have limits on when it's open. This is the signage, 7:30 to 7:30 daily. Obviously the condition's not adopted, but they've been implementing it. We were not previously aware of any sort of complaints. Mr. Buika had said that he hadn't had any consistent level of complaints as far as we're aware. It's being operated. If there was a day or a time when it wasn't opened early enough, that would've been in error, but signage is there. This is what has been provided. So we did go through the Environmental Review Process for an EA. We were granted a Finding of No Significant Impact, we were granted an SMA Major Permit, and a Shoreline Setback Variance. All of that work on the shoreline is now done. Mr. Buika had mentioned that there were subsequent applications that came in. I wouldn't say that that is partitioning each of those qualified for the applications that were filed at the time. Now this land use item,

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it just took a lot longer to resolve, but it's all part of the original package that was submitted, basically beginning in 2012. But with that, I think that we've, you know, gone over the details substantially enough for the discussion. Thank you.

VICE-CHAIR HOKAMA: Thank you, Mr. Hart, for that review. We'll ask the Members if they have any questions of clarification as it regards to your presentation. Mr. Guzman, any questions you'd like to pose to Mr. Hart at this time?

COUNCILMEMBER GUZMAN: I think I pretty much understand the situation. So this is basically the tail end of what has been approved through this Committee on other portions of this project, which was the repair of the, I believe, the seawall and then it went through an SMA and got that all approved and that was taken care. So this is basically the tail end which was let's clean up and address the 1968 variance which allowed them to operate as a hotel.

VICE-CHAIR HOKAMA: Correct.

COUNCILMEMBER GUZMAN: And because they have this variance, if they were to build future, supposedly I guess, future structures, the variance would not allow that to happen, is that correct?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: I guess it would be unclear if they could.

COUNCILMEMBER GUZMAN: Oh, it's unclear, okay.

MR. ALUETA: It's unclear, because there was a site plan that allowed for the initial development, and so I would have to research it more. But there is some debate as to whether they could build anything, addition to the property under the existing variance.

COUNCILMEMBER GUZMAN: Oh...that's why Mr. Ing is here. So I guess what I would say is the variance, which was legally granted --

MR. ALUETA: Correct.

COUNCILMEMBER GUZMAN: --would give them detrimental reliance, because they've been operating the same way since 1968. So if they were to build and construct, the argument, the legal argument would be you've allowed this to happen, you've granted it through a variance; so they, therefore, can build on their own property that's been allowed through the variance --

MR. ALUETA: Yeah...

COUNCILMEMBER GUZMAN: --that would be the legal argument, right?

MR. ALUETA: I think that, again, there's some issues that I would have to research more --

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COUNCILMEMBER GUZMAN: Right, right.

MR. ALUETA: --to determine whether or not they would be able to construct anything new under the existing variance –

COUNCILMEMBER GUZMAN: Yeah, to clean it...

MR. ALUETA: --and operate a...

COUNCILMEMBER GUZMAN: And so, basically, to clean this all up, just go in and get a zoning change –

MR. ALUETA: Correct.

COUNCILMEMBER GUZMAN: --to H-M.

MR. ALUETA: H-M.

COUNCILMEMBER GUZMAN: H-M, okay.

MR. ALUETA: And then the other issue is that if they had to come in with a new building or any type of new construction, they would have to meet the conditions of that...the zoning that it was developed under as well as the floor area...as well as the density requirement. So they would have to provide documentation that they met that density, they still met that density requirement.

COUNCILMEMBER GUZMAN: But that was under the granted variance.

MR. ALUETA: Under the variance, that is correct.

COUNCILMEMBER GUZMAN: Yeah. And so, and in compliance with the granted variance, and then when we had our last meeting here in 2016, we added two more conditions which were the...

MR. ALUETA: To the Change in Zoning, yes.

COUNCILMEMBER GUZMAN: To the Change in Zoning. So, at that point, that was the last time I heard about this, this whole...because that was the last meeting.

MR. ALUETA: Right.

COUNCILMEMBER GUZMAN: So two years later, they've gone to their board, their association board, and apparently those two conditions were granted. Now you are proposing an additional condition. If we were to include that condition, my question to I guess Mr. Hart and Mr. Ing, how long would it take for them to now take that condition and present it to the board? Whether or not they would accept that condition and bring it

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back here. Is that going to be another year, what are we talking about? 'Cause this is...this seems to me like a last-minute additional condition which may, you know, should have been placed in two years ago when we added the first two conditions.

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Correct. And, again, I bring the condition as just a proposal, the Council can either reject that and keep with the two conditions that you established already. Department was just trying to further along what an enhanced ability of the applicant to do some type of shoreline retreat in the future and not rely solely on an SMA.

COUNCILMEMBER GUZMAN: So just for clarification. So your suggested condition is basically saying that if you were to be granted this zoning change to H-M and furthermore, if you were to make future construction that it would be in compliance with a retreat management type project.

MR. ALUETA: Correct.

COUNCILMEMBER GUZMAN: Okay. Very good. Thank you.

MR. ALUETA: Yeah.

VICE-CHAIR HOKAMA: Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. I was going to ask that question, too; but I also wanted to reiterate my support for your suggestion, Chair, about looking at putting this into ordinance for all SMA Permits. The managed retreat issue is becoming a bigger issue than just one project. But, you know, did you pass out the wording of your proposed third condition?

VICE-CHAIR HOKAMA: They're still working with staff to make sure that it passes legal muster; so, yeah, they're working on it Ms. King.

COUNCILMEMBER KING: Okay. So we'll have it by the time we make a decision I guess. And is that, in your opinion, 'cause I don't have the wording in front of me, does that have any teeth to it, does that really bind this organization to managed retreat or is this just something nice to look at in the future?

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: It binds them if for any future land use development, meaning, for the construction. Again, they would have to get an SMA, but the condition of the zoning would indicate and guide any future development for the property. So it would be a condition to the land, okay. As indicated by the applicant, there is no future plans at this point to do any type of redevelopment. It's there only to try to encourage them, because they do under the zoning, right, that is being granted, or potentially being granted. It allows for a greater density, and as we talked about allows for them to

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potentially build a building in a location outside of where the areas...erosion is or the high erosion rate is. And so there's an economic incentive to do some type of managed retreat, not just, you know, allow for it to...the economic hardship of potentially losing the buildings that they currently have.

COUNCILMEMBER KING: Okay. Yeah, I thought there was something in this presentation that said they were not allowed to increase the density. I didn't see it under a condition, but I thought there was something in here, but maybe not. So you said something earlier about their plans to shore up Building A, which is the building that's probably the highest risk. So they would be allowed to do whatever they need to do to shore that building up including additional seawall or a hardening of whatever seawall is there or shoring up of that under...and that wouldn't violate your third condition?

MR. ALUETA: No –

COUNCILMEMBER KING: Okay.

MR. ALUETA: --that is not the intention. The intention of the condition is if they develop any new units.

COUNCILMEMBER KING: No, I understand that, but I'm just saying that, you know, if they continue to do whatever they need to to this existing units that are on the shoreline regardless of what they have to do to the, you know, I mean the...I think the collective intelligence is that seawalls...we don't want to do anymore seawalls because of the damage it does further down the coast. So does the...whether or not we go ahead with this that's an option of them just continuing to shore up that building that eventually is going to be partially underwater when the sea level rise happens anyway. But, you know, it seems like regardless of your proposed condition or if we don't even do anything today, we don't have any control over that.

MR. ALUETA: That is correct.

COUNCILMEMBER KING: And the reason I'm asking this is because, you know, when you mentioned that it's hard to I think you used the word "shoehorn," you know, parking requirements and or shoreline access, we have that project in South Maui that is very similar to this and that there's a hotel built on Single-Family zoning that's been operating as a hotel for a long time in 12...well, it's now it's 13 years ago when they tried to fix that zoning—and I think it was Mr. Hart is handling that issue—the community came out and said, well, if you're going to do that, give us more parking and harden the parking...I mean back then was harden the parking and then give us more parking to the public. And so there was a consent agreement made even though, I guess what you're saying in this situation which seems like a similar situation back then, if the County had done nothing, they could still operate as a hotel, correct?

MR. ALUETA: I'm not familiar with that project –

COUNCILMEMBER KING: Oh, okay.

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MR. ALUETA: --and how things transpired, sorry.

COUNCILMEMBER KING: Okay. Well, it's the same thing as a hotel that's operating on zoning that's Single-Family. And they were given a variance, but the Community Plan was never changed and the zoning was never changed, but they did somehow come out with a consent agreement; so, to me, that's kind of what we're trying to do here is to try and make an agreement with the hotel that if we do these...if we change these conditions for you, then you'll agree to, in perpetuity, to have this access. Is that what we're talking about is that in perpetuity or is it...is there a chance that that could change if the hotel changes hands? Does that condition stay with the building as long as the building's there or the condition of the parking?

