

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

November 15, 2018

Council Chamber, 8th Floor

CONVENE: 9:30 a.m.

PRESENT: Councilmember Kelly T. King, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Elle Cochran
Councilmember Stacy Crivello (in 9:32 a.m., out 10:52 a.m.)
Councilmember Don S. Guzman (in 9:57 a.m.)
Councilmember Riki Hokama (out 12:13 p.m.)
Councilmember Mike White (in 10:25 a.m.)

NON-VOTING MEMBERS:

Councilmember Alika Atay

STAFF: Traci Fujita, Legislative Attorney
Leslee Matthews, Legislative Analyst Trainee
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.: Michele McLean, Planning Director, Department of Planning
Jeffrey Dack, AICP Senior Planner, Department of Planning
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Paul Janes-Brown (PC-22, PC-23)
Aaron Placourakis, President/CEO, Sarento's on the Beach (PC-22)
Dan Blessing, President, Island Cream Company (PC-23)
Abe Galan (PC-23)
Vernon Kalanikau, Po`o for Kula Kai, Aha Moku Council Kula Kai (PC-22)
Ke`eaumoku Kapu, CEO, Aha Moku O Maui Inc. (PC-22)
Isaac Hall (PC-22)
Albert Perez, Executive Director, Maui Tomorrow (PC-22)
Pat Borge (PC-22)
Bernie Bays (PC-22)
Mark Joiner (PC-22)

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Sandra Brown, Property Manager, Festival Management Corporation (PC-23)
Toni Killeen, Vice President, The Festival Companies (PC-23)
Kerry Ringrose, President, Pacific Sign and Design (PC-23)
Victoria Kaluna-Palafox (PC-22)
Laurie Householder Mehler (PC-22)
Tyson Au (PC-11, PC-22, PC-23)
Kaniloa Kamaunu, Aha Moku O` Wailuku (PC-22)
Livit Callentine (PC-22)
James Buika (PC-22)
Michael Wildberger (PC-22)
Erika Lechuga DiSalvo (PC-22)
Autumn Ness (PC-22)
Jordan Hart, Chris Hart and Partners, Inc. (PC-22)
Tyler Hofinga (PC-22)
Bonnie Newman (PC-22)
Wayne Nishiki (PC-22)
Kai Nishiki (PC-22)
(6) additional attendees

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

CHAIR KING: . . .(gavel). . . Good morning, it's 9:30. I would like to call this Planning Committee of the Maui County Council meeting to order on November 15, 2018. Apologize for the late start, we were waiting for several Members who announced they would be late. And right now we have...first of all, ask everyone to silence your cell phones or any other noisemaking devices. In the room we have, well, myself, Kelly King, Chair of the Planning Committee. And I want to introduce Member Riki Hokama first because he's been sitting there the entire time, so thank you for being here on time. Member Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR KING: Thank you. And Vice-Chair Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Aloha, Chair.

CHAIR KING: We are still waiting for other Members who said they would be late, are Stacy Crivello, Don Guzman and Mike White. And today with us we have non-voting Member Alike Atay, thank you for being here --

COUNCILMEMBER ATAY: Good morning, Chair.

CHAIR KING: --appreciate it. And the Administration, we have Department of Planning Director, Michele McLean.

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MS. McLEAN: Good morning, Chair.

CHAIR KING: Good morning, aloha. I've got, is Joe Alueta here? I've got him on the list.

MS. McLEAN: He'll be here for the third item.

CHAIR KING: Okay. And we're also expecting David Raatz for a later item. Jeffrey Dack is here, Planner VI, out there, somewhere I saw Jeff out there. Okay, and we have, our Corp. Counsel is Michael Hopper this morning, thank you for being here. And then we have our Staff, Traci Fujita, our Legislative Attorney, thank you for being here. And Rayna Yap, our Committee Secretary, thank you for being here. And Leslee Matthews, who is our Legislative Analyst Trainee, thanks for being here. Actually, she's catching on so I think you're quickly over passing the title of trainee, so great job. I want to thank my staff, Susan Foley, Kate Griffiths and Terra Foti for their behind-the-scenes work. And we also have a designated resource person. Members, I would like to designate Jordan Hart as a resource person pursuant to Rule 18(A) of the Rules of the Council as he is a consultant for the applicant for the second item on our agenda. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR KING: No? Okay. So, Members, we have three items on today's agenda. We have PC-11, the Transient Vacation Rental Enforcement; PC-22, Community Plan Amendment and Conditional Permit for Maui Oceanfront Inn and Sarento's on the Beach Restaurant in Kihei; and PC-23, Amending Chapter 16.13, Maui County Code, Relating to Commercial Signs. The latter of these two were designated to the Planning Committee from the Land Use Committee because of the overabundance of items for the Land Use Committee, and so we will begin with testimony. And I want to begin with public testimony this morning for whoever needs to testify first and needs to leave but I also want to leave the option, we're going to leave testimony open for other agenda items because PC-22, the community plan amendment and conditional permit for the Maui Oceanfront Inn and Sarento's on the Beach we'll be having a presentation. So anybody who signed up to testify who would like to defer until after they see the presentation is welcome to do so and we will not close testimony after the morning session. So, if we call your name, if you're on the list and we call your name and you prefer to wait, just let the clerk know that you prefer to wait 'till after the item. Okay, so let's begin with our outer offices. Do we have any testimony from Hana, Dawn Lono?

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

CHAIR KING: Okay, thank you. Ella Alcon in Molokai?

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

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CHAIR KING: Okay, thank you. And on Lanai, Denise Fernandez?

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

CHAIR KING: Okay, thank you. We will check back in with you later in the morning and we'll go ahead and start with our testimony. So, for folks who are not signed up, you can sign up in the lobby, in case you don't know. We have three minutes for testimony and when you get to the podium you'll see the green light go on and then when there's 30 seconds left, the yellow light goes on, and then when your three minutes is pau, the red light will go on. So, we're gonna go ahead and start.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. MATTHEWS: Thank you, Chair. Our first testifier signed up to testify is Paul Janes-Brown, testifying on PC-22, to be followed by Aaron Placourakis.

MR. JANES-BROWN: Also 23.

MS. MATTHEWS: And PC-23.

MR. JANES-BROWN: Aloha kakahiaka, Madam Chair --

CHAIR KING: Aloha.

MR. JANES-BROWN: --esteemed members of the Planning Committee. My name is Paul Janes-Brown. I am a 21-year malahini. My grandsons were born here and I am coming to you in their behalf. Here on Maui we have I think one of the most democratic planning systems anywhere. It starts in the neighborhoods, in the community, and percolates up to you, the ones who we have entrusted with the future of this place. Today, you're going to be having an opportunity to prove that trust. The Kihei-Makena plan is an excellent plan that took many years to develop. There's a new plan that's coming soon. This item needs to be at least postponed, if not defeated immediately. Malama aina means to take care of this place. We are privileged, I am privileged, I am honored to be embraced to have the experience of being in paradise before I die. This place is special. The reason...when you say Maui to anybody anywhere, I've travelled in the world, I say I live on Maui, their eyes brighten. Everyone has an idea of Maui. Maui is on everybody's bucket list. But enough already, in the immortal words of one of our esteemed councilmen, nuff already. Look at the traffic, look at the number of people who are coming here. We have enough hotels, we have a terrible problem with vacation rentals, the time is now to put up the sign, no vacancies. That is your responsibility. Honor the community plan. Do not amend it. Do not allow pernicious developers to circumvent the democracy that we have established. It's time to say no to money and yes to the people. It's time to give us the opportunity to have the place that we love, the way we love it. The kanaka have

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reemerged. We celebrate that reemergence. We need to follow it. We need to listen to them. We need to malama aina. Mahalo.

CHAIR KING: Committee members, any questions? I have a question, Mr. Janes-Brown. So, I'm not sure exactly what you're opposing because there's a small hotel that's there right now.

MR. JANES-BROWN: Yeah, I'm opposing the amendment.

CHAIR KING: But what is your understanding of what the amendment would do?

MR. JANES-BROWN: As far as I know, the amendment is going to give 'em a parking lot and it's going to change from Single-Family to Hotel.

CHAIR KING: Okay, but the hotel is already there, you understand that?

MR. JANES-BROWN: Yeah, I know, that's too bad. It never should've gotten there but, you know, I don't think you should change it --

CHAIR KING: Okay.

MR. JANES-BROWN: --to allow for more hotels.

CHAIR KING: No, we're not doing that.

MR. JANES-BROWN: Yeah.

CHAIR KING: Okay, thank you.

MR. JANES-BROWN: That would be a bad idea.

CHAIR KING: Thank you.

MR. JANES-BROWN: The second I wanted to talk about is number 23 on your agenda. And essentially all I want to say about that is that one of the beauties of this place is that, you know, we don't have any billboards and you can drive around and you're not like inundated with visual pollution except during our quadrennial election time. And I wish that the candidates for Council and the Mayor would also obey the signage responsibilities that our County has laid out. The visual pollution from the last go round was abominable and I think that we have to be a little bit more sensitive to the needs of the people as far as visual pollution goes. And that's all I have to say about that.

MS. MATTHEWS: Our next testifier is Aaron Placourakis, to be followed by...testifying on PC-22, to be followed by Dan Blessing.

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MR. PLACOURAKIS: Aloha. Thanks for giving me the opportunity. And as the gentleman so nicely said, Maui is a place that I didn't just come up with an idea to come here and see if I can make some money. This is a place that I love and I feel it and I taste it and I smell it and it's just part of me and this is where I choose to raise my family and do business. I've had the restaurant on the beach, gonna be almost 19 years, and for the last 18 we've had to, every year try to get a temporary extension because we have no certificate of occupancy. Now it's, you know, I have 70 employees that are dedicated to this community. We're not just a restaurant. It's, you know, Sarento is my grandfather, he was my idol. When he passed, when I was 18, I always said, someday I'm going to have a tribute to him and that's what that place is. And for these 18 years, we've been able to employ, right now, 70 people and have been a big part of this community and we will want to continue to do that. It would really be helpful though to be able to get that permanent certificate of occupancy because every year I'm going right down to the last week, last day, we have a lot of commitments and December 31st is when it expires every year, and it seems like it's right down to the wire and makes it pretty frustrating to be able to continue to do business and book pre-parties and have all these employees that are depending on us to have this business and it makes it really tough. So, that's the main purpose of us being able to try to keep this and get this permanent certificate of occupancy 'cause what I've seen on that property, what we've done and being a part of that, it's not about the parking. That parking has been there, there's actually, the plan that I think you'll be able to see is super fair and actually increases the availability of public parking and makes it access. I know for a fact there's not any plan to do any kind of development other than maintain what we have. And for me to be able to continue to do business, I need to have that permanent certificate of occupancy. But thanks for your time and thanks for all the years of extending that extension. So, hopefully I won't have to beg for it again this year, but I'm willing to if I have to, I'm getting good at it. Any questions?

CHAIR KING: Committee members, any questions? Seeing none, thank you for your testimony --

MR. PLACOURAKIS: Thank you.

CHAIR KING: --and for being here.

MR. PLACOURAKIS: Mahalo.

CHAIR KING: And the Chair would like to recognize Stacy Crivello, Member Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR KING: Good morning. Next testifier?

MS. MATTHEWS: Our next testifier is Dan Blessing, testifying on PC-23, to be followed by Abe Galan.

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MR. BLESSING: Hello, my name is Dan Blessing. I'm the owner of Island Cream Company in Lahaina and I'm here today to support PC-23, which is relating to the commercial signs. I want to thank the Planning Committee for putting this on the agenda and I also want to thank the Councilmembers for considering this bill. This bill attempts to correct the problems in the 2017 ordinance, Bill No. 43, Ordinance 4434, and provide some equity and fairness to all the businesses. The 2017 bill had many benefits such as increasing the allowable sign square footage for many businesses, specifically those with large frontage or setbacks. Many stores received an increase of nearly 100 percent, such as the Lowe's store here in town. But unknown to most Councilmembers was a small, hidden insertion in some of the charts in the 2017 bill which added the word "combined." This added word of combined means any store that has two signs, because they are beside two streets, such as those in a shopping center or if your business happens to be on a corner, will face a decrease in their allowable square footage of 50 percent in many cases. It's important to note, two signs have been allowed for these locations in both the 2002 original sign ordinance and the amended 2010 bill. The word "combined" was snuck in only on the 2017 bill, which requires reduction in the square footage for many businesses. By removing the word "combined," as this bill does, it simply returns to the previous rule that has been in place for over 16 years. So, while the largest businesses get an increase of 100 percent, many small mom and pop shops are now facing reduction of 50 percent to their allowable sign size if this is passed. Other corrections in the bill restrict how the Planning Department can define signs and how they determine setback and frontage issues which have been very arbitrary and inconsistent at best. The changes proposed in this bill will ensure a more level and equitable enforcement process and keep the Planning Department more in line with the true intent of the County Council. It has been my experience when the Planning Department has any discretion in how a law is enforced, they will nearly always choose what is the least beneficial to the business or the citizen because of the us-against-them mentality that seems to dominate way too many of their staff. The weapon of choice for the Planning Department is the word "interpretation." When you hear the word "interpretation" please understand that means they are going to make up their own rules and regulations, and in many cases against the clear reading of the text and against the original intention of the County Council and its duly elected representatives. It's nice to see this bill provides clear and explicit language in those areas where the Planning Department has failed to use reasonable discretion in the past, including the provisions for the definition of a sign, frontage and setback issues. Earlier this year my business successfully concluded a legal challenge against the Planning Department because of their enforcement actions over the same type of situations being addressed in this bill. I believe these changes will provide protection for many of the small businesses who don't have the means or desire to challenge the Planning Department. It is my hope that each of you today will support and pass this bill in its current form so that we can correct what was an unfortunate mistake in the 2017 bill and save scores of small business owners thousands of dollars in replacement signs and the nearly guaranteed reduction of impulse sales and business that a reduction in sign size will cause. Thank you.

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CHAIR KING: Thank you, Mr. Blessing. Any questions, Committee members? Seeing none, next testifier?

MS. MATTHEWS: Our next testifier is Abe Galan, testifying on PC-23, to be followed by Vernon Kalanikau.

