

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

August 15, 2007

Council Chamber

CONVENE: 1:40 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member (Arrive 1:43 p.m.)
Councilmember G. Riki Hokama, Member
Councilmember Jo Anne Johnson, Member
Councilmember Michael P. Victorino, Member (Arrive 2:59 p.m.)

EXCUSED: Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney
Kirsten Hamman, Legislative Attorney

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning (Item No. 23)
Ann Cua, Planner, Department of Planning (Item Nos. 57 and 59)
Michael Miyamoto, Deputy Director, Department of Public Works
Jeffrey Eng, Director, Department of Water Supply (Item No. 23)
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
(Item No. 23)
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: **Item No. 23:** Karlynn Kawahara, Munekiyo & Hiraga, Inc.
John P. Maloney, Development Manager, Pacific Rim Land, Inc.
(Applicant's representative)
Greg Bayless, Farrington Bayless Architects, Inc. (Applicant's
Architect)
Stacy Otomo, Otomo Engineering, Inc. (Applicant's Civil Engineer)
Bryan Maxwell, Maxwell Design Group, Inc. (Applicant's Landscape
Architect)
Linda Taylor, Linda Taylor Engineering (Applicant's Wastewater
Engineer)
Michael Dega, Scientific Consulting Services (Applicant's
Archaeological Consultant)

Bob Nelson
Ed Lindsey, President, Maui Cultural Lands, Inc.

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Lucienne deNaie, Project Coordinator, Maui Tomorrow
Foundation, Inc.
Rob Parsons
Gregory Ball
Joyclynn Costa

Item No. 57: Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.
James Michael Whitehead
Siuaifu Whitehead
Wendy L. Pogni
Hayden Pogni

Item No. 59: Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.
Sherry Ann Boonstra-Barbier

Others: Melissa Prince
Additional attendees (15)

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

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee Meeting of August 15, 2007 is now in session. We have for the record in attendance, Members Pontanilla, Anderson, Johnson, and Hokama as well as Molina. Excused we have Members Mateo, Medeiros, and Baisa, and Victorino. And we've been told that Mr. Victorino will be on his way and will be joining us at some later point this afternoon. Members, we have three matters on our agenda today, LU-23, LU-57, and LU-59. But before we go into these matters the Chair would like to recognize Staff members who are in attendance, we have Committee Secretary Tammy Frias and we also have Staff Analyst Carla Nakata and at a later point in time I will get the full name of our, our new Analyst, my apologies. I'm sorry I should have prepared myself better for that. And we also have from the Corporation Counsel's Office Mr. James Giroux, from the Planning Department, Ms. Colleen Suyama, Deputy Director, and from the Parks Department, Mr. Pat Matsui.

We'll first address . . . item which is LU-23.

ITEM NO. 23: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR FOUR-UNIT SINGLE-FAMILY CONDOMINIUM AT KAEO, HONUA`ULA (MAKENA)
(C.C. No. 02-27)

CHAIR MOLINA: Members, we have a presentation from the applicant. Once we have, we are done with the presentation for that item then the Chair will entertain public testimony on that item. So at this time, Members, we'll take a short recess to bring the screen down to begin our

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presentation on LU-23 which is a District Boundary Amendment, Community Plan Amendment and Change in Zoning for a four-unit Single-Family condominium at Kaeo, Honua`ula, Makena. Meeting in recess. . . .(gavel). . .

RECESS: 1:41 p.m.

RECONVENE: 1:43 p.m.

CHAIR MOLINA: . . .(gavel). . . Land Use Committee Meeting for August 15, 2007 is now back in session. We are on Land Use Item No. 23 and doing a presentation for the applicant is Karlynn Kawahara from the firm of Munekiyo and Hiraga. And before I turn the mic over to Ms. Kawahara, I would like to recognize our new Staff Analyst Kirsten Hamman and my apologies for not remembering your name earlier. So welcome aboard. Ms. Kawahara, you have the floor.

Note: Computer-generated presentation.

MS. KAWAHARA: Thank you, Chair. Good afternoon, Chair Molina, and Members of the Land Use Committee. My name is Karlynn Kawahara and I am a planner with the firm of Munekiyo and Hiraga. We are before you today regarding the request for a District Boundary Amendment, Change in Zoning and Community Plan Amendment for the proposed four-unit project in Makena located at TMK 27 parcel 66, 217, excuse me, parcel 66. Joining me today are John Maloney of Pacific Rim Land, the applicant's representative; Greg Bayless, the project's architect; Stacy Otomo, the project's civil engineer; Brian Maxwell, the project's landscape architect; Linda Taylor, the project's wastewater engineer; and Mike Dega, the project's archaeologist.

We note the location of the project site and that is approximately one and a half acres in size. Again, the subject property is located approximately here. The existing use is vacant. At the request of Councilmember Anderson at the November Land Use Committee Hearing we went back and we found an aerial photograph of the area. So we see here approximate area of the subject property. We have the Makena Prince Hotel here, the Keawalai Church here, Makena-Keoneoio Road is here. But this was provided to give a realistic view of what's there.

We also would like to note that, the existing land use designations currently the State land use is Agricultural, the County zoning is Interim and the Community Plan designation is Hotel. Originally, the applicant's request was just for a District Boundary Amendment from Agricultural to Urban and a Change in Zoning from Interim to H-1, Hotel. However, following discussions with the County Planning Department in 2002 the following requests were made. The Planning Department initiated the community plan designation to move down from Hotel to Single-Family. And again the zoning is still requesting from Interim, I'm sorry, now from Interim to R-3 Residential and the District Boundary Amendment from Agricultural to Urban.

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The proposed project would allow for the construction of four single-family residences. Approximately 3,900 square feet in size; each unit would include the individual wastewater treatment facilities, which would be approved by the State Department of Health; two parking stalls; and two guest stalls. Oh, also I'm sorry, and a swimming, swimming pools. Site improvements that are anticipated include grading, retaining walls, drainage improvements and landscaping. Oops. Sorry, let me go back to that last slide. This is the site plan, we note that there are two entrances to the project site and Makena-Keoneoio Road is here.

These are the elevations of the proposed residences. South, North, East, and West. We note that the project site is mauka of Makena-Keoneoio Road. Project highlights include that the drainage basin has been oversized to handle more than double the required runoff from the project site. The applicant is willing to connect to the Makena wastewater service when service is available. In the meantime we are proposing the IWS system, again which would be approved by the State Department of Health. The applicant will be providing their parks and playground assessment to the County of Maui. And the applicant is willing to include a condition on the zoning that no short-term vacation rentals are allowed.

Again, this is the drainage basin for the project that has been oversized again to handle more than the required capacity. More than double the required capacity that the County requires. Project Update. Since the November 1, 2006 Council Land Use Committee hearing the project team members met with Council members and at the suggestion of Councilmember Anderson we reviewed the possibility of including parking stalls for public beach users fronting the project site. As a result, the applicant would like to propose the installation of four parking stalls along the project's frontage. These parking stalls would be designed to keep the rural nature of Makena-Keoneoio Road. That has been discussed at the November meeting and recently approved as part of the Papaanui project.

This is the proposed site plan; the four parking stalls would be located here. We note that there is a tree stub out, for lack of a better word to prevent the use of the parking stalls by buses or large trailers. We also note that a four-foot wide grass walkway would also be part of the proposed project as well as additional landscaping. I'd also like to note that the applicant met with the Makena Homeowner's Association on several occasions regarding this project and also shared with them the additional, the addition of the four public beach parking stalls along the property frontage. And the Association was supportive of the additional beach parking. One other thing I would like to point out is that in relation to the change in, I'm sorry, the Community Plan Amendment that a Chapter 3.43 Hawaii Revised Statute environmental assessment was prepared and reviewed by the Maui Planning Commission in 2006. And a FONSI was issued at their July, 2006 meeting.

Lastly, I would like to share two conditions that the applicant is proposing for the project. First, as represented in previous meetings the applicant has agreed that no transient vacation rentals will be allowed at the residential units; therefore, we're proposing conditions number one. Secondly, as previously noted, the applicant is proposing to add four beach parking stalls fronting the project site. And in order to keep with the rural nature of Makena-Keoneoio Road as

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noted in the Kihei-Makena Community Plan no curbs, gutters, or sidewalks, concrete sidewalks are proposed, instead just the parking and a grassed walkway.

We also note that a road widening lot would be created because a portion of the parking would be on the project site and this parking or this roadway widening lot would then be dedicated to the County of Maui. This concludes our presentation at this time and the project team is available to answer any questions you may have. Thank you very much.

CHAIR MOLINA: And thank you, Ms. Kawahara. Before you terminate your projector, Member Anderson has a quick question related to the matter, subject matter. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. If, if you could go to the aerial photograph. Which is I think your third slide.

MS. KAWAHARA: Right.

COUNCILMEMBER ANDERSON: With your little whatever you call that, yeah, that.

MS. KAWAHARA: Uh-huh.

COUNCILMEMBER ANDERSON: Could you show us where the sewage lines, I'm assuming they run along the road but then I, I don't know. So where are the current sewage treatment lines for the Makena Sewage Plant? Where do they run?

MS. KAWAHARA: I think I may defer that to the civil engineer. From what I understand, before he comes up here is that there aren't any lines running through Makena-Keoneoio Road right now. And I believe the service treatment plant is, or the wastewater treatment plant is further mauka.

COUNCILMEMBER ANDERSON: Right.

MS. KAWAHARA: So . . .

COUNCILMEMBER ANDERSON: But they've got to have lines coming down towards the resort so there must be lines somewhere down there.

MS. KAWAHARA: I'm . . .

COUNCILMEMBER ANDERSON: And if you guys intend to eventually hook up to them I'd like to know where that's going to be.

MR. OTOMO: Good afternoon, Members. My name is Stacy Otomo. What we're planning to do is there's a sewer pump station right around this area mauka of the existing public parking. What the applicant is proposing to do is working with the adjacent landowner to get an easement coming across their property to the pump station.

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COUNCILMEMBER ANDERSON: And that pump station is owned by Makena Resort?

MR. OTOMO: That's correct.

COUNCILMEMBER ANDERSON: And it, and it hooks into their system?

MR. OTOMO: Yes. It does.

COUNCILMEMBER ANDERSON: So it doesn't seem that, that would be a difficult connection to make initially. We'll talk about that later, Chair. And then if I could also look at the, the site plan that shows the parking spaces real quick. . . .*(short pause)*. . . Thank you. I'm just wondering why you cannot take the hedge that you have jutting out on the top. Yeah. And move that back in and allow, because right there across is a turn around. And, and if you took that hedge back in, in line with the rest of it you could allow for two more parking spaces. And, you know, I visit this area, I try to visit all of our beach accesses in the South Maui region, you know, at least every couple months. And every time I go down there that whole frontage has cars parked on it. And there, it is quite a distance from there to the parking lot across from Keawalai Church. So, I just wanted to have that in front of Members while I make the suggestion that you add two more parking spaces there unless there's some, you know, pressing reason why you couldn't.

MS. KAWAHARA: Chair. Member Anderson, I'll turn it over to John Maloney the applicant's representative to respond to your question.

COUNCILMEMBER ANDERSON: Thank you.

MR. MALONEY: This is John Maloney with Pacific Rim Land. We could probably add spaces. We were trying to keep sight distance out of the driveways for one thing and also have some nice landscaping. You can see those four circles on the north and south end, there are two on each end, were proposed trees. But we could look at adding additional parking.

COUNCILMEMBER ANDERSON: That would be good, because, you know, you could move those trees in towards the retention basin like you have at the bottom and as far as sight distance coming out of that driveway that four foot hedge is going to cause a problem right up against the road. So I think it would be more advantageous as far as sight distance if the hedge was in further and you could use that space for parking. And then while you have this up where are the historic sites that would be preserved on this property?

MR. MALONEY: I don't believe there are, there are no historic sites on this property.

COUNCILMEMBER ANDERSON: You're not preserving any historic sites?

MR. MALONEY: I would have to refer that to our archaeologist, Mike Dega with SCS Incorporated.

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MR. DEGA: Hi, Mike Dega for SCS Archaeology. There was one site composed of 13 features out there. We map recorded, excavated it. They all went through Criterion D. None were to be preserved under the State criterion on this parcel. I, I believe the applicant is preserving a section of the wall in the northeast corner however.

COUNCILMEMBER ANDERSON: You said there are sites that received Criteria D?

MR. DEGA: Yes.

COUNCILMEMBER ANDERSON: And that's . . .

MR. DEGA: Our recommendation to the State Historic Preservation Division was no further work on those sites and they concurred.

COUNCILMEMBER ANDERSON: So you've received an approval for significance that, you know, determination?

MR. DEGA: Yes. The only condition after that point was monitoring the ground, ground altering activity, which we've done in two different episodes so far.

COUNCILMEMBER ANDERSON: And so could you indicate again where the wall is that you're going to be preserving?

MR. DEGA: Karlynn could probably show it. It's the upper corner there, along that section of that area.

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

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. Members, we're going to take a short recess to put the screen up and we will continue the discussions on LU-23. Meeting in recess. . . .(*gavel*). . .

RECESS: 1:58 p.m.

RECONVENE: 1:59 p.m.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for August 15, 2007 is now back in session. Members, we are on Land Use Item No. 23, which is a District Boundary Amendment, Community Plan Amendment and Change in Zoning for a four-unit, Single-Family condominium at Kaeo, Honua`ula, Makena. Before we delve into the matter deeper, at this point the Chair will entertain public testimony. And the Chair would like to cover a few ground rules. First, you'll be given three minutes with one minute to conclude, and please turn off all cell phones and pagers, and identify yourself and any organization that you may be representing. Before we start with testimony for Land Use Items 23 is there anyone here is interested in testifying in LU-57 and 59? Okay. The reason I ask is the Chair is very well aware of the

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parking limitations out here near the County building. I'm just trying to ensure that no one gets a ticket and that they maybe wait unnecessarily long for that. So at this point seeing no one coming forward with LU-57 and 59 the Chair will leave it open until after we complete the discussion on LU-23. Okay. First to testify we have Bob Nelson followed by Ed Lindsey.

...BEGIN PUBLIC TESTIMONY...

