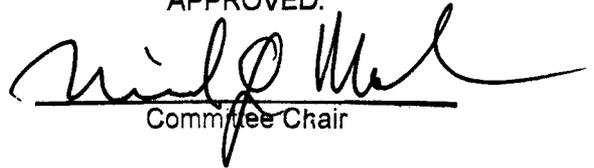


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M I N U T E S  
LAND USE COMMITTEE  
Council of the County of Maui  
Council Chamber  
January 23, 2008

APPROVED:



Committee Chair



1 consultant)  
 2 Kepa Maly, Cultural Historian  
 3 Resource Specialist, Kumu  
 4 Pono Associates LLC  
 5 (Applicants' consultant)  
 6 Stacy Otomo, President, Otomo  
 7 Engineering, Inc.  
 8 (Applicants' civil engineer)  
 9 Kamaile Sombelon, Executive  
 10 Director, Lokahi Pacific  
 11  
 12 Dugal Milne  
 13 Edward Chang  
 14 Laurie Chang  
 15 Additional attendees (10)

16 **Item No. 23:** John P. Maloney, Development  
 17 Manager, Pacific Rim Land,  
 18 Inc.  
 19 Karlynn Kawahara, Munekiyo &  
 20 Hiraga, Inc. (Applicant's  
 21 planning consultant)  
 22 Tim Farrington, Farrington  
 23 Bayless Architects, Inc.  
 24 (Applicant's architect)  
 25 Stacy Otomo, President, Otomo  
 Engineering, Inc.  
 (Applicant's civil engineer)  
 Bryan Maxwell, Maxwell Design  
 Group, Inc. (Applicant's  
 landscape architect)  
 Michael Dega, Scientific  
 Consulting Services  
 (Applicant's archaeological  
 consultant)  
 Additional attendees (10)

26 **PRESS:** Akaku--Maui County Community Television, Inc.  
 27 . . . . .

28 **CHAIR MOLINA:** ...(gavel)... The January 23rd, 2008, Land  
 29 Use Committee meeting is now in session.

30 For the record, we have -- in attendance, we  
 31 have Members Mateo, Baisa, Medeiros, Victorino, and

1           Molina; excused are Members Anderson, Johnson,  
2           Hokama, and Pontanilla, and -- and my understanding  
3           is that these Members will be arriving shortly to  
4           our proceedings today.

5                       We have two items on our agenda, Members, Land  
6           Use Item 24, which is a District Boundary Amendment,  
7           Community Plan Amendment, and Change in Zoning for  
8           the Garcia Family Subdivision in Makena; and Land  
9           Use Item 23, which is a District Boundary Amendment,  
10          Community Plan Amendment, and Change in Zoning for a  
11          Four-Unit, Single-Family Condominium at Kaeo,  
12          otherwise known as Honuaula, over in Makena as well.

13                      But before we do that, we're going to do  
14          public testimony first. At this point, we have  
15          three members of the public signed up to do  
16          testimony before us, and the Chair will call out the  
17          names of these individuals.

18                      But before we do that, the Chair would like to  
19          go over a few ground rules, and that would be to  
20          first of all, please turn off all cell phones and  
21          pagers and state your name before you testify, as  
22          well as any organization that you may be  
23          representing.

24                      So with that being said, let's also recognize  
25          Staff before I recognize the testifiers. We have

1           Committee Staff Analyst Carla Nakata, as well as our  
2           Committee Secretary, Tammy Diaz [sic] and then we  
3           have from the Corporation Counsel's Office,  
4           Mr. James Giroux; and from the Planning Department,  
5           the Director, Mr. Jeffrey Hunt. Good afternoon,  
6           everyone.

7   MR. HUNT: Good afternoon.

8   CHAIR MOLINA: I'd like to call up our first testifier,  
9           Dugal Milne, to be followed by Edward Chang. And if  
10          I mispronounce your name, please correct me.

11   MR. MILNE: Close enough.

12   CHAIR MOLINA: Thank you.

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

14   MR. MILNE: Good afternoon, Council Members, and Chairman  
15          Molina. My name is Dugal Milne, and I am a  
16          long-time resident of Makena, friend and neighbor of  
17          the Garcias, and I'm here to support their  
18          Subdivision.

19                   Foremost, their down-zoning request from Hotel  
20          to Residential is -- is huge. It means a great  
21          reduction in impact. If it were to be a Hotel zone,  
22          it would be -- it wouldn't be as consistent with the  
23          existing Community. So I think that, in itself, is  
24          a huge plus.

25                   They also have some very good plans drawn up,

1           which include preserving a heiau that has been  
2           unknown or forgotten by many elder Hawaiians that  
3           grew up in the area of Makena. So through a great  
4           research that Kepa Maly did, there's been extensive  
5           fact-finding that even I, being a Makena resident  
6           for 40 years, had not come across, knowing all the  
7           families and whatnot, so they've really done, if you  
8           want to call it diligence, in their research and  
9           findings to preserve this heiau.

10                    They'll also make it available to the public  
11           for whatever, research or just being able to come  
12           and view it. So their plans include the  
13           preservation of the heiau, they've also taken steps,  
14           voluntarily, to contribute 250,000, I believe, to  
15           Lokahi for furthering their housing.

16                    So I really think they've -- they've made an  
17           effort to -- to do their homework, and they've come  
18           up with a good plan, and I'm in support of it.

19   CHAIR MOLINA: Okay.

20   MR. MILNE: Oh, and the last thing I'd like to add is if  
21           the -- if the conversation or discussion is tabled  
22           for additional parking, public parking across from  
23           Maluaka Beach, I would not, as a resident, be  
24           supportive of that if that were to be a condition.

25                    I don't know that it is or not, but we

1 recently have gotten the church parking lot, which  
2 is the public parking in the area to be gated, and  
3 it's been a huge difference, where we don't have a  
4 lot of people, mostly young people, creating a lot  
5 of noise and parties in the area, and I think public  
6 parking across from Maluaka Beach would just open  
7 that --

8 MS. NAKATA: Three minutes.

9 MR. MILNE: -- avenue up. Thank you very much for your  
10 time.

11 CHAIR MOLINA: Okay. Thank you, Mr. Milne. And before I  
12 open up the floor for questionings for the  
13 testifier, the Chair would like to remind the public  
14 you have three minutes to testify with one minute to  
15 conclude.

16 And the Chair would like to also recognize the  
17 Council Members who've joined us for this  
18 afternoon's proceedings. We have Councilmember  
19 Anderson, Councilmember Johnson, as well as Council  
20 Chair Hokama, and on his way is Councilmember  
21 Pontanilla.

22 Committee Members, questions for our testifier  
23 at this time? Member Anderson?

24 COUNCILMEMBER ANDERSON: Thank you. I'm sorry, I didn't  
25 catch your name.

1 MR. MILNE: Dugal Milne.

2 COUNCILMEMBER ANDERSON: Hi, Dugal.

3 MR. MILNE: Hi, Michelle.

4 COUNCILMEMBER ANDERSON: Thanks for being here.

5 MR. MILNE: Or Mrs. Anderson. I don't know whether --

6 COUNCILMEMBER ANDERSON: Michelle's fine.

7 MR. MILNE: Okay.

8 COUNCILMEMBER ANDERSON: Are you a Member of the Makena  
9 Homeowners Association?

10 MR. MILNE: Yes, I am. I'm the current Secretary.

11 COUNCILMEMBER ANDERSON: And how many -- oh, then you would  
12 know. How many members do you have?

13 MR. MILNE: Well, we have not many paying members in recent  
14 years, but we have probably 15 to 20.

15 COUNCILMEMBER ANDERSON: And how many of those are  
16 full-time home -- residents?

17 MR. MILNE: About that same a number.

18 COUNCILMEMBER ANDERSON: They all live down there  
19 full-time?

20 MR. MILNE: Yeah.

21 COUNCILMEMBER ANDERSON: Okay. Thank you.

22 MR. MILNE: You're welcome.

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

25 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

1 Mr. Milne --

2 CHAIR MOLINA: Oh, oh, hang on. Mr. -- Mr. Milne? You  
3 have a -- you're a popular guy today. Got another  
4 Council Member that would like to ask you a  
5 question.

6 MR. MILNE: I like that.

7 CHAIR MOLINA: Proceed, Mr. Medeiros.

8 COUNCILMEMBER MEDEIROS: Mr. Milne --

9 MR. MILNE: Yes.

10 COUNCILMEMBER MEDEIROS: -- thank you for your testimony  
11 and for being here. You -- you say you've been a  
12 resident of Makena for four years?

13 MR. MILNE: Forty.

14 COUNCILMEMBER MEDEIROS: Forty years.

15 MR. MILNE: Actually, 44.

16 COUNCILMEMBER MEDEIROS: Oh.

17 MR. MILNE: I don't look that old, yeah?

18 COUNCILMEMBER MEDEIROS: And -- and what proximity do you  
19 live to the Garcia property?

20 MR. MILNE: I am two houses north of the church.

21 COUNCILMEMBER MEDEIROS: Okay.

22 MR. MILNE: And they're, sort of, adjacent to the church,  
23 so we're a hop, skip, and a jump away.

24 COUNCILMEMBER MEDEIROS: Okay. And the Makena Community  
25 Association that you're the Secretary of --

1 MR. MILNE: Yes.

2 COUNCILMEMBER MEDEIROS: -- what area does that encompass,  
3 from where to where?

4 MR. MILNE: Well, we've accepted membership from as far  
5 north as Polo Beach; however, we really haven't  
6 raised any new members from that area, and all the  
7 way out to Keoneoio.

8 Again, Joe(?) Borge and Dino Ventura, they  
9 aren't officially homeowner members, but they come  
10 to the meetings and whatnot, so -- and we've --  
11 we've gotten a little lax in -- in our collection of  
12 fees, you might say, but we still accept everybody  
13 to -- to come.

14 COUNCILMEMBER MEDEIROS: Thank you, Mr. Milne, for your  
15 testimony and your answers.

16 MR. MILNE: Okay.

17 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair.

18 CHAIR MOLINA: Okay. Thank you, Member Medeiros.

19 Committee Members, any other questions for our  
20 testifier? Seeing none, thank you, Mr. Milne.

21 MR. MILNE: You're welcome.

22 CHAIR MOLINA: Next to testify, we have Edward Chang, to be  
23 followed by Laurie Chang.

24 MR. CHANG: Good afternoon, Chairman Molina and Council  
25 Members. My name is Edward Chang. I am a long

1 resident of Makena.

2 You know, it seems like Dugal wrote my speech,  
3 and we -- we have the same concerns, and the  
4 concerns are related to single-family housing versus  
5 another kind of housing, which I really prefer much  
6 better.

7 The other is the area that this development is  
8 adjacent to the church, just past Makena Church up  
9 to the cul-de-sac at the Prince Hotel, is a very  
10 quiet area. Currently, it has a no-parking sign in  
11 front of the Garcias' house.

12 Dugal referred to the beach as Maluaka. I  
13 think I have to correct him and say it's Naupaka.  
14 Maluaka is on the other side of Prince Hotel Beach.  
15 Naupaka is right in front of the Garcias.

16 And it's a beach that's right off the road.  
17 It has little small turnarounds for unloading or  
18 whatever. And we get a lot of night visitors, and  
19 it -- it's an area that's kind of quiet and hard --  
20 sometimes hard to please, so I wish you'd consider  
21 those kind of things as you make your decisions.

22 Thank you very much.

23 CHAIR MOLINA: Okay. Thank you, Mr. Chang. Committee  
24 Member, questions for the testifier? Seeing none,  
25 thank you for your testimony.

1                   Next to testify, we have Laurie Chang; and at  
2                   this point, Ms. Chang is the last person to have  
3                   signed up to testify. The Chair will give the  
4                   public one last opportunity to sign up for testimony  
5                   here today.

6   MS. CHANG: Aloha, Mr. Molina and Council Members. That  
7                   was my husband that just spoke, and I'm here because  
8                   I'm a -- I'm not speaking for -- for Keawalai  
9                   Church; but as you know, Keawalai Church will become  
10                  the care keeper for Kalani Heiau, and we are very,  
11                  very pleased about that.

12                  I am a member of the Cemetery Committee at the  
13                  church and that pleases me more, but the Garcias  
14                  have been there long time. I knew their father very  
15                  well. He -- you know, they've always been very  
16                  passionate about Makena, and it's -- for me, it's so  
17                  nice to see a Makena family that must, you know,  
18                  take care of their inheritance. And I think this is  
19                  what the two boys are doing and that they're doing  
20                  it in a nice way. I really approve of what they're  
21                  doing.

22                  Besides taking care of the heiau, I need to  
23                  tell you a little story -- because I'm on the  
24                  Committee -- about Sam Garcia. Taking care of the  
25                  graves, we have many graves that have no

1 identification, and we did have one that Sam and his  
2 brother, where the deceased was very close, and he  
3 was an -- like an uncle to them.

4 And it really disturbed Sam that there was no  
5 identification on that grave so Sam came one day and  
6 said, could my brother and I donate something to  
7 make a memorial for Uncle, and we said we don't see  
8 why not. That would be wonderful because we're  
9 trying to identify all the graves.

10 And so I said, but you first must clear with  
11 kahu. Clear with kahu, and we'll clear it with the  
12 family. Well, as it turned out, it turned out very  
13 well. It was very generous of the two men. That's  
14 how passionate they are about the people of Makena.

15 But the family came forward and did it. And I  
16 don't think, myself, they would have done it at that  
17 time if it weren't for Sam and Jon first starting  
18 this out, and I'm very, very, very grateful to them.

19 But Makena is such a place that, you know,  
20 everyone says it's special. It -- it is special.  
21 And I like what they're doing, just single-family  
22 homes.

23 And most of all what's very important to me,  
24 and I think it's wonderful, is that the two boys  
25 will continue to stay there. They will also have

1 two -- two homes for themselves there, and I think  
2 that's important. That goes to show you how  
3 passionate that they are about Makena. That's all I  
4 have to say. Thank you.

5 CHAIR MOLINA: Okay. Thank you, Ms. Chang. Committee  
6 Members, questions for the testifier? Member  
7 Anderson?

8 COUNCILMEMBER ANDERSON: Yeah. Hi, Laurie.

9 MS. CHANG: Hi.

10 COUNCILMEMBER ANDERSON: I'm sure the boys appreciate being  
11 called boys.

12 MS. CHANG: But they're men, I know.

13 COUNCILMEMBER ANDERSON: I know, I know. But, I mean, to  
14 you, they're boys.

15 MS. CHANG: I'm kupuna to them.

16 COUNCILMEMBER ANDERSON: Exactly. So do you ever have  
17 occasion to go down there at night?

18 MS. CHANG: Yes. Lots of time because I do -- I did in the  
19 past, I can't right now, but in the past, I did a  
20 lot of the flower arrangements for the church.

21 COUNCILMEMBER ANDERSON: Uh-huh.

22 MS. CHANG: And guess where I get all my greenery -- most  
23 of my greenery from?

24 COUNCILMEMBER ANDERSON: From their yard?

25 MS. CHANG: From their yard. Their father was so generous

1 with me, and I tell you, it was a blessing for me.

2 COUNCILMEMBER ANDERSON: So do you -- do you recall -- I  
3 know that they now lock the gate at the parking  
4 lot --

5 MS. CHANG: Uh-huh.

6 COUNCILMEMBER ANDERSON: -- at 7:00 p.m.

7 MS. CHANG: Uh-huh.

8 COUNCILMEMBER ANDERSON: Prior to that, do you recall  
9 people being in the parking lot much later than  
10 that?

11 MS. CHANG: Oh, yes. Yeah, because they do go down to the  
12 beach and, you know, to shower is open, but the  
13 bathroom was always closed. The Hotel made sure  
14 that at 6 o'clock, the lua gets closed, but the  
15 shower was always open.

16 Yeah, so there was always parking there. And  
17 let me tell you, sometimes the parking got in the  
18 way for the church because they're awfully noisy.  
19 When we have weddings and funerals, I know there  
20 were times kahu had had to go out and say, please be  
21 quiet. So we're not in favor of any more parking  
22 down there.

23 COUNCILMEMBER ANDERSON: And so who -- who decided to lock  
24 the gate at 7:00 p.m., do you know?

25 MS. CHANG: No, I -- I -- I don't know. I think it's --

1 I -- as far as the lua went, it was locked at  
2 6 o'clock, as far as I know; other than that, I  
3 don't know.

4 COUNCILMEMBER ANDERSON: Okay.

5 MS. CHANG: Yeah.

6 COUNCILMEMBER ANDERSON: Thank you.

7 MS. CHANG: Okay.

8 CHAIR MOLINA: Thank you, Member Anderson. Committee  
9 Members, questions for the testifier? Seeing none,  
10 thank you for your testimony, Ms. Chang.

11 And Mrs. Chang, as I mentioned earlier, was  
12 the last person to have signed up to testify on Land  
13 Use Item 24. Is there anyone in the gallery that  
14 would like to testify on either of our items today,  
15 Land Use Item 24 or Land Use Item 23?

16 Seeing no one approaching, Members, if there's  
17 no objections, the Chair will close public testimony  
18 for both Land Use items.

19 COUNCIL MEMBERS: No objections.

20 CHAIR MOLINA: Okay. Thank you very much, Members.

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

22 **ITEM NO. 24: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN**  
23 **AMENDMENT, AND CHANGE IN ZONING FOR GARCIA**  
**FAMILY SUBDIVISION (MAKENA)(C.C. No. 07-219)**

24 CHAIR MOLINA: We'll start first with our first item, which  
25 is Land Use 24. But before we do that, the Chair

1 recognizes Councilmember Pontanilla to our Committee  
2 proceedings today. Good afternoon, Mr. Pontanilla.

3 VICE-CHAIR PONTANILLA: Good afternoon, Chair.

4 CHAIR MOLINA: Okay. Our first item is Land Use Item 24,  
5 which is a District Boundary Amendment, Community  
6 Plan Amendment, and Change in Zoning for the Garcia  
7 Family Subdivision.

8 The Committee is in receipt of the following,  
9 County Communication No. 07-219, from the Planning  
10 Director, transmitting proposed bills to grant a  
11 request from Samuel M. Garcia, Jr., and Jon E.  
12 Garcia for a District Boundary Amendment from  
13 Agricultural to Urban, a Community Plan Amendment  
14 from Hotel to Single-Family, and a Change in Zoning  
15 to establish R-3 Residential District for the Garcia  
16 Family Subdivision, a ten-lot single-family  
17 residential subdivision, and related improvements on  
18 approximately 5.497 acres located in Makena, Maui.

19 The subject property is identified on the  
20 County's real property tax database as 5405 Makena  
21 Road, but the existing residences on the subject  
22 property are also identified by 189, 191, and 193  
23 Makena Road.

24 The Committee is also in receipt of a  
25 correspondence dated January 11th, 2008, from the

1 Department of the Corporation Counsel, transmitting  
2 the following, a revised proposed bill entitled "A  
3 BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE  
4 DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN  
5 FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII." The  
6 purpose of the revised proposed bill is to grant a  
7 District Boundary Amendment for the subject property  
8 from Agricultural to Urban to facilitate the  
9 development.

10 Also, a revised proposed bill entitled "A BILL  
11 FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY  
12 PLAN AND LAND USE MAP FROM HOTEL TO SINGLE-FAMILY  
13 FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII." The  
14 purpose of the revised proposed bill is to change  
15 the Community Plan designation for the subject  
16 property from Hotel to Single-Family to facilitate  
17 the development.

18 And finally, a revised proposed bill was  
19 received entitled a Bill for an Ordinance to  
20 Establish R-3 Residential District Zoning, or  
21 Conditional Zoning, for Property Situated at Makena,  
22 Maui, Hawaii. The intent of the revised proposed  
23 bill is to establish the R-3 Residential District  
24 zoning for the subject property to facilitate the  
25 Project.

1                   So with that mouthful being said to you,  
2                   Members, I -- the applicant does have a presentation  
3                   to give us. But before we go on -- into the  
4                   presentation, the Planning Director, Mr. Hunt, do  
5                   you have any opening comments before we go on to the  
6                   presentation?

7           MR. HUNT: I'll defer until after the presentation.

8           CHAIR MOLINA: Okay. Thank you very much, Mr. Director.

9                   So, Members, we will take a very brief recess to set  
10                  the Chambers up for a presentation for LU-24.  
11                  Meeting in recess subject to the call of the Chair.  
12                  ...(gavel)...

13           **RECESS:           1:50 p.m.**

14           **RECONVENE:       1:52 p.m.**

15           CHAIR MOLINA: ...(gavel)... Land Use Committee meeting for  
16                  January 23rd, 2008, is now back in session.

17                   At this time, we have the applicant's  
18                  representative, Rory Frampton, to give us an  
19                  overview of Land Use Item 24. Mr. Frampton, you  
20                  have the floor.

21           MR. FRAMPTON: Thank you, Mr. Chairman. Again, I'm Rory  
22                  Frampton. I'm representing Sam and Jon Garcia for  
23                  their family property down in Makena.

24                   The property is their family land that was  
25                  inherited by them from their mother who comes from

1 the Cockett Family, and it is -- the land does trace  
2 back to the Cockett Family's parcels from South  
3 Maui. Oops. That's the end of the show. It's  
4 supposed to be the beginning. Hang on one second.

5 COUNCILMEMBER BAISA: Is it over already? Wow.

6 COUNCILMEMBER VICTORINO: I like those quick presentations.

7 MR. FRAMPTON: Let's go to the first slide. Try that  
8 again. Okay. This -- this map just kind of shows  
9 an overview of the Makena area. And the property is  
10 near Keawalai Church, south of the Makena Landing  
11 area and north of Puu Olai.

12 This is an aerial photo that shows the  
13 property outlined here in red.

14 UNIDENTIFIED SPEAKER: Keawalai?

15 MR. FRAMPTON: Keawalai Church is across the street.

16 Here's the Makena Prince Hotel, Makena-Keoneoio Road  
17 comes down here, and there's a turnaround, the  
18 cul-de-sac that was referred to earlier, and there's  
19 Makena Landing.

20 Across the street from the property are some  
21 single-family homes, and their -- the property is  
22 five-and-a-half acres. The back portion is -- is  
23 vacant, and it actually abuts the Hotel property.  
24 It, on two sides, abuts the property that's the  
25 second item on your agenda today that you'll be

1 hearing about, a proposed four-unit Project.

2 I'll flip to -- this is the Community Plan map  
3 of the area. The property location is right here,  
4 and you can see it's within a larger area that's  
5 designated for Hotel on the Community Plan.

