

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

July 2, 2008

### Council Chamber

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Joseph Pontanilla, Vice-Chair  
Councilmember Michelle Anderson, Member  
Councilmember Gladys C. Baisa, Member (Arrive 2:04 p.m.)  
Councilmember G. Riki Hokama, Member (Arrive 1:42 p.m.)  
Councilmember Jo Anne Johnson, Member (Leave 4:30 p.m.)  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Michael P. Victorino, Member

**EXCUSED:** Councilmember Danny A. Mateo, Member

**STAFF:** Tammy M. Frias, Committee Secretary  
Carla M. Nakata, Legislative Attorney  
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Jeffrey Hunt, Director, Department of Planning  
Clayton Yoshida, Planning Program Administrator, Current Planning Division,  
Department of Planning (Item No. 12)  
Joseph Prutch, Planner, Department of Planning (Item No. 12)  
Robyn Loudermilk, Planner, Department of Planning (Item No. 3)  
Jeffrey Dack, Planner, Department of Planning (Item No. 26)  
Tamara Horcajo, Director, Department of Parks and Recreation (Item No. 12)  
Michael Miyamoto, Deputy Director, Department of Public Works  
Stephen Orikasa, Administrative Sergeant, Wailuku Patrol Division, Department of Police  
(Item No. 3)  
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** **Item No. 12:** Charles Nunes, Jr.  
Patricia Nishiyama  
Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.  
B. Martin Luna, Esq., Carlsmith Ball LLP  
Eric S. Kaneshiro, Land Surveyor, Austin Tsutsumi & Associates,  
Inc.

**Item No. 3:** Dwayne Betsill, Managing Member, RDD LLC  
Vince Bagoyo, Jr.

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**Item No. 26:** Dr. Roger Kehler, Kihei Veterinary Clinic  
Mich Hirano, Project Manager, Munekiyo & Hiraga, Inc.

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

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CHAIR MOLINA: . . .(*gavel*). . . The Land Use Committee meeting of July 2<sup>nd</sup>, 2008 is now in session. For the record we have in attendance Members Jo Anne Johnson, Bill Medeiros, Joseph Pontanilla, Mike Victorino, and the Committee Chair, Mike Molina. . .and also Committee Member Michelle Anderson. Excused are Members Gladys Baisa, Danny Mateo, and Chairman Riki Hokama. We have from Staff, we have Carla Nakata, our Legislative Analyst and our Committee Secretary, we have Tammy Frias joining us today as well. And from the Corporation Counsel's Office we have Mr. James Giroux, and from the Planning Department we have Mr. Clayton Yoshida and someone we haven't seen here too often Joe--is it Prutch?--

MR. PRUTCH: Prutch.

CHAIR MOLINA: --Prutch--alright, welcome, Mr. Prutch.

MR. PRUTCH: Thank you.

COUNCILMEMBER VICTORINO: . . .(*chuckle*). . .

CHAIR MOLINA: Members, we have several items on our agenda today, three to be exact. But before we address any of them, the Chair is going to open the floor up for public testimony. The Chair would like to go over a few, brief ground rules before we proceed with public testimony. You'll be given three minutes to testify with one minute to conclude, and please state your name and any organization you may be representing, and, please, turn off all cell phones and pagers so as not to disrupt our proceedings here today.

First to testify, we have Chuck Nunes and Mr. Nunes will be testifying on Land Use Item 12, and to be followed by Patricia Nishiyama who will also be testifying on Land Use Item 12.

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

MR. NUNES: Good afternoon, Council Members. My name is Charles Nunes, Jr. My family owns the property at North Beach that is involved in the proposed exchange with Intrawest. I was born and raised in Lahaina, graduating from Lahainaluna High School in 1974. As a young child we cut the excess cane and grass that was growing on the property to feed our horses and cows. Approximately 22 years ago, we started exploring the possibility of a land exchange. In the past we have dealt with Amfac/JMB, Tobishi. . ., and Tobishima Corporations. We have spoken to several Mayors, started with Hannibal Tavares, at least three Parks Directors, and many Council Members. Everyone agreed that the exchange would benefit both parties, with the proposed park becoming much more practical and functional. Our property was originally designated H-2 in

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the Community Plan. In approximately 1990, we requested the CAC to amend our designation to Business in the Community Plan. You know, our family is not. . .are, are not developers. Our goal has always been a simple one with this property. This property would provide our. . .the educational opportunities for our children and their grandchildren. Currently we have no plans for our property; however, I am concerned with some of the suggested limitations regarding the height. I feel that the size and the parking that the--I'm sorry--I feel that the size of the property and the parking requirements already limit our options with the property. Although B-2 zoning allows 6 stories, I would like to request a height limitation of 50 feet and not more than 4 stories. This, this would give us flexibility in dealing with issues regarding parking and view planes. After 22 years of patience it seems that our family dream is close to realization. Approximately five years ago my father passed away without knowing whether the issue of the property reconfiguration would ever be resolved. I don't want my mother to suffer the same fate. Thank you for your consideration.

CHAIR MOLINA: Okay. Thank you, Mr. Nunes. Committee Members, questions for the testifier? Seeing none, thank you. Mr. Nunes, will you, you'll also be available for any--

MR. NUNES: Yes.

CHAIR MOLINA: --questions during the deliberations as well? Thank you. Next to testify on Land Use Item 12, we have Patricia Nishiyama. And at this point, Ms. Nishiyama is the last person to have signed up to testify. So if there's anyone else in the gallery that would like to testify, now's the time to come up and sign up for public testimony.

MS. NISHIYAMA: Aloha.

CHAIR MOLINA: Aloha.

MS. NISHIYAMA: Aloha, Chairperson Molina. Aloha, County Council Members. My name is Patricia Nishiyama and I am testifying on Item LU-12, the proposed West Maui Community Plan Amendment and Change in Zoning application for the Kaanapali North Park and Nunes land exchange. I am a resident of Lahaina, born and raised. I have known the Nunes family all my life. Aunt Flo has always been very aloha to our community, and I'm very familiar with their property at Kaanapali North Beach. I also know the individuals that work for Maui Beach Resort Limited Partnership, known to our North Beach Advisory Group as Intrawest.

Back in 2004, the North Beach Advisory Group was informed by Northwest [*sic*] that they would like to do a land exchange with the Nunes ohana. Intrawest was proposing a land change, exchange with the Nunes family so there will be a better configuration for North, North Park and a better configuration for the Nunes' property. The Nunes' property is currently surrounded on three sides by the North Park area. Actually you look at it. . .it's. . .they were locked in. So the North Beach Advisory Group comprised of myself, Bruno Ariyoshi, Buck Buchanan, Walter Delos Reyes, John Kuhia, and Star Medeiros was very supportive of the idea for the land exchange. Since our first discussion in 2004, Intrawest has kept us informed almost on a

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monthly basis on the status of the land exchange. We were aware that the land exchange might be a lengthy process as land use entitlements would be required for the new park, which will be open to the public but privately owned and maintained, and for the Nunes' property. The land use entitlements which you are considering today will benefit the public in having a better configured park and will benefit the Nunes family which has owned their property for many, many years.

I ask your favorable consideration in proving, in approving the Community Plan Amendment and Change in to Zoning. Mahalo.

CHAIR MOLINA: Okay. Thank you, Ms. Nishiyama. Committee Members, questions for the testifier? Seeing none, mahalo for your testimony.

MS. NISHIYAMA: Thank you.

CHAIR MOLINA: Committee Secretary, have we had any other requests for public testimony.

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay. Members, the Chair's been informed with regards to our other two Land Use items, there's some folks that do want to testify on that at a later point today. So if there are no objections, the Chair will close public testimony for Land Use Item 12 and keep open public testimony for Land Use Item 3 and Land Use Item 26.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you very much, Members. And the Chair acknowledges the presence of Council Chairman Hokama to our proceedings this afternoon. Welcome.

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

**ITEM NO. 12: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE PROPOSED NORTH BEACH PARK AND CHARLES NUNES PROPERTY (LAHAINA)** (C.C. Nos. 07-127 and 08-71)

CHAIR MOLINA: Alrighty, Members, let's get right down to business here for Land Use Item 12. The Committee is in receipt of County Communication No. 07-127, from the Planning Director, advising that he had initiated a Community Plan Amendment and Change in Zoning for the proposed North Beach Park and Charles Nunes' property in Lahaina, Maui, Hawaii, and this is to reconfigure the North Beach Park into one contiguous park makai of the proposed commercial area to be located on Lower Honoapiilani Road, and further advising of a May 8, 2007 hearing by the Maui Planning Commission which was to be held, which was held on the proposed action.

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And we also got a . . . County Communication No. 8, 08-71, from the Deputy Planning Director, transmitting the following bill, a bill entitled for . . . “A BILL AN FOR ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK TO BUSINESS, HOTEL TO BUSINESS, HOTEL TO PARK, AND BUSINESS TO PARK FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII”. The intent of the proposed bill is to amend the West Maui Community Plan and Land Use Map for portions of the subject properties of the following approximate sizes: 0.332-acre portion from Park to Business; for a 0.770-acre portion, from Hotel to Business; and a 0.572-acre portion, from Hotel to Park; and for a .752-acre portion, from Business to Park. Okay, and that’s just one of three bills.

And let me go over the second bill, another “BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT AND FROM H-2 HOTEL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII”. And, again, the purpose of this bill is to grant a Change in Zoning for portions of the subject properties of the following approximate sizes: for a 1.491-acre portion, from R-3 Residential District to B-2 Community Business District; and for a 0.068-acre portion, from H-2 Hotel District to B-2 Community Business District.

And finally, Members, one more bill, “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM H-2 HOTEL DISTRICT TO PK-2 PARK DISTRICT, FROM R-3 RESIDENTIAL DISTRICT TO PK-2 PARK DISTRICT, AND FROM H-2 HOTEL DISTRICT TO PK-2 PARK DISTRICT FOR PROPERTY SITUATED”, once again, “AT LAHAINA, MAUI, HAWAII”, and the purpose of the proposed bill is to grant a Change in Zoning for portions of the subject properties of the following approximate sizes: for a 0.131-acre portion, from H-2 Hotel District to PK-2 Park District; for a 1.365-acre portion, from R-3 Residential District to PK-2 Park District; and for a 3.505-acre portion, from H-2 Hotel District to PK-2 Park District.

Whew. . . wow, had a, definitely had a mouthful for you, Members. And the Chair would also like to note that the Council received the transmittal designated as County Communication No. 08-71, from the Planning Director, on February 28, 2008. Now under Section 8-8.6.4. of the Charter of Maui County, the Council has 180 days after the receipt of the transmittal or, simply put, until August 26<sup>th</sup> of this year to review and act upon this proposed zoning and land use ordinance, and to date, this is the first Land Use Committee meeting on this particular request.

So with that being said, I’m going to turn the microphone over to the Planning Department to give opening comments, and that will be followed by a presentation from the applicant. Mr. Yoshida?

MR. YOSHIDA: Good afternoon, Mr. Chair, Members of the Land Use Committee. Staff Planner Joe P. from our Office will be providing the Department’s overview.

MR. PRUTCH: Thank you, Clayton. Good afternoon, Chair and Members of the Land Use Committee. I’m Joe Prutch with the Planning Department.

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The subject property is located at the intersection of Lower Honoapiilani and Kaanapali Place in the north portion of the Honua Kai Resort. Its designations, Community Plan designations of Park, Hotel, and Business, it's got a State designation of Urban, and it's County zoned H-2 for Hotel and R-3 for Residential. The applicant on this project was Mr. Jeff Hunt, the Planning Director, requested a CPA and CIZ to amend the West Maui Community Plan to reconfigure 1.5 acres for Business use to abut Lower Honoapiilani Road and rezone the reconfigured 1.5 acre Business area to B-2 Community Business District; also to reconfigure, to reconfigure 1.5 acres of Park area. . .an existing 5 acres of Park area to PK-2 Neighborhood Park. The property owners are Charles Nunes and Intrawest. It's important to note that there would be no net loss or increase of Business or Park from this proposed action. The approval would allow essentially for the consolidation and resubdivision between the two property owners.

The public hearing was conducted on May 8, 2007 by the Maui Planning, Maui Planning Commission. There was no public testimony, testimonial letters included in that staff report at the time. At the hearing there was one public testimony in support of the project and there were no, no testimony in opposition. The Maui Planning Commission did recommend approval of the CPA and the CIZ, subject to three conditions of approval, which in summary are basically a, a restriction for two-story height, a list of permitted uses from the B-2 Zoning District, and a requirement for road widening improvements along Lower Honoapiilani. The Staff Planner at the time that this project went to the Maui Planning Commission was Colleen Suyama, who retired from the Planning Department essentially *yesterday*.

COUNCIL MEMBERS: . . .(*chuckle*). . .

MR. PRUTCH: That concludes my Department's report. Be happy to answer any questions.

CHAIR MOLINA: Okay. Thank you, Mr. Prutch. Members, the Chair would like to approach the Q&A in this fashion. We'll have the presentation from the applicant and then after that when we come back, we'll have. . .direct questions first to the Department and go forth from there. So with that being said, Members, the Chair will call for a brief recess to set up the Chambers for the presentation. Recess, subject to the call of the Chair. . .(*gavel*). . .

**RECESS: 1:49 p.m.**

**RECONVENE: 1:51 p.m.**

CHAIR MOLINA: . . .(*gavel*). . . The July 2<sup>nd</sup>, 2008 Land Use Committee meeting is now back in session. Members, we are now privy to a presentation from the applicant's representative from Munekiyo & Hiraga. Ms. Gwen Hiraga will be discussing Land Use Item 12. Ms. Hiraga.

*Note: Computer-generated presentation.*

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MS. OHASHI HIRAGA: Good afternoon, Chair Molina and Members of the Committee. My name is Gwen Hiraga from Munekiyo & Hiraga, and we are representing the two landowners affected by this Community Plan Amendment and Change in Zoning for Kaanapali North Park land exchange.

CHAIR MOLINA: . . .Ms. Hiraga, are you experiencing some technical difficulties? We can take a commercial break if you want. . . .*(chuckle)*. . .

MS. OHASHI HIRAGA: We're okay.

CHAIR MOLINA: Alright, here we go.

MS. OHASHI HIRAGA: As I mentioned, the landowners are Maui Beach Resort Limited Partnership and the Nunes Family Trust. This is a regional location map. This is Honoapiilani Highway, Lower Road is approximately right here, and this is the boundary reconfiguration area.

Project background. By way of project background, and the Planning Department noted this as well, but the purpose of the Community Plan Amendment and Change in Zoning is to provide for a more contiguous parcel for the Kaanapali North Park and to provide for the appropriate land use entitlements for the Nunes' property. To achieve this goal, a land exchange and boundary adjustment are proposed between the two landowners. The Nunes Family Trust owns TMK: 4-4-001:010, which is approximately 1.5 acres in size and the property is currently vacant. Maui Beach Resort Limited Partnership owns TMK: 4-4-14:08, and this is also approximately 5 acres in size. The parcel is part of the previously approved Honua Kai Resort project situated on Lot 4, Kaanapali North Beach. The MBRLP site surrounds the Nunes' property on all three sides.

Okay, again, this is Honoapiilani Highway, this is Lower Honoapiilani Road. These, this area here is the property owned by Chuck Nunes, and this right here is the North Park area.

The existing Community Plan designation for the Nunes' property is Business. The property is currently zoned R-3 Residential. The Community Plan designations for the MBRLP site is Hotel, Park, and Open Space, and the property is zoned H-2 Hotel.

This slide exhibits the existing Community Plan designations. The . . .this area is Hotel, this lighter area is the Park designation, this is the Nunes current parcel and that's designated as Business, and this area right here is Open Space.