VICE-CHAIR HOKAMA: Corp. Counsel?

MR. GALAZIN: Thank you, Chair. Which...

COUNCILMEMBER KING: I mean public access, I'm sorry, not...

MR. GALAZIN: Oh, public access. Yeah, I mean all the conditions that's the whole rationale behind having this recorded unilateral agreement is that anybody who looks to purchase this in the future is going to be aware ahead of time that they're taking it subject to these restrictions.

COUNCILMEMBER KING: Okay.

MR. GALAZIN: And so, yeah, it is intended to run with the land, it will bind all current and future landowners. And we're working on the wording on condition 3. I'll let -

COUNCILMEMBER KING: Okay.

MR. GALAZIN: --the Deputy Director take a look at it and see what he thinks.

COUNCILMEMBER KING: Okay. And then, lastly, I just want to make the comment, I'm really torn about this parking, these access, these hours, because it was, you know, being from South Maui where every, pretty much every development is required to have access to the ocean and most of them are required to have parking; so I understand that these are conditions that weren't put on this structure, but I also understand about our requirement to provide access to the ocean that, you know, that we're bound by our Constitution to provide the Native Hawaiian rights, the traditional rights of that access. So, you know, I haven't made a decision on like how I feel, you know, how I would vote on it, but I have, you know, I do have problems with somebody who lives an area that has 24-hour access and doesn't, you know, we're never locked off from the...we might be closed off from certain parks, but we're never locked out of access to the beach. And I know when that was proposed by one of our Councilmembers that was, you know, we had major pushback from the community about, you know, making a rule about that for closing parking. So I just have really mixed feelings about that, Chair. Thank you.

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VICE-CHAIR HOKAMA: Okay. Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Nothing right now.

VICE-CHAIR HOKAMA: Ms. Sugimura, questions for Mr. Hart on his portion, or the Department?

COUNCILMEMBER SUGIMURA: So, yeah, I do. So based upon what we're talking about, the last condition, would you have to take it back to the condominium owners and would it delay this process? Two years, I think is what you said.

MR. HART: This is Jordan Hart. Thank you, Chair and Members. That's how long it did take to get back to where we are now. Now there was a key personnel person that was lost in there, so that contributed to it. I think at this point we feel like we have the engagement of the board and the association and we're trying to maintain momentum. We just found out about the Department's proposed condition this morning. You know, I understand what the Department's trying to do. You know, I think that we would have to have the board, you know, look at it and see the implications. I do want to reiterate that no new development plan has been shared with us; so if there is no new development plan, you know, this proposed condition isn't impacting anything that I'm aware of, but this is the landowners' decision to make which we weren't previously aware of. If I could revisit the issue of parking, I do want to reiterate that there is significant, available shoulder space for public parking that the Council, you know, could open up by opening up the parking ordinance and just removing the restriction from parking there, which would satisfy a significant concern, and that's an existing resource that's just sitting there being unused. I mean it's being illegally used right now, daily, but as far as formalizing it, it could just be done by amending that ordinance. Thank you.

VICE-CHAIR HOKAMA: Okay. Anything else? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And, yeah, I think that area, there are no signs. I worked with...I thought Director Goode...we went on Google—well, what do we have?—Pictometry and looked at that shoulder and I think there is no no-parking signs. So I believe people, as you say, are utilizing it. My other thing is, is it not...those two, A and F, literally are failing, and especially A. Which this Ms. Jacqueline, who I had done some in-depth touring and spent a long time with her over there on the property to really vet through and see things in fine detail with her when she was still living on property, and I think...I'm wondering if the point about this is not going to change, there's no proposals on the table right now, if this truly is just about that, though. Because it's structurally not sound. It structurally continues to fail. And I know they've...coming in for emergency permitting and things. And I believe that's what prompted an urging of this public access, such as Makani Sands down the road. So I'm...this Change of Zoning will allow them to move forward in building this...remove this managed-retreat-type concept, implement it, move...build an existing...another structure inland more. So is that...has that not been discussed with the property and yourself or, I don't know, Department?

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MR. HART: This is Jordan Hart. There's an existing condition of an SMA permit that was issued by the Planning Department to initiate that construction...or that, not construction, that conversation about potential sites and potential relocation. I think that having zoning would facilitate doing something about that and not having zoning and leaving it in a variance would basically create the situation where there's a potential conflict between 22 unit owners who may be losing a place and what they're going to do about that. You know, under existing rules, they have the ability to continue to protect their habital [sic] structures even though, you know, they continue to be in jeopardy. Now the economics of that is the decision of the landowner, but I do think that having zoning makes it possible to proceed to a next step and the Department has provided conditions of a recent improvement or repair to the existing seawall to initiate that process. So I think this is a step in the process, but, you know, those...how that's going to function and when is going to be a portion of a conversation between the Department and the landowner themselves.

COUNCILMEMBER COCHRAN: And so, Chair? So the Hotel zoning, is the proposal...I'm trying to figure it out if they're asking to be allowed the full height of the zoning applicable...

MR. HART: If I could, the...there's a proposed condition from this Committee that's with this application that limits the height to existing building structures plus ten feet for appurtenances like antennas and things like that. So they're not asking for the full height of the H-M District.

COUNCILMEMBER COCHRAN: But I think that's a catchy term, "existing structures," because it is built on a slope, so you have some that are higher because it's here and then if you build these down here to meet those up above on the upper slope, is that what that means?

MR. HART: I think that it means structure height, and the Department has specific ways in the Zoning Code with diagrams on how they calculate height. So I understand...I don't think it's from the average mean sea level...or mean sea level, it's from the height of the specific building we're discussing. So location on the site shouldn't affect that.

COUNCILMEMBER COCHRAN: Okay. And lastly, Chair, I like your point about why are we only targeting one project, you know, about the managed retreat discussion because it should be across the board and perhaps written in a more, you know, something with teeth in an ordinance, but I also would like to entertain the thought, too, along those lines, as in...a lot of these places have been built around the same time. They're all coming in for these emergency permits because sea level rise, they're all falling into the ocean and all this stuff. So, with that, because at the time no one thought of public beach access. Makani Sands was nice enough and also urged, I guess, with this emergency permit there to open up beach access. It's wide open, they put sidewalk, shower, everything, no gate, 24/7 open. No parking, but you can access. So then this one rolls along and so they agreed, yes access, but they have a gate and timeframe on it. So I'd like it to be...if you were built in this certain timeframe and did not abide by this public access ruling, then it should be a mandate, now you are, you know, you have

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to comply since you have this opportunity, you're going to start tearing stuff up, fixing stuff up, whatever, and, you know, I think along with your managed retreat concept, also the public beach access to toss in there along with...if there's a way to look into, you know, incorporating that somehow, across the board for when these types of situations occur. And I think, lastly, West Maui hopefully is coming...the update of the West Maui Community Plan, hopefully, is coming up soon, and this should be a part of it for the bigger, broader community discussion. So, you know, I think...I'm not sure, is this stopping something from moving? Can it wait till the broader, bigger community has time to chime in and understand what this truly means? You know, the impacts, overall. So that's, you know, just another thought, too, so...

VICE-CHAIR HOKAMA: I think the Committee has full discretion on how we want to approach this. Again, we'll work with the representatives and the Department; but, at this time, what seems to be coming forward is a proposed condition 3 on the...and I think the term will be, "Shoreline Retreat Plan." Is that the term, Mr. Director, instead of shoreline replacement, it'll be a shoreline retreat plan? Is the...

MR. ALUETA: Shoreline Managed Retreat Plan. Thank you, Mr. Chair.

VICE-CHAIR HOKAMA: Okay. So that's how they're addressing this application at this time, Ms. Cochran, as I'm currently viewing their proposal. I don't have a problem with that. I still think, though, we should be looking at something that makes sense countywide by general application of anything within SMA areas. And that takes into account how each planning commission has made their own decision of what is their SMA jurisdiction. So I'm open to that. That, I think is going to take at least six months of Committee work to pound out something on a countywide basis. Any questions for Mr. Hart on his portion of what was presented, Members? Offer you one more opportunity. Anyone has a question for Mr. Hart? Ms. Cochran?

COUNCILMEMBER COCHRAN: Mr. Hart, so are you in this discussion with this 160-day need to reach out to Planning Department about the shoreline...or the retreat plan and all that? Are you a part of that discussion with owners and Planning?

MR. HART: Not previously, no. This was a more simple application the property filed it itself and received those conditions. So I hadn't been participating in this scope, just the larger package that we're at the tail end of here.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair.

VICE-CHAIR HOKAMA: Okay. One question, please, Mr. Hart. Under the Hotel-proposed zoning category, are you asking for to have all permitted uses be applicable for this request or you folks are satisfied that it can just stay narrow to what the variance permit allowed, which was the hotel use itself?

