

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

February 6, 2008

Council Chamber

CONVENE: 1:30 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson (Arrive 1:33 p.m.)
Councilmember Gladys C. Baisa (Leave 4:23 p.m.)
Councilmember G. Riki Hokama (Arrive 1:39 p.m.)
Councilmember Jo Anne Johnson (Leave 6:52 p.m.)
Councilmember Danny A. Mateo (Leave 7:03 p.m.)
Councilmember Bill Kauakea Medeiros
Councilmember Michael P. Victorino

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

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Simone Bosco, Planner, Department of Planning (Item No. 25)
Trisha Kapuaala, Planner, Department of Planning (Item No. 10)
Michael Miyamoto, Deputy Director, Department of Public Works (Item Nos. 23 and 25)
Vanessa A. Medeiros, Director, Department of Housing and Human Concerns (Item Nos. 23 and 25)
Robert Halvorson, Capital Improvement Projects Coordinator, Planning and Development Division, Department of Parks and Recreation (Item No. 23)
Kalbert L. Young, Director, Department of Finance (Item No. 25)
Val Martin, Captain, Fire Prevention Bureau, Department of Fire and Public Safety (Item No. 25)
Cheryl Okuma, Director, Department of Environmental Management (Item No. 10)
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 23 and 25)

OTHERS: **Item No. 23:** John P. Maloney, Development Manager, Pacific Rim Land, Inc.
Karlynn Kawahara, Munekiyo & Hiraga, Inc. (Applicant's planning consultant)
Tim Farrington, Farrington Bayless Architects, Inc. (Applicant's architect)
Stacy Otomo, President, Otomo Engineering, Inc. (Applicant's civil engineer)

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Bryan Maxwell, Maxwell Design Group, Inc. (Applicant's landscape architect)

Michael Dega, Scientific Consulting Services (Applicant's archaeological consultant)

Lucienne deNaie

Rob Parsons

Additional attendees (5)

Item No. 25: Thomas N. Fairbanks III

Janice Fairbanks

Shelly Harris

Betty M. Ota

Additional attendees (5)

Item No. 10: Larry Zolezzi, Operations Manager, Pacific Biodiesel, Inc.

Tamara Koller

Rob Parsons

PRESS: Chris Hamilton, *The Maui News*
Akaku--Maui County Community Television, Inc.

CHAIR MOLINA: . . .(*gavel*). . . The Land Use Committee meeting for February 6, 2008 is now in session. For the record we have in attendance Members Mateo, Baisa, Johnson, Medeiros, Pontanilla, Victorino and Molina. And from the Committee Staff, we have our Analyst Carla Nakata and Committee Secretary Tammy Frias. From the Corporation Counsel's office we have Mr. James Giroux and the Deputy Planning Director, Ms. Colleen Suyama. Welcome, Members, and thank you all for being on time, the Chair really appreciates this. We have a busy day ahead of us today, so we're going to go right into first public testimony and right after that we will delve into our Committee items. Before we start public testimony, the Chair would like to go over a few ground rules. You'll be given three minutes to testify with one minute to conclude. Please state your name and any organization you may be representing, and please by all means turn off your cellphones and pagers so as not to disrupt our proceedings here today. So let us go ahead and start, first to testify we have Tamara Koller followed by Sherry [*sic*], Shelly Harris. Ms. Koller, a very familiar face to all of us here on the Council. Good afternoon.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. KOLLER: Thank you. Thank you, Chair Molina and Members of the Land Use Committee. My name is Tamara Koller, I'm a resident of Makawao, Hawaii and I'm testifying on Land Use 10. I'd like to ask your support to pass the, I want to say the resolution that's attached to your second communication or your communication under No. 10 on your agenda, approving the action of the Board of Variances and Appeals granting a variance to allow Pacific Biodiesel to process waste cooking oil into biodiesel on property zoned Interim at Kahului, Maui, Hawaii. For those of you, some of you may know that I do drive a 2002 blue VW Beetle that has used biodiesel

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since I bought that. That biodiesel is produced from the waste cooking oil by Pacific Biodiesel and I use this rather than diesel from regular petroleum. I've had excellent use with it, my car runs very good and I just want you to consider passing this resolution, approving their Special Use Permit [*sic*]. My concern is if you do not approve the resolution and they have to shut down, what are you going to do with that waste cooking oil? It's going to go somewhere in the environment and that is not good. And anyway, thank you very much for your time today and it's good to see all of you.

CHAIR MOLINA: Thank you, Ms. Koller, the feeling's the same. Committee Members, questions for the testifier? Seeing none, thank you very much, Ms. Koller, for your testimony. Next to testify, Shelly Harris and she'll be testifying on Land Use Item 25, followed by Lucienne deNaie.

MS. HARRIS: Aloha and good afternoon. I'm Shelly Harris again. I'm here to support the Old Wailuku Inn and the approval of the Conditional Use Permit. I'm currently actually employed by them, they are actually my parents so I, I help them out on a daily basis. So it would be beneficial to myself, it's been great to be part of their business because it has allowed me to actually be there for my family, for my children to be there for their soccer games and the baseball games and for all the parent/teacher meetings that there are. So in that sense it has affected me personally in that way. I handle most of their reservations there at the Old Wailuku Inn and I have noticed that there are a lot of local business people, mainly business people that come over daily, weekly, monthly and every year that do business with us here in this area and they want to be close to the airport and the businesses that they deal with. So we need some sort of local establishment that can accommodate them while they stay here for their business. But also we, we do business with local bakeries because we buy some of our baked goods from them as well as flowers, so we support other local businesses as well. So it would be beneficial to all of Maui and visitors and, and the local businesses that come over from other islands that we continue to operate our ten bedroom bed and breakfast. Thank you for your time.

CHAIR MOLINA: Okay. Thank you very much for your testimony. Committee Members, questions for the testifier? Hang on. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. Hi. Thanks for being here. Can I ask what do you charge?

MS. HARRIS: For the rooms --

COUNCILMEMBER ANDERSON: Yeah.

MS. HARRIS: --we charge 150 to 190 per night, that's not including taxes. And the rate actually includes breakfast and it's a two person maximum.

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

MS. HARRIS: Sure. You're welcome.

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CHAIR MOLINA: Okay. Members, any other questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. Thank you very much for being here, Ms. Harris. I'm just curious, what's your occupancy rate? Are you almost always full?

MS. HARRIS: We are almost always full. I probably say we run, and depending on the time of year, we run anywhere from 70 to 100 percent occupancy. Right now, for example, the month of February we're booked solid, pretty much. We have a couple of pockets here and there, but for the month of February we have been very fortunate with occupancy.

COUNCILMEMBER BAISA: Thank you. Now I understand why it's so hard to get a reservation.

MS. HARRIS: Yes. . . .*(Laughing)*. . .

COUNCILMEMBER BAISA: Thank you very much.

CHAIR MOLINA: Thank you, Member Baisa. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes. You mentioned earlier about a lot of local business support, you know, business people that come here --

MS. HARRIS: Yes.

COUNCILMEMBER VICTORINO: --and stay there. What kind of percentage would you say between local businesses and local residents versus visitors from the mainland? Or visitors away from Hawaii?

MS. HARRIS: You know, I believe that the majority of the people that stay with us, and again it depends on the time of year, we could be anywhere from 20 percent up to 70 percent. So a good guesstimate, 50 percent of the whole year would be local people that come in. A lot of, for example we have some pharmaceutical companies, we have engineering companies that come in for different reasons. And so it's, it's extremely important for them because a lot of their business is done here in Central Maui versus them staying all the way on the other side in Lahaina, it would be more convenient for them to stay here.

COUNCILMEMBER VICTORINO: The other question I had was you mentioned between 150 and 195, is that per person or per room?

MS. HARRIS: Per room, per room.

COUNCILMEMBER VICTORINO: Per room.

MS. HARRIS: Yes.

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COUNCILMEMBER VICTORINO: A maximum of two, so if two business people came up and they share the room, \$75 each or whatever.

MS. HARRIS: Yep.

COUNCILMEMBER VICTORINO: Yeah. So, so your rate is basically a per room rate not a per person rate?

MS. HARRIS: Correct.

COUNCILMEMBER VICTORINO: And then the last question is, is there adequate parking as far as the visitors that come, do you provide adequate parking for them?

MS. HARRIS: Yes. We actually have a total of 12 stalls that are actually available to the entire property, we have one stall per guest room. So as far as the guests are concerned, yes, we have one parking stall per guest room.

COUNCILMEMBER VICTORINO: So per room?

MS. HARRIS: Yes. Per room. Uh-huh.

COUNCILMEMBER VICTORINO: The parking is based on per room? Okay. Thank you.

MS. HARRIS: Okay.

COUNCILMEMBER VICTORINO: I appreciate that.

MS. HARRIS: Sure.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Committee Members, any other questions for the testifier? Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, since we're allowing you to have a little PR here, free PR. How far in advance would someone have to make reservations?

MS. HARRIS: We normally recommend as soon as possible, anywhere, if they know approximately three months ahead of time, then it's great to book then. We have some visitors, some that are returnees and some that actually are just first time visitors here that book about a year in advance. But --

COUNCILMEMBER ANDERSON: So at least three months?

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MS. HARRIS: --definitely within three months.

COUNCILMEMBER ANDERSON: 'Cause I know when the EPA was here I think they wanted to stay with you guys but there wasn't any room.

MS. HARRIS: Yes. Yes. Yeah. And normally about three months is, is safe.

COUNCILMEMBER ANDERSON: Okay. Thank you.

MS. HARRIS: Sure.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And, Committee Members, just for your information the applicant has provided for us a brochure as well as a copy of a PowerPoint presentation that we will view later on today. So if there are no other questions, thank you very much, Shelly, for your testimony.

MS. HARRIS: Thank you for your time.

CHAIR MOLINA: Thank you. Next to testify we have Lucienne deNaie who will be testifying on Land Use Item 23, to be followed by Betty Ota. And for the record, we have Member Anderson in attendance today.

MS. deNAIE: Aloha. Thank you, Chair Molina. Good afternoon, Members. My name is Lucienne deNaie, I'm just testifying on my own behalf today. I did testify on this same matter--this is to refresh your memory--a, a small parcel in the heart of Makena, kind of catty-corner from Maluaka Beach, a little bit down across the street from Keawalai Church and immediately adjacent to the Kalani Heiau. This area is proposed to be stuffed with four condos and four swimming pools. I'm familiar with many of the family members that are connected with this land, I go to church with them in Kaulanapueo Church in, in Huelo. And I've heard a lot of wonderful stories about this place, it didn't come into the family hands until the '50s, but long before that folks who visited their grandparents who had another parcel further south would go with their grandfather to that land and he used the heiau that was adjacent to the land that eventually became the family's. And they, they had a connection to the land which is I guess why they swapped for it with Ulupalakua Ranch in 1956.

I testified last time about my concerns that this land has not really met the letter of the, the community plan or of our State Historic Preservation law in terms of really finding out what is there. It, it had tiny, little (*inaudible*) probes done. I talked to some family members and they informed me that one-third of the land was actually covered with carpet and they believed it was in that condition in 2001 or 2002 when this survey was done. And so no one looked underneath the carpet that was there. They had a tenant there that just put down carpet so that there wouldn't be weeds is what I was informed. At any rate, as you know our community plan has very clear requirements when a project comes in for application like this. They're required to identify all

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cultural resources located within or adjacent to the project area prior to application. You know, not after the fact, not while you're monitoring because you're bulldozing the place down, but prior to the fact. And I would ask that this requirement be met.

I just want to give an example, I'm going to turn in a letter, I only have one copy. But the parcel immediately next door, you're going to hear that well, Historic Preservation signed off on this. Let me tell you, they sign off on a lot of things and some of them they have to reconsider, and the project next door they did have to reconsider. I'll turn in the letter that explains how that reconsideration took place. It took place because a citizen came forward and said there is more here that you're not giving credit for. And it is my belief that this is also true of this parcel. There are several low walled structures there that are being interpreted as --

MS. NAKATA: Three minutes.

MS. deNAIE: --animal, animal confinement areas. But according to Theresa Donham who was involved with both parcels, she believed that they are pre-contact and deserve far more scrutiny. They were full of, when she visited, they were full of old broken bottles and trash so she doubts if any research was really done in that area. I see Mr. Dega is here, maybe he can address that. But I would urge you to make sure this has proper review. It's an extremely historic area, part of a probable royal compound that was centered by Keawalai Church. Thank you for your consideration. And four swimming pools, where's the water? Thank you.

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. Ms. deNaie, thank you for being here. In their letter, their archaeologist letter. . .they're saying that the, that there is little evidence that to connect. . .there is little empirical evidence in hand to suggest that associated or ancillary heiau structures or remnants are present on the subject parcel. Basically they're saying the Kalani Heiau, which I'm not so sure that's really the name of it, but at any rate that heiau abuts their property line. And so they're saying that there's nothing on their property that would be connected to the heiau or at least they can't make a determination. Are you saying that that is probably not correct?

MS. deNAIE: I am not an archaeologist. But in my discussions with Theresa Donham about her review of that site, she believes that there are structures on that property that connect with the heiau and she is one of the people who's been the most effective at discovering the full scope of these ceremonial structures. You need to sort of step outside the Western cultural perspective and realize how they were used and therefore how they would have been built and setup. And often times what we look at is the high walls and oh, this was the heiau and it might have been that the most important part of the heiau was a humble little terrace that once had a, a house or something on it that, that housed a sacred image or where people, you know, met to, to teach. You know, we really need to get the information in a, in a deeper sense in order to understand what is significant and what isn't.

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To just dismiss everything as ranching walls is not serving our historic purpose here. So, you know, there are others who disagree, I'll just put this, I am among them, I am not an expert, I'm only a researcher. But my research in this area shows that it is connected with people of high prestige and standing throughout the 1700 and 1800's and they lived in the vicinity and claimed land in this vicinity and fought over land. This very same parcel of land was part of the land that was fought over by two high born chiefs trying to be the Konohiki. So somebody wanted it for some reason, it's right across the street from Maluaka Beach. The family that lived there felt strongly connected to the heiau, the Lonokailua family. You know, I think we should connect the dots, that's all I'm saying. But we need, we need good information to connect the dots. If you, if you don't look very far and very long because it costs money, you don't have enough information to connect the dots. It's nobody's fault, except we haven't gone far enough.

COUNCILMEMBER ANDERSON: Theresa Donham is an archaeologist?

MS. deNAIE: She is, yes.