In terms of the existing zoning, the properties, the Maui Beach Resort Limited Property has multiple zoning. For the most part it's H-2 Hotel, there is a portion that's R-3 Residential, and this area is H-M Hotel. Nunes' property is zoned R-3 Residential as previously noted.

I just wanted to note some significant dates for you. In February of 1996, the Council did adopt the West Maui Community Plan and in that Community Plan included the designation of

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Business, which was down-designated from Hotel for the Nunes' property. In February of 2004, the Maui Planning Commission granted approval of a step one planned development for Honua Kai Resort, including the reconfiguration of North Park. So in anticipation at that time already in 2004, it was presented that there would be a land exchange with the Nunes family.

Although this is a Director-initiated amendment, a Community Plan. . . Director-initiated Community Plan Amendment and zoning change, an Environmental Assessment was prepared by Maui Beach Resort Limited Partnership. So the Maui Planning Commission reviewed the draft EA in February of '06 and they issued an anticipated findings of no significant impact. In December 2006, the Maui Planning Commission reviewed the final draft EA and issued a findings of no significant impact. Following the 30-day challenge period, the Planning Department--I'm sorry. In January of 2007, the Department made the determination that it would be a Director-initiated Community Plan Amendment and Change in Zoning. In April of 2008, the Planning Department did notify the Council that the Director of Planning has initiated a Community Plan Amendment and Change in Zoning for the parcels, and the Council was notified that a Planning Commission meeting was going to be held on May 8, 2008. So in May. . . on May, in May 2008, the Maui Planning Commission did review the Community Plan Amendment and Change in Zoning and recommended approval with conditions.

On the boundary configuration plan, again this is the proposed configuration with the land exchange. This area right here is that overlap area and this would--and it's better depicted on this plan--but this would be the Nunes' property right here and as shown here, and this area here would be North Park. Again, you know, the reconfigured Nunes parcel--and this is just a summary of the Community Plan and zoning designation--the Nunes parcel would be Business, B-2 and proposed zoning for B-2 Community Business District. The reconfigured MBRL [*sic*] parcel would Community Plan for Park and the zoning would be PK Neighborhood Park.

This is an overall site plan of the Honua Kai Resort project which is currently under construction. With the amendments, necessary amendments and subdivision, this would be the Nunes parcel and this area is the North Park.

I, we included some aerial photos. This is Honoapiilani Highway, this is the Lower Road, this is the Lot-4 area. The Mahana is located here. Okay, next slide. Again, just another aerial of the Lot-4 area.

And finally, this represents a, another perspective of Lot-4 under construction. Across the street, by the way, is the. . . I believe it's called Honokowai Marketplace. Okay, that's it. And this concludes our presentation. We're open to questions. Representing Intrawest or Maui Beach Resort Limited Partnership is Mr. Martin Luna, and our surveyor, the surveyor that did the survey work, the subdivision as well as the preparation of the metes and bounds description and mylar maps, Eric Kaneshiro from ATA, from Austin Tsutsumi & Associates is also present to respond to any questions the Committee may have. Thank you.

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CHAIR MOLINA: Thank you, Ms. Hiraga. Before we close, we, we just have one question from one of the Members regarding the presentation. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. Gwen, if you could go back to the slide on the Community Plan designation. I think it's like the fourth slide.

MS. OHASHI HIRAGA: This one? The existing Community Plan designation?

COUNCILMEMBER ANDERSON: Right.

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: So the Nunes' property is--

MS. OHASHI HIRAGA: Right here.

COUNCILMEMBER ANDERSON: --all of that dark?

MS. OHASHI HIRAGA: That's corr..., yes, that's correct and it's designated as Business.

COUNCILMEMBER ANDERSON: So that's what I'm asking 'cause it looks like at one point, it looks like from the Plan..., Planning Department report that it's designated Business and Park. Am I--what's that TMK number, was that the 10, Parcel 10 or is that. . .

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: . . .TMK parcel 10, 1.5 acres?

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: 'Cause it says in our. . .Planning Department report that it is designated Business and Park, not just Business.

MS. OHASHI HIRAGA: . . .I'm sorry, Councilmember Anderson, you see this portion right here, and I guess we didn't extend it out here, but this is that Park area.

COUNCILMEMBER ANDERSON: That's a portion of their property that--

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: --was designated Park?

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MS. OHASHI HIRAGA: It goes all the way to the property line here. So on the next slide, you know, you saw that sort of wrenched configuration. Yeah, it. . .the zoning map extends it all the way till here. So going back to the previous map--

COUNCILMEMBER ANDERSON: So even though it's currently being used. . .that, a strip that you saw on the previous map--

MS. OHASHI HIRAGA: Right here, Park?

COUNCILMEMBER ANDERSON: --yeah, that's designated Park--

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: --and it's currently zoned R-3 Residential--

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: --but being used as a Park. . .or will be used?

MS. OHASHI HIRAGA: Not. . .the, the park will extend like this.

COUNCILMEMBER ANDERSON: Right. . . .And so the property that the Nunes are acquiring that. . .can you show us a slide of that? That will be that, that parcel alone up there or that "L" shape?

MS. OHASHI HIRAGA: No, can you go back to the. . .no, you know, the one that. . . With the Community Plan Amendment and Change in Zoning this would be the Nunes parcel and this would be North Park right here. So the Nunes parcel would extend up to Lower Road.

COUNCILMEMBER ANDERSON: Right. And so they're asking for that to be all B-2, right?

MS. OHASHI HIRAGA: That's correct.

COUNCILMEMBER ANDERSON: Okay. Thank you very much. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, any other questions for Ms. Hiraga before we close the presentation portion?

COUNCILMEMBER MEDEIROS: Mr. Chair.

CHAIR MOLINA: Okay. Alright, Mr. Medeiros?

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COUNCILMEMBER MEDEIROS: Thank you, Chair. Ms. Hiraga, since you have that slide up, I just want to be clear because some of the other sketches or renderings of that area is little confusing, but this shows that the property on one boundary fronts Lower Honoapiilani Road. . .

MS. OHASHI HIRAGA: Uh-huh.

COUNCILMEMBER MEDEIROS: . . .and on the north boundary it fronts Kaanapali Place, which is the entrance to Embassy Suites? Is that correct?

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER MEDEIROS: That is correct?

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER MEDEIROS: Okay. And then so the property access would be through that park access road?

MS. OHASHI HIRAGA: For the property access to North Park and to Nunes is currently designated through this area.

COUNCILMEMBER MEDEIROS: And will that access remain private or public?

MS. OHASHI HIRAGA: It, it's. . .it'll be, I believe it's a private, but public, you know, open to the public because that's also the access for the park, and the park is a privately owned, maintained, but open to the public.

COUNCILMEMBER MEDEIROS: Okay. So the access will be available to the Nunes' property 24/7?

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Hiraga. Thank you, Chair.

CHAIR MOLINA: Okay. Alright. Thank you, Mr. Medeiros. Okay. Thank you, Ms. Hiraga. Members, we'll call for a short recess to put the screen back up and then we'll continue with our deliberations on Land Use Item 12. Meeting in recess, subject to the call of the Chair. . . .(gavel). . .

**RECESS: 2:05 p.m.**

**RECONVENE: 2:07 p.m.**

CHAIR MOLINA: . . .(gavel). . . The Land Use Committee meeting for Wednesday, July 2<sup>nd</sup>, 2008 is now back in session. Members, we're on Land Use Item 12 and for the Committee's

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information, along with the Planning Department, we have from the Department of Public Works, Deputy Director Mike Miyamoto and from the Parks Department, we have Director Tamara Horcajo in the gallery as well for any additional questions you may have. But let's first start with questions for the Planning Department. Committee Members, the floor is now open. We'll start with the area representative, Councilmember Johnson.

COUNCILMEMBER JOHNSON: Yes. Clayton, because, you know, the project that is Mr. Nunes' property, it was changed from Hotel and it's going to be going to or it's Business, B-2, what is the height limitation in B-2 and is that why the Department recommended that we, I guess, that we stick with the two stories?

MR. YOSHIDA: Mr. Chairman, Councilmember Johnson, the height limit in B-2 is six, up to six stories.

COUNCILMEMBER JOHNSON: Okay. Okay. So if it's up to six stories and I think the applicant was looking for, you know, four stories, at least when I spoke with the applicant they were looking at that, and why are you recommending two or why is the Department recommending two?

MR. YOSHIDA: Well, I'm not exactly sure because I wasn't the Planner handling the matter, but, you know, perhaps in similar instances the properties may have been restricted to two stories for Business zoned properties.

COUNCILMEMBER JOHNSON: Yeah. I was just trying to understand where that came from, if it was view planes or, you know, if there was some other consideration. That was, that was really the only question I had. So if they can't answer, then I guess we'll have to ask the applicant, maybe they know. . . .(*chuckle*). . .

CHAIR MOLINA: Sure.

COUNCILMEMBER ANDERSON: Point of information, Mr. Chairman.

CHAIR MOLINA: Okay. Go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: Yeah. The Planning Department report indicates that it is a view corridor. . .

COUNCILMEMBER JOHNSON: Yeah.

COUNCILMEMBER ANDERSON: . . .and that the Planning Commission wanted to. . . --(*CHANGE OF TAPE, start 1B*)-- . . .and that's why they limited it to two story.

CHAIR MOLINA: I see.

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COUNCILMEMBER JOHNSON: Okay. That, that's what I thought it was, but I just wanted to hear from the Department, you know, if they had made that recommendation and why *they* made the recommendation, and so I guess it's for a view corridor. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Member Johnson. Committee Members, questions for the Department? Member Medeiros?

COUNCILMEMBER MEDEIROS: Yeah. I think following up on Member Johnson's question and also what was contributed by Member Anderson, you know, having worked up there in that exact area for more than 20 years, I can't see what view corridor they're talking about, 'cause across the street from that property is a shopping center, not no residential, and next to the shopping center is Honoapiilani Highway, across from that is the County baseyard and sewer treatment plant. So, I'm not sure what view corridor we're protecting or considering for whom. And I believe the buildings to the makai, ocean side of the Nunes' property, the height of the Embassy Suites and the Mahana, I believe, are. . .one is in excess of 20 stories, I think.

COUNCILMEMBER JOHNSON: No, no.

COUNCILMEMBER MEDEIROS: Fourteen?

MR. YOSHIDA: I believe it's 12 stories.

COUNCILMEMBER MEDEIROS: Twelve stories. So I, I can't understand if we're talking view corridor, it's already gone with the Mahana and with the Embassy Suites, and across the street at the main highway there are no buildings there now that house residential units on the ground level; they're either County baseyards or a sewage treatment plant. So, I just wanted to be clear if that's what the Planning Department was citing as the reason to limit it to two stories, and you did mention that B-2 allows up to six stories. So is it your understanding, Planning Department, that that's the reason you recommended two stories, view corridor?

MR. PRUTCH: Member Medeiros, in talking with Colleen Suyama, the previous Planner for this project, a few days ago, I had asked her that question as well. Her one mentioning was, beyond the view corridors, she had mentioned also that because surrounding buildings were all approximately two story--well, besides the resorts--the, the commercial, business buildings were all two stories, she wanted to try to maintain that similarity and put the restriction or request that the restriction of two stories to the Planning Commission, and that's what they recommended approval of.

COUNCILMEMBER MEDEIROS: I see. Thank you for that additional information. I, I'm just thinking that this property owned by the Nunes Family Trust, in order to keep that property in their family, they're trying to do something with it that would. . .have some revenue to it so that they can proceed with their goals of using some of their revenue to educate their children and so forth and keep the land in the family in perpetuity. So I, I just have a hard time understanding if

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the zoning allows six stories, that the recommendation is two stories, and I heard what you said from the previous Planner. Thank you for that information.

MR. PRUTCH: You're welcome.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Member Medeiros. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. I just want to weigh in on this view corridor situation because the Coastal Zone Management Act, of which this is in the Special Management Area, one of its primary goals is to preserve view corridors to the shoreline and the ocean and, and those view corridors are. . .taken from the highway so that people along the highway, driving along the highway when they look to the ocean, they can see that there's an ocean there, that there. . .the shoreline is within that view plane. The Planning Department adopted a view plane guidebook to guide the Planning Commission and the Department in preserving the view planes that we have left. And I can understand Mr. Medeiros thinking that, you know, why try to change their height requirement or their, their allowable height when all the view plane or the view corridors are obliterated already, but that's just the point, is that what few view planes we have left from the highway to the ocean indicating that you are driving along a shoreline is what we need to preserve, and it is a requirement of the Coastal Zone Management Act. And I'm assuming they're going to have to go back and get a Special Management Area Permit before they go any further and that would be a consideration at that time, and I don't think it would look well to the Planning Commission who recommended a two-story height limitation to us and then have us just ignore it. You know, it's almost to the point now where you have to be in a helicopter to know that you're even along the shoreline. So, I would hope that the body could respect that requirement. It's there for a reason, it is a coastal zone, and, you know, I think two stories would provide plenty of commercial opportunity, especially since it's now going to be abutting the roadway, Lower Honoapiilani Roadway, which would provide better view access to. . .for. . .passersby to, to notice that this is a commercial property. . .with an inside to designated park areas. It's not so obvious. And, and we all know in commercial--well, almost in any real estate now--but it's location, location.

So my question to the Department or whoever can answer this, is where would be the, be the new access or, yeah, the access to the Nunes, the new Nunes' property? Would that be off Lower Honoapiilani or from that side road?

CHAIR MOLINA: Department?

MR. PRUTCH: I don't believe the access has been established yet, but my understanding, I believe, in meeting with the applicant was that it was going to be off the Kaanapali Place road rather than. . .unless it's right-in only on Lower Honoapiilani 'cause it would create--

COUNCILMEMBER MEDEIROS: That's on the other side.

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COUNCILMEMBER ANDERSON: Well, so is then. . .is the park access from Lower Honoapiilani?

COUNCILMEMBER JOHNSON: Yes.

MR. PRUTCH: Yes.

COUNCILMEMBER ANDERSON: Okay. So that, that access that we're seeing on the map is for the park and then the Nunes' property as a business/commercial property would be. . .the road's not named here, but I'm assuming it's the, the side road, the other side road?

CHAIR MOLINA: Okay. Mr. Yoshida?

MR. YOSHIDA: Yes. Mr. Chair, Councilmember Anderson, I believe in the question that Councilmember Medeiros asked the applicant when they did their presentation, the access will be off of the entryway to the North Park, which the applicant said will be open 24 hours a day, 7 days a week.

COUNCILMEMBER ANDERSON: Okay. So it's this. . .*(inaudible)*. . .I, I see, it's the, it's the park access off Lower Honoapiilani which is also going to serve them for their business property. Okay. Thank you. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, any other questions for the Department? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, for the second opportunity.

CHAIR MOLINA: And before you start, Mr. Medeiros--

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: --the Chair would also like to recognize the presence of Member Baisa to our proceedings today. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. I just wanted to further pursue the question. It is adjacent to a development that's coming up? Is that correct or is that already been constructed? And I'm talking about looking at a map that shows the whole park area to the south side of that property that extends all the way to the coastal area. You know what the height limits will be for that property?

MR. PRUTCH: Okay. For the Honua Kai Resort, I believe you're talking about south of the park. The mauka part of it, those are town homes, the town homes are going to be two stories. The large hotel building at the front, the two of 'em are 12 stories. So those two front buildings are going to be tall. The buildings behind, it'll be homes and they'll be two stories tall.

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COUNCILMEMBER MEDEIROS: Right. So when you add Embassy Suites, Mahana, and the new development, that pretty much takes away any view left to the coastal area is my conception of looking at the map.