MR. GALAN: That sound okay? Okay, so thank you for hearing my testimony. My name is Abe Galan. My wife and I are owners of Galan Sports Chiropractic in Lahaina in the Lahaina Gateway. I'm a licensed massage therapist trained as a specialist in nerve and muscular skeletal pain. I have been working here since 2001 and our office has six employees. We're not a large corporation, we're here to embrace the community by getting people back on their feet after an injury, and I'm honored to have the training to fix, say the father that comes in with sciatica so that he can return back to his family and provide for his family again. I'm able to fix a grandmother that can't sleep anymore because of a pinched nerve in her neck and things like that. And there's also people that come here that spend their whole life to, you know, or save their whole life to come here and visit us, and when they're in pain, they need to know where to go. Ultimately when these people are getting on the road to find us, they're hurting, they're in distress and they need help. What I ask is for you to embrace us so that we can continue to serve our community and avoid frustrations from our patients trying to find us. The impact of having to reduce our sign by 50 percent would devalue our business and make it very difficult for people to find us. We're already suffering from a lot of the congestion of traffic at the Lahaina bypass and now we're having to deal with the possibility of reducing our sign, which would only hurt us. You can help me by embracing me and my office and my company by helping us pass PC-23. Thank you.

CHAIR KING: Mr. Galan? Can ...

MR. GALAN: Oh, any questions?

CHAIR KING: I just wanted to know if you, are you also on a corner?

MR. GALAN: Yes, I'm on the corner --

CHAIR KING: Okay.

MR. GALAN: --at Lahaina Gateway, just where the bypass comes down and ends and then turns back on Honoapiilani Highway.

CHAIR KING: Okay. Alright. Any questions, Committee members? None? Alright --

MR. GALAN: Thank you for your time --

CHAIR KING: --thank you for being here.

MR. GALAN: I appreciate it.

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CHAIR KING: Next testifier?

MS. MATTHEWS: Our next testifier is Vernon Kalanikau, to be...testifying on PC-22, to be followed by Ke'eaumoku Kapu.

MR. KALANIKAU: Chair, I can hold the time for now 'cause --

CHAIR KING: Yeah.

MR. KALANIKAU: --I like give my mahalos to them.

CHAIR KING: Yeah, we'll just ...

MR. KALANIKAU: So, yeah, I gotta mahalo ...

CHAIR KING: If you...I'm sorry, did you want to speak ...

MR. KALANIKAU: Start the time --

CHAIR KING: Oh.

MR. KALANIKAU: --after I give my mahalos.

CHAIR KING: Oh, well, we have to give you the fair three minutes, so sorry.

MR. KALANIKAU: Okay, anyway, I just throw this in the three minutes. So, yeah, mahalo to you Stacy, Alike, Elle. I think down there was Don Guzman, right? You know, thanks yeah for the public service and I not doing 'em because I need brownie points. Mahalo, mahalo, mahalo. Okay, so on this PC-22, had to go dig as much info as I could and, right off the bat, I ain't supporting this at all. If you look at the history of South Maui, go Kula Kai, you know, these are perfect examples, you give 'em one inch then the next thing going be one bigger hotel in this area. And especially in one SMA zone, you know, kanakas they not going build their haies up here, going be little more mauka, the ahupuaa system, right? So, do we want to continue to cover what we have left for State DLNR lands? So, I just gotta bring that up because this is one perfect example of what happened to Kula Kai in the last 50 years so we cannot allow this. The parking area that we talking about, you know, orange and green, look like half-half. If I like go breakfast over there at Sarento's, maybe some of his tenants stay parked in the public parking, how we going manage that, who going watch that and divide that up and maintain that? The other part, you know, going speak as the, also a resident of that area, I get kuleana to that wahi kapu area, so where DLNR, that area and KIRC property, my ohana always go, when we go camp and fish in that area, we were not allowed as kids to go fish right away or go kiele all over the place. My father goes and honor the iwi kupuna on KIRC property and beyond and then he feed the mano and then we can go out and go swim and act like kids like the way we did. I used to get scoldings because I like to niele where the iwi stay. So, you guys need to

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understand that I get kuleana to that Kamaole ahupuaa. When I saw this and just recently, Sunday, I found this out, this was DLNR State land, you know, we get one opportunity as, you know, as the Po'o for Aha Moku Council for Kula Kai 'cause we make recommendations to DLNR, what's best for us as kanaka and for the community too so I get good ideas how we can reshape and reform this area. What we also need for our Ahu Moku Council and our kanaka is one repository to hold our, a little building there to hold our iwi kupuna when they start digging up Honuaula project, we have one place to keep iwi kupuna, and we go reinter 'em, the ohana from those area, not wait for SHPD and hold 'em for 10, 20 years, we going do 'em. So, there's a lot of variables we can do in this area that going benefit everybody. If this applicant get 20 units, then he only going get 20 stalls, that's that. We gotta keep this more public friendly access. So, my recommendation would be ask the County and State and Aha Moku Council and any NHOs and other associations that we hui up together and let's redo this again, this cannot. Mahalo.

CHAIR KING: Any questions, Committee members? No? Okay, thank you for being here.

MR. KALANIKAU: Yeah, thank you.

MS. MATTHEWS: Our next testifier will be Ke`eaumoku Kapu, testifying on PC-22, to be followed by Isaac Hall.

MR. KAPU: Aloha mai kakou, Ke`eaumoku Kapu. Dittos to what Vernon started in the beginning, mahalo you guys for your service, Elle, Alika, and Crivello, mahalo. I also support the intent of the Moku Po'o, Vernon Kalanikau, for the Kula Kai and I don't support this as well. What he was talking about is collaborating with the County and the State government to see an area as an interment area or a facility being put on the area for the Moku councils. Why that's important is because in Lahaina we've established the same at our building, Na Aikane O Maui, going in front of the Burial Council asking for a request in a motion form that Na Aikane O Maui and Aha Moku o Maui, Inc., the establishment where we're at is actually a State building to be used as a repository for all inadvertent finds. The motion was unanimous and now our building becomes the repository area for all inadvertent burials found in the Lahaina moku. My kuleana as the CEO is to try to collaborate with all the Moku councils to make sure that every moku has an area for repository for inadvertent burials and it will help actually support the State Historic Preservation because they overwhelmed already, the only get like three people in the office. So, just imagine if all 12 mokus had one repository within the mokus to care for the inadvertent finds on those historic properties to be used would help alleviate the stress and the pressure that SHPD is going through and continuously go through today. So, as Vernon said, yes, we are an advisory to the Department of Land and Natural Resources on the SHPD and all the departments, even DAR, our recommendations are highly considered, and I think, yeah, once again, I would like to remimic what Vernon was saying that having an area within each moku would be, especially with the County _____. I have sat in negotiations with the County as well as the State lands on parcels within our area on how maybe 501(c)(3)s or organizations can restore those properties so we can use those properties for what it's beneficially for, not only just the fact that we using it as a

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repository area but also for educational purposes when it comes to...everybody talk about the richness of the culture. What is it? What is the richness of a culture? You cannot put KIRC inside there and they going actually just educate about what because KIRC is about Kahoolawe, they not about the specific area. What is the history of that area that needs to be talked about? So, I encourage the County to really look into it, to get Vernon Kalanikau and all the Moku councils at the table with the State to try to look at these areas on doing some due diligence for the areas for the general community. So, mahalo everybody for your time and especially the ones that we not going be seeing here for the next two more years. I hope that you continue your strive to make sure that your name is part of the election when it comes again. So mahalo no kakou, aloha.

CHAIR KING: Thank you, Mr. Kapu. I think we have some questions, if you can stay. I quickly wanted to ask you if you had had a chance to speak with DLNR? There's an adjoining piece of property to this parking lot that, and I did talk with Vernon Kalanikau about it a couple days ago that, you know, we don't want to take any public parking spaces away from the groups that use it right now, the current parking lot, but there's one next door that DLNR owns, the one that's covered with kiawe trees.

MR. KAPU: Is that part of the KIRC property?

CHAIR KING: It's owned by DLNR.

MR. KAPU: Okay.

CHAIR KING: So, it's open right now and we have a open discussion. I just wondered if you had a chance to talk to DLNR about any of their land.

MR. KAPU: We're right at the point of trying to get a meeting set up with DLNR with, not DLNR, but Daniel Ornellas and hopefully we can get maybe you to come --

CHAIR KING: Sure.

MR. KAPU: --and sit in on that. So, hopefully we can get something scheduled soon and I'm pretty sure Daniel probably going give you one call too.

CHAIR KING: Okay, great. And were there any other questions? Mr. Atay...oh, Ms. Sugimura, we'll go with voting members first.

VICE-CHAIR SUGIMURA: Nice to see you here and also thank you for running. But I wanted to just ask you then for clarification that, are you saying that this property that we're looking at for the Sarento's, you're saying that this should be the repository for your ancestors?

MR. KAPU: Yeah because every time when you look at South Kihei, they have every other plan besides an area that would actually help support the local component of the area.

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You know, not only using it as a repository but also using it as a culturally ambiance area to educate, further educate, like how Vernon was talking, that's their cultural practice area. So, my question would ask to the restaurants and the hotel, what do they know about the area? What is the historical fact about the area? And I think it's really important that, you know, because Aha Moku O Kula Kai started establishing the ahupuaa signs, I think the most beneficial part now is to talk about the code of conduct within those certain areas, what can be done, what couldn't be done, and what I'm getting is we're at that point now as pertaining to what kind of code of conduct should be placed in those areas.

VICE-CHAIR SUGIMURA: So, you're not talking about the land next door that you just had a brief discussion with the Chair? You're talking about ...

MR. KAPU: All State DLNR lands is potential ...

VICE-CHAIR SUGIMURA: For all DLNR lands you're saying?

MR. KAPU: Yeah.

VICE-CHAIR SUGIMURA: Okay, thank you.

CHAIR KING: Thank you. Any other questions? Mr. Atay?

COUNCILMEMBER ATAY: Thank you, Chair, for giving me this opportunity. I have basically two questions.

CHAIR KING: Sure.

COUNCILMEMBER ATAY: Just wanted to get clarification. So, you're saying that the Aha Moku Maui has recognition and standing with the State of Hawaii's government?

MR. KAPU: Yes.

COUNCILMEMBER ATAY: And with that, they turn to you, the Aha Moku, from a advice or advisory directions from you folks as to what to do with their State-controlled lands? And the last and final question is, that particular land where we're discussing this parking lot, is that State land?

MR. KAPU: Yeah, it's on the DLNR. There's two parcels actually. The KIRC parcel and the other one I don't know which one is what but I sat on the Burial Council back in 2010 and that was specifically on our agenda on the, what was it, the preservation of the area and I don't know where it is at this point but I think what is really important, you know, getting back to what you talked about of we being given recognition through State Historic Preservation Division as a repository area, and that's in my building, the building that I manage. It's about taking back our responsibilities, not only taking back our responsibilities but collaborating with the State government on ways on how we can alleviate the pressure. We get iwi kupuna that is in State Historic

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Preservation, some going past 20-something years already. So, if you had one component in there on the Aha Moku to be an advisory with wherever the iwi kupuna came from. If it's the State, then it's easy to put a preservation plan together to get the burials back in the ground. But if not, some areas, like for my area, I dealing with County Council parks, trying to get iwi kupuna reinterred in the park area and I getting a lot of red tape, so it's the State process, the County needs to comply to try putting together a preservation area so we can reinter those iwi kupuna. But if it's under the State, then it doesn't go anywhere. So being that it's under my curatorship, I'm the one pushing the buttons with the State and the County to tell them we gotta hurry up and put this kupuna back in the ground and I think that's where the issue lies the most is having people confident enough and capable enough of handling the kuleana to malama this iwi kupuna until we can set into stone the preservation area of where those iwi kupuna going. And I do believe in the KIRC property, there is a preservation area already set. I don't know where it is at this point but I know it was worked on. I no longer sit on the Burial Council anymore but I'm trying my due diligence to make sure that every moku has a repository area.

CHAIR KING: Thank you very much for your testimony --

MR. KAPU: Yeah.

CHAIR KING: --appreciate it. And if you're here when we get to this issue, if you can stay, then if we have further questions, could we, we might want to call you in if there's no --

MR. KAPU: Okay.

CHAIR KING: --objections, okay.

COUNCILMEMBER ATAY: Thank you, Chair.

MR. KAPU: Okay, thank you.

MS. MATTHEWS: Our next testifier is Isaac Hall, testifying on PC-22, to be followed by Albert Perez.

MR. HALL: Good morning, Chair King --

CHAIR KING: Good morning.

MR. HALL: --and members of the Planning Committee. My name is Isaac Hall and I'm here testifying on behalf of Dana Naone Hall and Leslie Kuloloio. We've been involved with this property since 2001 when at the time when Maui Oceanfront and Sarento's were applying for variances and SMA permits that were inconsistent with the community plan and Dana and Les filed for contested cases so that they could not get those variances and SMA permits without making, getting the community plan amendment that we, that is before you now all those years later. Dana and Les have done their

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best to protect coastal resources and the public trust. Let me tell you how, with this property. There was naupaka growing out onto the beach that was depriving the public of its use of the beach. We insisted that they cut that naupaka back, they did cut that naupaka back so that the beach is more usable now, that's a common problem around. Sarento's and Maui Oceanfront were also using the public lands around their property, using them as if they were their own private property. We insisted that they stop doing that and they have stopped doing that and have put signs up so that the public has gotten back its public lands. Parking at, the parking lot was frankly a mess in terms of who was parking there and how it was done. It's really wrong to say it was being used by, the whole parking lot was being used for, by the public for beach access, it was not. It was being used by the employees of and guests of Sarento's, Maui Oceanfront. But not only there, Mana Kai was sending over its construction workers, its employees, so it was limited, assured public access, public beach parking. We entered into a settlement agreement with Maui Oceanfront and Sarento's in 2005 where they agreed to file, what is now before you now, the request for a community plan amendment...really?

CHAIR KING: You have 30 seconds, go ahead.

MR. HALL: I got more. In any event, at that time we reached an agreement that at least 51 percent of the stalls would be beach access stalls. We recently filed an amendment, which is this one, where 60 percent of the stalls are dedicated for public beach access parking 24/7. They are required to enforce it. If they don't enforce it, we can enforce it or any member of the public can enforce it, call in a tow truck or get the County to come and pull the truck out. We felt it was important to identify which stalls were public access parking stalls so that everyone would know that's my stall, I can go there and park. Before that, nobody knew which was public beach access and which wasn't. Right now, there's a public, it says public parking, there's confusion about what that means. Some people come in and say, I'm a member of the public, I can go there, even though they're not using it for beach access purposes. So, this, we feel, is a real improvement over what's existed for quite a while. Thank you.