6 COUNCILMEMBER ANDERSON: Hey, Rory?

7 MR. FRAMPTON: Yes.

8 COUNCILMEMBER ANDERSON: Could -- could you go back to  
9 that -- that overview, the --

10 MR. FRAMPTON: The aerial photo?

11 COUNCILMEMBER ANDERSON: Yes, please.

12 MR. FRAMPTON: Yes.

13 COUNCILMEMBER ANDERSON: Okay. Right at the north end of  
14 the beach, right across from the property --

15 MR. FRAMPTON: Yes.

16 COUNCILMEMBER ANDERSON: -- right in there, that --

17 MR. FRAMPTON: That's the public access to Naupaka Beach.

18 COUNCILMEMBER ANDERSON: Right.

19 MR. FRAMPTON: Yes.

20 COUNCILMEMBER ANDERSON: And there's a little turnaround  
21 there also.

22 MR. FRAMPTON: The -- there's a drop-off area -- and I have  
23 some photos that will show that, but there is a  
24 drop-off area there and also a cul-de-sac, a  
25 turnaround, and that's where the road terminates,

1 but there is a footpath that goes along the whole --

2 COUNCILMEMBER ANDERSON: Right. And so my question is,

3 back at -- at the north end of the beach, there's a

4 little grassy area there.

5 MR. FRAMPTON: Yeah.

6 COUNCILMEMBER ANDERSON: Is that owned by the State? Who

7 owns that?

8 MR. FRAMPTON: The land that is makai of the road between

9 the waterline and the road, I believe it's owned by

10 the Hotel. Yeah. That -- so it's the land area

11 between the high watermark and the -- and the public

12 roadway, my understanding is that's owned by the

13 Hotel.

14 COUNCILMEMBER ANDERSON: Okay. Thank you.

15 MR. FRAMPTON: So, again, this is the Community Plan.

16 Behind the property, it's designated under the

17 Makena Resort Plan for Business and there's

18 Multi-Family, across the street is Single-Family.

19 The zoning for the area, this turns the map up

20 a little bit to the side, but there's the property.

21 The zoning which was -- the zoning map designated

22 this in 1969 for Business/Resort use. A subsequent

23 interpretation of that Zoning Act was that it was

24 invalid because the underlying zoning at that time

25 was Agricultural.

1           This large area in Makena was urbanized in the  
2           '70s by Makena Resort. There were a few pockets  
3           that were not urbanized because they weren't owned  
4           by the Resort, and one of the pockets is the land  
5           that's owned by the Garcias, so we are asking for  
6           this pocket to be changed from Agriculture to Urban.

7           So in summary, the three ordinances that are  
8           before the Committee today, the first one is a  
9           Community Plan Amendment to go from Hotel to  
10          Single-Family, the second is a State District  
11          Boundary Amendment to go from Agricultural to Urban  
12          and because it's under 15 acres, this Council has  
13          the authority to act on that. And we are asking for  
14          conditional zoning, I'll go over the conditions  
15          later, and this would establish R-3 Residential  
16          zoning for the property.

17          These are some of the site photographs. This  
18          is standing at the Project driveway, looking north  
19          towards Kihei with Keawalai Church here on the left  
20          and the entry to the public restrooms and parking  
21          lot on the right.

22          This is further up the road now. The Project  
23          site is back down here; but, again, this just shows  
24          you a picture of the road with Keawalai Church on  
25          the right, the public restrooms are here on the

1 left, and the Project boundary starts right about  
2 where the turn starts.

3 COUNCILMEMBER ANDERSON: Rory?

4 MR. FRAMPTON: Yes.

5 COUNCILMEMBER ANDERSON: Where the sidewalk is?

6 MR. FRAMPTON: Yes. I'll -- the sidewalk starts --

7 COUNCILMEMBER ANDERSON: Right.

8 MR. FRAMPTON: Basically, the sidewalk provides an access  
9 connection from the restrooms, the shower, and the  
10 parking lot. It starts there, and it goes all the  
11 way around. The Garcias' property starts there, and  
12 it goes around the corner. And I'll get into that a  
13 little bit later. I have some detailed photographs  
14 of that sidewalk and right-of-way.

15 COUNCILMEMBER ANDERSON: And so the sidewalk was required  
16 by --

17 MR. FRAMPTON: The sidewalk was put in place when Makena  
18 Resort put in the restroom improvements. And so it  
19 was done in conjunction with the restroom and  
20 parking lot so that it would provide access to the  
21 beach parking on that little grassy strip that you  
22 mentioned.

23 So it was done at that time. It's all within  
24 the existing County right-of-way. The Garcias'  
25 property starts just mauka of the sidewalk.

1 COUNCILMEMBER ANDERSON: And -- and so the sidewalk was put  
2 in at the expense of Makena Resort?

3 MR. FRAMPTON: That is my understanding, yes. Yeah.

4 COUNCILMEMBER ANDERSON: Okay. Thank you.

5 MR. FRAMPTON: So there's the driveway that currently goes  
6 to the Garcia residences. That will be the main  
7 Project access for the -- for the Project.

8 That's looking straight up the access road.  
9 It's a -- they -- it's actually a roadway lot that's  
10 owned by Makena Resort, and there's access easement  
11 rights in favor of the Garcias. So this road will  
12 be improved and then the access, as you'll see in  
13 the site plan, will come off of that main road.

14 This is further down with the -- around the  
15 corner looking at the older residences who's the  
16 residences of Sam and Jon's parents.

17 This is way up on the back portion of the  
18 property looking towards the Hotel and looking makai  
19 across Parcel 66, which you'll be reviewing later on  
20 today.

21 So the site topography and existing  
22 conditions, this slide basically shows that roadway  
23 lot that's owned by Makena Resort, the curved nature  
24 of the frontage of the property with the sidewalk  
25 that goes from the restrooms to the crosswalk that

1 goes to the beach access.

2 And you can see the front of the property has  
3 residential structures on it, Sam, Jr.'s and the  
4 parents' house and Jon's house, and the idea is to  
5 try to keep the density relatively the same there,  
6 so the front part will still just end up with three  
7 lots, and their back portion of the property will  
8 have the majority of the lots.

9 It is -- there is a lava outcropping that  
10 comes down from -- mauka down through the property  
11 to makai, and one of these outcroppings was  
12 modified, and it's referred to as the Kalani Heiau.

13 This is the archaeological -- this just shows  
14 the archaeological sites. There's a number of  
15 features that are associated with ranching  
16 activities, some of these longer walls.

17 There's some walls that may have been  
18 associated with former habitation on the site, some  
19 of which might have been for farming done in this  
20 area, and the Kalani Heiau is in the middle.

21 We've done extensive archaeological testing on  
22 the property, as well as some historical research,  
23 which I will also mention just briefly later.

24 This is a zoom-in on the heiau plan map, and  
25 it -- it just shows sort of a unique alignment.

1           Some people refer to this as a notched heiau or an  
2           L-shaped heiau site, but you can see the cattle wall  
3           that's been built right over the top, and there's a  
4           cattle wall along the perimeter.

5           This was the previous site plan. It actually  
6           had 11 structures with 4 structures being on the  
7           front of the property, 7 being in the back, and this  
8           being the preservation area for Kalani Heiau.

9           After we kind of got into the Project and  
10          started developing the site preservation plan for  
11          the heiau, as well as looking at the character of  
12          the lower piece, it was decided to lessen the  
13          density in the front and to expand the preservation  
14          area.

15          This is the new -- this is the proposed site  
16          plan with just three residences in the front. You  
17          can see we really opened up the preservation area as  
18          you come along up the access road.

19          And, basically, these -- some of these lines,  
20          as you see, it's irregularly shaped, but we tried to  
21          follow some of the cattle walls that were there so  
22          that they would -- we could preserve the cattle  
23          walls, provide a planting buffer of -- of -- along  
24          those walls, and -- and it -- and the idea is to  
25          create a nice, passive preservation area for the

1 property, as well as another site that is further  
2 mauka.

3 The -- the idea here, it's an archaeological  
4 site that not much is known about. The -- the --  
5 the archaeological data is rather scant. There are  
6 numerous different ideas of what it may have been  
7 used for.

8 The State originally did not require that it  
9 be preserved; but after we went through and -- and  
10 got public comment, we decided that we'd preserve  
11 that site and incorporate a larger preservation area  
12 around it.

13 And what that does, is it allows for mauka  
14 view planes up to some of the more significant pu'u  
15 that are makai -- I mean, mauka in the Ulupalakua  
16 region. And -- and there is a no-build zone on this  
17 portion of that lot so that you do have a clear  
18 vision up to some of these more significant pu'u.  
19 We've also incorporated a visual corridor running  
20 down the property line, which goes right to that  
21 public beach access.

22 So, again, it's three lots in the front, seven  
23 lots in the back, and these house sites are shown as  
24 representative of what may occur on the property.  
25 The -- the proposal by the Garcias is to subdivide

1 the property and to sell off the back seven lots and  
2 to keep the front lots for themselves.

3 Or -- this is the grading and drainage plan,  
4 and what we're -- essentially what we're trying to  
5 do is a number of smaller, less deep retention  
6 basins scattered throughout the site so that we can  
7 collect runoff from a couple of the different areas.

8 And right now, what we've looked at is we've  
9 designed it 50 percent greater than what the County  
10 requirement would be. We're hoping that we can  
11 increase that.

12 And we -- when we get into the more detailed  
13 site planning, we will look at how we can  
14 incorporate as much grade -- drainage runoff or to  
15 control as much runoff as we can without having a  
16 negative impact on the site characteristics and some  
17 of the wall features that we want to try to  
18 maintain. But we know we can get -- comfortably, we  
19 can get 50 percent more than what the County would  
20 require.

21 I -- in your handout, I -- you do have a  
22 handout of the -- of this presentation, and I'm not  
23 going to go through all these dates of the -- for  
24 the chronology of the archaeological and the  
25 environmental assessment. There's some key dates in

1           there that I'm going to summarize on this next  
2           slide.

3                   Originally, back in 2001, the original  
4           inventory survey was approved by the State in  
5           May 2001. That subsequently, based on public  
6           comment and concerns, there was additional work that  
7           was done, and there was an addendum and then a  
8           revised addendum that collected a significantly more  
9           amount of data, and that revised addendum was  
10          approved and accepted by SHPD in June of 2005.

11                   We also conducted some studies -- and I'm  
12          going to go back one slide. The -- I call 'em the  
13          Kepa Maly studies. And Kepa is here today; and if  
14          you have any questions about these studies, he is  
15          available to answer the questions, but let me just  
16          quickly go -- go back here.

17                   His studies took place from June 2005 to  
18          March 2006, and there was a cultural, historical  
19          study of Kaeo and other lands in Honuauia, as well  
20          as oral history interviews from nine individuals,  
21          and then he helped us prepare the preservation plan  
22          for Kalani Heiau, which was actually accepted by the  
23          State in June of 2006. So this is just a summary of  
24          the major events of that chronology.

25                   So just to highlight the drainage, the on-site

1           detention basins are designed to handle a minimum of  
2           50 percent more than the County requirements.  Water  
3           supply, we are within the County service area.  We  
4           will be required to get County meters.

5                   They are -- in the common areas and some of  
6           the -- well, in the common areas, we're going to  
7           utilize plants that are adapted to the area to  
8           reduce the irrigation demand.  I'm sure the Council  
9           knows that the majority of water demand for some of  
10          the properties in South Maui do -- does come from  
11          irrigation.

12                   For wastewater, we will connect to the Makena  
13          Wastewater Corporation collection system, and  
14          attached to the PowerPoint is a letter from them.

15                   For Workforce Housing, we are exempt from the  
16          ordinance, the Workforce Housing Ordinance, since  
17          the Project received preliminary subdivision  
18          approval prior to the enactment of the ordinance.

19                   However, in recognition of the need, the  
20          Garcias have volunteered -- volunteered a  
21          contribution of \$250,000 to Lokahi Pacific, and  
22          there's a letter attached that makes that offer to  
23          Lokahi Pacific.  And Kamaile Sombelon is here from  
24          Lokahi Pacific today if you have any questions for  
25          her.  And that money is going to be earmarked for

1 projects in South Maui, affordable housing projects.

2 For the road right-of-way -- right-of-way  
3 standards, the Kihei-Makena Community Plan states  
4 that this -- you should protect and preserve the  
5 traditional rural scale and character of existing  
6 portions of old Makena Road in a manner similar to  
7 that existing at Keawalai Church.

8 So -- and you -- this Council went through  
9 this issue with -- recently with the Papanui  
10 Project, which was down near Makena Landing, and the  
11 proposed right-of-way that was accepted as part of  
12 that Project established a standard of 32 feet.

13 So for this Project, to be consistent with  
14 that right-of-way standard, we are proposing a  
15 right-of-way of 32 feet. What's different here is  
16 that there is an existing sidewalk, and we're  
17 proposing that that would remain because of its  
18 functional importance of providing beach access from  
19 the parking lot to the beach, and we would -- we are  
20 requesting that there be no streetlights.

21 And these are just some photos that will look  
22 in detail, again, at the -- this is the shower and  
23 the restrooms and the parking lot. And just taking  
24 you down across the Garcias' property, you see the  
25 sidewalk and the pavement width there, which is

1 approximately 24 feet. So there's about 24 feet of  
2 pavement with 4 feet of sidewalk and curb.

3 And this just is, again, just walking down the  
4 road, proceeding along. You can see the property  
5 rises on that ridge that I talked about, and there's  
6 the driveway to the Garcias' house.

7 And this truck is right at the end of the  
8 Garcia property at the sidewalk, which provides  
9 access to Naupaka Beach, and that's the little  
10 drop-off turnaround and the grassy area that  
11 Councilmember Anderson was talking about.

12 This looks further down towards the  
13 cul-de-sac, and this is the area that was referred  
14 to in testimony that has been -- where there's no --  
15 no-parking signs, but people do park. And I think  
16 in the second item that is after us, there's going  
17 to be discussion about the provision of public  
18 parking there.

19 This is looking back from the crosswalk back  
20 north, showing the sidewalk and the roadway in this  
21 area.

22 So we have handed out proposed zoning  
23 conditions, and I'm just going to go over those.  
24 I'm nearing the completion of this report -- or this  
25 presentation.

1           The first one is that once the property has  
2           received final subdivision approval, the ten  
3           residential lots shall not be further subdivided and  
4           shall not be the subject of a condominium property  
5           regime.

6           This condition is there because some of the  
7           lots are greater than 20,000 square feet, and the  
8           minimum lot size that we're asking for is 10,000.

9           This is a long one. It just has to do with  
10          the right-of-way. But in order to preserve and  
11          protect the traditional rural scale and character of  
12          the existing portions of Makena-Keoneoio Road, as  
13          stated in the Kihei-Makena Community Plan,  
14          improvements to Makena-Keoneoio Road fronting the  
15          Project site shall be provided in the following  
16          manner.

17          A, provide a road-widening lot that would  
18          provide for a minimum 32-foot right-of-way; B, the  
19          existing sidewalk and curb shall remain in place; C,  
20          there shall be no streetlights or gutters.

21          And let me stop there. We -- technically, the  
22          gutter that's there off the curb does not meet  
23          Public Works standards, but it does function as a  
24          gutter.

25          And I understand that Public Works feels that

1           that exemption for no gutters is really not  
2           necessary because there is one. So maybe that word  
3           "or gutters" should be the existing sidewalk and  
4           curb and gutters shall remain in place and then  
5           there shall be no streetlights.

6                     And then -- and D, retaining walls of which --  
7           abutting the right-of-way shall not exceed 4 feet in  
8           height. This condition shall exempt the Garcias  
9           from improving any portion of Makena-Keoneoio Road  
10          to urban standards.

11                    This -- this condition was taken -- taken out  
12          of the Papaanui condition that this Council approved  
13          earlier, and we made some minor modifications to  
14          reflect the fact that there is an existing sidewalk,  
15          curb, and gutter.

16                    The third condition would be the -- that  
17          transient vacation rentals shall be prohibited.  
18          Although they wouldn't be allowed in the R-3  
19          Residential District normally, this would prohibit  
20          any owner from coming in and asking for any type of  
21          approval in the future.

22                    And that no bed-and-breakfast home or  
23          commercial operations shall be allowed.

24                    So -- oh, and just real quickly, we do  
25          anticipate CC&Rs on the Project that will -- a

1 number of 'em will relate to architectural and  
2 landscape design guidelines in terms of design  
3 elements and materials, the use of Hawaiian plants  
4 adapted to the area, preservation of the streetscape  
5 along Keoneoio Road, and height restrictions on four  
6 of the lots, the front two of which would be to  
7 preserve the views from the heiau.

8 And then also, this was requested by the  
9 church that there be a notice to future buyers  
10 regarding the presence and activities associated  
11 with Keawalai Church so that people who come in know  
12 that there is a church nearby that is active with a  
13 number of activities that take place during the  
14 week.

15 Lastly, of course, there would be the  
16 preservation plan, the -- for Kalani Heiau. It  
17 would be a requirement that the homeowners  
18 association would implement and maintain.

19 That's the conclusion of my report, and I'm  
20 available for any questions or, Chair, do you want  
21 us to turn the lights back on and then go to  
22 question and answer?

23 CHAIR MOLINA: Yeah.

24 MR. FRAMPTON: Okay. So we'll go ahead.

25 CHAIR MOLINA: Okay. Yeah, thank you very much,

1 Mr. Frampton. We'll proceed with our Q and A right  
2 after we turn on the lights. Meeting in recess.  
3 ...(gavel)...

4 **RECESS: 2:14 p.m.**

5 **RECONVENE: 2:15 p.m.**

6 CHAIR MOLINA: ...(gavel)... Land Use Committee meeting for  
7 January 23rd, 2008, is now back in session. I'd  
8 like to thank Mr. Frampton from Chris Hart &  
9 Partners for that very informative presentation.

10 Mr. Frampton, before we proceed any further,  
11 we do have a question from Member Anderson regarding  
12 one of the proposed conditions that was in the  
13 presentation.

14 Member Anderson, you have the floor.

15 COUNCILMEMBER ANDERSON: Thank you, Chair. Mr. Frampton,  
16 on the condition regarding the road, part of that  
17 condition, it says that A, you shall provide a  
18 road-widening lot that would provide a minimum  
19 32-foot right-of-way.

20 How are you going to provote -- provide a  
21 road-widening lot? Which -- what do you mean?

22 MR. FRAMPTON: Well, we --

23 COUNCILMEMBER ANDERSON: The road's already there.

24 MR. FRAMPTON: Correct. First off, we wanted to maintain  
25 some consistency with the standards that were

1           adopted for Papaanui.

2                   The existing right-of-way -- right-of-way  
3           right now varies, but it does, at a -- at -- at one  
4           point, it pinches down to about 29 feet so it is  
5           less than 32 feet in one of the areas.

6                   And so what -- what that condition would do  
7           would be the Garcias would provide a land dedication  
8           on their property. They would actually subdivide  
9           out a portion of their property, incorporate it into  
10          the right-of-way so that it could -- so that it  
11          could eventually provide for 32 feet of  
12          right-of-way.

13   COUNCILMEMBER ANDERSON: But I don't understand that if the  
14          sidewalk's already there. I mean --

15   MR. FRAMPTON: Yeah. Typically -- typically --

16   COUNCILMEMBER ANDERSON: -- would they move the sidewalk  
17          or --

18   MR. FRAMPTON: -- typically what Public Works would do is  
19          look at the center line, and I can maybe let the  
20          Public Works Deputy Director comment, but they'd  
21          look at the center line and then take half from each  
22          property.

23                   I think your point is well taken. Because the  
24          sidewalk is already there and if we provided a  
25          road-widening lot, where would the improvements go?

1           They would probably happen on the other side of the  
2           street.

3                    But what -- what we'll do with Public Works  
4           is -- is provide the necessary right-of-way for  
5           there ultimately to be a 32-foot right-of-way. So  
6           we would provide our half of the -- of the shortage.

7                    Right now, it's 29 feet so we're short about  
8           3 feet so we might provide another 2 feet so that  
9           when the other side comes in, if they ever do come  
10          in, they'll take the remaining land from the other  
11          side. Did I confuse you?

12   COUNCILMEMBER ANDERSON: Yeah.

13   MR. FRAMPTON: We're comfortable with doing our part to  
14          ensure -- or the Garcias are comfortable --

15   COUNCILMEMBER ANDERSON: But you're saying --

16   MR. FRAMPTON: -- to do their part to ensure that there's a  
17          32-foot right-of-way provided.

18   COUNCILMEMBER ANDERSON: And so right now, the -- the width  
19          of the road fronting the house closest to the road  
20          is 29 feet?

21   MR. FRAMPTON: The right-of-way. That's the property lines  
22          which includes 4 feet of sidewalk and 24 feet of  
23          pavement and then some unimproved lands on the other  
24          side of the street.

25   COUNCILMEMBER ANDERSON: But they don't own the property on

1 the other side of the street.

2 MR. FRAMPTON: That's correct. So, typically, if you're  
3 short, say -- if the right-of-way is short, say,  
4 10 feet, typically, you take 5 feet from one side,  
5 5 feet from the other. So we're going to do our  
6 part to maintain -- to -- to allow for a future  
7 32-foot right-of-way.

8 COUNCILMEMBER ANDERSON: But -- but that's my question,  
9 Rory, and -- and you haven't really explained it to  
10 me.

11 If it says here the existing sidewalk and curb  
12 shall remain in place, how are you going to do that?

13 MR. FRAMPTON: It's only the ownership line that gets  
14 pushed back. So there will be 2 more feet of land  
15 area. The sidewalk will stay, the property line,  
16 instead of being right on the sidewalk, the property  
17 line will go in a couple feet so that the  
18 ownership -- the right-of-way refers to the  
19 ownership, not the physical --

20 COUNCILMEMBER ANDERSON: I see what you're saying.

21 MR. FRAMPTON: -- improvement. Yeah.

22 COUNCILMEMBER ANDERSON: So then what would be the point of  
23 that right-of-way if it's -- I mean, what would be  
24 the point of that?

25 MR. FRAMPTON: If there's any future necessary

1 improvements, it does -- actually, having that  
2 2 feet along the back side of a sidewalk, you can  
3 do -- you can do maintenance of the sidewalk, you  
4 can do planting. I probably should --

5 COUNCILMEMBER ANDERSON: It looks real nice the way it is  
6 right now.

7 MR. FRAMPTON: Maybe we should defer your comments to  
8 Deputy Director Miyamoto.

9 COUNCILMEMBER ANDERSON: You're trying to satisfy Public  
10 Works --

11 MR. FRAMPTON: Yes.

12 COUNCILMEMBER ANDERSON: -- in being consistent with the  
13 Papaanui Project?

14 MR. FRAMPTON: Yes.

15 COUNCILMEMBER ANDERSON: I see.

16 MR. FRAMPTON: Okay.

17 COUNCILMEMBER ANDERSON: That's the point of all this.

18 MR. FRAMPTON: That's the point with (inaudible) 32 feet,  
19 yes.

20 CHAIR MOLINA: Okay. If I could -- hang -- hang on,  
21 Mr. Frampton. What we'll do, Member Anderson, we'll  
22 get Public Works up here to add further  
23 clarification. And Mr. Anderson --

24 MR. FRAMPTON: Yeah.

25 CHAIR MOLINA: Mr. Anderson. Mr. Frampton, I'll excuse you

1           for now --

2   MR. FRAMPTON:   Well --

3   CHAIR MOLINA:   -- and we'll continue the discussion --

4   COUNCILMEMBER ANDERSON:   Well, my point being is that, you  
5           know, it's not one size fits all, all along this  
6           road.