COUNCILMEMBER ANDERSON: And at one time she worked for State Historic, correct?

MS. deNAIE: And she does now, she just returned to working for State Historic on the Big Island.

COUNCILMEMBER ANDERSON: Okay. And, on the Big Island?

MS. deNAIE: On the Big Island. Yes.

COUNCILMEMBER ANDERSON: And she feels that this, there are significant sites on this parcel?

MS. deNAIE: She does. In fact she told me in a phone conversation that she met there with Melissa Kirkendall and took her through and suggested that Melissa do the same thing there that they did on the Garcia property, that they hold back and get more review done and rescind the original approval that was given. Now you may recall that that rescinding had to be done on the Dowling property in Maluaka as well. This happens where citizens bring things to the presence of the over-worked staff at State Historic Preservation and they realize they just signed off too soon. That, you know, they needed to get stuff off their desk but there's more to know.

COUNCILMEMBER ANDERSON: And, and the letter that, that you have for us?

MS. deNAIE: I just turned the letter, it was a copy of the letter from SHPD thanking the archaeologist and landowner for the chance to reconsider the opinion that all, that the report was complete and acceptable and suggest that through citizen information that there was probably more to be found on that property.

COUNCILMEMBER ANDERSON: And, and you're speaking about the Garcia property or this property?

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MS. deNAIE: Garcia property immediately adjacent to this property.

COUNCILMEMBER ANDERSON: And so as best as I can determine, none of the sites on this property in front of us today have been given a significant criteria --

MS. deNAIE: Nothing. They'll be gone. No.

COUNCILMEMBER ANDERSON: --to save anything?

MS. deNAIE: No. Nothing. Not one shred of this site. So, you know, what if it does have portions that connect to the heiau? Then that part of the heiau is gone. You know, the Garcia's have been very conscientious about trying to protect the heiau and learn about the history of the area and I applaud them. You know, it would be nice to see this carry through to this parcel and the parcel behind it as well because they're all interconnected, they were all part of one property at one time.

COUNCILMEMBER ANDERSON: Okay. Thank you very much.

MS. deNAIE: Thank you.

CHAIR MOLINA: Members, any other questions for the testifier? The Chair has one question for Ms. deNaie. Back on January 23rd, we heard an application for a ten unit subdivision on an adjacent property. And you mentioned Ms. Donham from the SHPD, what is her views on that? 'Cause I find it interesting that, you know, here we have two properties adjacent to each other and there's a concern with the archaeological findings. And there was some archaeology issues with that property as well.

MS. deNAIE: Ooh, I missed that one.

CHAIR MOLINA: So I'm just kind of putting it out there, it's like, there was no concerns expressed to us from SHPD on that.

MS. deNAIE: Chair Molina, could you acquaint me to where this ten acre parcel was?

CHAIR MOLINA: That is the, the Garcia --

COUNCILMEMBER ANDERSON: The Garcia...

CHAIR MOLINA: --property. But although I don't want to get into too much detail on --

MS. deNAIE: No, it, it...

CHAIR MOLINA: --the Garcia property because of Sunshine law issues here.

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MS. deNAIE: And, and, and that's the property that the letter that I'm turning in to you refers to. That's TMK 66, I guess.

CHAIR MOLINA: So, so, so based on your conversations with Ms. Donham, then she's also saying to rescind the, maybe take, have us review the Garcia property as well?

MS. deNAIE: No. That's already been done and it's already been completed.

CHAIR MOLINA: So...

MS. deNAIE: And, and another significant site was preserved.

CHAIR MOLINA: So for SHPD that was okay --

MS. deNAIE: Yes.

CHAIR MOLINA: --even though it's right next to this property? But yet this particular --

MS. deNAIE: Well...

CHAIR MOLINA: --property has a problem?

MS. deNAIE: Here's the problem, SHPD signed off on both properties and said your report is complete. Theresa Donham went and looked at both properties, she and Dana Hall both wrote letters to SHPD saying you've missed a big one here. SHPD went out, Ms. Kirkendall walked with them, agreed and rescinded the approval letter until more work was done on the Garcia property. That's the letter I'm turning in to you folks. What I'm saying is this property is right next door and has the same issues and Theresa agreed that it did have the same issues.

CHAIR MOLINA: Okay. I just find it interesting that this is now coming up and whereas with the prior application none of this was brought up to the Committee. Thank you. Okay. Next testifier...

COUNCILMEMBER ANDERSON: Chair.

MS. deNAIE: Well, it had already been resolved, sir.

CHAIR MOLINA: Excuse me, hang on. Member Anderson has a question?

COUNCILMEMBER ANDERSON: Yeah. I'd just like to clarify, Mr. Chairman. The Garcia property because of the letter from Ms. Donham, SHPD went and took a second look. Also a letter from Dana Hall. They went and took a second look and they said, you're right there needs to be more saved here. And so what the archaeologist did for the Garcia property is they reviewed, went and reviewed their inventory survey, agreed with SHPD and these two people and said okay we will

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save this additional site. Then they, they extended their preservation plan to include that site, then they went to the next step of getting their preservation plan approved by State Historic. So the Garcia's went through the whole process which is rarely done here and gave us a preservation plan preserving not just the heiau but the additional site that SHPD and these two individuals felt were, was important enough to save in, in situ. And the Garcia's agreed to that, did a preservation plan outlining that, got it approved by State Historic and brought that to us in our approval. So they completed the process with the preservation plan that saved all these sites. What, what Ms. deNaie is saying is that nobody has taken a second look on this adjacent property to give it the same considerations that was given to the Garcia property where the heiau abuts this property that we're looking at today.

CHAIR MOLINA: Okay. All right. Thank you for that clarification, Member Anderson. And we do have I believe the applicant's representative here to give us further detail on this. Okay. Thank you for your testimony, Ms. deNaie. Next to testify we have Betty Ota and Ms. Ota is the last person to have signed up. The Chair will give the, anyone in the gallery one last opportunity to sign up for public testimony. And Ms. Ota will be testifying on Land Use Item 25.

MS. OTA: My name is Betty Ota and I live at 442 High Street, and I've lived in this neighborhood all of my life, that's 80 years. And my family purchased the present home in 1949 when the Lufkin estate was subdivided into three parcels. I've seen High Street grow from a quiet street when the only noise we could hear in the still of the night was the pineapple trucks from Wells Street over onto High Street and that made a lot of noise with all their gears, I don't know how many there were, and they were on their way to Lahaina when the cannery was still open. I'm the closest neighbor to Tom and Janice, my bedroom is adjacent to the boundary line. I have no objections to their addition of their bed and breakfast. I know that the traffic is heavy on High Street with all the new housing developments on Honoapiilani Highway. I'm sure none of the problems have any bearing on Ulupono. We, my sister and I, had never been bothered or felt intrusion by the bed and breakfast operation. We consider the Fairbanks good neighbors and friends and their operation has not impaired the peaceful and enjoyment of our home and property. The Fairbanks should be commended for their renovation of an old historic home. Their home contributes to the preservation of Old Wailuku Town, and I had met off island professional and business men and women who are so thankful that there is a comfortable and beautiful place in which they could stay overnight to do, to complete their business. And of course the food is excellent. In closing, please support the Fairbanks to continue their well managed endeavor with emphasis to maintain Hawaiiana. So thank you very much.

CHAIR MOLINA: Okay. Thank you, Ms. Ota. Committee Members, questions for the testifier? Seeing none, thank you for your testimony, Ms. Ota. Okay. We have one additional person that signed up for testimony, we have Rob Parsons who will be testifying on Land Use Item 23 and Land Use Item 10.

MR. PARSONS: Good afternoon, Chair Molina, Members. I'm testifying on LU-10, the variance for Pacific Biodiesel. And I came here today because I, I really thought Rubens Fonseca of EKO Compost would be here and I wanted to return this. This is a national award from the Solid

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Waste Association of North America that when I was working here he brought to my office to display because he was so proud of what they'd been able to achieve with the operation which combines Pacific Biodiesel and EKO Compost and handles some of our trickiest waste issues, and has done so in such a way that they've received this national award and also an international award that Kelly and Bob King went to receive in China. So I'm here just to share very quickly what, what I know having worked with them on a couple of their issues interfacing the County and the State. I have toured the facility, it has what I consider a small footprint, it's appropriately sited in my mind, it borders EKO Compost with which they have a symbiotic relationship. What they filter out of the fats, oils and grease and used cooking oil for making fuel goes into the compost and is completely reused as well. It borders Ameron on one side, cane fields on one side and the landfill. So the impacts on the neighbors are minimal or non-existent. I know it's an arduous permit process with both the County and the State and this matter before you is, would, would put County zoning in conformance with the DOH requirements of the State. So I urge you to pass that and so we can continue to handle all of the waste streams that, that go through EKO Compost and Pacific Biodiesel.

LU-23 is the proposal for, you know, what, it's called a residential development. But I testified on this before the Planning Commission back in 2001 and at that time it was referred to as resort residential and I went, what the heck is that? There is no such thing, it's either something's a resort usage or it's a residential usage. And I think that that title has been extracted from it now in its new iteration that's before you. But I think that that, it shows that the type of development that they proposed here on a small lot, one and a half acres that is in a archaeologically sensitive region is, is quite big with four separate units, four swimming pools, one for each unit, 4,000 square foot each unit and I believe four parking places for each unit. So if this is a residential usage, boy that's a stretch. So I know that things come before you and the temptation is to just look at that application that, that's before you, but once again I urge you to look at the whole context of the South Maui Community Planning Region, there's specific language in the community plan document that says retain the rural character of the area of Old Makena Road in the Keawalai Church vicinity. And I think this would stick out as a sore thumb. I believe you did a site visit on this last Fall and pretty much things are the way they were. This is one region of South Maui that hasn't given in to the mega mansions that have taken over the Makena Landing area, Keawakapu area, so many other areas. And our community plan asks us to respect the old rural character of this region.

So I hope you'll scrutinize this and make sure that you have any and all questions answered. And remember this, this is more development at the end of our road, at the end of the infrastructure. People need to drive all the way through South Maui to get here just to construct it. We need to look at the water usage, wastewater usage and I encourage you to do your best to do a thorough review of the application before you. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Mr. Parsons. Committee Members, questions for the testifier? Seeing none, thank you for your testimony. Okay. Committee Secretary, have we had any additional sign ups?

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MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay. No additional sign ups. If there are no objections, the Chair will be closing public testimony. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Thank you.

...END OF PUBLIC TESTIMONY...

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

CHAIR MOLINA: Okay. Members, let us proceed with our first agenda item which is Land Use Item 23, a District Boundary Amendment, Community Plan Amendment, and Change in Zoning for a four-unit, single-family condo at Kaeo, Honuula (Makena). This matter was on our Committee agenda back on January 23rd; however, the prior item before that item took up pretty much the whole day so that matter, this particular matter was not addressed back then. So, Members, this is, we are considering three bills for this matter. One, "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KAEO, HONUULA, MAKENA, MAUI, HAWAII". The intent of the proposed bill is to facilitate a request from Mike Munekiyo on behalf of Pacific Rim Land, Inc., for a District Boundary Amendment to develop a four-unit single-family condominium project on approximately 1.552 acres of land located at Kaeo, Honuula, Makena, Maui. Second bill is, A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM HOTEL TO SINGLE-FAMILY FOR PROPERTY SITUATED at the same site. The intent of the proposed bill is to change the Community Plan designation for the subject property from Hotel to Single-Family, at the request of the former Planning Director to facilitate the development. And the third bill is, A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO R-3 RESIDENTIAL DISTRICT FOR PROPERTY SITUATED AT, again, KAEO, HONUULA, MAKENA, MAUI, HAWAII. The intent of the proposed bill is to change the zoning for the subject property to conform to the proposed Community Plan designation and to facilitate the development.

So I've said quite a mouthful, Members, for you on this particular matter. I believe we have met twice this term on this matter and we have from the Planning Department, we have Deputy Director Suyama . . . *(change tape, start 1B)* . . . Comments? Before we call on the Members to ask questions. And for the Members' information, we have on hand from the applicant, the representatives, we have John Maloney, Development Manager for Pacific Rim Land as well as

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Karlynn Kawahara from Munekiyo & Hiraga, Inc.; Tim Farrington from Farrington Bayless Architects; Stacy Otomo from Otomo Engineering, Inc.; Bryan Maxwell from Maxwell Design Group, Inc., which I guess it's indicated here to the Chair that this individual is the project's landscape architect; and Michael Dega, the Scientific Consultant Services representative, basically the project's archaeological consultant. So we have a plethora of resource people that, at your perusal here today. So, Director Suyama, any comments?

MS. SUYAMA: The only comment I have is in, in relationship to the testimony from Lucienne deNaie regarding the archaeological inventory survey. Just for your information, an archaeological inventory survey was conducted for the project in 2001 and at that time State Historic Preservation Division had, you know, basically concurred with the inventory survey and only had recommended that during ground altering work, which is the construction activity, that a monitoring plan be devised prior to the, to any ground altering activity. Further in 2006 when the final draft, final environmental assessment was done for this project, State Historic Preservation also had another opportunity to review this project. And during that time there was no difference in the original recommendation from State Historic Preservation, and that document was published on August 8, 2006. So, you know, there was no notification from State Historic Preservation to the County that they had reversed their original decision, or their original recommendation. You know, it's great that they did that for the Garcia property, but no similar letter was ever sent to the County saying in any fashion that the original inventory survey was no longer valid and the original comments were no longer valid. And I just wanted to point that out that, you know, we're just running based upon the comments that we have continually received from State Historic Preservation Division.

CHAIR MOLINA: Okay. Thank you, Director. Members, as I mentioned earlier we do have the archaeological representative for the applicant available to you if you have questions on this particular issue. And in addition to that I believe the applicant also submitted a letter with regards to the parking matter, you should have that available to you as well. And at this point we'll open up the floor for questions. We'll go down the line, we'll start with Mr. Victorino.

COUNCILMEMBER VICTORINO: Well, Mr. Chair, I would like to hear from their archaeologist and see what they have to say about this because. . .and what Ms. deNaie has brought up and what Ms. Suyama has brought up are really conflicting opinions. And I think that's important. As far as the parking and other things, we can discuss that later. But I think that's been one of my focal points at this juncture is to find out specifically from their side what specifically has occurred, go over their assessment because they have their EA here. And let, let me say another thing so that the viewing audience don't get nervous, today is Ash Wednesday, that's why my hair, my head has this. I just think I had to say that because I've been asked a number of times and what's wrong, it's Ash Wednesday, that's all folks, it's a religious thing and thank you very much. Thank you, Mr. Chair.