MR. NELSON: My name is Bob Nelson. I am an Episcopal Priest, retired. I am also a member of Keawalai Congregational Church in Makena. I, you know, Makena, I mean Keawalai Church is now celebrating its 175th anniversary. It was founded by Hawaiian families, not missionaries, in 1832 and the land on which it's located was once part of the Great Mahele land grant to John Mahoe. Just like the property that you are considering here today. The Hawaiian community that used today's church site back in the 15th through the 18th centuries very likely lived and made use of the land that is across the street and only a few hundred yards, a few hundred feet away that you're considering. I would hope that you would insist that the proposed project's cultural review would reflect that.

It's my understanding that what cultural review was done quite frankly was minimal, which means that important history could be bulldozed and lost as a result of the sites that are merely being called "having no significance". When archeological review of the north lawn area of Keawalai Church was done back in 1998, that's this report, there was a whole lot more revealed than you would have guessed at looking at the surface. Six test units were dug and a rich cultural deposit was found just below the surface. They showed that the church was built on a site that was heavily used during the 15th and 16th centuries and as far back as 12..., the 1200s. The survey suggests that Kalola one of the highest ranking Alii of her time may have lived in Keawakapu. Kalola was the sister of Maui Chief Kahekili and the grandmother of Keopuolani, the sacred wife of Kamehameha. Keawakapu was the traditional name for the little bay just across the road from the property you're dealing with today, and also the name, the original name of Makena's Keawalai Church.

The survey says and I quote, "Historic information indicates that Kalola stayed in Honua`ula --

MS. NAKATA: Three minutes.

MR. NELSON: --during a very critical period in the history of Hawaii. The presence of a landing, fish pond, a heiau, the Kalani Heiau, immediately adjoining this property you're considering, and numerous contact era residential sites from the 17 and 1800s. An immediate area make the...Keawalai site a very likely candidate for having a chief's compound. In addition, the traditional landing, landing name Keawakapu indicates affiliation with high status. The property you're reviewing today lies between Kalani Heiau on the Garcia property, which you saw where they want an easement to go through and the historic Makena Road. Are any of the large collection, and there are a large collection of old walls, enclosures, or rock paved areas --

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MS. NAKATA: Four minutes.

MR. NELSON: --on this property part of the cultural landscape?

CHAIR MOLINA: Mr. Nelson, you need to conclude soon please.

MR. NELSON: I will. Were any of the surface or below ground sites on this land included in the compound of one of Maui's leading ruling families? Could all those walls found on the proposed condo site have protected gardens that were managed by retainers of the Alii? It seems to me that these questions need answers before any piece, any more of Makena's history disappears.

CHAIR MOLINA: Okay. Mr. Nelson, thank you. I have to stop your testimony now. Members, do you have any questions for the testifier? Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Nelson, thank you for being here and for taking an interest in this. Have you had a chance to review the archaeological report inventory survey that was done for this project?

MR. NELSON: No. I have not. I'm sorry.

COUNCILMEMBER ANDERSON: So, it's your feeling that there isn't enough that's been done to connect this site with the Kalani Heiau?

MR. NELSON: That's one piece of it. The other piece of it is quite frankly, you know, this was an exhaustive study that was done and you see what was found below the surface. And that heiau, quite frankly, that is a sacred space.

COUNCILMEMBER ANDERSON: And so you're suggesting. . .

MR. NELSON: And, and they're, excuse me, but they're proposing to, to maintain just the, the wall in that, that north, northeast corner adjoining the heiau and nothing more?

COUNCILMEMBER ANDERSON: And so you're suggesting that there needs to be a . . .contiguous study connecting. I mean just because the parcel that is in question here has its own boundaries doesn't mean that those boundaries fit with the ancient boundaries that connected the heiau to this site.

MR. NELSON: Well they don't, they don't. They simply don't.

COUNCILMEMBER ANDERSON: Okay. Thank you very much.

CHAIR MOLINA: Committee Members, any other questions for the testifier? Seeing none. Thank you, Mr. Nelson. Next to testify, we have Ed Lindsey followed by Lucienne deNaie.

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MR. LINDSEY: Aloha, Council Chair Mike Molina, and a hui auwinalā, Council Members. My name is Ed Lindsey and I represent Maui Cultural Lands, Inc. It is an organization that deals with archaeological stabilization, reforestation, and education. Currently, we have a program going on in Honokowai Valley and we are doing reforestation above it, the wind farms, and we are also working on taro patches. Before I would like to preface my thoughts that and congratulate the planner, Karlynn Kawahara to doing, for doing a good job. She is one of my former students and she's one of my favorite people. And here I am speaking about a project that she's trying to shepherd through.

We here in Maui County need developers. We need good planners. And we need jobs. And somehow we're always opposing each other. I would like to sit down, sometime sit down with all the developers and just clear the tables and say, and not how we can stop you but what we can do to make it better. And that's where my point of view is coming from. We're losing too much of our heritage. You know, in, in my, the work that we're doing and the people that we meet I always tell them Hawaiian Culture is older than George Washington. It's older than the American Revolutionary War. It's older than Columbus. It's older than the Christian Crusades. It's as old as the Roman Empire.

While they were afraid to sail the seas the kanaka maoli was sailing all over the place. So we have a culture and we're, we're, we're blessed to be rich in this culture. And we need to see that this evidence or what little evidence we have left is taken care of. And the word I like to get to all the people here and esteemed Members is to plant and crystallize a thought in your mind -- that we need to protect these places. Currently, DLNR SHPD they're in complete disarray. DLNR, disarray. They're supposed to be taking care of our forest and all our natural cultures, disarrayed. All under funded. Our natural resources, going downhill. Our ocean resources, going downhill. Our island style, going downhill.

And we need to look at those things that make us really special. And to celebrate --

MS. NAKATA: Three minutes.

MR. LINDSEY: --these things that make us really important as an ocean going people and a multi-cultural people. Anything that's worse that can, that can happen right now is that we lose our sites, our stories, and our island culture to something that's monogamous to Western style. And we're at the crossroads. One, some of our main concerns is water, again. Swimming pools, where's the water going to be dumped? If it's chloride it's going to be in the ocean. Urban growth, urban spread. And the landscaping, I hope the landscaping is not tropical Garden of Eden when you're living in a dessert. I would like to see more native plant landscaping and the kinds of plants that belong there. And, you know, you're living in a dessert landscape it with dessert.

MS. NAKATA: Four minutes.

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MR. LINDSEY: Not the other kind of stuff that lives in the forest, rainforest. And we already suffering with water. And with that I, I'm not for or against it but I would like to have you folks think about these things. And mahalo and aloha.

CHAIR MOLINA: Okay. Mahalo, Mr. Lindsey. Committee Members, questions for the testifier? Seeing none. Thank you. Next to testify we have Lucienne deNaie followed by Rob Parsons.

MS. deNAIE: I'll wait 'til everybody gets their handout. Sorry. . . .(pause). . .

CHAIR MOLINA: Proceed, Ms. deNaie.

MS. deNAIE: Thank you. Thank you, Chair Molina. And thank you, Members, for being here today. You have a busy work week. My name is Lucienne deNaie. I'm testifying on behalf of Maui Tomorrow. I want to tell a little story about this land. I know family members who are connected to this land and upfront I'm going to ask, apologize to them because I may be saying some things that are kind of hurtful but they're part of the public record. So if any of the family members of the, of the Bak(?) or Lonokailua or Kalani family are listening in e kalamai. But here's the short sad story. This family, the Lonokailua and Bak. . . .(change tape, start 1B). . . small parcel over by Onouli Beach where the, the black sands development is now near the fishpond. They had roots to this Makena land going back hundreds of years. And the ohana was given a chance to return to this small portion of their ancestral aina in 1956 through a land exchange with Ulupalakua Ranch. Now the ranch never owned this land until 1909. It, it was owned by the heirs of Mahoe, the original konohiki of the area. And the Lono-Bak(?) ohana was related to the Mahoe ohana.

This family was all renowned for their fishing knowledge. They also raised pigs and had gardens. They even planted ipu vines in the rock walls on their land. How do I know these things? Well, because there was a tremendous effort made by Kepa Maly to do the cultural history of this area as part of the Garcia approval. And here's 40 pages just interviewing one of these family members that tells a lot about this land. This report was not available when the cultural assessment was done for this land or when any of the previous decisions were made. It was just issued last December. So none of the information in it has been included in what we know about this land. If you read this, and this is what I've handed out to you a few select pages, you will find out that this family was taxed off this land. They just couldn't afford to pay \$22,000 a year for their other parcel and God knows what they had to pay for this one.

So the 40 members that were all part of the ohana decided to sell. And of course they're not likely to complain or anything like this but this is a sad occasion. This is an area that has cultural significance and the fact that the cultural assessment for this project says, "no cultural resources were identified therefore there will be no adverse effect" is not true. And I beg this Council to read the information that I've given you and see if you think that there are no cultural uses of this land. Because it's very. . . clearly stated that there are traditional practices associated with this land. This family was a remarkable family and from the time they lived on this land and their other parcel they took care of things here. They took care of the Makena-Keoneoio Road. They

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took care of the shrines of the shark in Puu Olai and in other areas. They took care of the fisheries. Mr. Lono was renowned as a fisherman.

MS. NAKATA: Three minutes.

MS. deNAIE: He knew where everything was and they also respected the, the heiau and used it for their cultural practices. And they recognized that this place has a huakai po, it, it has a pathway where the kupuna used to access the upper lands. And it's very clearly described the conditions under which Mr. Kalani's tutu described this to him. This will go right through the middle of one of these condos. This is not a right thing. It should be taken under consideration. There should be a reevaluation done here and the proper treatment of this land should be made. Mr. Nelson is right this connects to the other lands and there's no reason to believe that these walls don't have other history. They may have been used for ranching, we don't really know but there's a remarkable collection of . . . walls and we have no evidence of --

MS. NAKATA: Four minutes.

MS. deNAIE: --of the ranching era in this area anyway. We should have something that let's us know how it operated. So I urge this Council not to make a hasty decision, get more information, and really recognize the cultural richness of this particular part of Makena. Thank you so much.

CHAIR MOLINA: Okay. Thank you, Ms. DeNaie. Committee Members, questions for the testifier? Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chairman. Lucienne, thank you for being here and for your interest. You know, we have an October 31, 2001 review letter from State Historic Division in which they say --

MS. deNAIE: They agreed.

COUNCILMEMBER ANDERSON: --that Scientific Consultant Services conducted an archaeological inventory survey of the subject property including subsurface testing during which a single prehistoric habitation/historic period ranching complex was identified. Do you know where the prehistoric habitation? I mean if it's prehistoric it should be preserved.

MS. deNAIE: Well my understanding from reading both the original and amended cultural inventory, you know, or archeological inventory for this, and reading the cultural assessment as well which was added more recently I think in 2005 or so, is that this being regarded as one site even though it has 13 different features. And partly because they're, many of them are interconnected. And the area that is prehistoric are probably the areas where some test pits were dug that are pavement areas. Now pavement areas are not associated with ranching. Ranchers did not sit around on these lava paved areas and do anything. They're associated with people who were working on fish hooks or building canoes or doing something where they had a little shaded area and that they were, that they were the work places of their, of their era. So these are probably

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what are being judged as prehistoric. There were several areas that had some coral fragments, midden, some shell midden.

It was not a huge amount but let me just say, I'll just take you back to another project if you'll let me just have a minute here. The Keaka project that was recently reviewed in Maluaka, one of the most less imposing sites, turned out to be a multiple burial area. The areas below the heiau that were just dismissed by the original consultants turned out to have a very, very rich cultural deposit once further work was done. I think you'll find out if you talk to Mr. Dega that these kinds of work are always rushed and they're always under money constraints and they're told, you know, okay, just do what you can and we're going to pay you this much and get out of here. I don't think Mr. Dega is a bad archaeologist. I just think he wasn't told do the best absolute job you have and find everything here and tell us about it. And because very few landowners want to know that this is something that could get in the way of their development. So, you know, that's my prejudicial view but after reading hundreds of archaeological reports I can tell you that the State Historic Division signs off on many reports that are later found to have very significant sites.

COUNCILMEMBER ANDERSON: So, you know, I'm looking at the, and, Members, if you want to see. . .in Appendix A of the Environmental Impact Statement or the Environmental Assessment, Appendix A has the archeological inventory survey. And I, there's no map and I'm trying to find out where this habitation, this prehistoric habitation complex is located.

MS. deNAIE: Member Anderson, I have the map if you want a map.

COUNCILMEMBER ANDERSON: I would love a map. You know, the map should be included in the inventory survey so that we can have some idea of where these sites are located.

MS. deNAIE: Here you go.

CHAIR MOLINA: Ms. deNaie, if you, oh, it's a big map, yeah. I was going to see if we could get copies of it for the Members for their information. Maybe at a later point we can get. . .

COUNCILMEMBER ANDERSON: Maybe in a break, Chair, we can --

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: --we can have at least the areas in question.

CHAIR MOLINA: Get a. . .*(inaudible)*. . .at least for the Member's information.

COUNCILMEMBER ANDERSON: And so then, the, the other question I have is . . . um . . . in addition we concur with the recommendations made in the report that archaeological monitoring occurred during any ground disturbing activities. Of course, of course they're going to concur because that's standard, everybody does it. .

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MS. deNAIE: That is the standard condition in everything in an archaeological sensitive area.

COUNCILMEMBER ANDERSON: Exactly.

MS. deNAIE: But that means that after you've bulldozed things you find a --

COUNCILMEMBER ANDERSON: It's too late.

MS. deNAIE: --few things and so you can't know if you, you can't put it back together and say, wow we maybe should have done something else here.

COUNCILMEMBER ANDERSON: Well and the whole point in having this done prior to any ground disturbing activity is that should you find an area worthy of preservation in situs, and especially if it is in connection with a heiau or a religious area, religious sites in the area then you would have the opportunity to redesign your project so that you're not disturbing the area and you can, and you can preserve it in place and treat it with the respect it deserves. But, you know, once we've approved this and they start their ground altering activities and then they find something, basically what happens is, oh, we stop and we do some data recovery and we just bulldoze it over because then it's too late to make any changes.