7   CHAIR MOLINA:   Uh-huh.

8   COUNCILMEMBER ANDERSON:   And I don't think we should try to  
9           cram everybody into the same size shoe when the  
10          Community Plan specifically says that the road --  
11          road, Makena-Keoneoio Road shall be maintained as  
12          existing in front of Keawalai Church.

13                 And we've seen pictures today of Keawalai  
14          Church, and this is, you know, a stone's throw from  
15          the church.   So I don't know why we need to change  
16          it at all unless there's a fire access issue.

17   MR. FRAMPTON:   Okay.   Your -- your point is well taken, and  
18                 I just would reiterate, we were doing that to  
19                 establish consistency with the standard that was  
20                 established in Papaanui.

21   COUNCILMEMBER ANDERSON:   Okay.

22   CHAIR MOLINA:   Okay.

23   COUNCILMEMBER ANDERSON:   I have a few more questions for  
24                 Mr. Frampton.

25   CHAIR MOLINA:   Okay.   At a later point, we'll call up

1 Mr. Frampton and then you can respond to questions  
2 from Member Anderson and the other Members, okay?

3 All right, Members, the Chair did invite  
4 various resource personnel for this particular  
5 Project. We invited the Deputy Director,  
6 Mr. Miyamoto, from Public Works, as well as the  
7 Director of Housing and Human Concerns, Vanessa  
8 Medeiros, and Patrick Matsui from the Planning and  
9 Development Division, Department of the --  
10 Department of Parks and Recreation.

11 So why don't we get Mr. Miyamoto up here first  
12 since we're -- we have a very interesting topic to  
13 discuss with regards to the road-widening proposal  
14 from the applicant.

15 Member Anderson, if you'll kind of take into  
16 consideration my request at this point, can I just  
17 go down the line, offer the other Members a chance  
18 to ask questions, and then we'll come back to you?  
19 I know you have a lot of questions on that  
20 particular matter.

21 Good afternoon, Mr. Miyamoto. Do you have any  
22 opening comments to make before I open the floor to  
23 the Members for questions?

24 MR. MIYAMOTO: No, other than that the applicant was  
25 correct, that we were just trying to be -- exercise

1 a consistent definition of what the rural scale and  
2 nature was for the corridor and as the Council's  
3 decision previously was that Papanui would --  
4 decision was going to be the standard so we just  
5 suggest -- we just -- we were asking them to comply  
6 with that requirement.

7 CHAIR MOLINA: Okay. Thank you, Mr. Director. Committee  
8 Members, questions? So we'll just work our way down  
9 the line.

10 Mr. Victorino, do you have any questions for  
11 the Director at this time?

12 COUNCILMEMBER VICTORINO: I would defer at this time.

13 CHAIR MOLINA: Okay. Mr. Pontanilla?

14 VICE-CHAIR PONTANILLA: Not at this time.

15 CHAIR MOLINA: No. Mr. Hokama?

16 COUNCILMEMBER HOKAMA: No.

17 CHAIR MOLINA: Mr. Medeiros?

18 COUNCILMEMBER MEDEIROS: Mr. Chair, no, I -- I probably --  
19 my question would probably more appropriately be  
20 directed to the consultant of the Project.

21 CHAIR MOLINA: Okay. Thank you. Member Johnson, questions  
22 for the Deputy Director of Public Works?

23 COUNCILMEMBER JOHNSON: I just wanted to know, were there  
24 any other things that this right-of-way might be  
25 used for, such as if there were drainage

1 improvements or signage or anything else that you  
2 might be recommending at a future time?

3 MR. MIYAMOTO: The -- given that the additional  
4 right-of-way would be behind the existing sidewalk  
5 that's there, I guess the only reasonable thing that  
6 could be placed in that right-of-way, like you're  
7 saying, is additional signing. If there's signing  
8 that needs to go up, that would be a good spot for  
9 that additional signage to go up.

10 COUNCILMEMBER JOHNSON: Can -- and what is the width of the  
11 sidewalk? Is it just -- it's handicapped  
12 acceptable?

13 MR. MIYAMOTO: The sidewalk was built, I guess, previously  
14 so the -- the -- I imagine it met the standards at  
15 the time, but it's currently, if I'm not mistaken,  
16 about 4 feet wide, the current sidewalk.

17 COUNCILMEMBER JOHNSON: Okay. And that would accommodate  
18 -- however it's structured, that would accommodate  
19 with any curb cuts or anything, people that are  
20 handicapped that would be able to utilize that?

21 MR. MIYAMOTO: The driveways are the only ones that I'd  
22 have to really take another look at, the -- whether  
23 or not the driveways are to the current standard.

24 I think the current standard either calls for  
25 the -- the sidewalk through the driveway to remain

1 at a constant level and then have the slope be on --  
2 closer to the travel lane. You wouldn't want a  
3 sloped driveway because that would --

4 COUNCILMEMBER JOHNSON: Yeah.

5 MR. MIYAMOTO: -- push anyone in a wheelchair towards the  
6 driveway so that's something we would evaluate  
7 during the building -- the building permit process.

8 COUNCILMEMBER JOHNSON: Okay. Thank you.

9 CHAIR MOLINA: Okay. Thank you, Member Johnson. Member  
10 Baisa, questions for the Deputy Director of Public  
11 Works?

12 COUNCILMEMBER BAISA: No, not at this time, thank you.

13 CHAIR MOLINA: Okay. Mr. Mateo?

14 COUNCILMEMBER MATEO: No.

15 CHAIR MOLINA: No. Okay. Member Anderson, you have the  
16 floor.

17 COUNCILMEMBER ANDERSON: Thank you, Chair. I would first  
18 like to thank Mr. Frampton for the presentation. I  
19 think the photographs he gave -- shared with us gave  
20 a real clear picture of the situation down there.

21 I -- you know, it's difficult for us to do  
22 site inspections. We have so much on our docket to  
23 go out and do site inspections so I can appreciate  
24 that because these -- both of these are small  
25 Projects.

1           But because I do live in the area and I  
2 frequent this area quite -- quite a lot, I'm very  
3 familiar with it. And I -- I just -- I don't see  
4 any need for us -- I mean, if they want to give  
5 2 feet right-of-way, you know, just to not argue  
6 with Public Works, then fine, but that opens up the  
7 option at some day in the future to use that  
8 right-of-way, to move the sidewalk and widen the  
9 road.

10           I'm going to read what the condition is in the  
11 Community Plan. Protect and preserve the  
12 traditional rural scale and character of existing  
13 portions of old Makena Road in a manner similar to  
14 that existing at Keawalai Church.

15           Well, this roadway is part of the roadway  
16 right in front of Keawalai Church. So if we're  
17 supposed to preserve and protect it at the existing  
18 scale and character that exists in front of Keawalai  
19 Church, why would we add 2 feet right-of-way that  
20 would open up the option of widening that road?

21           I don't see any need for it. And if we're  
22 going to, you know, adhere to this policy that was  
23 adopted, then I -- I guess I would need some other  
24 explanation from Public Works.

25           Because their letter, and I guess maybe I

1           should address Mr. Miyamoto on this, you know, it --  
2           I -- I can appreciate Public Works trying to be  
3           consistent, but the only thing that we need to be  
4           consistent with is this policy that was adopted as  
5           part of the Community Plan, which is why Papaanui  
6           did not -- was not forced to go Urban.

7                        And the conditions at Papaanui are different  
8           than the conditions in front of this property. So  
9           why would we use Papaanui as a standard to be  
10          consistent with?

11   CHAIR MOLINA: Mr. Director?

12   COUNCILMEMBER ANDERSON: Mr. Chair, I'm not finished. I  
13          know you're hearing what I'm saying, but I wanted to  
14          leave you with a question. Because in the letter  
15          from Mr. -- or Director Arakawa in answer to  
16          questions from -- I guess from you, Mr. Chair.

17   CHAIR MOLINA: Right. Uh-huh. Members, it's the  
18          January 17th document, 2008.

19   COUNCILMEMBER ANDERSON: January 17th at the very back,  
20          second to the last -- second page, last paragraph.  
21          To be consistent -- so your Department is responding  
22          to questions regarding the road widening.

23                        To be consistent with the definition of rural  
24          scale and character, the applicant would have to  
25          remove the curb sidewalk and provide a road-widening

1 lot that would provide a 32-foot road -- wide  
2 roadway -- right-of-way. The road-widening lot  
3 would have to be clear of all obstructions which  
4 includes the hedgerow.

5 I mean, the hedgerow's been there since this  
6 Community Plan was written, the sidewalk's been  
7 there since this Community Plan was written. The  
8 whole idea is to preserve the traditional rural  
9 scale and character of the area.

10 So, Mr. Miyamoto, why would they have to do  
11 that?

12 CHAIR MOLINA: Mr. Director?

13 MR. MIYAMOTO: Mr. Chair. In discussing with -- this with  
14 the Director, you know, the Papaanui Project was  
15 utilized to help define what that rural scale and  
16 nature was for this corridor as -- as evidence that,  
17 you know, the current roadway in front of the  
18 Keawalai Church doesn't quite meet the original  
19 intent.

20 And what was that original intent was not  
21 memorialized in any way in the Community Plan so  
22 the -- the Papaanui was the Project that was used as  
23 a standard. Rural standard. No curbs and gutter,  
24 no sidewalk, limited right-of-way to 32 feet.

25 So the response basically wanted, you know,

1 primarily to hold that standard because if they  
2 altered from that standard, then the applicant  
3 may -- either has to go through the -- you know,  
4 getting a variance to modify that cross-section, you  
5 know, or this Council would have to agree to modify  
6 what's required of the applicant to provide at this  
7 location.

8 As in this case, it already has had  
9 experienced some urbanization by having the curb and  
10 sidewalk put in, so it's certainly not our -- Public  
11 Works' ability to say that this is consistent with  
12 Papaanui.

13 So we wanted, in our response, to be  
14 consistent to what was presented for the Papaanui  
15 and let it be this body's decision to say whether or  
16 not it was an acceptable thing to leave the existing  
17 sidewalk in and that it -- it did meet the rural  
18 character and scale as mentioned in the Community  
19 Plan.

20 COUNCILMEMBER ANDERSON: I see. So you guys are just  
21 trying to be consistent within your Department in  
22 what you're saying here?

23 MR. MIYAMOTO: Yes.

24 COUNCILMEMBER ANDERSON: I see. I can understand that.  
25 However, Papaanu -- Papa --

1 CHAIR MOLINA: Anui.

2 COUNCILMEMBER ANDERSON: Thank you. Really was not the  
3 first development that had to meet this rural  
4 roadway standard in the Community Plan since the  
5 plan was adopted. This plan's ten years old now.

6 The Dowling Project at Palauea I think was one  
7 of the first larger projects and many along  
8 Makena-Keoneoio Road have happened since then so  
9 I -- you know, I know we had an argument with the  
10 Department over what you guys wanted us to do at  
11 Papaanui.

12 So if you're not married to that in any way  
13 and you're not telling us it's -- telling us it's a  
14 safety issue or that you've got to, some day, put in  
15 something that you need that right-of-way for, then  
16 I'm satisfied that it's up to this body to interpret  
17 the policy of the Community Plan. After all, there  
18 isn't any property closer to Keawalai Church than  
19 this, so thank you.

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

21 Committee Members, any other questions for the  
22 Deputy Public Works Director at this time before I  
23 excuse him? Okay. Seeing none, thank you,  
24 Mr. Director.

25 Next, we have the Housing Director,

1 Ms. Medeiros, if you could please come up. And good  
2 afternoon, Madam Director.

3 MS. MEDEIROS: Good afternoon.

4 CHAIR MOLINA: Thank you. And as it -- as it was mentioned  
5 in the presentation, the applicant is not eligible  
6 for the -- the -- or shall I say the Residential  
7 Workforce Housing Policy does not apply because the  
8 Garcias received preliminary subdivision approval  
9 before the effective date of the policy, and they  
10 have proposed an alternative, I guess, the -- the  
11 monetary contribution.

12 Do you have any comments on this?

13 MS. MEDEIROS: Unfortunately, we have not been given a --  
14 any kind of a document to review with respect to the  
15 proposal so we are unable to evaluate or make a  
16 comment at this point. We were given a verbal  
17 information, but nothing firm or definite.

18 CHAIR MOLINA: Okay. And I believe they had discussions  
19 with Lokahi Pacific on this as well, so all right.  
20 Very good.

21 Members, any comments for the Housing Director  
22 at this point on this particular matter?

23 COUNCILMEMBER MATEO: Chairman?

24 CHAIR MOLINA: Okay. Mr. Mateo?

25 COUNCILMEMBER MATEO: Chair, thank you. Madam Director,

1 the comments the applicant had made a little bit ago  
2 is their consideration of a 250,000 contribution to  
3 affordable housing needs that they're going to  
4 partner with Lokahi Pacific for units to be built  
5 specifically in the South Maui area.

6 Are you familiar with any of the planned or --  
7 or, perhaps, ongoing housing developments that  
8 Lokahi Pacific currently has in the -- in the South  
9 Maui area?

10 MS. MEDEIROS: We are aware of a development that Lokahi is  
11 doing. I believe it's the Kenolio Leilani Project  
12 in Kihei. Lokahi Pacific is in the process of  
13 receiving some HOME funds through the County for  
14 that.

15 COUNCILMEMBER MATEO: And -- and would you be aware whether  
16 or not that is the Project that is being earmarked  
17 for this potential contribution?

18 MS. MEDEIROS: I don't know. We -- again, we have not been  
19 given any specific proposal information so I am  
20 unable to evaluate.

21 COUNCILMEMBER MATEO: Okay. Mr. Chair, my -- my -- my  
22 concern stems from the fact that the Department has  
23 not been provided with this kind of information.

24 You know, it -- it's nice that they're making  
25 the -- the gesture and the offer, but it should have

1           been inclusive with providing the information so  
2           that we're aware of their contribution as well.

3                   And, yes, they didn't have to provide it, but  
4           I believe the Garcias are considerate and concerned  
5           enough to help us meet our rising issue in  
6           affordable housing as well.

7                   So I'm a little -- I'm a little disappointed  
8           that we are not fully aware of exactly where this is  
9           going and, you know, would nice -- it would be nice  
10          at this point to at least have gotten that  
11          information, whether it be from Lokahi or -- or --  
12          or anybody else. But it seems like there is a  
13          little piece that is not completely clear at this  
14          point. Thank you, Chairman.

15 CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Member Baisa?

16 COUNCILMEMBER BAISA: Yes, Chair. Yeah, I understand when  
17          we were talking earlier that a representative from  
18          Lokahi Pacific is here today, Ms. Sombelon, the  
19          Director?

20 CHAIR MOLINA: Yes. Yes, I believe so.

21 COUNCILMEMBER BAISA: Could we ask her?

22 CHAIR MOLINA: Okay. Ms. Sombelon? Members, any  
23          objections to having the -- Ms. Sombelon from Lokahi  
24          Pacific come up?

25 COUNCIL MEMBERS: No objections.

1 CHAIR MOLINA: Okay. Seeing none, thank you. Okay.

2 Member Baisa, you have the floor.

3 COUNCILMEMBER BAISA: Yes. Thank you very much.

4 Ms. Sombelon, thank you for being here this  
5 afternoon.

6 MS. SOMBELON: Sure.

7 COUNCILMEMBER BAISA: I was wondering if you might share  
8 with us any information you have in regard to this  
9 \$250,000.

10 MS. SOMBELON: I received -- I guess the Council has been  
11 made aware from a letter that was drafted by the  
12 Garcias' attorney regarding the contribution, and  
13 that was dated January 17th.

14 We did meet with them previously; and because  
15 of the timing of the release of funds, you know,  
16 it -- I was told it might be about a year or two  
17 before the funds would be available for our use.

18 And they -- and I know it's probably an  
19 oversight on -- as far as notifying the -- the  
20 Department of Housing and Human Concerns, but we  
21 just met, I think, less than a week ago and trying  
22 to see where we could use those funds.

23 We do have a development, Leilani Subdivision,  
24 which is a seven-lot subdivision in Kihei, and we  
25 were just informed last week also of the rising

1 costs for that Project. And we have Papaanui funds  
2 earmarked for that, and of course their Project is  
3 stalled for I don't know how much longer, and we're  
4 ready to proceed. We want to start construction in  
5 March.

6 And so to give them a definite time frame as  
7 far as putting it into Leilani, which is our Project  
8 coming up, you know, we estimate that the build-out  
9 would probably put families into the homes by the  
10 end of this year.

11 And if those funds are available, we will  
12 definitely use those funds because we were informed  
13 that prices -- we were trying to keep it at 250,000,  
14 and the prices have increased by about 30,000 per  
15 house so this money would definitely be a help to  
16 that Project.

17 And we're just trying to scramble and see  
18 where we can -- we have other Projects we are  
19 negotiating with other developers that are building  
20 in that area, and we haven't solidified anything at  
21 this point, but there will be -- I think we have  
22 about another 40 units that will come online if we  
23 can successfully negotiate with this other developer  
24 that could use those funds. We could use those  
25 funds definitely.

1 COUNCILMEMBER BAISA: Thank you. So at this point, you  
2 don't actually have any kind of contract with the  
3 developers for this \$250,000?

4 MS. SOMBELON: I would say we -- you know, I got my Board  
5 to approve the -- the acceptance of these funds.  
6 And we are negotiating, you know, as -- we will --  
7 we will be doing, I guess, a codevelopment agreement  
8 eventually.

9 But the time it takes to -- from meeting with  
10 them and negotiating things and getting my Board to  
11 approve, you know, it just wasn't happening too  
12 quickly enough for -- for this meeting.

13 COUNCILMEMBER BAISA: Thank you. The other thing I was  
14 interested in is was there any condition that  
15 appeared to be attached to the money, like it had to  
16 be for a hundred -- a hundred percent affordable  
17 housing, or were there any conditions that you're  
18 aware of?

19 MS. SOMBELON: No conditions. All that they asked was that  
20 we develop -- it be earmarked for a development in  
21 the Kihei area and that it be used for our projects.

22 COUNCILMEMBER BAISA: Thank you very much, Chair. I'll  
23 defer to others.

24 CHAIR MOLINA: Okay. Thank you, Ms. Baisa.  
25 Mr. Pontanilla?

1 VICE-CHAIR PONTANILLA: Thank you. Thank you for being  
2 here, Ms. Sombelon.

3 Can you tell me a little about your affordable  
4 housing project in Lahaina? I know you did receive  
5 some funding from Kaanapali Beach.

6 MS. SOMBELON: Right.

7 VICE-CHAIR PONTANILLA: They came to this Council, and they  
8 announced at -- at their meeting that we had with  
9 Land Use that they were going to donate to Lokahi  
10 Pacific for that affordable housing and -- and  
11 that's the first time that we heard that, you know,  
12 any moneys was being considered for your Project.

13 Who else donated to Lokahi Pacific to make  
14 that affordable housing a reality in Lahaina?

15 MS. SOMBELON: We also received funds from Starwood.

16 VICE-CHAIR PONTANILLA: Thank you.

17 MS. SOMBELON: You're welcome.

18 CHAIR MOLINA: Okay.

19 VICE-CHAIR PONTANILLA: And -- and, Chairman, the reason  
20 why I bring this up is that some of the fundings  
21 that are provided to nonprofits for affordable  
22 housing does not pass through to this Council.

23 In fact, when they did the Lahaina one, it was  
24 a meeting setting just like this that I found out  
25 that moneys were being donated for affordable

1 housing in the Lahaina area. So just a comment,  
2 Chair. Thank you.

3 CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Before I  
4 open up the floor again for questions, Ms. Sombelon,  
5 the -- you mentioned the letter that came from the  
6 applicant's attorney was dated January --

7 MS. SOMBELON: Seventeenth.

8 CHAIR MOLINA: January 17th of this year.

9 MS. SOMBELON: Uh-huh.

10 CHAIR MOLINA: Okay. And this was sent to the Council?

11 MS. SOMBELON: No, it was sent to me.

12 CHAIR MOLINA: Oh, okay. So the Council -- we have yet to  
13 receive it, then, for --

14 MS. SOMBELON: Yeah. I don't know if --

15 CHAIR MOLINA: Okay. All right. Thank you. I just wanted  
16 to make that clarification. Committee Members --

17 MS. SOMBELON: Oh --

18 CHAIR MOLINA: -- additional questions for Ms. Sombelon?

19 MS. SOMBELON: Excuse me. Rory -- Rory Frampton said that  
20 it's attached to the PowerPoint presentation in your  
21 packet.

22 CHAIR MOLINA: Okay. In the back of the PowerPoint packet  
23 that we -- so we only got it today, then, basically,  
24 right? Yeah. All right. Thank you. Mr. Mateo?

25 COUNCILMEMBER MATEO: Chairman, thank you. Thank you --

1           thank you for being here.

2   MS. SOMBELON:   Okay.

3   COUNCILMEMBER MATEO:   In -- in your discussion with the --  
4           with the applicant in terms of their providing that  
5           250,000 to Lokahi for your Project, is -- is that an  
6           expectation to be received up front or when the  
7           Project gets all their approvals or when they  
8           complete their development Project?   So can you tell  
9           me when Lokahi is expecting --

10   MS. SOMBELON:   Yeah.   I was told that it would be one to  
11           two years, so when they get approval of their  
12           Project.

13   COUNCILMEMBER MATEO:   Okay.   So it will be before they  
14           actually start the construction or the  
15           development --

16   MS. SOMBELON:   Yes.

17   COUNCILMEMBER MATEO:   -- of their property?

18   MS. SOMBELON:   Yes.

19   COUNCILMEMBER MATEO:   Thank you.   Thank you, Chair.

20   CHAIR MOLINA:   Okay.   Thank you, Mr. Mateo.   Additional  
21           questions for Ms. Sombelon?   Seeing none, thank you  
22           very much.

23   MS. SOMBELON:   Thank you.

24   CHAIR MOLINA:   Very good.   Members, we will now hear from  
25           Mr. Matsui from the Parks Department.

1 COUNCILMEMBER ANDERSON: Chair --

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

3 COUNCILMEMBER ANDERSON: -- I -- I have some affordable  
4 housing questions.

5 CHAIR MOLINA: Oh, okay. So -- hang on, Mr. Matsui. We  
6 have questions for Director Medeiros. Proceed,  
7 Member Anderson.