CHAIR MOLINA: All right. Thank you, Mr. Victorino. Members, do you have any pressing questions for Director Suyama if, related to the archaeological concern? Otherwise if there are no objections, I will call up Mr. Dega, the applicant's representative to respond to questions.

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COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Seeing no objections, Mr. Dega, if you could come and please have a, I would tell you a seat, but you can maybe stand and just be prepared to respond and for the, for the record can you give us your name and the organization that you represent.

MR. DEGA: Michael Dega, Scientific Consultant Services. Mr. Chair, Committee Members, thank you. It's a good question. Both parcels have undergone several different phases of archaeological research. For the parcel in question we were contracted to do an archaeological inventory survey. The first report was submitted in November of 2000, Melissa Kirkendall reviewed the document, came back to us with a few revisions to the document. It was later accepted, April 5, 2001. The recommendation at that point was for archaeological monitoring in case there's any inadvertent discoveries made. March 24, 2005, Melissa Kirkendall having revisited the Kalani Heiau site with Dana Hall, Uncle Les folks to map out their footprint, did another visit through the same parcel. She had some questions on a couple of possible enclosures, she said, she called me and said you need to go out there and do some additional work on this parcel. We went out after, I think it was March 22nd, did some more excavation on feature six, analyzed some mapping that was done in 2001 on the accepted report. I wrote a letter to Ms. Kirkendall saying it did not change its significance and explained what we had found at the, at the features. Basically there was no cultural deposit found in the feature she wanted us to further investigate. So that's two phases of inventory survey and the monitoring.

We also did in, one moment here, 2002 archaeological monitoring for some lateral utility work along the front side of the property for water meters or, or what have you. We dug three trenches at the very front of the property in the sand, they're about 10 meters long each of them, again the results were negative. No culture material whatsoever. At this point the inventory survey was accepted, the additional work in 2005 was also accepted and noted by the SHPD.

CHAIR MOLINA: Okay. All right. Thank you, Mr. Dega. Mr. Victorino, additional questions for Mr. Dega?

COUNCILMEMBER VICTORINO: Mr. Dega, you have heard what was said earlier by a public, by another testifier that maybe even in the second round you guys didn't go deep enough or far enough. And of course obviously that concerns me because, whether it's Uncle Les, Dana Hall, Kirkendall, I don't care who it is. If a site's there and we lose it, it's lost forever. In your professional opinion and your report, do you find anything of significant cultural or historical in that particular area that you went back on?

MR. DEGA: From, based on our research to date, no.

COUNCILMEMBER VICTORINO: Okay.

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MR. DEGA: You have to remember archaeology is a, a sampling enterprise. We cannot test 100 percent of every parcel, so we test as much as we can under the parameters. If we can't test 100 percent of a parcel, a mitigating quality such as in this report is archaeological monitoring. Monitoring isn't us standing behind watching machines bulldoze, we are in front of the machine watching as it moves. If we see anything at all, the machine stops, we evaluate the find immediately and assess its significance and call the State Historic Preservation Division so we can work on concurrence. So it is a quality mitigating factor, monitoring.

COUNCILMEMBER VICTORINO: Okay. So for this project you're saying that you will be, well, not literally you, but someone will be in front there double checking as they, whatever these areas are being graded or cleaned out or whatever to make sure that no site has or is left undiscovered?

MR. DEGA: That's correct. Yeah. Because like I said we can't test everything, there may be deposits underneath the surface which we can't see. But as, as they're grading if we can see the beginnings of the cultural deposit, we stop immediately, evaluate and work with the SHPD on how to mitigate. Typically we would stop the machine in that area, try to define the cultural area boundary and then manually test it to get more information out of it and establish its significance.

COUNCILMEMBER VICTORINO: Okay. Thank you, sir. Thank you, Mr. Chair.

MR. DEGA: Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Dega, in regards to the monitoring, would that be an archaeologist that's going to be there in front of the equipment?

MR. DEGA: Yes.

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

CHAIR MOLINA: Okay. Thank you. Chairman Hokama? And by the way, we want to recognize Chairman Hokama to our proceedings today. Do you have any questions for the applicant's archaeological representative?

COUNCILMEMBER HOKAMA: Not for this resource person, Chairman.

CHAIR MOLINA: Okay. All right. Thank you, Mr. Hokama. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Dega, so you're, you're the lead archaeologist on this project?

MR. DEGA: I'm the responsible party, yes.

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COUNCILMEMBER MEDEIROS: Okay. And there was some mention that there was some collaboration with the adjacent property as far as the archaeology study?

MR. DEGA: Yes.

COUNCILMEMBER MEDEIROS: Okay. So your firm consulted with the other archaeologist about this particular area?

MR. DEGA: Yes, sir.

COUNCILMEMBER MEDEIROS: And the findings of both consultants was that the report submitted met the requirement and approval of SHPD?

MR. DEGA: That's not for us to assess, that's for SHPD to assess.

COUNCILMEMBER MEDEIROS: Okay. So I'm asking you what the results from SHPD was?

MR. DEGA: They, they accepted both reports, yes.

COUNCILMEMBER MEDEIROS: Okay. All right. Thank you. And that's all I have for this resource person. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. Thank you for being here. Because there are four swimming pools involved in this particular proposal, what is the ordinary depth that you would go to with this, with the installation of a swimming pool as opposed to just laying a slab and putting a foundation in?

MR. DEGA: That, I think that's a question for the engineer. I'm sorry.

COUNCILMEMBER JOHNSON: Well...

MR. DEGA: When we do tests, archaeological testing we dig to the bottom which is bedrock. Which is about. . .this deep in the area, about 45 centimeters. As far as the construction, I can't answer the engineering question.

COUNCILMEMBER JOHNSON: Okay. Well, this is important to me because if the archaeological significance or any of the archaeological findings are below what you have actually gone to because of the inclusion of the swimming pools, that is very important in terms of knowing what depth and how to appropriately address the areas. And specifically where those pools would be sited I would think that you would go to a different depth than on standard projects. So that's my reason in asking that and that's why for me it's very important that if we're going to look at a

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proposal that you know where these things are going to be, that you pay particular attention to that. So because you have not done that, that is enough knowledge for me at this point. Thank you.

MR. DEGA: That's a, that's a good point. And if, if we are monitoring the, whatever depth the pool is at and we find a cultural deposit, we will dig to the bottom until we hit bedrock to expose as much of the deposit as possible.

COUNCILMEMBER JOHNSON: And, and I understand that. My concern is that before you go to all the expense and before you actually look at the disturbance of these sites and the potential for there having to be a whole redesign of the area, that this be done in advance. It's called preparation. So for me I just, just from what's been said right now, I, that is not satisfactory to me. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Baisa, questions for the applicant's representative?

COUNCILMEMBER BAISA: Yes. I don't believe I've had the opportunity to speak with too many archaeologists, it's a pleasure. Thank you for being here.

MR. DEGA: Thank you.

COUNCILMEMBER BAISA: I don't have a whole lot of experience in this area so I may ask a question that everybody else knows but I don't know. If somebody hits something of significance, what happens outside of stopping the digging?

MR. DEGA: Once, once something is found, any kind of cultural deposit or a burial or anything, the work stops and we need to describe what, what we found at that point. Usually we consult immediately with the State Historic Preservation Division. This is called an inadvertent discovery. We didn't know it was there and it came up. So we consult on how, how best to understand the deposit, how to describe it and establish significance. Some significance criteria are different. If it's a burial, it gets a very significant criteria and then that, all bets are off at that point for a little bit until consultation occurs. If it's a cultural deposit with some shells and things, we'll work with SHPD and they may say sample some of it and send off charcoal to date and see how old it is, things like that.

COUNCILMEMBER BAISA: And so when that is determined what that is, would it be serious enough to halt the project? Or what, what's the result of that?

MR. DEGA: It has in the, it has in the past, certainly. Burials, say a potential heiau that had been buried through time, either through sand or, or flood events. Each case is, is different so you have to evaluate the find as you see it basically.

COUNCILMEMBER BAISA: Thank you very much. That's good information.

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MR. DEGA: Thanks, thanks also for having me here, it's nice to talk to people.

CHAIR MOLINA: Thank you, Member Baisa.

COUNCILMEMBER BAISA: Live people. . . .*(laughter)*. . .

MR. DEGA: Live people. . . .*(laughter)*. . .

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Thanks. Mr. Dega, or is it Dr. Dega?

MR. DEGA: Mr., Mike's fine.

COUNCILMEMBER ANDERSON: Do you have a Ph.D.?

MR. DEGA: Yes. At U.H.

COUNCILMEMBER ANDERSON: A Ph.D. in Archaeology?

MR. DEGA: Yes. At U.H. Manoa.

COUNCILMEMBER ANDERSON: Excellent. So there are 13 features on this property?

MR. DEGA: Yes.

COUNCILMEMBER ANDERSON: And of those features, how many sites does that total?

MR. DEGA: It constituted one site. They're all grouped under one site heading.

COUNCILMEMBER ANDERSON: Under one site heading?

MR. DEGA: Yes.

COUNCILMEMBER ANDERSON: And all 13 features were found to be not significant enough for saving?

MR. DEGA: They were all, yeah. They were assessed as significant under Criteria D which means important to history or pre-history of the region, which requires documentation. At that point we did the inventory survey documentation, we recommended no further work and SHPD concurred. Yeah.

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COUNCILMEMBER ANDERSON: And no further work meaning there'll be no further data recovery of any kind?

MR. DEGA: That's correct.

COUNCILMEMBER ANDERSON: And so the sites will just be bulldozed?

MR. DEGA: They won't be because we'll be monitoring. If a significant deposit arises while they're bulldozing, then we stop. Even if the, 'cause the significance can change through time.

COUNCILMEMBER ANDERSON: Yes it can.

MR. DEGA: Yeah.

COUNCILMEMBER ANDERSON: Even, even, even right now it could change with further review. So did you do any testing at all on any of the sites? Any of the features?

MR. DEGA: Oh, the features. Yeah. We tested nine features during inventory and then we went back and tested the additional feature four years later when it was...

COUNCILMEMBER ANDERSON: Is this carbon dating?

MR. DEGA: We didn't get any charcoal to carbon date.

COUNCILMEMBER ANDERSON: So what kind of testing did you do?

MR. DEGA: Manual testing. Basically we dug a, dug a square with a trowel and a toothbrush and, and found out...

COUNCILMEMBER ANDERSON: To see what was underneath?

MR. DEGA: Yeah. Exactly.

COUNCILMEMBER ANDERSON: Underneath the, the rocks? But not --

MR. DEGA: Underneath, underneath the...

COUNCILMEMBER ANDERSON: --subsurface?

MR. DEGA: Yeah. We went beneath the rocks. We go, again we dig as far as we can because there are different time periods and layers through time, so we dig to the bottom as far as we can get. In this area we were, we were always stopped by bedrock about 40 to 50 centimeters below surface.

COUNCILMEMBER ANDERSON: And you found no midden, nothing?

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MR. DEGA: Yeah, we did, we, we found little bits of shell, little bits of coral which is common for a coastal zone. We found lots of historic, a gun bullet casing to 1901, from bottles from the 1910s and '20s. The more significant things for the historical record out there.

COUNCILMEMBER ANDERSON: But you found nothing that would indicate prehistoric dating? Because I find that odd...

MR. DEGA: The shell you could say, yeah, I mean it was a prehistoric food item, the shell was. Opihi, we found some coral which could have been placed there. Again it's hard to differentiate the, the prehistoric versus historic 'cause the shell was, still Opihi, we eat it today. It's a, it's a, the depth of the find and the context basically.

COUNCILMEMBER ANDERSON: You know, I just find it very odd that right next door there is a significant historic site of religious significance, religious use and it butts right up against the property line and that you find nothing on the other side of the property line worthy of saving that would have any, enough significance. What about the paved area in feature three?

MR. DEGA: In feature, let's see, hold on, let me turn to that.

COUNCILMEMBER ANDERSON: I mean a paved area indicates...

MR. DEGA: A paved area usually is associated with a pre-contact activities.

COUNCILMEMBER ANDERSON: Right.

MR. DEGA: We dug three, three test units, that's the square with our trowels and things. And we got negative results. We dig the, to provide, to get empirical evidence to interpret the site or to justify our interpretation of what the site may be. If we don't find anything, we're kind of stuck with our original interpretation as best we know it.

COUNCILMEMBER ANDERSON: What about the paved area? What was your determination of its use?

MR. DEGA: Modified outcrop, I think we just gave it a general assessment. . .which is typical for the area, an activity area. But again we didn't have any evidence to say what kind of activities were occurring there. There were no stone tools, there was not a lot of midden, they weren't consuming food, preparing food. There was just no evidence. It is a common prehistoric feature. We just, I mean the lack of data is, is difficult to deal with.

COUNCILMEMBER ANDERSON: Yeah. But...

MR. DEGA: And, and you do find...

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COUNCILMEMBER ANDERSON: I mean it seems to me that you, if you had done further work like they did on the Garcia property you would have found a connection, you would have found a way to connect some of the features that are adjacent to the heiau as being part of the heiau complex. And it, it's very disturbing to me that nothing is going to be saved, that you found no significance worthy of saving anything. When, pardon the pun, a stones throw away you have a highly religious site.

MR. DEGA: I, I...

COUNCILMEMBER ANDERSON: So it tells me that --

MR. DEGA: We're...*(inaudible)*...

COUNCILMEMBER ANDERSON: --there wasn't enough effort or there was no intention of saving anything. Because this parcel is not that big and you're putting an awful lot in it. So...

MR. DEGA: Our intention is to assess the function of a site and establish its significance. We have a harder time of doing that if we don't have any data. I mean we'd love to find a connection between things and, and heiau all over Maui we excavate outside of structures to see if there was activity occurring before the structure was built. Because often the structures --

COUNCILMEMBER ANDERSON: You know, you, you --

MR. DEGA: --the last thing you'll see.

COUNCILMEMBER ANDERSON: --told me that you did no carbon dating. You know, one of the, one of the criteria for saving something is if it can be dated to pre-contact time. And you said that you did no carbon dating because there was no charcoal. But I, I'm reading the field results and over again, over and over again I see mention of charcoal.