MS. deNAIE: Well that's sadly what's happened in many of our worthwhile sites. If you read Mr. Kalani's description, you will see his family felt very strongly that the pathway was used because of the heiau and it connected to Ulupalakua where there are several other heiaus that actually align with this area. And there's some important house sites just mauka of it on the Seibu land. It's all interconnected but by dicing it up into little pieces, an acre here and two acres there we lose the continuity.

COUNCILMEMBER ANDERSON: So, Lucienne, as you're standing there I know this might be hard but I'm assuming you've familiarized yourself with this map. Where is the site that they're referencing as the prehistoric habitation site on this map?

MS. deNAIE: It is one of the two or three pavement areas and I think there was one that was, Mr. Dega is probably the proper person to, to answer this and he's in the room. But my, my recollection was that it was near the, the site of the heiau in the northeastern corner. And that's probably one reason why they're choosing not to disturb the fence in that area.

COUNCILMEMBER ANDERSON: Well it says, I wanted to finish, when they're talking about ground disturbing activities in the sections of the project area where historic properties consisting of pavement features are located given the potential relationship between these areas and Kalani Heiau. So I, I see a paved area up here and . . .

MS. deNAIE: Well there's several paved areas noted on, on the map and they're, they're adjacent to walls which is why I think we should give the walls a little bit more consideration. It's like some

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of those walls might have been one layer of an older wall and then built on later. You know, there's a fascinating history here.

COUNCILMEMBER ANDERSON: Thank you very much for being here.

MS. deNAIE: Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Any other questions for the testifier? Member Johnson? Hang on, Lucienne. Yep. We got another question for you.

COUNCILMEMBER JOHNSON: Yes, Lucienne, I read through the documentation that have provided and the dialogue going back and forth and I wanted to find out 'cause in one of the statements the family says, "our family when we sold the property we made an agreement that all those that are buried there you are to preserve them in one place and that the ohana can come and visit."

MS. deNAIE: That's a little confusing. That is their other property, which is where the "black sand development" is overlooking Puu Olai and the fishpond. That was this family's original property. But they were offered this chance to do a land swap in the '50s and get this second piece of property. And being fishermen they jumped at it because this is the fisher grounds, you know, this fishing grounds was fought over in the 1800s.

COUNCILMEMBER JOHNSON: So, so then that you know of there are no burials on this particular property or don't we know?

MS. deNAIE: What Mr. Kalani says in there and, and Kepa Maly who did the interview asked him specifically do you know of burials here or on the Garcia property and he said no, you know, because we lived here starting in the '50s our burials are all in the older property. There were like I think seven burials in that property.

COUNCILMEMBER JOHNSON: But there's no knowledge on their part as to pre-contact burial?

MS. deNAIE: Not from their family but of course whether there's pre-contact burials or not they wouldn't know because their family, you know, had a connection to those lands but did not directly live on those lands. They had a parcel in Palauea that they traded to Ulupalakua Ranch for this in, in 1956.

COUNCILMEMBER JOHNSON: Okay. Thank you very much.

MS. deNAIE: Sure.

CHAIR MOLINA: Thank you, Member Johnson. Seeing no other questions. Thank you, Ms. deNaie. Next to testify we have Rob Parsons followed by Gregory Ball.

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MR. PARSONS: Good afternoon and aloha, Chair, Members. My name is Rob Parsons. I provided testimony in January of 2002 to the Planning Commission on this project application that's before you today. I had concerns then and I have concerns now five and a half years later. And I certainly share the opinion of the previous three testifiers that in many cases the culturally significant sites of South Maui has been fractionalized and marginalized and in some cases lost. But I'd like to share a couple other concerns with you. And whether we're looking at 1,400 units with an amenity of a private golf course or four units with amenities of private swimming pools for each unit I think there are some basic things that your Committee ought to be looking at. And, you know, where's the water coming from? What's the water source?

I think getting very clear answers about whether there will be a wastewater hookup to the Makena system or whether a septic system would go in as I think that's, absolutely needs to be answered. And, you know, I, I hearken back to actually the Apana Administration which at that time had a policy after what happened at the so-called Montana Beach of the Condominium Project Regime in a coastal area. They said, you know, this isn't wise for a lot of reasons. We are not going to do condominium projects in the coastal management area and yet that's what we're looking at today. If it were a subdivision it would be four units and it would trigger an affordable unit. But it's not.

So when the initial report came forward from Planning Department to Planning Commission, Planning Department described this as resort residential usage. And I scratched my head and I said what the heck is that? It's either resort or it's residential. It can't be both. So what will the usage be here? Is, you know, they've said we're not going to do vacation rentals but by putting four mini-hotels on one parcel we've got to look at what really the impact will be to the area. And there is clear language in the South Maui Community Plan that says the rural character of Old Makena Road in the vicinity of Keawalai Church shall be preserved. I don't know if it's "shall" or "should", you know, that's, that's one of those situations where we get into of, you know, how closely we're going to follow it but it, the language is in there. So I would hope that we abide by that because this seems out of character with a lot of the old quaint houses that are still in the section from Makena Landing to where the road was --

MS. NAKATA: Three minutes.

MR. PARSONS: --segmented at the time the hotel was built. And that's not the characteristic of other parts of Old Makena Road, which have given way to luxury accommodations. So, you know, I think Councilmember Hokama asked a very poignant question at last Friday's continuation of the Land Use Committee meeting and he just said who are we building for? So I, I just hope that you use your wisdom and judgment in requiring the information that you need to decide whether this application for rezoning in front of you today is worthy of approval or worthy of more study and I thank you.

CHAIR MOLINA: Thank you, Mr. Parsons. Member Anderson.

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COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. Mr. Parsons, thanks for being here and taking time out of your day. When you said condominium projects were you meaning the fact that these are condominiums or were you talking about Condominium Property Regime?

MR. PARSONS: I don't think this is described as a CPR but we've got a one and a half acre parcel and this is, you know, you've got the discrepancy in what was approved in the community plan. And I honestly don't know when Hotel designation was awarded to this if it was in the '80's community plan or in the revision of the '90s. I suspect probably in the '80s.

COUNCILMEMBER ANDERSON: Yeah. It was in the '80s.

MR. PARSONS: Okay. And I don't know the process, which brought that about because it, it's a tiny parcel by hotel standards. So I, I can't try to guess what. . .

COUNCILMEMBER ANDERSON: I think it was a leftover parcel from Seibu when they built the hotel.

MR. PARSONS: I see.

COUNCILMEMBER ANDERSON: So you don't know if it's condominium property, you know it's not Condominium Property Regime?

MR. PARSONS: Well, I think you can ask the Planning Department how they're viewing it.

COUNCILMEMBER ANDERSON: But you're referencing the fact that these are four condos.

MR. PARSONS: That, that they was described as condominium projects. Yes.

COUNCILMEMBER ANDERSON: Okay. Thank you very much.

MR. PARSONS: Yeah. Thank you.

CHAIR MOLINA: Thank you, Member Anderson. Seeing no other questions. Thank you, Mr. Parsons. Next to testify we have Gregory Ball and Joyclynn Costa.

MR. BALL: Hi. Good afternoon. I'm Greg Ball. I'm just here on behalf of myself. This is a relatively small project as projects go. But I wanted to take some vacation time from my job to come down and speak on it. I would urge the Council with respect to all of these developments in Makena to consider having the developers propose how they're going to barge in the water.

COUNCILMEMBER ANDERSON: . . . (*chuckled*) . . . Thanks for that.

MR. BALL: You know will there be an arrangement made for a water barge to come over from one of our wet areas once every three months, throw a line over and fill up the pools and water the golf

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course? Because it is a dessert. And if they're planning on drilling down and doing something with the well, I object because that's public water. If they're planning on tapping into the County water system, I object. Folks, we're drying up.

When I first started looking into the Makena issues that was back in the mid-'80s. I was doing pro-bono work for Hui Ala Nui O Makena. We had all of the maps. We took depositions. We did discovery and I do have some awareness of that parcel but I'm not going to talk about it. And a lot of things were realized about how dry it is down there. And one of the reasons why development didn't surge ahead was because of that. The other reason was that one of your more colorful predecessors here on the Council, and it was not Wayne Nishiki is quoted as saying back, I think he said this in 1985, he said "I will not let a damn little Tokyo be built down there." And he was talking of course about the effort by Seibu Prince to chop up the kahiku la loi and the kahiku alanui down there. Well, I don't know what you call this. It's kind of either a metastasis or an incremental urbanization of a rural area but it really shouldn't be tolerated in a dry situation. Maui is drying up. I'm sure you're all aware of that. We've entered some sort of dry spell. I don't know how long it's going to last.

When I first lived in Haiku in 1981 everyone wore rubber boots. Now it's like Kihei up there. There's a sign at the marine park and the signs says it's one of the, the memorial signs to the Fourth Marine Division. It quotes one of the marines from World War II as saying that what he will remember of Camp Maui is the unending rain. Well, folks, the rain ended about three years ago. I stupidly planted fruit trees and didn't put in irrigation thinking what do I need irrigation for I'm in. . .in Haiku. But now it's Kihei hydrologically.. I get to spend a lot of time dragging hoses around. The whole island is drying up. We've got brush fires on Oahu that are on the same hydrologic side as Makena. You know, the, the only wisdom I can share is of course we should hope for the best and plan for the worst.

MS. NAKATA: Three minutes.

MR. BALL: But we're not here to hope. You folks of course are, are charged with planning. So if you plan for the worst I don't know how you can let any more development take place in a hydrologic dessert when we've been under water restrictions in Haiku now for months. When will the dry spell end? No one knows. We could be entering a 50 year or 100 year dry spell. No one has given us a warranty as to when the next rainy phase will come back. We don't know. But if you Google other places in the Pacific you will find that the drying is happening all over. Australia is in the middle of a 10,000 year drought like they've never seen. So the, it's a very auspicious week for this hearing to be happening when you realize there's thousands of acres on fire on Oahu in the same hydrologic zone --

MS. COSTA: Four minutes.

MR. BALL: --as Makena. Thank you.

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CHAIR MOLINA: Thank you, Mr. Ball. Committee Members, questions? Member Anderson.
Mr. Ball.

COUNCILMEMBER ANDERSON: Thank you, Mr. Ball, for being here. Unfortunately Flossy didn't give us any water either. We could have used a few drops anyway. You know, I want to bring to your attention that there is a study that has been done by, my brain is a little mush right now, it's either EPA or USGS. Does anybody remember? It was USGS and we just brought it forward in our Water Resource Committee a week or so ago. And it's called Climate Change in Hawaii and they did it specifically for the Hawaiian Islands. And they say that we are in a drought period, we will continue to have drought in the future and it's going to get worse. And that the drought, the spacing of the drought will be further apart and that the rain patterns are going to change. And what you're saying triggered that in me because if you're calling Haiku now more hydrologically [*sic*] attuned to Kihei, that's exactly what they say in this report is that the, you know, the historical pattern of rain is not going to maintain into the future, it's going to change. So, and I, and I like your humor 'cause we need it here as much as we can.

MR. BALL: Well the Haiku residents I talked to, it's the, the rain...shadow that is the, the aerographic(?) rain that is actually groomed by the, the mountain. That's not a front, that's just land made rain.

COUNCILMEMBER ANDERSON: Right.

MR. BALL: It is receding towards Hana so that when, when I talk to people and I do a lot of asking what used to be a canopy of rain that extended over Kokomo Road out towards Baldwin which always lined up with Giggle Hill.

COUNCILMEMBER ANDERSON: Right.

MR. BALL: So Giggle Hill was kind of a magnet for that rain canopy. It hasn't been there for years. It's, it's either receding towards Hana or it's somehow laterally gone out to sea. So I'm now in a dry zone and have been for three years.

COUNCILMEMBER ANDERSON: Yeah. It's strange. I saw the same thing happen in Keokea. It used to be, you could set your clock at three o'clock afternoon, every afternoon the rain clouds would come and that happened for the first maybe ten years I lived there and I'd say in the last seven years that doesn't happen anymore.

MR. BALL: You know I think, I think developing Makena is based on the, the assumption that there is water elsewhere that can be laterally borrowed. I don't think that's true anymore. I think we need to hoard the water that we've got and if they want to develop, fine they can bring in barges. Thank you.

COUNCILMEMBER ANDERSON: Thank you very much.

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CHAIR MOLINA: Okay. Thank you. Any other questions for the testifier? Seeing none. We have one more testifier Joyclynn Costa she's the last person to have signed up. The Chair will give the public one last opportunity to testify on Land Use Item 23.

MS. COSTA: Good afternoon, my name is Joyclynn Costa and I speak on behalf of the kupuna who have passed and cannot come to this podium to speak in opposed to being disinterred. I'd like to read you the law, it's in HRS 172-11 and it reads, land patents on Land Commission awards to whom, for whose benefit, every land, every land patent issued upon the award of the Board of Commissioners to quiet land titles shall be in the same, shall be in the name of the person to whom the original award was made. Even though such person is deceased or the title to the real estate thereby granted has been alienated. Meaning even if it was sold, transferred, conveyed. And all the land patents so issued shall inert to the benefit of the heirs and assigned of the holder of the original award. So the possessor, the owner is the land patent awardee from the Land Commission awards.

You talk about historical value or, or the insignificants of. And I would like to bring to this Council information so that it is not of not knowing but that now you know. The case of Smith vs. Wilder. According to common law and cases of ordinary internments in the ground the heir has no property in the bodies or, or ashes of his ancestors. He cannot sustain an, an action against such disturbed, as disturb the remains. But as the body after burial becomes part of the ground where it was committed earth to earth, ashes to ashes, dust to dust, the person who was the freehold of the said, of the soil can bring an action of trespass against any wrongdoer. So I read you two laws, HRS 172-11 the title holder is the royal patentee. The heirs can come forward and will cause trespass against anyone who comes to disinter any iwi or any artifacts thereof. And I just wanted to bring that awareness to this Body. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Costa. Committee Members, questions for the testifier? Member Anderson?

COUNCILMEMBER ANDERSON: Ms. Costa, thank you for being here. Are you aware of any land court awards on this property?

MS. COSTA: Several. And I know personally the Bak-Lonokailua family.

COUNCILMEMBER ANDERSON: So there are land court awards in their names on this property?