CHAIR KING: Thank you, Mr. Hall. Any questions? Ms. Sugimura?

VICE-CHAIR SUGIMURA: Yeah, so just curious, great testimony, thanks for representing Dana and Les Kuloloio. So, are you saying then that you support this or you're against it?

MR. HALL: Well, as far as the community plan amendment and the permit, that's for you to decide. I'm not opposing it because we've said they had to apply for it, they have to come before you to request it, and that's in your jurisdiction to decide what to do. But as far as the parking lot goes, I think we've come up with a good solution for how to use that parking lot and it assures 60 percent of the stalls are dedicated for public beach access parking 24/7. We felt it was important to have the 24/7 in there because what happens, I've seen it happen in other hotels, is that they say, oh, it's only beach access parking from nine o'clock in the morning 'till dawn, or sunset, and then the restaurant people come in and/or employees come in and it comes time for

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public beach access parking later on and you can't get those cars out of there. So, we said, okay, we don't want that, we want it to be 24/7 so that that stall is available for public beach access the whole time, nobody else can use it for any other purpose.

VICE-CHAIR SUGIMURA: So, if I could, one last question?

CHAIR KING: Go ahead.

VICE-CHAIR SUGIMURA: So, you're saying that you basically represented community concerns and that the demands that you made were complied with, is that what you're saying?

MR. HALL: Well, I'm saying --

VICE-CHAIR SUGIMURA: It sounds like it --

MR. HALL: --that the --

VICE-CHAIR SUGIMURA: --from the naupaka...

MR. HALL: --naupaka got cut back. They got out of the areas--like there was, right in front of Sarento's restaurant it was being occupied as if it were private property. We got them out of there.

VICE-CHAIR SUGIMURA: And access, there's beach access 24/7?

MR. HALL: Right.

VICE-CHAIR SUGIMURA: And the parking stalls are designated as you requested for public use?

MR. HALL: Well, that hasn't happened yet, that's part of this proposal.

VICE-CHAIR SUGIMURA: Oh, but it's...well, okay. So, you're basically getting all your concerns answered?

MR. HALL: Well, I mean, I'm sure there are more concerns to be dealt with but those are the ones that we dealt with and I think they are protective of the coastal zone and public trust resources.

VICE-CHAIR SUGIMURA: Thank you.

CHAIR KING: Thank you. Any more questions? I just have one more question, Mr. Hall, and I know you had lot more, so perhaps you could stay and be a resource when we get to this issue. But also on the amendment to the consent agreement, there was supposed to be, and to just verify that, because you mentioned it, that, what the public wanted in Kihei was to not have that lot be paved so that it will remain gravel.

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MR. HALL: That's right.

CHAIR KING: So, just to confirm that.

MR. HALL: That's in this as well.

CHAIR KING: Right, okay. Alright, any other questions? If not, next testifier? Thank you very much.

MR. HALL: Thank you.

MS. MATTHEWS: Our next testifier is Albert Perez, testifying on PC-22, to be followed by Tyler Hofinga.

MR. PEREZ: Good morning, Councilmembers. My name is Albert Perez, I'm Director of the Maui Tomorrow Foundation. We have concerns about PC-22. I would like to express my appreciation for the work that Isaac Hall did on behalf of Dana, his wife, and also Uncle Les Kuloloio. So, there are some things that have improved since they got involved, that is definitely true. We are concerned, however, about the enforcement of this parking agreement. My understanding is, right not even though there's a 51 percent minimum, that it's really not enforced. I'm not so sure about that but I would think that if you were to approve this conditional permit, that you would want to have a condition in there that the hotel, the restaurant, whoever is getting this lease, put money into a fund to have somebody supervise this area and make sure that those conditions are enforced. The public has a right to access the beach and we need to protect that right. We need to be increasing access to public lands and where there are people who are encroaching on it, whether it's employees of a private business or tenants of a hotel who are not supposed to be parking there, they need to be removed. Other comment is that the Environmental Assessment for this project is fairly old, I think it's about 13 years old. And we were searching for it on the OEQC, the website, and we could not find it. So, I'm not sure what findings they made, 'cause I wasn't able to find it, but it's 13 years old, things have changed in the area, the amount of beach access has decreased. I think that it needs to be updated. We are urging the Planning Committee to hold a public hearing on this issue. There already was a public meeting out in Kihei but there remain a lot of questions. People still don't have a full understanding of this project, they need an opportunity to do that, to ask questions, and to voice their concerns. I don't see what the urgency is of approving this today and I urge you to hold a public hearing. It's a very important issue. Finally, the, amending the community plan from Single-Family to Hotel will open the door to new development at this property unless you condition it. And I'm not sure if you can condition a community plan amendment in that way but I'm very concerned. I don't know, the applicant has stated that they don't want to change anything so why do they need this community plan amendment? They already have a variance. The Hotel zoning that's underlying will allow many more uses and it would allow expansion even if that's not their current intent, maybe they might change their mind in the future. So, if you decide to grant this community plan amendment, we

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would ask that you'd add conditions so that the density and intensity of the use would not be increased and the public needs to be certain that their right to use and enjoy Maui's beaches is protected. Thank you.

CHAIR KING: Thank you. Any questions? Seeing none, thank you for being here.

MR. PEREZ: Thank you.

MS. MATTHEWS: Our next testifier is Tyler Hofinga, testifying on PC-22. Would you like to testify now or after the presentation?

MR. HOFINGA (from the gallery): After.

MS. MATTHEWS: Okay. Our next testifier will be Pat Borge, testifying on PC-22. Would you like to testify now or after the presentation? Is this person here? Okay. After? Okay.

CHAIR KING: If they're not here, we'll just put 'em to the, after.

MS. MATTHEWS: Our next ...

UNIDENTIFIED SPEAKER: ...*(inaudible)*...

MS. MATTHEWS: Okay. Pat Borge, yes, testifying on PC-22, to be followed by Bernie Bays.

MR. BORGE: Good morning --

CHAIR KING: Can you move the mic ...

MR. BORGE: --Councilmembers.

CHAIR KING: Can you move the microphone down so ...

MR. BORGE: My name is Pat Borge. You know, I'm born and raised here, grew up in the plantation camps of Puunene, I got my own business now, we're tourism, but I also, you know, I hear this guy, he running his business, you know, everything is about making money. But years ago I used to work construction and one day, I was a mason for about eight years, then one day I said, you know, I love Maui, what am I doing participating and destroying this island. So, I said, you know, I'm going to get into the service business, I'm going to take care the tourists, okay. Tourist come to Maui because of the people, not just 'cause of its beauty, 'cause we show the aloha to these tourist, and that's why they keep coming to the islands. Now you guys talking about building another hotel, you have the power to say no. Don't vote on this, defer it. We have a community plan, they go before the community and the community decides what they want, not somebody coming here and said we wanna change the amendment. Everything is amendment. This is a key word when I watch the Council work, everybody comes in here and they want to amend this and amend that. You know, you have the power to say, no, this is it, this is the rules, when you play a game

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or anything, there's rules and there's regulations and you gotta follow it and you gotta go through the process. Every time I see this guys with money come before you and they go let's change, let's have an amendment, I wanna amend this, but the rules are the rules, you know, this public parking here right in Kihei, you know, I watch Kihei being developed, there's no public access. You go on the weekends, Kalama Park, Kamaole I, II and III, there's no parking for the locals. We gotta park, you know, couple blocks away to walk with the kids to go to the beach. This public parking right in front of that hotel, I know this area very well, and Leslie Kuloloio, Isaac Hall, years ago I was a real activist when I was in my 20s and we stopped that Makena Resort from closing that road, I was part of that process, you know. But at the same time, you look now, they got, they gonna develop that whole area, you know, it's a shame, it's really a shame because you guys are voting this hotel...excuse me, I know I'm getting carried away now here but. Look on Oahu, you have this people on strike right now, hotel workers. They didn't better their lives working at a hotel, they still struggling. So, every time you guys say, oh, we're gonna build a hotel for help the local people to get jobs and everything. Drive to Kahului, Wailuku, look at all the cars parked outside of houses and stuff, that's how we living, that's how the local people live. That hotels ain't making their lives better, they cannot even afford a house, you know, so. But to them, going to the beach and having that freedom to go to the public beaches, that's our privilege, that's the public, we're the public, I'm the public. I should have the right to go to that beach and you guys gonna take that parking away to build a hotel, that's ridiculous. To me, it's a common sense approach, you use common sense when you vote on this issues and take care the people of Maui, and I appreciate your time and God bless all you guys, I hope you guys make the right decision. Thank you.

CHAIR KING: Thank you, Mr. Borge. Just, can you wait to see if there are any questions? Also I wanted to just mention for everybody, we're not voting on a new hotel, we're not taking any parking spaces away. The only thing that we're going to be voting on later on is whether to align the community plan with what the zoning already is, so there's no new hotel ...

MR. BORGE: Yeah, okay, like you mentioned, the community plan, but they're trying to do a shortcut here, right?

CHAIR KING: No. But that's why I asked the folks if they wanted sit through the presentation first and then testify after you --

MR. BORGE: Oh, okay.

CHAIR KING: --see what we're actually talking about.

MR. BORGE: But I just letting you know how I feel anyway.

CHAIR KING: Yeah, no, that's good.

MR. BORGE: Okay, thank you.

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CHAIR KING: Thank you.

MS. MATTHEWS: Our next testifier is Bernie Bays, testifying on PC-22, to be followed by Mark Joiner.

MR. BAYS: Chair King, Councilmembers, my name is Bernie Bays, I'm an attorney. I represent the Oceanfront Hotel. I think everybody has completely misunderstood the purpose of this amendment. As Isaac Hall testified earlier, he, on behalf of the community, negotiated numerous concessions from the hotel as a condition of the approval that's being sought today. And one of those conditions that he extracted is that 43 of the stalls in the adjoining parking lot of the hotel, that the hotel would actually let the public use 43 or 51 percent of the those parking stalls. As Isaac testified, that hasn't worked out, at all well, the way we had hoped, because it was never approved by the Council. And what we're here today to do with this amendment is to increase the parking available to the public from 43 stalls up to 51 stalls. In addition to that, the amendment requires the hotel to police the public parking. And what has happened is that people have taken the position, because it said public parking, not beach access parking, that people could park there all day. So, eight to ten of the stalls that were supposed to be available for public beach access have actually been just people parking there all day. So, the purpose of this amendment is not to restrict public access in any way, it's to substantially improve the parking available to the public and that's why this is being heard today to commit the hotel to this. We have also agreed not to increase the density of the hotel. There's no intention to do that. And once this amendment is approved and we receive approval from DLNR, we're going to improve that parking lot and clearly mark designated stalls, which are the most convenient stalls, that those be available to the public, as Isaac said, 24/7. In addition to that, as I said, the hotel will police those parking stalls to make sure they're actually available for beach access. No employee parking by Sarento's or by the hotel are allowed in that parking lot. So, these changes are intended to improve the situation there. And the truth is, this amendment provides an excellent example of the County, representing by Chair King and the Planning Department, the community represented by Isaac and Dana Hall, and the State represented by Daniel Ornellas of cooperating to improve beach access, to improve dedicated beach parking, which is badly needed. So, this amendment is going to improve and address many of the concerns that the people have expressed here. So, this amendment is a good thing for the community and we would ask that you approve it. Thank you, Madam Chair.

CHAIR KING: Thank you. Any questions from the Committee? Seeing none, thank you for being here.

MS. MATTHEWS: Our next testifier will be Mark Joiner, testifying on PC-22, to be followed by Sandra Brown.

MR. JOINER: Aloha, good morning. I know most of you and I'm really looking forward to testifying on this. I wanted to mahalo Kelly especially for being our South Maui

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representative and putting so much time and energy into this. I'm a resident of South Maui. I can tell you that this beach access receives as much or more traffic by locals than any of the, any other beach in Kihei, any other beach in Kihei, Kam I, Kam II, Kam III, you name it. I'm in the water every single day and so I'm able to observe that. It's important to keep this access free and open to both the beach and the adjacent State parks, lands, lease to the Kihei Surfside and others. First I would advocate taking out the row of straggly kiawe trees that kind of bisects that parking area to increase the gravel area. If it looks like it's going to be paved, I would recommend that we use pavement that water can travel down through so that the pavement doesn't increase the runoff to the ocean itself. The lot should be lined with appropriate, if we do pave it, with appropriate handicap spaces. But all other spaces, I'm recommending, and many of us have recommended, remain open, like at Long's in Kihei, where there's plenty of parking and UPS, Amigo's and everybody else that's there don't have reserved space so there's plenty of room for all. Further, I understand the existing Oceanfront Inn was grandfathered into a Single-Family setting due to "historic use" back in, I think, 1984. I strongly remember not...recommend not changing the community plan designation, or at the very least, waiting for the Kihei Community Plan, which is coming up here shortly. If the change in community plan designation is allowed, it should be written in as a condition that the hotel may not increase the intensity, and it sounds like that's their intention, density or the footprint of the hotel so as to not create a giant Wailea or a Kaanapali-style hotel, which none of the people in the neighborhood, certainly including us, would welcome or advocate. It would be totally inappropriately and it would be tremendously impactful for the setting. The couple of seconds that I have left, I also would like to mahalo the Councilmembers who are not going to be joining us in the future. Thank you so much for your wonderful service. Mahalo.

CHAIR KING: Mahalo. Thank you, Mr. Joiner. Any questions for the testifier? Seeing none, thanks for being here.

MR. JOINER: Thank you.

MS. MATTHEWS: Madam Chair, our next testifier is Sandra Brown, testifying on PC-23, to be followed by Bonnie Newman.

MS. BROWN: Aloha, Chair King and Councilmembers. I am, my name is Sandra Brown. I'm a property manager for The Festival Companies and I represent Maui Mall and Lahaina Gateway Center. I'm here to recommend and ask that you support the PC-23 amendment to the commercial sign code. And my position is based on advocating for tenants, for tenants who are small businesses who come to Maui or are here in Maui and their main form of advertising would be their sign. And so we're asking that the former sign code as far as sign sizes for businesses that have two frontages would remain the same there and not be subject to reduction by at least 50 percent. I think that most small businesses, their main form of advertising is their sign and so reducing that would not help them in any way. I think that as community members and as Councilmembers, it should be important that we keep sign sizes, you know, we're not asking for billboards but we are asking that smaller businesses that may

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have two frontages would be able to keep their sign sizes and not have to reduce them by 50 percent based on this latest ordinance to the sign code. Mahalo.