8 COUNCILMEMBER ANDERSON: So, Ms. Medeiros, did you receive  
9 the December 31st letter from Chair Molina?

10 MS. MEDEIROS: Yes. Yes, I did.

11 COUNCILMEMBER ANDERSON: And -- and you just haven't had a  
12 chance to respond, is that it?

13 MS. MEDEIROS: No, we did respond. Our letter response was  
14 dated January 16th.

15 CHAIR MOLINA: It's near the end of the (inaudible)  
16 section.

17 COUNCILMEMBER ANDERSON: I'm sorry, I guess I missed it in  
18 all of this. Oh, here it is. So I guess my  
19 question, Mr. Chair, is going to be Corp. Counsel.

20 CHAIR MOLINA: Proceed.

21 COUNCILMEMBER ANDERSON: The Maui Planning Commission saw  
22 this at its regular meeting of November 26th, and  
23 they voted to recommend approval to us with the  
24 condition that prior to final subdivision approval  
25 -- final subdivision -- the applicant shall submit

1 evidence of compliance with either a pending or  
2 adopted County Affordable Housing Policy, as  
3 determined by the Department of Housing and Human  
4 Concerns.

5 We adopted the Workforce Housing Bill the  
6 following month. So I think it's a matter of  
7 interpretation here as to whether or not this  
8 condition is meant to be valid.

9 Obviously, the Planning Commission wanted them  
10 to comply with the pending ordinance. They're  
11 calling it the County Affordable Housing Policy,  
12 isn't the same as the Workforce Housing Bill, but --  
13 because we have other affordable housing policies  
14 within the County Code.

15 So when the bill was passed, there was a  
16 provision that got put in that said all preliminary  
17 subdivisions shall be exempt from this bill. All  
18 subdivisions which have received preliminary  
19 approval shall be exempt.

20 You know, I -- I got a problem with that  
21 because it doesn't take anything to get a  
22 preliminary subdivision approval. All you have to  
23 do is submit, you know, your plans for subdivision,  
24 and you get an automatic approval within 45 days.  
25 Maybe with a list of a whole bunch of things you got

1 to do before you can get final, but the fact is, is  
2 that the Planning Commission intended this condition  
3 to be attached to the approval of the Change in  
4 Zoning.

5 So I guess I have two questions, one for  
6 Ms. Medeiros, if she would be able to calculate -- I  
7 see this as they already have three existing homes  
8 so I see them as being exempt.

9 They're going to be adding seven. And I'm  
10 assuming they're all going to be over 600,000. So  
11 if they were to meet the Workforce Housing Policy  
12 for in-lieu fees for seven units, what do you think  
13 that would amount to?

14 CHAIR MOLINA: Madam Director?

15 COUNCILMEMBER ANDERSON: And if -- if you need some time,  
16 I'll ask James a question in the meantime.

17 MS. MEDEIROS: Well, if somebody has a calculator because  
18 it would be -- if we're counting the seven lots that  
19 don't have houses on it, it would be 7 times  
20 122,750, I believe, is the -- is the amount. So 7  
21 times 122,750, if somebody has a calculator real  
22 fast.

23 COUNCILMEMBER ANDERSON: And --

24 COUNCILMEMBER VICTORINO: Okay, going be \$859,250.

25 CHAIR MOLINA: Thank you, Mr. Victorino.

1 MS. MEDEIROS: That's the answer.

2 COUNCILMEMBER ANDERSON: And that 100 --

3 COUNCILMEMBER VICTORINO: (Inaudible).

4 COUNCILMEMBER ANDERSON: Eight fifty-nine two what?

5 COUNCILMEMBER VICTORINO: Eight fifty-nine, 250.

6 COUNCILMEMBER ANDERSON: Thank you, Mike. And so that

7 122,000 is per lot, is that -- what that figure --

8 MS. MEDEIROS: The 122,750, if I recollect from the

9 ordinance, it is the difference between the

10 140 percent of median and 100 percent of -- was it

11 140? One forty percent of median and 100 percent of

12 median price for a three-bedroom home.

13 COUNCILMEMBER ANDERSON: But in the -- in the ordinance, it

14 requires for the in-lieu fee that you figure that

15 based on each lot, the difference between the 160

16 and -- or 140?

17 MS. MEDEIROS: I believe it's between 140 and 100 percent

18 of median for a three-bedroom home.

19 COUNCILMEMBER ANDERSON: Okay. Okay, thanks. And then my

20 question to Corp. Counsel, Mr. Giroux, I'm assuming

21 that maybe you probably sat in on the Planning

22 Commission for this back in November of '06.

23 So was there any discussion? Has anyone --

24 Mr. Chair, has anyone received any discussion on

25 whether or not this condition should be valid or

1 not?

2 CHAIR MOLINA: Okay.

3 COUNCILMEMBER ANDERSON: Because it doesn't say prior to,  
4 it doesn't reference preliminary approval or  
5 nothing. It just says prior to final subdivision  
6 approval, the applicant shall submit evidence of  
7 compliance.

8 CHAIR MOLINA: Let's ask Mr. Giroux. Can you expound on  
9 the matter, please?

10 MR. GIROUX: I -- I can't admit or deny my presence at that  
11 meeting. But Ms. -- to answer Ms. Anderson's  
12 question, I -- I think what -- what we need to make  
13 clear is that the -- the Planning Commission is a  
14 recommending body.

15 They -- they are looking at these types of  
16 ordinances and these types of Change in Zonings in  
17 order to try to help facilitate you in -- in looking  
18 at the Project and getting conditions on paper. You  
19 are the ultimate authority in crafting these  
20 conditions.

21 The -- the Planning Commission, at the time  
22 that they were looking at these types of -- of  
23 zoning requests, they were -- they were also looking  
24 at SMA Permits, they were looking at Special Use  
25 Permits. They were looking at a lot of types of

1 applications.

2 At the time, they had no guidance as to what  
3 the County's affordable housing policy was. What  
4 you have to understand is that when you're asking  
5 people to donate or you're asking for voluntary,  
6 you're asking for these, what's called, an ad hoc  
7 exaction at the moment, you're basically taking a  
8 risk that you may not be consistently applying that  
9 request evenly.

10 When you're talking about policies, oftentimes  
11 these policies may change rather rapidly between one  
12 application and the other.

13 My understanding, as far as trying to advise  
14 the Planning Commission in these types of  
15 situations, was that if there's a County policy  
16 which shows directive, meaning that it's been passed  
17 by ordinance and you do not need to guess at what  
18 the policy is, then that is the type of exaction  
19 that you want to encourage. You want to have clear,  
20 concise directive.

21 So when they're giving these recommendations  
22 to the Council, is what they're saying is, when you  
23 come up with a policy and it's passed by ordinance,  
24 then follow that because that's a recommendation to  
25 this body to have a policy in effect.

1                   Once that policy is passed, then the -- the  
2                   Planning Commission can then easily follow that.

3   COUNCILMEMBER ANDERSON:  Mr. Giroux, I was asking  
4                   specifics, not kind of generalities.  I mean, we all  
5                   see what the -- the condition says.  It's on the  
6                   Community Plan Amendment, it's on the Change in  
7                   Zoning, that prior to final subdivision approval,  
8                   the applicant shall submit evidence of compliance  
9                   with either a pending or adopted County affordable  
10                  housing policy as determined by the Department of  
11                  Housing and Human Concerns.

12                  So does anybody know when they got their  
13                  preliminary subdivision approval?

14   MS. MEDEIROS:  November 3rd, 2006.

15   COUNCILMEMBER ANDERSON:  November 3rd, 2006?  I mean, you  
16                  know, I mean, we were on the cusp of approving this.  
17                  And the Commission had already said on November 28  
18                  that they wanted them to comply with the ordinance.  
19                  So, you know, I -- I -- I don't see anybody  
20                  splitting legal hairs here.

21   CHAIR MOLINA:  Uh-huh.

22   COUNCILMEMBER ANDERSON:  And -- and I would -- I would hope  
23                  we would have had a legal opinion on this because to  
24                  me, this condition is a recommendation that they got  
25                  from the Planning Commission to us to comply with

1 the ordinance, and they don't have their final  
2 subdivision yet. They -- and they don't have their  
3 SMA yet.

4 What's the Planning Commission going to say  
5 when it comes back for the SMA and they see we only  
6 got \$250,000 when they were expecting, you know --

7 CHAIR MOLINA: Compliance with the policy, uh-huh.

8 COUNCILMEMBER ANDERSON: Yes.

9 CHAIR MOLINA: Okay. Mr. Giroux, you have any --

10 COUNCILMEMBER ANDERSON: So, you know, I really don't care  
11 to hear from Mr. Giroux on this. Thank you, Chair.

12 CHAIR MOLINA: Okay. The Chair would like to just get  
13 Mr. Giroux's comments briefly before we go on to  
14 recess.

15 MR. GIROUX: Thank -- thank you, Chair. I don't believe I  
16 was finished answering the first question.

17 But the -- the thing is, is that you -- you  
18 have a housing policy. Now, if you didn't want to  
19 exempt anybody from that policy, the policy would  
20 not have an exemption section. And that is  
21 underneath the power and discretion of the Council.

22 So you -- you can't -- well, I guess you can  
23 disagree with your own policy.

24 COUNCILMEMBER MATEO: Chairman?

25 CHAIR MOLINA: All right. Thank you, Mr. Giroux.

1 Mr. Mateo, your question and then we'll go on to  
2 recess. Mr. Mateo?

3 COUNCILMEMBER MATEO: Chairman, thank you very much.

4 Ms. Anderson brings up -- brings up a very good  
5 point.

6 However, Mr. Giroux, it was the Planning  
7 Commission that spent a while reviewing the actual  
8 policy before the preliminary approval of this  
9 particular application, and some of the  
10 recommendations that we adhered to was from Planning  
11 Commissions.

12 So they in fact knew of the intent, the  
13 purpose, and the function of the Residential  
14 Workforce Housing Policy prior to -- prior to  
15 November because they had -- they -- they spent the  
16 time to review and question.

17 So I would just, at this point, think that  
18 Ms. Anderson's question is -- is very relevant and  
19 in need of -- of a legal interpretation at this  
20 point. Thank you, Chairman.

21 CHAIR MOLINA: Thank you, Mr. Mateo. With that being said,  
22 Members, we're going to go on to --

23 MS. NAKATA: Oh, Mr. --

24 CHAIR MOLINA: -- recess. We shall come back --

25 MS. NAKATA: Mr. Chair?

1 CHAIR MOLINA: Staff?

2 MS. NAKATA: Could Staff just point out, we got two  
3 separate responses from the Department of Housing  
4 and Human Concerns to the Chair's request.

5 The first was dated January 14th, in which the  
6 Director indicated that the Department would need to  
7 consult with Corporation Counsel in order to respond  
8 to the inquiry.

9 The second response dated January 16th  
10 presumably was following consultation with  
11 Corporation Counsel for the Department. And in fact  
12 at page 3 of the response under Section 2, the  
13 Director indicates that following consultation with  
14 Corporation Counsel, and then she -- and then the  
15 letter goes on to contain, I guess, the  
16 interpretation of the proposed condition.

17 CHAIR MOLINA: And that was on page 3 of 4, right, on -- on  
18 that January 16th document with regard to the  
19 consultation --

20 MS. NAKATA: So it does seem as though the Department has  
21 already consulted with the Department -- with  
22 Corporation Counsel in responding to the inquiry.

23 CHAIR MOLINA: All right. Thank you very much, Staff.  
24 Members --

25 COUNCILMEMBER ANDERSON: Chair?

1 CHAIR MOLINA: -- we're going to go on to recess.

2 COUNCILMEMBER ANDERSON: Before you break --

3 CHAIR MOLINA: When we come back, we'll continue the  
4 discussion. Meeting in recess till 3:10.

5 ...(gavel)...

6 **RECESS: 2:55 p.m.**

7 **RECONVENE: 3:14 p.m.**

8 CHAIR MOLINA: ...(gavel)... Land Use Committee meeting for  
9 January 23rd, 2008, is now back in session.

10 Thank you for that recess, Members. We've  
11 been trying to sort out this issue related to the  
12 housing matter.

13 At this point, I know Member Anderson had a  
14 question and Member Victorino would -- wanted to  
15 just make a clarification. So, Member Anderson, if  
16 you don't mind yielding the floor to Member  
17 Victorino before I recognize you?

18 COUNCILMEMBER ANDERSON: Not at all.

19 CHAIR MOLINA: Thank you, Member Anderson.

20 COUNCILMEMBER VICTORINO: Yeah. Yes, thank you.

21 CHAIR MOLINA: Mr. Victorino?

22 COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. My  
23 clarification is really Ms. -- to Ms. Medeiros.

24 You stated -- you asked me how much 7 times  
25 122,750 was, right? We were wrong in that question,

1           weren't we?

2   MS. MEDEIROS:   Correct.

3   COUNCILMEMBER VICTORINO:   Okay.   Could you give us the  
4           exact number that we should have multiplied that  
5           figure by?

6   MS. MEDEIROS:   Okay, thank you.   Thank -- thank goodness  
7           for breaks.

8   CHAIR MOLINA:   Madam Director?

9   MS. MEDEIROS:   My understanding is that the -- the  
10           Subdivision is for a ten-lot subdivision, although  
11           there are currently three houses, so we're taking  
12           into account the seven new lots.

13                   Based on the application of the Workforce  
14           Housing Policy, 50 percent of the lots would have to  
15           be affordable, which is 3.5 and we round it up to 4,  
16           so it would be 4 times the 122,750 amount, which --

17   COUNCILMEMBER VICTORINO:   Which would come out to \$491,000.

18   MS. MEDEIROS:   Correct.

19   COUNCILMEMBER VICTORINO:   Okay.   So that is the correct  
20           figure that we should be dealing with if what we're  
21           trying to establish is -- this is going to be part  
22           of the Workforce Housing Policy.

23   MS. MEDEIROS:   If you determine that they should be subject  
24           to that and they choose to do the in-lieu fee, then  
25           that would be the calculation, correct.

1 COUNCILMEMBER VICTORINO: Okay. Thank you. So I wanted  
2 that correction out there because I wanted to make  
3 sure the public understood how we're going to -- or  
4 if and what we determine is based on the facts and  
5 not a -- not a mistake number.

6 So thank you, Mr. Chair. I appreciate that.  
7 And maybe if they get a moment, you can call the  
8 applicant down and ask his opinion on what we've  
9 just discussed.

10 CHAIR MOLINA: All right. Thank you for that  
11 clarification, Mr. Victorino. Member Anderson, you  
12 have the floor.

13 COUNCILMEMBER ANDERSON: I will yield to other Members on  
14 the affordable housing issue.

15 CHAIR MOLINA: Okay. Committee Members, any other  
16 questions on the housing issue at this point?

17 COUNCILMEMBER VICTORINO: I would --

18 CHAIR MOLINA: And I think, Mr. Victorino, you had a  
19 request for -- or a suggestion to have the applicant  
20 come down --

21 COUNCILMEMBER VICTORINO: Yes. I'd like to have the  
22 applicant come down, please.

23 CHAIR MOLINA: -- and offer their thoughts on this? Okay.  
24 Mr. Frampton? Mr. Frampton, your comments.

25 MR. FRAMPTON: Thank you. Just a couple points. And I

1 apologize for the oversight on not having the letter  
2 go to the -- to the Housing Director. The letter is  
3 attached to the packet.

4 We had met with Lokahi Pacific I think it was  
5 at the beginning of the summer. These discussions  
6 have been going on, and -- and -- and once we  
7 realized we were scheduled, we didn't -- we did go  
8 ahead to finalize that. And the -- the offer that's  
9 contained in the letter that's attached to the  
10 packet is -- is the official offer from the partners  
11 to Lokahi Pacific.

12 As -- as Ms. Sombelon noted, the -- the moneys  
13 wouldn't be available for some time so the only  
14 stipulation that we wanted was for that it would go  
15 to an affordable housing project in the Kihei area  
16 and that there was no -- we wanted to basically make  
17 it flexible for her, not knowing when the moneys  
18 were actually going to be made available.

19 And -- and, really, the reason for that was  
20 because there is a subdivision process that we still  
21 have to go through, and the subject of getting water  
22 meters and that type of stuff could take an awful  
23 long time.

24 So when all that is squared away, then the  
25 moneys would become available prior to the starting

1 of construction, like Councilmember noted. So it  
2 would be prior to the granting of final subdivision;  
3 or in the case of a bonded final, it would be prior  
4 to the bonded final as well.

5 So the -- you know, I was at the Planning  
6 Commission meeting and, really, that condition  
7 stemmed from -- Jeff Hunt, actually, was our planner  
8 at the time.

9 Prior to September of '06, we had received  
10 letters from the Housing Director, noting that we  
11 were exempt from the policy at that time because the  
12 policy was, at that time, ten units.

13 So -- and mind you, this Project has been in  
14 the works since -- we turned in the application  
15 since 2002 so it's not a new project. It's not  
16 something that we were turning in to rush ahead and  
17 to try to beat this affordable housing project.  
18 We'd been in the project -- process for a number of  
19 years. But -- and -- and throughout that time, we  
20 were exempt from the policy at -- that was in place,  
21 and it was just a policy. It was not an ordinance.

22 Come -- come the summer of -- as -- as the  
23 then-planner, Jeff Hunt, was working on our Project,  
24 getting ready for Planning Commission, he sent an  
25 e-mail to then-Director Alice Lee, asking her if she

1 had any change from her previous position that we  
2 were exempt.

3 And her statement was that for all new  
4 applications, we're asking that they comply with  
5 whatever comes out of Council, whatever comes out of  
6 the affordable -- the -- the Workforce Housing  
7 Ordinance because it was pending, and the  
8 discussions were taking place at that time at  
9 Council.

10 And as you know, the discussions were going,  
11 kind of, all over the place. The percentage  
12 requirements had gone up, the trigger had gone up,  
13 and these things -- a lot of these things were  
14 changing after it had left the Planning Commission.

15 So when we were at the Planning Commission in  
16 November, there was no discussion on this affordable  
17 housing issue because it -- they knew that we were  
18 going up to Council. But there was a condition that  
19 the Planning Department had recommended that the  
20 Project comply with the ordinance, the ordinance  
21 that gets approved.

22 And so, you know, when the ordinance got  
23 passed and it had the exemption, we felt we were in  
24 compliance that we were exempt from the ordinance  
25 because it listed one of the -- one of the items

1           that was listed under the exemption clause was  
2           the -- anybody who had received preliminary approval  
3           would be exempt.

4                   Now, coming into this process -- and I think  
5           the letter from Housing, in which they consulted  
6           their attorney, seemed to me that it -- it makes it  
7           perfectly clear that this Project would be exempt,  
8           absent a condition by this body.

9                   If this body -- I think what he said was this  
10          body, if you want to override the ordinance, you can  
11          come in and say, well, we said you're exempt, but we  
12          don't want you guys to be exempt and that you guys  
13          could supersede your -- your ordinance where you  
14          exempted us.

15                   We, obviously, were hoping that you didn't.  
16          We thought that we would make a -- or the Garcias  
17          wanted to make a good-faith effort towards  
18          complying, and the amount of the \$250,000 was  
19          similar to an amount that would have been required  
20          when -- when the -- under the old policy. That's  
21          how that figure came up.

22                   So that's kind of a -- from our side, the  
23          chain of events that led to us, you know, still  
24          feeling strongly, and I -- I think it's not feeling  
25          strongly, that it's clear that if -- if you look at

1 the ordinance, we're exempt.

2 It is the Council's decision, you guys can do  
3 whatever you want, you could supersede the  
4 exemption, or you could recognize the voluntary  
5 contribution that the Garcias are trying to make.

6 CHAIR MOLINA: Mr. Frampton, you've heard the figure that  
7 was mentioned by Victorino related to the  
8 three-and-a-half lots and if we were to consider,  
9 you know, applying that provision of the policy  
10 and -- and, you know, a figure in lieu of the  
11 housing units.

12 Are you able to comment on that at this point,  
13 or you need more time to think about it? I don't  
14 want to pressure you at this point in time.

15 MR. FRAMPTON: Yeah. I -- we -- the -- in the -- in the  
16 interest of moving this Project along and moving  
17 this discussion along, we did -- we did, when we --  
18 that's what our understanding that the calculation  
19 would be when we talked about this in break, so  
20 the -- the -- the applicants would be willing to go  
21 up to that figure, the -- whatever the -- whatever  
22 the figure would come out to be, the -- at 4 units  
23 times the 122 and change, which takes us up to about  
24 490 and change. I think the -- the Housing Director  
25 had that figure.

1           But, yes, the applicant would be willing to do  
2           that. We would do it again via this letter. And,  
3           again, we were following precedent, you know, with  
4           the Papanui case. It was the same set of  
5           circumstances. They were exempt from the ordinance,  
6           but they offered a voluntary contribution. They did  
7           it via letter, offering the money to Lokahi, and it  
8           was not attached as a condition of zoning.

9   CHAIR MOLINA: Uh-huh.

10   MR. FRAMPTON: And the idea there is that, you know, we  
11           have put it in writing. The Garcias are long-time  
12           residents here. They're not going anywhere. We're  
13           going to do it as part -- prior to bonded or final  
14           subdivision.

15   CHAIR MOLINA: Okay. Thank you, Mr. Frampton.

16   COUNCILMEMBER VICTORINO: Mr. Chair?

17   CHAIR MOLINA: Mr. Victorino, followed by Member Anderson.

18   COUNCILMEMBER VICTORINO: Yeah, thank you. And,  
19           Mr. Frampton, thank you very much because our  
20           discussion really wasn't trying to put you or  
21           anybody at fault. We were trying to really get to  
22           the nexus. And I think it's a matter of  
23           interpretation, and I -- I -- I don't want to  
24           belabor the point.

25           I'm very pleased that, you know, knowing the

1           Garcias and -- and the long-time relationship with  
2           these families down in the Makena area, that this,  
3           if you guys are willing to do that, put the 491,000  
4           forth towards affordable housing, you know, we will  
5           be very pleased to at least move this on.

6                    And -- and, really, thank you for, you know,  
7           really abiding by what we're -- our intent was, you  
8           know. And, again, it's a matter of interpretation.  
9           I think you agree with me on that one when we  
10          discussed the matter.

11                   So, you know, Mr. Chair, I -- I'm really  
12          pleased that these kamaainas again come through and  
13          willing to do these things and help our people,  
14          especially our working people.

15                   So, Mr. Frampton, I really thank you for, you  
16          know, this -- this -- this discussion and getting  
17          this thing moved forward. And if you could put that  
18          in a letter form and that way, we're all satisfied  
19          at least for that point.

20                   Now, there's some other things that need to be  
21          brought up, but I want to thank you very much and  
22          the owners for their consideration in this area.