MS. COSTA: Correct. The three main names within Honua`ula is Hoomanawanui, Kanehoa(?), and Keahounui(?). I think I'm mispronouncing her name. E kala mai kupuna. They have the holdings of the ahupuaa and within the ahupuaa there are, there are several royal patentees that they give to and they hold land patents awarded through the Land Commission awards. Those are forever to their heirs. I don't care what anybody says, all you have is the ownership to pay taxes on that place that's why you have a TMK, that's called a tax map key account. You own an account; you don't own the possession of the land. The land belongs to the patentee from the Commission. And no one can take it from them. It's in the law. So if those families come home

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and they find out that you put a house on their bones you may be liable for a suit. And anyone who agrees with them and gives them permission to do so may also be pulled into the suit. I'm no lawyer. I'm just reading books and you can go do your own homework. . .*(change tape, start 2A)*. . . Thank you.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: Thank you, Ms. Costa. Seeing no other questions for the testifier the Chair has, will open it for one last time for testimony on LU-23. Seeing none. If there's no objection, Members, the Chair will close public testimony for Land Use Item 23.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered by the Committee, testimony is closed for LU-23.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: Members, the Chair would like to call for a short recess. Meeting will be in recess until 2:55 and please be prompt in your return. . . .*(gavel)*. . .

RECESS: 2:45 p.m.

RECONVENE: 2:58 p.m.

CHAIR MOLINA: . . .*(gavel)*. . . Land Use Committee meeting for August 15, 2007 is now back in session. Thank you for that break, Members. We are dealing with Land Use Item No. 23, which is a District Boundary Amendment and also a Community Plan Amendment and Change in Zoning for a four-unit Single-Family Condominium at Kaeo, Honua`ula, Makena. The Committee is considering the following: A PROPOSED BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AG TO URBAN FOR A PROPERTY SITUATED AT KAEO, HONUA`ULA, MAKENA, MAUI, HAWAII. And also A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM HOTEL TO SINGLE-FAMILY FOR A PROPERTY SITUATED AT KAEO, HONUA`ULA, MAKENA, MAUI, HAWAII. And also A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO R-3 RESIDENTIAL DISTRICT FOR A PROPERTY SITUATED AT KAEO, HONUA`ULA, MAKENA, MAUI, HAWAII.

And we'll start off first with comments from the Planning Department and then after that the Chair will open the floor for questioning of not only the Planning Department but our resource personnel as well. Deputy Director Suyama.

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MS. SUYAMA: When this application originally came before the Department in 2001 they did ask for the H-1 Hotel zoning in conformance to the community plan for the Kihei area, Kihei-Makena area in order to do a residential project, a single-family residential project. The position of the Department at that time was that if you are intending to do a single-family residential project then it should be, you know, the property should be community planned for single-family residential use. And that's why the Director at that time, John Min, had proposed the Community Plan Amendment from Hotel to Single-Family Residential. You know, in, in that way we supported the District Boundary Amendment, Change in Zoning and of course, you know, our Community Plan Amendment.

In this way it guaranteed that hotel uses would not be permitted on the property and there was that question about, because originally they had asked for H-1 Hotel and we are opposed to that. So we said if your, if your intention is to build residential units then zone it residential. The other thing is that at that time we had been processing compliant to Chapter 3.43 in which we had taken that the Director initiated Community Plan Amendments were not subject to Chapter 3.43. It was exempted as part of comprehensive, doing a comprehensive general plan update. Since that time it has been determined that, no, even a Director initiated Community Plan Amendment is subject to Chapter 3.43 and that's why later we went through, you know, with the applicant to do an environmental assessment which was approved on August 8, 2006.

There was also during the time there were some other things like, in terms of the archaeological report, the Department had relied upon the State Historic Preservation Division who basically reviews these inventory survey. And the State Historic Preservation Division did approve the inventory survey in 2001, on October 21, 2001. And subsequent to that they also approved a monitoring plan because monitoring was recommended by the inventory survey and that plan was approved on November 22, 2001. And this was. . .because they had already had plans to demolish, there was an existing house on the, on the property and as part of the demolition of that existing house through, what they did was they did do the monitoring plan for the project as part of, you know, basically initiating. . .portions of the construction. It is also my understanding that for the project there are water meters that were installed by the developer and you could confirm this with the developer.

But that was my understanding that the four water meters necessary for the four units have already been installed in the project. And lastly, in terms of the sewers, one, the project was reviewed by the Planning Commission. At that time they were in negotiations with Makena Resort to connect to their, to their sewage system rather than using the individual wastewater systems. You know, there was a good opportunity for them to do that especially with the Garcia, the next door Garcia project also attempting to do a District Boundary Amendment, Change in Zoning and Community Plan Amendment that as part of that coordinated effort there was the possibility that these projects would connect eventually to the Makena system.

You may want to follow up with the applicant as to the progress of getting some kind of agreement, you know, with the Makena Resort especially now since they are under new management and new ownership. In terms of the roadways improvements, the Department has

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always been in favor or support of not using urban standards for Makena-Keoneoio Road. That has never, you know, we have never said that we wanted curbs, gutters, and sidewalks for these projects. We've always said that we support the rural character of the area and we have no objections if, you know, urban standards are not used. I would, you know, I would think that the condition would be similar to Papaanui subdivision when it came before the Council where there's a specific condition dealing with the roadway improvements.

CHAIR MOLINA: Okay. Thank you, Deputy Director. Before we open the floor for questioning the Chair would like to recognize Members Baisa and Victorino to our proceedings today.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR MOLINA: Good afternoon, Mr. Victorino. You had a question?

COUNCILMEMBER VICTORINO: No. Not at this time.

CHAIR MOLINA: Oh. Okay. I'm sorry. I thought I saw your hand go up. For the Body's information we also have available as resource personnel Deputy Director of Public Works Michael Miyamoto; the Director of the Department of Water Supply, Mr. Jeffrey Eng. And I believe that is who we called for today, I believe I introduced Mr. Matsui earlier as well. And the applicant, the, also available we have Greg Bayless from the Farrington Bayless Architect, Stacy Otomo from Otomo Engineering, Brian Maxwell from the Maxwell Design Group, Linda Taylor from Linda Taylor Engineering, and Michael Dega from Scientific Consulting Services. So we have a plethora of resource personnel today and the Chair would like to just add that additional copies of the final EA have been provided as well as a, as well as a December 12, 2006 response from the Public Works and Environmental Management Department advising of the improvements that would be required under urban standards for the portion of the Makena-Keoneoio Road fronting the subject property as well as a response from the Corporation Counsel's office relating to the roadway issues posed. So with that said the floor is open. Questions, Members? We'll start with Member Johnson.

COUNCILMEMBER JOHNSON: Yes. Thank you very much for going through some of this but my question primarily has to do with the information that we received today with regard to the archaeological impacts or some of the information that may not have been included as part of the environmental assessment. And if I understood what the develop..., developer's presentation was it said that basically there was nothing of any significance and that there was just not going to be any building on the site up in the, be the northeast corner where there was a portion of a wall. My question would be based on the information that we received today do you still as, I guess, you know, in the Planning Department and part of your recommendation, are you still in support of the application as it's been submitted to us with the plans that they have?

MS. SUYAMA: I believe we are still in support of the application. I did not get to read the entire, you know, submittal from Lucienne deNaie regarding the cultural part that was submitted. But in the original application they did do a cultural assessment and at that time they had relied upon Leslie

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Kuloloio as their cultural person that they talked to, spoke with about the history of the area and the significance of the area. And my understanding is Mr. Kuloloio is also someone that has his background or roots in Makena as well as his family's roots in Makena and he provided them as part of the cultural assessment information.

COUNCILMEMBER JOHNSON: And, and I understand that 'cause, you know, there's obviously reference in here to kind of a long historical I guess background with regard to while we relied on this information we relied on that information so it's gathering data from many different sources. But I think the information that we received today at least to me anyway seems quite significant in as much as the trail, particularly the trail that is referred to in the document. It goes right through one of, or the condominium if it's built on the site that is projected it would go right through the trail that is to be preserved or was requested I guess as a part of this historic survey to, you know, at least the family wanted it to be preserved. And historically I would think that those kinds of sites would be preserved. So, I don't know, I realize you don't have the benefit of looking at all the information right now but I, I would really like you to take a look at it because to me it is very important where we locate these.

My other question would be in regard to the cumulative impact of a lot of these smaller projects. And with regard to the water issue that was raised, I mean it's been raised many times and it'll continue to be raised particularly because we are in a drought period. Have you looked at the whole issue of swimming pools, particularly in Kihei or dryer areas or just Countywide I guess and looked at perhaps taking, I guess a closer view or a closer look at the cumulative impacts of all of these thousands of swimming pools that we have? I think one of the fastest growing businesses in Maui County is the swimming pool company, and particularly in dry areas. Has your Department taken any look at that and all of the impacts that they are having and in particular in dry areas?

MS. SUYAMA: I'm not aware of our Department having to look at whether, you know, what effects the ability to build a swimming pool or the number of swimming pools that are, that are currently in the County and how that effects our water resources. You may want to talk to Jeff Eng as the Water Department Director as to whether they've made those kinds, kinds of consideration because I can't answer that question.

COUNCILMEMBER JOHNSON: Well, and the only reason I'm asking it of your Department is because we're going through the General Plan review, some of this information, if it's something that we're not looking at perhaps we should be. Because it seems really very disingenuous to say to somebody Upcountry, well, you can't even water your lawn or you can't water your crops but it's fine to build swimming pools all over the County. So, I mean to me in principle that, that is something that if we're going to plan then we need to look at what resources we have available, water being a resource and particularly with planning, I mean in, even in Colorado or I believe it was Colorado they actually at one point said that you could not put in a fireplace unless somebody gave up I guess a credit or you purchased a credit to put in a fireplace because the air was getting so polluted in some of the mountainous areas. So I'm looking at if you want to do a swimming pool then this is a condominium complex or it's condominiumized [*sic*] that's my

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understanding anyway, maybe what we should do is say yeah, if you want to put in a swimming pool put one in for the complex but you can't have four separate ones. So is this a condominium?

MS. SUYAMA: Condominium only means that the ownership is a joint ownership of the, of the basic land property. It's not subdivided into individual zoning lots. But you can put single-family residences in a condominium by saying that each person of this larger lot without going through subdivision owns this portion of that property. There's also what they call condominiums which are apartment projects or multi-family projects that also have been termed as condominium but they're basically apartments. You know, that's, that's the proper term. In this case, they're building single-family residences but the ownership is through a Condominium Property Regime. You know, that's all that it means in terms of the term condominium.

COUNCILMEMBER JOHNSON: Yeah. And I know they're doing it on farm land too and. . .

MS. SUYAMA: Right. There's a lot of areas that people are condominiumizing [*sic*] which is to just separate ownerships in property without going through formal subdivision review.

COUNCILMEMBER JOHNSON: Yeah. And it also escapes certain triggers in terms of review and certain financial considerations too --

MS. SUYAMA: Right.

COUNCILMEMBER JOHNSON: --when you condominiumize [*sic*].

MS. SUYAMA: My understanding though is that with the subdivision ordinance is that if your, if you have four or more units it's subject to the subdivision ordinance. In other words, you have to provide the improvements that a regular subdivision would have been required to do. Like whether it was upgrades in water, upgrades in roadway systems, etcetera. You're still required to provide that once you go through four units or more. So this project, although you're not subdividing it into individual lots, my understanding of the process is that they're still subject to the subdivision ordinance standards or requirements.

COUNCILMEMBER JOHNSON: Okay. And that's been verified with Public Works or Development Services . . .

MS. SUYAMA: Well, that's my understanding of how the subdivision works. You could talk to Mr. Miyamoto if, if that, my understanding is correct.

COUNCILMEMBER JOHNSON: Okay. And with regard to the prohibition of short term vacation rentals, that condition has really been looked at not only on this project but in other projects. But I have found that what people are doing now is there's timeshares or interval ownership, or what they're now terming "Fractional Ownership" where you have a certain period of time that you can come during that year. And I don't know if they're doing it through, I guess you could do it

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through Limited Liability Corporation where your ownership in the LLC may be how you would actually be, I guess deemed one of the owners. So have you had experience with those types of ownership issues because they really mimic hotel use?

MS. SUYAMA: The only project that I'm aware of that this issue came up was in Kaanapali. The five lot subdivision where after the units were built and the lots were sold some people came together and they bought in terms of joint ownership the whole house. And they said that while there's four owners it's divided between the four and the four people decide what interval that they, they will use the unit as a vacation home. It's not, it doesn't go through the timeshare review that you go through the Department of Consumers, Consumer Protect..., I think RICO. They don't go through that same process so they're not considered a timeshare project like some other ones where you, you sell one week intervals in a unit and it's recorded that your ownership is that one week interval.

Those timeshare projects are restricted to certain areas and within the single-family residential area timeshares are not a permitted use. It's, you know, it, I mean to me vacation rentals are not a permitted use in the residential areas. It doesn't mean that people don't do it, you know, and to me I think if you put a condition that no Transient Vacation Rentals are permitted it's very clear to the owners that, that is not a permitted use on the property. And the only way you can get that use at some future date is to change the zoning conditions, which means you go through the same zoning process as a Change in Zoning, what they're going through now. In other words you go back to Council and you ask for that condition to be either deleted or amended in some way.

COUNCILMEMBER JOHNSON: And, and perhaps one of the things that we could do would be to add a condition that specifies because this is residential and it's single-family, it's not multi-family. Is that correct?

MS. SUYAMA: Yes.

COUNCILMEMBER JOHNSON: Okay. Maybe what we could do is put in a condition that specifies single-family ownership only will be permitted. So, in other words, they can't use all these creative loopholes to get their little buddies, you know, which are really operating just like a hotel. So I mean I've seen it done in other complexes and it doesn't make me happy. So, anyway, I guess we'll talk about that when we get to conditions if this moves forward. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. This is for Corporation Counsel. You know, we had a testifier, in fact the last testifier in regards to the issue of land ownership. And, you know, this is not the only project that we hear about land ownership. Can you give us some comments in regards to how do we determine the ownership of the land for any project that is being proposed here in Maui County?