MR. HART: I guess the best way I could reply to that is that we hadn't proposed any limitations and there's no known, you know, proposed development or additional uses that we're aware of at this time.

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VICE-CHAIR HOKAMA: Okay. 'Cause for some Members, you know, hotel use is one thing, but TVRs, B&Bs, and whatnot, we view it in another light of a different type of accommodation. So, you know, I just want to be clear, you know, before we make our final call, if that is something... 'cause the way I view the variance is very narrow on permitted use.

MR. HART: Chair, to address that issue, you know, you're right. It was Apartment, but the County had no regulations on short and long-term rentals before the '90s, and so...

VICE-CHAIR HOKAMA: No, I understand that.

MR. HART: Okay. Thank you.

VICE-CHAIR HOKAMA: I'm just saying that within the zoning category you are requesting for now, some people would say, I'm okay, just give me what the current use is and really...you can exclude everything else under the permitted use. 'Cause I'm not going to go there, I'm not doing a haberdasher, I'm not doing, you know, we got things in the Code that's pretty outdated. So, you know, I'm just asking a question.

MR. HART: As far as what we've been made aware of by the property, you know, the request is to normalize the zoning of the existing use for where they're located.

VICE-CHAIR HOKAMA: Of all permitted uses?

MR. HART: I'm not aware of the desire to add any additional uses beyond what's going on now. I guess if that's the response. I mean...

VICE-CHAIR HOKAMA: And again, I just bring this up because I don't want this to be one sticking technical point down the road if and when you really want to use a shoreline managed retreat plan of what then can be replaced or not replaced. So if they say, replace means only what was existing, anything else that was permitted under the zoning doesn't apply, only what existed. I don't want that to be...you understand what I'm saying, on replacement?

MR. HART: No, no. I think I'm a little confused right now, I'm sorry. I think that provided...okay. So there are some peripheral-type uses in the Hotel Districts...

VICE-CHAIR HOKAMA: Main thing your counselor understands what I'm saying.

MR. HART: Okay.

VICE-CHAIR HOKAMA: As long as Mr. Ing is understanding of the legal, permitted use versus actual use only, as the legal counselor...

MR. HART: Yeah, to reiterate, there's no proposed...so let me just say that I believe what the Department interprets what is happening right now is equivalent to traditional hotel

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use, and that is what the applicant in condo hotel is probably more accurately what they would call it, and that is the intended continued use.

VICE-CHAIR HOKAMA: Okay. 'Cause that's my understanding, Mr. Hart, yeah.

MR. HART: Thank you.

VICE-CHAIR HOKAMA: Continued existing use. Okay, thank you. Thank you for that clarification. Members, any other questions you would like to pose either to the Department or to the applicant's representative, please? I'll start with Mr. Guzman. If you have one, Mr. Guzman?

COUNCILMEMBER GUZMAN: No, I don't have any further questions. It's pretty clear to me this is just cleaning up the 1968 variance. They're asking for the same use. And, well, in fact, you know, I think by Mr. Alueta's suggestion of the added condition, if we were to approve this zoning change, then you have more of a hammer or a restriction that they must follow versus if we were to deny it and they stay in use under the variance, they could still do whatever they want to do under the variance. So we really don't have any leverage in reality, Chair. You know, the leverage comes in granting it. We then now can impose this condition, but if we deny it, they still exist under variance.

VICE-CHAIR HOKAMA: Under the current...

COUNCILMEMBER GUZMAN: And they can still do whatever they want. So it's in our best interest to grant it so then we then...if we were to add that condition in then they would then need to follow it.

VICE-CHAIR HOKAMA: Comply.

COUNCILMEMBER GUZMAN: So that's just where I'm kind of looking at it. Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, I did find that statement, but I guess it's more of an intent. On slide number six, it says, there is not intention of expanding the number of units nor is there an intention to build anything other than the actions identified on the application. So I don't know how binding that is if we didn't pass this condition, but that's the applicant stating the intent of not creating extra density, correct?

VICE-CHAIR HOKAMA: Mr. Hart?

MR. HART: Chair. Jordan Hart. Right. I think that we were trying to just clarify that the only development that would be happening as part of this overall application that was submitted at the same time—SMA Major, Shoreline Setback Variance, Environmental Assessment, Community Plan Amendment, Change in Zoning—the repairs to the seawall were the only development that was proposed as part of this. Now, you know,

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30 years from now if there is zoning, you know, maybe sooner, if the applicant is in discussion with the Department on managed retreat, there potentially could be a proposed development that would occur. But as far as, you know, what goes along with this application, there is no development related to units or the peripheral support services for the association. And the reason that that, you know, was important, is because there was a lot of discussion about with the community, you know, if you get the Change in Zoning, what happens? Well, what happens is that you have to file an SMA Major Permit in order to do anything else after that. You know, you got zoning, but that doesn't mean you can build anything. You got to get SMA Major Permit, and then you got to get your building permits. So there's a number of steps that happen any...like even after presuming zoning is changed, the Community Plan is changed, you know, you're still at square one if you're proposing to do anything at that time.

COUNCILMEMBER KING: Okay. And then just needed to get confirmation that... 'cause when looking at that plan—I think it's on page ten—it looks pretty tight as far as adding a new building if you were to replace Building A and Building F. But I was talking to Planning earlier and they said, well, you could put something over on the, I guess, up above Building B on this map looking up above it, if you move the parking underneath it, if you like built it up over parking, so is that going to still qualify as under 45 feet?

MR. HART: I did raise that with the Department. So just to back up a little bit, you know, this application was filed before the County started its update to the West Maui Community Plan. You know, there was internal discussion in the Department about managed retreat, but, you know, that conversation has advanced significantly in the time that this application has been in. So I did raise that question with the Director about whether or not the height limitation would end up becoming a problem because you probably have to go up in order to keep the same number of units. Now, we haven't participated...substantive conversation about where potential sites to relocate or have an architect look at setbacks and density and figuring out what those buildings would be shaped liked. That hasn't been done yet. So I couldn't say that I think that there's a...I mean I'm aware the Department, you know, has locations where they think are appropriate, but there's a next step of somebody actually designing two dimensions, you know, and complying with zoning, what those structures would be shaped like and where they could fit. So that's pending. I do think that the height could become a limiting factor in the future, but...

COUNCILMEMBER KING: You know, I think there were issues with the building on the other side of the road about view planes.

MR. HART: That's true. So I do want to point out, those are private views. In the context of the Special Management Area, public views need to be preserved. But the applicant, you know, was...prior to discussion about managed retreat when the discussion was only height limitation, the applicant's position was that there's no proposed development so that that is not a...limitation to existing height isn't an issue because they had no intention of changing anything.

COUNCILMEMBER KING: Okay. Alright. Thank you.

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VICE-CHAIR HOKAMA: Thank you. Ms. Crivello, questions at this time?

COUNCILMEMBER CRIVELLO: No.

VICE-CHAIR HOKAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No, questions.

VICE-CHAIR HOKAMA: Thank you. Ms. Cochran, any questions?

COUNCILMEMBER COCHRAN: Yeah, Chair. I don't know. I just...the term "hotel" in this area really scares me. I mean I've seen them tear down a perfectly good Kapalua Bay Hotel, you know, and built up this huge thing. Montage, the Residences, you know, and so it, yeah, it's just really scares me to think. Lot of it needs to move out of the shoreline area and they could tear A and F out and just jack up everything all around it, just fill it all in with hotel, and I don't know. So what are they being...they're taxed right now on Residential or condo?

MR. ALUETA: Department's not aware of what they're tax rate is. Maybe Mr. Hart can...

MR. HART: It's Hotel.

MR. ALUETA: Hotel, okay.

COUNCILMEMBER COCHRAN: 'Cause then they're going to be Hotel, so then we're going to be either be taxed at Hotel if we change zoning?

VICE-CHAIR HOKAMA: They are taxed what is the actual use. So, today, I'm sure they're being taxed at the Hotel rate if that's the actual use, by the permit.

MR. HART: That's correct.

VICE-CHAIR HOKAMA: So they're being taxed as Hotel.

COUNCILMEMBER COCHRAN: Hotel or condo owner? They like more condos. I think it's technically a hotel use, is it?

MR. HART: It is...if I could, Chair?

VICE-CHAIR HOKAMA: Mr. Hart?

MR. HART: Jordan Hart. So Real Property Tax taxes you on what you're doing, not what's permitted. So, as an example, you could build a illegal home, like no building permits, they'll tax you for it. So this is operating as Hotel, it's being taxed as Hotel. And now this is legally permitted to operate as Hotel, but I'm just saying that just because they

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don't have Hotel-zoned tax, that doesn't prevent Real Property Tax from charging them Hotel tax.

VICE-CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, no, I just...anyways. There's no proposal today, but I guarantee you there's some proposal's going to come up soon.