MR. DEGA: Yeah. There wasn't enough charcoal to date or the charcoal came from a layer, for instance we found charcoal that was associated with the 1901 bullet. We don't have to date the charcoal 'cause we know it's associated with 1901 deposit. It's an absolute date. The charcoal below that not associated with historic, there either wasn't charcoal or there wasn't enough to date.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

MR. DEGA: That's a good question.

CHAIR MOLINA: Member Mateo, questions for the applicant's representative? Okay. All right.

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COUNCILMEMBER ANDERSON: You know, I do have one more comment, if I could.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: You know Theresa Donham?

MR. DEGA: Yes. Yes.

COUNCILMEMBER ANDERSON: Do you respect her as an archaeologist?

MR. DEGA: Sure.

COUNCILMEMBER ANDERSON: And she thinks that there's sites here that need further review, and you disagree with that?

MR. DEGA: I do.

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

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. I'll excuse Mr., excuse me, I have one more question for you, Mr. Dega, from Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to follow up on something. Mr. Dega, you pointed out that you received your Ph.D. from University of Hawaii.

MR. DEGA: Yes, sir.

COUNCILMEMBER MEDEIROS: And I'm assuming your concentration of your archaeology studies were in Hawaiian archaeology?

MR. DEGA: Hawaiian archaeology and Southeast Asia, both.

COUNCILMEMBER MEDEIROS: Okay. And Member Anderson brings up some good points. And I just wanted to get your professional opinion. I know in East Maui, in the Hana area we have a lot of heiaus and most of them, I don't know if it's because of the passage of time, there are pretty much nothing around it. Now in the formation of heiaus in old Hawaii was there always adjacent areas that would connect to the heiau?

MR. DEGA: That's a good question. Sometimes we find evidence for it and sometimes we don't. Sometimes it's a, a stand alone structure and sometimes it's affiliated with auxiliary habitation or men's hale or different activity areas. It's, it's very individual and depends on the region. 'Cause you have, you do have so many different types of heiau, you have agricultural heiau in the fields which are very community based and smaller. You have a large heiau which are the ceremonial religious complexes, those often have attendants who have small hale on the outside, yeah. And

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again it depends on the preservation of the area too. If you go into the sugar cane fields, you know, West Maui anywhere, sometimes you find only the main structure and there would be auxiliary once but they've been taken out by cane. Sometimes you find addendum structures, so, you know.

COUNCILMEMBER MEDEIROS: So it's really individual to the site?

MR. DEGA: It is. And, and to the, the high status individual who built them.

COUNCILMEMBER MEDEIROS: Right.

MR. DEGA: 'Cause almost all heiau were affiliated with a high status individual.

COUNCILMEMBER MEDEIROS: And the Kalani Heiau in the adjacent property, what kind of heiau was that?

MR. DEGA: Well, they say it's a luakini. You know, a war sacrificial heiau. It, it's hard to prove.

COUNCILMEMBER MEDEIROS: Is there evidence for that?

MR. DEGA: No empirical evidence. No. And, and the, when the archaeologist went out and, and mapped and recorded it several times over the years even from Walker in 1930, it's been so dilapidated through time, it's hard to get the original configuration of the heiau. So that would be a task in trying to reconstruct that I think.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Dr. Dega.

MR. DEGA: Thank you.

COUNCILMEMBER MEDEIROS: I appreciate the information.

MR. DEGA: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair.

CHAIR MOLINA: Thank you, Member Medeiros. Seeing no other questions for you at this time, Mr. Dega, you're excused.

MR. DEGA: Thank you.

CHAIR MOLINA: Next, Members, the Chair would like to move on to discuss a letter that was submitted by the applicant related to the road as well as the proposed parking. I would like to call upon the applicant's representative, either Ms. Kawahara or Mr. Maloney, if you can make yourself available to clarify this letter to the Committee.

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MS. KAWAHARA: Good afternoon, Chair Molina and Members of the Land Use Committee. My name is Karlynn Kawahara and I am with the firm of Munekiyo & Hiraga. As Committee Chair Molina pointed out, we did submit a letter on February 5, 2008 to the Committee and this was based upon the discussion that occurred at the January 23rd Committee meeting on the neighboring property as previously has been identified as the Garcia property which is again abutting this site on two sides. And we had originally proposed a condition to provide four paved beach parking stalls fronting our project site to provide for public beach access parking. However, based on the testimony received from the members of the public at the January 23rd Committee meeting as well as the discussion that the Committee had at that meeting, we decided to go ahead and withdraw that condition because it was very clear to us at the January 23rd meeting that the Committee was in support of keeping Makena-Keoneoio Road to the standards that it currently has. And if we were to add the four paved public beach parking stalls fronting our site, it would widen the road to 50 plus feet wide in that area, and that is again right next to the Garcia property.

So, you know, we are happy to accept the condition that basically agrees to keep and preserve the traditional rural scale of the road as noted in the Kihei-Makena Community Plan and in--however, the applicant did want to continue to provide some kind of benefit to the community and so in lieu of the public beach access parking in the letter dated February 5, 2008, we did note that the applicant is proposing a \$100,000 voluntary contribution to Lokahi Pacific for their proposed Kenolio affordable housing complex in Kihei. And that \$100,000 value is the approximate cost of the road, the beach parking improvements for those four stalls. So I'd also just like to note in that letter on February 5th we noted the Committee's proposed condition for the Garcia's project regarding no transient vacation rentals, no bed and breakfast and commercial, a limitation on commercial operations. And the applicant is willing to accept those conditions on this property as well. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Kawahara. We'll start again, way on this side of the room now for questions for the applicant's representative. Mr. Mateo?

COUNCILMEMBER MATEO: Thank you, Chairman. Ms. Kawahara, good morning, good afternoon.

MS. KAWAHARA: Good afternoon.

COUNCILMEMBER MATEO: The addition, I mean that's, that's quite generous the, you know, a quite generous offer at this point. I wanted to ask you though, the initial proposal from the developer included the widening of, of that, that so-called rural road up to 50 feet?

MS. KAWAHARA: Correct.

COUNCILMEMBER MATEO: What would the cost have been for those improvements and that expansion of that roadway?

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MS. KAWAHARA: Currently the, and I can get clarification from our civil engineer if I need to. But I believe the right-of-way width is 44 feet wide right now. So the addition of the beach parking would have added about six, maybe seven or eight feet at the most of pavement to the roadway on that side. So I believe the calculation for that additional pavement, six to eight feet of pavement and, is about \$100,000.

COUNCILMEMBER MATEO: And the additional cost, so it, that would have been \$100,000 for that addition and the cost for the parking stalls, or is that inclusive?

MS. KAWAHARA: That would be inclusive --

COUNCILMEMBER MATEO: That would be inclusive...

MS. KAWAHARA: --of the pavement for the parking stalls as well as the curbing and the striping for the parking stalls.

COUNCILMEMBER MATEO: Thank you. Chairman, are we restricted just to comment or ask questions just based on the letter of February 5th or can we stray?

CHAIR MOLINA: Well, at this point the Chair would like to, for the time being, just keep it, questions confined to the letter at this time. And I would like to make the Committee aware we do have as well in the gallery the Housing Director, Ms. Medeiros and also Mr. Miyamoto from Public Works for your consideration to ask questions of that as well. So, but, Mr. Mateo, at a later point we'll definitely entertain your questions on other matters as well.

COUNCILMEMBER MATEO: Thank you, Chairman. I'll, I'll yield.

CHAIR MOLINA: Okay. Thank you very much, Mr. Mateo. And there's also someone from Parks, I was notified, I believe Mr. Halvorson is also here available as well if you have a need to ask a question related to Parks and regarding the proposed beach parking that was initially submitted by the applicant. Member Anderson, questions for the, for Ms. Kawahara related to this letter?

COUNCILMEMBER ANDERSON: Okay. You know, I recall a PowerPoint presentation last time we saw this and there was going to be some tree. . .(*change tape, start 2A*). . .that were going to be jutting into what I consider the right-of-way right now. And it was at that time that I asked if you could remove the tree and allow for additional parking and that's when you said yes. But I don't see any need to pave it, we don't need to widen the road, people park there right now for beach access on dirt. And so I don't know why there needs to be curbs and gutters or any kind of paving. The road is fine just the way it is right now. So while it's noble that you're offering 100,000, it's not anywhere near what the Garcia's offered.

I'm not inclined to give up beach parking that is utilized by the general public as a whole in trade for \$100,000. We are in dire need of beach access and beach parking and, you know, while I can understand that the 15 or 20 members of the Makena Homeowners Association don't want

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people parking down here and enjoying the beach into the evening hours, that's the price you pay for living along a public shoreline and, you know, I've visited this area in the evening myself on many occasions recently to observe what's going on, and I don't see any rowdiness or outlandish behavior. I see couples quietly getting married and quietly eating on the beach. And if there is a problem, that is a police enforcement issue. So myself, I think we need all the beach parking we can get. And from what I can see, at least four cars can park on the shoulder of this road, they don't need any paving, they don't need anything, they need it to just be left the way it is. And we would still appreciate the \$100,000.

The other thing in the letter that you mentioned, you know, we are already constrained by the community plan from urbanizing this roadway. And, you know, and I, I tend to agree with Mr. Parsons when he is extending the request for maintaining the rural character along this roadway to not just the road but to the properties that are built on the road. There would be no need to urbanize the road, Mr. Chairman, if the improvements made to the properties along the roadway remain rural improvements and not urban improvements. And I have a, I'm trying to find exactly what it says, it says protect and preserve the traditional rural scale and character of existing portions of Old Makena Road. So it does speak specifically to the road, but again when I see what you're proposing in the PowerPoint and, and, you know, I don't know if all Members had the opportunity to see how far back does this go. When was the last time we heard this?

MS. KAWAHARA: I believe it was August, 2007.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: Was that the first time we heard it?

MS. KAWAHARA: No.

CHAIR MOLINA: I think that was the second time, I believe. Was that the second or maybe, Staff, you can clarify that? I know we heard this matter at least twice, I believe, right.

COUNCILMEMBER ANDERSON: Because February '02 is the first PowerPoint presentation we have in our binder.

MS. KAWAHARA: Oh. I'm sorry, you're asking about the first presentation?

COUNCILMEMBER ANDERSON: And, and if Members would avail themselves of looking at the PowerPoint back in '02, these buildings don't look rural in scale at all to me, they look very urban in scale. And, you know, I find it kind of disconcerting when you look at the Garcia parcel kind of wraps around this parcel.

MS. KAWAHARA: That's correct.

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COUNCILMEMBER ANDERSON: And, and the Garcia parcel is very low key and very rural in scale. In fact they even have restrictions on the height of the housing to allow for open view plane to be enjoyed by everyone on the property. But the way you've got this laid out and, and I'm particularly disturbed with all the trees along the, gees, this is just so unmanageable to have all of this spreading over a five-year period. The, the current project update that we received shows trees all along the frontage of Makena-Keoneoio Road. I see it with and without. I'm confused if it's the intention. The last time we talked about it there were trees that kind of butted in to the shoulder of the road. And that's when I asked if you could remove the tree so there'd be more parking spaces. I kind of saw the trees as a way to prevent people from parking. But --

MS. KAWAHARA: But, oh sorry.

COUNCILMEMBER ANDERSON: --what is the intention now for trees along the roadway?

MS. KAWAHARA: The trees I believe along the roadway were to meet the parking requirements for those public parking spaces as we had proposed them to be paved. I believe the Code has a requirement for, you know, a tree for every, one for every five stalls. So. . .

COUNCILMEMBER ANDERSON: Well, I think that has to do with parking lots, not roadside parking. So I would very much appreciate no trees along the roadway because sooner or later it's going to, the trees will obstruct the view of the ocean to people mauka. And I just think you need to be very sensitive that you are on the shoreline, the shoreline is a public trust resource. And the public has a right to access it and if there isn't parking to access, then they don't have access. And, Members, somewhere in here I provided pictures back when to show the kind of parking that's being utilized here and it's being utilized all, you know, all day long, it's not just in the evening. And it is quite a walk to the Keawalai Church parking lot. So I would like to see us maintain the shoulder as it is and let people continue parking. And if there are, you know, problems in the evening, then call the police.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: That's all I have, Mr. Chair. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And just to refresh our memories on the amount of meetings, meeting dates that we have here from 2002, February 25th and October 14th, on October 16th of '03 there was a site inspection, at the tail end of the '06 term we did have one meeting. I guess that's why maybe I thought for some reason there was two meetings this term.

COUNCILMEMBER ANDERSON: It's hard to keep track.

CHAIR MOLINA: Hard to keep track. Thank you, Member Anderson. November 1st of '06 we met and of course August 15th and then the 23rd of course no meeting, and here we are today. So, just for the record we have I guess one, two, three, including today would be one, two, three, four, five, five meetings and a site inspection so. Okay.

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COUNCILMEMBER ANDERSON: So my point is, Mr. Chairman, there's no need, the community plan says not to do it, everything else that we've dealt with from--the large project that Mr. Dowling's doing at Palauea we restricted the roadway from curbs, gutters, and sidewalks for the very purpose of keeping it rural in character. And so I see no reason to change that at this point and, you know, it's nice that they're trading off the paving, but I don't think we would have approved the paving anyway. That was only their proposal and there's no need to pave the, the roadside parking that currently exists. It's not paved now, works just fine.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: Thank you. Member Baisa, any questions for Ms. Kawahara?

COUNCILMEMBER BAISA: No questions. I'm pretty clear on the situation. Thank you.

CHAIR MOLINA: Okay. Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: No questions.

CHAIR MOLINA: Okay. Member Medeiros?

COUNCILMEMBER MEDEIROS: No questions.

CHAIR MOLINA: Chairman Hokama? Member Pontanilla?

VICE-CHAIR PONTANILLA: No.

CHAIR MOLINA: Okay. And, Mr. Victorino?

COUNCILMEMBER VICTORINO: No. None at this time.

CHAIR MOLINA: Okay. Thank you very much. Thank you, Ms. Kawahara --

MS. KAWAHARA: Thank you.

CHAIR MOLINA: --for giving us the details on your letter here. As I mentioned earlier we do have the Public Works, Deputy Public Works Director on hand for any additional comments if you would like, Members. And we also have the Director of Housing, Ms. Medeiros on hand I guess basically to respond to the applicant's consideration to us for \$100,000 contribution in lieu of not doing the parking. Is there any request to have Ms. Medeiros come down to give comment on that?

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COUNCILMEMBER BAISA: No.

COUNCILMEMBER MEDEIROS: No.

VICE-CHAIR PONTANILLA: No.