MR. PRUTCH: There, there was--I don't have it with me--with the Honua Kai project, there was a view corridor study done for that project, and basically the view corridors were between those two large hotel units and along the beach park. . .

COUNCILMEMBER MEDEIROS: Okay.

MR. PRUTCH: . . .and that was about it.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Department. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Seeing no other questions for the Department, is there a request for Director Horcajo with regards to the Parks Department or Deputy Director Miyamoto for Public Works? Any questions related to that? Okay.

COUNCILMEMBER HOKAMA: Public Works.

CHAIR MOLINA: Chairman Hokama? Okay. Deputy Director Miyamoto, the request for, from Council Chair Hokama regarding this matter, questions for you.

COUNCILMEMBER HOKAMA: Chairman, if I may?

CHAIR MOLINA: Proceed, Mr. Chair.

COUNCILMEMBER HOKAMA: Thank you. Mr. Miyamoto, thank you. The reason I asked for your presence is maybe you can help verify for me my understanding of some of the components of this proposal and, and, you know, obviously a part of the discussion is whether or not we want to reduce what is allowed in the zoning category from six stories to four stories. And, you know, to be upfront with you, I'm open to the request of four stories, but one of the things that will help me make a final determination is that how I understand the Code regarding grading and filling. Because on this site there, for example, the proposed site that will be consolidated and being considered for B-2, even if we potentially determine that it be no more than two stories, the Code currently does not prohibit submitting a grading and fill plan that gets approved and going up with fill another 100 feet and then put their 2-story building on it, right? Legally, there's nothing in the Code that prohibits that?

CHAIR MOLINA: Okay. Mr. Deputy?

MR. MIYAMOTO: Yes. I guess in the review of the permit, Planning Department would have to look at the intent when the, what the Planning Commission does. I imagine when this structure, when

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this property comes in for SMA, you know, your concern can certainly be one of the conditions that could be addressed through SMA that, you know, the building height be limited to a certain elevation or the fill height, those types of things can be addressed, I guess, when, when they come in for the building permit and SMA, then those conditions can be imposed.

COUNCILMEMBER HOKAMA: Well, you know, a lot of times we know from experience people come with a proposal, not necessarily that's what they're going to do, but to get it through the subdivision, final subdivision approval process, the initial layout for certain things. They'll say. . .this is what, this is what we propose, and I know that is part of the difficulty our engineers have in making final determinations because what is proposed to them is earlier in the whole process to get to construction, that what they present for your Department's review on an approval under let's say a grading or fill permit. . .

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER HOKAMA: . . .may not be what the final elevations will be once they move to final construction drawings. Would that be a good understanding?

MR. MIYAMOTO: Mr. Chair.

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Fortunately with the, the use of KIVA nowadays. . .the Planning Department can easily flag a property and that flag can create a, a notification that, you know, when development comes in. . .

COUNCILMEMBER HOKAMA: Uh-huh.

MR. MIYAMOTO: . . .that our staff or whoever of the staff is reviewing proposals for that property has, can go into KIVA and look at what the flag is. The flag may be to call Planning, contact Planning about building height, and that's certainly something that, you know, could be created in the situation that, you know, whatever the conditions are in SMA, the Planning Department can then flag those conditions on to the TMK of that property so that when a development proposal comes in and, you know, our staff will go to that lot to check on the, the history and everything, that flag will call. . .check. . .let us know to contact Planning about building heights, and then naturally Planning does review the, the construction plans. So they would then try to see how this is remaining in compliance with the SMA permit.

COUNCILMEMBER HOKAMA: I just bring up what we know is still on Maui County Code because we're dealing with some legal issues in various venues regarding what we've approved, what is allowable by Code, what is the appropriate interpretation or definition of, of words. But I think part of our problem is that while we have always supported view planes or view corridors and that, you know, I would agree is part of public law under Coastal Zone Management, we have not put it into ordinance of exactly what it is, what the standards will be, the widths will be,

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whether or not it includes horizontal air space or not, and what is appropriate. Because one thing I do know is that for many things in South Maui that had asked for view planes, I don't see it, but then I know we don't enforce it either because we don't have that enabling legislation that cites the standards, parameters of what we're trying to either protect or include in a, in a project. So stating that. . .you know, I'm, I'm just curious that even, you know, legally even if our intent is to protect a view plane, if done in certain matters that are legal, we still would have no view plane because it still could comply with building height limitations. . .

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER HOKAMA: . . .while you change the contour of the property sufficiently, legally with appropriate permits and not accomplish what we want, which means views get blocked, regardless. . .

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER HOKAMA: . . .because we don't have everything in the Code in our specific requirements of implementation, the appropriate legislation enacted. Would that be a good understanding on our part this afternoon?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Mr. Chair, I guess I really shouldn't speak for the Planning Department regarding this, but I. . .just in a recent case, for example, in Wailea there was a commercial proposal that came forth and. . .the. . .under, you know, protecting the view planes and everything the applicant did make certain attempts, but the pro..., the project got deferred because the commissioners who were issuing the SMA permit wanted a more clear identification of what the building heights were. So one of the def..., in the deferral action they asked the applicant to come back with story poles, to go ahead and put poles on the vacant lot at this time so that they could have a clearer picture of what exactly they wanted. And then given that they were, they were gonna. . .they haven't take action yet, but I imagine their, their action would be to create conditions that would hold this developer to those, those requirements, those conditions of the SMA. And even though the Code doesn't have the teeth, the SMA permit does and then that's when we coordinate with the Planning Department to ensure that when the construction plans come in, then, you know, we don't want them to be violating their SMA permit. So that's when we check with Planning for conformance to compliance reports.

COUNCILMEMBER HOKAMA: Okay. Thank you for sharing that. I don't want to stray from the agenda items for Chairman Molina, but I'll, I'll end with this. If it's good enough for shoreline areas, then your Department and those (*inaudible*) better think about it for an island wide because I consider mauka view planes just as important as makai. So if you're going to do it, get that proposal to Council so we can have the appropriate discussion in the right committee for consideration as enactment into the Code so that the Commission then does not need to interpret

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or guess what is County policy, it'll be in the Code specifically for enforcement and implementation. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. . . I'm a little flummoxed here, so please bear with me. Chair Hokama's line of questioning. . . Planning Department, Public Works, and certainly our Corporation Counsel should all be able to advise him that there is a building height restriction and the method for measuring building height in the County Code. It was adopted in our Comprehensive Zoning Ordinance back in 1991, and it is the crux of the issue over the Maui Lani fiasco. And. . . the Administration, at that time, tried to invoke an old Building Code reference that did not specify that height should be measured from the top of the structure to the existing or finished grade, whichever is lower. That's what currently is in the Code. And so all these people that are out there putting fill and thinking they can build 30, 30 feet from the top of the fill are being misguided, and we need to make an issue of this right now because the judge is making an issue of it on Maui Lani and there's going to be a whole lot of lot owners that are not going to be able to build on lots they bought that have 30 feet of fill. So. . . not to mention the long-suffering residents who live along the, the older subdivisions that, that this fill went up against, people who have for generations lived in homes that now have 30 feet of fill staring them in the face when they open their backdoor.

So, I want to get it on the record. The Comprehensive Zoning Ord..., Ordinance is Title 19.04 under General Provisions and Definitions, height is defined. . . means the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural grade, on the natural or finish grade, whichever is lower. So that means if you're going to put in fill, you got to measure your building height from the existing grade, not from the fill, from the fill. And when you go in to get a grading permit, you are required in your drawings to show the existing topography, and it's a line drawing showing the elevations every, what, five, ten feet so that when the Planning Department reviews. . . the grading permit--and this is what happened in Maui Lani. The Planning Director advised the developer that you must be aware that you cannot build higher than 30 feet from the finished grade or from, from the existing grade, and that's when it went upstairs and. . . we all know what happened from there, an administrative decision was made to *override* the policy of this Council. This policy was set specifically to prevent this kind of thing from happening, to protect our mauka and makai view planes, to protect your neighbors so that when they buy in an area and they're building at grade, they have some expectation that the neighbors aren't going to come in next door and fill in a gully or whatever and, you know, build to your detriment. So, I just want to get it on the record. We do have in the County Code a protective covenant, and for those who would like to know, it's under definitions of height in Title 19.04, General Provisions and Definitions. And there is also a supremacy clause in this Comprehensive Zoning Ordinance that says any provisions that within the County Code that are in conflict with the provisions of this title, this title shall prevail, and, you know, I'm very aware of this because the people on Palama Drive who were impacted by the, by the Maui Lani fill contacted me early on, and I did a lot of research on this and I have followed this all the way through, and the judge is falling on this definition to protect the

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residents of Palama Drive. And those people who were misled into believing that they could build on top of 30 feet. . .you know, shame on the developer.

So we do have a provision in the Code that protects people, but it's only as good as its implementation. And we need the Administration to recognize that this is, this is a policy of this body and they, and it's not just in the SMA, it's everywhere. You build to the building height that your zoning district allows and it will be measured from the top of your structure to the finished or existing grade, whichever is lower, and the existing grade is on record in the, in the subdivision office in their grading permit because it's a requirement of the grading permit.

So, I'm sorry, Mr. Chair, I had to go off topic, but I think this is important enough and, and I'm really sorry that nobody mentioned this to Chair Hokama when he brought this issue up because. . .*(sigh)*. . .we've got an ongoing court case on this very issue.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Point well taken. Alright, Members, do you have any other questions for the Public Works Department? Okay. Seeing none, the Chair would like to call up the applicant's attorney, Mr. Luna, just for clarification with regards to a June 30<sup>th</sup> transmittal to the Committee. This is related to the property description. My understanding, there was some revisions made to the property descriptions with this transmittal. If I could just get some further clarification from you, Mr. Luna. Thank you.

MR. LUNA: We met with Carla and Mr. Giroux and, and we found that there were. . .I think in the Community Plan map that it was an earlier version instead of the finished one that had been done. So we subsequently, I think it was yesterday, we provided the correct version to the Committee and I think Ms. Frias already put it in the binders. So we had that corrected.

CHAIR MOLINA: Okay. And, Members, it should be in your binders dated June 30<sup>th</sup>, and I just wanted clarification for the Committee and for the record. And so the, the property description was revised and are we talking about TMKs as well in addition to that--

MR. LUNA: That's correct.

CHAIR MOLINA: --okay, numbers?

MR. LUNA: As well as name. . .*(chuckle)*. . .

CHAIR MOLINA: Okay. Alright, Members, do you have any questions with regards to this particular matter or any other matter regarding the application for Mr. Luna or Ms. Hiraga, the applicant's representative? Okay. Seeing none, thank you--

MR. LUNA: Thank you.

CHAIR MOLINA: --Mr. Luna. Alright, Members, any other final thoughts or questions before the Chair offers a recommendation?

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COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay. Members, alright we have three bills to consider here today. The first bill, the Chair would entertain a motion for first reading to support "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK TO BUSINESS, HOTEL TO BUSINESS, HOTEL TO PARK, AND BUSINESS TO PARK FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII".

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER VICTORINO: So moved. Second.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. It's been moved by Member Johnson, seconded by Member Victorino. Any discussion? The Chair has a consideration. I'll yield first to you, Member Johnson, but the Chair would ask for a consideration after Member Johnson.

COUNCILMEMBER JOHNSON: No. You know, this has been a long time coming, so. . .excuse me, this has been a long time coming, and I think that this actually gives a better configuration for the park.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER JOHNSON: So, I don't really have a problem with the presentation and the way that this has been made. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. The Chair would ask for a consideration to amend this particular bill to include the property revisions that was sent in by Mr. Luna which further revises the property or the description itself, so it adds more clarity.

COUNCILMEMBER JOHNSON: Would you like me to make a motion to amend?

CHAIR MOLINA: If, if you would.

COUNCILMEMBER JOHNSON: I amend the main motion to include the revisions as provided by the applicant.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been amended, moved and amended by Member Johnson to include the property description as submitted by the applicant, and that property description was dated

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June 30<sup>th</sup>, 2008, for the record. Any discussion on the amendment to the main motion? Seeing none, all those in favor--oh, excuse me, Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. I have a question, Mr. Chairman, I'm sorry if I--you read that pretty quick. . . .*(chuckle)*. . .

CHAIR MOLINA: I'm sorry. Yeah--

COUNCILMEMBER ANDERSON: Is there a condition restricting the height to two, two stories--

COUNCILMEMBER MEDEIROS: There is.

COUNCILMEMBER ANDERSON: --in the bill?

CHAIR MOLINA: There is. Yeah, I think it's on. . .we're not on that second bill yet related to--

COUNCILMEMBER ANDERSON: That's going to be in the second bill?

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: Okay.

CHAIR MOLINA: And we'll, we'll get to that bill eventually and then--

COUNCILMEMBER ANDERSON: Alright, thank you.

CHAIR MOLINA: --at that point you can propose an amendment.

COUNCILMEMBER ANDERSON: Thank you, Chairman.

CHAIR MOLINA: Okay. For this first bill, any other discussion on the amendment? Okay. Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? The Chair will mark it eight-zero; one excusal, Member Mateo.

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**VOTE:**       **AYES:**       **Councilmembers Anderson, Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:**        **None.**

**EXC.:**        **Councilmember Mateo.**

**ABSENT:**     **None.**

**ABSTAIN:**   **None.**

**MOTION CARRIED**

**ACTION:**    **APPROVE amendment to the main motion.**

CHAIR MOLINA: Now we're back to the main motion, as amended. Any discussion? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark it eight-zero. The first bill passes.

**VOTE:**       **AYES:**       **Councilmembers Anderson, Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:**        **None.**

**EXC.:**        **Councilmember Mateo.**

**ABSENT:**     **None.**

**ABSTAIN:**   **None.**

**MOTION CARRIED**

**ACTION:**    **Recommending FIRST READING of revised proposed bill.**

CHAIR MOLINA: We are now on the second bill, and the Chair will entertain a motion to support "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT AND FROM H-2 HOTEL DISTRICT TO B-2

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COMMUNITY BUSINESS DISTRICT FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII”.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Moved by Member Pontanilla, seconded by Member Victorino. The Chair, before he entertains other considerations for the bill, would again like to ask for a motion to amend to include in this bill to . . .include the property description as submitted by Mr. Luna, the applicant’s representative.

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. Moved by Member Victorino, seconded by Member Pontanilla. Any discussion on the amendment to include the property description dated June 30<sup>th</sup>, 2008 from Mr. Luna? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? --(*CHANGE OF TAPE, start 2A*)-- . . .The Chair will mark it eight-zero for the amendment.

**VOTE:       AYES:       Councilmembers Anderson, Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:       None.**

**EXC.:       Councilmember Mateo.**

**ABSENT:   None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    APPROVE amendment to the main motion.**

CHAIR MOLINA: We are now back to the main motion, as amended. The Chair will now entertain other considerations for this particular bill. Okay--

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COUNCILMEMBER HOKAMA: Chairman?

CHAIR MOLINA: Oh, sorry. Member Hokama, followed by Member Anderson.

COUNCILMEMBER HOKAMA: Chairman, I move that the Condition 1 of the . . . on Exhibit "3", Conditions of Zoning, be amended from 2 stories to 4 stories, not to exceed a height of 50 feet. . . and to replace 35 feet in height.

COUNCILMEMBER VICTORINO: Second.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. It's been moved by Member Hokama and seconded by Mr. Victorino to amend the . . . I'll, I'll go ahead and let you restate that. . . .(chuckle). . . That was a pretty long-worded condition. Mr. Hokama, I'll yield the floor to you.

COUNCILMEMBER HOKAMA: Thank you, Chairman. The revised Condition 1 would read "That the height of buildings shall be limited to four stories not to exceed 50 feet in height".