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MR. GIROUX: I think when Corp. Counsel is asked to look into it we usually try to look to see if there's a warranty deed. Sometimes they'll show us their title report then that title report will refer to the deed and then we'd, we'd still want to. . .you know, if we are asked to, to confirm that we want to see the deed. And oftentimes we, we will talk to the, the consultant and make sure that they get us the latest copy of any deeds or any transactions. Sometimes the land will be sold while it's going through its entitlement process and so we will ask for an updated deed.

VICE-CHAIR PONTANILLA: So whenever it does go to, like say in this case here it went to the Planning Commission. Is there any advice that's given to the Planning Commission in regards to land ownership?

MR. GIROUX: Usually because it's a, it's a, you know, it's just a review body they, they don't have final authority. We rely heavily on the Department to, in their looking at the application to do the initial screening. And once it gets to the Council we do then oftentimes there's a heightened scrutiny because oftentimes there is change in ownership along the way.

VICE-CHAIR PONTANILLA: This would be the Planning Department. Yeah, maybe same question for the Planning Department.

MS. SUYAMA: In this case a warranty deed was included as part of the application documentation as proof of ownership. And I believe all the necessary authorization letters to allow the applicant to come in for the Land Use re-designations were received at that time.

VICE-CHAIR PONTANILLA: Okay. Thank you. The question, other question that I had was for Public Works.

CHAIR MOLINA: Okay. Proceed, Mr. Pontanilla. Mr. Deputy Director, Mr. Miyamoto, if you could please come up.

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Before we continue, I, could I just follow up if Mr. Pontanilla would let me on his question about the warranty deed?

VICE-CHAIR PONTANILLA: Sure.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Go ahead.

CHAIR MOLINA: Okay. Member Anderson.

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COUNCILMEMBER ANDERSON: Thank you. So, are you saying Mr. Corporation Counsel that a warranty deed, which usually says for 10, for \$10 and other considerations we are granting such and such land to this entity. You consider a warranty deed a clear title?

MR. GIROUX: Well, as far as, you know, land transactions what, what you usually do is, you know, there's, there's different levels of, of scrutiny that you might put, you know, and what we try to do is at a minimum look at what would be, what would be legally defensible as in a transaction as far as a conveyance. Although zoning doesn't require that high of a standard we do try to, you know, at least to have some level of comfort in knowing that the person is holding a valid deed. People can do title searches, oftentimes you'll see title insurance with that having a title report. There's all levels of scrutiny as far as somebody, and if somebody wanted to actually take an action to court and then do a, you know, a title, quiet title action then there's another whole level of scrutiny that the courts would look at as far as title. But in, in the transactional world there is a certain amount of deference given to a title that is given by the government that says that, that the title has been transferred and it's legally transferred.

COUNCILMEMBER ANDERSON: Again, my question is do you consider a warranty deed clear title?

MR. GIROUX: Your, your question is clear title as far as zoning that. . .*(inaudible)*. . .

COUNCILMEMBER ANDERSON: No. I'm just asking you if you consider a warranty deed as evidence of clear title?

MR. GIROUX: Well I think there's a certain level of presumption that you have to, to give it and not saying it can't be challenged. All, all titles in Hawaii are open to challenge at any given time and that's why you have title insurance. Because the title company says that we will defend you in the court of law if it so happens that somebody does challenge that. So you're, you're not guaranteed title, you're, you're guaranteed that you'll have an insurance company defending you in the court of law.

COUNCILMEMBER ANDERSON: So what you're saying is that a warranty deed does not give clear title?

MR. GIROUX: Well it's as good as it gets.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Mr. Pontanilla, questions for Deputy Director Miyamoto?

VICE-CHAIR PONTANILLA: Thank you, Chair. Question for the Director, since the Public Works do the building, building code ordinance, is there something, you know, because we talking about lack of water all the time, is there any ordinance presently that, you know, tell builders that you

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gotta use water saving devices for certain areas in this County? In other words, building standards. Do we require them to do that?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: Mr. Chair, with regards to specific areas I'm not sure if there's anything that relates to specific areas. But I think that, you know, they are encouraged to use water conservation, energy, as the County is moving towards lead certification. I mean, certainly it's something that's being very well encouraged by the Planning Commission and this Council and also with the, our building permits.

VICE-CHAIR PONTANILLA: So as far as the subdivision standards do we encourage that?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: To some degree I think we do I think, you know, even in like the, the recently outdoor lighting there's also things in there that tries to shield the lights and certain types of lights that can be considered as energy conserving. To some degree I think we, you know, with the standards, you know, we have the low flush toilets and the, the reduce flow showerheads, fixtures and things of that nature.

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

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Committee Members, any other questions for Mr. Miyamoto? Member Anderson?

COUNCILMEMBER ANDERSON: Thank you. Mr. Miyamoto, do you have a copy of the Planning Department transmittal to the Council would be, January 25, '02? Exhibit 7 is a letter from your Department.

CHAIR MOLINA: Mr. Director, you need a little bit more time to find that letter?

MR. MIYAMOTO: If you could repeat the date of the transmittal again?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Ms. Suyama should probably have a copy of the report and Exhibit 7 is the review letter from your Department on the report and it's dated October 8, 2001.

MR. MIYAMOTO: Yes. I do see it. I have it in front of me.

COUNCILMEMBER ANDERSON: Okay. Great. It says on Item 2 that the developer is not required to pay assessment fees for this area at the current time. Could you explain that if possible?

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CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: Mr. Chair, I have to, I, yeah, I'm assuming that was regarding sewer assessments at the time. But I know that we did, in February of, February 21st of 2006 we did file additional comments regarding this. But I'd have to do a little bit more research if I . . .

COUNCILMEMBER ANDERSON: Well, wait a minute, let's look at that February 26th.

MR. MIYAMOTO: Twenty-first, 2006 letter. Yeah. Okay. I'm going to have to research this further then.

CHAIR MOLINA: February of 2006, Mr. Director, again that was 20 . . .

MR. MIYAMOTO: Twenty-first --

CHAIR MOLINA: Twenty-first. Okay.

MR. MIYAMOTO: --of 2006.

CHAIR MOLINA: Okay. Members, have you found that letter? Staff?

MR. MIYAMOTO: Mr. Chair, it may not be in your files from what I'm, from what the Planning Staff is telling me. It may be something that may just be in our files. But we did provide additional comments and there was no . . .reference made to not being charged assessment fees. It goes through our standard process and it does confirm that this project will conform to the, to the four lots or more subdivision process.

COUNCILMEMBER ANDERSON: Could we get a copy of that letter, Mr. Chair?

CHAIR MOLINA: Okay. Staff will make a request for that letter from the Public Works Department. Yeah.

COUNCILMEMBER ANDERSON: So, you know, I know that the . . .(*change tape, start 2B*). . .is a State function. But would you, would you guys be involved in notification of it or have any notice at all if a Condominium Property Regime was filed on this property?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: I'm not aware of, if anything's been filed. To be honest, I, I don't know. In looking at our files though in regards to your previous question the assessment fees did refer to the sewer system because they were not going to be connecting to the County sewer system.

COUNCILMEMBER ANDERSON: And so that's what you were referencing?

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MR. MIYAMOTO: Yeah. I just, I looked further back at the, in the file and it has comments from our Wastewater Division that says no assessment fees will be assessed as they don't connect to the County system.

COUNCILMEMBER ANDERSON: But as I recall, now I've lost my place, here we go, the older letter. You're recommending that, have you guys done any further. . .consultation or consideration on this project for an individual wastewater systems? I got a real problem with that, because this is right on the coastline. This is one of the few sandy beach areas that we have down there that is not on the impaired water bodies list which means it's no longer Class A waters. And so I would like to see them be required to hookup to the Makena wastewater system. And, and, you know, Garcia's right next door, they're going to be coming forward also and I think Ms. Suyama said that they were in discussion with Makena Resort in hooking up to their wastewater system. So, would that be something that you folks would like to see happen?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: Our current, current ordinances doesn't, if the County system is within so many feet of a property, yes, they would have to connect and if they're beyond that then it becomes the Department of Health who then regulates it. Given the recent report about near shore waters and the, the possible implications of injection wells and, and this, private, the private system would have some kind of a leech field I imagine that could possibly make its way down to the near shore waters. It's always desirable but we have no control over it at this point in, in the process.

COUNCILMEMBER ANDERSON: You may not, but we do.

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER ANDERSON: And so we're asking, you know, as, as a professional if that would be the wiser decision given the circumstances that we have right now. I mean our coral reefs are totally degraded and they are degrading every year. And so if we have the opportunity to hookup and it didn't look like it would be that big a deal although I'd certainly like to see it avoid any historic sites. That means they have to jog their lines around a little. It didn't seem like it would be that difficult. So, Chair, could I ask Ms. Suyama a little bit about that too because. Ms. Suyama, are you --

CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: --the planner on the Garcia, the adjacent property? Are you familiar with it?

MS. SUYAMA: I'm not the planner on the Garcia property. It originally was handled by Jeffery Hunt until he became the Director and it has since been reassigned to Clayton Yoshida from our office.

COUNCILMEMBER ANDERSON: So you don't know anything about it?

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MS. SUYAMA: Very little other than they came in for the District Boundary Amendment but nothing of the specifics on the property.

COUNCILMEMBER ANDERSON: You don't know what kind of development they're planning?

MS. SUYAMA: I believe they were planning residential uses also. But I really don't know, you know, much of the specifics so I'm really hesitant to answer your questions about the Garcia project.

CHAIR MOLINA: Member Anderson, what we could do is through Committee Staff we can forward the question to the Department and get a response.

COUNCILMEMBER ANDERSON: Yeah. Because I think we need to look at, Mr. Chair, we're supposed to be maintaining a rural character in this area and if, and we're also supposed to be looking at cumulative and secondary impacts in a Change in Zoning. And to me that means you look at the surrounding area and what the use is, the current uses are and what the planned uses are. And we do know that the Garcia's have a planned use that they're bringing forward. It's I think even already at the Council. And so it would be, I think advantageous for us to see, you know, we're making decisions incrementally, but we need to look at what we're doing in its totality. And so I'd like to see, you know, some way, these two properties even though they're separate TMKs and they have separate western boundaries around them now. They are on land that, you know, has Hawaiian antiquities on it that need to be preserved and need to be in their contiguous nature presented for educational and public enjoyment purposes.

And I don't see anything in this project that lends itself to that. I mean the driveway to this project goes right through the northern corner where there is the stepping stone trail and what they consider a habitation site. And it's all connected. The stepping stone trail leads right to the Kalani Heiau. So, I mean, we had Office of Planning mention it, we had State Historic mention it, that there needs to be, you know, it needs to be considered in its totality. And so I would hope that we would have the opportunity for, for looking at these two projects, at least whatever the Garcia's have planned, whatever their historic preservation plan is. We need to see them both together, Mr. Chairman, to see the big picture here. I mean otherwise we're just like, you know, tying up, a blindfold on and throwing a dart and hoping it lands right.

CHAIR MOLINA: Okay. So noted, Member Anderson. Members, as it relates to this matter I think there's, we're going to need additional time for discussion which I don't believe we will have today. So, the Chair will let, maybe we'll spend a few more minutes because we do have two more items to address on our agenda today. I, I did ask Mr. Matsui from the Parks Department to comment on a proposed conditions. So if there are no objections I'd like to excuse Mr. Miyamoto for now and bring up Mr. Matsui and with what little time we have left to discuss this project. And then in the future we'll bring this matter back to the Committee.

COUNCIL MEMBERS: No objections.

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COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: If I may? If you could give each one of us an opportunity to just list the questions that we have so that next time they come back --

CHAIR MOLINA: . . .*(Inaudible)*. . .

COUNCILMEMBER ANDERSON: --they've had an opportunity to get the information that we feel we need.

CHAIR MOLINA: That's right. Thank you, Member Anderson. In addition to that Committee Staff will make note, will be receptive to your questions and we'll forward those questions in writing as well --

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: --to the various resource personnel. Mr. Matsui, the Chair just has, would like your comments on the proposed condition from the applicant. They are offering to do four additional parking stalls and there was of course a consideration from Member Anderson to expand that to six. Can I get your comments?

MR. MATSUI: On the parking stalls?

CHAIR MOLINA: Uh-huh.

MR. MATSUI: Yeah. I guess we support it. You know there's a nice beach across the street and it would be good to have more parking.

CHAIR MOLINA: And I know there's a no parking restriction within the area and I'm sure there are a lot of people that do, you know, forgo that, I guess restriction and still park there anyway. So you see this as a community, major community benefit then?

MR. MATSUI: Yes.

CHAIR MOLINA: Okay. Thank you. Members, any questions for Mr. Matsui? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. In regards to the County, I guess restroom facility across the church, are we hooked up to the Makena Resort, the pump station at this time?

MR. MATSUI: Yes.

VICE-CHAIR PONTANILLA: We are?

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MR. MATSUI: Yes.

VICE-CHAIR PONTANILLA: And we probably is the only, I guess, customer that they have in that one particular area?

MR. MATSUI: No. We have, we have another, the other restroom by the landing. And that's not hooked up to the, we put in a septic system with a leech field.

VICE-CHAIR PONTANILLA: Okay. So the one that across the church is hooked up to the, the force main station area?

MR. MATSUI: Yes.

VICE-CHAIR PONTANILLA: Okay. Fine.

CHAIR MOLINA: Thank you, Mr. Pontanilla. If there's no other questions for Mr. Matsui, the Chair has a quick question for the Deputy Planning Director. The applicant is entitled to build up to a height of 30 feet for their structures. And I believe they're requesting 26 feet as a max. Would you recommend that the Committee place a condition in there setting the height limitation at 26 feet even though they're entitled to go to 30?

MS. SUYAMA: If the applicant is not objectionable to that because 30 feet is what's in the Code that allows them to do that.

CHAIR MOLINA: And the indications we get is that their structures are not going to go above 26 feet. So, okay. That's, I just wanted to get your input on that because the Chair's considering a condition such as that.

VICE-CHAIR PONTANILLA: Chair, one more.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. For the Planning Department. Back in January 8, 2002 again coming back to the, the sewer line, according to the applicant at that time there were supposed to be negotiations with the adjoining landowners in regards to an easement to facilitate the sewer line, future sewer line. Do you know the status of that?

MS. SUYAMA: No. I don't. You would have to discuss that with the applicant.