CHAIR MOLINA: Okay. All right, Members, seeing none. We'll move on. Any request--oh, excuse me, Member Anderson, this is for Director Medeiros?

COUNCILMEMBER ANDERSON: No, no, no.

CHAIR MOLINA: Oh. Okay. Any request for Director Medeiros?

COUNCILMEMBER BAISA: No.

CHAIR MOLINA: Okay. My next request to you all would be any questions for the Parks Department representative, Mr. Halvorson? Otherwise, I'll go ahead and excuse Mr. Halvorson. No?

COUNCILMEMBER ANDERSON: Is there...

CHAIR MOLINA: Any, any questions? Member Johnson, you have a request for the Parks Department representative?

COUNCILMEMBER JOHNSON: Yeah. And all I wanted to know was, are they giving money or land or...?

CHAIR MOLINA: According, the applicant, according to the letter it was stated 100,000, that's the offer being made by the applicant.

COUNCILMEMBER ANDERSON: No, we're talking about park assessments.

COUNCILMEMBER JOHNSON: Parks.

CHAIR MOLINA: Oh. Parks. Let me get, call up the applicant's representative. Ms. Kawahara?

MS. KAWAHARA: Thank you. Karlynn Kawahara, Munekiyo & Hiraga. We have received a comment letter from the Parks Department that the parks and recreation fee would be applicable to this project. So I believe we're paying for one unit according to the County Code 18.16, I believe it is? Okay. So we will be paying the fees.

COUNCILMEMBER JOHNSON: And do you know what the amount of that is?

MS. KAWAHARA: I'm not certain because this project had actually received its preliminary, I guess review back in 2001, so I think that was prior to the existing park fees going into effect.

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COUNCILMEMBER JOHNSON: So you're going to go all the way back and use the old fees as opposed to using the new ones? Is that what you're saying?

MS. KAWAHARA: Well, that's what, that's the requirement that the Parks Department had placed on us so.

COUNCILMEMBER JOHNSON: But this is 2008.

MS. KAWAHARA: I think there's a formula that's actually used to calculate the fees, it's not necessarily that we pay the fees that were applicable back in 2001. And I'm sorry that I'm not more well versed in how, I know that the fees, the calculation changed back in 2003 or maybe 2004. But maybe, I don't know if Mr. Halvorson could, could give you some enlightenment on that. But I know that it's not just, we're not just paying whatever was paid in 2001. There's a formula that, that's used based on the real property tax values, I believe, I'm not sure.

COUNCILMEMBER JOHNSON: Yeah. I know that and it has to do with zone, time of zoning and you're applying for a zoning change which you have not yet been granted, so I'll, I will clarify that with Parks, Mr. Chair.

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

COUNCILMEMBER ANDERSON: While she's there could I ask her a question?

CHAIR MOLINA: Oh. Sure. Ms. Kawahara.

COUNCILMEMBER ANDERSON: I'm sorry I'm jumping the, the line here. But in regards to the wastewater connection to the property, it states in your October '07 letter that a preliminary, the applicant was in discussions with the Garcias regarding coordinating wastewater connection for the property to the private Makena Resort facilities, and that a preliminary agreement was reached between the applicant and the Garcias. So I'm assuming that means you're going to put sewage lines through the Garcia's property to hook up to the Makena Resort wastewater, is that the idea?

MS. KAWAHARA: That's my understanding, that there has since been an agreement between the Garcias as well as the applicant to cost share in the improvements and that the, our applicant has already submitted an application and received approval for I believe service from the Makena Resort.

COUNCILMEMBER ANDERSON: And that's what I'm asking is because in October '07 you were saying that you were awaiting a response for confirmation of service capacity --

MS. KAWAHARA: Yes. We have --

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COUNCILMEMBER ANDERSON: --from Makena Resort.

MS. KAWAHARA: --since received that capacity allocation from Makena Resort.

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

CHAIR MOLINA: Okay. Thank you, Ms. Kawahara. Mr. Mateo, you had a consideration for Ms. Kawahara aside from the letter that, I'll leave it open to you to ask now if you want to ask your question. Go ahead.

COUNCILMEMBER MATEO: Chairman, well I'll just ask my questions and you just cut my line when you ready. Thank you. Ms., Ms., I just want to follow up on some of the, the items that I had the opportunity of touching bases with you prior on. The, the total project site is a little more than one and a half acres?

MS. KAWAHARA: That's correct.

COUNCILMEMBER MATEO: 1.552 acres. And yet, and we see that the development costs for this project is 5.75 million to develop. Is this 5.75 million to develop just the initial land cost to develop and prep the, the property?

MS. KAWAHARA: I did clarify that with the applicant and that includes the land cost as well as estimates on the potential building cost. However, I would like to clarify that we are not, that those units that, the plans that you have in your, in your proposal, those are conceptual plans and that each of these lots would be sold individually and it is up to the buyer whether or not they want to actually build that. Now if they decide that they don't want to build the house to that, and there will be covenants, codes, and restrictions and design guidelines that of course they will have to comply with, but if they do not decide to build that home, they will be subject to their own SMA application that they would have to go through.

COUNCILMEMBER MATEO: So they're going to, they're going to develop the land in terms of the prepping and there is no specific period of time when the actual home is going to be built?

MS. KAWAHARA: That's correct. I'm, I'm not aware of a specific requirement that each owner would have to build a home by a certain time.

COUNCILMEMBER MATEO: Okay. Then in that process then the application recognizes just one TMK. So if you're going to sell four different units or four different single-family homes, then how do you get by the four different TMKs that would be necessarily, I mean a usual occurrence when you sell to individual homebuyers? So how are we getting around that?

MS. KAWAHARA: I have to admit that I am not well versed in the condominium property regime that is proposed for this project. My, I may need to call on John Maloney to further explain that. But

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my basic understanding is that all four buyers would be then listed on the TMK and then would, would be paying property taxes. Is that the question that you're asking?

COUNCILMEMBER MATEO: . . .*(inaudible)*. . .

MS. KAWAHARA: Okay. Yeah. I believe, I live in a condominium property regime as well and, you know, we pay real property taxes on our unit. It's...

COUNCILMEMBER MATEO: But it's all prorated so that all four pay their fair share of it or?

MS. KAWAHARA: That I'm not, I'm getting nods of yes that they all pay their fair share.

COUNCILMEMBER MATEO: Okay.

CHAIR MOLINA: Mr. Mateo, would you like Mr. Maloney to add clarification to your question?

COUNCILMEMBER MATEO: Thank you, Chairman. That, that may be helpful.

CHAIR MOLINA: Okay. Mr. Maloney? After Mr. Mateo is done with his line of questioning, we'll go to Chairman Hokama and after Chairman Hokama is done with his line of questioning, Members, we will take a recess. Mr. Maloney.

MR. MALONEY: Thank you, Chair.

CHAIR MOLINA: And for the record if you could go ahead and identify yourself for the...

MR. MALONEY: My name is John Maloney with Pacific Rim Land Incorporated. Can I answer your questions?

COUNCILMEMBER MATEO: Please, go ahead.

MR. MALONEY: There's a planned condominium regime for this property. . .so that when we get through our process of entitlement on the changes in zoning, then we'll address the condominium regime. But essentially it's just like anybody buying in a new condominium, they, they, they are buying into a part of a TMK and, and that's the way the property regime works. It's just a, a method of, of selling fee simple property.

COUNCILMEMBER MATEO: Now, my, my only interest was because through a lot of the documentation there were really no reference that, that I actually was able to point out to actually look at the, the, the condominium regime process because I was, we were primarily told this is four single-family units separated, separate owners, separate this, separate that. Then you look at one TMK and then you begin to look at how does it work, and then obviously it goes back to this process. Mr. Maloney, with the development of these homes then is there, is there an idea or do you have an idea of what these units will be going for since just to develop the property itself and

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development of the units somewhere down the line it's already costing you 5.75 million? You're going to be selling these properties for what?

MR. MALONEY: Our market analysis has it about 800,000 to \$1 million per unit. That's not a house, that's a, a person buying their portion of the property regime.

COUNCILMEMBER MATEO: Okay. But we were just told that the 5.75 million includes the property prepping as well as the home and if you're selling the home for about \$1 million, you're not recouping your costs.

MR. MALONEY: Well, these are estimates and, and I, I just, I can't tell you that, that our design and everything is, is not even started. I really, I don't know how we can, we can talk about those numbers in a hard fashion.

COUNCILMEMBER MATEO: Well, I'm sure as you go through your process, Mr. Maloney, that you've already calculated the costs of your project. So all I'm asking is for a little upfrontness in being able to understand the project. So, you know, Chairman, at this point I think I'm done. Thank you, Mr. Maloney. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Chairman Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. I'm in support of your intent to be able to dismiss Administrative personnel not required by the Committee. So if you would allow the Parks representative to come forward so we can take care of his requirements for the Committee since I have some questions as it regards to the application.

CHAIR MOLINA: Okay.

COUNCILMEMBER HOKAMA: Please, Chair.

CHAIR MOLINA: All right. Mr. Halvorson. And when we come back from recess, Members, we'll start with Member Anderson and we'll excuse Mr. Maloney for, for the time being. Good afternoon, Mr. Halvorson, and thank you for making yourself available. Can you please go ahead and state your name for the record and your position.

MR. HALVORSON: My name's Robert Halvorson, I'm with the Parks Department, Planning and Development Division.

CHAIR MOLINA: Okay. Chairman Hokama?

COUNCILMEMBER HOKAMA: Thank you. Mr. Halvorson, I think Ms. Johnson, my colleague from West Maui brought up a, a very good point. So maybe for this Committee's clarification and full understanding can you give us how your Departm..., well this Administration and your Director is viewing the ability of this proposal to fulfill its park requirements?

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MR. HALVORSON: I believe the park dedication requirements in this case are based on the building permit issue and it would be at the current park rates.

COUNCILMEMBER HOKAMA: And therefore it would be as my understanding is and I'm sure it may not be quite the same as some of the other Members, but my understanding of the current requirements by ordinance is that there will be an amount per lot?

MR. HALVORSON: Correct. But there's a three lot exemption so it would only be a park assessment for one unit.

COUNCILMEMBER HOKAMA: And so for, even if we went. . .and, and because it is a condominium property regime, of course, one minus three is still minus two, so it would come down to zero. Would it, and then if we had them, required them to subdivide whereby we created four lots, you would still minus the three lots and come up with only one lot?

MR. HALVORSON: That's correct.

COUNCILMEMBER HOKAMA: And that is how your current Director is viewing this? And so knowing that and the various options of how to satisfy it, what is your Director proposing as the way to satisfy this? Money? Parcel of land, whether it be small or not? What option is your Director leaning towards to fulfill this requirement?

MR. HALVORSON: An in lieu cash contribution, in lieu of land.

COUNCILMEMBER HOKAMA: And do you know currently what is the anticipated dollar amount of this requirement?

MR. HALVORSON: It's in the neighborhood of \$17,000 for the...

COUNCILMEMBER HOKAMA: Okay. I'm sure that's the way it is and it can be verified. So, Mr. Halvorson, I thank you. Mr. Chairman, thank you so much for allowing me the question to the Parks representative.

CHAIR MOLINA: Okay. Thank you very much, Chairman Hokama. And as stated earlier, Members, we're going to go ahead and take a recess and when we come back we have Member Anderson who has questions for us. This meeting is in recess until 3:10. . . .(gavel). . .

RECESS: 2:55 p.m.

RECONVENE: 3:10 p.m.

CHAIR MOLINA: . . .(gavel). . . The Land Use Committee meeting of February 6, 2008 is now back in session. Members, when we last left off we had Councilmember Anderson ready for some

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questions to be given to Mr. Maloney. If you could please take the stand, Mr. Maloney? Or the podium I should say. Feel like we're in a courtroom at times. Okay. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: I had notes here, just a second. You said that when you were speaking with Mr. Mateo, you mentioned that you haven't done the design yet for the units?

MR. MALONEY: We've done a schematic design, that's what's in front of you there and, and there's no plans drawn as far as construction plans.

COUNCILMEMBER ANDERSON: But...

MR. MALONEY: We've, we've, we've, we've identified a building envelope and it does show elevations which are residential building, or houses. And we won't be doing any, you know, any plans...

COUNCILMEMBER ANDERSON: Specific design --

MR. MALONEY: Right.

COUNCILMEMBER ANDERSON: --plans, yeah.

MR. MALONEY: Anyone who buys in here would...

COUNCILMEMBER ANDERSON: What I'm trying to get at, Mr. Maloney, is you plan on building on to this site as represented to us in these site plans, is that correct?

MR. MALONEY: That is correct.

COUNCILMEMBER ANDERSON: Okay. And then the one unit you have, I see you have a retention basin which is very good. But I, I see that you're elevating, looks like you're doing an awful lot of fill to elevate, looks like it would be the southern portion of the parcel. Is that correct? To make them all the same height?

MR. MALONEY: We're, we're, we're, we're holding within the County ordinance of 30 feet on, on the building heights with those finished floor heights that are shown.

COUNCILMEMBER ANDERSON: So with the fill and the building you will still be at 30 feet from existing grade?

MR. MALONEY: That is correct.

COUNCILMEMBER ANDERSON: Okay. 'Cause it looks like an awful lot of fill on this southern portion. So and, and it looks to me like these are all two story buildings.

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MR. MALONEY: That is correct.

COUNCILMEMBER ANDERSON: And so a two-story building is almost 30 feet already.

MR. MALONEY: These I believe are approximately 28 feet roughly.

COUNCILMEMBER ANDERSON: So that means you could only have two, two feet of fill underneath it if you want to stay within the 30 feet limit from existing grade.

MR. MALONEY: Well we, we've, we've, we've done the math and it works based on the elevations of the floor plans.

COUNCILMEMBER ANDERSON: Well, I guess I'll take your word for it, even though when you look at the site map here there are one, two, three, four, five, six, seven, eight, eight steps of elevation underneath this one condominium and that looks like way more than two feet.

MR. MALONEY: The, the site itself is already it's, it's not balanced. I mean it's, there's some areas higher than the others the way it exists.

COUNCILMEMBER ANDERSON: Right.

MR. MALONEY: And that's what we're working off of.

COUNCILMEMBER ANDERSON: Well, I just want to make sure that you understand that the building height on the whole parcel cannot exceed 30 feet from existing grade.

MR. MALONEY: Right.