CHAIR MOLINA: Okay. Mr. Hokama. . . or Members, any other discussion on the proposed amendment by Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR MOLINA: Okay, sorry. Go ahead, Mr. Hokama, followed by Member Johnson.

COUNCILMEMBER HOKAMA: Considering what was . . . and from under the Hotel designation and what we allow under our Business zoning categories, while I appreciate the former Director, Deputy Director's thoughts and, and recommendation to us to keep it at two story, for me I have other factors that I think are just as important. One, you know, we've always talked about trying to assist local families retaining local property. So for one, I view this as a reasonable consideration to allow such a family request to have a chance to financially succeed. Two, I, I believe it is a still reasonable height limitation on what can be developed. And again, we do know that because of the SMA component as they move toward developing their conceptual plans to more finalized plans and construction drawings that will be presented to the Planning Commission, that they would be able to convince the Commission that whatever is presented within the limitations that we are imposing this afternoon will be done in a tasteful and acceptable manner, not only to the family, but also to the community at-large that has shown a lot of support for this consideration, Chairman. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Hokama. We're on the amendment from Chairman Hokama which is to amend Condition No. 1 to allow a change from two stories to four stories. Member Johnson?

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COUNCILMEMBER JOHNSON: Yes, I just had a question because I, I don't know, for some reason I thought I heard 40 feet instead of 50 feet.

CHAIR MOLINA: Department?

COUNCILMEMBER JOHNSON: 'Cause I was trying to look for it in. . .I don't know, I, I could've written it down wrong, but. . . And while they're looking for that, the other issue that I also had was because of the issue that was raised by Member Anderson with regard to, you know, adding fill and, you know, anything else, would it be, I guess as a friendly amendment, advisable to add "from existing grade", you know, instead of just leaving it open. . .like to say, yeah, we assume it's from existing grade? But--

CHAIR MOLINA: To add more clarity?

COUNCILMEMBER JOHNSON: --to add just a little bit more clarity--

CHAIR MOLINA: Specificity, okay. Well--

COUNCILMEMBER JOHNSON: --to say "from existing grade".

CHAIR MOLINA: Okay. Well, I guess we have two, two questions here. I guess, Planning Department, if you could answer the first question from Member Johnson?

MR. PRUTCH: As it pertains to the height. . .

COUNCILMEMBER JOHNSON: Uh-huh.

MR. PRUTCH: . . .in the Code, the B-2 Code, it, it specifically says six stories. It actually doesn't give a height limitation. The Planning Commission had recommended 2 stories or 35 feet to give it some criteria, and I believe Mr. Hokama had mentioned, Hokama had mentioned 50 feet--is that what it was?--4 stories or 50 feet? Okay. So that's where the clarification is from.

COUNCILMEMBER JOHNSON: Yeah. And on that one, you know, I don't know, for some reason I just thought I heard 40 feet, but, you know, I don't know. Where does the 50 feet come from? I guess just what each story would be or is there a letter? Because I'm trying to find it in the transmittal.

MR. PRUTCH: The, the 50 feet is from the motion. The Planning Commission condition is for 2 stories or 35 feet. So that we know is a recommendation. The motion on the floor now, I guess, was 50 feet or 4 stories, and I'm, I'm not sure exactly where the 50 feet came from, other than stories are about 10 to 12 feet approximately.

COUNCILMEMBER VICTORINO: I thought that was what they asked for.

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COUNCILMEMBER JOHNSON: You know, could I ask the applicant, you know, because I wrote down 40 feet.

CHAIR MOLINA: Okay. Any objections to the applicant's representative?

COUNCILMEMBER BAISA: No.

CHAIR MOLINA: Okay. Ms. Hiraga or Mr. Nunes, if you will.

MS. OHASHI HIRAGA: . . .Yes.

COUNCILMEMBER JOHNSON: Yes, Gwen. Is it 50 feet that was requested by the applicant, 4 stories?

MS. OHASHI HIRAGA: That's correct.

COUNCILMEMBER JOHNSON: Okay.

MS. OHASHI HIRAGA: The applicant in his testimony requested 50.

COUNCILMEMBER JOHNSON: Okay. I just wrote it down wrong then.

MS. OHASHI HIRAGA: Okay.

COUNCILMEMBER JOHNSON: Thank you very much. I just wanted to double check that.

CHAIR MOLINA: Okay. Okay, I guess we got that question answered. Now, Member Johnson, you had another question for Mr. Giroux about a possible friendly amendment or. . .?

COUNCILMEMBER JOHNSON: Yes, and that would be to add further clarity to say, you know, 50 feet then from existing grade.

CHAIR MOLINA: Uh-huh. Basically adding language to Chairman Hokama's amendment?

COUNCILMEMBER JOHNSON: Right, because of. . .you know, we don't want to have issues somewhere down the road. I'd rather just err a little bit on. . .and, and if there's any clarification needed, then when they come back to the minutes of this meeting, the Planning Commission when they review the SMA, they would see the comments that were made by Member Anderson and about the discussion of view planes and. . .

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: . . .that's really, to me, very important because I think there were some issues. . .

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CHAIR MOLINA: Uh-huh.

COUNCILMEMBER JOHNSON: . . .with regard to what has already been done on property that is not the Nunes' property, but on the other areas with regard to fill and adding, you know, a little bit of height because there are no more view planes on North Beach and view corridors, other than the one open space corridor right smack in the middle.

CHAIR MOLINA: Uh-huh. Okay. Alright, Mr. Giroux or the Department, you care to respond to Member Johnson's consideration?

MR. YOSHIDA: Well, Mr. Chair, Councilmember Johnson, I believe as Councilmember Anderson had pointed out, the Code requirement is. . .for height is from existing or finish grade, whichever is lower. So they will have to follow the Code unless they get a variance. . .which is, is measured from existing or finish grade, whichever is lower.

COUNCILMEMBER JOHNSON: Okay. But if we put that in then as a condition because we're the ones that are designating this condition as a qual..., I guess as a part of zoning, can they actually go back on what we're recommending?

CHAIR MOLINA: Okay. Before you respond, Mr. Yoshida, Chairman Hokama?

COUNCILMEMBER HOKAMA: Chairman, just, just a point of order to you. I've made a motion to amend. Is what you're considering--

CHAIR MOLINA: Is additional language to your amendment.

COUNCILMEMBER HOKAMA: --is accepting a, another motion to amend from Ms. Johnson to, to the. . .what is before the Committee at this time? Is that what you're considering?

CHAIR MOLINA: Actually, she's actually considering as a friendly amendment and we were trying to determine whether it should be more done. . .it can be done either as a friendly amendment or as a formal, separate amendment. And my understanding, if it is a. . .has to be done as a formal, separate amendment, it would have to come after we--

COUNCILMEMBER JOHNSON: Yeah. It'll come after.

CHAIR MOLINA: --make a decision on your amendment.

COUNCILMEMBER HOKAMA: Yeah. I would prefer we take it separately, Chairman.

CHAIR MOLINA: Okay. Member Johnson, you have any objections to your consideration as a separate amendment?

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COUNCILMEMBER JOHNSON: No, I don't. I just was looking for guidance on the language because I felt that we could do it in one motion. But if that's the wish of the body, you know, I'll abide by it.

CHAIR MOLINA: Okay. Alright. Members, we're on the amendment, proposed amendment from Chairman Hokama regarding Condition 1. Member Pontanilla--excuse me, Member Anderson, did you have your hand up earlier and I saw--

COUNCILMEMBER ANDERSON: Go ahead.

CHAIR MOLINA: You'll yield? Okay. Member Pontanilla, followed by Member Anderson.

VICE-CHAIR PONTANILLA: Yeah. Thank you. For the Department, just for clarification, under B-2 you had said that whoever want to develop on B-2 land can go up to six stories?

MR. YOSHIDA: Yes, I believe that's the, that is the current standard under the B-2 zoning that the height limit be up to six stories.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah. Thank you, Chair. You know, I guess the reason they want the B-2 zoning is because it gives you so much more options of the types of businesses that you could put in. You know, B-2. . .I mean, well, I guess it has to be B-2. It could be B-1 Neighborhood and that, that would restrict them to two stories. But the reason they want. . .well, I guess the reason they want B-2 is they want more options for development. But I'm just wondering that, you know, all, with all due respect to the Nunes family, I'm just wondering, you know, if the people who are requesting this were not a local family, were a haole like me, would we stick to the, the Planning Commission's recommendation for two-story height? Because you're not local, we don't want to give you the break. So, I won't be supporting the amendment, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, any other discussion on the proposed amendment from Chairman Hokama? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah. I, I'm going to support the amendment, and I think the discussion was well taken. I'm an advocate for view planes like Member Anderson, but as I explained, the view plane has been obliterated mostly for that area from existing buildings, and I, I think I'd like to see that the applicant, according to the Planning Department, can go up to six stories. . .and they're not asking for six stories, but four stories. So I'll be supporting the amendment. Mahalo, Mr. Chairman.

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CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Committee Members, any other discussion on the proposed amendment from Chairman Hokama? Okay. Seeing none, the Chair will express his reservations on the amendment as well, but I will support it. . .but with some reservations. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah. And, and I really. . .I have mixed feelings because, you know, I know the Nunes family has done this and, and it's taken them a long while. They've really. . .this has not been an easy thing for *anybody*, local or otherwise. This has been a very difficult issue. I may not like what was done at North Beach in terms of the development, but that's not our purview. So as far as the amendment and the height go, I agree that the view plane really has been severely compromised not by our actions, but both by the Code and the actions of the Planning Commission, and the view corridors that were to have been preserved, they did not pay attention, I believe, to the citation that Member Anderson quoted from. So I, I don't feel you have to makeup the errors that were given to companies that basically have no ties whatsoever to Maui. Don't put that and try to impose now what should've been imposed on the hotels that are there and penalize other people because there's not much left. I respect the Planning Commission's views, but not these Members, but other Members and recent decisions that were made, I don't agree with. I don't like timeshares either, but I believe in this particular situation I did suggest to the applicant that one of the things that they may consider with the additional height is instead of sprawling all the parking out onto the apron, that they actually include perhaps a portion of the parking on maybe some of the, you know, the first or second story of the structure. And I don't know if that's possible, but I know that that is something that they would like to at least consider. And if you restrict it to two stories, they cannot accommodate any additional parking unless they do it on that apron. And that to me. . .I, I would at least like them to have that opportunity and maybe even provide some beach parking, too, because those spaces that we have in North Park, they're going to be used up right away. So, I will support the amendment. I, I totally respect Member Anderson's, you know, quotations and sticking with the Code, but I will support it, and after this I will make my friendly amendment. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Any other comments before the Chair calls for the vote on the amendment? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER ANDERSON: No.

CHAIR MOLINA: Okay. The Chair will mark it seven ayes, with one no, Member Anderson. The amendment passes.

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**VOTE:**       **AYES:**       **Councilmembers Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:**       **Councilmember Anderson.**

**EXC.:**       **Councilmember Mateo.**

**ABSENT:**   **None.**

**ABSTAIN:**   **None.**

**MOTION CARRIED**

**ACTION:**   **APPROVE amendment to the main motion.**

CHAIR MOLINA: Member Johnson, you have the floor.

COUNCILMEMBER JOHNSON: Yes. I move to amend the . . .I guess 'cause we're back to the main motion, as amended, I move to amend to include the language on the height restriction as noted--could you please repeat that, Clayton?--from existing grade or. . .

COUNCILMEMBER MEDEIROS: Finish grade.

COUNCILMEMBER JOHNSON: . . .finish grade, whichever is lower.

CHAIR MOLINA: Okay. Mr. Yoshida?

COUNCILMEMBER JOHNSON: And is that correct?

CHAIR MOLINA: Mr. Yoshida, can you confirm?

MR. YOSHIDA: Yes, that's the current Code requirement.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Okay. And, and that. . .so that we don't get mixed up with different Code years and when North Beach first came into being--I don't want to deal with that anymore. I just want to add that language. So, if you could--

CHAIR MOLINA: Okay. Member Johnson, if you'll permit--

COUNCILMEMBER JOHNSON: --I guess restate it.

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CHAIR MOLINA: . Yeah, I'd like--Staff, do you want that proposed amendment restated by Member Johnson?

MS. NAKATA: Staff's understanding is that the amendment would be to Condition No. 1 of Exhibit "3" to the bill to read as follows: "That the height of building shall be limited to four stories not to exceed 50 feet in height" and to add in the phrase "from existing or finish grade, whichever is lower".

CHAIR MOLINA: Okay, Member Johnson, is that correct?

COUNCILMEMBER JOHNSON: That's, that's correct.

CHAIR MOLINA: Okay, Members?

COUNCILMEMBER VICTORINO: Second for discussion.

CHAIR MOLINA: Alright, it's been seconded for discussion by Member Victorino. Member Johnson, any other comments before I yield the floor to other Members?

COUNCILMEMBER JOHNSON: No. And my only justification in doing that is because we have these other situations where people even on the affordable housing requirements, the developer at Intrawest went back to when they were first, I guess, granted their permits and used an old ordinance. So to me, you know, they went by old ordinances. This makes it perfectly clear that it's at this point in time, it's a minor clarification as far as I'm concerned, it's dotting an "i", but I just prefer to have the language in there so people can't wiggle out of it later on. . . .(chuckle). . .

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Pontanilla, followed by Member Anderson.

VICE-CHAIR PONTANILLA: Thank you. Just a point of clarification for the Department. Is it existing grade or natural grade?

CHAIR MOLINA: Mr. Yoshida?

MR. YOSHIDA: I believe the--well, I guess Mr. Giroux is pulling it up right now.

COUNCILMEMBER ANDERSON: It's under height.

COUNCILMEMBER HOKAMA: Chairman, my request--

CHAIR MOLINA: Any more comments? Member Hokama?

COUNCILMEMBER HOKAMA: --my request to allow our--

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CHAIR MOLINA: Recess?

COUNCILMEMBER HOKAMA: --professional staff, if would consider a very short recess.

CHAIR MOLINA: Sure. Definitely. Okay, Members, we'll call a brief recess for the Administration to respond to Member Pontanilla's questions. A matter of fact, Members, it might be a good time to take our afternoon break. So, Members, this meeting will be in recess until 3:15. . . .(gavel). . .

**RECESS: 2:57 p.m.**

**RECONVENE: 3:16 p.m.**

CHAIR MOLINA: . . .(gavel). . . Land Use Committee meeting for Wednesday, July 2<sup>nd</sup>, 2008 is now back in session. Thank you very much for that break. Members, during the break we gave the Corporation Counsel and the Planning Department time to, I guess, do some research on a request made from. . .I believe it was--

COUNCILMEMBER JOHNSON: Mr. Pontanilla.

CHAIR MOLINA: --Mr. Pontanilla, excuse me.

COUNCILMEMBER MEDEIROS: Oh, yeah, the question. Right.

CHAIR MOLINA: Okay. Corporation Counsel or Planning Department, are you read to respond?

MR. PRUTCH: Yes, that would be natural grade.

COUNCILMEMBER JOHNSON: Natural grade.

COUNCIL MEMBERS: . . .(chuckle). . .

MR. GIROUX: And just, just to clarify. The definition--I'll just read it into the record--but the definition of finish grade and natural grade are also in the definitions. So the definition of natural grade, grade means existing grade. . .

COUNCILMEMBER JOHNSON: Oh.

MR. GIROUX: . . .and then it goes on to further, you know, talk about that. But if, if you were to just mirror the definition of height, then that would cover the other two definitions. . .

COUNCILMEMBER JOHNSON: Uh-huh.

MR. GIROUX: . . .which would include the existing, the language of existing grade.

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COUNCILMEMBER JOHNSON: Okay.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Member Anderson, you had a question?