VICE-CHAIR PONTANILLA: Fine. Thank you.

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CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Okay, Members, the Chair would like to give you an opportunity to give input to the Committee as to what questions our resource personnel should be aware of the next time we meet on this matter. Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. There are two things that I'm interested in that can be reported in later, on later. And one is on the parking stalls for the units. Initially, in 2001, in looking over their files the initial proposal was four parking stalls for each unit based on four bedrooms. And I don't know, it evolved to what, what we have now which is two parking stalls and two guest parking stalls. So I'm kind of interested in how that happened and how that was decided. The other thing that I would like to verify is that we actually have, it was mentioned that we already have four water meters. I'd like to know if we really have them. And if we have them do we have the water to service them. Thank you.

CHAIR MOLINA: All right. Staff will take note of that request and we'll get, try our best to get responses to those questions, Member Baisa. Okay. Members, the, Member Johnson, you had something?

COUNCILMEMBER JOHNSON: No. And I just wanted the answer, well, I guess Mr. Miyamoto did say that they would be subject to all of the current subdivision standards. So, whatever those are.

CHAIR MOLINA: Okay. All right. Thank you, Member Johnson. Alrighty [*sic*], Members, the Chair will defer, before we do so, Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. I have a few questions I'd like to get answers to before we meet again on this.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: One is I'd like to know when they were issued for meters, the date. When they received their Condominium Property Regime. I would like to see the inventory survey that was done on the Garcia property and if there's a preservation plan I'd like to see that. And, you know, I, I think that, and maybe whatever, if we could have a map that shows, you know, everything makai is basically either, or correct me if I'm wrong, but I'm assuming everything makai is either already developed or park and open space. There's no vacant land makai that is still open for development. Is that, is that true, Ms. Suyama?

CHAIR MOLINA: Deputy Director?

COUNCILMEMBER ANDERSON: I'm just going off memory here.

MS. SUYAMA: Is this with regard to the Keoneoio-Makena Road? Everything makai of that? Right now what's makai of the property and the Garcia property is the beach right-of-way, a beach park that was required for the Seibu resort when they opened their, when they did the improvements. And then after that is the Keawalai Church.

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COUNCILMEMBER ANDERSON: So everything up to Keawalai is already built out?

MS. SUYAMA: I believe it is except there may be some individual lots that are not owned by the resort that have not been developed. I'm not definitely sure but Makena Resort has no other properties to develop on the makai side.

COUNCILMEMBER ANDERSON: So if we could have a, a map or even just a site plan of some kind that shows all the properties along this section of Makena Road up to Keawalai Church on the makai, I mean the mauka side. Up to the Maluaka Beach parking lot I think would be appropriate. I know, I think we, I think we already approved something along here. But I'm confused, we've looked at this several times and I might be thinking of that. So if we could have something that shows what the plans are along this section of Makena-Keoneoio Road would be helpful.

MS. SUYAMA: Okay. The Department can do that.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER ANDERSON: And then, and then one other thing is, you know, I'd like to have a little clearer understanding of the sites that are here and, you know, Criteria D is, you know, that's a significance level for preservation but they're not intending to preserve anything. And so I would like to have some justification for that. And, you know, I think there needs to be, maybe the . . . archaeologist on this project could interface with the archaeologist on the Garcia property and see if they can, you know, do a little bit of combined research here to, to either refute or support the connection. I mean you're basically a stones throw away from this heiau. And I don't know how you can separate it and say, you know, because we have a property line dividing these historic sites everything on this side of the property line we can destroy. I'd like to see some justification for that and hopefully that the applicant can look at some alternative ways of this design. It seems extremely dense and I think that there should be a way for them to respect the sites that are in the northern corner and still, you know, reach their goal. I just think it's a very urban style project in an area that's supposed to be rural.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay, Members, with that being said, if no objections the Chair will defer this matter.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: RH, DM, BM).

ACTION: DEFER pending further discussion.

CHAIR MOLINA: Okay. Thank you, Members.

COUNCILMEMBER ANDERSON: Oh, and one other thing, Chair.

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CHAIR MOLINA: Yes.

COUNCILMEMBER ANDERSON: Maybe they would have, have the time to also speak with the Garcia's and Makena Resort and see if they can't work out a deal with the sewage.

CHAIR MOLINA: Okay. So noted.

ITEM NO. 57: CHANGE IN ZONING FOR 232 AND 242 LAHAINALUNA ROAD (LAHAINA) (C.C. No. 04-248)

CHAIR MOLINA: All right. Members, we're going to go right into our next two items, LU-57 and LU-59. All right. Members, the last time we met on this matter was on February 28th. And this relates to County Communication No. 04-248 from The Planning Director transmitting a proposed bill to amend Ordinance No. 1585 by deleting certain existing conditions of zoning and expanding the uses permitted on property zoned B-2 Community Business District, located at 232 Lahainaluna Road and 242 Lahainaluna Road, Lahaina, Maui.

Also we're considering a correspondence dated January 19, 2007, from the Department of Corporation Counsel, transmitting a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD". The intent of the revised proposed bill is to amend Ordinance No. 1585 by deleting certain existing conditions of zoning and expanding the uses permitted on the subject property.

Before we go into, any further on this matter, Committee Secretary, did we have any sign ups for Land Use Items 57 as well as Land Use Items 59?

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay. Members, if there are no objections the Chairman will close testimony for Land Use Item 57 and Land Use Item 59.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered. Okay. Members, at this point, let's see, since the, the February 28th meeting the Committee did receive the following information from the Public Works Director. A document dated March 5, '07 transmitting a copy of the Department's October 31, October 31, 1985 comments referenced in Condition No. 5 of Ordinance No. 1585. Also responses from the owners dated April 20, '07 and 6/29/07 regarding current and future anticipated uses of the properties. And we did get a response from the Corporation Counsel's office dated April 25, '07 transmitting the Office of Environmental Quality Controls April 20, 2007 response to the question of whether an EA is required under Section 343.5(a)(4)

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of Hawaii Revised Statutes in connection with the amendment of zoning ordinances for two properties located within the Lahaina National Historic Landmark District.

And joining us from the Planning Department we have Planner Ann Cua. Welcome to our proceedings today, Ms. Cua. And we also have the Police Department on call if there are any additional questions for the Police as it relates to this application. So, Members, I'll, I'll give the Planning Department an additional opportunity to comment if they choose too. Otherwise we'll open the floor for questions. Ms. Cua?

MS. CUA: We, we did a presentation at, at the last meeting and I, I don't really think we, I need to go over that again. I think where we left it was with the, the uses. If you recall the, the Planning Department had recommended excluding a number of uses from the B-2 Business District. When we took the matter to the Planning Commission they further restricted the uses partly based on some of the testimony we had received at the public hearing. And then when the matter came before the Council I think where we left it where you were, you were considering possibly further restricting those uses as well.

CHAIR MOLINA: Okay. Thank you, Ms. Cua. Member Johnson, as the area representative do you have any comments or questions? And I know one of the major issues from our last meeting was the subject of the EA being required.

COUNCILMEMBER JOHNSON: No. I had an opportunity actually to meet with the applicant and go over some of the issues because my concern was that there was a property across the way from it that, you know, it had certain prohibitions on it too. And I think the concerns raised at the last meeting, 'cause that is such a congested area, was we just don't want any and every business to be operating in that area. So I think the additional prohibition of certain activities on those lots was very important to me. And particularly when I look at the circulation of that area anyway. So, those are my biggest concerns. I know that Member Anderson did have a question and I don't know if her issues have been addressed. But at least from my perspective that was my principle focus because, you know, it, it really is congested and it's very dangerous along that whole stretch and the traffic does backup from people coming off Honoapiilani Highway and particularly in late afternoon, early morning when they're making turns in that area onto Lahainaluna. So, I, I, I'm at this point in time, I don't have any issues that I need any further information on and I do appreciate the, you know, the applicant being willing to further restrict those uses on the property. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Questions, Members, for the Department or any of our resource personnel? Well, let me, before the Chair makes a recommendation. The Chair did have a couple of questions.

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: Oh. I'm sorry. Member Anderson?

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COUNCILMEMBER ANDERSON: Did you want to go ahead?

CHAIR MOLINA: No. No. Go ahead. I'm trying to find my place here. But you can go ahead.

COUNCILMEMBER ANDERSON: Me too.

CHAIR MOLINA: I'll yield the floor to you.

COUNCILMEMBER ANDERSON: You know, I had asked, I know we got a letter from them because the last time we met I had a problem with just giving them B-2 because there are too many permitted uses under B-2 for this, I think, sensitive inner section property. And so then they, they said that there would be, they would, I think we got a letter from them saying that they would agree to prohibit certain properties. But I think what's more important is that we have a list of the properties that are permitted. And that we condition this with, you know, give them the B-2 and then condition it with just those properties that are, I mean those uses that are permitted that we feel would be appropriate for the area. And I thought I saw a letter listing all of them, but I haven't been able to find it. So I do have a list from the B-2 Code 19.18 with all of the items crossed out. With all of the items crossed out. Oh, you got that too?

COUNCILMEMBER JOHNSON: Yeah. It's right here.

COUNCILMEMBER ANDERSON: Okay. All right. Here it is. Yeah. So that we just make a condition and there isn't anything on here that I would have a problem with. And I think if I might just for the record, Mr. Chair, and for people listening that it would include, the permitted uses would include: antique shops; art galleries; awning or canvas shop; bath, Turkish and the like, including masseurs; block print; block printing establishment; business office and agencies; catering establishments, not employing more than five people; charity organizations; custom dress making, haberdashery, and women's apparel. Jewelry stores or fine art, including interior decorating; library, news and music stand, or magazine stands; nurseries, provided that all incidental equipment and supplies including fertilizers and empty cans are kept within enclosed buildings.

You know, the reason I was concerned about this, Mr. Chairman, when we last met is that you have several parcels contiguous and that there's the option if we give them B-2 that someone could buy all those parcels, tear down those buildings and put something large in there that I think may not be appropriate due to the traffic congestion in the area. So we want to, you know, narrow down the scope so that they can't do that. And I don't know that a nursery would be an appropriate thing.

Nursing and convalescent home; parcel delivery; pet shop does not involve boarding of animals; a photo studio, plumbing shop; printing; lithography; private club or fraternal organization; professional; financial; shoe store; sign shop; skating shop; tailor shop; warehouses and yards which are adjunct to and part of the operation of the permitted uses listed above. Bed and breakfast. . .do you hear that gang? Bed and breakfast subject to the restrictions and standards of

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19.64, any other retail business or commercial enterprise which are similar in character of rendering sales of commodities or performance of services to the community and not detrimental to the welfare of the surrounding area provided, however, that such uses shall be approved by the Commission.

Well, I have no problem with any of it, even the warehouses and yards if they are adjunct to and part of a permitted use. But I do have a problem with a nursery because I think that that is a high volume and high traffic kind of situation. And, you know, we have to think down the road, Members, you know, it's very likely that we up-zone this property and give it the zoning that, you know, they could sell off these lots and someone could come in and buy em all, tear all the houses down and do something larger. So personally I agree with all of these except for a nursery.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Comments, Members? Member Baisa?

COUNCILMEMBER BAISA: Member, I'm sorry, Chair Molina, I had the opportunity to meet with the applicants and they, they had this list with them when they came. And we had a very good discussion and we talked about many of the issues that I'm, I'm unfamiliar with that come up neighborhoods. You know, things like Hula studios and things that make noise and people coming and going and whatever. And we did talk about, you know, just taking a lot of this off the list. And the applicants were extremely willing to do that. I think they're very sensitive to the fact that they don't want to, you know, impact either the traffic or the neighborhood in a negative way.

And I noticed that in our letter that we got in the end of June that they have agreed to additional, you know, taking additional things off the list. They're taking off automobile parts, dancing, Hula studios, dry goods, department stores, music conservatories, music studios and restaurants. And so there's pretty much an exhaustive list already of the things that they would not consider. So having a great deal of faith in people I think they understand where we're going. However, if it is necessary to put this in our approval to protect what Member Anderson is talking about, well, you know, I understand that too. But I think our applicants are a young couple trying to develop a business for themselves to benefit our community and our family and I think they understand what is needed.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, any comments to the proposed additional prohibitions as it relates to the conditions for LU-57? . . . *(change tape, start 3A)*. . .

VICE-CHAIR PONTANILLA: Yeah. Maybe if the applicant can come forward and --

CHAIR MOLINA: Sure.

VICE-CHAIR PONTANILLA: --you know, ask the question about nurseries.

CHAIR MOLINA: You read my mind, Member Pontanilla.

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COUNCILMEMBER ANDERSON: I just asked them, Mr. Chair.

MS. OHASHI HIRAGA (from the audience): . . . (*inaudible*) . . .

CHAIR MOLINA: Okay. The, the, okay, we've been told from the gallery by the applicant's representative that the applicant has no problem with restricting nurseries.

VICE-CHAIR PONTANILLA: Okay. Fine.

CHAIR MOLINA: Okay. Alrighty [*sic*]. So we will make that notation, Staff, to I guess cross out No. 41 as far as uses on the, under County Code Chapter 19.18, cross out No. 41, Nurseries. And not nursing right? Just nurseries? Okay.

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER BAISA: How about a new baby? . . . (*chuckled*) . . .

CHAIR MOLINA: . . . (*chuckled*) . . . Okay. Alrighty [*sic*]. Okay. Members, if there are no other suggestions the Chair is ready to offer a recommendation.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. The last thing I wanted to make sure that, that this applicant, I know and also has, he seen all of us and they've worked really hard compiling a terrific list here. And I think it just shows that when a kamaaina family with kamaaina, kamaaina ideas come through we can really work together and come up with something very, very plausible for the whole community. And knowing that area and, and working in that area for over 20 years I understand the sensitivity. The only one that I still have a little concern is financial buildings. And the reason I bring that up and I, I, I, I did not really think about it until just the other day I was at Bank of Hawaii and this was at Wailuku and there was no parking in the entire area. And this is like on Friday, Social Security weekend and everybody is just jammed packed.