CHAIR KING: Thank you for your testimony. Any questions? No questions from the Committee, thank you for being here.

MS. BROWN: Thank you.

MS. MATTHEWS: Our next testifier will be Bonnie Newman, testifying on PC-22. Would you like to testify now or after the presentation?

MS. NEWMAN (*from the gallery*): May I ask a clarification on the content of the presentation? I don't understand that.

CHAIR KING: It'll be the consent agreement that has the information about what the parking lot will be.

MS. NEWMAN (*from the gallery*): Then I'd like to testify after, please.

CHAIR KING: Okay, thank you.

MS. MATTHEWS: Our next testifier will be Toni Killeen, testifying on PC-23, to be followed by Kerry Ringrose.

MS. KILLEEN: Good morning. Thank you for allowing me to testify here today. My name is Toni Killeen. I'm vice-president of The Festival Companies. I'm here this morning and in the capacity of authorized agent for Lahaina Gateway Center, Maui Mall and the Shops at Wailea. I'm here in the support, to not only support our managers, our property managers, but also our tenants and in supporting SB-23 [*sic*]. We know that commercial signage is critical to the success or failure of any business so we are in support of SB-23 [*sic*]. Thank you.

CHAIR KING: Okay, thank you. Anybody...PC-23 but.

MS. KILLEEN: Oh, I'm sorry.

CHAIR KING: Any questions for the testifier? No? Thank you for being here.

MS. KILLEEN: Thank you.

MS. MATTHEWS: Madam Chair, our next testifier is Kerry Ringrose, testifying on PC-23, to be followed by Victoria Kaluna-Palafox.

MR. RINGROSE: Aloha and good morning, Planning Committee, ladies and gentlemen. I'm Kerry Ringrose, president of Pacific Sign and Design, based here on Maui for 35 years. I have worked with the sign code during that time. Maui County's sign code is generally good and workable with a couple of notable exceptions. I have served on

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committees to advise on the sign code and changes over the years. The biggest problem at the moment seems to be on the procedural interpretative side of the latest code with long delays for approvals and interpretations. With regard to the matter at hand, PC-23, I would have to agree that new interpretations have had a regressive effect on situations that were previously allowed and there is, I would argue, no demonstrable benefit to Maui County residents. These are shopping centers and there is a reasonable expectation on the part of legitimate businesses that they will be able to keep and retain their frontage and their image. My main concern is that Planning does not approach sign code problems in a piecemeal fashion and fails to address some more systemic issues with the code. In other words, we don't want Planning to develop a sign code fatigue with repetitive complaints about various aspects. Mahalo.

CHAIR KING: Thank you for your testimony. So...any questions from the Committee? Basically, are you in support of the proposal, the proposed ...

MR. RINGROSE: I do support it, yes.

CHAIR KING: Okay, alright, thank you, thank you for being here.

MS. MATTHEWS: Madam Chair, our next testifier is Victoria Kaluna-Palafox, testifying on PC-22, to be followed by Laurie Householder Mehler.

MS. KALUNA-PALAFOX: Aloha, good morning, Madam Chair, Councilmembers. I'd like to congratulate those that have returned back to this place and those that are not returning, ke akua get one big job for you, mahalo. My name is Victoria Kaluna-Palafox. I am a cultural practitioner. And this space that we're talking about, I don't think we need Sarento, I just going come out straight, I don't think we need to Sarento to help to police or help to pave or help to put signs up to designate those stalls. I think if we give it back to the community, Aha Moku has a great foundation, Aha Moku knows how to put these things. I think the community should be the one to police. The community can police because the community lives there. The community knows the area. The community cares for this space and this area. So, I am against the amendment for the pure fact that the community can come back together as one, together with Aha Moku, you folks can take care your kuleana there in Kihei. You folks there 24/7, every day, you utilize that space, you care for that space, your children and grandchildren go to those space. So, again, I thank you for your time, really short my testimony. Please, I'm against the amendment. Please give it back to the community because they know what to do and how to do it. Mahalo.

CHAIR KING: Thank you. Any questions? Thank you for being here --

MS. KALUNA-PALAFOX: Thank you.

CHAIR KING: --for your testimony.

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MS. MATTHEWS: Our next testifier will be Tyson Au, testifying on PC-11, 22 and 23, then to be followed by Laurie Householder Mehler.

MR. AU: Aloha, aloha mai kakou, kupuna, chief, aliis. My name is Tyson ____ ____ Au. And first thing I like ask is if you guys get quorum 'cause I never heard it been stated? If you may, Chair, answer the question?

CHAIR KING: I'm sorry?

MR. AU: Do you have quorum?

CHAIR KING: Yes, we do.

MR. AU: Okay. Yeah, so first of all, the holy ghost, yeah, better mark 'em down, the boo going come at you. Anywhere get sand, get iwi. It's acknowledged 1984, yeah, the Kihei-Makena plan, that you guys know of and there shall be no amendments or any changes, if anything, shall be acknowledged. In the future, yeah, you guys going be doing all this kind stuff but going come back to you and it's written but no one knows where it is. It's like the missing puzzle, yeah, everybody wondering, even I stay wondering, wondering if you guys wondering. But this game, yeah, this game is easy to me, it's funny, questions and words can be used against you if you answer. Repositories, thank you for offering, Chief, but there shouldn't be any repositories. Iwi ancestors, where we come from, they shouldn't even be brought out and so I acknowledged in the 1984 Kihei-Makena plan, by the holy ghost. And there's up righteousness, everybody will be deemed duly, Federal, Supreme Court, and I suggest you stop tapping into my phone, State, County. And this three-minute thing no mind to me because you not the policyholder and you can try prove me wrong but only going put you in one place, one heavy place, yeah. And you guys should think, yeah, before you guys do things, money, money, money, but you leave the poor behind, yeah, the overflow of the richness, the lesser, yeah. He's the provider, has been taken by many entities, organizations, individuals, family, chairs. So, if I was you guys right now I'd press eject from your seat and, you know, I never even know this meeting was coming up but cars following me and drones following me, watching me, just like I get some kind of power, either that or, you know something I don't know. And I can read, I can read everybody's faces, yeah, facial expressions. And as far as the last testimony I had for the, Everett's property, yeah, I when wait for the broadcast, never did see 'em. Is it because of something I said? Did I offend you in any way?

CHAIR KING: Sir, can you conclude your testimony, please?

MR. AU: Everett, Everett's property, you just had 'em, 141, right across Mana Kai, it wasn't broadcasted.

CHAIR KING: No, that's not on the agenda today.

MR. AU: No, that's the last agenda.

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CHAIR KING: Yeah.

MR. AU: Is this being broadcasted?

CHAIR KING: Yes, it is. But you've --

MR. AU: It is?

CHAIR KING: --exceeded your three minutes so --

MR. AU: Yeah, well, you're not the policyholder.

CHAIR KING: --if you could...we're going to have to take a recess. . . .*(gavel)*. . .

RECESS: 10:42 a.m.

RECONVENE: 10:43 a.m.

CHAIR KING: . . .*(gavel)*.point for the agenda items. So, we're going to, we'll go to five minutes since we got started late on this meeting and Mr. Hokama's been sitting here since 9:00 so we'll go for another five minutes and then take the morning break and then come back and finish. But can we move on with the next testifier, Leslie?

MS. MATTHEWS: Yes, Madam Chair, our next testifier is Laurie Householder Mehler, testifying on PC-11 and PC-22.

MS. MEHLER (from the gallery): ... *(inaudible)* ...

CHAIR KING: Okay, you'd like to wait 'till after the presentation? Okay, next?

MS. MATTHEWS: Our next testifier is Kaniloa Kamaunu, testifying on PC-22, to be followed by Livit Callentine.

MR. KAMAUNU: Aloha mai kakou, Kaniloa Kamaunu, Waihee Valley. So, as was said earlier, I guess there's a lot of miscommunication of what is taking place, but, you know, dealing with this enough, you know, you know that there are always underlying things that may not surface immediately but do eventually end up showing up and the fear, that clarity, as well as being forthwith, is usually a thing of politics. You know, it's like konane, yeah, you gotta make the moves and you don't show everything at once but then it shows itself sooner or later. And so whether or not the promotion of a new hotel or expansion of a hotel, the changing of zoning or whatever, it's usually somewhere within the amendment, somewhere for it to be finagled and to be worked in. You know, I've seen it enough in dealing in this area, you know, they say that these things are not going to happen but yet, lo and behold, it is brought up somewhere else and it shows its head and the thing that we feared the most happens. So, my concern with what's going on here is that, why we even giving you one variance? Why isn't it just kept for the people? And his people can deal like

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everybody else. You wanna come there on a certain time, then, you know, if it's 24/7 access, then access when you wanna come. If you don't have so many stalls, you shouldn't have put your business there in the first place. I mean, why are we concerned, and this is my concern, is that the County makes it a concern of the people, of private businesses, to take care of their business. They no take care of me. They give nothing to me. Though I'm from Waihee, I travel this whole island, kanaka, I know this island. I know what Kihei look like, it's ugly now. I like the parking lots that did, that was covered by kiawe trees, I like all the bumpy roads we had to go through to get to Makena, I miss all that. Coming from Waihee, going to Makena, that's almost one half day drive back in the day, but it was good. Today, what you get, same thing but you stuck in traffic. So, what is this offering the people, offering us nothing, you say, oh, we'll make it 60 percent, 60 percent parking, why they no make 'em 100 percent? Let them deal with what they gotta deal with. You know, I mean, e kala mai to your workers and you, but why is it the public's problem? Why do we, when we as kanaka, we get 24/7, nobody need to put that in an amendment, that's our right. And you guys locking up all the beach parks at seven o'clock, ancient fishing grounds, you guys no more the right for do that. And so 24/7 only goes along what our rights are as kanaka, kanaka, we born here, kanaka, it's our lands, so we do the things kanaka's do. And I like Mr. Borge, he correct, people come here, to travel here to see the kanakas and to see the way they live, not Sarento's. We what people come to see, we aloha, because it is our birthright. It's our institution that we brought out to the humanity of people. In Hawaii, I tell the tourists, we the only place in the world that was able to gather people together and live as one. No fences, no separate schools or stores, we live together, uncle, aunty, cousin. Today, gated communities, separation, that's western. We no separate, people is people, kanaka believe that. We are the world and we have brought the world here because we aloha. So e kala mai, but 100 percent belongs to the people. Mahalo.

CHAIR KING: Thank you. Any questions? No? Thank you for being here.

MS. MATTHEWS: Chair, our next testifier is Livit Callentine, to be followed by Judith Cantrell. Ms. Callentine is testifying on PC-22.

CHAIR KING: Going a little bit over, but...I think we'll go one more...how many more testifiers do we have? Okay, so we'll take Ms. Callentine and then we'll take a ten-minute break so that everyone can have their morning break. Aloha.

MS. CALLENTINE: Aloha, Chair and Members. Thank you for allowing this testimony today. My name is Livit Callentine and I'm testifying on PC-22. Just for point of reference, I work as a professional land use planner for the County of Maui in the Planning Department; however, today I'm here on my own vacation time. I'd like to point out for the Committee's benefit that in 2017, the Land Use Committee, when they heard this item, they received 133 pages of testimony, mostly, as far as I know, all against components of this project at least. I oppose the community plan amendment because, plain and simple, it's not necessary. In the Kihei Community Plan, Parcel 29 is designated Single-Family. The request is to change the community plan designation to Hotel. According to the applicant, the reason for this request is to reflect the

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existing use as a hotel. You should know, the applicant is not required to change or amend the community plan and may continue to operate the hotel exactly as it is without changing the community plan designation. So, I asked myself, why does the applicant want to do this? And I can say, based on my many years of experience on this planet and in the planning realm, that I could speculate that he may have a long-term plan to expand the hotel. Changing the designation would be able to expand the use more easily. It is common in the land development arena to hold back from revealing future plans because such plans might be viewed unfavorably so projects are sometimes bifurcated. This might be a bifurcation, I don't know, but it's a question worth asking. As far as I know, the applicant has not disclosed any plans to expand, and you heard his attorney say, no, no expansion, but ask yourselves, why would anyone spend hundreds of thousands of dollars if he or she doesn't expect to benefit from that in the future? Secondly, I oppose the conditional permit application because its main purpose is to allow--and understand my testimony was written before I had, I knew anything about this amended agreement, so I am gonna have to kinda shift this. So, the way that it was proposed was as a paving of all or a portion of the gravel parking lot on Parcel 149 so I understand that that, it was not going, the agreement so far is not to pave but given the existing gravel lot is peacefully shared by the public, by the Maui Oceanfront Inn hotel guests and of Sarento's restaurant. There are no demarcated stalls, there is no conflict with the sharing arrangement and it should be allowed to continue as is. If approved and built, the paved portion of the lot or the demarcated portion of the lot, if it's not paved, would only be accessible to guests of the hotel and restaurant. For residents and visitors alike, the parking lot makes it possible for us regular folks who don't live on or near the shoreline to access the beach for recreation, for fitness and for socializing. Additionally, we, as a County, should be allowing...should not be allowing any additional impervious surface to be placed near the shoreline. Even with drainage improvements, paved lots create storm water runoff because the ground cannot absorb the storm water so it flows down to the ocean where it can create a brown water event. Ideally, during periods of storm surge and high tide events, some of the water is absorbed into the ground. Pavement defeats this purpose. Further, this is a shoreline parcel and because of our continuing climate change, there should be no further development on the shoreline, especially not a hotel. As our neighborhoods continue...finally --

CHAIR KING: Please conclude.

MS. CALLENTINE: --and this is my final point.

CHAIR KING: Okay.

MS. CALLENTINE: As our neighborhoods continue to become denser in our collective effort to provide more housing, it is imperative that we also supply the community with the adequate recreational opportunities. Today, more than ever, we must maintain and enhance beach access. It is much more difficult to seek beach access rights retroactively. The time to preserve access via this beach parking lot is now. I will point out that Mr. Bays said that this ...