COUNCILMEMBER ANDERSON: Right. And so you will be developing the site plan as it's laid out here with the driveways, two driveways coming off Makena Road and going to the back of the property and entering each of the four units?

MR. MALONEY: That's correct. Two on each side.

COUNCILMEMBER ANDERSON: Right. Okay. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

MR. MALONEY: Could I have a moment to clarify something I said to Mr. Mateo earlier?

CHAIR MOLINA: Okay. Can I do, just a quick follow up to Member Anderson's question regarding building heights? If I'm correct, if memory serves me correct, you initially had suggested a 26

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foot height for your building, so now are you basically waiving that now and considering going higher and going to the maximum of 30 feet?

MR. MALONEY: Well, we would like to be able to build what the ordinance allows.

CHAIR MOLINA: Okay. And not the 26 feet that I believe you guys had proposed back in, like sometime ago?

MR. MALONEY: If we had proposed that then it, it must of worked for our design and the elevations.

CHAIR MOLINA: Okay. So we won't put anything in, in, for the record for 26 feet, then you just want to go to the maximum --

MR. MALONEY: Yes.

CHAIR MOLINA: --allowable 30 feet?

MR. MALONEY: Yes, sir.

CHAIR MOLINA: Okay. You can go ahead and clarify your statements to Mr. Mateo.

MR. MALONEY: When Mr. Mateo was asking me about the construction costs and what not, I had forgotten that this project has been around a long time and, and because of that our numbers have changed a bit and we haven't fine tuned them yet. But because of that we're willing to create a higher donation to Lokahi Pacific to \$250,000.

CHAIR MOLINA: Okay. Thank you, Mr. Maloney. And this is again, this is a voluntary?

MR. MALONEY: It is a voluntary contribution.

CHAIR MOLINA: Thank you. Mr. Mateo, would you like to follow up? Okay. Well, thank you. I'm sure that figure is much appreciated by the Committee. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. I just wanted to follow up on the discussion on the height. Is there any assurance that you can give us--and I understand that you're working, you have interfaced with the Garcias, the adjoining property because their property wraps around the back of your property--can you give this Committee any assurance that your building heights will not adversely impact their view planes?

MR. MALONEY: We have an agreement with the Garcias, we've given them view planes and we've also limited plantings for tree heights so that their, they have view planes.

COUNCILMEMBER ANDERSON: To the ocean?

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MR. MALONEY: Yeah.

COUNCILMEMBER ANDERSON: Unobstructed from their house sites?

MR. MALONEY: That is correct.

COUNCILMEMBER ANDERSON: Okay. Without having to build up...

MR. MALONEY: And the Garcias are satisfied with the arrangement.

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

CHAIR MOLINA: Okay. Thank you, Member Anderson. Any other questions for Mr. Maloney?
Member Johnson?

COUNCILMEMBER JOHNSON: Yes. Because in some of the letters everybody talks about down zoning because it, it's Hotel designated in the community plan and it's now going to be condominium or Residential or Single-Family. So, well I guess my curiosity is how did it get to be, if the... *(change tape, start 2B)*... things. I know we've had other properties that through, I guess our community plan updates and the mapping and we've had mapping errors, we had some people in Paia that were very upset that their property got rezoned and then they had an inconsistency in their zoning. So can you explain to me if you know, how did a family lot or an agriculture area get, get the zoning of Hotel? Was it requested --

MR. MALONEY: No.

COUNCILMEMBER JOHNSON: --or is this another error?

MR. MALONEY: That, that zoning was on the property when it was purchased. Excuse me, it's the community plan that's Hotel.

COUNCILMEMBER JOHNSON: Okay. So if the community plan going all the way back when the property was purchased, it was purchased by the current owner, right?

MR. MALONEY: Uh-huh.

COUNCILMEMBER JOHNSON: Was it ever discussed about the inconsistency? Because when you buy something, you do it with the hope that you can build on it because the zoning and the community plan designation are the same. That's the goal.

MR. MALONEY: Right.

COUNCILMEMBER JOHNSON: Okay. Why would you buy something when you know that the community plan designation and the zoning don't match?

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MR. MALONEY: We knew that we could do a four unit condominium in the Hotel District without changing the zoning to Residential. But we opted to do that at the request of the Planning Director several years ago to be consistent with the residential and not having any transient housing. So we agreed to that, that's why we're, we're making the change at this time.

COUNCILMEMBER JOHNSON: Okay. So, so when you bought the property what you're saying is that the zoning and the, and the community plan were consistent with Hotel?

MR. MALONEY: Well, it's what it is now which we haven't gotten approval yet, it's County Interim, it's State Ag and it's community plan Hotel.

COUNCILMEMBER JOHNSON: Okay.

MR. MALONEY: That's what it was when we bought it.

COUNCILMEMBER JOHNSON: That's my point, you can't build anything until all those things match, so why would somebody buy a piece of property knowing that there's this long protracted process that you have to go through?

MR. MALONEY: That was the decision of the owners, the buyers.

COUNCILMEMBER JOHNSON: Thank you. Thank you.

CHAIR MOLINA: All right. Thank you, Member Johnson. Committee Members, any other questions for Mr. Maloney? Seeing none, thank you, Mr. Maloney. Excuse me, we have one more. Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Maloney, would you have any objection to keeping Makena-Keoneoio Road as it is right now?

MR. MALONEY: No. I think it's very rural and quaint. We like it the way it is.

COUNCILMEMBER ANDERSON: And would you have any objections to allow cars to park on the shoulder of the road?

MR. MALONEY: They are now and we wouldn't object to that.

COUNCILMEMBER ANDERSON: Great. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Mr. Maloney, one quick question. I don't know if this is a question more appropriate for your architect. But has there any been, been given any consideration for indigenous architecture for these units? Has that been discussed?

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MR. MALONEY: We've --

CHAIR MOLINA: Looked into...

MR. MALONEY: --discussed the design and, and those, those schematic plans are, are residential type that is in the area already and we feel it's, it's, it's appropriate.

CHAIR MOLINA: Okay.

MR. MALONEY: Especially since it could have been a hotel.

CHAIR MOLINA: Okay. And I just bring that up because of the area with all of its cultural significance, I just thought about that issue with indigenous architecture and in case, I for one would not like to see something that sticks out like a sore thumb if you will. 'Cause I know there are some homes in that area that sort of stick out and, at least in my opinion.

MR. MALONEY: Well, I know that these houses have, what appears to be some plantation style roofing.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR MOLINA: Chairman Hokama?

COUNCILMEMBER HOKAMA: Thank you. Mr. Maloney, just a couple of quick questions. In your willingness to agree to Ms. Anderson's question regarding the parking, is that your property or are you talking about the County's right-of-way and easement areas?

MR. MALONEY: It's, it's the right-of-way that exists so it's public property and, and cars park on that now even though it's signed no parking.

COUNCILMEMBER HOKAMA: Then they should be tagged and towed, Chairman. But my other question is to you then, 'cause I'm trying to get an understanding. I don't, I have issues with property regimes in general and I don't really agree with the State's approach to this type of ownership that at times to me circumvents County review and processing. So is there an issue if we require, if this moves forward if we require subdivision requirements?

MR. MALONEY: I had investigated the or researched the, the past application that was submitted in 2001. It was a subdivision application. We found that the four parcels so to speak, we were trying to hold them at around 10,000 square feet as being an acre and a half. And we had three lots that would have been according to County standard, but we'd had the fourth lot non-conforming because of the dimension on the frontage would be too short and that's the reason why we went to the condominium regime which would be allowed to have four units.

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COUNCILMEMBER HOKAMA: So if, so what you're telling us is if you went through subdivision you only could get three lots? Is that the bottom line?

MR. MALONEY: I believe that's correct. Without a variance. And as far as any concern about a property regime, I'm not so sure what concerns they would be. I mean we're, we're offering to have all those conditions put on this project so that there's no transient housing, no fractional timeshare, that they're, they're single-family homes.

COUNCILMEMBER HOKAMA: It's, it's an issue for me, Mr. Maloney. You may not have it and, and that's fine but --

MR. MALONEY: Okay.

COUNCILMEMBER HOKAMA: --I have an issue with property regimes and that type of fractional property ownership. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Chairman Hokama. Any other questions for Mr. Maloney at this time? Seeing none, thank you, Mr. Maloney. And any last requests for comment from Director Medeiros? I know there was an increase in the amount that's been proposed by the applicant. Any comments from Director Medeiros on that? Seeing none, okay. Member Anderson?

COUNCILMEMBER ANDERSON: I just looked back and saw Mr. Miyamoto and now he's gone.

CHAIR MOLINA: Yeah. He's been kind of in and out of the gallery here.

COUNCILMEMBER ANDERSON: 'Cause I do have a question for Public Works if I could.

CHAIR MOLINA: Okay. Staff, can we get a hold of Deputy Director Miyamoto? I believe he's out there, he's been waiting patiently as well.

COUNCILMEMBER ANDERSON: And if not maybe Mr. Maloney can answer the question.

CHAIR MOLINA: Okay. Mr. Maloney, could you please come on back up again while we await the Public Works Director? Member Anderson, just for your info, Mr. Miyamoto is here as well.

COUNCILMEMBER ANDERSON: Oh, good. Maybe he can come down also.

CHAIR MOLINA: Kill two birds with one stone. Mr. Director, could you please come up and take a seat.

COUNCILMEMBER ANDERSON: I'm just, you said there's no parking signs there and I'm wondering why?

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MR. MALONEY: I recall there being one or two signs that are regulatory signs that say no parking along the mauka side of the road.

COUNCILMEMBER ANDERSON: And, and you don't know when they put there or why they were put there?

MR. MALONEY: I have no idea. They were, I'm sure, there since before the purchase of the property.

COUNCILMEMBER ANDERSON: Okay. I'll ask, put Mr. Miyamoto on the spot. Because I don't see why there should be no parking signs. You know, the, the cars park off the roadway and it's some distance from the cul-de-sac so, Mr. Miyamoto, would you have any, any idea about the no parking signs?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: Thank you, Mr. Chair. I really don't know the history on when the no parking signs were placed there. I can verify that they are there, whether or not there's sufficient shoulder width for those vehicles to properly park and get out of their vehicle and then, you know, without being in the traveled way or someone falling off into the adjacent property. 'Cause I did notice that there is some slope to the, the shoulder area in that shoulder, in that area. So that, you know, if someone were to get out on the passenger side, it could possibly that, yeah, the slope of the roadway could, the shoulder area could push them into the adjacent property.

COUNCILMEMBER ANDERSON: Well, would you have any objection if we made a condition to the zoning that the shoulder be graded in such a manner to make it safe for off street parking? And that the no parking signs be removed? Because people park there.

MR. MIYAMOTO: Yeah. For us, I mean the applicant had indicated that they were going to also grade it so that they could have a four foot wide grass walkway adjacent to the, to that area. For us, if there's going to be on street parking we're looking at, the reason we're looking for asphalt because we're thinking about maintenance. You know, it's going to be, if all of that parking is going to be in the County's right-of-way now we're looking at maintaining that parking, those parking stalls. In the rural standards there's no particular guideline as to what, you know, typically on street parking is done on the shoulder area. So in a rural standard it would just be a shoulder area, which the adjacent property owner would then be responsible for maintaining that shoulder area. But if the County's going to maintain it we're looking for asphalt.

COUNCILMEMBER ANDERSON: Well I, I wouldn't agree to that because that certainly would widen the roadway, at least the, you know, the visual of it. It would take away the rural, rural character, if they want to grass it, fine, or even gravel. But people have been parking along this road for decades with no problem and these folks are putting in a detention basin that's going to keep and retain all the runoff from their property so that wouldn't be a problem for the shoulder. And, again my question to you is would, would you have any problem with a condition requesting that the shoulder be graded in such a manner as to make, you call it on street parking? I like to think

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of it as off street parking. But parking on the shoulder of the County right-of-way. You know, and then removing the no parking signs.

Because if we can provide, you know, four, five, or six parking spaces along here that are currently being utilized by people, I think it's our responsibility to do that. Because we are losing, we are losing parking, we're not gaining it and, and to take away from parking space that's currently being utilized I think is a really, you know, backward step. And, you know, Members, I don't know, many on the Council now have not been to a site visit here, but it is quite a walk. If you were going, you know, come with beach chairs or kupuna or children it's, it's a long ways to walk from Keawalai Church down to this area. And where the turnaround is, that gives access to this beach and to Maluaka and, you know, got a letter, we got a letter of complaint, somebody saying that, you know, there's already too many people on the beach.

CHAIR MOLINA: Mr. Director, can you respond?

COUNCILMEMBER ANDERSON: Go to any of our beaches, there's too many people, but if we don't provide parking we are not meeting our responsibility to give the public access to their shoreline.

CHAIR MOLINA: Mr. Director, any comments?

MR. MIYAMOTO: Okay. As far as the distance of the existing parking lot, yes it is far away and I think that when the road was originally developed by the Makena Resort that's why they did put that drop off zone right adjacent, right opposite of this, this property. It's a, it's sort of like a circular area that's used to drop off people with, with their lawn chairs, coolers, whatever they, they need for the ocean. Because I use that, that drop off when I drop my wife off and illegally parked in the no parking area across the street. I didn't, I didn't notice the signs but I parked there.

COUNCILMEMBER ANDERSON: I never noticed them either.

CHAIR MOLINA: Yeah.

MR. MIYAMOTO: Yeah. And there is an existing, I think, fencing in that area that sort of makes it more challenging to, for the passenger to get out on that side. As far as, you know, if the grassed area, the concern that was raised to us was, you know, the concern with that commercial users might use it. You know, someone who might want to push out, rent some kayaks or something may try to use that area. 'Cause now it's a much more convenient area for them to utilize that area. And if it's not asphalt, the question then becomes how do you designate the, the stalls. We're going to have to think of a creative way to designate a parking stall on gravel or grass. You know, there may be have to be some kind of a paver that may have been, be installed to...

COUNCILMEMBER ANDERSON: Well, why do you have to designate it? I mean it works just fine now without anything at all. Even with the no parking signs it works just fine.

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MR. MIYAMOTO: Yeah. I'm just going by, based on the previous comments made in the previous meeting how they were, I think the applicant had proposed four stalls and they were told to try and designate the stalls such that the commercial users could not utilize those stalls.

COUNCILMEMBER ANDERSON: Oh. I see.

MR. MIYAMOTO: And so...