So financial institutions worry me in that respect, not that they are not good for the community but it does have at times a very heavy impact as far as traffic and parking, oh, the desire for parking in that area. That would be No. 51. I don't have so much a problem with professional, but the financial building part, you know. So that's the only one that I still had a concern on and really other than that they've done a fine job. I have no problem with this project. I would gladly support it. I'd gladly . . .*um*. . . recommend that this approval be made. But financial institutions or financial buildings sometimes can be a very, you know, heavy, heavily trafficked area and again being that I'm very aware with that area and the impact that more traffic would

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have in that area especially certain time, payroll weekends, et cetera, et cetera. I'm just concerned so I would like to ask the applicant if that one, I know we kept asking for one more, if that one more could be stricken from the --

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: --the desire, project.

CHAIR MOLINA: All right. Mr. Victorino, I've received word from the applicant's representative, they have no problems with striking out financial buildings and just leaving it as professional buildings.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. I appreciate it. And thank you again applicant for your consideration. I think that just shows how wonderful they are as far as working with us.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: Chair, I might suggest that we leave financial buildings and then just put excluding banks because . . .

COUNCILMEMBER JOHNSON: But that's already excluded.

COUNCILMEMBER ANDERSON: Huh?

COUNCILMEMBER JOHNSON: That's already excluded . . . *(inaudible)* . . .

CHAIR MOLINA: Yeah. I think banks . . .

COUNCILMEMBER ANDERSON: What?

CHAIR MOLINA: Planning Department I believe we've excluded banks?

COUNCILMEMBER ANDERSON: No, because there are other financial buildings.

COUNCILMEMBER VICTORINO: Well that's --

COUNCILMEMBER ANDERSON: Thirty . . .

COUNCILMEMBER VICTORINO: --thirteen.

COUNCILMEMBER BAISA: Thirteen says banks and it's scratched out.

COUNCILMEMBER VICTORINO: Thirteen. Yeah.

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COUNCILMEMBER ANDERSON: Oh. Oh. Thirteen is banks and it's already crossed out.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: I'm, I'm referring not only to banks but other financial institutions.

COUNCILMEMBER ANDERSON: Okay. All right. That's fine.

CHAIR MOLINA: You're talking about like maybe --

COUNCILMEMBER VICTORINO: Mortgages.

CHAIR MOLINA: --loan, loan companies --

COUNCILMEMBER VICTORINO: Yes.

CHAIR MOLINA: --mortgage companies so.

COUNCILMEMBER VICTORINO: Any of these. Yeah.

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER VICTORINO: Yes.

CHAIR MOLINA: All right.

COUNCILMEMBER ANDERSON: All right.

COUNCILMEMBER VICTORINO: Okay. Thank you.

CHAIR MOLINA: All right. Okay. Now that we've made that clarification is everybody clear on that?
All right. Very good, Members.

COUNCILMEMBER VICTORINO: I apologize for my example.

CHAIR MOLINA: No. No. No apologies necessary, Mr. Victorino. All right. Members, the Chair is ready to offer a recommendation on Land Use Item 57. Okay.

COUNCILMEMBER VICTORINO: Recommendation.

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CHAIR MOLINA: Thank you, Mr. Victorino. The Chair will recommend passage on first reading of the revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII".

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been moved by Member Johnson, seconded by Member Victorino. Any comments? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Yes, Staff?

MS. NAKATA: Could staff just clarify? That would be as, as further revised to include the additional prohibited uses in the applicant's June 29, 2007 letter as well as the two additional exclusions discussed at the meeting today?

CHAIR MOLINA: Okay. Will that make it cleaner then if proceed in that fashion, Staff?

MS. NAKATA: Yes. I believe so.

CHAIR MOLINA: All right. So noted. Members, you're aware of the I guess how we're going to phrase this motion as mentioned by Staff? All right. It's all clear to the Members?

COUNCILMEMBER VICTORINO: Yes.

CHAIR MOLINA: Comments on the motion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FIRST READING of revised proposed bill, and RECORDATION of unilateral agreement (232 and 242 Lahainaluna Road).**

CHAIR MOLINA: Thank you. The Chair will mark it seven, zero with two excusals, Member Mateo and Member Medeiros. Let's go to LU-59.

MS. NAKATA: Excuse me, Mr. Chair.

COUNCILMEMBER ANDERSON: Mr. Chair.

MS. NAKATA: Will there also be a motion to file the communication?

CHAIR MOLINA: I believe wasn't that included in the motion?

COUNCILMEMBER VICTORINO: No.

COUNCILMEMBER ANDERSON: No.

CHAIR MOLINA: Okay. I apologize. Okay. Members, if there's no objections this will include a filing of County Communication No. 04-248.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: DM, BM).

ACTION: **Recommending FILING of communication (232 and 242 Lahainaluna Road).**

CHAIR MOLINA: Okay. Member Anderson?

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COUNCILMEMBER ANDERSON: Yeah. I did want to make a comment, Mr. Chair. And I should have said something when you had asked for discussion. But we were on a roll. I just want to thank these folks for being so cooperative.

CHAIR MOLINA: You know what Member Anderson, we still got to do LU-59, which relates to the applicant so if you want to save your thank yous [*sic*] for a --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: --we still got. . .

COUNCILMEMBER ANDERSON: Oh. We got one more.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: Okay. Good.

CHAIR MOLINA: Fifty, 59 is related to 57 so.

COUNCILMEMBER ANDERSON: Yeah. Yeah. Yeah. Okay.

CHAIR MOLINA: So just thought I'd make you aware so you can give an even bigger thank you at a later point.

ITEM NO. 59: CHANGE IN ZONING FOR 252 LAHAINALUNA ROAD (LAHAINA)
(C.C. No. 04-249)

CHAIR MOLINA: All right, Members, LU-59 relates to County Communication No. 04-249, from the Planning Director, transmitting a proposed bill to amend Ordinance No. 1537 by deleting certain existing conditions of zoning and expanding the uses permitted on property zoned B-2 Community Business District, located at 252 Lahainaluna Road, Lahaina, Maui. And also we'll be considering a correspondence dated February 16, 2007, from the Corporation Counsel's office, transmitting a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII". The intent of the revised proposed bill is to amend Ordinance No. 1537 by deleting certain existing conditions of zoning and expanding the uses permitted on the subject property.

And since the February 28th meeting we did get again responses from the owners dated April 20, '07 and 6/29/07 regarding current and future anticipated uses of the properties. And along with the same response from the Corporation Counsel's office dated April 25, '07 transmitting the OEQCs April 20, 2007 response. And I'm going to ask again, Planner Ann Cua,

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if you have any additional comments before I open the floor to questions and any, and the Chair's recommendation?

MS. CUA: No additional comments. It was very similar to the last comments I made.

CHAIR MOLINA: Okay. Thank you. Members, any questions as it relates to LU-59? Member Johnson?

COUNCILMEMBER JOHNSON: Yes. Are the additional prohibitions then going to be included in this one also?

CHAIR MOLINA: I believe it would be. Ms. Cua, can you comment on that?

MS. CUA: Yeah. I believe that the, you're talking about, about even the, the --

COUNCILMEMBER JOHNSON: Previous issue.

MS. CUA: --the two?

COUNCILMEMBER JOHNSON: Yes.

MS. CUA: You would have to ask the applicants on the, the two that were proposed on the floor. But I believe the list that you were distributed at today's meeting pertain to all three properties on Lahainaluna Road.

CHAIR MOLINA: And this would be related to 252 Lahainaluna Road?

COUNCILMEMBER JOHNSON: Uh-huh.

CHAIR MOLINA: Thank you. That's a good point to bring up, Member Johnson.

COUNCILMEMBER JOHNSON: Yeah. I just wanted to not co-mingle the two issues because they are separate and make sure that these applicants are okay. I think we banned three additional plus, you know, the items that were listed in the letter. So I just want to make certain that that's all right.

CHAIR MOLINA: No. That's, that's a good matter to bring up, Member Johnson. I'd like to ask the applicant's representative is this, any issues on this as it relates to 252 with the additional prohibitions?

MS. OHASHI HIRAGA (from the audience): No.

CHAIR MOLINA: Okay. The applicant, we've, we've been given an . . . indication that the applicant is fine with these additional prohibitions. Any other questions before the Chair offers a

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recommendation? Seeing none. The Chair would like to recommend that the, a motion be made on first reading of the revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", and to file County Communication No. 04-249.

COUNCILMEMBER JOHNSON: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. It's been moved by Member Johnson, seconded by Member Pontanilla. Any comments? Discussion? Member Anderson?

COUNCILMEMBER ANDERSON: I didn't hear you say including the two exclusions --

COUNCILMEMBER JOHNSON: Three.

CHAIR MOLINA: Three.

COUNCILMEMBER ANDERSON: --in your motion.

CHAIR MOLINA: Yeah. It would also apply to the property situated at 252 Lahainaluna Road as well.

COUNCILMEMBER ANDERSON: The same exclusions --

CHAIR MOLINA: Yes.

COUNCILMEMBER ANDERSON: --that we did before? Okay.

CHAIR MOLINA: As it relates to that 232 and 242 as well.

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: A lot of two's in there, so it makes it sound. . .

COUNCILMEMBER ANDERSON: A lot of property here.

CHAIR MOLINA: Yeah. Okay.

COUNCILMEMBER ANDERSON: I just would like to thank them for being willing to compromise and give us some assurances that this property is not going to be built out into a 7-11 or something such as that. You know, that's reassuring and I wish them all good luck. Thank you, Chair.

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CHAIR MOLINA: Thank you, Member Anderson. Any additional comments? Staff?

MS. NAKATA: Excuse me, Mr. Chair. Could staff just clarify on one of the conditions under the excluded uses from B-1 Neighborhood Business District so it's in the strikeouts under 19.16.020 sub-part F. Daycare centers and nurseries are fully stricken whereas in the bill I believe the only exclusion is daycare centers -- whether nurseries were intended to be omitted or not or prohibited or not.

CHAIR MOLINA: I believe the Committee feels that nurseries should be prohibited from this property as well. So would we need to have a formal amendment made to the bill?

MS. NAKATA: Yes. If that's the case then the bill should be revised to include "and nurseries under the exclusion for B-1."

CHAIR MOLINA: All right. The Chair is open for a motion to amend. Member Johnson.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been moved by Member Johnson, seconded by Member Victorino to add an additional prohibition of nurseries for the property situated at 252 Lahainaluna Road. Members, any discussion? Member Anderson.

COUNCILMEMBER ANDERSON: Do we need to include financial buildings on that?

CHAIR MOLINA: Ms. Nakata, was the financial building matter as well, was that covered in this bill or do we need to also include that?

MS. NAKATA: No, the financial buildings, that's one of the new exclusions from today's meeting.

CHAIR MOLINA: That's right.

COUNCILMEMBER ANDERSON: Right.

COUNCILMEMBER JOHNSON: We added it.

MS. NAKATA: No. That's fine.

COUNCILMEMBER ANDERSON: I don't understand because the nurseries was a new exclusion, too but whatever.

MS. NAKATA: No.

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CHAIR MOLINA: Ms. Nakata.

MS. NAKATA: Yeah. Let me, let me just clarify. This is not the nurseries under B-2 19.18.020, it's the nurseries combined with daycare centers and nurseries under 19.16.020 B-1.

COUNCILMEMBER ANDERSON: Oh, okay.

CHAIR MOLINA: All right. Is that --

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: --that clear, Members? Okay. Any additional comments on the proposed amendment to the bill? Seeing none. All those in favor of the amendment signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: None.

EXC.: Councilmember Mateo and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion (252 Lahainaluna Road).

CHAIR MOLINA: Thank you. The Chair will mark it seven, zero.

COUNCILMEMBER ANDERSON: Wait a minute, Mr. Chairman.

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: I'm a bit confused now. Because Ms. Nakata just brought up 19.16, which is B-1 Neighborhood Business District. So what we're doing here is we're allowing any permitted use within the B-1 Neighborhood District as well as all these permitted uses in B-2 aside from the ones that we've excluded. Is that correct, Ms. Cua? So, Members, we

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have to be very clear what we're allowing here. We're allowing grocery stores and meat markets, gasoline retailing. That is a B-1 permitted use.

CHAIR MOLINA: Member Anderson, any objections? The applicant would like to respond, give additional clarification?

MS. NAKATA: Mr. Chair.

CHAIR MOLINA: Staff.

MS. NAKATA: Staff would just note that gasoline retailing was one of the exclusions listed in the correspondence from the applicant's representative.

COUNCILMEMBER ANDERSON: It's not crossed out here. That's why I'm confused.

CHAIR MOLINA: Yeah. Okay. Was that the April 20, '07 response I guess from the applicant?

COUNCILMEMBER ANDERSON: Okay. Good.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: And what about grocery stores? Grocery stores has a much, as much traffic as a bank if not more.

CHAIR MOLINA: Staff, was, Staff, was that included in the response? Okay. Members, is that something you would like to consider prohibiting? Can I ask the applicant's representative to come up and respond?

MS. OHASHI HIRAGA (from the audience): Cross it out. Cross it out.

CHAIR MOLINA: Okay. I've been getting an indication the applicant is okay with crossing, with adding to the list of prohibition, grocery stores as well.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Mr. Chair, that would be under B-1, right, now we're talking about?

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: Okay.

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CHAIR MOLINA: So, Staff, do we need that as a form. . . , done as a formal amendment?

MS. NAKATA: The question is just whether it's grocery stores only or grocery stores and meat markets under J.

COUNCILMEMBER ANDERSON: I think it would be both.

CHAIR MOLINA: Both. Yeah.

COUNCILMEMBER ANDERSON: They can have a delicatessen, but not a grocery store or a meat market. They can sell it by the slice.

CHAIR MOLINA: Okay. Staff, any other comments before we proceed?

MS. NAKATA: No, Mr. Chair.

CHAIR MOLINA: Okay. Members, any other comments? We're back to the main motion as amended. So we don't need to add that additional amendment made as it relates to the groceries? We can just do it as a strike out now without a formal amendment?

MS. NAKATA: Would you like to, Staff to read the additional prohibitions I guess that are included within this amendment or . . .

COUNCILMEMBER ANDERSON: Chair, I'd like to --

CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: --amend the main motion.