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CHAIR KING: Please conclude 'cause ...

MS. CALLENTINE: Just let me, real quick.

CHAIR KING: Okay, we have a lot of other people here ...

MS. CALLENTINE: I know, I know, you're right, Madam Chair. Mr. Bays said that he will...wouldn't...this would increase the stalls to the public. That is patently incorrect. There's already access to all of the stalls by the public and I would recommend a condition of approval if you approve the conditional permit that residents with a State ID should have access to any open stall 24/7. Thank you for taking my testimony.

CHAIR KING: Okay, we're gonna --

MS. CALLENTINE: Any questions?

CHAIR KING: --go ahead and take the morning break and then, if Members can be back at 10:00, so we can finish the testimony and then continue.

MS. CALLENTINE: What? No questions?

CHAIR KING: Oh, I'm sorry. Does anybody have any questions? I didn't see any. Thank you. ...*(gavel)*...

RECESS: 10:52 a.m.

RECONVENE: 11:04 a.m.

CHAIR KING: ...*(gavel)*... Okay, the Planning Committee meeting will come back to order. And we're going to proceed with testimony, except for those that want to wait 'till after the presentation on PC-22. So, Ms. Matthews?

MS. MATTHEWS: Yes, Madam Chair. Our next testifier will be Judith Cantrell, testifying on PC-22. Judith Cantrell?

CHAIR KING: Okay, if she's not here, we'll put her on the list to testify after.

MS. MATTHEWS: Our next testifier is Bruce Benner, testifying on PC-22. Okay, our next testifier is James Buika, testifying on PC-22. Would you like to testify before the presentation?

MR. BUIKA *(from gallery)*: Yes, please.

MS. MATTHEWS: Okay. To be followed by Michael Wildberger.

MR. BUIKA: Aloha --

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CHAIR KING: Aloha.

MR. BUIKA: --Chair King, Councilmembers. My name is James Buika. I'm a Wailuku resident for 16 years. I'm also in the Planning Department, taking the morning off on vacation time, to testify against PC-22. I know the area very well and as a shoreline planner, I understand the issues here. Ultimately, what I, what, from my perspective, what I see is this is an extremely sensitive topic and environmentally and socially impactful issue in front of you that should not be accepted today or approved today. I recommend that this item either be deferred or denied and taken up with the Kihei-Makena Community Plan, which will begin next year. It should, as some of the testifiers stated, it really should be vetted in a public fashion with all of the public involved. There are many issues down here. What I also think is that with changing the community plan to Hotel does have tremendous impactful implications, no matter what the applicant says. It will change the area forever, over time, in the future. We already have four, five, six hundred additional units going in in Kihei, Wailea, two new hotels at the edge of Kihei. Wailea, Wailea 670 is going in, the massive project in Makena, which is discovery lands. It puts tremendous pressure on limited shoreline access and I believe that the Planning Department and the Council should be increasing shoreline access rather than decreasing it. And from my perspective, no matter what the applicant today states that they are increasing shoreline access and public parking, they are not. They are taking public parking away and they are decreasing shoreline access. So in conclusion what I suggest is that you deny PC-22 today and take it up as, properly, in the proper form, which is the update of the Kihei-Makena Community Plan. Thank you.

CHAIR KING: Okay, any questions, Committee Members? No? Oh, Mr. Buika, one question.

VICE-CHAIR SUGIMURA: Mr. Buika, so, thank you very much for taking off and for testifying. So based upon what we're looking at though, they are saying they're going to give more public access, parking rather, and that public access remains. They're not taking away public access. I'm not sure ...

MR. BUIKA: Well, they're taking away, they're privatizing 22, 24 of those spaces, which in the eyes of the public right now are 100 percent available. There is no demarcation of parking spaces there. So it will take away half of that gravel lot in front of the DLNR parcel, which will extremely limit the parking availability there. On the weekends, that lot is full right now with beach goers. Taking away 22 parking spaces or how many, severely limits that and forces pressure on other parking and other shoreline access, people will not be able to...so no matter what they say, right now it is a symbiotic relationship, workers use the lot, hotel users use the lot, restaurant goers use the lot, and public beach access locals use the lot in a very symbiotic relationship at this point and I think it should just go on. By denying PC-22 today, that symbiotic relationship continues to go on. If you limit that parking, hundreds of people who could not be here today who use that will, you will have their ire, it will shock them, it'll freak them out if 22 --

CHAIR KING: Can you conclude?

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MR. BUIKA: --of those lots are privatized.

CHAIR KING: I think you answered the question, thank you.

COUNCILMEMBER COCHRAN: Chair?

CHAIR KING: Any other questions?

COUNCILMEMBER COCHRAN: I have a question.

CHAIR KING: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah. Thank you, Mr. Buika, for being here today. So, you did mention briefly a point about the change in the community plan will have effects. Can you just elaborate on that point you made? 'Cause they're saying it's sort of like a benign thing, let's just, you know, get the zoning --

MR. BUIKA: Right, well, it ...

COUNCILMEMBER COCHRAN: --... *(inaudible)* ...

MR. BUIKA: When you are gone, when I am gone, when everyone is here is gone, we'll forget all about this, what's going to happen? We'll have a eight-story, six-story hotel on that parcel right there and, when the parcel was always meant to be community plan Single-Family residence. Everything to the south is Single-Family residence, every single one of those parcels, that's a very sensitive environment there. It can't handle a hotel right there. And it will, I mean, that's the reason for it, it adds value, just as other testifiers said. The intent over time is to build a large hotel there, no doubt about it, in my opinion. So, that could be the impact, that would be the impact of changing the community plan unless you put conditions on the community plan to limit the height, limit the footprint. Sarento's and Maui Oceanfront Inn are encroaching in the shoreline setback area, that should be moved out. There are rocks, revetment concrete out there that the State has been trying to get them to take out that needs to be taken out, that are not allowed there. So, there's a large footprint there already into the shoreline area. So, it would have, in my opinion, tremendous future social and environmental impacts.

COUNCILMEMBER COCHRAN: Okay, well thank you. Thank you for your testimony --

MR. BUIKA: Thank you.

COUNCILMEMBER COCHRAN: --and time.

CHAIR KING: Thank you, Ms. Cochran. Ms. Sugimura, you had a question?

VICE-CHAIR SUGIMURA: Oh, sorry.

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CHAIR KING: No, okay. Okay, next testifier?

MS. MATTHEWS: Madam Chair, our next testifier is Michael Wildberger, testifying on PC-22.

CHAIR KING: Here he is.

MS. MATTHEWS: Would you like to testify before the presentation? To be followed by Wayne Nishiki.

MR. WILDBERGER: I get three minutes?

CHAIR KING: Aloha. The green light will go on, giving you your three minutes, okay.

MR. WILDBERGER: Okay, I probably don't need three minutes. Just Mike Wildberger, I'm just speaking as an individual and a beach user at Keawakapu Beach for the last 30 years or so. I understand the frustrations, the business owners that are renting property from DLNR with the short-term leases, they want a Change in Zoning so that they can--Aaron was explaining to me, he has troubles with the, having to go through the paperwork every year but I'm also a treasurer for a boat company that works out of the harbor and we do that every year too and boats have great investment also. And so it's not in, it's not a burden to have your paperwork in place and prove that you are a functioning business for the DLNR. So, that's not a good enough excuse to change zoning and open up all kinds of problems to that site. The site was given a variance back in the '80s and it's kind of fulfilled what they meant it to be. The Oceanfront hotel is more like a guest house for South Kihei. My family stays there when they come and visit, friends from Upcountry who want to stay on the beach come down and stay there. It's not like a resort, it's not a giant hotel, and it doesn't, the indication they want to change zoning because that's the use, that's not the use. The use is by people with family visiting or people on Maui who want to be at the beach. There are a lot of visitors, there's visitors who don't want the giant resort. And to change the zoning just for that doesn't make sense either. As far as the parking goes, there's not enough parking at Keawakapu. Every holiday, parking runs out onto South Kihei Road, across the street, down the driveway to Mana Kai. To go ahead and cut out a certain number of spots from the available parking, just for the hotel or the restaurant, does not make sense. On the same days when parking has filled all the gravel lots and extends out to South Kihei Road, there are empty spots at the Mana Kai's lot, which is reserved for their guests. Mana Kai actually is, I understand is leasing another lot for public parking. But it's not a good use of the space and, really, the movement of the guests at the hotel, they leave in the morning, they come back in the evening, they go to dinner, is the exact opposite of the residents. There's really no reason to segregate parking. That shouldn't even be considered, the natural flow of parking is better. The only time we're out of parking is on holidays, when there's a lot of residents there. And the answer to that is to find more parking or ride your bicycle to the beach _____. That's all I have to say about that. Thanks.

CHAIR KING: Any questions? Okay, thank you. Thank you for being here.

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MR. WILDBERGER: Am I allowed to ask a question too?

CHAIR KING: No. But I will tell you, there's no Change in Zoning being considered --

MR. WILDBERGER: Okay.

CHAIR KING: --today. That's not on the agenda.

MR. WILDBERGER: Oh, I thought that was on --

CHAIR KING: No.

MR. WILDBERGER: --PC-22, the request? Okay, I was just wondering if you had a lot of, if there is a lot of e-mail or other testimony, written testimony. I wasn't sure how to find that, but thank you.

CHAIR KING: All testimony will be public record. Next testifier?

MS. MATTHEWS: Our next testifier is Wayne Nishiki, testifying on PC-22.

MR. NISHIKI (*from gallery*): I'm going to wait till after the presentation.

MS. MATTHEWS: Okay. Our last testifier before the presentation, possibly, is Erika DiSalvo.

MS. LECHUGA DISALVO (*from gallery*): ... (*inaudible*) ...

MS. MATTHEWS: Do you want to testify before the presentation?

MS. LECHUGA DISALVO: Yeah, I'll testify now.

CHAIR KING: Okay.

MS. LECHUGA DISALVO (*from gallery*): ... (*inaudible*) ...

MS. MATTHEWS: Yes.

CHAIR KING: Or do you want to wait ...

MS. MATTHEWS: Do you want to wait until after the ...

CHAIR KING: Do you want to wait 'till after the --

MS. LECHUGA DISALVO: No, I'm coming now.

CHAIR KING: --presentation?

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MS. LECHUGA DISALVO: I'm so sorry. Good morning. My name is Erika Lechuga and I live in Haiku but I was a resident in South Maui for about 16 years and we spent a lot of time at Keawakapu Beach and we still do. I am really concerned about the face of South Maui and what's happening over there. Wailea is exploding with lots of luxury developments and I am concerned, as a lay person, I don't fully understand, you know, what it means to change zoning, what kind of implications that has on the public and I am really concerned that, like parking is going to be impacted. I am greatly concerned that if zoning is changed from Single or from Family to Hotel that in the future there can be more parking taken away, greater expansion of that particular building, and it's also my understanding that the property itself is State property and that the land is leased by the State through the DLNR. And so as someone in the community I'd like to be able to participate in like a community meeting for the south side and I think that that would be an important first step before anything gets changed so that the people of Kihei and the island know, you know, what's at stake. And, sorry I was kind of rushing in so now my thoughts are a little scattered, but I think that beach access is really, really important. I am against the paving of the lot, if that would be part of the zoning change. And, yeah, I don't know if you all are familiar with the Ulua Beach and what happened to their parking area, but we used to go there as residents and the parking now is a nightmare, there's nowhere to park. So, and I believe that a lot of that is because once the Andaz came in and redid, you know, the hotel, the Renaissance Hotel, there was some impact on the parking that was for Ulua Beach. Well, now I believe the Andaz is utilizing a lot of that parking so now there is less place for the locals to come and, you know, swim, fish, dive, everything. So, what I would like to see is that the Council come in and do a site visit. I'd like to also see a meeting, a community meeting, for Kihei and anybody that wants to hear what, the impacts of changing of the zoning and, yeah, I would like to ask the Council to defer this until, you know, more information can be gathered. And I know that I missed out on a lot of the testimony, there's a presentation happening so, you know, I apologize if I'm saying a lot of the same things that other people are saying but thank you for being here, thank you for hearing this and I appreciate your time.

CHAIR KING: Any questions? I just have a quick question for you, Erika.

MS. LECHUGA DISALVO: Yeah.

CHAIR KING: Thanks for being here. But were you at the community meeting that I held on this issue when it first came up?

MS. LECHUGA DISALVO: I was not.

CHAIR KING: Okay. You live in Kihei?

MS. LECHUGA DISALVO: I think she was sick.

CHAIR KING: Okay, 'cause we had a site visit --

MS. LECHUGA DISALVO: I remember that.

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CHAIR KING: --and then we had another community --

MS. LECHUGA DISALVO: Yes.

CHAIR KING: --meeting . . .*(inaudible)*. . .

MS. LECHUGA DISALVO: Yes, I do remember that. And also now that I am in Haiku, it's harder for me to get, but it's --

CHAIR KING: Okay.

MS. LECHUGA DISALVO: --definitely a priority for me and thank you for doing that.

CHAIR KING: Okay, thank you.

MS. LECHUGA DISALVO: Thank you.

CHAIR KING: Next testifier?

MS. MATTHEWS: Our last testifier before the presentation is Autumn Ness, testifying on PC-22.

MS. NESS: Aloha, Committee, my name is Autumn Ness. I wasn't going to say anything and then I realized that this is happening repeatedly throughout the morning so I wanted to clarify something. A lot of the people that have come here from the community to talk about this keep using the word zoning and they don't, I barely know the difference between a Change in Zoning and a change in community plan designation and I work in this building. So, a lot of people that came off of this stand were confused that they used the word "zoning" instead of community plan amendment. That we're all talking about the same thing. For the community, they want, the people that have been up here, from what I understand, they want the designation to stay Single-Family, whether we call it designation or zoning, it's the same thing. It's one piece of protection left to keep this hotel, whether the current owners or some owners when I'm an old lady want to expand this into Hotel, there's one designation that is a fail-safe and that is that it is currently zoned or designated in the community plan as a Single-Family. So, a lot of people that came off of here, they used the wrong word but that's what the intent was and I hear that conversation happening in the back of this Chamber a lot. I also wanna kind of piggyback on what Ms. Callentine said about, if you look at the big picture, this doesn't make any sense. The community is not gaining anything with this piece of legislation. I use that beach a lot, everything's great. I find it really hard to believe that a landowner would hire a consultant and put a lot of money into this whole entire arduous process, which we all know takes time and money, to just keep things as good as they are. In my opinion, this is an investment in something bigger. We don't know what that is yet but we've all been on the receiving end of some misrepresentation of somebody's plan, I'm not going to name any names but was some of the same parties involved in this very application, where

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they have completely misrepresented the intent and the plan until they get their permit and then they do whatever the hell they want to do. So, I'm just saying, put the pieces together. If the community doesn't really stand to benefit anything and a landowner and a developer is putting a lot of money into something, what's the end goal? So, yeah, I just wanted, my main point was to clarify that a lot of people in here are just using the word "zoning" and "designation" interchangeably without knowing it, so, thank you.