23   CHAIR MOLINA:   Okay. Thank you, Mr. Victorino. Member  
24                    Anderson?

25   COUNCILMEMBER ANDERSON:  I -- I'm just really pleased that

1           they're willing to do this, and I thank the Garcias  
2           for agreeing to it because, you know, it is a -- I  
3           think we could probably spend a lot of time, defer  
4           this, get a legal opinion, and it may end up being  
5           in our favor; then again, it may not so then we  
6           would have to be the hard guys here.

7                         And I -- I really appreciate you folks  
8           agreeing to do this. It's going to be very helpful,  
9           and maybe you'll save some money on the  
10          right-of-way. Thank you. Thank you, Chair.

11 CHAIR MOLINA: Thank you, Ms. Anderson. Mr. Mateo?

12 COUNCILMEMBER MATEO: Chairman, thank you. I -- I think  
13          this is a little difficult for me. It's a little  
14          difficult for me because when you have an applicant  
15          that submitted his application in 2002 and, you  
16          know, it went through -- it went through the  
17          process.

18                         And, yes, we have a very rigid Residential  
19          Workforce Housing Policy, but the applicant was  
20          informed by the Director of Housing and Human  
21          Concerns of one item. The Planning Commission  
22          provided their -- their input and kind of directed  
23          it in another direction, and we have Corp. Counsel  
24          that will not tell us one way or another whether or  
25          not, you know, interpretation is -- is clear even

1 till today.

2 It puts us in a very awkward situation, and it  
3 puts the applicant in a very difficult situation  
4 because 200,000 at this point, you know, we don't  
5 just pick it out of the air.

6 So I'm a little -- I'm a little perplexed that  
7 -- you know, I -- I fully support the need for  
8 affordable housing, but at the eleventh hour when  
9 our people had the opportunity to provide an actual  
10 determination, it wasn't, and they -- back on our  
11 laps to supersede actions that we had already taken,  
12 I find that very disturbing, and I find it -- I find  
13 it quite difficult for the applicant because there  
14 is a good -- a good-natured gesture being presented  
15 to us.

16 And if only they were told from the get-go  
17 that you would have to comply with the requirements,  
18 then I don't think we would be having this  
19 discussion. But from the get-go, they were told by  
20 government officials you're exempt. That disturbs  
21 me. Thank you, Chairman.

22 CHAIR MOLINA: Thank you, Mr. Mateo. Committee Members,  
23 any other questions related to this matter?

24 Mr. Hokama?

25 COUNCILMEMBER HOKAMA: Chairman, thank you for allowing my

1 opportunity. I -- I have some similar appreciation  
2 of Mr. Mateo's comments, Chairman, and I -- and I  
3 will state for the record in my point of view, this  
4 Project is exempt from our policy.

5 And I keeping trying, I've tried to recall  
6 through my memory chips in my brain. I cannot  
7 recall Council ever putting a condition on a Land  
8 Use entitlement that went against a current policy  
9 enacted into ordinance.

10 You know, we've reiterated policy that's been  
11 enacted into ordinance, such as vacation rentals or  
12 B&Bs and -- or whatnot, Mr. Chair, but I cannot ever  
13 recall us going contrary to the existing laws of the  
14 County through Maui County Code ordinances. So I  
15 just share that with all the Members.

16 But on this matter, you know, Mr. Chair, I  
17 would just say if the applicant is willing to  
18 voluntarily do this, then I am more than happy to  
19 voluntarily accept that money.

20 But I would say if the Committee is willing to  
21 go with a letter to suffice and have no reason to  
22 doubt the Garcias, being ancient families in my --  
23 my perspective, very, very old, old ancient families  
24 of this County, then I would say maybe it needs to  
25 be clear.

1                   Because in the current letter attached to the  
2                   PowerPoint presentation, I would say, then,  
3                   Mr. Frampton, you may want to reverify in the  
4                   written document that it is prior to construction  
5                   that the donation will be presented to -- to the  
6                   County or to the appropriate nonprofit agency that  
7                   will be the accepting authority because that's what  
8                   we've heard you --

9                   MR. FRAMPTON:   Yes.

10                  COUNCILMEMBER HOKAMA:  -- this afternoon reiterate more  
11                  than once that it is prior to construction.  And I  
12                  would just ask that if that is the case, then in the  
13                  letter, it details that that is the language, prior  
14                  to construction.

15                         Because I read that the only two components in  
16                         the letter was that it be within the region and it  
17                         be for the development and maintenance of affordable  
18                         projects.

19                  MR. FRAMPTON:  Uh-huh.

20                  COUNCILMEMBER HOKAMA:  But I just wish to ask you that  
21                  point about the timing so it's perfectly clear when  
22                  the money is to be received that it's as of -- that  
23                  is -- it is as you have stated this afternoon, prior  
24                  to construction.

25                  MR. FRAMPTON:  We could make that perfectly clear with a

1 new letter that we could have drafted up tomorrow if  
2 the Committee sees fit to pass this out, this item  
3 out of Committee, and we'd have it in -- have the  
4 letter in writing to this body prior to first  
5 reading. And it would specify the change in the  
6 amount, plus the -- the timing. We would make it  
7 perfectly clear.

8 COUNCILMEMBER HOKAMA: Thank you, Mr. Frampton.

9 Mr. Chairman, thank you.

10 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Committee  
11 Members, any other questions for the applicants  
12 before we move on to, I guess, discuss, get into the  
13 matter of conditions? Member Anderson?

14 COUNCILMEMBER ANDERSON: Yeah. While Mr. Frampton's up  
15 here, I have some questions --

16 CHAIR MOLINA: Okay. Proceed.

17 COUNCILMEMBER ANDERSON: -- going back to the presentation.  
18 Regarding -- regarding the cattle wall, the  
19 preservation plan that you folks have done, the --  
20 you showed us a cattle wall that goes through the  
21 heiau and then when you look at the preservation  
22 plan, it's not there any more.

23 So it's your intention to remove that cattle  
24 wall?

25 MR. FRAMPTON: I think it was just not highlighted. It was

1 not chosen as a -- specified as a boundary. What we  
2 did highlight were the portions of the walls that  
3 were used as boundaries of the preservation area.

4 The -- right now, there is no -- in the  
5 preservation plan, we did not -- basically, the site  
6 would remain as is. If there was going to be any  
7 modification, such as removal of that wall, we'd  
8 have to go back through the State Historic  
9 Preservation Office if we wanted to tinker around  
10 and do any kind of restoration of the site to maybe  
11 try to get it cleaned up or maybe present it in a  
12 manner that was maybe closer to what it was in the  
13 past.

14 But as what -- what -- what we're doing right  
15 now, and it's supported by some of the testimony in  
16 the oral interviews, is that we're leaving it as it  
17 is. We're -- we're preserving the areas around the  
18 site.

19 But in terms of the remains of the site, right  
20 now, there is no -- there's not a provision to  
21 remove that wall. However, there's an opportunity  
22 to do that through the further interpretive work and  
23 through the part -- and partnership with the church  
24 and as part of some steward -- as part of the  
25 ongoing stewardship of the site.

1                   But, again, that would have to be approved  
2                   through the State Historic Preservation Division,  
3                   and we have not specifically requested that as of  
4                   yet.

5   COUNCILMEMBER ANDERSON:   And would that be something that  
6                   you would be willing to do?

7                   Because first of all, I'd like to mention,  
8                   Mr. Chairman, that there was an environmental impact  
9                   statement done for this Project because they're  
10                  getting a Community Plan Amendment.

11                  And as the approving authority for the  
12                  Community Plan Amendment, I felt all the Council  
13                  Members should have a copy of this EIS.  And I asked  
14                  that to happen, and apparently it was not followed  
15                  through with.  I didn't hear anything from you about  
16                  it.

17                  So it looks like I'm the only one with a copy  
18                  of the EIS, and that's regrettable because this is  
19                  such a well-done EIS.  And included in the EIS,  
20                  Members, is guess what, an approved preservation  
21                  plan by State Historic.

22                  So we have met -- these applicants have met,  
23                  as far as I can tell, all the requirements of the  
24                  Change in Zoning application, including the  
25                  Community Plan Amendment by finalizing a

1 preservation plan, having it reviewed by State  
2 Historic, also the Commission -- Cultural Resource  
3 Commission.

4 And, you know, Mr. Chair, this -- this is the  
5 future of what's going to happen to these historic  
6 sites, to these religiously significant sites. And  
7 they changed their plans significantly to  
8 accommodate this site.

9 And I wish all of you had a copy of this so  
10 you could see. This is the kind of information we  
11 should have in front of us for every Change in  
12 Zoning application that has significant sites  
13 because now we know this is the plan for what's  
14 going to happen there.

15 CHAIR MOLINA: Uh-huh.

16 COUNCILMEMBER ANDERSON: These sites will be -- sorry.

17 Hang on, Rory. These sites will be open to access  
18 to the public, there will be -- the view plane from  
19 these sites, you're probably going to see Molokini  
20 because they're high up on a knoll.

21 I've spoken with the archaeologist. I'm not  
22 sure if Kepa Maly's an archaeologist, to tell you  
23 the truth, but he did the preservation plan. The  
24 intention is to complete an interpretation of the  
25 area and to put in interpretive signs and

1 information so that the public, native Hawaiians,  
2 school children, visitors, can be enriched by the  
3 antiquities of our host culture.

4 And so I really want to commend the Garcia  
5 Family for taking the historic preservation process  
6 all the way through to its final conclusion, which  
7 is the preservation plan, for altering their Project  
8 to accommodate the sites on this property.

9 I just took my tab out, and I had a colored  
10 map I wanted to show everybody. Originally, they  
11 were only going to preserve the heiau, which is  
12 towards the front of those -- of that preservation  
13 plan, you saw the heiaus towards the front, then  
14 there's a knoll in the back. And they're not quite  
15 sure what it was meant to be used for, but there  
16 were enough comments made by cultural practitioners.

17 I know that Dana Hall weighed in on this  
18 heavily, also -- having a senior moment. Dana's  
19 pal.

20 MR. FRAMPTON: Uncle Les.

21 COUNCILMEMBER ANDERSON: Thank you, Uncle Les. My  
22 apologies. Les Kuloloio. And in response to that,  
23 they expanded the cultural area, preservation area,  
24 to include this other site at the top. So there's  
25 going to be two knolls that have historic sites on

1           them.

2                   And I -- I just -- you know, I can't emphasize  
3           the importance of having this preservation plan  
4           done. And having gone through the process and being  
5           willing to listen to input from people, they  
6           substantially changed their Project --

7   CHAIR MOLINA: Uh-huh.

8   COUNCILMEMBER ANDERSON: -- to accommodate the historic  
9           sites. And not just to accommodate them but to go  
10          the full course, to give them huge buffer zones, to  
11          give them access, to commit to a preservation plan  
12          and an interpretive program so that these sites are  
13          going to mean something to people in the future.

14                 They are not landscape features for a  
15          subdivision. And that's how you guys are treating  
16          them, and I commend you for that. And I -- I hope  
17          other developers take a lesson because we have so  
18          few sites left and so little of it interpreted for  
19          the enjoyment and enrichment of the public.

20                 So that being said, you said that you changed  
21          it based on public comment. Do you want to comment  
22          for us, Rory, on where that input came from and why  
23          you made -- why you and the Garcias made a decision  
24          to change -- I mean, they actually changed a whole  
25          lot in order to accommodate these sites. And while

1           -- while you respond to that, I'm going to find that  
2           map.

3   MR. FRAMPTON:   Well, I --

4   CHAIR MOLINA:   Oh, Mr. Frampton, before you respond, could  
5           I just add something to Member Anderson's concern  
6           regarding the EA?

7                    The Chair did take into consideration your  
8           request about providing a copy of the EA to  
9           everyone, but I was trying to be sensitive to the  
10          concerns -- or the cost to the Garcia Family.

11                   Typically, Mr. Frampton, how much would a copy  
12          of an EA if we provided a copy of --

13   MR. FRAMPTON:   In -- in this case, it would be over a  
14          hundred dollars per copy.

15   CHAIR MOLINA:   Okay.  And the -- and the Chair's aware --  
16          well aware of, you know, preserving our resources,  
17          you know, paper, trying to preserve paper, so I was  
18          looking for a balancing act here.

19                    So I sent an e-mail to all the Members dated  
20          July 18th -- excuse me, January 18th, and it states  
21          here to all the EAs, we are placing a CD containing  
22          the final environmental assessment for this Project  
23          in your Member's in-tray.  This application is  
24          scheduled for the Land Use Committee's meeting of  
25          January 23rd, 2008.

1           So it was available to all of you in CD format  
2           so I'm trying to take advantage of technology, along  
3           with trying to save paper. So -- and I -- and I  
4           agree with Member Anderson's, you know, assessment  
5           that, you know, looking at the EA is important so  
6           whether it be in hard copy or CD, so I -- I did --

7   COUNCILMEMBER ANDERSON: Chair, let me respond to that. I  
8           appreciate your effort --

9   CHAIR MOLINA: Yeah.

10   COUNCILMEMBER ANDERSON: -- but I would like to use this  
11           opportunity. You know, a CD, you know how long it's  
12           going to take to read a 500-page document from a CD?  
13           It ain't going to happen.

14           Having a hard copy, you can flip through, you  
15           can see the maps, you can, you know, reference them,  
16           and it becomes, you know, a dynamic document.

17           They spent a lot of money developing this, and  
18           this is an informational document that all of us  
19           could be using. And the reason I'm bringing this up  
20           now in front of Jeff Hunt, our Planning Director, is  
21           because this EA went in front of the Planning  
22           Commission.

23           They were the accepting agency for this EA,  
24           although they are not the authority for the permit  
25           that triggered the EA. We are. So they had to have

1 nine copies for the Planning Commission.

2 So I would request every time you review an EA  
3 for acceptance by the Planning Commission, that you  
4 just forward those EAs on to the Council because  
5 then we would get a second use out of these EAs for  
6 every single Member here.

7 And, you know, I'm adamant about this because  
8 I used to be a planner for OEQC. I know the value  
9 of these documents, and I know how much time and  
10 money goes into producing them. There's way more in  
11 this document than you're going to see in the  
12 Planning Department report.

13 So I appreciate what you did, Mr. Chair, but  
14 maybe in the future, it will just be a standard  
15 procedure that instead of throwing away the EAs  
16 after the Planning Commission has accepted them,  
17 which to me is waste of a hundred dollar -- \$800  
18 minimum, not to mention the amount of money and  
19 effort that went to develop the document.

20 It shouldn't be thrown away. It should be  
21 used for the purpose it was developed, for a  
22 Community Plan Amendment.

23 CHAIR MOLINA: Okay. Thank you, Member Anderson, for your  
24 comments. So we'll -- we'll see what we can do  
25 about it for the future.

1                   And, again, the Chair was just being very  
2                   sensitive to the Garcias. I know we're not -- we  
3                   know they're not gazillionaires, if you know what I  
4                   --

5   COUNCILMEMBER ANDERSON: No, I was hoping you could get 'em  
6                   from the Planning Commission.

7   CHAIR MOLINA: Yeah. And that -- that may be one other  
8                   alternative we can consider as well. So anyway, I'm  
9                   kind of sensitive to trees, like many of you, so --  
10                  anyway, I'm sorry, Mr. Frampton. I'm -- well, are  
11                  you able to respond? I'm sorry for the delay on  
12                  that.

13   MR. FRAMPTON: Yeah. I think the question was just -- and  
14                  I'll quickly highlight it. I briefly mentioned it  
15                  in my presentation.

16                  The decision to amend the site plan was it was  
17                  -- there were a number of reasons, one of which was  
18                  the -- the archaeological site on the knoll that was  
19                  really of -- in -- it was hard to determine. There  
20                  was a lot of speculation of what it might have been  
21                  used for.

22                  I think we found a way to incorporate that  
23                  into an overall site plan that we thought maybe  
24                  would kind of preserve not only the archaeological  
25                  site but the -- that I -- I'm -- I have a little --

1 I guess it's my own bias of liking to try to keep to  
2 the natural landforms. And -- and those two rock  
3 formations are fairly -- are -- are natural.

4 There's -- there's an opportunity to do  
5 sensitive Hawaiian landscape treatment around there  
6 so I think it -- the idea was that it could  
7 provide -- it wouldn't hurt the Project. In fact,  
8 it might almost be an amenity to have the natural  
9 landscape preserved, in addition to the sites.

10 And -- and in addition, the other  
11 consideration with going down from four lots to  
12 three was what I mentioned earlier, again with the  
13 Garcias wanting to keep the density and the  
14 character along Makena-Keoneoio Road kind of like  
15 how it is now. So rather than putting four lots  
16 makai of the heiau, we went to three.

17 And I think over -- we felt overall, it just  
18 lended itself to a better overall site plan. So  
19 there were a combination of factors.

20 COUNCILMEMBER ANDERSON: Well, I appreciate it very much.

21 And I'm sure the kupuna watching from above  
22 appreciate it because they all held this area in  
23 high regard.

24 The -- the question I had about the cattle  
25 wall, the rock cattle wall, I can see that you

1           have --

2   MR. FRAMPTON:   Could -- could -- I'm sorry for  
3           interrupting.   Could I just see what we stated in  
4           the report for the cattle wall?

5   COUNCILMEMBER ANDERSON:   What you're going to do with it,  
6           you mean?

7   MR. FRAMPTON:   Yes.

8   COUNCILMEMBER ANDERSON:   Sure.   You can.

9   MR. FRAMPTON:   Because -- because -- and I'm sorry, I just  
10          wanted to --

11   COUNCILMEMBER ANDERSON:   No, no, no.   When you find -- find  
12          it, Rory.

13   MR. FRAMPTON:   The text on page 20 -- page 21 of the -- or  
14          no, I'm sorry.   It's page 20 of the approved  
15          preservation plan.

16   COUNCILMEMBER ANDERSON:   Got your CDs, Members?

17   MR. FRAMPTON:   Talks -- talks about the -- the long-term  
18          preservation efforts, and it talks about possibly --  
19          well, talks about working with the -- the Garcia  
20          Family property owners and community members.

21                 Hopefully, the church would coordinate any  
22          interpretive programs and organize programs of site  
23          stabilization or restoration with the prior approval  
24          of DLNR.   So that's where I talk about there having  
25          to be prior approval.

1 COUNCILMEMBER ANDERSON: Right --

2 MR. FRAMPTON: And on the last -- on the last paragraph --

3 COUNCILMEMBER ANDERSON: -- but that's standard.

4 MR. FRAMPTON: Under the last paragraph, it does say -- it

5 does say an initial task could be the removal of a

6 portion of Site 5036A, a wall that currently bisects

7 Kalani Heiau because this historic ranching-related

8 feature artificially divides the site and detracts

9 from its original appearance.

10 The stone wall -- the stones from the wall

11 could be used to restore portions of the original

12 heiau walls that were undoubtedly the source for the

13 historic wall's construction.

14 So we do recognize that as an option. It's

15 in -- it is in here, but it would be something that

16 would be taking place in the future --

17 COUNCILMEMBER ANDERSON: Right.

18 MR. FRAMPTON: -- and we would have to get SHPD approval.

19 COUNCILMEMBER ANDERSON: Right. Well, to do any alteration

20 or restoration, you have to do that.

21 MR. FRAMPTON: Right.

22 COUNCILMEMBER ANDERSON: But I'm just asking that --

23 MR. FRAMPTON: It's been discussed, and we certainly see

24 that as a potential in consultation with the

25 community groups that -- that do take on -- or the

1 community group that does take on the eventual  
2 long-term --

3 COUNCILMEMBER ANDERSON: Because the thing is, Rory, it's  
4 not just about preserving these sites that have  
5 been, you know, left in disarray --

6 MR. FRAMPTON: Uh-huh.

7 COUNCILMEMBER ANDERSON: -- for centuries.

8 MR. FRAMPTON: Right.

9 COUNCILMEMBER ANDERSON: But to restore them so that they  
10 can be adequately interpreted for enjoyment of the  
11 ancient past.

12 So, you know, I don't know what the cost would  
13 be to do that, but I would hope that that would be  
14 something that would be part -- you know, it's --  
15 it's in here as an initial task that could happen, a  
16 potential. I would hope it would be something that  
17 you would take very seriously in the interpretation  
18 of the site and in its restoration.

19 I don't know about -- I mean, you -- it looks  
20 like there's -- there's a rock wall all the way  
21 around the preservation site, and I had a question  
22 on that, is what will be the height of the rock  
23 wall?

24 MR. FRAMPTON: It's the existing cattle wall and so we  
25 would incorporate -- we basically --

1 COUNCILMEMBER ANDERSON: This wall right here --

2 MR. FRAMPTON: Yes.

3 COUNCILMEMBER ANDERSON: -- around the preservation zone?

4 MR. FRAMPTON: Portions of that -- the -- we're not going

5 to build new walls, but we'll utilize the existing

6 cattle ranch walls as a perimeter and that's why

7 there's sort of an irregular shape to the site.

8 So -- and --

9 COUNCILMEMBER ANDERSON: Well, they're perfect, actually.

10 MR. FRAMPTON: Right. So we wouldn't have to construct any

11 new walls.

12 COUNCILMEMBER ANDERSON: Oh, you wouldn't?

13 MR. FRAMPTON: No. And -- and where there are no walls

14 along that perimeter, we would plant a planting

15 buffer.

16 COUNCILMEMBER ANDERSON: And they're only -- most of the

17 cattle walls I see are, like, 3 to 4 feet tall.

18 MR. FRAMPTON: Correct.

19 COUNCILMEMBER ANDERSON: Okay. Thank you very much.

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

21 Committee Members, the Chair is looking -- noting

22 the time. I've been informed that several of you

23 have some commitments at 5:00, and we do have one

24 other matter on our agenda today to discuss.

25 The Chair, at this point, is -- being that

1           there may be some additional discussion on the  
2           conditions and time and so forth and to be fair to  
3           the other applicant for the other matter, I'd like  
4           to have that matter discussed.

5                        However, if you would like to act on this,  
6           that's -- the Chair is open to that.  However, the  
7           Chair has a preference for deferring this because of  
8           the issues with regards to the monetary  
9           contribution, as well as getting an opinion -- or  
10          getting further clarification from the Public Works  
11          Department on the right-of-way issue, the road  
12          extension.

13                      The Chair's opening this up for your comments  
14          if this is something you want to continue on to make  
15          a decision today.  Again, the Chair's preference is  
16          to defer and bring this back in the near future to  
17          make sure we get all the Is dotted, the Ts crossed,  
18          and I know there was some apprehension with regards  
19          to the housing issue.

20                      So, you know, the Chair's preference is just  
21          to get some additional clarification and -- you  
22          know, from the various departments.

23   COUNCILMEMBER ANDERSON:  Chair?

24   CHAIR MOLINA:  Member Johnson, followed by Member Anderson?

25   COUNCILMEMBER JOHNSON:  Yes.  And -- and I think for me,

1           that would be important because I would like an  
2           opportunity to also look at the mitigation for the  
3           near-shore waters because I did note that there were  
4           some concerns from, I believe, it's the Makua Family  
5           across the way.