VICE-CHAIR HOKAMA: Okay. Anyone else at this time has questions? Anything else, Department, you want to make comment on before we take up the proposed conditions?

MR. ALUETA: Just sorry for muddying the water.

VICE-CHAIR HOKAMA: No, no. We need to review this item and make decisions and allow all parties to move on. Okay, Members, if there's no questions for either the Department, your Chair...your temporary Chair or the applicant's representative, Mr. Hart, the Chair will at this time I have you first take a look at, staff handed out, a proposed condition 3 that was worked in coordination with the Department of Planning. This is their proposed language. And on the second line it should read, Shoreline Managed Retreat Plan; that would be the appropriate phrase. Okay. That would be on the proposed...so at this time, the Chair will entertain a motion to recommend to Council passage on first reading, be ordered to print, the proposed revised bills that's attached to Communication dated August 29, 2018 from the Department of Corporation Counsel. One, the Bill for an Ordinance to Amend West Maui Community Plan and Land Use Map from Single-Family to Hotel for Property Situated at Lahaina, Maui, Hawaii, and Identified as Tax Map Key (2) 4-3-003:015, for the Kahana Sunset AOAO; as well as a proposed revised 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 Map Key (2) 4-3-003:015, for the Kahana Sunset AOAO, allowing staff to make any non-substantive changes and allowing for all filing of appropriate communications.

COUNCILMEMBER COCHRAN: So move.

VICE-CHAIR HOKAMA: Okay. We have a motion.

COUNCILMEMBER SUGIMURA: Second.

VICE-CHAIR HOKAMA: Motion by Ms. Cochran, seconded by Ms. Sugimura. Okay. Members, the Chair is going to take up a motion to amend. Let's see. The two conditions are currently part of the motion, the main motion as submitted by the Department, Ms. Nakata?

MS. NAKATA: Mr. Chair, the two conditions are currently part of the revised Change in Zoning bill.

VICE-CHAIR HOKAMA: Okay.

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MS. NAKATA: The third condition handed out today is not.

VICE-CHAIR HOKAMA: Okay. Thank you for the updated status. Okay. So we're clear, on the motion currently, it has the first two conditions as we talked about, which was one, the hours of the public access; and I believe the second item was on the building heights shall not exceed 45 feet. Is there any questions or discussion on the two conditions, one and two at this time, Members? Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair? So I'd like to see if we can amend the hours of, you know, hours of the open and closure of those gates to just 24/7.

VICE-CHAIR HOKAMA: Okay.

COUNCILMEMBER COCHRAN: So I think that's...we have that opportunity here as decision makers to do that.

VICE-CHAIR HOKAMA: Yes, we do. Department, any comments to the adjustment proposal –

MR. ALUETA: No.

VICE-CHAIR HOKAMA: --to condition two?

MR. ALUETA: No, no comments at this time. Thank you.

VICE-CHAIR HOKAMA: Thank you. Mr. Hart, you have any comments you able to share with the Committee at this time on the proposed revisions to condition number two?

MR. HART: Thank you, Chair. Jordan Hart. You know, I did express concerns about personal privacy, the proximity to windows; and I would like, you know, the Department to...or not Department, the Council to consider that, you know, the Department of Parks and Recreation closes their facilities at night time for specific reasons to protect property and other justifications and I don't think this landowner's asking for anything beyond what the County Department already does on top of that. They are the ones providing the shoreline access to the general public for their use. Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you. Members? Ms. King?

COUNCILMEMBER KING: Yeah, I have a question. So, Mr. Hart, do you know of any other beach access areas that close at any specific time?

VICE-CHAIR HOKAMA: Mr. Hart?

MR. HART: I'm not sure. You know, these are project-specific scenarios that come up, so I don't know one that I could tell you right now.

COUNCILMEMBER KING: Okay. Thank you.

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VICE-CHAIR HOKAMA: Ms. King?

COUNCILMEMBER KING: Yeah, I just...I think the parks and the shoreline access are two different things, so that was...I just wondered if there was anybody else and then the...I don't...I'm not aware of any other shoreline access areas that close.

VICE-CHAIR HOKAMA: Thank you. Ms. Crivello, any questions on the conditions?

COUNCILMEMBER CRIVELLO: No.

VICE-CHAIR HOKAMA: Okay. Thank you. Ms. Sugimura, any questions on the proposal as presented?

COUNCILMEMBER SUGIMURA: So basically this is amendment, right, to keep it open 24...

VICE-CHAIR HOKAMA: Yes. She's asking to expand it to 24 hours.

COUNCILMEMBER SUGIMURA: So if our parks are closing at 7:30, I wonder why. And then for us to ask them, which is private property, to keep open 24/7. And I understand liability and concerns like that, I wonder if Mr. Hart has any concerns that he received from...

VICE-CHAIR HOKAMA: Okay. We'll ask if Mr. Hart is able to come down and provide a response, please.

MR. HART: Thank you, Chair. I don't think that, you know, it's a...there was a discussion we had with the Department regarding liability and how liability for access works, you know, whether or not there's a liability issue. I definitely think that there is a privacy and middle-of-the-night, you know, peace and quiet issue that they're concerned about. And then, you know, it was discussed. Responsible fishermen are not necessarily a concern. Concern is people who are not going to do, you know, things that are appropriate. And so if you have an open right of way down this property, the edge of this property where there never was one before, it just basically is a concern of the owners. So they did agree to provide shoreline access, and now, you know, it's being requested that that shoreline access be open 24/7. And I think that they're tolerant of daylight hours; and, you know, that's kind of the extent of it. I don't think that—how do I put it?—it's not unreasonable to think that somebody who previously had a relatively private side unit on the edge of a property is really looking forward to the potential for people to be coming down at any hour of the night in the middle of the night pass their property. Thanks.

COUNCILMEMBER SUGIMURA: So question for Corp. Counsel?

VICE-CHAIR HOKAMA: Yes?

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COUNCILMEMBER SUGIMURA: So then I'm just wondering then, if we require this to be open 24 hours, seven days a week, then does the County then have any kind of liability hearing what Mr. Hart has just said?

VICE-CHAIR HOKAMA: Corporation Counsel?

MR. GALAZIN: Thank you, Chair. I think when it comes to access to the shoreline, what really is the driver for it is going to be development when something occurs, I think it's—the Deputy Planning Director has mentioned on a couple of occasions today—the SMA, certainly these properties in the SMA, when something comes in, that's really the trigger, the nexus where you get something is being built, something is being changed and, at that point, we need to recognize and establish, you know, beach access through that. Right now, if you're just looking at a change in land use entitlements and nothing's being built right now, it seems as though the applicant is willing to abide by a proposed condition for, you know, 12-hour access to require 24-hour access just for a Change in Zoning could potentially be problematic. It's, you know, if they are okay with that, they would like to agree to that, that would be fine, and then the County wouldn't have the liability if it's something that they're voluntarily agreeing to. But if it's a condition we're proposing as a condition just a Change of Zoning when there's no development taking place, that would raise some possible concerns. I'd have to look into that a little bit more. But typically it would be when something comes in, when you're doing the development, then at that point you're changing something and you need to provide, you need to recognize those rights. You need to provide that kind of access. But if you're just, you know, writing different words on a map, that's something different.

VICE-CHAIR HOKAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you. Anyone else has a question either for Department or Mr. Hart? Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, I think that that's...it's not just a changing a word on a map, it's a huge thing. When you change Open Space to Hotel or some, you know what I mean, that's...oh, we just change o-s to h-o-t-e-l, that's huge, it's not just a word on a map on a piece of paper, there's implications, and there's implications here. You know, I think hours of operation. I mean there's...shoreline access is shoreline access. We are lacking all throughout West Maui. This is our opportunity. And if I recall walking through with Jacqueline, I don't...there was no time reference here. It was the beautiful path which you see, the nice, you know, stairway, nice walls, handrails, things of that nature. I don't recall us talking about gates and hours, ever. And now here it is and now the people are saying, you know, yet they're willing to let anybody just walk through their entire property any old time? Now here's a designated area that's meant for access for the public regardless if you're a fisherman or not. You know, how dare anybody judge someone on what they're...why they want to go to the beach? So I think, you know, you brought up Na Ala Hele and Aha Moku and this is part of the PASH laws, too, which we need to enforce I think and stand up for, and that's my reasoning for

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changing the hours. There should not be hours. There is no other cut off. There's all kinds of places all along heading north, can get access to the beach 24/7, and I've not...this County has never had a liability or issues with people. So I really see no difference here and I think it ought to be open for everyone at all times. I think there's no risk to us.