CHAIR KING: Thank you. Any questions for the testifier? No? Thank you for that clarification. Okay, any ...

MS. MATTHEWS: Madam Chair, that's all of the testifiers that we have that would wish to speak before the presentation.

ITEM PC-22 COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (09-246)

CHAIR KING: Okay, so, Members, what I'd like to do next is move, is skip over the PC-11, since we don't have a real substantive presentation by Planning on that right now, and move into the PC-22. Allow the parties that are requesting the conditional permit to do a presentation and then we will leave...and then...so any questions during the presentation will be clarification only. We're not going to be debating 'till after we get the rest of the testimony and then we'll close testimony after that. So, if we can call the, put on the presentation. So, PC-22 is a community plan amendment and conditional permit for Maui Oceanfront Inn and Sarento's on the Beach and this is the, it's a two-part action, two different actions. Mr. Hart, do you want to introduce yourself?

MR. HART (*PowerPoint Presentation*): Thank you very much, Chair, Members. My name is Jordan Hart, a land use planner with Chris Hart and Partners. Just to try and clarify things upfront, you know, why is the applicant proposing these two items, community plan amendment and conditional use permit. And the number one reason is because that's part of the settlement agreement that was established as referenced by Mr. Hall, where he had two interested parties, Ms. Dana Naone Hall and Leslie Kuloloio. They had a number of issues with the property as it was being operating at the time. They intervened on a variance application. The County of Maui became a party to that intervention and ultimately resulted in a settlement agreement outlining a series of issues that needed to be cleaned up on the property, including clarifying the community plan amendment and getting a conditional use permit in order to do commercial parking on a property that's designated Park. So, it's the simplest way to explain what's going on but I'll go through some of the history to kinda give context for that as well. So, the project site, the two red parcels. Parcel 29 is the older hotel parcel and Parcel 149 is the smaller parking lot parcel on the north side. Here's a zoom in of those two, you can see the gravel parking lot on the north side. I do want to point out that Hale Hui Kai is also a hotel parcel. It's immediately to the south.

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That'll become relevant as I show you some older land use maps. This is the State Urban District, so we're well within the Urban District, basically, everything below the Piilani Highway is Urban in this area. This is the 1969 zoning map, County just got off of this map actually. But anyway, it was zoned H-M Hotel and the park parcel is zoned Park. Now these are the Keawakapu residential lots, they go all the way down to the end of Keawakapu Road and there was a same pattern, Single-Family residence, except for the two Hotel parcels at the end. Now, basically what happened is in 1984, '85, I'm sorry, everyone is saying '84, really, '85, the entire section got changed to Single-Family. You know, our position is that was clearly a mapping error. You have two existing hotels since the '70s. Hale Hui Kai has already completed their correction of the map. The reason ours took so long is that Western Apartment Supply & Maintenance Company, which was the former leaseholder of the hotel, went into bankruptcy. The entire lease package from the State went into receivership. It was purchased by the new applicant, Ruby & Sons. So, there was a long period of time where there was no action because of that process and so we're trying to get that resolved, which is all tied into the original settlement agreement. So, these are just some character photographs of the area. This the main entrance to the hotel property, Sarento's. This is the gravel parking lot that exists. This is a beach access landscape architectural feature. So, this is one of the items that the variance was filed for that ultimately resulted in an intervention. It was that archway, this ramp, and this stairway. Basically what happened is, the leaseholder tried to create accessibility improvements in between the parking lot parcel that they had a revocable permit for since the year 2000 from the State of Hawaii and they filed for a variance because these are in the side yard setback and as a result of other issues that Mr. Hall mentioned that members had a concern of, did some research, realized that the community plan designation is out of order. In the Special Management Area you can't get a Special Management Area use permit if all of your land use designations are not in order, and so that needed to be corrected. This is a photograph of the lot as it is now. So, basically what we're asking is to go from Single-Family back to Hotel for this parcel here. Some chronology, back in '68, the State leased this parcel for the development of a hotel. In 1973, the hotel and restaurant were constructed. In 1985 the Kihei-Makena Community Plan changed the existing hotel parcel with the constructed hotel from Hotel to Single-Family. This is the Kihei Civic Development Plan from 1968, this would have been the predecessor to the Kihei-Makena Community Plan and so these two parcels, Hale Hui Kai and the Maui Oceanfront Inn are Hotel. And then...now I'm showing you the '98 map but the same thing happened in '85, it just swept them through and changed it. Now, nobody was really aware of it, the Maui Oceanfront Inn was getting permits to do various things, SMA minor permits. So I presume that's the reason nobody objected to the continuation in the '98 community plan. The conditional use permit is for the parking, part of the settlement agreement. The issue was that this is Park zoned so how can you do commercial offsite parking in a Park-zoned parcel without a conditional use permit? So, the settlement agreement required a conditional use permit. Another issue was, shouldn't the community be the main beneficiary of that use? So, they had a 51 percent parking ratio at that time. Now, this is the initial conditional use permit, that request, that was before the Land Use Committee. We are amending the request because there is a draft, there is a amendment to the settlement agreement, it's been

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signed by the leaseholder as well as Mr. Hall's interested parties. It's been submitted to the Planning Department for review. It is more restrictive than the original agreement so we would presume that it'll be signed but that's for Corporation Counsel and the Department to determine. So, for the revocable permit, in the year 2000, BLNR issued a revocable permit for the parking lot parcel. In 2004, an SMA exemption was issued for a proposed two-lot subdivision for the creation of Parcel 149 from the overall DLNR parcel, which is Parcel 001. The purpose was to issue a lease to the prior applicant for the same request, Western Apartment Supply & Maintenance Company. May 2005, Mr. Hall filed a petition to intervene on behalf of Dana Naone Hall and Leslie Kuloloio on a variance application that was intended to address side yard setbacks, those are those access items that I showed you, the archway, the stairway, and the ramp. In 2005, Deputy Corporation Counsel, Cheryl Tipton, on behalf of the Planning Department of County of Maui files a petition to intervene in the contested case proceedings on the variance application. In November of 2005, a settlement agreement was executed between Western Apartment Supply & Maintenance Company, Tri-Star Restaurant Group, which is Sarento's, Ms. Naone Hall and Mr. Kuloloio. And that was intended to resolve a whole list of issues that were out of order Mr. Hall referenced, allowing the naupaka to grow on the beach, use of the area fronting Sarento's, not clearly delineating where members of the public can be, procedurally correcting issues in the side yard setback, procedurally correcting the community plan so they can get SMA permits in order to correct the issues in the side yard setback, and so on. Following our last meeting with the Land Use Committee, the conclusion was that there needed to be a new meeting with the community. We had that meeting with the community on September 9th of 2017. It included a site visit at the gravel parking lot and a discussion of the issues. It was followed up by a full presentation, similar to this presentation I'm giving now, with the chronology of what's happened and why we're doing it and then a question and answer, that was held at Saint Theresa hall. The general conclusions from that meeting was that the community preferred that the gravel parking lot remain in gravel and not be paved. I want to say that the original request at the time, at the settlement agreement, was that it be paved originally and that was seen to be an improvement of the facility for the community. In current times, people were more concerned about runoff and they would prefer that it not be paved. Another issue that was requested was that additional parking stalls be provided for the community. So, I'm gonna go over, briefly, the settlement agreement amendments that, those are the items that have been signed by the interested parties and the leaseholders and submitted to the County. And these are also supposed to reflect the new, what we would like in a conditional use permit. So, one clarification was that there is a reference to commercial use on Parcel 149, that reference to commercial use is clarified to mean parking, offsite commercial parking from the hotel and restaurant, no other commercial uses. There is a section clarifying that all stalls need to be expressly available to the general public, all beach parking stalls need to be available to the public for 24 hours a day. There was also thorough a discussion, Councilmember King met with DLNR Land Division, there was discussion of a potential opportunity for the County to obtain land for a parking use in Parcel 001, that's DLNR's larger parcel, the same parcel that the KIRC facility is going on. There's a additional section that says basically, in the event that the County is able to develop

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a substantial parking lot, then the leaseholders would have the opportunity to request eight stalls back, going back towards their original settlement agreement. And then there's a clarification of the obligation of who is responsible for maintaining paying for the policing of the parking lot and that would be the hotel property. As Mr. Hall said, anybody who feels that it's not being operated appropriately can file a complaint, they can notify the hotel if they're onsite, that they want a vehicle to be towed, they can file a complaint with the Planning Department, Zoning Enforcement Administration Division if they feel that the hotel isn't operating the parking lot consistent with this conditional use permit. So, this is the original layout of the parking lot. Basically in this configuration, these were the beach parking stalls that were proposed, it was 51 percent, that is 42 stalls, were for the general public and 49 percent, that is 40 stalls, for the commercial operators. This is no longer the request. I'm going to show you the updated version. This is the, this is what's in the amended settlement agreement and this is basically 60 percent of the stalls or 51 parking stalls for the general public and 40 percent or 34 for the hotel operator. One thing I do want to emphasize, I was here yesterday for the Council's discussion of the proposed parking ordinance. This was all occurring when we were back under 19.36 parking ordinance, not 19.36A, which included compact stalls. And so that's part of the conditional use permit is that this be allowed to be developed in this way. The hotel is the one that takes the compact stalls, not the general public in this configuration. If we need to go to...well, actually the general public has five compact stalls but the majority are for the hotel. If we need to go back to all full-size stalls, it's just gonna reduced the overall available parking in the lot. One issue that did need to be addressed, that has been addressed since the signing of the settlement agreement, was clear delineation of how the beach, or the members of the public will get to the, can get to the beach and where they can use. These are all diagrams of where signage is currently installed on the site. One issue that I should have deleted for today's presentation is future paved parking. This is how it could have been delineated if it was a paved lot, it will probably have to be signage or something like that in front of each gravel lot in the future. So, some points that I think are relevant, commercial parking has been occurring alongside beach access parking on Parcel 149 for approximately 18 years now. So, what we're talking about isn't actually a change, as Mr. Hall mentioned. You know, the intent of delineating the stalls was to keep non-members of the public out of the beach access parking stalls so that the public could say, you don't belong here and I want you out of our stalls. If it's...anyway, not being delineated doesn't allow for that to happen. Public parking is not being removed by this conditional permit, it's being increased and more clearly delineated. And there is no development proposed with this action. And that concludes my presentation. Thank you.

CHAIR KING: Okay, alright, thank you, Mr. Hart. And so, Members, are there any questions just for clarification about the presentation before we take testimony? And then we'll go, after testimony we'll go into deliberation. Okay, then we'll go back to the public who wanted to testify after the presentation. Ms. Matthews?

MS. MATTHEWS: Madam Chair, our first testifier is Tyler Hofinga, to be followed by Bonnie Newman, both testifying on PC-22.

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MR. HOFINGA: Good morning, I think it's still morning, yeah, for a little while. I just wanted to introduce myself, it's Tyler Hofinga, I'm a new owner in the Keawakapu area and I just wanted to suggest to everyone that this seems like a very significant issue. I live in San Francisco and I'm here once a month. This seems like a very significant issue and I think we may need to take more time and I'd recommend that you think very carefully about this. Obviously, I think it's a Federal law that people have access to the beach anywhere in the United States, I think, and I just wanted, I'm not going to need my whole three minutes but I want to just ask, please make sure that you do the right thing and think very, very carefully about both sides and then make an intelligent decision that continues to provide the maximum amount of access and public parking to visitors and residents alike. That's all I have to say. Thank you.

CHAIR KING: Any questions? No? Thank you.

MR. HOFINGA: No questions.

CHAIR KING: Thank you for being here.

MS. MATTHEWS: Our next testifier is Bonnie Newman, testifying on PC-22, to be followed by Judith Cantrell.

MS. NEWMAN: Aloha. Mahalo for this opportunity and thank you for your public service, all of you. I am gratefully a full-time resident for over 32 years now. It's the ocean that lured me here, it's the ocean that keeps me here. I live in Maui Meadows now for 13 years and I swim at Keawakapu two or three mornings a week. Also, at least once a week, I'm there for sunset and I just wanted to say, I'm not going to repeat a lot of the things that people have said, I really respect your time and mine, but what hasn't been mentioned is that the Mana Kai is very gracious in allowing the public to use the lawn in front their, which is really a condominium but it's run as a hotel, and people gather there every night for sunset and the only place that we can park is that gravel parking lot. And it works very well and it doesn't hold all the people for the weekend or for holidays, no, not in the least, but it's a gathering place and it's very important to us. I am also the present president of the Maui Meadows Neighborhood Association, we had a meeting last night, and they urged me to come down and say how important it was to the residents of Maui Meadows. I call Keawakapu Beach, Keawakapu Club. The same residents go there almost every morning, there's early people, there's later in the morning people and there's always sunset walking people, not only from Maui Meadows but all of South Kihei. And there's very little parking and there are three different access to Keawakapu Beach. This is the most used. Why? Because of that lovely grass area that is maintained by Mana Kai. So, it's really important that we have all the parking that's available now for the public. And it's quite obvious that some people from Sarento's, some people from the hotel, park there also, but there really has not been a problem and we're grateful that it's not being paved because of the runoff. A lot of us live in that area and use the beach. It's my gym, the ocean is my gym, it's for my fitness, and at the age of 73, it's really important to me that I have access. A lot of us are seniors there. We've come here to Maui to enjoy and be healthy in our later years. So, mahalo. So, therefore, I'm opposed to the amendment right

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now without a meeting of the public or a community meeting for--and I appreciate the site meeting that was held last year, that helped a lot. And I just want to say that I've received quite an education here this morning. I really didn't know enough about it and I'm also a realtor in the area for 29 years and I'm really glad I stayed because I've learned a lot. So, thank you. Mahalo for your attention and for all you do for all of us. Aloha.