6                        So -- also, the reef health. I would like an  
7           opportunity to review that section. And I  
8           apologize, I haven't had time to find that specific  
9           wording.

10                      And then from the applicant, this would be for  
11           Rory. Because I know that you've already offered to  
12           limit some of the, I guess, uses, like with specific  
13           reference under the Residential R-3 on lots of  
14           10,000 square feet or more, B&Bs would be permitted,  
15           and some of those things are not being -- you're --  
16           you're proposing that you would not have B&Bs or  
17           TVRs.

18                      I also would like, if you looked at the rest  
19           of the uses in those buildings, schools,  
20           kindergartens, you know, because I -- I know  
21           sometimes people within their own residential  
22           dwellings can have these types of operations.

23                      I just wanted to see if there were any other  
24           things that you had planned for this particular area  
25           that would be considered.

1 MR. FRAMPTON: Well, the simple question is no, it's  
2 intended for residential use. And there will be  
3 restrictions in the CC&Rs which would -- you know,  
4 it's within the interest of the neighborhood that is  
5 going to be developed to keep the uses simple and --  
6 and to not allow proliferation.

7 So we will be adding additional restrictions  
8 in the CC&Rs to that -- to that effect. And --  
9 anyway, I was -- yeah.

10 COUNCILMEMBER JOHNSON: No, I -- I appreciate that because  
11 I know that even though in CC&Rs where certain  
12 things are prohibited, basically, I was given  
13 information even our CC&Rs with our condominium like  
14 with regard to day cares, nursery, is -- is  
15 permitted.

16 MR. FRAMPTON: I think -- I think the idea was to, you  
17 know, with the Change in Zonings to have -- actually  
18 have this County -- this County Council put  
19 conditions on that run with the land regarding the  
20 uses that we -- that were very obvious.

21 Just in -- in regards to your other point  
22 about the water quality, you know, that will be  
23 going through a detailed review at the SMA level.  
24 We have shown you the water plan.

25 The drainage across the Garcia Project -- I

1 mean, the Makua Project -- property does not come  
2 from the Garcia Project. It comes from other  
3 sources. So I think -- and that will be flushed out  
4 not only through the SMA but as we go through the  
5 detailed subdivision design and review phase.

6 And I do think that we are -- we could come to  
7 an agreement with the road right-of-way condition,  
8 as well as the housing condition. It seems to me  
9 that we've already kind of come to an agreement on  
10 that.

11 So I -- I do respectfully suggest that we are  
12 ready, at least with the conditions that we have  
13 proposed, with one minor change if we needed to not  
14 have the road right-of-way go to 32 feet, that could  
15 be easily -- I already have the language that could  
16 be adopted for that.

17 And if it was the Committee's desire, I think  
18 we are ready to move forward with the conditions and  
19 with the Project that we've presented before you.

20 CHAIR MOLINA: Okay. Thank you, Mr. Frampton. Member  
21 Anderson?

22 COUNCILMEMBER ANDERSON: I'm ready to move on it,  
23 Mr. Chairman. They're volunteering half a million  
24 dollars towards affordable housing. They've done a  
25 lot of work here.

1                   I don't see why -- the drainage plan, I  
2                   reviewed it. I think it's more than adequate, and I  
3                   think we were already told by Deputy Director  
4                   Miyamoto that it's our call.

5                   The Community Plan is pretty straightforward,  
6                   you know. I don't see any reason to change that  
7                   roadway at all in front of the Garcia home, so I'm  
8                   ready to move.

9   CHAIR MOLINA:   Okay. Thank you, Member Anderson.  
10                   Committee Members, any other comments on the subject  
11                   matter?

12   COUNCILMEMBER MATEO:   Chairman?

13   CHAIR MOLINA:   Mr. Mateo, followed by Mr. Medeiros.

14   COUNCILMEMBER MATEO:   Chairman, real briefly. Thank you  
15                   very much for the opportunity.

16                   I concur with Member Anderson. You know, half  
17                   a million dollars is a major contribution to one of  
18                   this County's largest issues and concerns. And --  
19                   and, you know, in fact, this is also a down-zoning  
20                   of property, you know, like do you want a hotel on  
21                   this property, or do you want single-family homes on  
22                   this property?

23                   I prefer the single-family home and the  
24                   affordable houses that we'd be able to build with  
25                   the half a million dollars that they're going to be

1 providing, so we're ready to move. Thank you,  
2 Chair.

3 CHAIR MOLINA: Okay. Thank you. Mr. Medeiros?

4 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I -- I just  
5 wanted to ask Mr. Frampton mainly because of my  
6 Public Works background.

7 The roadway lot for the driveway easement will  
8 still belong to Makena Resort?

9 MR. FRAMPTON: Correct.

10 COUNCILMEMBER MEDEIROS: And -- but it's in favor of the  
11 Garcia property to use it as their access?

12 MR. FRAMPTON: Correct.

13 COUNCILMEMBER MEDEIROS: Now, in your drainage plan, will  
14 any runoff be coming down that driveway to the main  
15 road?

16 MR. FRAMPTON: Nothing would be allowed to exceed that  
17 which is currently occurring. And in fact, our  
18 proposal is to actually reduce the amount compared  
19 to what's occurring today.

20 COUNCILMEMBER MEDEIROS: Okay. And if the marketable lots  
21 are resold -- well, are sold from the original  
22 purchasers, will the easement access be part of the  
23 sale?

24 MR. FRAMPTON: Yes.

25 COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Frampton.

1 Mahalo, Mr. Chairman.

2 COUNCILMEMBER VICTORINO: Mr. Chair?

3 CHAIR MOLINA: All right. Thank you, Mr. Medeiros.

4 Mr. Victorino?

5 COUNCILMEMBER VICTORINO: Yeah, I also would like to say  
6 that I'm very satisfied in reviewing everything that  
7 these people have brought forth.

8 I did look at the CD, but I do agree that's a  
9 heck of a CD to follow. But, really, in all -- all  
10 fairness to them, I think I'm ready to take an --  
11 take action on this item, too, so I would wait for  
12 your recommendation, Mr. Chair.

13 CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Any other  
14 comments? All right. Thank you very much, Members.

15 Well, it would seem the majority of you have  
16 reached a comfort level at taking action on this  
17 so -- and I thank you for bearing with the Chair. I  
18 tend to take a more conservative approach, and I --  
19 I do appreciate all of the work the applicant has  
20 gone through.

21 And I guess because of the discussion that we  
22 had here today, I just wanted to make sure that if,  
23 you know, everyone's okay with moving on, that's  
24 fine. And, you know, maybe it's just me, but I'll  
25 yield to the majority if this is something you guys

1 want to do, act on today.

2 I'm fine by that so please give the Chair  
3 about five minutes to confer with Staff. I just  
4 want to look at some matters related to one of the  
5 conditions, and there's the possibility we may have  
6 to get in contact with the Public Works Director for  
7 a few comments from him as well.

8 Members, meeting in recess for five minutes.  
9 Please don't leave the Chambers. ...(gavel)...

10 **RECESS: 3:55 p.m.**

11 **RECONVENE: 4:02 p.m.**

12 CHAIR MOLINA: ...(gavel)... Land Use Committee meeting of  
13 January 23rd, 2008, is now back in session.

14 Members, we are on Land Use Item 24, and the  
15 Chair thanks you for allowing the Chair to confer  
16 with Staff.

17 At this point, being that it would seem the  
18 majority of you would like to act on this matter,  
19 the Chair will concur and will work with the  
20 majority here on this.

21 I'd like to make a quick run-through on the  
22 proposed conditions from the applicant. Let's look  
23 at Condition No. 1, that once the property has  
24 received final subdivision approval, the ten  
25 residential lots shall not be further subdivided and

1 shall not be the subject of a condominium property  
2 regime.

3 Any comments, or can we move that on --  
4 condition on?

5 COUNCIL MEMBERS: Consensus.

6 CHAIR MOLINA: Okay. Consensus? Thank you very much,  
7 Members.

8 The Chair's going to bypass Condition 2 for  
9 right now. Let's -- I'd like to look at Conditions  
10 3 and 4.

11 Condition 3, that transient vacation rentals  
12 shall be prohibited. Comments, Members? Consensus?

13 COUNCIL MEMBERS: Consensus.

14 CHAIR MOLINA: Okay. Condition 4, that no bed and  
15 breakfast home or commercial operations shall be  
16 allowed. Do we have consensus?

17 COUNCIL MEMBERS: Consensus.

18 CHAIR MOLINA: Okay. Thank you very much. Member  
19 Anderson, comments on that condition?

20 COUNCILMEMBER ANDERSON: Well, that just triggered  
21 something I wanted to ask Mr. Frampton. I forgot.

22 CHAIR MOLINA: All right. Proceed. Mr. Frampton?

23 COUNCILMEMBER ANDERSON: The commercial operations. The  
24 reason, Rory, I asked you about who owned the  
25 property across the road?

1 MR. FRAMPTON: The Makua property? Oh, no, the -- the  
2 grassy lawn area?

3 COUNCILMEMBER ANDERSON: Right. If I could point this out  
4 to the Members. On page 16 of the PowerPoint --

5 COUNCILMEMBER VICTORINO: Uh-huh.

6 COUNCILMEMBER ANDERSON: -- it's the top picture. So you  
7 believe that that's owned by Makena Resort. So when  
8 they have those dinners on the beach, they're not  
9 really on the beach. They're on that grassy area.  
10 Page 16 of the PowerPoint.

11 MR. FRAMPTON: Yeah. I'm looking at the --

12 CHAIR MOLINA: Member Anderson, is that the top photograph?

13 COUNCILMEMBER ANDERSON: Yes.

14 CHAIR MOLINA: Okay.

15 COUNCILMEMBER ANDERSON: And you see where the signs are,  
16 Members, to the right of the sign you can see that  
17 grassy area, and it's bigger than what you see in  
18 the picture.

19 MR. FRAMPTON: It -- the --

20 COUNCILMEMBER ANDERSON: But I did two site inspections  
21 this weekend, and both times they had people with  
22 candlelight or tiki light torches serving dinner  
23 there.

24 MR. FRAMPTON: I -- that -- if it's occurring -- the -- the  
25 pictures that I saw of that occurring had it

1 occurring makai of the vegetation line so I think  
2 that would be on the public beach.

3 And I do think that that's a matter that's,  
4 you know, separate from what we're discussing right  
5 now; but to specifically answer your question, the  
6 parcel, I believe, between the road and the  
7 vegetation line is owned by the Resort. Anything  
8 beyond that on the, quote, "sandy beach," would be  
9 public --

10 COUNCILMEMBER ANDERSON: Okay. Well, that's what I wanted  
11 to know --

12 MR. FRAMPTON: Public and conservation.

13 COUNCILMEMBER ANDERSON: -- because there are dinners  
14 taking place in that area.

15 MR. FRAMPTON: And that would be in the conservation  
16 district on publicly owned land.

17 COUNCILMEMBER ANDERSON: Sorry?

18 MR. FRAMPTON: Sorry, it would be makai of the vegetation  
19 line, which is the --

20 COUNCILMEMBER ANDERSON: No, no, no, no. I'm telling you  
21 that I observed --

22 MR. FRAMPTON: Right.

23 COUNCILMEMBER ANDERSON: -- dinners being served on the  
24 grass mauka of the vegetation line.

25 MR. FRAMPTON: Oh, on the grass?

1 COUNCILMEMBER ANDERSON: Yes.

2 MR. FRAMPTON: Oh, okay, I'm sorry.

3 COUNCILMEMBER ANDERSON: And I just wanted to confirm that  
4 that is owned by Makena Resort.

5 MR. FRAMPTON: And I was looking in here for the TMK map,  
6 and it's on a different plat so I could not give you  
7 that verification, but it's my understanding that  
8 it's owned by the Resort.

9 COUNCILMEMBER ANDERSON: Okay. Thank you. Thank you,  
10 Chairman.

11 CHAIR MOLINA: Okay. Thank you, Member Anderson.  
12 Committee Members, any other comments related -- oh,  
13 excuse me, I'd like to ask the Planning Director to  
14 give comments.

15 I believe you had some language that you're --  
16 you'd like us to consider to strengthen these  
17 conditions related to the vacation rentals and  
18 possibly the bed and breakfast? Mr. Hunt?

19 MR. HUNT: Thank you, Chair. And if -- if you will, I'd  
20 like to make a few comments on the application  
21 itself. I deferred my comments earlier.

22 CHAIR MOLINA: Uh-huh.

23 MR. HUNT: As noted in the report, the Planning Commission  
24 reviewed this in November 2006 and recommended  
25 approval.

1           During the review process, it reduced the  
2           number of lots from 11 down to 10. Also, there was  
3           an archaeological plan that was originally  
4           submitted, and that was then had -- it had to be  
5           resubmitted, based on comments from agencies and the  
6           public.

7           And while I think the applicant should be  
8           commended for his efforts in changing that, I also  
9           think it points out the positive aspects of review  
10          and regulation.

11          We often get a lot of complaints and concerns  
12          about review times and delays, but there are  
13          positive aspects to this, and -- and this is an  
14          example of how that has occurred.

15          There's been a lot of talk about the pending  
16          General Plan update and Change in Zonings and  
17          Community Plan Amendments.

18          Given the size of this operation and the fact  
19          that it's already in a committed area, the Planning  
20          Department has no concerns on this proposal, given  
21          the pending General Plan update. We also -- and it  
22          has been noted that this is actually a reduction in  
23          density with the Community Plan Amendment that's  
24          being proposed.

25          In terms of the conditions, we don't have any

1 problems with the conditions except a couple.  
2 Condition No. 4 says no bed and breakfast home or  
3 commercial operations shall be allowed.

4 Contrary to a lot of misinformation that has  
5 been spread about the Administration, the  
6 Administration supports vacation rentals if they're  
7 through the permitting process.

8 We think this is actually a good location for  
9 a bed and breakfast -- a bed and breakfast as you  
10 know but for the sake of the public, has an on-site  
11 manager and, therefore, there's a lot more support  
12 for those in our Community.

13 In talking to Rory, apparently, the owners  
14 don't want that. And he can -- I'll -- I'll leave  
15 that up to him to confirm that, but I'm just making  
16 my comments as -- as your Planning Staff.

17 In regards to the transient vacation rentals,  
18 if you adopt that condition, I would suggest that  
19 you beef it up to make it clear so that there is no  
20 misinterpretation of it in the future, that there's  
21 no lawsuits given the interpretation of it or  
22 whatever, that it simply say that a bed -- transient  
23 vacation rentals shall not be allowed, including  
24 through the Conditional Permit process, so it's very  
25 clear that you can't use a Conditional Permit to --

1 to get through that condition. Thank you.

2 CHAIR MOLINA: Thank you, Mr. Director. Member Anderson?

3 COUNCILMEMBER ANDERSON: Thank you, Chair. So, Mr. Hunt,  
4 on Item 4, basically, this is a request of the  
5 owner. So would this more appropriately be put in  
6 their CC&Rs?

7 MR. HUNT: If the owner wants to, for the life of the  
8 Project or the property, say -- state that there's  
9 no B&Bs, that -- I suppose that's the owner's  
10 request.

11 Again, the Planning Department thinks that  
12 this is a possible good location for a B&B. Rory is  
13 at the podium and -- and, you know, I would ask that  
14 you get his comments and input.

15 COUNCILMEMBER ANDERSON: Okay. Thank you.

16 CHAIR MOLINA: Okay. Mr. Frampton?

17 COUNCILMEMBER ANDERSON: Mr. Frampton?

18 MR. FRAMPTON: As I mentioned earlier, the intent is to  
19 create a residential project and so there was a --  
20 it was a condition volunteered by the applicant  
21 that -- to basically show in good faith that that's  
22 what was intended and that's what -- and the -- we  
23 still stand by these two conditions, despite the  
24 generous offer of the Planning Director to remove  
25 them.

1 COUNCILMEMBER ANDERSON: Okay. Thank you.

2 CHAIR MOLINA: Okay. Mr. -- Director, do you have  
3 additional comment?

4 MR. HUNT: Just to clarify, we -- we're offering that you  
5 consider removing one. The second -- the condition  
6 regarding transient vacation rental, we're just  
7 suggesting a rewording to make it clear.

8 MR. FRAMPTON: Thank you.

9 MR. HUNT: We -- we support that condition.

10 CHAIR MOLINA: All right. Thank you. Members, additional  
11 comments on the proposed conditions related to bed  
12 and breakfast and transient vacation rentals?  
13 Member Johnson?

14 COUNCILMEMBER JOHNSON: Yes. Because the applicant has  
15 stated that it's Residential, I believe that one of  
16 the difficulties you have is that when it's in  
17 CC&Rs, you always have to go through this horrific,  
18 sometimes very expensive process if someone in your  
19 Residential community decides not to abide by that.

20 If it's a condition of zoning, they are far  
21 less likely. And, of course, as a condition of  
22 zoning, we enforce instead of being told by the, you  
23 know, Department, well, that's a private matter  
24 because it's in your CC&Rs.

25 And I would also include prohibition of

1 fractional ownership because that is the new  
2 buzzword for time-shares. I would add in time-share  
3 or fractional ownership.

4 CHAIR MOLINA: Fractional ownership. All right. Would you  
5 like to propose that as a separate condition for the  
6 Committee to consider?

7 COUNCILMEMBER JOHNSON: No, I would just expand, you  
8 know --

9 CHAIR MOLINA: Oh.

10 COUNCILMEMBER JOHNSON: -- transient vacation rental --

11 CHAIR MOLINA: Okay.

12 COUNCILMEMBER JOHNSON: -- time-share, or fractional  
13 ownership.

14 CHAIR MOLINA: All right. To -- to assist Staff, Mr. --  
15 Mr. Hunt, can you reiterate the language for the  
16 transient vacation rental prohibition?

17 MS. NAKATA: Mr. Chair?

18 CHAIR MOLINA: Yes, Staff?

19 MS. NAKATA: Staff would note that in the Wailea 670 set of  
20 conditions, there was a recommendation that may  
21 assist the Committee in this matter.

22 And it went along the lines of that no  
23 transient vacation rentals or time-shares shall be  
24 allowed -- in that case it was within the Project  
25 district -- and further, no Special Use Permit or

1 Conditional Permit for such accommodations shall be  
2 accepted by the Department of Planning.

3 CHAIR MOLINA: Okay. Committee Members, is that language  
4 acceptable to insert as a condition for this  
5 Project?

6 COUNCILMEMBER ANDERSON: If we could add in fractional  
7 ownership.

8 CHAIR MOLINA: Okay. Is that the same as time-shares?

9 COUNCILMEMBER ANDERSON: Not really.

10 CHAIR MOLINA: Okay. Mr. Hokama?

11 COUNCILMEMBER HOKAMA: I would have -- you know, I think  
12 the Committee brings up a valid point of concern,  
13 Mr. Chairman, but that is what I thought number one  
14 was supposed to take care of when we are saying that  
15 shall not be subject to a property regime.

16 COUNCILMEMBER VICTORINO: Yeah. Condominium.

17 COUNCILMEMBER ANDERSON: Yeah.

18 COUNCILMEMBER HOKAMA: Because that's what a property  
19 regime is.

20 COUNCILMEMBER VICTORINO: Right.

21 COUNCILMEMBER HOKAMA: Fractional ownership, where you  
22 are -- you are acquiring a percentage of ownership  
23 and not a specific lot within the larger parcel.

24 You know, you're just one of X amount of  
25 owners that have equal percentage rights of

1 ownership to the -- the big -- the -- the -- the lot  
2 in question or the parcel in question, Chair.

3 So, you know, I -- I don't know if number one  
4 already takes care of that concern of Members of the  
5 Committee, Mr. Chairman.

6 CHAIR MOLINA: Okay. Can we get a clarification?

7 Mr. Director or Corporation Counsel, can you  
8 comment, does Condition 1 address the issue of  
9 fractional ownership?

10 MR. HUNT: I would suggest that just to be on the safe  
11 side, you add it in. My interpretation is that a  
12 CPR is not necessarily always the same as a  
13 time-share; and just to cover all your bases, add it  
14 in. I don't -- I don't see the harm in adding it  
15 in.

16 CHAIR MOLINA: Okay. All right. Members, do we have  
17 consensus on that just to be on the safe side? All  
18 right. Thank you.

19 MR. FRAMPTON: Could -- could --

20 CHAIR MOLINA: Staff, do you want -- can you go ahead,  
21 then, you're going to insert that language with  
22 regards to the fractional ownership?

23 MS. NAKATA: Yes, Mr. Chair.

24 CHAIR MOLINA: All right. Thank you.

25 MR. FRAMPTON: Could -- I'm sorry, could you repeat the

1 language?

2 CHAIR MOLINA: Can you repeat the language for --

3 MS. NAKATA: That no transient vacation rentals,  
4 time-shares, or fractional ownerships shall be  
5 allowed; and further, no Special Use Permit or  
6 Conditional Permit for such accommodations shall be  
7 accepted by the Department of Planning.

8 CHAIR MOLINA: Okay. Thank you. Members, moving on, let's  
9 look at Condition 2.

10 COUNCILMEMBER ANDERSON: Chair?

11 CHAIR MOLINA: Member Anderson?

12 COUNCILMEMBER ANDERSON: Could we have Mr. Frampton respond  
13 to that?

14 CHAIR MOLINA: Mr. Frampton?

15 MR. FRAMPTON: I just -- I just want to reserve the right  
16 to comment only on -- I mean, there's no intent to  
17 do -- we don't -- I just want our attorney to look  
18 at that; and if there's any minor rewording of that,  
19 maybe we could bring it up at first reading.

20 And it just has to do with the -- the  
21 ownership part of it if, you know -- anyways, I  
22 just -- if a family decides to purchase a house and  
23 it's under two different trusts --

24 CHAIR MOLINA: Uh-huh.

25 MR. FRAMPTON: -- I mean, what does that mean? I mean, the

1           intent is long-term residential use. We don't want  
2           to turn it into a time-share, but I just reserve the  
3           right to comment, and we'll work with Staff on that.

4 CHAIR MOLINA: All right.

5 COUNCILMEMBER ANDERSON: So there is a possibility --  
6           excuse me, Chair --

7 CHAIR MOLINA: Uh-huh.

8 COUNCILMEMBER ANDERSON: -- that if, say, a family wanted  
9           to buy a home and there's two different trusts  
10          involved, that might interrupt that ability to do  
11          that?

12 MR. FRAMPTON: That was my concern.

13 COUNCILMEMBER ANDERSON: Yeah.

14 MR. FRAMPTON: And -- and -- and with the language that was  
15          just read to me. And I'm sorry, I -- I didn't hear  
16          it. I was conferring with the applicant.

17 COUNCILMEMBER ANDERSON: Yeah.

18 MR. FRAMPTON: So, you know, again, the -- the intent is  
19          clear. I'd rather keep it simple and the way it is.  
20          I would rather not have the amended condition. I  
21          just think it complicates things for -- you know.