VICE-CHAIR HOKAMA: Okay. Anyone else? Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. You know, I would have consideration for the property owners because of the fact that they built the access. They spent \$65,000 at the request of the County, it sounds as though. And I recall in 2016 when these two conditions were proposed by Mr. Couch, the discussion of the hours were presented on the floor. And then the representative had requested an opportunity to bring that back to the board and discuss whether or not the board would consent to it, so then we would avoid the liability. The board has now, two years later, consented to the hours, and now because of the consent, the liability has lessened on the County. Now we're, two years later, are asking to extend the hours and on the floor itself without any notice, add an additional third condition. No wonder our private sector is fed up with how we operate our permit systems. This last notice stuff is for the birds. And basically, where's your leverage here? Where is our leverage as the County? They can operate and do what they've been doing since 1968 on a variance. What is your leverage here to push them to expand the hours? There's nothing. They can counter sue. They'll sue us right now. If I was Mr. Ing, I'd sue us if we add this into...add an additional 24 hours in there, because they can actually still operate under the 1968 variance. We got to work with the private sector here. They built the access, \$65,000. It's private property. I understand the accesses. But if you're going to put that...if you're going to apply it to this property single handedly, apply it to all of them across the board and make it an ordinance not a condition. Conditions can be sued on. Ordinances across the board, all along that shoreline, will stand up in court.

VICE-CHAIR HOKAMA: Thank you for that. Anyone else? Yes, Ms. King?

COUNCILMEMBER KING: I was just going to ask if –

VICE-CHAIR HOKAMA: Yes?

COUNCILMEMBER KING: --Mr. Hart had a reply.

VICE-CHAIR HOKAMA: Mr. Hart? You should give comment.

MR. HART: No, I wasn't sure...anyway. No, I think that we would like to try and keep it simple and get through this process just to...I mean just to state that. It's been difficult enough to get here. I did want to point out that the hours were a condition of this Committee, so that's not new. Those hours were recommended by this Committee. Those hours are...the board basically did draft...already sign a UA in the event that there was no additional conditions for those. So they've accepted that at this point. You know, anything else would go back to them for discussion, basically. Thank you.

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VICE-CHAIR HOKAMA: Okay. So I have a...I'll accept Ms. Cochran's proposal as a motion is there a second to her motion?

COUNCILMEMBER KING: Second.

VICE-CHAIR HOKAMA: Okay. There's a second to the motion to amend to increase the hours up to 24 from the current 12 hours as stated in the revised bill for an ordinance. Any further discussion, Members?

COUNCILMEMBER CRIVELLO: I have a question.

COUNCILMEMBER COCHRAN: Chair? Oh.

VICE-CHAIR HOKAMA: Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: So, Corp. Counsel, if I may ask this question?

VICE-CHAIR HOKAMA: Yes?

COUNCILMEMBER CRIVELLO: So if I'm hearing you right, if we put in this condition for 24 hours, we may or can be held liable should anything happen to whomever?

VICE-CHAIR HOKAMA: Corp. Counsel?

MR. GALAZIN: Thank you, Chair. And thank you for allowing me to clarify. The liability wouldn't be for personal injury to somebody. The liability would be, you know, at taking this challenge. But basically by this regulation, the private property interests that the property owners currently enjoy are being infringed upon without any further development going on. When any time that there is a regulation that's put in place to allow access, there's got to be, you know, a nexus in proportionality to some type of development, some impact and that you are mitigating. Otherwise, as Councilmember Guzman pointed out, you know, you could do that legislatively as a process for ordinance. But, as a condition just of zoning, I believe access would be something that would be dealt with through the SMA Permit process, because that's where they must consider what the impacts are and how to mitigate that. And, you know, shoreline access is one of the biggest things that all the planning commissions must consider. So the liability wouldn't be, you know, tort liability. And so thank you for allowing me to clarify.

VICE-CHAIR HOKAMA: Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. So the liability could be that the owners may take action upon the County for these kind of conditioning that they may not agree to.

VICE-CHAIR HOKAMA: Corp. Counsel?

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MR. GALAZIN: Thank you, Chair. So, yeah, that would be one liability, potentially; or the other would be that they don't agree to execute the unilateral agreement and they keep the entitlements that they already have and which means that they have no obligation to provide any access whatsoever.

COUNCILMEMBER CRIVELLO: Okay. Thank you. Thank you, Chair.

VICE-CHAIR HOKAMA: Okay. Ms. Sugimura? Okay. Anyone else? Ms. King?

COUNCILMEMBER KING: So, yeah, I think...I wanted to ask Corp. Counsel.

VICE-CHAIR HOKAMA: Yes?

COUNCILMEMBER KING: I mean I'm not sure where the liability comes in, because this has to go back to them to agree to; and if they agree to it, there's no liability because they've agreed to it. But the chance we take is that they say, no, we don't...we're not going to agree to this and so we'll just continue operating as we are. But then if they do that, one of the things that I was...that kind of bothers me about this condition is that it leaves the door open for them to build additional units as a Hotel District because it doesn't say you can't build additional units, it just says, the first units that you build have to be replacing and have to be part of a managed retreat. So I'm not sure I like that word "first" in there, but 'cause if you take that out, then it just makes it clear that it can't be additional density, to me, because that you're not allowing them to build anything that's not replacement. So that's one concern I had. But I mean the point that I wanted to make and clarifies that whatever we do today, whatever conditions we put in this, it's not a done deal until they agree to it. If they agree to it, then there's no liability on our part, is that correct?

VICE-CHAIR HOKAMA: Corp. Counsel?

MR. GALAZIN: Thank you, Chair. Actually, that is not technically correct. Under the Koontz decision, anytime that you propose conditions as a proposal to Land Use entitlements, whether or not they're agreed upon or whether or not they sign off on the Unilateral Agreement, that can still be...they can still grant a take in this claim. And that's whether it's monetary exaction, whether it's, you know, access. There's a whole variety of things. So that Koontz decision was the more recent one that amplified the null and dull and traditional rough proportionality and nexus test. So there would still be a possibility. I'm just...I don't know what the percentages is, you know, I couldn't give you the odds of how likely it would be they might succeed in such a case. All I'm trying to do is just bring it up as something for your consideration.

COUNCILMEMBER KING: So any condition we put on here, we're being liable, any additional conditions?

MR. GALAZIN: Any time you put...

COUNCILMEMBER KING: And this number, this third one is making us liable as well?

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MR. GALAZIN: Any time you put conditions, you have to think about what are the reasons for the conditions. And if the further field you get from what the intent is, I think the more that the County is exposed, that's all.

COUNCILMEMBER KING: Okay so, yeah, so, you know, my intent was to honor the condition of the Constitution that requires access for, you know, hunting and gathering and, you know, all the traditional Hawaiian practices, as you mentioned earlier, Chair. But I'm not sure, yeah, I mean I'm not really confused about any of these conditions because now you're telling us by putting conditions on here we're making ourselves liable because they're not trying to build anything new yet. But I mean, you know, to the earlier point made, if we do Change in Zoning that gives them a whole new outlook on life on what they could do with future building. So, to me, that's a fairly big tradeoff if we don't do this third condition, because then they could go up and out and, you know, they could continue to build density in there. They could redo buildings to have more units. They could turn 'em into hotel units rather than condos and then you'd have extensive density in there. I mean that's what I feel like we're giving them if we don't do this third condition, but I don't want to...but if you're telling us by adding this third condition now we're going to be liable 'cause we're making a new condition and they're not building anything yet. So I feel like we're kind of...it's kind of like a catch 22.

VICE-CHAIR HOKAMA: Corp. Counsel?

MR. GALAZIN: Thank you. And hopefully I can clarify this for you. What the applicant's asking to do is just ratify, through zoning, what is currently there. They...I've looked through the tax rolls, they were taxed...all these units have been taxed as Hotel for the last five or six years or so. I think they've all been taxed for 2018 as Short-Term Rental classification. But they have these units here, they are of certain height; and what they want to do is just go ahead change the zoning rather than work under this variance, Because, let's face it, that's not a great way to plan land use. It's, you know, what is the actual use there, let's go ahead and change the Community Plan and the zoning to reflect that. I think a condition there that says, well, if you have structures that are of a certain height, you want to allow them to change their zoning, but you want to keep that height restriction because that's what's existing there. There's a nexus there. There's something that you can tie to what the request is. But, you know, any time you put conditions, yes, there are...you do have to consider why are you putting this condition on. What is...what are you trying to accomplish. Certainly well aware of the Constitutional rights that, you know, or recognize it in the Constitution as well as, you know, in the PASH decision, and I think, you know, there was an SMA Emergency Permit was there that may have spoken to this recently. And, again, any development that is going to come through, yes, may process and access will be certainly established then. That doesn't necessarily preclude somebody from asserting that they have traditional access rights regardless of what the zoning is. That can...they can also be established, you know, through a court action. So there's a variety of ways to look at it. I don't mean to say that every time you put a condition you're exposing the County, but you want to look at what is the condition, why is the condition there, and what is it trying to accomplish.

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COUNCILMEMBER KING: Okay. So you're not necessarily advising against the condition 3?