CHAIR MOLINA: Okay. I think this might be cleaner if we just do it as an amendment. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you. Under B-1 permitted uses, I would like to amend the main motion to exclude gasoline retailing, servicing and such Item N as well as Item J, grocery stores and meat markets.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson, seconded by Member Johnson. Any discussion? Seeing none. All those in favor of the amendment signify by saying aye.

COUNCIL MEMBERS: Aye.

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CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **APPROVE amendment to the main motion (252 Lahainaluna Road).**

CHAIR MOLINA: Thank you. The Chair will mark it seven, zero with two excusals, Members Mateo and Medeiros. We're back to the main motion as amended. Any discussion, Members? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FIRST READING of revised proposed bill, RECORDATION of unilateral agreement, and FILING of communication (252 Lahainaluna Road).**

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CHAIR MOLINA: Seeing none. Thank you. The Chair will mark it seven, zero, two excusals, Members Mateo and Medeiros. Land Use Item 59 passes as well. Okay.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Staff.

MS. NAKATA: Sorry. Did you want to go back to 57 to incorporate those as well or would these additional exclusions pertain only to 59?

COUNCILMEMBER JOHNSON: We should go back.

CHAIR MOLINA: All right. Members, so ordered by the Committee we shall go back to 57 and we shall add the additional exclusions of, is it groceries . . . the, the amendment that was made by Member Anderson, we will include that in LU, Land Use Item 57. Again do we, well, we have a bill that's passed so now what is the procedure, Staff? Shall we do a formal amendment?

MS. NAKATA: A motion to reconsider by --

COUNCILMEMBER JOHNSON: Reconsider.

MS. NAKATA: --one of the Members on the prevailing side.

CHAIR MOLINA: All right. We have to ask for a reconsideration of the prevailing side, which was seven, zero. I need a motion to reconsider.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER ANDERSON: Second.

CHAIR MOLINA: Okay. It's been moved by Member Johnson, seconded by Member Anderson. On the floor we have a motion to reconsider Land Use Item 57. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **APPROVE reconsideration of the main motion (232 and 242 Lahainaluna Road).**

CHAIR MOLINA: Thank you. The Chair will mark it seven, O. The motion to reconsider has passed. So now we are on LU-57 and we are going to consider a proposed amendment. The floor is open. Member Anderson?

COUNCILMEMBER ANDERSON: Okay.

CHAIR MOLINA: It's been a long day.

COUNCILMEMBER ANDERSON: Move to, move to amend, what's the bill number?

CHAIR MOLINA: LU-57.

COUNCILMEMBER ANDERSON: Okay. That'll work. Move to amend LU-57 to exclude under B-1 Neighborhood Business District Item No. J, grocery stores and meat markets as well as Item No. N, gasoline retailing.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson, seconded by Member Johnson to include the additional prohibitions as stated. Any discussion?

MS. NAKATA: Mr. Chair, and that would also include the exclusion of, and nurseries from sub-part F as we did with LU-59.

COUNCILMEMBER ANDERSON: Oh. Thank you, Carla.

CHAIR MOLINA: I believe that would also, that would be included as well.

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COUNCILMEMBER JOHNSON: Friendly amendment.

CHAIR MOLINA: Can we do it as a friendly amendment or is it a formal amendment that would be recommended? Friendly?

COUNCILMEMBER ANDERSON: You know, Mr. Chairman.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: I think that the term nursery in here means like a child's nursery, not a garden center.

CHAIR MOLINA: Well it, well, well there's I believe one has, 41 says nurseries and then we have nursing and convalescent homes.

COUNCILMEMBER ANDERSON: No. I'm looking at B-1 under Item F --

CHAIR MOLINA: Oh, the B-1, I'm sorry.

COUNCILMEMBER ANDERSON: --where it says daycare centers and nurseries. They're talking about babies, not, not a garden nursery. Are you agreeing with me, Ms. Cua?

MS. CUA: I am. But you, you, you actually are deleting both nurseries. There are no nurseries. No plant nurseries, no baby nurseries. If you look at No. 41 under B-2 permitted uses it's the plant nurseries.

COUNCILMEMBER ANDERSON: Right.

MS. CUA: But then the baby nurseries is under B-1, F, daycare centers and nurseries.

COUNCILMEMBER ANDERSON: So that was something that they had originally said that they would cross out?

MS. CUA: What, what happened was daycare centers was always crossed off even when it, when we sent it up to you. But we, we stopped it at daycare centers. I'm, I'm not sure why, I can't recall. So, but, but with the applicant's submittal of these, of this, this zoning list, this permitted use list where they went and basically scratched off the uses that they were willing to, to not have, they did scratch off the entire Item No. F, daycare centers and nursery so.

COUNCILMEMBER ANDERSON: Okay. Then, thank you. Now I'm, if it's already been excluded why do we have to add it in, into the prohibited uses?

CHAIR MOLINA: Staff or Ms. Cua?

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CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: . . .or, or motion to amend the main motion. Because, Members, under Item 66 on B-2 zoning it says any other retail businesses or commercial enterprises which are similar in character of rendering sales of commodities or performance of services to the community not detrimental to the welfare of the surrounding area provided, however, that such uses shall be approved by the Commission as conforming to the intent of this article. And because that's sort of an open ended thing like, you know, ten years down the road if somebody else buys this from them and they want to come in and, and get another use that's not specific here, I would want us to have a condition that says any other uses approved according to 19-point, do they allow that in 16, too? They don't. . .they also allow it in 19.16, other similar retail businesses, blah, blah, blah, approved by the Commission as conforming to the intent of this title. I think we need some kind of condition in here that so the, so the Planning Department who advises the Commission and the Commission will know that the Council does not want any high traffic volume uses on this corner. And I'm not sure how we actually would craft that. If Ms. Cua might come up with something because we are giving an open ended permitted, permission for the Commission to give them other uses.

CHAIR MOLINA: Ms. Cua?

MS. CUA: The thing about when they have to, when they decide to use No. 66 and come to the Commission, you know, we take a look at whatever record there exists for that particular property. And it's, it's always been very clear throughout this whole project from the 1986 conditional zoning that was granted that high, that, that traffic was an issue. And, and I, you know, I don't know if you want to go to that extent, you know, the record is extremely clear in terms of how you have conditioned this project. And, and, you know, when we do a report to the Commission, you know, that's something that we're going to represent.

COUNCILMEMBER ANDERSON: Well, Mr. Chairman, I, I think it is necessary because when they first came to us none of these uses were crossed off. It was just B-2. And. . .

MS. CUA: That's not correct. Oh, I'm sorry, Mr. Chair.

CHAIR MOLINA: Ms. Cua?

MS. CUA: When they came before you there were quite a bit of uses crossed off.

COUNCILMEMBER ANDERSON: But not. . .

MS. CUA: We crossed off a bunch --

COUNCILMEMBER ANDERSON: Yeah. But not. . .

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MS. CUA: --the Commission crossed off a bunch.

COUNCILMEMBER ANDERSON: But we crossed off more so.

MS. CUA: Right.

COUNCILMEMBER ANDERSON: And, and we crossed off ones that would allow high volume traffic. And so I'm just trying to make sure that down the road when you're not here, Ms. Cua, and I'm not here and maybe even these people aren't here anymore that there is something in place that says this property shall, you know, other permitted uses shall not be of high. .high traffic volume. And because there's nothing that prevents that from happening the way it, it, it's worded right now in the ordinance. So I would move to amend the main motion to add a condition that says any other permitted uses approved by the Planning Commission shall not be high traffic volume uses.

CHAIR MOLINA: Okay. Is there a second?

COUNCILMEMBER JOHNSON: Second for discussion.

CHAIR MOLINA: Second for discussion. Okay. The floor is open for discussion on the proposed amendment. I believe Member Anderson gave us her reasons for it. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah. And the only thing I was looking at is if we could get guidance, like at first reading because this is just in Committee right now. And then consider, rather than going back to the other one, you know, we're like bouncing like a ping pong ball at this point, if we could look at these --

CHAIR MOLINA: Get a comment from the Department maybe?

COUNCILMEMBER JOHNSON: --and the wording --

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: --and maybe have comment from the Department as to the language. Because I think the purpose that, it has been very clear but I want to make sure that we tighten up the language and make certain that it's enforceable and whatnot. So that, you know, maybe put something else and I guess Mr. Hokama has a comment. But I would just really like to do it that way.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. Well, if it's not ready to leave Committee then it's not ready to leave Committee. And maybe we should keep it in Committee. But if we are ready, Mr. Chairman, I would say if the Committee wants to make that restriction I would say the

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simplest condition is that any other, any differentiation of permitted uses must return to Council. Period. They just have their permitted uses. Any change from those lists means a Change of Zoning Amendment which means they go through the whole process again.

CHAIR MOLINA: Whoever the owner is.

COUNCILMEMBER HOKAMA: And that way you don't have to worry about whether the Commission is going to be made aware of intention of Council or misunderstanding of interpretation. Just make it very clear. Any changes from the conditions need to return to Council for amendment. And, and we take care of it that way.

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

COUNCILMEMBER ANDERSON: Yeah. I'll withdraw my motion, Mr. Chairman, given Chair Hokama's recommended, which I think is very good.

CHAIR MOLINA: Okay. So could we consider that as an amendment then Chair Hokama's recommendation?

COUNCILMEMBER ANDERSON: I think maybe for --

CHAIR MOLINA: Staff.

COUNCILMEMBER ANDERSON: --since we've, we've got two bills here I would like to make a new motion to that effect for both Item 57 and Item 59. Any other uses not permitted by this Change in Zoning shall require an amendment to the Change in Zoning before the Council.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Thank you, Member Johnson. Staff, since we're considering 59 as well do we need to have a reconsideration for LU-59 or do we, should we do this separately?

COUNCILMEMBER HOKAMA: Separate.

COUNCILMEMBER JOHNSON: Separate.

CHAIR MOLINA: Okay. I, I kind of thought so. All right. Well, Member Anderson, will, if you could with your proposed amendment I guess take out LU-59 and then we will go back to LU-59 and ask for a reconsideration on that. But for now your amendment will be for LU-57.

COUNCILMEMBER ANDERSON: Okay. That's fine.

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CHAIR MOLINA: All right. Any additional discussion on the proposed amendment for LU-57 as mentioned by Member Anderson? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: None.

EXC.: Councilmembers Mateo and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion (232 and 242 Lahainaluna Road).

CHAIR MOLINA: Okay. The vote is seven, zero. Two excusals, Members Mateo and Medeiros. And we're now back to the main motion for LU-57 as amended. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: None.

EXC.: Councilmembers Mateo and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

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ACTION: FIRST READING of revised proposed bill, RECORDATION of unilateral agreement, and FILING of communication (232 and 242 Lahainaluna Road).

CHAIR MOLINA: Okay. Thank you, Members. It is seven, zero. LU-57 has passed once again. Okay. Let us go to LU-59 and. . .

COUNCILMEMBER ANDERSON: Wait a minute, Mr. Chair. We made an amendment to 59 and. . .

COUNCILMEMBER JOHNSON: Yeah, but we have to ask for reconsider.

COUNCILMEMBER ANDERSON: Oh, so we have to reconsider 57?

CHAIR MOLINA: Yeah. We have to consider LU-59 again to, to. . .incorporate your proposed amendment for LU-59. We have to do a motion to reconsider. I know it's somewhat cumbersome but. . .

COUNCILMEMBER ANDERSON: Yeah. I thought we just did 59 and. . .

CHAIR MOLINA: No. That was 57.

COUNCILMEMBER ANDERSON: Oh, that was 57.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: Okay.

CHAIR MOLINA: Okay. So the Chair will entertain a motion for reconsideration of Land Use Item No. 59.

COUNCILMEMBER ANDERSON: So moved.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Moved by Member Anderson, seconded by Member Johnson. Any discussion? All those opposed [*sic*] signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **APPROVE reconsideration of the main motion (252 Lahainaluna Road).**

CHAIR MOLINA: Okay. The motion for reconsideration passes seven, zero. Two excusals, Members Mateo and Medeiros. Member Johnson.

COUNCILMEMBER JOHNSON: Just, just point of information. You said all those opposed, you didn't say all those in favor.

CHAIR MOLINA: Oh. I'm sorry, did I?

COUNCILMEMBER JOHNSON: The way you worded it was that you said opposed.

CHAIR MOLINA: Okay. It's, yeah, no.

COUNCILMEMBER JOHNSON: All those in favor.

CHAIR MOLINA: Yeah. No, no opposition so we have seven in favor. Excuse me. It's been a long day. I apologize.

COUNCILMEMBER ANDERSON: It's going to be longer, too.

CHAIR MOLINA: Yeah. All right. Now, Member Anderson, the Chair is awaiting your proposed amendment for LU-59.

COUNCILMEMBER ANDERSON: Oh dear, I'm not sure I can recall exactly what I said. But any other . . .um. . . what did I say Carla?

CHAIR MOLINA: Staff.

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MS. NAKATA: Any other uses not permitted by this ordinance shall require a further Change in Zoning.

COUNCILMEMBER ANDERSON: So moved.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Moved by Member Anderson, seconded by Member Johnson. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: None.

EXC.: Councilmembers Mateo and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion (252 Lahainaluna Road).

CHAIR MOLINA: Okay. The vote will be seven, zero. Seven in favor and two, two excusals, Members Mateo and Medeiros. We're now back to LU-59 as amended. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

EXC.: **Councilmembers Mateo and Medeiros.**

ABSENT: **None.**

ABSTAIN: **None.**

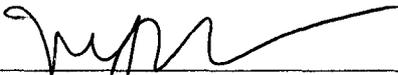
MOTION CARRIED

ACTION: **FIRST READING of revised proposed bill, RECORDATION of unilateral agreement, and FILING of communication (252 Lahainaluna Road).**

CHAIR MOLINA: Thank you. The Chair will mark it seven, zero, with two excusals, Members Mateo and Medeiros. LU-59 passes. Okay. Seeing no other considerations for this meeting for today, the August 15, 2007 Land Use meeting. The Chair, if there are no announcements, will adjourn the Land Use meeting for August 15, 2007. Thank you very much for your work, Members. . . .(gavel). . .

ADJOURN: 4:30 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

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CERTIFICATE

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

DATED the 5th day of September, 2007, in Pukalani, Hawaii



Daniel Schoenbeck