22                 So if -- but if it is -- if the -- if it's the  
23          wishes of the Committee to move forward with that  
24          language, then I would just reserve the right to  
25          have our attorneys just comment on that ownership

1 issue.

2 And, again, not for -- not for the intent of  
3 trying to figure out a way to skirt it, but worrying  
4 about how it may affect other things that might be  
5 unintended.

6 CHAIR MOLINA: Okay.

7 COUNCILMEMBER ANDERSON: Thank you.

8 CHAIR MOLINA: All right. Thank you. Member Johnson?

9 COUNCILMEMBER JOHNSON: And -- and, Rory, this is more for  
10 -- not to penalize or limit --

11 MR. FRAMPTON: Right.

12 COUNCILMEMBER JOHNSON: -- but to actually address the  
13 concerns because --

14 MR. FRAMPTON: Yeah, yeah --

15 COUNCILMEMBER JOHNSON: -- the -- the ownership and the way  
16 it's being structured in a lot of the sales that are  
17 taking place now, they're getting around this by  
18 using the fractional ownership, and it's being used  
19 synonymously with time-share.

20 So, you know, if you have other language,  
21 that's fine; but my concern is that if you want to  
22 keep it Residential, have your attorney look at it  
23 and see if it's worthy. But this is the latest  
24 little technique.

25 MR. FRAMPTON: Right.

1 CHAIR MOLINA: Okay. Thank you. All righty, Members.

2 We'll move on to Condition No. 2.

3 Members -- excuse me, Mr. -- Planning

4 Director, Mr. Hunt? Go ahead.

5 MR. HUNT: I know we're trying to move forward. On -- on

6 Carla's suggested language, she said something to

7 the effect it will not be accepted by the Planning

8 Department?

9 And I would really prefer that language to say

10 something it will not be approved by the County. We

11 don't want to be in a position of, you know, telling

12 people sorry, we're not even going to accept your

13 application.

14 CHAIR MOLINA: Members, any objection to the change?

15 COUNCIL MEMBERS: No objections.

16 CHAIR MOLINA: Okay. Seeing none, Staff will make that

17 change.

18 All right. We're finally on Condition No. 2,

19 which relates to the road and -- Keoneoio Road. I

20 believe we -- Member Anderson, I guess you brought

21 up the issue of leaving it in its current form,

22 rather than the applicant making the adjustments.

23 Would you like to propose an amendment to the

24 condition, Member Anderson?

25 COUNCILMEMBER ANDERSON: Well, I -- I think that we should

1           just take the condition as --

2   CHAIR MOLINA:   Remove the condition?

3   COUNCILMEMBER ANDERSON:  -- as it's stated and just remove

4           Item A.

5   CHAIR MOLINA:   Okay.  Members --

6   COUNCILMEMBER ANDERSON:  But --

7   CHAIR MOLINA:   Go ahead.  I'm sorry, Member Anderson.

8   COUNCILMEMBER ANDERSON:  -- remove provide a road-widening

9           lot that would provide for a minimum 32-foot roadway

10          right-of-way so that it would read, in order to

11          protect and preserve the traditional rural scale and

12          character of existing portions of Makena-Keoneoio

13          Road, as stated in the Kihei-Makena Community Plan,

14          improvements to Makena-Keoneoio Road fronting the

15          Project site shall be provided in the following

16          manner.

17                 A, the existing sidewalk and curb shall remain

18          in place; B, there shall be no streetlights or

19          gutters; C, retaining walls abutting the

20          right-of-way shall not exceed 4 feet in height.

21                 These conditions shall exempt Samuel Garcia,

22          Jr., Jon E. Garcia, their successors or permitted

23          assigns, from improving any portion of

24          Makena-Keoneoio Road to Urban standards.

25   CHAIR MOLINA:   All right.  Members, although this is not a

1 formal condition by the Committee or the Planning  
2 Committee [sic], I don't believe we need to have a  
3 formal amendment down on the floor.

4 So is there any comments? Everybody in  
5 agreement with the removal of A, which provides --  
6 which states, provide a road-widening lot that would  
7 provide for a minimum 32-foot roadway right-of-way?  
8 Mr. Hokama?

9 COUNCILMEMBER HOKAMA: Chairman, I -- I just am approaching  
10 this more from a concern of a public safety issue.  
11 I don't mind trying to maintain what is warm and  
12 fuzzy and very nostalgic, provided that it doesn't  
13 hamper the ability of our agencies to perform in an  
14 emergency.

15 CHAIR MOLINA: Uh-huh.

16 COUNCILMEMBER HOKAMA: And, you know, we -- we -- we've  
17 made decisions in the past, whether it be with the  
18 Heritage Road to East Maui through our colleague  
19 Mr. Medeiros' District, Hana, but yet we know by  
20 making certain decisions, we've impacted our ability  
21 to respond by certain departments, particularly  
22 Fire.

23 Because we've gone and upgraded our equipment,  
24 where now size of equipment and capacity which --  
25 which comes down to a weight factor now hampers the

1 Department to respond in emergency mode regarding  
2 certain locales within the region because of the  
3 limitation we've placed on the road system.

4 So my -- my thing with this suggestion or --  
5 or proposal is that maybe we structure in a way that  
6 as long as it doesn't hamper the ability to perform  
7 in emergency.

8 That retaining the road as is, is not an issue  
9 for me; but if it's an issue of the ability to  
10 respond, whether it be to the Garcias' property  
11 themselves, I don't have a problem with creating  
12 certain standards that would allow the County to  
13 perform in that unique situation, Mr. Chairman.

14 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. I'd like to  
15 call upon Director Miyamoto for his comments related  
16 to your -- your suggestion, Mr. Hokama.

17 Thank you, Mr. Director, for making yourself  
18 available to us once again. You've heard the  
19 comments and the recommendation from the Committee  
20 for this condition, and we'd like to get your  
21 thoughts on this as it relates to a safety issue  
22 from Member Hokama.

23 MR. MIYAMOTO: Regarding the -- the -- the safety issue,  
24 the current road, as it exists, has been in that --  
25 that way for numerous years and being a 24-foot wide

1 paved area should really not pose a safety concern.

2 The additional right-of-way that we may, you  
3 know, if -- if granted, you know, if we had to post  
4 signs that said no parking or stopping to ensure  
5 that that -- that that corridor stayed clear of  
6 vehicles like the one that's parked in the  
7 crosswalk, that's certainly something that the  
8 additional right-of-way could be utilized for.

9 And in the proposed condition that Member  
10 Anderson had -- had suggested, the -- the one thing  
11 that I want to point out that -- in discussing with  
12 the applicant, was there is a small gutter there,  
13 existing gutter.

14 It may not meet our current standards, but it  
15 is an existing gutter that somewhat protects the  
16 existing curb that the -- the -- where the pavement,  
17 asphalt pavement meets the curb.

18 You -- you wouldn't want that to not be  
19 protected because that's where the water intends to  
20 run, and you wouldn't want water to seep between the  
21 asphalt and the curb and cause maintenance problems,  
22 so we want to make sure that the gutter gets  
23 included as part of the existing curb and sidewalk.

24 MR. FRAMPTON: Yes. Yes.

25 COUNCILMEMBER HOKAMA: Chairman?

1 CHAIR MOLINA: Proceed, Mr. Hokama.

2 COUNCILMEMBER HOKAMA: If I can follow up. You know, I  
3 understand the spirit of -- of what Ms. Anderson is  
4 trying to preserve, so can this be addressed through  
5 an easement instead of a right-of-way as another way  
6 to approach the -- the issue and -- and still  
7 dealing with it in a -- in an appropriate manner?

8 Would an easement suffice that's in favor of  
9 the County to take care of that issue with the  
10 gutter or -- or other road safety matters?

11 MR. MIYAMOTO: Functionally -- functionally, it would, but  
12 it -- I guess for us, going back to the consistency,  
13 it's sort of -- it's somewhat different consistency  
14 with the Papaanui.

15 But functionally, an easement along -- in that  
16 area to ensure that we had that 32 feet so that  
17 we -- if we do need to provide signs that there is  
18 a -- an area that we could place those signs, I  
19 mean, that certainly would functionally be the same.

20 COUNCILMEMBER HOKAMA: Okay, Mr. Director. And, again,  
21 Members, I -- I've found Exhibit 11, which is Fire  
22 Department. They make no concern of width of the  
23 road.

24 But one thing, though, Mr. Miyamoto, to -- in  
25 reality, let's say the Committee fully agrees that

1           we should get the 32 feet. In practice, though,  
2           when we do those shoulders, people park even if  
3           they're not supposed to park, right? Isn't that  
4           what comes down to the reality?

5 CHAIR MOLINA: Mr. Director?

6 COUNCILMEMBER HOKAMA: So is it better, then, as a control  
7           not to have that width if -- if we're trying to deal  
8           with the issue of the parking because then that  
9           becomes a hazard itself, right?

10 MR. MIYAMOTO: Yes. And then -- and then it becomes an  
11           enforcement issue, like as -- as experienced on the  
12           adjacent property in front where the -- the next  
13           Project is.

14                    I mean, there are existing no-parking signs  
15           and, you know, as some of the testifiers have  
16           indicated, there are people that are parking there,  
17           and it -- it then becomes an enforcement issue that  
18           the County has to take care of.

19 COUNCILMEMBER HOKAMA: Okay. Chairman, thank you for my  
20           opportunity to provide questions. Thank you.

21 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Committee  
22           Members, so you've heard the proposed change in  
23           language to the Condition No. 2.

24                    Do we have consensus for this condition?

25 COUNCILMEMBER ANDERSON: Chair?

1 CHAIR MOLINA: Member Anderson?

2 COUNCILMEMBER ANDERSON: In response to Mr. Miyamoto, I  
3 would change Item A -- we got rid of Item A entirely  
4 --

5 CHAIR MOLINA: Uh-huh.

6 COUNCILMEMBER ANDERSON: -- so B is now A, and it should  
7 read, the existing sidewalk, curb, and gutter shall  
8 remain in place.

9 Is that correct, Mr. Miyamoto?

10 MR. MIYAMOTO: Yes.

11 COUNCILMEMBER ANDERSON: Okay. And then I think maybe we  
12 should, since the applicant wrote this condition,  
13 I -- you know, I was just going to do away with that  
14 condition and just say Makena-Keoneoio Road fronting  
15 this property shall remain in its -- in its existing  
16 state, but I guess it's more important to spell it  
17 all out.

18 This will be, again, deeded with the land so  
19 anybody that buys property, they will know what all  
20 this -- all these conditions are. I -- I'd like the  
21 applicant to comment on this, Mr. Chairman, the  
22 change that I made.

23 CHAIR MOLINA: Okay. Mr. Frampton?

24 MR. FRAMPTON: Yeah. I think -- I think that's accurate to  
25 change that to read, the existing sidewalk, curb,

1 and gutter shall remain in place and then the next  
2 item, which will be the new Item B, shall -- would  
3 then read, there shall be no streetlights and then  
4 you would strike "or gutters" to make that  
5 consistent and then the new Item C.

6 And just, you know, we're -- we're fine with  
7 -- with whatever way the Council decides to go. I  
8 think either way, Public Works had decided that they  
9 were -- the existing conditions were acceptable. So  
10 if you don't want the extra 2 feet for whatever  
11 purposes, then we're fine.

12 VICE-CHAIR PONTANILLA: Chair?

13 CHAIR MOLINA: Hang on.

14 COUNCILMEMBER ANDERSON: Thank you. Thank you, Chairman.

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

16 Mr. Pontanilla, comments on this condition?

17 VICE-CHAIR PONTANILLA: Thank you. Thank you. Question  
18 for Public Works.

19 In -- in the case of that sidewalk, which is  
20 4 feet, and if we were to -- we're considering  
21 addressing ADA compliance, because when you look at  
22 the existing parking lot, there's a ramp that comes  
23 down to the sidewalk and -- and going on the 4-foot  
24 sidewalk, you know, you don't have that much room.

25 So with the extra 2 feet that the developer is

1 willing to provide, that would give us an ability to  
2 expand the sidewalk from 4 to 6.

3 So, you know, Chair, for me, you know, getting  
4 that 2 feet from the developer at this time, you  
5 know, makes sense.

6 CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla.

7 Mr. Medeiros?

8 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. One -- one  
9 question for the applicant's consultant,  
10 Mr. Frampton.

11 I was looking at all the photographs you  
12 provided, but I can't seem to find a photograph that  
13 has any fire hydrants. Are there fire hydrants down  
14 there?

15 MR. FRAMPTON: Yes, there are, and I thought there was  
16 one -- there are -- it's on the makai side of the  
17 road.

18 COUNCILMEMBER MEDEIROS: Oh, okay.

19 MR. FRAMPTON: And you --

20 COUNCILMEMBER MEDEIROS: So -- so as far as you understand,  
21 there's at least an 8-inch waterline there?

22 MR. FRAMPTON: I believe it might be 12.

23 COUNCILMEMBER MEDEIROS: Twelve?

24 MR. FRAMPTON: Or 10.

25 COUNCILMEMBER MEDEIROS: So -- to support a full-size

1 hydrant?

2 MR. FRAMPTON: It's large. It's large.

3 COUNCILMEMBER MEDEIROS: Okay.

4 MR. FRAMPTON: Yeah.

5 COUNCILMEMBER MEDEIROS: And -- so there -- there are  
6 hydrants there?

7 MR. FRAMPTON: Yes.

8 COUNCILMEMBER MEDEIROS: Okay. For the -- Mr. Chair, I --  
9 I would agree with Council Chair Hokama and Member  
10 Pontanilla.

11 And, again, I'm taking this from being in  
12 Public Works, you know, for so many years and also  
13 being in the Fire Department that the applicant, you  
14 know, is offering the -- this 2-foot increase in  
15 road widening, and I think we should accept that  
16 because I think, as Member Pontanilla said, and  
17 maybe the Deputy Director of Public Works can either  
18 confirm this or not, but I believe the ADA  
19 requirements are going to 5-foot sidewalks to  
20 accommodate wheelchairs; and even in some areas,  
21 they're making it wider for when two wheelchairs  
22 meet.

23 Now, for the Deputy Director, can you tell me  
24 if that's true or not?

25 CHAIR MOLINA: Mr. Director?

1 MR. MIYAMOTO: Yes. That's -- that's my understanding  
2 that, you know, that's one of the concerns that with  
3 sidewalks, you know, they can do a slight bulb out  
4 to --

5 COUNCILMEMBER MEDEIROS: Right.

6 MR. MIYAMOTO: -- so that two wheelchairs can pass through  
7 on a sidewalk.

8 COUNCILMEMBER MEDEIROS: Right. So with that in mind, if  
9 we would have to increase the width of the sidewalk  
10 or an area where two wheelchairs can pass, we would  
11 shrink -- be shrinking the size of the pavement if  
12 we couldn't go wider and we had to come inward.

13 So it's my feelings that for public safety and  
14 to meet ADA requirements, we should accept the  
15 road-widening lot. Mahalo, Mr. Chairman.

16 CHAIR MOLINA: All right. Thank you, Mr. Medeiros. Member  
17 Anderson?

18 COUNCILMEMBER ANDERSON: I understand Mr. Medeiros'  
19 concern; however, it's a very short length of  
20 roadway -- of sidewalk.

21 And it is a beach-access sidewalk, but it  
22 leads to a turnaround so that people who have  
23 wheelchairs or are handicapped, they can drive right  
24 up to the beach side and be dropped off right there.  
25 They don't even have to, you know, traverse along

1 the sidewalk.

2 My concern is, you know, if we open that up  
3 for road widening, then we're going to lose the  
4 rural character, and we might as well urbanize the  
5 whole road.

6 This is supposed to be -- I don't know if any  
7 of you have been down there recently, but it's --  
8 it's a very small neighborhood. Most of the  
9 shorefront -- most of Makena's gorgeous shorefront  
10 has been privatized by large homes in the last  
11 five years -- maybe ten years, but mostly in the  
12 last five years.

13 And so if you want to see the shoreline, you  
14 got to go to a beach access area or an area where  
15 there's no homes makai of the road, such as Makena  
16 Landing, so I'd like to see it stay rural.

17 As far as fire safety, the -- the road ends up  
18 in a huge cul-de-sac at -- at Maui Prince Hotel so  
19 if there's ever a need for a fire truck to turn  
20 around, they've got all the radius at that  
21 cul-de-sac that they need.

22 I -- I just don't think it's necessary, and --  
23 and I'd hate to see us -- you know, unless I had  
24 something in writing that said legally, we have to  
25 do this, I don't see any point in doing it. It's

1           too short a road -- a sidewalk and too short a  
2           distance between the parking lot and the end of the  
3           sidewalk.

4 CHAIR MOLINA:   Okay.   Thank you, Ms. Anderson.

5 COUNCILMEMBER ANDERSON:   And, you know, what -- what's on  
6           the other side of the road?   What kind of  
7           right-of-way is established on the other side of the  
8           road?   Does anybody know that?

9 CHAIR MOLINA:   Mr. Director?

10 COUNCILMEMBER ANDERSON:   Does the County have right-of-way  
11           on the makai side of the road, Mr. Miyamoto?

12 CHAIR MOLINA:   Mr. Director?

13 MR. MIYAMOTO:   Mr. Chair?   The actual right-of-way varies  
14           in that -- that whole corridor in front of the --  
15           the Garcias' property.

16                   The Garcias' side of the roadway, the -- the  
17           right-of-way is basically pretty much close to the  
18           back of the existing sidewalk.

19                   But on the makai side, the sidewalk is more --  
20           I guess it's not a smooth curve as -- as the -- the  
21           roadway.   It's a little -- it's straight segments  
22           that -- that intersect on the makai side that create  
23           the right-of-way varying in width from 30 to  
24           44 feet.

25 COUNCILMEMBER ANDERSON:   Oh, there's no sidewalk on the

1 makai side?

2 MR. MIYAMOTO: Correct. And the right-of-way -- but the  
3 right-of-way line on the makai side is not as smooth  
4 as -- as it is on the Garcias' side of the property.

5 COUNCILMEMBER ANDERSON: You mean, it jig -- jig-jags like  
6 that?

7 MR. MIYAMOTO: Slightly. The -- it's -- yeah. If you were  
8 to try and draw a curve with straight lines.

9 COUNCILMEMBER ANDERSON: But how much right-of-way is there  
10 on that side?

11 MR. MIYAMOTO: It varies in width from anywhere from --  
12 the -- the -- the entire corridor varies in width  
13 from about 30, if I'm not mistaken, I may be wrong,  
14 I think it was 44, but I have -- I'd have to go back  
15 and measure the scale.

16 But there is a -- there is a -- some small  
17 additional spaces that are provided where I think  
18 utility poles are. I think there's one where  
19 there's the utility pole, current existing utility  
20 pole. There's a fire hydrant in one of 'em, and the  
21 other one has the utility pole.

22 COUNCILMEMBER ANDERSON: Yeah. In the EIS, there's a nice  
23 diagram here, Members. It shows the road widening  
24 -- or the right-of-way on the makai side.

25 MR. MIYAMOTO: And there's the utility pole in this one.

1 COUNCILMEMBER ANDERSON: It looks like a lot of  
2 right-of-way, Mr. Miyamoto. Do you have a map?  
3 So the right-of-way already exists. Why  
4 should we want more right-of-way on the other side  
5 of the road where, you know, we've already  
6 established -- the County has already established,  
7 through the Maui Prince, a sidewalk, a beach access,  
8 a turnaround.

9 MR. MIYAMOTO: Yes. I -- I guess those standards were  
10 developed before the -- the decision at Papaanui.  
11 And I guess, you know, for us, we were just trying  
12 to be consistent with the 32-foot right-of-way, and  
13 the -- the applicant had no problem providing the  
14 additional right-of-way that -- that would provide  
15 the 32 feet to be consistent with that -- the  
16 previous decision.

17 COUNCILMEMBER ANDERSON: Yeah, I think they were trying to  
18 be nice.

19 VICE-CHAIR PONTANILLA: Chairman?

20 COUNCILMEMBER ANDERSON: Thank you, Chairman.

21 CHAIR MOLINA: Okay. Thank you, Member Anderson. Members,  
22 the Chair would like to call for a five-minute  
23 recess, okay, and then we'll come back to -- I guess  
24 Mr. Pontanilla has one question and then the Chair  
25 would like to -- hopefully, we can get some action

1 taken on this matter of this particular condition.

2 Meeting in recess for five minutes. ...(gavel)...

3 **RECESS: 4:35 p.m.**

4 **RECONVENE: 4:40 p.m.**

5 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting  
6 for January 23rd, 2008, is now back in session.

7 Members, we've been deliberating on the  
8 proposed Condition No. 2 from the applicant related  
9 to the roadway, Makena-Keoneoio Road, and I know  
10 there's been some deliberation on whether we should  
11 amend this condition to remove language related to  
12 a -- to expand the roadway right-of-way from 29 feet  
13 to 32 feet.

14 At this point, the Chair would like to  
15 recognize Member Anderson, whose -- would like to  
16 offer a compromise. I know some Members have  
17 concerns which -- which relates to public safety if  
18 we keep the road in its present condition as it is.

19 Member Anderson, you have the floor.

20 COUNCILMEMBER ANDERSON: Thank you, Chairman. In order to  
21 address the concerns that some of the Members have  
22 that maybe in the future, there might be a need for  
23 that extra 2 feet, that maybe what we could do is  
24 reconstitute Item A to say, provide a road-widening  
25 reserve lot that would provide for a minimum 32-foot

1 roadway right-of-way to be dedicated to the County.

2 MR. FRAMPTON: Upon demand.

3 COUNCILMEMBER ANDERSON: Upon demand.

4 CHAIR MOLINA: Okay. Members, did you get that on the  
5 upon? Would you like that repeated, Members?

6 COUNCILMEMBER ANDERSON: Oh, boy.

7 CHAIR MOLINA: Staff -- Staff, is that -- do you need a  
8 repeat?

9 MS. NAKATA: Yes, please.

10 CHAIR MOLINA: Okay. Just for Staff's sake, Member  
11 Anderson, could you repeat that?

12 COUNCILMEMBER ANDERSON: Provide a road-widening reserve  
13 lot that would provide a -- for a minimum 32-foot  
14 roadway right-of-way --

15 MR. FRAMPTON: To be dedicated.

16 COUNCILMEMBER ANDERSON: -- to be dedicated to the County  
17 upon demand.

18 CHAIR MOLINA: Okay. So, Members, we're going to reinstate  
19 letter A.

20 How does this affect letter -- what was --  
21 what was letter B, where it was -- it read as the  
22 existing sidewalk, curb, and gutter shall remain in  
23 place. Is that what -- you will also leave it --  
24 that in as well?