MR. GALAZIN: That is correct.

COUNCILMEMBER KING: Okay. I just want to clarify that. Thank you, Chair.

COUNCILMEMBER CRIVELLO: Chair?

VICE-CHAIR HOKAMA: Okay. Ms. Crivello?

COUNCILMEMBER CRIVELLO: So I guess I need clarification from the maker of this condition. Is this for the traditional access for Native Hawaiians when we're talking about gathering rights, or is it just access for anyone? Because there's a difference, yeah. If it's for the traditional practices or the traditional gathering rights for the Native Hawaiians, I think that would have to be stipulated, because whoever wants access got to come up with the proof that they are of the Native Hawaiian, if that's how we're going to label it for the cause, for the purpose, because of the allowance that we have on the traditional gathering rights that involves with the Native Hawaiian. So I just need clarification on that part.

VICE-CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, it is for that, but it's also for public. So they can, as I understand, I guess now anybody can just traipse on through their property, they're all okay with that. So I think if this...this doesn't go through, there'll be some people going to go walking right through and you want to talk about less privacy or whatever you're talking about with this more access to this public beach. Access which is purposely built, cement walls as you're descending down, the walls get taller. You can't peak over, you know. And no one's talking about the Schweitzers on the other side, on the south side. They gave up a lot, too. It's not just these owners on the north side. So there's a lot of participants here. And I think, in the end, it is the community who is inconvenienced if you want to say. For many years, for generations, so that's what I'm trying to correct here, that's what I'm trying to get back to. This bay has been very privatized. So, you know, putting a time on this, I'm trying to lift that part, Chair. But I like the general, bigger picture. It should be across the board, yes, but we have this applicant in front of us. And, you know what, we're not taking, as far as I'm concerned. Boosting them up into a Hotel-zoned is way higher value than what they are today, and it's giving them way more uses, permitted uses in Hotel zoned, so there is no taking. They're being given a whole lot more value if this Change in Zoning goes through. That's how I look at it. So, Ms. Crivello, that's kind of my point, thank you.

VICE-CHAIR HOKAMA: Okay. Anyone else? So my one question to Corp. Counsel, I mean if we talking about access through this one property owner. To the north side you get Door of Church [*sic*], you got private properties - the McKelveys...you name all these old families. I guess someone could make a point that they can go through those properties too then for access rights. Doesn't matter who owns the land, but if there's an access

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they can go through anybody's land, is that right? I mean they're just talking about one hotel property, we're talking about anybody's private property.

MR. GALAZIN: Yeah, Chair, if there are established, you know, rights that have been exercised and historically and traditionally, continuously, then, you know, those can be recognized and should be recognized regardless of public, private ownership.

VICE-CHAIR HOKAMA: Okay. When we did the Constitution, was for a fair and equitable access. So what is good for these guys is good for all the property owners, too, regarding access. Okay. We have a motion on the floor, and it's proposed to amend by Ms. Cochran. Any further discussion on the proposed motion to amend? Okay. All in favor of the motion, say, "aye."

COUNCILMEMBERS: Aye.

VICE-CHAIR HOKAMA: Opposed, say, "no."

COUNCILMEMBERS: No.

**VOTE: AYES: Chair Hokama, and Councilmembers Cochran, Crivello, and King.**

**NOES: Councilmembers Guzman and Sugimura.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Chair Carroll, and Councilmembers Atay and White.**

**MOTION FAILED.**

VICE-CHAIR HOKAMA: Okay. Motion is defeated. We still have the main motion on the floor, which includes the two conditions as currently standing, the twelve hours on the conditions which says, public shoreline access. And then under condition one, no building shall exceed 45 feet in height. No, the Department is recommending a third condition. You have copies of that. The condition as proposed by Department states three, that any future unit shall first consist of replacement units as part of a shoreline managed retreat plan approved by the Department of Planning. All replacement or additional units shall comply with H-M Hotel District development standards as modified by these conditions of zoning; that is the recommendation number three from the Department. Is there any motion to amend to consider --

COUNCILMEMBER KING: Chair?

VICE-CHAIR HOKAMA: --addition to...Ms. King?

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COUNCILMEMBER KING: I'd like to make a motion to amend Condition 3. Do we need a motion for Condition 3 first?

VICE-CHAIR HOKAMA: I just need a...yeah. You're going to make the motion to amend?

COUNCILMEMBER KING: Yeah.

VICE-CHAIR HOKAMA: Okay. There's a motion to amend to add Condition 3.

COUNCILMEMBER SUGIMURA: Second.

VICE-CHAIR HOKAMA: We have a second by Ms. Sugimura. Ms. King?

COUNCILMEMBER KING: Chair, yeah, I'd like to make a motion to amend Condition 3.

VICE-CHAIR HOKAMA: Okay.

COUNCILMEMBER KING: Just to remove the word "first," and the words in the second sentence, "or additional" so that it would read, any future units shall consist of replacement units as part of a shoreline retreat plan approved by the Department of Planning...or shoreline managed retreat. All replacement units shall comply with H-M Hotel District development standards as modified by these conditions of zoning. And if I can get a second, I'll explain.

VICE-CHAIR HOKAMA: Okay. We have a motion to amend the amendment. Okay. Seconded by Ms. Sugimura.

COUNCILMEMBER KING: Okay. And then, Chair, I think this makes it more specific that we won't be increasing...that we're not approving any increased density so that...the way it reads right...without the amendment, it allows for additional units after the replacement units. So, this way, it just stays the same density.

VICE-CHAIR HOKAMA: Okay, thank you. Department, any comments at this time?

MR. ALUETA: I'm sorry, can you repeat that question please, Chair.

VICE-CHAIR HOKAMA: You have any comments on the proposal by Ms. King on condition three?

MR. ALUETA: No. We initially made that in our initial draft in discussions with the applicant. I had later modified it to include the potential for additional units as allowed under the zoning. Again, as to sweeten the pot, sort of say, so that it would entice them more to try to do a shoreline retreat rather than maintain a status quo, and that was the intention, is that it has to become economically financial...feasible for any type of shoreline retreat. Currently, it is our understanding that there are 22 units potentially would be up for some type of managed shoreline retreat. That would be the units that we're looking at right now. But, again, the initial...that was their initial then just to do

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replacement; however, I recognized the economic feasibility of such a standalone plan and that's why we had made the modifications to the condition three, to include...allowing for additional units as allowed under the zoning.

COUNCILMEMBER KING: Okay. But this would be a condition that would not allow that.

MR. ALUETA: That is correct.

COUNCILMEMBER KING: So, Chair, if I may, just wanted to just remind the Department that we're, you know, got a resolution that was passed out of Committee, still has to pass the full Council but we're looking at...this whole area is part of the sea level rise issue. So allowing additional...I mean we're making a commitment to not allow any additional development in sea level rise areas with the understanding that those are going to be in great peril and within a matter of a couple of decades. So, you know, I think it's pretty reasonable to stick with whatever replacement they have right now and not encourage them to go with additional units. So anyway, that's my proposal.

VICE-CHAIR HOKAMA: Thank you for that. Mr. Hart, any comments? Quickly.

MR. HART: Thank you. Two comments. The first one is that I think that it's necessary to identify the extent of the managed retreat plan, just because these buildings are wooden, so at some point, the other buildings will need to be replaced just because of their life cycles. So being able to delineate when they've satisfied the managed retreat component of it, at least from where we're at now, I think would be helpful, prevent confusion in the future. And the other thing I wanted to point out is just there was a comment almost as if the shoreline access was up in the air at this point. I do want to point out that there's a SMA Permit condition for the shoreline...the shoreline access is being provided and there's a condition that it be provided, so it's not as if that condition goes away that somehow they're going to stop providing that access. The issue that was at question that was brought up by the Committee was hours of operation. Thank you.

VICE-CHAIR HOKAMA: Okay. Thank you for that. Members, any discussion on...yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: So to clarify, Mr. Hart? Layman's terms on condition number three of the association or the homeowners would be in your opinion, okay with this?

MR. HART: Oh, I'm not...

COUNCILMEMBER GUZMAN: Because usually when we add on conditions, we ask the applicants -

MR. HART: Sure.

COUNCILMEMBER GUZMAN: --on the floor whether or not they're okay, and I think we've always said that, are you okay with this? And so I'm asking you, as the representative, do you believe this would be okay with the...

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MR. HART: Certainly I think that not identifying when they've satisfied their managed retreat obligations, so that they could like replace any of the mauka buildings that are made out of wood and almost 50 years old at this point. I think that that's an immediate confusing issue that probably wouldn't be acceptable. But as far as the overall, I'm just not in a...I'm not authorized to accept conditions from them that could, you know, limit their property or anything like that.

COUNCILMEMBER GUZMAN: So if you were to take this condition three back to them for discussion –

MR. HART: Sure.