CHAIR KING: Okay, thank you. Any questions for Ms. Newman? No?

COUNCILMEMBER COCHRAN: Chair, quick. Sorry.

CHAIR KING: Oh, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. And so you are also speaking on behalf of Maui Meadows Association?

MS. NEWMAN: I'm speaking on behalf of the Board of Maui Meadows Association 'cause we met last night but not the whole Association, although we are sending out a survey about it this week.

COUNCILMEMBER COCHRAN: Okay. Thank you.

MS. NEWMAN: Thank you.

MS. MATTHEWS: Our next testifier is Judith Cantrell, testifying on PC-22. Judith? Our next testifier will be Bruce Benner, testifying on PC-22. And I don't believe Laurie Householder is here either. Okay, our next testifier will be Wayne Nishiki, testifying on PC-22, to be followed by Kai Nishiki.

MR. NISHIKI: Good morning, Kelly.

CHAIR KING: Aloha, Wayne.

MR. NISHIKI: Nothing against you. This is just what I gotta do and it's just because...I wanna read it now, still nervous. This decision today is so important to the residents of Maui. You must also be fair and protect the community plan process to ensure the public's trust. The Kihei Citizen Advisory Committee, the Maui Planning Commission and the County Council, which I was a part of, did not make a mistake in the Single-Family designation of this parcel. We all voted separately and passed and now it's law, it's law. The Kihei Community Plan became law and our residents used this beautiful beach, which is safe for young generation kids. This is why we ask our legal advisor, the Corporation Counsel at that time, Rodger Betts, on the takings issue. I will quote from Mr. Betts directly from the community plan, which is law, and it was in reference to the down zoning of many parcels, excuse me, community plan change of many parcels. He says, "if you just simply down zone but the land is still viable, land, and the person can use it, the courts have held that it is not a taking" from our Corporation Counsel, Riki Hokama, Mr. Betts. I know he's not with us anymore, but

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that was his quote. I want to also say that when I listen to what people misunderstood...I'm done. Any questions?

CHAIR KING: Any questions, Committee members? Thank you. You know you have 30 seconds after the light turns yellow.

MR. NISHIKI: Oh, really?

CHAIR KING: Yeah.

MR. NISHIKI: No, I'll field the questions because I will. Thank you.

CHAIR KING: Okay. Any questions? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Mr. Nishiki. Yeah, so I just wanted you to finish your sentence.

CHAIR KING: I think he's ready to take questions.

MR. NISHIKI: This is really, really important because I think that as elected members, you all understand because you are now going through a community plan process. Right now you're discussing the West Maui plan. The South Maui plan also had the inclusion of community members. I'll name them because I know a lot of you know them also. Smokey Burgess; . . .*(inaudible)*. . .; local family, Roy Suda; educator, Annie Kemper; developer--God, I can't remember his name now--but we had a mix of different people that sat on the CAC. They passed out this plan, gave it to the Planning Commission, Commission passed the plan out and gave it to the Council. You need to see that this is a long process. All the community members that had a stake in this plan at this point were allowed to come and say, for our family, I wanna do Single-Family to Multi-Family. Joe Kealoha, I wanna go from whatchamacall to Hotel. And so we took every request, over hundreds of requests from families, and had to digest and then pass it. This included the CAC, the Planning Commission and the Council.

CHAIR KING: Okay, Mr. Nishiki, can I just ask you, if we have a clarifying question?

COUNCILMEMBER COCHRAN: Yeah, sure. And so, Mr. Nishiki, what you're, I guess--thank you for explaining the arduous process which we're in now--and at that time, looking back, the CAC, as you stated earlier, the Single-Family designation was not a mistake is what you're highlighting, and that there's a reason for it to be there.

MR. NISHIKI: There was no mistake made. We had the discussion about designating the particular parcels to Single-Family in that area.

COUNCILMEMBER COCHRAN: And the main reason to keep it there?

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MR. NISHIKI: The contiguous concern of all. If you look at Keawakapu Beach, continuous Single-Family residences except for a few parcels, but that's it, so we needed to keep the contiguous. The other concern was, because we heard from even the Kihei Community Association in testimony, they didn't want any more hotels, okay. Now, what is more important is what I would call short circuiting this process, which is now going to follow the Lahaina plan. As two planners, professional planners say, either vote it down or refer it back to the Kihei community and that community can decide now what they want to do with this particular parcel. What you guys are doing, and through no mistake of yours because I've heard the comment, oh, you know, a lot of the time we've pretty much went through and did a change, Kelly, but in this situation, as one person said, the change is so intense from Hotel to Single-Family, that he must give the community a chance to voice their feelings. What you're doing now is you're eliminating, really, the community plan process, which is law, yeah --

CHAIR KING: You know, Wayne, can we ...

MR. NISHIKI: --and short circuiting and just going, oh, no, Council, we know better and now we want to pass it. I think ...

CHAIR KING: Can we ask you to stay around as a potential resource person because I'd like to get to our last testifier?

MR. NISHIKI: Oh, okay.

CHAIR KING: So, and we've kind of gone on for a long time.

MR. NISHIKI: Sure. Thank you.

CHAIR KING: Thank you. Okay.

MS. MATTHEWS: Our last testifier, Madam Chair, is Kai Nishiki, testifying on PC-22.

MS. NISHIKI: Good morning, Councilmembers, Committee Chair. Mahalo very much to Kelly King for working with the community last year to address the concerns regarding the paving of the parking lot and the runoff in the ocean. With passage of your resolution regarding sea level rise, I deeply respect your commitment to protect our valuable shoreline areas and resources. Keawakapu is a very special place to me and the rest of the community in South Maui. It is the last view corridor available in South Maui. Everything else is developed. This has been brought up continuously by Daniel Ornellas, the State land agent, and even he has said, look, this area really needs to be looked at as a whole, as a district, as a master plan for this area and I think even yesterday, Riki, you brought up that it's good to look at things in, as a big picture and not parcel by parcel and in this area, we have KIRC coming in, we have lots of State land that the public would like to have access to. We have Maui Oceanfront Inn asking for a community plan amendment, we have the parking lot issue, we have seven acres right across the street slated for development. There's no rush here. It would be best to have the community have a chance to really look at the

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area and decide what the community wants as a whole instead of us making decisions on all these desires of the different landowners. It's the last, this area is basically the last beach access that many residents are comfortable going to. We're pushed out of Wailea, we're pushed out of Kaanapali. This is it for us and I'm so thankful for our community who comes out and really has an opportunity, so thank you very much on that. We have a newly elected State Rep for Kihei, Tina Wildberger, and she has a great working relationship with you, Kelly, and she is working towards getting matching funds from the State to work with the County to work on a master plan for this area. I think we need to consider, what are the needs for this region, what does the community want? A master plan is a great opportunity to get all stakeholders together, including our community, to voice their opinions about this area. This is a win-win for our community, there's no need to rush it. The update for the Kihei Community Plan is coming up, let's respect that process. And, finally, a community plan amendment is a huge deal. We've had planners come in here and say, look, developers don't spend a lot of money...they're making an investment, they want a return on their investment. Whether that's going to happen now, in the future, or if they're going to sell the parcel and let somebody else develop it, we don't know, but this happens very often, you get entitlements and then you have options about what you want to do. So, this is not just housekeeping and let's really understand that a community plan amendment is huge. And additionally, I would request that there be a public hearing with all of the Councilmembers there and a site visit by all of the Councilmembers. I know a lot of you probably haven't been down there in a long time. Why don't you go down there and see what's going on, like the public, this is our last, our last place to go. And I would really like someone to ask the Planning Department if they could clarify about what the parking requirements are for these businesses because perhaps we need to look at this lot in a different way, like maybe we need to say, yeah, sure we have, you know, this agreement and that agreement and they want parking and everything, but what is in the best interest for the community? Let's look at that, let's really look at what the community wants and not what's best, in the best interest of the businesses and the resorts. So, please, I would like to have a little bit of clarification on the parking requirement and why would we want to give them more parking than is only required for their business? If they're only required three or four spots or ten spots, then let's do that and leave the rest of the parking for the public, that is the intent of State land, that's the intent of these ceded lands, is for it to benefit the public. So, please protect our shoreline access. When you mark stalls only for hotel, we're losing, we're losing. Those, there has been testimony and pictures showing you what happens when you mark spaces only for the public, that's what's happening at Mana Kai, or just for the private use. Mana Kai has tons of parking and that's all for private use and it's empty most of the time and the public is left scrambling in this little lot for parking. So, please support the public, the public's right to access the shoreline and this is longstanding use, you want to talk about longstanding use? Longstanding use --

CHAIR KING: Excuse me?

MS. NISHIKI: --is that --

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CHAIR KING: Can you conclude?

MS. NISHIKI: --that public has enjoyed this lot, so.

CHAIR KING: Thank you.

MS. NISHIKI: Thank you very much.

CHAIR KING: Thank you so much for being here, appreciate it, appreciate your testimony. Any questions? Okay.

MS. NISHIKI: Mahalo.

CHAIR KING: Thank you. Are there any other testifiers? And any other testifiers in the Chambers who would like to come forward, sign up. And did we get any response from any of the satellite offices and whether they have ...

MS. MATTHEWS: That's all the testifiers that we know of, Madam Chair.

CHAIR KING: Okay. Alright then, with no objections, we'll close testimony.

COUNCILMEMBERS: No objection.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR KING: Okay, alright, testimony is closed and if Members are able to stay for another half an hour. Does anybody have to leave right away?

COUNCILMEMBER HOKAMA: Ten minutes.

CHAIR KING: Ten minutes, okay. Then we can go into, at least go into discussion on this issue, on item PC-22. So, there are two...let me grab the...PC-22, the Committee is in receipt of the following: County Communication 09-246, from the Planning Director, transmitting the following: a proposed bill, a, a proposed bill to grant a request from Western Apartment Supply & Maintenance Company an amendment to the Kihei-Makena Community Plan and Land Use Map from Single-Family to Hotel, to reflect the existing hotel use on approximately 1.119 acres of State-owned property situated at 2980 South Kihei Road, Kihei, Maui, Hawaii; and b, a proposed bill to grant a request from Western Apartment Supply & Maintenance Company for a two-year conditional permit to allow for the construction and use of an offsite parking lot on approximately 35,932 square feet of State-owned property on South Kihei Road, Kihei, Maui, Hawaii, within the County Park District, identified for real property tax purposes as tax map key (2) 3-9-004:149; and 2, a correspondence dated February 14th, from the Department of the Corporate [sic] Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance to Amend the Kihei-Makena Community Plan and Land Use Map from Single-Family to Hotel for Property Situated at Kihei,

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Maui, Hawaii. The purpose of the revised proposed bill is to amend the Kihei Community Plan and Land Use Map from Single-Family to Hotel for approximately 1.19 acres situated at 2980 South Kihei Road, Kihei, Maui, Hawaii; and 3, the correspondence dated February 14, 2017, from the Department of Corp. Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Granting a Conditional Permit to Ruby & Sons Hospitality, LLC, for the Construction and Use of an Offsite Parking Lot Within the County Park District for Property Situated at Kihei, Maui, Hawaii. The purpose of the revised proposed bill is to grant Ruby & Sons Hospitality, LLC, a two-year conditional permit to allow for the construction and use of an offsite parking lot on property identified for real property tax purposes as tax map key (2) 3-9-004:149. So, Members, we have two bills before us. I'd like to let the Planning Department make a statement, purpose.

MS. McLEAN: Thank you, Chair. I would like to point out that this was transmitted to the Council in 2009, that was before my time with the County. The Department recommended approval at that time and I believe with key appropriate conditions, the Department could continue to support the request and I'll just summarize briefly the reasons why. For the Sarento's, Maui Oceanfront Inn property, it's an existing development and by having a mismatch between the use and the zoning in the community plan, they are not able to get SMA permits for any work, whether it's minor or major. The work that's been done in the past was probably under SMA exemptions or they were improperly issued. But the SMA law requires consistency between use and zoning and community plan. So, with that mismatch we would not be able to process permits for minor or major work. I believe it would be appropriate for conditions to be placed on it to restrict the size and the use and the intensity, and I believe that's been proposed, to limit the development potential to no more than what is there today. As for the adjacent parcel and the conditional permit, that is more of a policy call for the Council. It is a way to ensure that those parking spaces are used for public beach access because right now there doesn't seem to be any particular requirements on how it's used, and then it would be up to the Council to determine how those parking spaces are allocated, and I would suggest that conditions be placed on the conditional permit to spell that out. As you know, there's an existing settlement agreement that requires at least 51 percent of those spaces be provided for public beach access. The County is a party to that agreement. There's also a proposed amendment to the settlement agreement that would increase that number. The County has not yet signed off on that but the County is certainly willing to do that. We would like for that to be in concert with the conditional permit bill if it does get approved so that not only by private agreement among the parties, but also by the ordinance that those requirements would be in place. And I'll just limit my introductory comments to that. Thank you, Chair.

CHAIR KING: Okay, and any comments from Corp. Counsel?

MR. HOPPER: No, Chair.

CHAIR KING: Okay. So, but we've gone over both of these bills and I think Corp. Counsel has looked at the proposed amendment that would limit the size and scope of the

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hotel. So, Members, questions of Planning or Corp. Counsel? Comments?
Mr. Hokama?

COUNCILMEMBER HOKAMA: Chair, thank you for allowing me at this time. Again, I need to meet with my fumigation contractor, I got a bad termite problem. But, anyway, I thought we would be either completed or considering a recess, Chair. My first question, Chair, that I would like to have some responses, maybe from you. I appreciate your letter that you sent on November 9th, requesting the status of Ruby & Sons Hospitality. So, do we have a response back to your concern that you presented, Chair?

CHAIR KING: Well, actually, we do and that was part of the presentation today because the request was for an update on the consent agreement. The amendments were presented by Mr. Hart today as their consultant. And so I knew that we had been working on changes to that since the community meeting that I held last year, so I just wanted to find out where that was it and as the Planning Director has said, the County has not yet signed off on it but the, Ruby & Sons has signed off on it and the community members who had the original, were the original complaintants [sic] ...

COUNCILMEMBER HOKAMA: Yeah, I just was wondering about the legal business status of this entity that you questioned.