COUNCILMEMBER ANDERSON: No, I want to comment on Ms. Johnson's amendment?

CHAIR MOLINA: Oh.

COUNCILMEMBER ANDERSON: Is that where we're at?

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: Yes, I believe we're on Member Johnson's consideration to add language to Condition 1. Go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. I, you know, I appreciate. . .it's always good to be clear, but I don't know that it's going to help any because. . .you know, the previous amendment just wiped out the view corridor. So, I just want to point out to Members that we do have a Maui Coastal Scenic Resources Study, and it is supposed to be used by the Planning Department when they are looking at projects in the Special Management Area. And I just want to quote--and there is a map that shows, you know, that this is a view corridor area--"two major features that contribute to Maui's unique quality are its coastal and mountain views. These features are an integral part of Maui's sense of place and represent a valuable aesthetic resource to be preserved. Accordingly, development should be tied to these features in their orientation and should be compatible with these features in their design." For the. . .Community Plan Amendment required of this request and an Environmental Assessment was required, and I don't know if any of you Members requested it for review, but I did, and in the Environmental Assessment it states that. . .in 1988--and this is just background information in regards to the requests that are being made to us today--in 1988 a Special Management Area Use Permit and Shoreline Setback Variance were approved for the North Beach Resort Development Subdivision by the Maui Planning Commission. Conceptual plans for the recreational facilities included among, among other amenities, the development of a south park and north park, and they included the master plan, this is the subdivision master plan for this North Beach area, and it specifically marks off this area in question as a view corridor. . .within their master plan. So we are, we are basically wiping out this view corridor that otherwise they would have to adhere to because it's in their master plan that was part of their subdivision, and which is I'm sure why the two height, two. . .

COUNCILMEMBER MEDEIROS: Story.

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COUNCILMEMBER ANDERSON: . . .story--thank you--height restriction was recommended by the Planning Department to preserve this view corridor. So that's the last I'm going to say about it, Mr. Chairman. I will be supporting Ms. Johnson's amendment.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER ANDERSON: But I don't think it's going to do any good.

CHAIR MOLINA: Okay. Committee Members, any other comments on the proposed amendment from Member Johnson related to Condition 1? Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to be clear on this. So Member Johnson's amendment basically restates what the Code says, but she just wants it to be included in this legislation? Is that correct?

CHAIR MOLINA: That's correct, but I'd like to ask. . . maybe I'll ask Member Johnson to verify that.

COUNCILMEMBER JOHNSON: Yes, that, that is my intention.

COUNCILMEMBER MEDEIROS: Okay. And then a follow-up question is for Corp. Counsel, if you'll allow me.

CHAIR MOLINA: Proceed, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: If there was a little difference between an amendment of Condition of Zoning and the current Code, which would have precedent?

MR. GIROUX: I believe being in the nature of zoning, you would take the most restrictive. It would, you would take whichever is the more restrictive if, if you're looking at height because you're, you know, you're taking into account view corridors and the such. So you would look at the. . . the language and the circumstance, but in, in this circumstance you would look at the most restrictive.

COUNCILMEMBER MEDEIROS: So if an amendment or if a condition was more restrictive than what's currently in the Code, that would take precedent?

MR. GIROUX: Yes, that--

COUNCILMEMBER MEDEIROS: Thank you, Corp. Counsel. Mahalo, Mr. Chairman.

CHAIR MOLINA: Alright. Thank you, Member Medeiros. Committee Members, any other final comments on the amendment to Condition 1 as proposed by Member Johnson? Seeing--

MS. NAKATA: Mr. Chair, could Staff clarify then? The--

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CHAIR MOLINA: Yes.

MS. NAKATA: --amendment would be revised to natural or finish grade?

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER MEDEIROS: It's the same.

CHAIR MOLINA: No, I don't believe--

COUNCILMEMBER JOHNSON: No, it's the same. And, and to my understanding by what Mr. . . .

CHAIR MOLINA: Yoshida or Mr. Prutch.

COUNCILMEMBER JOHNSON: I'm, I'm not sure. If, if you could just restate what was said?

CHAIR MOLINA: As, as recommended by the Department.

MR. PRUTCH: Yeah. It says that height is defined by natural or finish grade, whichever is lower.

COUNCILMEMBER JOHNSON: Okay. And then we would be eliminating "existing"?

MR. PRUTCH: Yes. It would just say natural or finish grade, whichever is less.

COUNCILMEMBER JOHNSON: And, and that's, that's what you were saying, Mr. Giroux? Okay.

MR. GIROUX: Yes. Because the, the definition of. . . I think where you, the existing language is, is that the definition of natural grade has language that, that references existing grade or elevation of the ground surface. . .

COUNCILMEMBER JOHNSON: Okay.

MR. GIROUX: . . .prior to man-made changes.

COUNCILMEMBER JOHNSON: Oh, okay. Thank you for clarifying that since that is supposed to be my motion. . . *(chuckle)*. . .

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: So, yeah, and if, if Carla could just restate that motion, I'd really appreciate it.

CHAIR MOLINA: Okay. Staff, if you will.

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MS. NAKATA: The motion would be to amend Condition No. 1, which currently reads “That the height of buildings shall be limited to four stories not to exceed 50 feet in height” by adding the following phrase “from natural or finish grade, whichever is lower”.

CHAIR MOLINA: Okay. Is that clear, Members? Alright, very good. Before we call for the vote, the Chair would like to ask the Members’ consideration to allow Staff to make any technical and nonsubstantive changes to the bill as well.

COUNCIL MEMBERS: No objections.

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: DM).

CHAIR MOLINA: Okay. Thank you very much, Members. The Chair will call for the vote. All those in favor signify by saying--oh, excuse me, Member Anderson.

COUNCILMEMBER ANDERSON: We’re voting on--

CHAIR MOLINA: On the second amendment.

COUNCILMEMBER ANDERSON: --the second amendment? Thank you.

CHAIR MOLINA: Thank you. On Member Johnson’s amendment--

COUNCILMEMBER JOHNSON: Right.

CHAIR MOLINA: --to Condition 1. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark it eight-zero; with one excusal, Member Mateo.

**VOTE:       AYES:       Councilmembers Anderson, Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:       None.**

**EXC.:       Councilmember Mateo.**

**ABSENT:   None.**

**ABSTAIN:   None.**

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**MOTION CARRIED**

**ACTION: APPROVE amendment to the main motion.**

CHAIR MOLINA: Now we're back to the main motion, as amended. Are there any other considerations? Member Johnson?

COUNCILMEMBER JOHNSON: This isn't a consideration, but I, you know, like again this is the kind of information that should be coming from the Planning Department and should also be given to an applicant. There is a view corridor right in that area. Unfortunately, where the little band goes, it kind of ends just about. . . I don't know, just, just at the end of our North Park. So, you know, to me I, I guess they were looking, assuming that there would be a view corridor and nothing would be built in that area. But for me, I really am conflicted about the, you know, preservation of a view corridor because it was not done in a lot of the planning and even through some of the buildings, the configuration of some of the buildings where Starwood is, where Intrawest is, it, it just. . . it even got changed from what it originally was. So while it's not the property that's under question, this whole plan, the Shoreline Zone and Open Space Plan was made a part of the subdivision, it goes with the whole thing. So, I guess my only question would be that if that plan was adopted--I guess my question would be to Mr. Giroux--if this is part of it and we're looking at an existing ordinance, what are we doing when it appears that we're going against that existing ordinance?

CHAIR MOLINA: Mr. Giroux?

MR. GIROUX: Ms. Johnson, I. . . you're, you're referring to a, a view corridor analysis? Is that. . . ?

COUNCILMEMBER JOHNSON: This was actually part, there was a. . . because I was an intervenor on originally North Beach--I'm more familiar with this area than other people--there were view corridors that were planned on this particular. . . it was the Shoreline Zone Map, there was a Shoreline. . . and, and a plan that ran throughout the whole subdivision that was adopted by the Planning Commission, and what it did was it integrated, and I'm just assuming that this. . . because I, you know, I did not stay till the final intervention, so I don't know what happened as far as the final adoption of the ordinance. But if this were part of their Shoreline Management Plan and the View Corridor Preservation Plan and it ran with the whole subdivision as part of their original conditions for development at North Beach, what happens if we now, you know, alter that or appear to alter that?

MR. GIROUX: Okay.

COUNCILMEMBER JOHNSON: Or does that not run with Mr. Nunes' property?

MR. GIROUX: I think I gotta make a, a clarification that what you're looking at I don't believe is an ordinance. I. . . it's a, it's part of a permit process.

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COUNCILMEMBER JOHNSON: Um. . .

MR. GIROUX: I mean it wasn't adopted by Council is what I'm trying to say.

COUNCILMEMBER JOHNSON: Oh, okay. You're--

MR. GIROUX: Because your question was what happens when you have two ordinances that are in conflict? So--

COUNCILMEMBER JOHNSON: Yeah. And I guess--

MR. GIROUX: --and I have to--

COUNCILMEMBER JOHNSON: --the Shoreline Zone Plan was adopted by the Planning Commission. So it would not be--

MR. GIROUX: It's not an ordinance.

COUNCILMEMBER JOHNSON: --and it would not be part of Coastal Zone Management requirement?

MR. GIROUX: Well, that's now. . .if we can eliminate the first question. . .

COUNCILMEMBER JOHNSON: Uh-huh.

MR. GIROUX: . . .I can get to the second level. . . .(chuckle). . . Okay. 'Cause we're, I'm not. . .

COUNCILMEMBER JOHNSON: Okay.

MR. GIROUX: . . .it's a totally different analysis if, if I'm asked to, if there is an actual conflict in two ordinances.

COUNCILMEMBER JOHNSON: Okay.

MR. GIROUX: I'm trying to eliminate that analysis from, from the question. We are dealing with an SMA situation, though, where your zoning today of this parcel will not circumvent 205A analysis because the Planning Commission will be the ultimate authority. Your, your zoning. . .whether you left it blank and the, the owner could build the six-story structure. . .if. . .even if that zoning stood and it got to the SMA process and that building would absolutely wipe out a view corridor, that the ultimate authority in, in positioning, massing height would be within the purview of the Planning Commission.

COUNCILMEMBER JOHNSON: Uh-huh.

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MR. GIROUX: They. . . --(*CHANGE OF TAPE, start 2B*)-- . . .

COUNCILMEMBER JOHNSON: Okay.

MR. GIROUX: They could bring that. . .even though if they were allowed to go six stories, they could bring it down to four or two or one, whichever they saw would preserve the view corridor most, most effectively, and they can also change the positioning. They can, they can actually rotate a building if, if it fell within the setbacks and such in order to preserve a corridor. And also with massing they could, if as the building grew. . .as they could pull in, you know, certain types of architectural structures in order to make the building not look like just a solid block--

COUNCILMEMBER JOHNSON: Right.

MR. GIROUX: --that would be blocking a view corridor. So with that being said, the ultimate analysis, no matter what you do at zoning. . .

COUNCILMEMBER JOHNSON: Uh-huh.

MR. GIROUX: . . .you're basically just saying yes, you can use the use and here's the maximum you can do. But the Planning Commission, while looking at an SMA major, can make those types of changes in order to be in compliance with the policies and objectives of 205A.

COUNCILMEMBER JOHNSON: Okay. So they can be. . .when they come for the SMA with a plan for a building, they would then also have access to this information? Because I, I really. . .I, I'm very conflicted because, you know, I didn't see this particular item previously. I, I know just because I drive that area that, you know, forget about view corridor. I mean it just, it's not really there, but I just wanted to make sure that, you know, at least this item as was presented by Member Anderson was discussed because ordinarily I would never. . .you know, I mean view planes are really important, the whole area is really important. So I, I'm just hoping that, you know, when the building is sited, too, that if there is an airflow situation, that the way that the building is actually sited maximizes the amount of airflow because I can tell you when Starwood went in, Kahekili Park has no airflow. It's dead air, except when you have, you know, real heavy breezes coming from offshore. So it's sad, but that's one of the things when you building buildings, you change the airflow, too. But I want to thank Member Anderson for bringing this forward and I will be supporting the main motion, but again I guess I should state it's doing so with reservations only because I still--when, when we don't have a plan in front of us, it does give cause for concern, and I really do respect the Planning Commission's looking at this issue and while I don't agree with them on some of their decisions, I, I think they probably tried to do the best they could. And I thank Colleen for offering her sentiments on view planes, too. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Anderson?

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COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. I think we need some clarification here. In 1988, this whole North Beach Subdivision was approved by the Special, by the Planning Commission as, as a Special Management Area Permit. So the area in question already has a Special Area Management Area Use Permit and a Shoreline Setback Variance for this land that we are now dealing with. And as part of that approval, they had a subdivision master plan approved for their subdivision, and the master plan lays out where these view corridors must be. The Nunes folks are in that view corridor. They are now trading their property with North Beach property which was previously community planned for Park. So if the Members want to look, by allowing them four stories we are wiping out that view corridor from the roadway. If you want to look at the, the visual, the aerial visual that Ms. Hiraga provided us in her. . .presentation, you can see the property in question, you can see it has a clear view corridor to the ocean and a view to Molokai, and that's what this subdivision master plan was protecting in this view corridor. So you put four stories at that corner, you're wiping out the view corridor, which currently exists. I just want to be very clear what we're doing here. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you for that clarification, Member Anderson. Committee Members, before the Chair calls for the vote on the main motion, as amended, the Chair needs some clarification from the Planning Department. Mr. Prutch, in your opening remarks you mentioned Condition 3 which is attached to the. . .part of the February 27, 2008 transmittal from the Department. And as I was looking through the, looking at the bill itself, several pages down the road under Exhibit "3", I see only two of the conditions listed, unless maybe there was. . .Condition 3 was left off of Exhibit "3". Can you add some clarity to this?

MR. PRUTCH: Yes, I can, Chair. Sure, we talked about this on the break. And the memo, Staff Report that was drafted for the Committee listed a Condition No. 3. However, when I went back and looked at the Planning Commission's Staff Report in 2007, there was no Condition No. 3, and then I looked through the motions, the minutes, and there was only a motion to approve the two conditions, the height and the uses. So, I'm not exactly sure where this third one came from, but it wasn't in the Planning Commission motion and it wasn't in the Planning Commission Staff Report as well. Um. . .

CHAIR MOLINA: So, so for the record the Committee is considering just two conditions officially then?

MR. PRUTCH: Yes.

CHAIR MOLINA: Okay.

MR. PRUTCH: Yes.

CHAIR MOLINA: So this Condition 3 that was part of this February 27, 2008 should then, in essence, be omitted then and not even--

MR. PRUTCH: Yes. Yes.

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CHAIR MOLINA: --factored in?

MR. PRUTCH: Yes.

CHAIR MOLINA: Okay. So, Members, is that clear? We're only considering two conditions and not a third condition which was listed, for the record, as "That the reconfigured lot along Lower Honoapiilani Road shall construct the road widening improvements." So, in essence, that condition is not part of the bill that we're considering here today. So, I wanted to just make that clear. According. . .and, of course, this is from the Planning Department.

COUNCILMEMBER VICTORINO: Chair.

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: And I don't like to. . .normally I don't, I would accept my colleague's interpretation of a view plane, but, Ms. Anderson, I cannot see where you see, what I see, and I don't see what you see.

COUNCILMEMBER ANDERSON: . . .*(chuckle)*. . .

CHAIR MOLINA: Okay. . .*(chuckle)*. . .

COUNCILMEMBER VICTORINO: And I'm sorry to say that because I'm looking at this where, and am I correct in saying where these trees are, right along that turn, next to the entry to the Embassy is the lot in question?

COUNCILMEMBER JOHNSON: Uh-huh.

COUNCILMEMBER BAISA: Uh-huh.