COUNCILMEMBER ANDERSON: But that's with the idea of paving it. But, you know, the thing about the commercial users, you know, if they don't have a permit to operate and park there then, and commercial users can certainly use the turnaround and park their vans back at, at the church. I'm thinking more about families and, you know, local residents being able to access this shoreline in a free way. And so you wouldn't have any objection to having the shoulder, having, when they do their work grade the shoulder so that it's safe for off street parking and, and removing the parking, the no parking signs?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Yeah. That would keep in the rural nature of the roadway certainly and with the removal of the parking, no parking signs I guess would have to be changed to the County Code to be --

CHAIR MOLINA: Right.

MR. MIYAMOTO: --change the designation of that area as now allowing the parking.

CHAIR MOLINA: Mr. Director, if I could just interject real quickly. So if that, those signs were put up by the County and thus it would have to be referred to, for example, Public Works and also get comments from the Traffic Advisory Committee, if that is something to be considered to remove those signs, am I correct?

MR. MIYAMOTO: Yes.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: Well, I think when the Council, we're giving them zoning to intensify the use of this property and when we put a condition on the zoning, I think that kind of preempts. You know, somebody can argue with me about it but. . .and I'll listen to it, but we're always putting in conditions that may not comport with the County Code or may override certain provisions in the Code to meet the specific needs of the parcel in question. And, you know, I don't understand why the no parking signs are there to begin with. It may be just somebody called somebody in Public Works and said we want no parking signs and they got them put in. You know, it's, it's as simple as that.

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CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER ANDERSON: So...

CHAIR MOLINA: Mr. Giroux, can I get your comments on this if we were to place a condition like that and not, for example, transmit a communication to the Public Works Committee for the removal of these signs. Are we circumventing the process in a legal way without I guess providing the public an opportunity to testify on the potential, you know, if we were to place this as a condition? I guess if this matter passed the Council, then I guess the public would have their opportunity to testify on a proposed condition that we would have. Can I get feedback from you, Mr. Giroux?

MR. GIROUX: Thank you, Chair. I think Michelle Anderson is alluding to the, the opinion that I wrote regarding the, the rural nature of, of the road. And I really want to caution this body that in writing that we took in very specific and very narrow context of the community plan and its conflict with possible Public Works requirements. So I really would caution this body to look at that memo very narrowly. I, I wouldn't use that memo to say that, yeah, it's okay to go on and on and on and on and eroding the, the requirements of Public Works. If there's a procedure in place to assure the safety and regarding the signage and those types of things, I believe that you should entrust those things to the, to those processes. But again, you know, the, this is a deliberative body so until all of the facts on those types of conditions are really put on the record and, and looked at clearly, that you should understand that, you know, zoning, we're dealing with use and we're trying to deal also with the impacts of those uses, and the conditions of zoning should be narrowly tailored to deal with those impacts.

CHAIR MOLINA: Okay. Thank you, Mr. Giroux. And, Member Anderson, can I recognize Member Pontanilla and I'll go back to you? Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Miyamoto, this particular road is it a County road at this time?

MR. MIYAMOTO: My understanding there's, there's portions that are and there's portions that aren't. But my understanding is this section it is.

VICE-CHAIR PONTANILLA: If it's a County road maybe, Mr. Giroux, do we need to go through ordinance to remove those signs?

MR. GIROUX: I believe if those signs were put up through ordinance that they would have to be removed through ordinance. The, the issue a lot of times with these types of signages is if there is a citation that you, you need to be paying a fine or you could get your car towed or, or these types of things if challenged in court if an ordinance isn't in place then, then the courts wouldn't uphold any type of penalty like that.

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VICE-CHAIR PONTANILLA: Thank you. I'm looking at a photograph that was given to us back in February 25, 2002. It indicates all the no parking signs along that piece of property and I don't know if the no parking signs were placed because of, you know, a request from the Fire Department in regards to safety. I don't know if any personnel from the Fire Department is here that probably could answer some, a safety question.

CHAIR MOLINA: I know we, Member Pontanilla, we did have Captain Martin in the gallery earlier, I think they stepped out. I know they were called to give their comments on the next item on the agenda. But if you like we can ask the Committee for their comments regarding your question?

VICE-CHAIR PONTANILLA: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: I would like Corporation Counsel to call out in the County Code where there is an ordinance that says no parking signs will be posted at this, on this section of Makena-Keoneoio Road. 'Cause--

CHAIR MOLINA: Mr. Giroux, are you prepared to respond?

MR. GIROUX: I think Public Works would probably be more prepared to look at that type of issue.

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: I'd have to do a little bit more research.

COUNCILMEMBER ANDERSON: Well, I see Mr. Giroux has a computer, he could maybe just put Makena-Keoneoio Road and see what comes up in the County Code, that's what I'd do. And I'm looking at the Code right now and, you know, I, I live on a cul-de-sac and there were no parking signs put on my cul-de-sac which is a huge cul-de-sac that people have parked on for 30 years because one new neighbor didn't like the visual pollution. And all it took was a phone call to the Public Works Director and those no parking signs were installed. There's no ordinance addressing it. . .at all. So, yeah, I'd say if maybe it's already been adopted by the Council and, and those no parking signs were put there under ordinance that we would have to undo it.

But until you can show me where it's in the ordinance I don't believe that those signs were erected through ordinance because I would know, I've been here ten years and I can guarantee you Wayne Nishiki would have fought it tooth and nail and, and I would know about it. Because Makena-Keoneoio Road is a shoreline road and the only access you have to the shoreline along this stretch of Makena is from that road. And to put no parking signs on it, you know, is ridiculous. People park on the shoulders of roads for beach access all over this County and, you know, maybe we should find out if, I mean I can see when you, when you say you have to put up a no parking sign because there's certain roadways that would be unsafe because people are parking on both of the sides road and a fire, a fire truck or an ambulance can't get through. But

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that's not the case on this road and, you know, this isn't just any road, this is a beach access road. So to restrict parking means you're restricting access to the beach or the shoreline.

CHAIR MOLINA: Okay. Thank you, Member Anderson. I think you bring up a very interesting topic and maybe at a later point in our discussion we can get some feedback from the Corporation Counsel as well as the Public Works Director on the ordinance or supposed ordinance out there regarding no parking signs. Any other questions for resource personnel before the Chair makes a recommendation on this proposal?

UNIDENTIFIED SPEAKER: You can release...

CHAIR MOLINA: Oh, yes. Mr. Maloney, I guess if there's no questions for you, Mr. Maloney. Thank you for standing up there so patiently. Okay. Members, and I guess at this point there, I've been, I don't see any official conditions and when we get to the point of that bill, the third bill which will address conditions, then we will consider proposals from Member Anderson and anyone else on this Committee for this project. So with that being said, the Chair will offer a recommendation. The Chair will offer a motion for a, a bill for an ordinance to amend the State Land Use District classification from Ag to Urban for property situated at Kaeo, Honuaula, Makena.

VICE-CHAIR PONTANILLA: So moved.

CHAIR MOLINA: Okay. It's been moved by Member Pontanilla. Is there a second?

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Seconded by Mr. Victorino. Any discussion? Seeing none. Staff, I would like to ask for your comments, I believe there is some housekeeping issues regarding this particular bill in term of the, in terms of the year to be changed from 2002, I believe? Can you clarify that for the Committee?

MS. NAKATA: Yes. Mr. Chair, just that the reference year be changed from '02 to '08.

CHAIR MOLINA: Okay. Is there a need to amend or can we do this as a friendly motion, friendly motion?

MS. NAKATA: I think if the Committee is comfortable giving Staff leave to make non-substantive revisions of this nature, that would be fine.

CHAIR MOLINA: Members, any objections to Staff changing the year from 2002 to 2008?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you. With that being said, all those in favor signify by saying "aye".

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COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. We have eight "ayes" and one "no", Member Johnson.

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

NOES: Councilmember Johnson.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised proposed bill.

CHAIR MOLINA: Moving on to the next bill, the Chair will entertain a motion for an ordinance to amend the Kihei-Makena Community Plan and Land Use Map from Hotel to Single-Family for property situated at Kaeo, Honuaula, Makena, Maui, Hawaii.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's moved by Member Pontanilla, seconded by Member Victorino. And again looking at the bill, Members, the year I guess would need to be changed from 2002 to 2008. Is there any other need for a change on the, this particular bill, Staff?

MS. NAKATA: Yes, Mr. Chair. The only other change recommended would be to reference Ordinance No. 3166 after the reference to Chapter 2.80A, Maui County Code.

CHAIR MOLINA: Okay. Members, are you clear on that, I guess, what we would consider a non-substantive change?

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MS. NAKATA: So it would say Chapter 2.80A, Maui County Code and Ordinance No. 3166 in Line 1, Section 1.

CHAIR MOLINA: Okay. All right, Members, are we clear? Is there a need to formally amend or can we do this on agreement of the Committee?

MS. NAKATA: Staff would consider that non-substantive so if the Committee's in agreement.

CHAIR MOLINA: Members, any concerns with regards to just allowing Staff to make these changes?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you. Any other discussion on the motion for this bill? Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. We have eight "ayes" and one "no".

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

NOES: Councilmember Johnson.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised proposed bill.

CHAIR MOLINA: Members, we're on the third bill and the Chair will entertain a motion for an ordinance to change zoning from Interim District to R-3 Residential District for property situated at Kaeo, Honuaula, Makena, Maui, Hawaii.

VICE-CHAIR PONTANILLA: So moved.

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COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Moved by Member Pontanilla and seconded by Member Victorino. And this would also include the filing of the communication. Members, any considerations for conditions at this point? Member Anderson?

COUNCILMEMBER ANDERSON: Yes, Mr. Chair. Move to amend the main motion to add a condition stating that the applicant shall grade the shoulder fronting their property to provide for safe off street, is it on street or off street? Off street parking.

CHAIR MOLINA: Mr. Director, Mr. Miyamoto, what is the appropriate language?

MR. MIYAMOTO: It's actually on street 'cause in a parking lot it would be off street.

COUNCILMEMBER ANDERSON: Okay. Thank you. On street parking for beach access purposes.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. The motion has been made by Member Anderson and any discussion, Member Anderson?

COUNCILMEMBER ANDERSON: Yes. I'm looking at the County Code and, Mr. Giroux, if you would look at Page 235 under Section 10.48.040 it lists the no parking prohibited, you know, no person shall stop, stand, or park a vehicle and then it lists in various districts of Maui where you cannot park on a street. Whether it's on the south side, the east side, both sides what not. Under Kihei District there is no listing for Makena-Keoneoio Road. So there is no ordinance prohibiting the parking and, you know, I think out of curiosity it would be interesting to find out how those no parking signs got there. But I think I would like to see that we allow beach access parking as currently exists there--I'm sorry, I took off on this County Code thing 'cause I just want to verify to the Members that there is no ordinance prohibiting parking on this street currently. And now I forget exactly what I said in my motion.

CHAIR MOLINA: Okay. Well, we'll ask Staff to restate the motion to amend. Ms. Nakata?

MS. NAKATA: That the applicant shall grade the shoulder fronting their property to provide for safe on street parking for beach access purposes.

CHAIR MOLINA: Would you like to include the removal of the signs in your amendment as well?

COUNCILMEMBER ANDERSON: And then, yeah, I think maybe what I would like to do is make another amendment after that one that would request removal of the signs and maybe if any signs go up there, it should be signs that should say no commercial parking.

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CHAIR MOLINA: Okay. We'll address the, your first, your first amendment separately.

COUNCILMEMBER ANDERSON: Okay. Thank you.

CHAIR MOLINA: Members, any other discussion regarding Member Anderson's first proposed amendment? Seeing none...oh, excuse me, Member Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. If we're going to remove those signs, I want to hear from the Fire Department in regards to safety issues if there are any. And if we're going to put up the signs and because of the community itself coming out and saying that they don't want. . .(*change tape, start 3A*). . .the side of the road that we put a time limit on the no parking...

CHAIR MOLINA: Okay. At this point we have, I don't see the Fire Department representatives around at this time, Mr. Pontanilla. So --

MS. NAKATA: Mr. Chair.

CHAIR MOLINA: --we have a motion on the floor. Staff?

MS. NAKATA: The fire representatives when they left did leave contact numbers, but they were originally requested for the second item.

CHAIR MOLINA: Okay. Mr. Pontanilla, at this point I don't know how fast they could, you know, get here. However, at a later point if you like, you know, we can get to the--well, Members, let's go ahead and take a recess to try sort this out because at this point it's difficult to get a hold of the Department. And anyway, meeting in recess and subject to the call of the Chair. . .(*gavel*). . .

RECESS: 3:48 p.m.

RECONVENE: 3:50 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The Land Use Committee meeting for February 6, 2008 is now back in session. Members, the Chair would like to offer this to you. Why, why don't we, I know Member Pontanilla brought up an issue with fire and the possible removal of the signs as an amendment. I'd just like to address Member Anderson's first amendment which regards to, which is related to grading the shoulder. We'll, let's take a vote on that first and then when it's appropriate Member Anderson can propose that condition. And I've just been informed by Staff that they've talked to Captain Martin who was here earlier, they are not prepared to comment on the concern from Mr. Pontanilla at this time. So I just wanted to pass that on to you as an FYI. So let's go ahead and vote on Member Anderson's first amendment. Staff, please re-read the first amendment that Member Anderson proposed for the record.

MS. NAKATA: The proposal is that the applicant shall grade the shoulder fronting their property to provide for safe on street parking for beach access purposes. However, Staff would note that the

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Department of the Corporation Counsel has previously opined that the reference to the applicant should be clarified by using either the own..., the name of the property owner and/or in this case the developer. I believe here the property owner is BN01 Investment, LLC and the developer is Pacific Rim Land, Inc.

CHAIR MOLINA: Okay. So the names of the owner should be included in the amendment as well?

MS. NAKATA: I guess Staff would like to hear Deputy Corp. Counsel's opinion on that.

CHAIR MOLINA: Okay. Mr.--

COUNCILMEMBER ANDERSON: And their assigns.

CHAIR MOLINA: Mr. Giroux, your concerns regarding the inclusion of the property owner's names in the proposed amendment?

MR. GIROUX: Oh. Yeah. I believe that was our suggestion to --

CHAIR MOLINA: Okay.

MR. GIROUX: --to clarify who would be responsible and then when the unilateral is filed, the unilateral document would state that the successor assigns would be responsible.

CHAIR MOLINA: Okay. Members, you've heard the comments from Corporation Counsel. Any objections to including the names to make it more specific as to who is responsible for grading the shoulder? Member Anderson, as the maker of the motion to amend?