COUNCILMEMBER GUZMAN: --how much time would that take? Would that...and the reason why I'm asking that is because this has already gone through two Councils.

MR. HART: Sure...

COUNCILMEMBER GUZMAN: And it could possibly go to three. And to have this discussion again in the new third Council, you're going to...it's going to just prolong everything longer.

MR. HART: Sure.

COUNCILMEMBER GUZMAN: So, I'm just...

MR. HART: If I could, Chair? I completely understand the situation. It's just the nature of property ownership. It's a condominium complex with 79 unique individuals who own land and they elect a board. And so different people have different opinions and so I mean in that context, we'll have to take it back to them. I hope we have engagement and we'll bring it back as quickly as we can. But as far as...they're having a meeting towards the end of this month. So they'll have the opportunity to get together and discuss it. I hope that they will accept, you know, any of the conditions that are put forward and we can move forward with this. I do want to reiterate that I think that this is an incremental process. You know, it's completely understood that this property faces shoreline erosion. They will be back to the Planning Department for SMA permits quite frequently, I'm sure. I mean in the long term. So I think getting them into the Hotel zone cleans up the land use designations. It doesn't, you know, continue a property to operate as a hotel on a variance on Single-Family land for, you know, 50 years. We can clean that up. And it also facilitates the discussion of managed retreat. But I think that if we get hung up here and they don't do the Change in Zoning then they continue to operate on a variance, they continue to try and protect their structures as they currently have the legal right to do, and then there's a potential conflict that happens between the landowners and the County in the future. But if we can kind of incrementally move forward and create a path for them to react and do something, I think that this can, you know, unwind itself. But if we kind of burden it down to the point where they can't, you know, adopt or at least record the Unilateral Agreement and

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accept the Change in Zoning, then we're just, you know, we didn't move anywhere after all of this.

COUNCILMEMBER GUZMAN: And, Chair, I guess my concern was, back in 2016, we...Mr. Couch brought forward two conditions, and we gave the opportunity for Mr. Hart to bring those back, two years later, we add on another condition. So when will it end, when they come back again? And it could be in the next Council, and we put another condition on, I don't know. Thank you very much. That's just my two cents, thank you.

VICE-CHAIR HOKAMA: Okay. Further discussion, Members? Ms. King?

COUNCILMEMBER KING: Chair, yeah, I understand the frustration but I also think that, you know, in the last two years, climate change and sea level rise has become, you know, front and center and this is what we're going to be going through a lot with future coastal developments and erosion issues. And so...and to me, also, the amendments are in line with what the client is claiming in their presentation where they say, there's no intention of expanding the number of units. So we're not asking them to do...to...we're just asking them to qualify that statement by keeping the same number of units. So and that's what my intention is for my amendment.

VICE-CHAIR HOKAMA: Okay. Thank you for that. Any other discussion, Members? Corporation Counsel, so this amendment in no way restricts or takes any of the private property owners' ability to utilize the property in a legal manner?

MR. GALAZIN: Chair, are we talking about the condition as it's written or are we talking about...

VICE-CHAIR HOKAMA: As proposed.

MR. GALAZIN: As proposed, no. Just sort of sets forth the standard that...if there's going to be any development on the property, it's going to first deal with, you know, managed retreat before they can even come in to apply for some other kind of development. And then they would still need to comply with development standards as modified by the conditions of zoning with the height restriction in there.

VICE-CHAIR HOKAMA: No, but Ms. King is saying, now take out the additional units.

MR. GALAZIN: To take out additional units, you know, that's...

VICE-CHAIR HOKAMA: So we telling the property owner, you cannot improve your property anymore.

MR. GALAZIN: Yeah, and so thank you, Chair. I think what the consultant is trying to say is that the way that that language could be interpreted, it's a little vague in that...does that mean if they were to try and, you know, take some of these older buildings and go ahead and reconstruct them, that this condition would somehow deter them from doing

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so. That is a possibility. I mean this is language that I just saw for the, you know, the first time this afternoon and we've been trying to massage it, you know, during discussion. So I can see the applicant's position that just saying, you know, that you can only do replacement units, period, could pose a problem.

COUNCILMEMBER KING: Chair? Chair, I don't think that's what he was saying. I think he...what he was worried about were the words that are already in here about a shoreline managed retreat not being defined.

VICE-CHAIR HOKAMA: Okay. I'm asking my question.

COUNCILMEMBER KING: Okay.

VICE-CHAIR HOKAMA: I don't care about your guys' questions right. I'm concerned about my question. My question was about the additional units, is that a taking potential?

MR. GALAZIN: Chair, potentially.

VICE-CHAIR HOKAMA: If they can prove that within the standards of the district it's permitted, and we say, no, upfront, is that not taking?

MR. GALAZIN: So, Chair, thank you. It is potentially if you're going to look at changing this to Hotel zoning, but then telling them they can't build any other structures beyond what's already there. I think that poses less of a potential problem, because what you're trying to do...what the applicant's representing is that they just want to get the land use entitlements to reflect what is currently on the property. I think it would be within your purview to go ahead and allow it to be changed to the Hotel zoning, change the Community Plans so that they can get SMA Permits that are consistent with both the Community Plan and zoning but still put a limit on the number of structures that they can put on. That would pose less of an issue from a legal point of view.

VICE-CHAIR HOKAMA: Okay. Thank you for your comments.

MS. NAKATA: Mr. Chair?

VICE-CHAIR HOKAMA: Ms. Nakata?

MS. NAKATA: Staff's understanding is that the scope of Councilmember King's proposed amendment to condition 3 would be two part: first to remove the word "first" from the first sentence and second to remove the phrase "or additional" from the second sentence, is the correct?

VICE-CHAIR HOKAMA: Correct. Okay, Members, any questions? Are you clear on the motion to amend as presented by Ms. King? Any need for clarification? If not, all those in favor of the motion as presented by Ms. King, please say, "aye."

COUNCILMEMBERS: Aye.

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VICE-CHAIR HOKAMA: Opposed, say, “no.”

COUNCILMEMBER SUGIMURA: No.

COUNCILMEMBER GUZMAN: No.

**VOTE:       AYES:   Chair Hokama; and Councilmembers Crivello, Guzman, and King.**

**NOES:       Councilmember Sugimura.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Chair Carroll; and Councilmembers Atay, Cochran, and White.**

**MOTION FAILED.**

VICE-CHAIR HOKAMA: Okay. Chair rules motion as defeated. Okay. So still yet, are we going to consider condition three? So that’s what’s before you now and the motion to amend. Do you still want any...this current proposal as submitted by the Chair for the Department or you folks do not want to have this included in the zoning ordinance? Any further discussion? That’s the vote we’re going to have now, whether we’re going to include condition three as submitted by the Department. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: As clarification –

VICE-CHAIR HOKAMA: Yes?

COUNCILMEMBER SUGIMURA: --we don’t include it, right?

VICE-CHAIR HOKAMA: Currently it’s not included, yes.

COUNCILMEMBER SUGIMURA: Yes, okay. So if we...except...but if we do not accept this, I just want to just be clear that if any new development...any changes to this project, that they will have to come and apply for permits or go through the process. So it’s not like they would be able to not do these things. But this is just for clarification the Department wanted this to be sure that they do come back.

VICE-CHAIR HOKAMA: We’ll have Mr. Buika...but my understanding from the Director is this is one of their tools to help move managed shoreline planning forward. That’s my understanding that this is an enticement so that other property owners will join the County in a managed project program.

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MR. BUIKA: Right, correct, Chair.

VICE-CHAIR HOKAMA: Mr. Buika?

MR. BUIKA: Yes, correct. It would first require that the at-risk units be decommissioned, I guess, for something new that would be created. So we would not be able to create additional units above and beyond their 79 units until I guess these first...I guess there were 22 units in Building A and F.

COUNCILMEMBER SUGIMURA: Okay.

MR. BUIKA: So that's how that would work.

VICE-CHAIR HOKAMA: Okay. Ms. King?

COUNCILMEMBER KING: And then...

MR. BUIKA: Yeah, I think...

VICE-CHAIR HOKAMA: Yes, Mr. Buika? Yes?

MR. BUIKA: Joe was saying that they can repair their existing units so is that issue of the wooden structures needing repair. They could...this references any future units, right, any new future units that would be constructed, that would need to come in for an SMA Permit.

VICE-CHAIR HOKAMA: Okay.

COUNCILMEMBER KING: So...

VICE-CHAIR HOKAMA: Hold on, hold on, hold on. Okay. You okay?

COUNCILMEMBER SUGIMURA: Yeah. Fine, fine.

VICE-CHAIR HOKAMA: Okay. Ms. King and then Mr. Guzman.

COUNCILMEMBER KING: Okay. So if we're leaving in the additional units, then we're assuming that there is going to be increased density in this area at some point, that's what that was meant to do, right, like you said -

MR. ALUETA: Correct.