CHAIR KING: Oh, okay, right, okay, the letter about DCCA. So, I believe they are in, they had put in an application to get into compliance and I'll ask Mr. Hart to explain. And I think I sent them, actually, a longer letter.

MR. HART: Chair, if I may? Certificate of Good Standing was submitted to Committee Staff.

COUNCILMEMBER HOKAMA: That was just recently, Mr. Hart?

MR. HART: Yes, that's right.

COUNCILMEMBER HOKAMA: Okay.

CHAIR KING: You should have a letter that looks like this. It's a response.

COUNCILMEMBER HOKAMA: Okay, thank you. No, I don't, but that's fine. My...follow-up question, Chair, please? Because the County is a party on, I guess, on an earlier intervention on the variance, are we still required to eventually sign off on the conditions of the conditional permit request before us?

CHAIR KING: Department or Corp. Counsel?

MR. HOPPER: The party was the Planning Department in this case and the agreement doesn't obligate, it basically states the Planning Department won't oppose but realizes it has statutory duties with respect to the applications. So, to decide whether to grant

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the applications or not, that's still up to the County Council, there's not an obligation --

COUNCILMEMBER HOKAMA: Understood.

MR. HOPPER: --on that to grant the permit pursuant to the settlement agreement but the agreement does require that the Planning Department not oppose the applications but does recognize that there are statutory duties the Department has to present the application but the County Council would be the entity deciding those permits at this point.

COUNCILMEMBER HOKAMA: Okay.

CHAIR KING: Mr. Hokama?

COUNCILMEMBER HOKAMA: If the Council chooses to say not approve either or both, does that violate the requirements of the applicant in that agreement, private agreement for the submittal? Was it also for the submittal and approval that they were required to receive from the County?

CHAIR KING: Mr. Hopper?

MR. HOPPER: I can refer to the agreement. It basically says that the applications have to be filed within a certain period of time, and Mr. Hall and Mr. Bays may also comment on this, but it basically discusses the County receiving the applications within a certain period of time and basically processing them. It says that the parties have to perform, in good faith essentially, and I can find the relevant sections but essentially it does leave still the application process intact for the County Council to decide yea or nay on the permits themselves. So, I don't see making the ultimate decision. I don't see the decision making power of the Council being changed by the settlement agreement.

COUNCILMEMBER HOKAMA: No, I'm just wondering what is the status between the applicant and the party that filed the intervention?

MR. HOPPER: Well, I can do my best to read that in the agreement, and I'll find it, but I think if we're talking about what's the status between the other parties, and the other parties are here, I'd rather have them explain their understanding of that. I can give you my understanding of it and read the agreement here but they're ...

COUNCILMEMBER HOKAMA: So, the County's only concerned about one small portion of this whole application? That's why you guys really don't care what the other two parties do?

MR. HOPPER: As far as the County is concerned, you know, it had representation of the Department of Planning. As far as whether or not Mr. Hall or Mr. Bays are satisfied that the other has complied or not complied with the agreement, I don't want to speak for them is what I'm saying.

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COUNCILMEMBER HOKAMA: That would be between those two parties?

MR. HOPPER: Yes. And the Planning Department has agreed to certain things but it's mainly to process the applications in good faith and to not oppose the applications but still have its statutory duties, you know, to comment and give its opinion on the applications, and that was what was agreed to. There's other agreements as well as far as the, of the parking and other things like that, but the actual applications were essentially still left up to the Council to decide whether to not to grant or deny the applications. Now, the issue of having a, an operating hotel on a property that is community plan Single-Family, that can lead to some problematic issues potentially and --

COUNCILMEMBER HOKAMA: Understood.

MR. HOPPER: --so we'd want to discuss that further if the hotel use pre-dated the community plan change and is an ongoing continuing use. And so that can have some issues as well but that's, as far as the agreement, the Council does have the authority to review, as it would other applications, and make a determination on those applications.

COUNCILMEMBER HOKAMA: Okay, thank you very much, Mr. Hopper. Thank you very much, Chair.

CHAIR KING: Thank you, Mr. Hokama. Mr. White, did you have ...

COUNCILMEMBER WHITE: Yes, thank you. For the Department, one of the comments of the testifiers mentioned the Change in Zoning or change in community plan back in 1985. It seems a little strange to me that they would've taken two properties where there were already hotels or condominiums constructed and put them back into Single-Family. And I know we've had mapping errors where we've done the research into the actual ordinance that passed to see whether those specific TMKs were noted as being changed. Do you know whether those two were included in the ordinance as being changed to Single-Family or not?

MS. McLEAN: We did not look into the history of that designation, whether those were purposefully changed with the community plan update or whether it was --

COUNCILMEMBER COCHRAN: I did.

MS. McLEAN: --it was more of a mapping change. If Councilmember [sic] Nishiki is still here, he seems to recall the activity at that time.

COUNCILMEMBER COCHRAN: Yes, he does.

MR. DACK: Also add that the Council has, a few years ago, you did do the mapping change for the Hale Hui Kai property immediately to the south of the property of subject now.

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And so it appeared that the Council at that time accepted that it had been a mapping error back in the 1980's but, again, no research specifically as it appears that Mr. Nishiki is recalling has been done to my knowledge.

COUNCILMEMBER WHITE: And whether it was or was not, the Council has the authority to make the adjustment as they did on the other property. And I think that the challenge that I see here is that even if it was changed back, we've placed the owners of these properties in a legal limbo because if we don't have consistency in the community plan, then they are frozen from doing virtually anything to upkeep the property. So, I think, I'm leaning toward supporting this measure because I think it is the result of community meetings, I mean, this has been around for a long, long time. So, to say that this is a new issue is, I think, a little bit unusual. And the fact that it's part of an agreement, I think it's, you know, it makes sense to me to follow the Department's recommendation. Thank you, Chair.

CHAIR KING: Okay, thank you, Mr. White. And just to let Committee members know that my recommendation for the ordinance regarding the community amendment, community plan amendment, would be to add the, into the ordinance, the phrase, the condition that the hotel shall not increase its current capacity, density, height or footprint. And this was agreed to by the hotel owner's representation. That way, if that goes into the ordinance for the community plan amendment, that any attempt to change that condition would revert the community plan back to the original, you know, where we are today, and take that designation away. So that would keep it, that would keep the hotel like it is right now, which, you know, people have, people even testified, they have said that they use that hotel and that hotel is not, I don't think that hotel size and shape and location is the issue, it's the fear of that hotel potentially being sold and redeveloped into something bigger so, and none of us want that in Kihei. So, Ms. Cochran, you had a comment?

COUNCILMEMBER COCHRAN: Yeah, first off, my office did do extensive research and Mr. Nishiki is recalling what had occurred back in that time. So, for further vetting or information on that behalf, my office and the Nishikis can go into very, very fine details about it. The other thing is, you did mention, Ms. McLean, that you've given exemptions in the past for this property for SMAs, can you not continue to do that or, I mean, there's a conflict here and that's why the reason for this amendment? Until then, you're not able to give SMA minors or majors but you have in the past?

CHAIR KING: Department?

MS. McLEAN: We would, without the consistency issue being resolved, we would not be able to issue SMA minor or use permits. We could issue exemptions, however. And work has been done in the past. I do not know if those were done through an exemption or if those were done through a minor that should not have been issued because of the inconsistency.

COUNCILMEMBER COCHRAN: Okay. So, I was just there and I didn't realize this was the property but they are doing extensive renovations, I mean, extensive. So, I don't know

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how--that was hundreds and thousands of dollars of renovations as far as I could see. How that happened, now that I'm understanding this conflict, have no idea how that all went down.

MS. McLEAN: That could've been an exemption.

COUNCILMEMBER COCHRAN: So, but my thing is, overall, with this whole entire item is the community plan being pushed through, you know, and I think, I mean, it's been mentioned by yourself, Chair, throughout a lot of other applications across this County, the community plans are coming up, it's going to be vetted through community, we should wait, this is the time, and this is the perfect item, I feel, that should be waiting too, for that. It's been on the books for a long time. The property's been operating as is for a long time. The community has been utilizing the parking and the beach and everything for a long time. So, what is the push? And you had two planners from your own Department stating the same. And, yeah, you know what this wreaks of, it reeks of Honolua, the whole time, under our noses, the community, there's a huge master plan that was planned in that project district, all the way from Kapalua Bay, all the way out to Honolua and beyond, to Punalau, to Windmills. And finally when it got to where I lived in Honolua Valley, they showed this park and all this lovely things for the surfers, but yet that was on the books for years, decades in the making. We had no idea 'till the very end. So, this feels like something to that effect, where you start this chain reaction and we're gonna change that into Hotel and all this other State lands. I know they're going across all islands to check on every single parcel they own and they're looking for the highest and best use. This could be when all of us are dead and gone, are not here anymore, oh, look, County always wanted hotels around here. Well, no, that's not the true, as I sit here. So, I don't know, I don't want to chain, I don't want to start that chain reaction of, oh, thank God Mr. Nishiki's here and others recall the day and how this got to be where it's at, you know. So, I'm really not in favor but, I mean, if it's gonna go because of the makeup of this body, then an amendment like you stated will have to suffice at this time. But I'll tell you what, this is not right, especially when South Maui's community plan is right after West Maui's and that's where I think it should be vetted thoroughly. And settlement or no settlement, that's my other question, Mr. Hopper, can we change things in this settlement?

CHAIR KING: Mr. Hopper?

MR. HOPPER: At this point, the settlement was with the Planning Department and the parties but you have control over the granting or not granting the conditional permit and the community plan amendment and you can put conditions on those, which would be just as binding as any conditions on the settlement agreement. So, you can more directly address those issues by putting them in the actual ordinances if you're not satisfied with any of those issues, like the number of, you know, the number of stalls, things like further expansion or other issues, you can actually put that in the ordinances themselves if you have those issues that you need to be dealt with. That's certainly within the Council's purview.

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COUNCILMEMBER COCHRAN: Okay. I like that comment.

CHAIR KING: Okay, anything further?

COUNCILMEMBER COCHRAN: That's all for now.

CHAIR KING: Okay. I'm gonna start with the community plan amendment and give my recommendation because I want to get this, and one of the reasons why I want to get this through, is because I want to get that statement in there that we want to keep the hotel the same size and shape and if we don't do this and they continue to get exemptions, we will not be in control of what happens. Things are going to happen, like they've been happening so my, if you're looking at the ordinance, which is with the communication dated February 14th and the actual request for legal services is dated February 9th, on your Granicus it says February 14th, that's the ordinance that says, A Bill for an Ordinance to Amend the Kihei-Makena Community Plan and Land Use Map from Single-Family to Hotel for Property Situated at Kihei, Maui, Hawaii. Be it Ordained by the People of the County of Maui, Section 1, pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Single-Family to Hotel for property situated at Kihei, Maui, Hawaii and identified for real property tax purposes by tax map key (2) 3-9-004:029 comprising 1.119 acres and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in a Community Plan Map No. CP-531, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof. And then, Mr. Hopper, do we need to put in a Section 2 for the condition in this ordinance?

MR. HOPPER: If you are going to add conditions, Madam Chair, I think you would need another section and that's normally handled that way. You probably also want to reference, similar to conditions of zoning. If you're going to add conditions, that they be set forth in a unilateral agreement and recorded on the property. And so that's something the applicant would need to sign before recording. We have, I believe, done conditions on community plan amendments before. There's certainly conditions of zoning that have been done but if that's done, I would also add a condition that they be set forth in a unilateral agreement and recorded on the property so that they would, those conditions would run with the land.

CHAIR KING: Okay, so that, are you telling me that needs to be a separate document?

MR. HOPPER: Well, the, just like with a Change in Zoning or zoning application, that's referenced in here as a, there will be unilateral agreement, and then in addition you will have a unilateral agreement that has to be signed, that's usually added as an exhibit per, before first reading. So, I would recommend going with that process so if there are conditions they'd be recorded on the property.

CHAIR KING: Okay. I guess, do we have a commitment from the hotel operator, Mr. Bays, for that condition?

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MR. BAYS: Madam Chair, the condition, the way you stated it to the community plan amendment would be acceptable to the applicant. The applicant is the leasee and I think the unilateral agreement that was proposed is not a good idea. I think you can put the condition directly in the community plan amendment and I would recommend that that's the way it be done because the State is the landowner so you can condition the community plan amendment on that condition, add it as a separate paragraph as Corporation Counsel has recommended. I don't think we need or want a unilateral agreement here. Thank you.

CHAIR KING: Okay, thank you for that. You know, since it's already 12:25, I'm going to ask the Committee if we can get critical mass to recess this meeting until next Wednesday afternoon, if that's possible. If not, we can reschedule it. If we reschedule it, we'll have to go through, you know, we open it up for public testimony again, which is fine with me, but if we can recess 'till Wednesday, we can actually get this done, or not done, and we can make a decision on it quicker.

COUNCILMEMBER WHITE: Morning or afternoon?

CHAIR KING: Well, I think the morning had...yeah, there's an MPO meeting in the morning, so it would be afternoon, 1:30. Mr. Guzman?

COUNCILMEMBER GUZMAN: Chair, I was not aware that this was going to be recessed to another date certain but I've already scheduled my hand surgery for that Wednesday --

CHAIR KING: Oh, okay.

COUNCILMEMBER GUZMAN: --so I'll be leaving Tuesday night.

CHAIR KING: Okay.

COUNCILMEMBER WHITE: I'm available.

COUNCILMEMBER COCHRAN: I'm available.

CHAIR KING: Ms. Sugimura?

VICE-CHAIR SUGIMURA: Actually going off to have Thanksgiving with my son after the MPO meeting but I'm available, let's get this done.

CHAIR KING: Okay. So, you know, I'd like to be able to come back with the documents and, in the correct form, and make my recommendations and then make my recommendations on the conditional permit and we'll, so we're going to recess 'till Wednesday...is that the 21st--Wednesday, November 21st and, at 1:30, so we'll see you all there. Thank you. . . .*(gavel)*. . .

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RECESS: 12:25 p.m.

APPROVED:



KELLY T. KING, Chair
Planning Committee

pc:min:181115:alp

Transcribed by: Annette L. Perkett

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CERTIFICATE

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

DATED the 10th day of December, 2018, in Haiku, Hawaii.


Annette L. Perkett
Annette L. Perkett