COUNCILMEMBER VICTORINO: And if I looked--God forgive, Ms. Anderson, I may not be the brightest person and I've got good eyesight, but I see buildings right in front of me right now.

COUNCILMEMBER ANDERSON: If I may, Mr. Chair.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: Member Victorino, the view planes are measured from a roadway.

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER ANDERSON: So it's either Lower Honoapiilani Highway or Honoapiilani Highway.

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COUNCILMEMBER VICTORINO: Okay.

COUNCILMEMBER ANDERSON: If you're driving around and you're looking, the corridor is from the parcel going down to the beach, not going--you know, you have to look at it at that angle where all that green, greenery runs down to the beach and then all of a sudden you see the beach, that's all open space there. I'm not looking straight through, trying to look through Embassy Suites. You're looking at the corridor that goes down to the beach, and that's the corridor that's going to be blocked off. And it's in their master plan, I will pass it down so you can see. That's the way you measure a view corridor. They're not perpendicular necessarily, sometimes they're at an angle, and that's what they were trying to preserve in this view corridor. There's also a view corridor at the other end of the project. The idea is that yes, you can have density along the shoreline as long as every so often you have an open space corridor that allows view to the ocean, and that's what this corridor was meant to provide at that end of the project.

CHAIR MOLINA: Okay. Thank you for that clarification. Mr. Victorino, any final comments? I know, I know it's. . .can be a little difficult sometimes.

COUNCILMEMBER VICTORINO: I'm sorry. And I apologize.

CHAIR MOLINA: No, no apologies necessary.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Alrighty, Members, I guess the Chair will finally call for the vote. For the second--

COUNCILMEMBER MEDEIROS: Mr. Chair.

CHAIR MOLINA: Mr. Medeiros, followed by Mr. Hokama.

COUNCILMEMBER MEDEIROS: Yes. And before we got back to the corridors we were discussing Condition 3?

CHAIR MOLINA: Yeah. There is no. . .officially there is no Condition 3, even though there was one listed in the Staff Report, but as explained by Mr. Prutch that, that currently there's no, I guess, anything to substantiate, well, how that Condition 3 got in there. So if you look at Exhibit "3" there's only two conditions listed.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: So the. . .in. . .I guess that page 4 on the February 27, 2008 transmittal which, which you're looking at, the Staff Report, that Condition 3 is not supposed to be there, to make it short.

COUNCILMEMBER MEDEIROS: Oh, okay.

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CHAIR MOLINA: 'Cause I guess they went back through the minutes of the Planning Commission and there was no record of a Condition 3, and Mr. Prutch has just stated to us, you know, no one really knows how that Condition 3 got put in there in the, in the Staff Report.

COUNCILMEMBER MEDEIROS: It's a . . .and my understanding may not be totally accurate, but because that Condition 3 that we're looking at that no longer exists, it's, it states that the reconfigured lot along Lower Honoapiilani Road shall construct the road widening improvements. My understanding that the road widening improvement's already there, they exist, they were done already. So, I'm not sure why the condition was there.

CHAIR MOLINA: That's, that's the great mystery we're still trying to figure out, why. So, yeah.

COUNCILMEMBER VICTORINO: . . .*(chuckle)*. . .

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

CHAIR MOLINA: Thank you. Mr. Hokama, followed by Ms. Anderson.

COUNCILMEMBER HOKAMA: Chairman, so we can have the discussion, I would move to amend Exhibit "3", Conditions of Zoning, that 2. ii. be deleted.

VICE-CHAIR PONTANILLA: Second for discussion.

CHAIR MOLINA: Okay. A motion has been made to Exhibit "3" by Member Hokama. Member Hokama, you have the floor. And the motion to amend was seconded by Member Pontanilla.

COUNCILMEMBER HOKAMA: Chairman, you know, many times when people look at our documents, they, they get confused, and I would say if Members would look at Condition 2. a. . . .

COUNCILMEMBER MEDEIROS: 2. a., okay.

COUNCILMEMBER HOKAMA: . . .part of the language of 2. a. says that, no living or sleeping quarters shall be permitted in any detached accessory building or structure on the same lot, and, and that's one of the parameters of, of uses under this proposal. And yet under ii., we state a contrary use, it goes against 2. a., which says that but you can have a B&B. . .

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER HOKAMA: . . .although we just said no living or sleeping quarters shall be permitted in another component of the conditions. So my proposal to the Members is we need to make up our mind, and my proposal is delete ii.



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**ACTION: APPROVE amendment to the main motion.**

CHAIR MOLINA: Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Yeah. And I'm sorry, I didn't get a chance to explain that vote. I just, it's in a resort area so that's why I think bed and breakfast is appropriate. But, you know, we got all--at least I did--got all upset about this view corridor and neglected to ask. In the Report, the Planning Department mentioned that there would be an impact to parking, to beach access parking, and that the response from the consultant was that potential impacts on parking for beach and park users at North Park will be mitigated by providing an additional 200 parking stalls for the hotel development. So, I want to know if that the additional 200 parking stalls for hotel development, if within those parking stalls they will designate some of them specifically for beach access parking, because 200 stalls can be taken up by employees and, you know--

CHAIR MOLINA: Sure. Would you like to hear from the--

COUNCILMEMBER ANDERSON: --visitors at the hotel.

CHAIR MOLINA: --applicant?

COUNCILMEMBER ANDERSON: Yeah. I'd like to get it on the record, Mr. Chair.

CHAIR MOLINA: Sure.

COUNCILMEMBER ANDERSON: I'm sorry to kind of slow you down at this point--

CHAIR MOLINA: No, that's okay.

COUNCILMEMBER ANDERSON: --but I think it's a very important issue that. . .'cause we are losing some beach parking access--

CHAIR MOLINA: No, that's an important consideration.

COUNCILMEMBER ANDERSON: --by trading this property, and I want to make sure that they will be dedicating some of these 200 stalls specifically for beach access use for the general public.

CHAIR MOLINA: Okay. Ms. Hiraga or Mr. Luna or Mr. Nunes, if one of you could come up and respond to Member Anderson's request. Okay. Mr. Luna?

MR. LUNA: Members, Mr. Chairman, I'm Martin Luna. At the Planning Commission meeting that I attended, there was talk about employee housing and that was provided, but I don't recall any parking that would be provided for the park within the resort area itself. However, the, the park

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has been extended, widened, so there might be room to add additional parking in the widened area. So we can check on that.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: Maybe Ms. Hiraga can answer my question because I'm quoting directly from a letter. . .well, somebody else has my EA now, so I don't have it in front of me, but I'm quoting from a letter that Munekiyo & Hiraga wrote in response to the Planning Department's comment letter on their EA regarding the loss of beach parking. And just to refresh the applicant's or the consultant's memory, it was a January 13, 2005 letter and it says "potential impacts on parking for beach park users at North Park will be mitigated by providing an additional 200 parking stalls for the hotel development. In addition, hotel security and hotel personnel will be responsible for enforcing beach parking use." So, I just want clarification that that means they are going to actually dedicate some parking space, some of that 200 parking spaces towards beach access parking.

MR. LUNA: What was the date of that letter?

CHAIR MOLINA: Ms. Hiraga?

COUNCILMEMBER ANDERSON: It was January 13, 2005. . . .And then maybe you could answer my question in a quick way, Ms. Hiraga, without--I'm sorry to throw this wrench in, but--

MS. OHASHI HIRAGA: I just--

COUNCILMEMBER ANDERSON: --the North Park, the new, the new North Park area that is going to be developed from the Nunes' property, will there be parking, new parking included in that. . .that would be beach access parking?

MS. OHASHI HIRAGA: Yes, Gwen Hiraga. The new North Park area will have 100 parking stalls.

COUNCILMEMBER ANDERSON: And so how many are currently on the Nunes' property?

MS. OHASHI HIRAGA: On the Nunes' property? There's no parking on the Nunes' property.

COUNCILMEMBER ANDERSON: Well, in the picture I saw it showed a parking area.

MS. OHASHI HIRAGA: For, for the--

COUNCILMEMBER ANDERSON: So that would be the parking area that you guys are developing? That's a drawn-out picture at existing?

MS. OHASHI HIRAGA: Yeah, but that's what it would look like.

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COUNCILMEMBER ANDERSON: Okay.

MS. OHASHI HIRAGA: So the total parking for the entire North Beach area is 100 stalls at the North Park area, there's 100 stalls in the open space area as well, but there was never a discussion or intention that stalls within the resort property would provide for public parking because they are providing it on the, at the park parcel itself.

COUNCILMEMBER ANDERSON: Okay. Well, 100 stalls I think is sufficient--

MS. OHASHI HIRAGA: Yes.

COUNCILMEMBER ANDERSON: --besides the ones along the corridor.

MS. OHASHI HIRAGA: Yeah.

COUNCILMEMBER ANDERSON: Right. Thank you very much. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson, for getting that on the record. Okay. Committee Members, any other considerations before the Chair calls for the vote on this particular bill? Alrighty. Seeing none, all those in favor of "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT AND FROM H-2 HOTEL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII" signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay, thank you.

COUNCILMEMBER ANDERSON: No.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: But, Mr. Chairman, you didn't ask anyone to speak on the main motion.

CHAIR MOLINA: Oh. Yeah, yeah. Okay, you're right.

COUNCILMEMBER ANDERSON: And that, you know, that's fine, but I just wanted to explain my no vote, and I guess I've said enough. So. . .

CHAIR MOLINA: Okay. Members, any objections to allowing Member Anderson to explain her no vote?

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COUNCILMEMBER ANDERSON: No, Chair, it's okay.

CHAIR MOLINA: Okay. Alright, so we'll go into the record as seven ayes; one no, Member Anderson; and one excusal, Member Mateo.

**VOTE: AYES: Councilmembers Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES: Councilmember Anderson.**

**EXC.: Councilmember Mateo.**

**ABSENT: None.**

**ABSTAIN: None.**

**MOTION CARRIED**

**ACTION: Recommending FIRST READING of revised proposed bill, and RECORDATION of unilateral agreement.**

CHAIR MOLINA: Okay. We have one more bill to consider, Members.

COUNCILMEMBER ANDERSON: Two.

CHAIR MOLINA: We're almost there. Okay. The Chair will recommend passage on first reading of the proposed bill entitled "AN ORDINANCE TO CHANGE ZONING FROM H-2 HOTEL DISTRICT TO PK-2 PARK DISTRICT, FROM R-3 RESIDENTIAL DISTRICT TO PK-2 PARK DISTRICT, AND FROM H-2 HOTEL DISTRICT TO PK-2 PARK DISTRICT FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII".

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Moved by Member Johnson, seconded by Member Victorino. Member Johnson, as the maker of the motion, you have the floor.

COUNCILMEMBER JOHNSON: No comments.

CHAIR MOLINA: Okay. The Chair would like to ask a consideration for an amendment to, again, include the June 30<sup>th</sup>, 2008 transmittal from the applicant's attorney regarding the property description. The Chair will entertain a motion to amend to add in--

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COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER HOKAMA: Second.

COUNCILMEMBER MEDEIROS: Second.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Moved by Member Johnson, seconded by Member Hokama. Any discussion on the proposed amendment to include the property description? Okay. Alright, seeing no discussion or hearing no discussion, all those in favor of the amendment signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER ANDERSON: No, I mean aye.

CHAIR MOLINA: Aye. Okay, we'll mark it as an aye for Member Anderson.

COUNCILMEMBER BAISA: . . .(*chuckle*). . .

COUNCILMEMBER ANDERSON: I'm already on the next project. . . .(*chuckle*). . .

CHAIR MOLINA: It'll be eight ayes with, with one excusal, Member Mateo.

**VOTE:       AYES:       Councilmembers Anderson, Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:       None.**

**EXC.:       Councilmember Mateo.**

**ABSENT:    None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    APPROVE amendment to the main motion.**

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CHAIR MOLINA: And by the way, this motion will also include--we're now back to the main motion, as amended--

COUNCILMEMBER JOHNSON: Include the filing.

CHAIR MOLINA: --and this will include the filing of County Communication No. 07-127 and 08-71. Okay. Any other considerations for this bill? We're back to the main motion, as amended. Member Johnson?

COUNCILMEMBER JOHNSON: No. I just want to thank Mr. Nunes for working with the IntraWest people to actually go through this process because it's taken him a long time, and of course timing is everything and I think it's taken so long, we're now in an economic downturn. So this may not happen for a while, but I really want to thank him and his family for at least considering it because I mean he could have asked for another access way out onto the Lower Road and been totally within his rights. So, you know, it, it, it...there could've been a lot of other things. He could also have gone to six stories. And I just appreciate the fact that even though other people haven't been so concerned perhaps about the community, I think he's tried to do the right thing and I, I really appreciate it and I'm sure when he comes forward with any plans during the actual process for a building permit and SMA application, I'm sure he'll do his best to respect the wishes of the community. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson? Any other comments before the Chair calls for the vote? Member Anderson?

COUNCILMEMBER ANDERSON: Sorry, I thought we were already there. . . .*(chuckle)*. . . You know, I think that this is. . . on the basis of it, a good switch, a good use of the land. But, you know, currently it is zoned R-3, R-3 doesn't allow for four stories. And I, I can't support this because it's going to be obliterating an approved view corridor adopted on a master plan, and, you know, maybe people don't see my point of view, and that's fine, too. But when we have so little scenic resources and we're mandated by law to protect them--the master plan was adopted 20 years ago to protect this corridor and today, we're ignoring that. So, I'm not going to be able to approve this Change in Zoning for that reason only. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, any other considerations? And by the way, the Chair is going to ask, again, if there are no objections, to allow Staff to make any technical and nonsubstantive changes to the bill as well.

COUNCIL MEMBERS: No objections.

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: DM).

CHAIR MOLINA: Okay. Member, the Chair will call--

MS. NAKATA: Mr. Chair?

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CHAIR MOLINA: Staff?

MS. NAKATA: Could Staff please request clarification possibly from the applicant's surveyor on the TMKs referenced in Section 3 of the bill? I guess both TMKs 008 and 010 are referenced in Section 3, which is different from the property description which references TMK 008 only.

CHAIR MOLINA: Okay. Ms. Hiraga or Mr. Luna, do you have someone that can respond to the request from Staff? And, sir, if you could please state your name, position, and organization for the record before you speak.

MR. KANESHIRO: Eric Kaneshiro from Austin Tsutsumi & Associates. I believe the question was in regards to TMK number and I believe Exhibit "3", was it?

MS. NAKATA: Section of, Section 3 of the bill which I guess refers to Parcel E, I believe.

MR. KANESHIRO: Yes, Parcel E. That part, that Parcel E is within TMK: 4-4-14: portion 008 and does not include the current Nunes' property, which is 4-4-01: parcel 010.

CHAIR MOLINA: Okay. Staff, does that--

MS. NAKATA: So Staff's understanding is that the reference to parcel 010 will be stricken from Section 3 of the bill?

CHAIR MOLINA: Okay. Do we need to have an amendment for the record or can this, that just be done without any objections, if the Committee so desires?

MS. NAKATA: I think the Chair could consider it a technical amendment to the bill.

CHAIR MOLINA: Technical. Okay, so. . .just basically, just a nonsubstantive change or do we need a formal amendment, proposal?

MS. NAKATA: I don't believe a formal vote is necessary, if the Committee's comfortable with making that as a technical revision.

CHAIR MOLINA: Alright. Committee Members, are you comfortable with that adjustment?

COUNCILMEMBER JOHNSON: Uh-huh.

COUNCIL MEMBERS: No objections.

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: DM).

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CHAIR MOLINA: Okay. Thank you very much, Members. Alrighty, now we're back to the main motion, as amended. So, Members, the Chair will call for the vote. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER ANDERSON: No.