COUNCILMEMBER KING: --sweeten the pot. So we're allowing them to build additional units which I don't think should happen given their statement of intent and also their location in the inundation zone. But if they were to try to build additional units after they satisfied the Department of Planning's shoreline managed retreat program

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qualifications, then they do have to come back to the Council for additional use or are they allowed to just build because they're Hotel zoned?

VICE-CHAIR HOKAMA: Director?

MR. ALUETA: I'm not sure how the...if the condition is staying the same as is written, right, they would only need an SMA Permit. If you're removing the ability to add additional units above what is existing and the only new units would be the ones that are replacement units, then yes, that would cap their unit count at the project any new units would have to become...would have to come back for an amendment to this condition.

COUNCILMEMBER KING: Okay. But the way that it is now since the amendment didn't pass, it's out of our hands. So that's where my concern comes in because now they're a hotel, and we've given them the ability to put in additional units and we don't have any oversight over that any point in the future.

MR. ALUETA: That is true in the sense that the oversight is the zoning itself. So the H-M zoning district is your conditions of zoning along with the limitations on the height, which is a key factor in this development. So and they would still be subject to the SMA.

COUNCILMEMBER KING: Right. But we don't have anything to do with...

MR. ALUETA: So, conditions, you do not have control over that...

COUNCILMEMBER KING: Right.

MR. ALUETA: The Planning Commission would be exact what conditions they need to satisfy the Coastal Zone Management Program.

COUNCILMEMBER KING: Yeah, okay. So, yeah, I don't...yeah, that's the unintended consequence I'm worried about, Chair, by granting that Hotel zone.

VICE-CHAIR HOKAMA: Okay. Thank you for your comments. Anyone else, Members? Okay. Department, any last comments? No? Done. One last ability, Mr. Hart, any last comment?

MR. HART: I know the motion is not on at this time, but what I was trying to explain is that you might be freezing these buildings so that they couldn't reconstruct the building. So what I was saying is if you're going to talk about managed retreat, to the best of our ability at this time, it would be nice to identify what that means so they don't need to come back for a Change in Zoning as an example if they wanted to demolish and reconstruct one of the back buildings after they had already accommodated their managed retreat obligation, so as I was trying to explain. Thank you.

VICE-CHAIR HOKAMA: Okay. Mr. Buika?

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MR. BUIKA: Thank you, Jordan and Chair. The shoreline retreat plan would be approved by the Department of Planning; so we're not doing it on the floor right now, but there is that requirement for the...approval by the Department of Planning so that could be negotiated at 22 or those two buildings upfront, which is kind of the intention. I think right now is to get those two buildings out of the shoreline as the managed retreat plan. And so it's not exact, but it would be subject to the approval of the Department. Did that help?

MR. HART: I think the Department's intent in the minutes is, you know, I think you guys understand what I'm trying to say is that, you know, it's an incremental process, they'll be at the Planning Commission many times; so I just would like to prevent a situation where they would need to come and do an additional Change in Zoning to make minor adjustments as a result of this condition. Thanks.

VICE-CHAIR HOKAMA: Okay. Thank you for those comments. Okay, Members, there is a motion to amend on the floor. Any questions, any need for clarification? This is again, regarding whether condition three as proposed by the Department will be included in the Change in Zoning and the Community Plan ordinance proposal. Yes, Ms. Sugimura?

MS. SUGIMURA: Based upon what Mr. Hart said and future clarification, I wonder if the Department has a comment regarding that just so that the landowner doesn't have to come before us because they don't quite, you know, it's not clear enough. And so I wonder if the Department can provide that clarity so that the property owners...

VICE-CHAIR HOKAMA: Department, any comments?

MR. ALUETA: I'm trying to get clarity on what the concern is at this point as far as the managed retreat part. And the intention of this condition is that when we want to incentivize them to build new units outside, new additional units, and maybe that should be clear, but new additional units outside the shoreline area that would be replacement units for the ones along the coast...shoreline. The intention is not to have that...at least not on the zoning side, is that managed retreat program be part of any reconstruction at this point. So if they have an older building that needs to be repaired and maintenance, then not...would not be a condition of this zoning. Whether or not the SMA, the Commission would require some type of shoreline management plan or retreat plan during an SMA Permit is a different matter.

MR. HART: Chair, if I may?

VICE-CHAIR HOKAMA: Mr. Hart?

MR. HART: That's what I was trying to explain. Let's say they've fulfilled their managed retreat obligation, but they want to demolish and rebuild one of the back buildings in 40 years, you know, I'm not talking about repair and maintenance, I'm talking about like if they want to level one of their existing buildings and rebuild it or move it or whatever they might want to do under their permitted zoning, I just want to clarify how it's established

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that they fulfilled their managed retreat obligation rather than, you know, let's say there's some sort of difficult interpretation and the managed retreat continues to slide uphill and they never fulfill their managed retreat obligation, like how do you...how do they, as landowners, establish when they've checked off their obligation and then they can start to function relatively independently. Now, understanding that they always need to come into the Planning Department and get an SMA Major Permit from the Planning Commission before they can do anything. So there's an opportunity for the Planning Department and the Commission to revisit these things; but if we're going to make it a condition of zoning, it would be nice to at least, for the foreseeable future from where we're at right now, identify when they've fulfilled their obligation in this specific context.

VICE-CHAIR HOKAMA: Department?

MR. ALUETA: Thank you, Mr. Chair. I guess...from our standpoint right now we consider there'd be 22 units and they're identified...and that's my understanding, there's 22 units in Building A and Building F, and those are the two units, the two structures that we have our most concern for.

MR. HART: That reflects our conversation this morning, but it's not in the condition as far as I've noticed.

MR. ALUETA: Okay, so...

VICE-CHAIR HOKAMA: So, Department, is there a issue that the condition will not provide what we...our intentions are?

MR. ALUETA: And that can be identified in the plan that is developed. We can identify those buildings. And then once those, in that plan, and then we can...Department can, when we work on that, but with the...approved by the Department we can put a closing, 'cause that's the intention at this point.

VICE-CHAIR HOKAMA: Okay. Anything else, Members? We have a motion to amend on the floor, referred to the Department, referred the representative. Okay. All in favor of the motion to amend, say, "aye." Those opposed, say, "no."

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**VOTE:           AYES:   Chair Hokama; and Councilmembers Crivello, King, and Sugimura.**

**NOES:       Councilmembers Guzman.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Chair Carroll; and Councilmembers Atay, Cochran and White.**

**MOTION FAILED.**

VICE-CHAIR HOKAMA: Okay. At this time, motion is defeated. Condition three is not included into the proposed ordinance. I would tell the Staff, though, to please make sure in the Committee Report the discussion regarding the shoreline managed retreat area plan is well documented and with appropriate narrative.

COUNCILMEMBER SUGIMURA: Chair?

VICE-CHAIR HOKAMA: ‘Cause I think is an important point we need to work on. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So the Departments, by what, the Departments, so they’re going to be working with them, right, regarding this?

VICE-CHAIR HOKAMA: This doesn’t exist.

COUNCILMEMBER SUGIMURA: Oh.

VICE-CHAIR HOKAMA: We didn’t vote it in.

COUNCILMEMBER SUGIMURA: ...that’s right.

VICE-CHAIR HOKAMA: So this don’t exist, and that’s why I’m saying, I want it in the Committee Report of our discussion, because I think it is still important enough to move forward regarding potential general policy. So I’d like it to be mentioned that we had a discussion and that we still feel there’s merit to this subject. Okay. We are back to the main motion as amended, which is to move forward the two proposed revised bill for an ordinances to Council for first reading, be ordered to print. Is there further discussion on that motion? Ms. King?

COUNCILMEMBER KING: Chair, I’m just really not comfortable. I would move to defer this, because I don’t...I think there’s unintended consequences with this Hotel zoning. Without that statement and I do agree that that’s a very important statement about

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managed retreat and maybe the Department needs to define that a little bit better, but I'm not ready to vote in favor of it at this point. Thank you.

VICE-CHAIR HOKAMA: Okay. Understood. And, again, we all can...bare minimum quorum; so, you know, Ms. King, thank you for saving your intentions; therefore we won't have sufficient support to make a recommendation. However, I will talk to Chairman Carroll, because I do believe we need to make a final determination and one of the things I'll recommend to Chairman Carroll is to have this item discharged by the Council for final action on Council floor. Okay. With no further business before this Committee, thank you very much all of you who've attended. With no objection, this item will be deferred.

COUNCILMEMBERS: No objections.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: AA, RC, EC, MW)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

VICE-CHAIR HOKAMA: Okay. Item is deferred and this meeting is adjourned. . . .(gavel). . .

**ADJOURN:** 5:05 p.m.

APPROVED:



RIKI HOKAMA, Vice-Chair  
Land Use Committee