25 COUNCILMEMBER ANDERSON: Right.

1 CHAIR MOLINA: Okay. And then C will be, there shall be no  
2 streetlights. All right.

3 COUNCILMEMBER ANDERSON: Right.

4 CHAIR MOLINA: Okay. Members, are we clear? Member  
5 Pontanilla, you have a comment?

6 VICE-CHAIR PONTANILLA: Thank you, Chairman. You know,  
7 thank you for that amendment, Member Anderson.

8 The only thing that I'd like to add is that,  
9 you know, Item B, the existing sidewalk and curb  
10 shall remain in place, with the particular language  
11 there, you know, we all know that the road -- the  
12 road width, actually, is going to remain in place on  
13 the mauka side. But in future -- in the future, if  
14 anything happens on the makai side, then we need to  
15 be conscious of that.

16 CHAIR MOLINA: Okay. Thank you for your comments, Member  
17 Pontanilla.

18 Any other comments before I recognize Member  
19 Anderson again? Mr. Hokama?

20 COUNCILMEMBER HOKAMA: I think this is a great  
21 consideration, Mr. Chairman. One, it protects the  
22 County in the future, should we need to respond,  
23 that upon demand we can acquire the property; and in  
24 the meantime, it will be subdivided out, still under  
25 the ownership of the Garcia Family or -- or

1 successors, and that until such time as the County  
2 can justify the -- the demand of the 2 -- the  
3 additional 2 feet, that it will be maintained in  
4 existing form to satisfy some of our other Members'  
5 concern of protecting that character that is  
6 specifically special to the Makena -- Makena area,  
7 Chairman.

8 So I would say that it's a very good midpoint  
9 for all of us, and I would ask that we support that  
10 proposal.

11 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Member  
12 Anderson, final comments on this recommendation?

13 COUNCILMEMBER ANDERSON: Was I asking for another shot?

14 CHAIR MOLINA: No, no, I saw your hand go -- but if you  
15 don't have a comment, that's okay. We can move on.

16 COUNCILMEMBER ANDERSON: No. Well -- oh, I know -- I guess  
17 what I wanted to say was the condition that Member  
18 Pontanilla just read about, the existing sidewalk,  
19 we did change it to say the existing sidewalk, curb,  
20 and gutter --

21 CHAIR MOLINA: Yeah.

22 COUNCILMEMBER ANDERSON: -- shall remain in place. The  
23 idea being that we don't want the road widened  
24 because if you're going to widen the road, you're  
25 going to have to remove the sidewalk.

1 CHAIR MOLINA: Uh-huh.

2 COUNCILMEMBER ANDERSON: So the road -- the -- the 32-foot  
3 right-of-way is to provide additional 2 feet mauka  
4 the sidewalk so that should there be a need to widen  
5 the sidewalk --

6 CHAIR MOLINA: Uh-huh.

7 COUNCILMEMBER ANDERSON: -- if we're -- I'm not going to  
8 say it, forced to do it for some reason or if the  
9 County needs it to erect signs or for whatever  
10 reason. But I just wanted to make that clear  
11 because I don't want to mislead anybody in -- in the  
12 condition.

13 You know, you've got a straight right-of-way  
14 here all the way down to a huge turnaround. I -- I  
15 think that there's plenty of, what do you call,  
16 right-of-way for fire trucks and everything. There  
17 should be no problem.

18 You know, we allowed Papaanui the same kind of  
19 standard, and they're on a very, you know, curvy  
20 road with no sight distance.

21 So, you know, I know we want to be careful  
22 about meeting safety standards; but at the same  
23 time, I think it's really important that we keep  
24 this area in its rural character. And when we start  
25 urbanizing the roadways, you know, that -- that

1 character is lost immediately.

2 CHAIR MOLINA: All right. Okay. Thank you, Member  
3 Anderson. Staff, do you need anything repeated, or  
4 shall we -- can we just move on?

5 All right. Members, I assume we have  
6 consensus on Condition 2 as worded?

7 COUNCIL MEMBERS: Consensus.

8 CHAIR MOLINA: Okay. Mr. Medeiros?

9 COUNCILMEMBER MEDEIROS: Yeah, sorry for not getting your  
10 attention earlier.

11 CHAIR MOLINA: Uh-huh.

12 COUNCILMEMBER MEDEIROS: But -- so I just wanted to know if  
13 Corp. Counsel has any concerns the way it is, on  
14 demand?

15 CHAIR MOLINA: Okay. Mr. Moto, any comments?

16 MR. MOTO: No. No comments.

17 COUNCILMEMBER MEDEIROS: Okay. Mahalo, Mr. Chair.

18 CHAIR MOLINA: All right. Thank you very much.

19 Mr. Hokama?

20 COUNCILMEMBER HOKAMA: Chairman, just one -- one question.  
21 And in general, I'm very happy with the -- the way  
22 condition -- proposed Condition 2 is being presented  
23 to the Committee.

24 My only question to Mr. Miyamoto, again, there  
25 shall be no streetlights or gutters, I can

1 appreciate the streetlights component, since we're  
2 trying to protect our night skies, as well as, you  
3 know, our ability of our high technology on  
4 Haleakala.

5 But the gutter, you know, my only concern is  
6 that if -- you know, one of the concerns is what  
7 goes into the ocean.

8 So if there's a need to, you know, either  
9 improve or adjust the gutter to take care of the  
10 sheet flow from the road system because the property  
11 is going to have to -- the -- the family's going to  
12 have to take care of whatever sheet flow is on  
13 property on site, is -- is that something we -- we  
14 should try and craft proper language so that in case  
15 we need to take care of the gutter system to take  
16 care the street flow -- sheet flow within the road  
17 system, that it can be still accomplished without  
18 saying, well, I'm sorry, we cannot do the Project  
19 because it's prohibited?

20 MR. MIYAMOTO: Mr. Chair? As -- the size of the gutter is  
21 not specific in the condition. If it needs to be  
22 up-sized because there's -- you know, the flows are  
23 somehow getting between the existing gutter and the  
24 existing asphalt, you know, as part of a  
25 maintenance, we could possibly do a modification to

1 that gutter width and probably extend it.

2 But in looking at the topography, this is a  
3 relatively flat area. I imagine there's a lot more  
4 sheet flow than it is flow that flows along the curb  
5 line so I -- it's not that much of a concern in  
6 checking with our -- our Engineering Division.

7 COUNCILMEMBER HOKAMA: Okay. That's all I needed to know.

8 Thank you, Chairman.

9 CHAIR MOLINA: Okay. Thank you, Chairman Hokama. Any  
10 other considerations before the Chair offers a  
11 recommendation?

12 MS. NAKATA: Oh, Mr. Chair?

13 CHAIR MOLINA: Okay. Staff?

14 MS. NAKATA: Could Staff just clarify, the reference to  
15 gutters was moved to accommodate the fact that there  
16 is an existing gutter.

17 So that section that Mr. Hokama was referring  
18 to now reads, there shall be no streetlights. The  
19 "and gutter" was removed. And the phrase  
20 immediately prior to that, which is now B --

21 CHAIR MOLINA: Uh-huh.

22 MS. NAKATA: -- now reads, the existing sidewalk, curb, and  
23 gutter shall remain in place.

24 CHAIR MOLINA: That is correct. And -- and -- I believe  
25 that is correct, and we'll verify that with Member

1 Anderson, too.

2 COUNCILMEMBER ANDERSON: Yeah. Thank you, Carla.

3 CHAIR MOLINA: Mr. Hokama? Mr. Hokama, any --

4 COUNCILMEMBER HOKAMA: No, Chairman. Thank you very much.

5 CHAIR MOLINA: Okay. So noted. Members, the Chair is

6 ready to offer a recommendation. Member Anderson?

7 COUNCILMEMBER ANDERSON: Mr. Chairman, I -- I would like to

8 have the applicant make a comment regarding the

9 discussion we had about the affordable housing fee

10 and how they intend to approach that so that we're

11 not adding it as a condition --

12 CHAIR MOLINA: Uh-huh.

13 COUNCILMEMBER ANDERSON: -- but they are doing it

14 voluntarily.

15 CHAIR MOLINA: Okay. All right.

16 COUNCILMEMBER ANDERSON: And I'd like to get it on the

17 record and for people listening what they intend to

18 do.

19 CHAIR MOLINA: Sure. Chair has no problems with that.

20 Mr. Frampton, can you be very brief?

21 MR. FRAMPTON: We -- yeah.

22 CHAIR MOLINA: Chair is -- you know, 5 o'clock, we're going

23 to lose some Members.

24 MR. FRAMPTON: Thank you very much.

25 CHAIR MOLINA: Thank you.

1 MR. FRAMPTON: We will amend the letter that you -- that  
2 was included in the packet to do two things, to  
3 specify the change in the amount and to specify  
4 the -- the -- that it won't -- that it will be made  
5 prior to construction, initiation of construction.

6 That will be done in a letter, it will be sent  
7 to Lokahi Pacific, this time with a CC to the  
8 Housing Director that was left off last time, and it  
9 will be done very shortly within the next couple  
10 days. And that's how it will be done.

11 COUNCILMEMBER ANDERSON: So we'll have that before first  
12 reading, you can copy to us?

13 MR. FRAMPTON: Absolutely. Absolutely.

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

16 CHAIR MOLINA: And thank you, Member Anderson, and thank  
17 you, Mr. Frampton, for further clarifying this on  
18 the record. Member Baisa?

19 COUNCILMEMBER BAISA: Thank you, Chair. Member Anderson's  
20 question and Mr. Frampton's reply took away my last  
21 lingering doubt, and I wanted to be sure there was a  
22 record that it was voluntary. Thank you.

23 CHAIR MOLINA: Okay. I think he's -- he's made it quite  
24 loud and clear to us this is a voluntary  
25 contribution, and it's much appreciated.

1                   So, Members, with that, Chair will offer a  
2                   recommendation on the three bills. We'll take it  
3                   one by one.

4 COUNCILMEMBER VICTORINO: Recommendation.

5 CHAIR MOLINA: Okay. Thank you, Mr. Victorino.

6                   Recommendation is first a bill -- Chair will  
7                   recommend passage of the revised proposed bill  
8                   entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE  
9                   LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL  
10                  TO URBAN FOR PROPERTY SITUATED AT MAKENA MAUI,  
11                  HAWAII."

12 COUNCILMEMBER VICTORINO: So moved.

13 VICE-CHAIR PONTANILLA: Second.

14 CHAIR MOLINA: Okay. It's been moved by Member Victorino,  
15                  seconded by Member Pontanilla. Discussion? Seeing  
16                  none, all those in favor, signify by saying "aye."

17 COUNCIL MEMBERS: Aye.

18 CHAIR MOLINA: All those oppose?

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

3            **NOES:**            **None.**

4            **ABSTAIN:**       **None.**

5            **ABSENT:**       **None.**

6            **EXC.:**           **Councilmember Johnson.**

7     **MOTION CARRIED.**

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

10    **CHAIR MOLINA:** Thank you. The Chair will mark it eight,  
11                               zero, with one excusal, Member Johnson.

12                               The next bill, the Chair will entertain a  
13                               motion to recommend passage of the revised proposed  
14                               bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE  
15                               KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM  
16                               HOTEL TO SINGLE-FAMILY FOR PROPERTY SITUATED AT  
17                               MAKENA, MAUI, HAWAII."

18    **COUNCILMEMBER VICTORINO:** So moved.

19    **VICE-CHAIR PONTANILLA:** Second.

20    **CHAIR MOLINA:** Moved by Member Victorino, seconded by  
21                               Member Pontanilla. Discussion? Seeing none, all  
22                               those in favor, signify by saying "aye."

23    **COUNCIL MEMBERS:** Aye.

24    **CHAIR MOLINA:** All those oppose?

25

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

3             **NOES:**            **None.**

4             **ABSTAIN:**       **None.**

5             **ABSENT:**       **None.**

6             **EXC.:**           **Councilmember Johnson.**

7     **MOTION CARRIED.**

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

10    CHAIR MOLINA: Thank you. The Chair will mark it eight,  
11                                   zero, with one excusal, Member Johnson.

12                                And finally, the Chair will entertain a motion  
13                                to recommend passage of the revised proposed bill  
14                                entitled a Bill for an Ordinance to Establish R-3  
15                                Residential District Zoning, or Conditional Zoning,  
16                                for Property Situated at Makena, Maui, Hawaii, and  
17                                this also includes the filing of the communication.

18    COUNCILMEMBER VICTORINO: So moved.

19    VICE-CHAIR PONTANILLA: Second.

20    CHAIR MOLINA: Moved by Member Victorino, seconded by  
21                                Member Pontanilla. Members, discussion?

22    COUNCILMEMBER HOKAMA: Chair?

23    CHAIR MOLINA: Okay. I see a number of hands going up.

24    COUNCILMEMBER ANDERSON: Chair?

25    CHAIR HOKAMA: Okay. Member Anderson, followed by Chairman

1 Hokama.

2 COUNCILMEMBER ANDERSON: Oh, everybody wants to say  
3 something?

4 CHAIR MOLINA: Okay.

5 COUNCILMEMBER ANDERSON: I was going to feel guilty keeping  
6 everybody while I spoke.

7 I just want to thank the applicants because I  
8 think they've done a very good job in responding to  
9 the needs of the -- or the -- the concerns of the  
10 Community.

11 I know that there is a family across the  
12 street that's having drainage problems, but they  
13 also had those drainage problems addressed at the  
14 Planning Commission and -- so I think that they're  
15 okay with that.

16 This is going to go for an SMA permit, and  
17 they'll have another shot to get that situation  
18 addressed. I don't believe it's from runoff from  
19 this property.

20 You know, we have -- we have a bad drainage  
21 problem in all of South Maui, Mr. Chairman, because  
22 there is no master drainage down there. And so any  
23 time it rains, and when you're on sea level  
24 property, you're going to get -- you're going to get  
25 drainage problems. So we need to have that

1 addressed, but I don't think it's the Garcias'  
2 responsibility in this particular area.

3 I'm sorry we didn't get to the abutting  
4 property, but I know they have some concerns. I  
5 just want to state that when you live along the  
6 shoreline, you are sharing public property with the  
7 public. And you have to, I guess, accommodate that  
8 and respect that, that the public has a right to be  
9 there.

10 And I think the Garcias and the way they've  
11 handled this application with the historic sites by  
12 opening it up to access for public -- for the public  
13 to enjoy, it just really warms my heart that  
14 somebody is finally treating our ancient Hawaiian  
15 sites with respect. And so I thank them very --  
16 very much for that, Mr. Chairman.

17 CHAIR MOLINA: All right. Thank you, Member Anderson.

18 Chairman Hokama, comments?

19 COUNCILMEMBER HOKAMA: Chairman, I just wanted to say this  
20 was, for me, a very good application. I was able to  
21 make some decisions quickly on the information  
22 presented, and it is a rarity that we have a request  
23 to down-zone property, to reduce density, to reduce  
24 build-out potential and so I appreciate the efforts  
25 of the Garcia family.

1           I believe this is something that fits within  
2           their needs also, Mr. Chairman. And, again, I just  
3           appreciate the opportunity to deal with a  
4           down-zoning that makes sense for me and so I'm happy  
5           to support the request. Thank you.

6 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. And I think  
7           you stated it so eloquently. It's a rarity when you  
8           see down-zoning. It's a lot like Halley's Comet.  
9           You don't see it too often. Mr. Victorino?

10 COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. And,  
11           again, I echo the same sentiment as -- as my  
12           colleagues; but more importantly, I'd like to also  
13           say I'm very heart -- very, very grateful for that  
14           generous contribution that they brought forth the  
15           \$491,000. It will be greatly appreciated by many of  
16           our working people that so dearly need it.

17           And it's just one of the real facts that we  
18           have a real kamaaina family who really cares about  
19           their community and the County of Maui and the --  
20           and so I'm looking forward to see ing this Project  
21           come to fruition. I hope that -- and I wish them  
22           nothing but continued success.

23           And when first reading comes around, I will  
24           hope to be the same supportive way I am right now to  
25           these people. Thank you, Mr. Garcia, and Mr. Garcia

1 and the entire Garcia family.

2 CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Members,  
3 before we continue the discussion on the motion,  
4 Staff, I'd like to ask you to make a comment on one  
5 of the conditions that is in the bill.

6 MS. NAKATA: Yes. Staff would just like clarification,  
7 Mr. Chair. I believe right now, the proposed  
8 Condition No. 1 that was recommended by the Planning  
9 Commission is still in the bill, and Staff wanted  
10 clarification as to whether that should be removed.

11 CHAIR MOLINA: Okay. And the condition as it reads right  
12 now that -- you're talking about the condition that  
13 was from the applicant or the Planning Commission?

14 MS. NAKATA: From the Planning Commission, Mr. Chair, it  
15 reads that prior to final subdivision approval, Sam  
16 -- Samuel M. Garcia, Jr., and Jon E. Garcia shall  
17 submit evidence of compliance with either a pending  
18 or adopted County Affordable Housing Policy as  
19 determined by the Department of Housing and Human  
20 Concerns.

21 CHAIR MOLINA: Okay. Members, in lieu of the voluntary  
22 contribution from the applicant, the Chair would  
23 recommend that we maybe delete that proposed  
24 condition from the Planning Commission.

25 Any comments on that, Members?

1 COUNCILMEMBER ANDERSON: Yeah. Mr. Chairman, I don't know  
2 that we need to delete it because we didn't act on  
3 it. It was only a recommendation.

4 CHAIR MOLINA: Uh-huh, okay.

5 COUNCILMEMBER VICTORINO: Right.

6 COUNCILMEMBER ANDERSON: And so I would just say that we  
7 replace that Exhibit B with this Exhibit B.

8 I -- I think it's kind of odd that we even get  
9 bills with these conditions attached as exhibits  
10 when we haven't acted on them.

11 CHAIR MOLINA: Okay. Thank you, Member Anderson. Staff,  
12 any -- is that procedurally --

13 MS. NAKATA: So Staff's clarification is that the Exhibit B  
14 that's attached to the revised proposed bill, the  
15 intention is that the new Exhibit B would replace it  
16 with the four conditions that the Committee had  
17 reached consensus on earlier?

18 CHAIR MOLINA: Okay. Committee Members, is that  
19 satisfiable to all?

20 COUNCILMEMBER ANDERSON: That's correct.

21 CHAIR MOLINA: Okay, we will go that route. Okay, Members,  
22 any final discussion before the Chair calls for the  
23 vote on the bill? Chairman Hokama?

24 COUNCILMEMBER HOKAMA: Chairman, I would just ask with your  
25 indulgence, please, that the -- the Committee allow

1           you and the Staff with appropriate departmental  
2           representatives to do any nonsubstantive adjustments  
3           or changes to the legislation.

4 CHAIR MOLINA: Okay. Thank you, Chairman, and that is a  
5           very good recommendation, and we will work on that,  
6           assuming this goes on to first reading to the  
7           Council.

8                    Any final comments before the Chair calls for  
9           the vote? Okay. If none, the Chair will call for  
10          the vote on the proposed bill for an ordinance to  
11          change zoning from Interim District -- excuse me, to  
12          change the -- I lost my place here. To -- to pass  
13          the proposed bill for an ordinance to establish R-3  
14          Residential District Zoning for property situated at  
15          Makena, Maui, Hawaii.

16                   The Chair calls for the vote. All those in  
17          favor, signify by saying "aye."

18 COUNCIL MEMBERS: Aye.

19 CHAIR MOLINA: All those oppose?

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

3             **NOES:**            None.

4             **ABSTAIN:**       None.

5             **ABSENT:**       None.

6             **EXC.:**            Councilmember Johnson.

7     **MOTION CARRIED.**

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

10    **CHAIR MOLINA:**   Okay. Chair will mark it eight, zero; one  
11                                excusal, Member Johnson. This matter will move on  
12                                to the Council for first reading. Congratulations  
13                                to the applicants, and thank you for enduring the  
14                                process.

15    **ITEM NO. 23: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN**  
16                                **AMENDMENT, AND CHANGE IN ZONING FOR FOUR-UNIT**  
17                                **SINGLE-FAMILY CONDOMINIUM AT KAE0, HONUULA**  
                                  **(MAKENA) (C.C. No. 02-27)**

18    **CHAIR MOLINA:**   So, Members, we have one last item on the  
19                                agenda. The Chair's going to recommend a deferral  
20                                because of the time constraints, and we do have some  
21                                Members that have some other commitments.

22                                The Chair apologizes to the applicants. I  
23                                will accept full responsibility for this. We did  
24                                have a very long discussion on this first matter,  
25                                but I will bring your matter to this Committee in

1           the very near future for a full discussion that will  
2           allow ample time for the Committee to discuss and  
3           consider this proposal, and this relates to Land Use  
4           Item 23.

5 COUNCIL MEMBERS: No objections.

6 **COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JJ).**

7           **ACTION:           DEFER(no discussion).**

8 CHAIR MOLINA: Members, any announcements before we  
9           adjourn? Member Anderson?

10 COUNCILMEMBER ANDERSON: Chair, if I may indulge.

11           Thursday, the Water Resources Committee is meeting  
12           at 1:30. Because Monday was a holiday, we took the  
13           Thursday slot.

14                   I believe Budget is also meeting that morning  
15           so we switched with them, and I just want everyone  
16           to know now that we've made our changes to Council  
17           rules, nonCommittee Members can attend this meeting.

18                   The EPA will be here to give us their findings  
19           on their optimization study. We've got scientists  
20           from Region 9 in San Francisco, two -- two lead  
21           scientists from Region 9 and also two scientists  
22           from Dallas, Texas, that have come, and they've  
23           spent the last week and a half reviewing the  
24           Upcountry system with the Department of Water  
25           Supply.

1                   They had a meeting last week for the public.  
2                   This, of course, is a public meeting, but it -- it  
3                   will be a presentation, giving us their results and  
4                   their recommendations.

5                   So any Member who has time free, please --  
6                   please come to that meeting. And those who are  
7                   watching now, you can view it live on Akaku 1:30.

8   CHAIR MOLINA: All right.

9   COUNCILMEMBER ANDERSON: Thank you.

10   CHAIR MOLINA: Thank you very much, Member Anderson, and  
11                   I'm sure it promises to be a very informative and  
12                   exciting meeting live on Akaku, as well as  
13                   Mr. Pontanilla's Budget and Finance meeting  
14                   scheduled for 9:00 a.m. Thursday.

15                   So with that being said, no other  
16                   announcements, this meeting, Land Use Committee  
17                   meeting for January 23rd, 2008, is now adjourned.  
18                   ...(gavel)...

19   **ADJOURNED:    5:01 p.m.**

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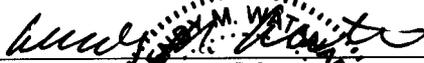
C E R T I F I C A T E

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

I, Wendy M. Watanabe, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 15th day of February, 2008, in Honolulu, Hawaii.

  
Wendy M. Watanabe, Notary Public, State of Hawaii  
My Commission Expires: 4/07/2010  