CHAIR MOLINA: Okay. The Chair will call, call it at seven-one, seven ayes, one no; and one excusal, Member Mateo.

**VOTE:       AYES:       Councilmembers Baisa, Hokama, Johnson, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:       Councilmember Anderson.**

**EXC.:       Councilmember Mateo.**

**ABSENT:   None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    Recommending FIRST READING of revised proposed bill, and FILING of communications.**

CHAIR MOLINA: Alrighty, Members, do you. . .would you like a short break before we get into our--

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: --two final items or do you want to work right through it, Members?

COUNCILMEMBER HOKAMA: Let's go.

CHAIR MOLINA: Let's go? Alrighty. Okay, Members, the next item on our agenda--and by the way, Committee Secretary, did we have any request for testimony on either Land Use Item 3 or the Land Use item that follows that which is Land Use Item No. . . .

MS. FRIAS: Twenty-six, twenty-six.

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CHAIR MOLINA: . . .26. Any request--

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay, Members, if there are no objections, we are going to close public testimony on Land Use Items 3 and 26.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Alrighty, thank you.

**ITEM NO. 3: CHANGE IN ZONING FOR WAIHEE MAUKA PROJECT** (C.C. No. 06-314)

CHAIR MOLINA: Okay. Members, the Committee is in receipt of County Communication No. 06-314, from the Planning Director, transmitting a proposed bill to grant a request from RDD LLC for a Change in Zoning from Ag District to OS-2 Open Space District for the Waihee Mauka Project on approximately 17.559 acres along Kahekili Highway in Waihee, which would allow for the development of a 14-lot ag subdivision on the parcel. Also, a correspondence dated January 19, 2007, from the Corporation Counsel's Office, transmitting a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT FOR PROPERTY SITUATED AT WAIHEE, MAUI, HAWAII" was received, and the purpose of the revised proposed bill is to grant the request for the subject property. And also as a follow up, Members, on this, the Committee did meet on this application back on August 1<sup>st</sup>, 2007 and October 3<sup>rd</sup>, 2007, and the . . .I guess the outcome of this. . .I guess the, when the Committee last met on it, it was deferred and consideration of the application. . .and also in consideration of this application, the applicant was asked to meet with the Waihee Community Association, and the Committee received a correspondence dated January 30<sup>th</sup>, 2008 from the applicant, Dwayne Betsill, Managing Member of RDD LLC, reporting on his appearance before the Waihee Community Association on January 7<sup>th</sup>, 2008. And the Committee also received a correspondence dated June 25<sup>th</sup>, 2008 from Jan Yagi Buen, a former President at Waihee Community Association, transmitting her correspondence which was dated February 26, 2008 relating to this application.

So, Members, that is where we're at right now, and I believe we had. . .Mr. Victorino was in attendance at one of those meetings, I believe, as well as Mr. Medeiros who also made an appearance there as well to get input from the community on that particu..., this particular matter.

We have from the Department, Robyn Loudermilk here and as well as Mr. Miyamoto, the Deputy Director of Public Works standing by as a resource person. And we have from the Police Department, Sergeant Orikasa as well for any additional questions you may have. And we have also representing the applicant, Vince Bagoyo, Jr. and Dennis Boehlje [*sic*], Vice President of Planning and Development for Betsill Brothers Construction.

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So with that mouthful being said, the Chair would also like to welcome Planning Director Hunt to our proceedings this afternoon. Planning Department, do you have any opening remarks before we turn the matter over to the Committee for questioning, or Ms. Loudermilk?

MS. LOUDERMILK: We have nothing to say at this point in time.

CHAIR MOLINA: Okay. Alright, it makes it simple. Committee Members, do you have questions or would you like to hear comments from the...questions of the, pointed to the applicant? Member Anderson?

COUNCILMEMBER ANDERSON: You know. . .*(sigh)*. . .for the viewing public, could we just have a brief description of what's in front of us so that everybody knows what we're talking about?

CHAIR MOLINA: Alright. Okay, Department, could you go ahead and refresh our memories with the description of the proposal from the applicant?

MS. LOUDERMILK: Good afternoon, Chair and Members of the Committee. What we have before us is a Change in Zoning from RDD LLC. . . --(*CHANGE OF TAPE, start 3A*)-- . . .Tax Map Key 3-2-009:portion of 1, which is approximately 17.42 acres. It is in the State Agricultural Land Use District, community planned Open Space in the Wailuku-Kahului Community Plan, and zoned Agriculture. The request is for a Change in Zoning from the Agricultural District to the OS-2 Open Space District to provide conformity with the Open Space designation on the Wailuku-Kahului Community Plan Land Use Map.

The public hearing was held by the Maui Planning Commission on October 10, 2006. There were no public testimony, and there are two letters of support of the project in the Department's Report, and the recommendation from the Maui Planning Commission was approval and the vote was unanimous; and that concludes the Department's summary of the application.

CHAIR MOLINA: Okay. Thank you, Ms. Loudermilk. Committee Members, questions? Member Anderson?

COUNCILMEMBER ANDERSON: How many acres of this land are in taro?

CHAIR MOLINA: Department?

COUNCILMEMBER MEDEIROS: How many acres?

CHAIR MOLINA: Also, we have the applicant here available, too, to respond. Mr. Bagoyo or Mr. Betsill, would you care to respond to Member Anderson's question?

COUNCILMEMBER ANDERSON: 'Cause, Mr. Chair, here's my concern. The reason they need to change to Open Space, Change in Zoning to Open Space, which I guess is only fair because we

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designated it Open Space, he can't subdivide the land, the rest of the land is ag. He can't subdivide the land until he gets the zoning consistent with the Community Plan designation. So that's the reason for this request. But once that happens, that means he's entitled to subdivide the land under the Agricultural Zoning District parameters which, I understand, allows for 14 lots. I'm not sure the community understands that based on the letter that we got from their President Jan Yagi Buen because in the letter it says at the very--this is the June 25<sup>th</sup> letter, '08--the very last sentence in the last paragraph, "the Waihee residents are opposed to overdevelopment, and as long as Waihee Mauka is Open Space and not a step toward Change in Zoning to develop the land for other purposes in the future, there is no objection to the proposed OS-2 zoning at this time." So it doesn't indicate to me that they, they understand that once we change this to Open Space, he's then in conformity and he can go ahead and subdivide the land as agricultural subdivisions or agricultural lots, and, you know, while he. . .while the intention is to keep it, some of the land--and, Members, if you'll note, there's pictures of this land towards the back of the report, and we all know where this is, I guess. Kahekili Highway goes right by this out to Waiehu--

COUNCILMEMBER MEDEIROS: Waihee.

COUNCILMEMBER ANDERSON: --and that is a beautiful Open Space zone in there with taro growing. . .right up against the roadway. So my question to Mr. Betsill, if he's here--

COUNCILMEMBER BAISA: He is.

CHAIR MOLINA: Mr. Betsill, if you--

COUNCILMEMBER ANDERSON: --if he can. . .'cause, you know, I can see the macadamia nuts staying 'cause you can build a house, clear out a few trees and keep the rest and build a house. And, you know, the area that's grazing for cattle, you can build a house and still have pasture land. But I don't know that you can keep taro and grow a house, I mean build a house. . . (*chuckle*). . . You can't grow taro and build a house on the same land because it's, you know, three feet deep in water.

CHAIR MOLINA: Okay, Mr.--

COUNCILMEMBER ANDERSON: So if you could just give us an idea of the plan on that, that portion of the land?

MR. BETSILL: Sure.

CHAIR MOLINA: Mr. Betsill, if you could just state your name for the record and--

MR. BETSILL: Dwayne Betsill. Good morning or good afternoon, everybody. We have approximately 12 acres of taro on the property right now, approximately 45 acres of mac nut trees, and the rest is in pasture land right now. But in the subdivision right next to it, just to give the information, is

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I have 6 acres and I have 2, I have a little over 2 acres. It's not wetland taro, it's dryland taro. So we actually have water coming to the situation. So on my property I have 6 acres and 2 acres is in taro, and 4 acres is for a home and for other uses.

COUNCILMEMBER ANDERSON: So this 12 acres of taro is dryland taro?

MR. BETSILL: It, it is.

COUNCILMEMBER ANDERSON: Oh, so it's conceivable that someone could--

MR. BETSILL: Yes.

COUNCILMEMBER ANDERSON: --cut out a piece of it for a house and leave the rest in taro.

MR. BETSILL: Right, and that's our plan, that's what I plan all along is to keep the mac nut and the taro working. Once again, as I shared with some of you, that's our plan, that's our desire, that's our goal, but once again it's up to the people who purchase the property--

COUNCILMEMBER ANDERSON: Right.

MR. BETSILL: --whether or not they would do that.

COUNCILMEMBER ANDERSON: You can't put CC&Rs on the subdivision to--

MR. BETSILL: We do have CC&Rs. I'm not sure how restrictive we can be that. . .of, of what we can require. But it's similar to the coffee plantation, what they're doing right now is they have the, the agriculture already in place, and our plan is to continue to harvest the mac nuts and the, the taro.

COUNCILMEMBER ANDERSON: Okay. Thank you, Mr. Betsill.

MR. BETSILL: Sure.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: Thank you, Member Anderson. Committee Members, questions for the applicant, Mr. Betsill at this time? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, thanks so much. With the new important ag land bill that was adopted by the State Legislature, are there any plans for this area to designate any of the portion of your land as important ag lands to preserve some of the character of that area? 'Cause I know it's a voluntary program, but I just wondered if you had reviewed it and looked at any potential possibilities for development of this area?

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MR. BETSILL: The, the question is--well, I'm not sure what the law says, the new law you're talking about?

COUNCILMEMBER JOHNSON: Well, it's, it's a mechanism whereby if you have lands that are significant--

MR. BETSILL: Right.

COUNCILMEMBER JOHNSON: --cultural, historic, view planes, that type of thing, that there are certain benefits that you may be able to secure if you're willing to go through the steps that are listed in the IAL bill.

MR. BETSILL: Okay. No, I was not aware of the bill. We, our plan all along, once again, was just to keep it in taro. So if there's some assistance we can get from that bill, we will certainly look into it.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Committee Members, any other questions for the applicant, Mr. Betsill? We have Member Baisa, followed by Member Medeiros.

COUNCILMEMBER BAISA: Thank you very much, Mr. Betsill, for coming. I happened to be at a meeting last night of the Kula Community Association Board, and Representative Kyle Yamashita was there to explain the new bill, and he went through it very carefully. . .

MR. BETSILL: Okay.

COUNCILMEMBER BAISA: . . .and made it very clear that it was targeted to large landowners and probably would not work very well for smaller parcels. And the process is quite onerous, so I don't know. . .I just don't think a lot of people will be doing it unless they have *large* acreage and it'll be worth for them to go through the process. The interesting thing is even though you may go through the State process and get the designation, it still comes to the County and we have to confirm or agree. So it's quite an interesting thing. But I do want to tell you I appreciate your efforts in agriculture. We're struggling so hard here to grow local products, particularly taro. . .

MR. BETSILL: Uh-huh.

COUNCILMEMBER BAISA: . . .and without water, I'm glad you're doing dryland taro. So thank you very much for your consideration and doing what you're doing.

MR. BETSILL: It is still requiring a lot of water, unfortunately.

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COUNCILMEMBER BAISA: . . .(chuckle) . . .

MR. BETSILL: So that's what we're working on, but at this point we're selling approximately 5, I think we're 4 to 5,000 pounds per week. That's, that's what we're doing right now.

COUNCILMEMBER BAISA: That's wonderful. Luaus are getting very expensive.

MR. BETSILL: Yes, they are. . . (chuckle) . . .

COUNCILMEMBER BAISA: . . .(chuckle) . . . Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Medeiros, followed by Member Anderson.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Betsill, thank you for being here. I, I know my attendance in that community meeting. . .one of the concerns raised by the members of the community, and I, I'd like to follow up on that, is the concern about the drainage and where the water was going because it is on fairly sloped property and Halawai or the West Maui Mountains does produce a lot of water and rain, and they were concerned that the runoff would come through the village area. What, what are the plans for drainage?

MR. BETSILL: The open space area is actually a drainageway and that will continue to be preserved, it'll be dugged [*sic*] out. The plan is to dig that out. . .actually that area to maintain and make sure that it flows freely across the road as it's planned.

COUNCILMEMBER MEDEIROS: Okay. So is, is it a retention system or will it flow to the ocean?

MR. BETSILL: It's not a retention, it's a flow.

COUNCILMEMBER MEDEIROS: Okay. So it uses, utilizes the natural flow areas to direct it towards the ocean?

MR. BETSILL: That is correct. That was why it was initially, my understanding, that initially the open space was for it to be a flow space for that.

COUNCILMEMBER MEDEIROS: Uh-huh, I see. And is it designed for the 50- or 100-year storm?

MR. BETSILL: I'm not sure of that, and I'm sure that will come out in, in, in the . .in. . .when we process the subdivision what we're required to do according to County rule. But I'm not, I'm not sure if that is. . .I would imagine it is, but I can't say yes.

COUNCILMEMBER MEDEIROS: Okay. And I, too, would like to join Member Baisa in saying that your kalo *really* looks good up there and I understand, as you just mentioned, you produce quite a bit of poundage.

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MR. BETSILL: Uh-huh.

COUNCILMEMBER MEDEIROS: Does it go to poi factories?

MR. BETSILL: Right now it's going to Kauai, believe it or not, and the Big Island primarily. . .

COUNCILMEMBER MEDEIROS: Wow.

MR. BETSILL: . . .and that's our two biggest buyers. We also are selling it to the poi factory here locally, but the majority is going off-island because there's such a lack of poi in the islands.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Betsill. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Medeiros. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. Mr. Betsill, the open space corridor runs through the parcel. . .

MR. BETSILL: Yes.

COUNCILMEMBER ANDERSON: . . .and that's what we're dealing with today is the 17 acres of that Open Space designation. So there is a large parcel zoned Ag, I mean the whole parcel's zoned Ag.

MR. BETSILL: Right.

COUNCILMEMBER ANDERSON: And so the large parcel on the Waiehu side, how many acres is that?

MR. BETSILL: That's probably 70.

COUNCILMEMBER ANDERSON: Seventy?

MR. BETSILL: I want to say around, approximately 70.

COUNCILMEMBER ANDERSON: And that's the one that you can subdivide into 14 acres?

MR. BETSILL: Actually, both sides of the ditch can be divided. There's 113 total, then the 17, and then both sides are, are a part of the. . .that can be subdivided.

COUNCILMEMBER ANDERSON: Well, that's what I'm trying to get at is that. . .um. . .when you look at the sliding scale in the, in the Ag Zoning Ordinance, you take the parcel size and based on the parcel size in the sliding scale you can get so many lots out of it.

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MR. BETSILL: Right.

COUNCILMEMBER ANDERSON: So that's what I'm getting at, is that when you look at the sliding scale for this large, larger. . .

MR. BETSILL: Yes.

COUNCILMEMBER ANDERSON: . . .of the parcel, how many--irrespective of the open space corridor in the middle, it's still on one parcel, right?

MR. BETSILL: Yes.

COUNCILMEMBER ANDERSON: So what are the total number of lots that you can get out of that large--

MR. BETSILL: Fifteen.

COUNCILMEMBER ANDERSON: 1-5?

MR. BETSILL: 1-5.

COUNCILMEMBER ANDERSON: And that's all you will be doing?

MR. BETSILL: That's correct.

COUNCILMEMBER ANDERSON: Thank you very much. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Mr. Victorino, as the area representative, do you have questions for Mr. Betsill?

COUNCILMEMBER VICTORINO: Yeah, thank you. . .and I'm glad a lot of the things have been cleaned, cleared up. Dwayne, thank you for all your efforts; I do appreciate it. We still have one area that was of major concern and that was traffic and, you know, that was an ongoing issue at the various meetings, not due to what you've done or plan to do--

MR. BETSILL: Right.

COUNCILMEMBER VICTORINO: --but it is a real major concern. And I remember you and David Goode were going to try to get together and look for some alternative, a bypass or some kind of exit beyond the village itself. How have you come about and has that continued to progress?

MR. BETSILL: The only conversation. . .yeah, we've had several conversations with Mr. Goode and what we've, what we've looked at or what they're looking at is that there's a, there's an old

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road. . .actually not on our property, but on the property above us, and I suggest that he get with David Singer and also Patricia Bragg who are the two owners up above to try to come up with something. We have, we, we. . .in our proposal, our design we do actually have a road that would go through our subdivision up to that road which. . .and I, we have already told him that we'll be happy to make a provision for them to come through our subdivision if that's the nature of the, of the road design. But it's actually in, in Mr. Goode's court right now. That was just another outlet out is what you're saying from the main, they didn't want him to come through the main, the main village up above.

COUNCILMEMBER VICTORINO: That. . .yeah, I remember that was one of the main concerns of the village as. . .because already they're inundated with the school traffic, they're inundated with Hawaiian homes and just the ordinary tourist and other traffic that comes in and out of the. . .along Kahekili.

MR. BETSILL: Yeah.

COUNCILMEMBER VICTORINO: And so with yours along with what Mr. Goode is planning, I mean that was going to make a real big bottleneck in using St. Ann that--I forget the name of the street next to St. Ann's, which is really a tiny street that was built back in the days of plantation, and so there's really little room, if any room to expand. So, you know, I know we discussed it and I just wanted to have some clarification 'cause that's so important to these people, and I know you did say in many instances that you're trying to work with that community to make sure that they're comfortable in what we're trying to do. So, I just hope, I wanted to know the update so that my fellow Members would know the update--

MR. BETSILL: Right.

COUNCILMEMBER VICTORINO: --as far as that traffic issue was concerned.

MR. BETSILL: I've talked to Mr. Goode twice on two or three occasions, and he was talking about looking and talking with the other--we, we made a provision, we said we'd make a provision through our subdivision and we'd be happy to help, if that would help the outlet.

COUNCILMEMBER VICTORINO: Okay, Mr. Betsill. Thank you very much. We do appreciate your, your--

MR. BETSILL: Yep.

COUNCILMEMBER VICTORINO: --assistance in this matter. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. And by the way, Members, as a reminder if you have any issues on traffic or Public Works, we do have Deputy Director Miyamoto from Public Works and Sergeant Orikasa from the Police Department. Any request for questions to these individuals? Okay, seeing none. . .and I guess no further--Mr. Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you. In regards to Member Victorino's questioning about another road to alleviate the problems that may occur going to Waihee town, as you come out from, I guess, by the church area going towards Wailuku, where do you tie in to get back to Kahekili Highway?

CHAIR MOLINA: Okay. Mr. Betsill?

MR. BETSILL: Where, where do you get in? The St. Ann's road goes right into Kahekili and then you just come straight to Wailuku--

VICE-CHAIR PONTANILLA: Right.

MR. BETSILL: --which would go through the town and then in front of our property. What we were discussing is he had a cul-de-sac going in, if he pushed it on through, he could go above and it, it's right, it's halfway into our, our 113 acres that we actually have a road planned to come from there which would come back into Kahekili Highway. . .if they were to choose that route to go above.

VICE-CHAIR PONTANILLA: So that would be the alternate route?

MR. BETSILL: That would be an alternate route.

VICE-CHAIR PONTANILLA: Yeah. Yeah.

MR. BETSILL: We're just making that--I mean, once again, we are making a provision to work with Mr. Goode and any other homeowners there which are all. . .the neighbor above us are also producing mac nuts, just for your information, and, and same thing with Patricia Bragg above, they're all working in the agricultural field.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Any final questions for Mr. Betsill at this point before I excuse him? Seeing none, thank you very much, Mr. Betsill. And final request for Police Department or Public Works on this matter before the Chair makes a recommendation? Okay, Member Hokama?

COUNCILMEMBER HOKAMA: Police Department, please, Chairman.

CHAIR MOLINA: Okay. Sergeant Orikasa, if you could please come up.

MR. ORIKASA: Good afternoon.

COUNCILMEMBER HOKAMA: Good afternoon.

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CHAIR MOLINA: Good afternoon, Sergeant Orikasa. Thank you for being present here today. Chairman Hokama, you have the floor.

COUNCILMEMBER HOKAMA: Yes. Ser..., Sergeant, you are aware that Hawaiian homes has recently, I guess, completed the next phase in Waiehu Kou, and then, of course, we are all aware of what's happening with. . .Mr. Goode, through KDS or KSD Development, and then with Mr. Betsill's proposal now. Is there currently a, an issue for, from your Department's standpoint regarding impacts specifically from this project as it relates to either the Beach Road or the road that comes across and enters into Happy Valley?

MR. ORIKASA: Yeah, we. . .currently, there are issues regarding the, the traffic backing up all in those areas, and largely it stems from the increased residential areas in those. . .in the Waihee or Waiehu area. There's no growth for the roadway, and at this point all the residents of the area are just dealing with it.

COUNCILMEMBER HOKAMA: Uh-huh.

MR. ORIKASA: Any further development will cause an impact. How significant? I would, I would not be able to guess at this point, but there will be some impact to the traffic condition.

COUNCILMEMBER HOKAMA: You've heard of the. . .thought that a, I guess a more mauka collector road proposal that maybe could tie multiple projects and then tie into this specific proposal that we are, we are considering this afternoon as another way of relieving some of the traffic on Kahekili Highway. . .I guess between the golf course road and the--gosh, I don't know what is the road into Happy Valley--but anyway that strip. But your understanding is Kahekili cannot accommodate additional widening or improvements regarding traffic safety?

MR. ORIKASA: As far as. . .I, I don't know about the, the widening or as far as increasing the roadway space or lane capacity, I'm not sure about that. But I'm speaking as-is conditions at current. . .

COUNCILMEMBER HOKAMA: Uh-huh.

MR. ORIKASA: . . .the roadway is inundated particularly in morning and the afternoon hours.

COUNCILMEMBER HOKAMA: Okay. So even with the build out of this proposal, and we heard Mr. Betsill mentioned that with, with both sides of the potential Open Space designation we're only looking at 14 lots. So, you know, if. . .let's say one house, two drivers, minimum maybe three if they have a high school student, that in itself in, in your Department's view that how much exact, further exas..., exasperation does it create on the two components of traffic for, for your concern, which is the morning traffic and pau hana traffic, right?

MR. ORIKASA: Yes. I don't believe there will be significant impact to the current traffic conditions, although there is a concern of being that this is an agricultural area, if there will be an increased

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amount of light industrial type vehicles entering and exiting that area despite there being a bypass road.

COUNCILMEMBER HOKAMA: Uh-huh.

MR. ORIKASA: A bypass road would be good for further travel of these type of, type of vehicles rather than having them on the current, smaller Kahekili Highway.

COUNCILMEMBER HOKAMA: Right.

MR. ORIKASA: But that, that is another area of concern regarding traffic safety.

COUNCILMEMBER HOKAMA: Okay. 'Cause while I do know we, we are considering to add some dwelling units--let me use that term--it was, as I can recall, very active agricultural acreage before, Mr. Chairman, so you did have, I believe, Wailuku Sugar equipment and trucks and personnel were working in and out of that area since it was actively in production for many, many years. So other than the morning and pau hana right now--and, of course, I hope Public Works is informing you of what's happening with Iao Stream crossing as well as some other projects that may help us or defer us in getting that new bridge road component--

MR. ORIKASA: The extension of Wili Pa Loop--

COUNCILMEMBER HOKAMA: --to assist with the traffic easement and easement of traffic congestion. So stating that, is there a recommendation on how we should maybe consider phasing or timing of road improvements regarding the project?

MR. ORIKASA: Well, as far as suggestions to the current traffic problems is. . .would only be to have additional outlet roadways from Kahekili Highway or Waiehu Beach Road. That, that would be the. . .I would see as a more immediate solution being with the limited space and the problems with land acquisition for the development of roadways, but would. . .bottom line would be more outlet roadways, like you said, the extension of Wili Pa, I believe, is--not Wili Pa--Imi Kala. . .

COUNCILMEMBER HOKAMA: Imi Kala, right.

MR. ORIKASA: . . .Street over Iao Stream. That is one way of decreasing the inundation of traffic through the Happy Valley area.

COUNCILMEMBER HOKAMA: Okay. And, Sergeant, I, I'm hoping you will verify that you or you and your, or your Department has already shared those comments with our departments and with the Planning Commission?

MR. ORIKASA: There was--no, not in writing. There was a previous comment made by the Sergeant before me that was made. . .particularly focused upon the, the open space area, not upon the traffic issues.

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COUNCILMEMBER HOKAMA: Oh, okay. Thank you. Thank you, Sergeant. Chairman, thank you. That's been what, some of the questions presented to me from members of the community in that area about the traffic concern, the morning school traffic, pau hana traffic concern. But again, Chairman, I do, I will share that I am aware that it was at one time a very active cultural productive acreage and so there was diff..., different types of traffic at that point in time. So, I just share that with the Committee. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Chairman. Committee Members, any other questions for Sergeant Orikasa for the Police Department? Okay. Seeing none, thank you, Sergeant, very much for your--

MR. ORIKASA: Thank you.

CHAIR MOLINA: --responses. Any questions for Deputy Director Miyamoto from Public Works as it relates to this matter? Okay. Mr. Deputy, if you could please come up, we have a question from Member Anderson. . . .Member Anderson, you may proceed.

COUNCILMEMBER ANDERSON: Thank you for being here, Deputy Director. You know, this, this section of Kahekili Highway, right across from this--do you have a map with you so you know what we're looking at?

MR. MIYAMOTO: I'm pretty fairly familiar with the area.

COUNCILMEMBER ANDERSON: Okay. So right across with your, from this area in question is Department of Hawaiian Home Lands subdivisions, and there is about, oh, a hundred homes in there being built. More?

MR. MIYAMOTO: Yes, I think there's a lot, there's several more than that being built in that area.

COUNCILMEMBER ANDERSON: Yeah. Several more?

MR. MIYAMOTO: Well, there's Phase--

COUNCILMEMBER ANDERSON: You don't mean several more hundred, I hope.

MR. MIYAMOTO: No, no, no. I mean Phase III is, is pretty well occupied and I think they're working on Phase IV. They're pretty much limited on Phase IV until they finish a wastewater pump station upgrade in the Hawaiian homes further, closer towards the Iao Stream.

COUNCILMEMBER ANDERSON: Okay. So you are very familiar. Does that mean you know if they were required to give a road widening lot when they put in these subdivisions on their side of the road?

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MR. MIYAMOTO: I think from my recollection, you know, because this area is State, State Highways, it's a State highway at that point, you know, what they were required to do hasn't, isn't. . .been privy to us as to what roadway improvements they were required. The. . .from my observations of the, the corridor, the problem is the intersection with Kahekili Highway and Waiehu Beach Road, that's where the problem is. That's the, the major, major congestion point because someone trying to make a left turn coming from Waihee to go down toward the Beach Road, that causes the traffic to backup because that crossing over that intersection is single lane in each direction. . .

COUNCILMEMBER ANDERSON: Uh. . .

MR. MIYAMOTO: . . .and there is an existing stream that flows under that intersection that makes it even more difficult to widen that intersection. . .

COUNCILMEMBER ANDERSON: Uh-huh.

MR. MIYAMOTO: . . .to accommodate a left-turn lane.

COUNCILMEMBER ANDERSON: Uh-huh.

MR. MIYAMOTO: And so those are some of the challenges I think the State's trying to work with. They've done some recent modifications to the drainage facilities in that intersection, but I don't, I'm not sure if they have any plans to widen it.

COUNCILMEMBER ANDERSON: I mean they. . .it's pretty wide right now. It's kind of a matter of restriping, isn't it?

MR. MIYAMOTO: That's certainly something that could be considered on the--

COUNCILMEMBER ANDERSON: I mean when you look at the map, and I used to live in that area and I drove that intersection a lot, it seems like they could--well, that's neither here nor there for us today. My point was trying to see if when Mr. Betsill does his subdivision, if we could get a road widening lot from him and then we've got, you know, a good portion of that corridor that could be widened in the future if we have it.

MR. MIYAMOTO: Yeah. The section. . .yeah, the section that's in front of the Waiehu Kou Subdivision is pretty much a three-lane section, they have a turn lane to try and keep the traffic, you know, keep the through traffic flowing. But as you get closer to the intersection--

COUNCILMEMBER ANDERSON: Right.

MR. MIYAMOTO: --the right-of-way is obviously someone else's--

COUNCILMEMBER ANDERSON: Right.

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MR. MIYAMOTO: --kuleana at this point.

COUNCILMEMBER ANDERSON: Well, I guess 15 lots aren't going to make a big difference when you consider you have a 100-plus new lots in there already. Okay. Thank you very much. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. I don't know if you know the answer, but on, on Waiehu Beach Road I know that the responsibility is the State of Hawaii, and in regards to the existing road right-of-way is there enough room to add another lane? No, it's not our responsibility, but I, I--

MR. MIYAMOTO: But if you look, if you look at the intersection of Waiehu Beach Road and Lower Waiehu Beach Road, they actually do have a left-turn lane. . .

VICE-CHAIR PONTANILLA: Uh-huh.

MR. MIYAMOTO: . . .at that intersection. So just from looking at that it seems like the corridor is relatively consistent so that there may be a possibility that they could add--

VICE-CHAIR PONTANILLA: All the way to Lower Main?

*Note: Loud static noise from the sound system.*

MR. MIYAMOTO: . . .(inaudible). . .

CHAIR MOLINA: Okay, continue.

*Note: Technical difficulties with the sound system made it difficult to hear Mr. Miyamoto and Chair Molina.*

MR. MIYAMOTO: I think you may have a . . .(inaudible). . .once you get towards the Iao Stream. . .(inaudible). . .restricted. . .(inaudible). . .

CHAIR MOLINA: Recess. . .(gavel). . .

**RECESS: 4:30 p.m.**

**RECONVENE: 5:08 p.m.**

*Note: Due to technical difficulties with the sound system, the meeting reconvened without recording and the remaining minutes were summarized from Staff notes.*

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CHAIR MOLINA: . . .(*gavel*). . . The Land Use Committee meeting of July 2, 2008, Wednesday, is back in session. Members, thanks for hanging in there. Because of technical difficulties with the microphone, we are going to recess. . .and Akaku is going to show a crawler that this meeting will be recessed until Monday, July 7, 2008, 10:00 a.m., Council Chamber. Members have confirmed with me that they can attend. This meeting is recessed to Monday, July 7, 2008, 10:00 a.m., Council Chamber. With that, Members, any announcements at this time?

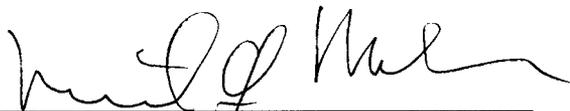
COUNCIL MEMBERS: . . .(*chuckle*). . .

COUNCILMEMBER VICTORINO: That's fine.

CHAIR MOLINA: Okay. This Land Use Committee meeting is recessed to Monday, July 7, 2008, 10:00 a.m., Council Chamber. . .(*gavel*). . .

**RECESS:** 5:10 p.m.

APPROVED:



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MICHAEL J. MOLINA, Chair  
Land Use Committee

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Transcribed by: Tammy M. Frias