COUNCILMEMBER ANDERSON: No objection. I guess we have no, I mean that was the intent.

CHAIR MOLINA: Okay. With that, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yes. I want to express that in this amendment the property owners are going to do the grading of the shoulder and who's going to maintain it after it's graded and allowed for parking?

CHAIR MOLINA: Okay. Well, let's ask the property owner for his comments. Being that it is a County right-of-way--

COUNCILMEMBER ANDERSON: Maybe we should ask Mr. Miyamoto who maintains it right now.

CHAIR MOLINA: Okay. Mr. Maloney, please come on up to stand, be prepared to respond as well. And, Mr. Director, so would that be the County's responsibility to maintain or can we consider a condition to make the property owner responsible?

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MR. MIYAMOTO: By Code typically the adjacent property owner maintains the shoulder area and...

COUNCILMEMBER ANDERSON: Exactly. I think it's the law and I think it even says in the Code that it should be grassed or gravel so that people can park on it.

MR. MIYAMOTO: Yeah.

CHAIR MOLINA: All right. Mr. Director, any further comments? So this will be the property owner's responsibility to maintain?

MR. MIYAMOTO: The adjacent property owner.

CHAIR MOLINA: Okay. All right. Thank you. Mr. Maloney, any comments you'd like to add?

MR. MALONEY: We would accept that condition.

CHAIR MOLINA: Okay. So noted. Okay, Members, the Chair, oh excuse me. Mr. Hokama followed by Mr. Victorino.

COUNCILMEMBER HOKAMA: So you own the land across the road too?

MR. MALONEY: No. Adjacent, I thought they were talking about the frontage of our property.

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER HOKAMA: And even if we connect to the County road the pavement, it's still their responsibility?

MR. MIYAMOTO: Yes. Typically we have the condition that the Code requires that the, we call it the sidewalk area, but actually it's the shoulder from the edge of pavement to the property line, the adjacent property owner is responsible for the maintenance. So that's why we've done a lot of enforcement activities where we've asked adjacent property owners to remove their obstructions from the County's right-of-way.

COUNCILMEMBER HOKAMA: Okay. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama.

COUNCILMEMBER HOKAMA: Oh. And then --

CHAIR MOLINA: Go ahead.

COUNCILMEMBER HOKAMA: --one quick question then.

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CHAIR MOLINA: Mr. Maloney.

COUNCILMEMBER HOKAMA: Since the voluntary contribution was proposed because the removal of the parking --

COUNCILMEMBER MEDEIROS: Right.

COUNCILMEMBER HOKAMA: --and now the parking is now going back in. What does that do to the so-called voluntary contribution, Mr. Chairman?

CHAIR MOLINA: Good question.

COUNCILMEMBER ANDERSON: Well, the...

CHAIR MOLINA: Hang on. Well, there's no, no parking being proposed, right?

COUNCILMEMBER ANDERSON: There's no paving.

CHAIR MOLINA: We're just, we're just grading right? That's part of the amendment? Okay. So there's no inclusion of additional parking stalls so, and the applicant's offered to give 250,000 in lieu of parking.

COUNCILMEMBER HOKAMA: For parking, they're grading for parking, Chairman.

CHAIR MOLINA: Well, let's ask, get a feel for the applicant. I'll go right to you, Member Anderson. Mr. Maloney, is it even if you were doing this grading are you still comfortable with the 250,000 donation?

MR. MALONEY: Yes, we are. And we're going to have to grade in there anyway, I mean we'll be addressing the frontage as we do our grading so.

CHAIR MOLINA: Okay. Member Anderson.

COUNCILMEMBER ANDERSON: And, and, and I think what it was it was the paving, Mr. Hokama, is that they were originally were going to pave the shoulder for parking and that's an expense. And so now they're not doing that, then they're saving that expense. But I'd like to ask Mr. Maloney, would you have any objection to a sign that says parking for beach access only from, I don't know what the language is going to be, but beach access only, no commercial use, no commercial parking, and then limit it. . . up till 9:00 p.m. so that after 9:00 p.m. parking would be prohibited.

MR. MALONEY: We, we accept that but I, I would assume the County of Maui would install the signs.

COUNCILMEMBER VICTORINO: Mr. Chair?

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COUNCILMEMBER ANDERSON: Yeah. I just want to make sure that, that you were okay with that. That way people can't park there all hours of the night.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And, Mr. Victorino, my apologies I know you come after Mr. Hokama.

COUNCILMEMBER VICTORINO: No. No. And, and not to contradict my colleague from South Maui, but it's right here in the Code that says from 7:00 a.m. to 7:00 p.m. And on the makai side from South Kihei Road all the way to Okolani and to end at the cul-de-sac at Keawakapu Beach parking lot on the makai side from 7:00 a.m. to 7:00 p.m. for the sole purpose of facilitating access to the shoreline for recreational purposes.

COUNCILMEMBER ANDERSON: But that's...

COUNCILMEMBER VICTORINO: Right here in the Code.

COUNCILMEMBER ANDERSON: That's South Kihei Road for Keawakapu Beach.

COUNCILMEMBER VICTORINO: Okay.

COUNCILMEMBER ANDERSON: That's particular to that one roadway.

COUNCILMEMBER VICTORINO: And that's that area, not in, all the way down to the end?

COUNCILMEMBER ANDERSON: No. This is entirely a different area.

COUNCILMEMBER VICTORINO: Okay. So, okay then fine. Then I would say then since we have that in the Code, that I'd like to see this come back to us in, in, in Public Works so that we could make the same applicable changes. Because if you don't want no parking, which I have no problem with, then we can designate it just like we've designated the rest of South Kihei. I think that would be the fair way to do it for all.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Okay. Members, any other questions for Mr. Maloney before the Chair calls for the vote on the proposed amendment from Member Anderson? Staff needed clarification from Corporation Counsel regarding the, is it--Staff, go ahead and explain your, your concern to the Corporation Counsel.

MS. NAKATA: Yeah. I apologize for belaboring this, but I just wanted to get some clarification, will it be BN01 Investment, LLC and/or Pacific Rim Land, Inc.? Because I think that would impact all of the conditions that we'd be considering.

CHAIR MOLINA: Mr. Giroux?

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MR. GIROUX: Carla, is the concern that all the owners are not being named or, or is that the, the concern that that's not the official name?

CHAIR MOLINA: Staff?

MS. NAKATA: I think the first entity is the landowner and the second is the developer. Are you comfortable with just the landowner?

MR. GIROUX: I believe if we could name both, both parties.

CHAIR MOLINA: Okay. Staff, you'll make note of that, we'll name both parties to make sure 100 percent we know who is responsible.

COUNCILMEMBER MEDEIROS: Mr. Chair?

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: One final question and thank you. So in Ms. Anderson's amendment the property owner will grade the shoulders which the intent is to allow on street parking on the shoulders, and the material on the shoulders for parking will also be designated in the amendment or left to the property owner's wishes?

CHAIR MOLINA: Member Anderson, would you like to respond to Mr. Medeiros' inquiry?

COUNCILMEMBER ANDERSON: Currently in the County Code it calls out for all shoulders to either be grassed or graveled, all County right-of-ways to be grassed or graveled. The intent for that is that people can park on them, people can walk along them, you're not supposed to be putting any large obstructions on the County of right-of-way for those two purposes. And I think we just heard Mr. Miyamoto tell us that they're now enforcing that portion of the Code and asking people to take off large plantings, large things that are in the County right-of-way that prohibit people from parking on the right-of-way and/or traversing it as necessary for a walkway. Look all over the County, Members, people park on the side of the road everywhere and it's meant to be free from obstruction for that purpose. And it does say in the County Code, I could look it up, I'm very familiar with this because of the situation on my cul-de-sac. It's either supposed to be grassed or graveled.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mr. Chair, my suggestion that it be grassed if she wants to say that. And the reason I don't suggest gravel because of my experience with Public Works highways, gravels get kicked onto the pavement area, it makes it dangerous for bicyclists, children,

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wheelchairs and those alike and it's hard to keep gravel on the shoulder when you allow parking on the shoulder. So my recommendation for safety consideration is it be grass.

CHAIR MOLINA: Okay. Member Anderson, is that something you'd like to consider in your...

COUNCILMEMBER ANDERSON: Well, you know, the way the County Code reads right now, this shoulder area is a responsibility of the adjacent landowner, it's their choice to grass or gravel. I would hope that they would grass it because it's going to look nicer for them. And, you know, I'm not, we're not talking about major gravel, just actually the way it is right now is just fine, dirt.

CHAIR MOLINA: Okay. All right, Members, you've heard the considerations. The Chair is going to call for the question on this. All in favor of the proposed amendment signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER HOKAMA: No.

CHAIR MOLINA: Okay. We have eight "ayes" and one "no".

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

NOES: Councilmember Hokama.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Member Anderson, you have another amendment to propose?

COUNCILMEMBER ANDERSON: Do we want to go forward with that now?

MS. NAKATA: Excuse me, Mr. Chair. Could Staff please clarify who the "no" was?

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CHAIR MOLINA: The “no” was Chairman Hokama.

MS. NAKATA: Thank you.

CHAIR MOLINA: Okay. Okay. Member Anderson, you have another consideration as an amendment?

COUNCILMEMBER ANDERSON: That the frontage, that the frontage right-of-way shall contain beach access parking signs prohibiting commercial use and limiting parking after...

CHAIR MOLINA: Restricting parking --

COUNCILMEMBER ANDERSON: ...8:00 p.m.

CHAIR MOLINA: --restricting parking after 8:00 p.m..

COUNCILMEMBER ANDERSON: After 8:00 p.m..

CHAIR MOLINA: Okay. There’s a proposed amendment from Member Anderson, is there a second?

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. It’s been moved by Member Anderson, seconded by Member Pontanilla. Member Anderson, you have the floor to --

COUNCILMEMBER ANDERSON: Yeah. I think this...

CHAIR MOLINA: --further clarify your amendment.

COUNCILMEMBER ANDERSON: I think this, you know, addresses everybody’s needs and allows the general public to have free access to this shoreline. It hopefully protects the surrounding property owners from loud parties at night. You know, they, it’s my understanding they lock the Keawalai Church parking lot at 7:00, I think. So that gives people an additional hour and, you know, if they want to get rowdy after that, they can go somewhere else where they’re not right in front of someone’s house. And then it also prohibits the use of these spaces for commercial operators which I think is really important. This should be for the general public. If you’re a commercial operator, get out of our public, general public parking accesses. We’re getting complaints all over the west side, you know, and the problem we have, Chair, is there’s not enough enforcement and, you know, what are we going to do about that? At least we’ve got the intent in place and anybody that wants to be persistent enough hopefully will get it enforced and that’s the reasoning behind it.

CHAIR MOLINA: Okay. Thank you for your comments. I think that’s a very familiar theme, lack of enforcement for not only this but other matters. Any other comments? Staff, could you go ahead

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and re-read the proposed amendment just to get clarification so all the Committee Members are aware.

MS. NAKATA: That the frontage right-of-way shall contain beach access parking signs prohibiting commercial use and restricting parking after 8 o'clock p.m..

CHAIR MOLINA: Okay. Members, you have heard the amendment as read by Staff. Seeing no other questions on this, the Chair will call for the vote. All those in favor of the proposed amendment signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Chair will mark it unanimous, 9-0.

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

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Committee Members, any other considerations as conditions? The Chair has one, I know Member Johnson has one. I wanted to get mine in real quick and I, I thank you for waiting, Member Johnson. The Chair would like to ask for a motion for a condition to prohibit transient vacation rentals, bed and breakfast homes and fractional ownership.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. Its been moved by Member Victorino, seconded by Member Johnson. Any discussion, Members? Okay. Member Johnson?

COUNCILMEMBER JOHNSON: That was the condition that I was going to refer to --

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CHAIR MOLINA: I read your mine.

COUNCILMEMBER JOHNSON: --because it was in the memo. So you already took care of it, thank you.

CHAIR MOLINA: Thank you. Any other discussion as it relates to the proposed condition? Seeing none, all those in favor signify by saying...

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Staff?

MS. NAKATA: I'm sorry, could you please repeat, it was...

CHAIR MOLINA: Yes. The condition would be to prohibit transient vacation rentals, bed and breakfast homes and fractional ownership.

MS. NAKATA: Mr. Chair, Staff would...

CHAIR MOLINA: And you, you can put it in your own words right, it's basically the intent is to make sure we have a prohibition regarding those, those items.

MS. NAKATA: Staff would just note that with, for instance, the Garcia project there were two separate conditions that were imposed. One read that no transient vacation rentals, timeshares or fractional ownership shall be allowed and further no Special Use Permit or Conditional Permit for such accommodations shall be approved by the County. And the second dealt with the bed and breakfast situation and that was that no bed and breakfast home or commercial operation shall be allowed.

CHAIR MOLINA: Okay. So, Members, you've heard the comments from Staff. Is that something you would like to include in the amendment as read by Staff to make it similar to what was imposed on the Garcia property to be consistent with both properties?

MR. GIROUX: Chair, can I, can I just add a comment?

CHAIR MOLINA: Mr. Giroux?

MR. GIROUX: The word fractional ownership gives me a little concern because the, the, they are proposing a condominium regime which they are going to be given fractional ownership of that property. So I, I'm wondering if your intent is to, to prohibit that?

CHAIR MOLINA: I have been throwing that out there. I guess, well, with the Garcia property we weren't talking about condominiums, yeah. So being that the condominium ownership has to do with fractional ownership so that could cause the applicant some headaches.

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MR. GIROUX: Yeah my, my other caution is that, you know, the word fractional ownership isn't defined in the County Code and my concern is that husband and wives can own properties in fraction and, you know, in common. That type of ownership and zoning you have to be careful of separating use from ownership. Zoning is to look at use, a transient use is different than a fractional ownership and I think that we should try to make that, that a clear understanding that you're not trying to prohibit people from owning property together.

CHAIR MOLINA: Okay. All right, Mr. Giroux, well, Chair is taking your concerns into consideration and I will leave out the portion of fractional ownership in the proposed amendment. So if there are no objections, Members, to that. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah. And I, and I would look for guidance from Corporation Counsel to really address this issue because it is being more and more commonly referred to, it's being advertised and, and somehow we have to be able to address the issue. Because if the end result is that, you know, it could be deemed a different, I guess a different interpretation of fractional ownership, then we should be clear about what we mean. And Corporation Counsel can you...

MR. GIROUX: Yeah. I, I think at this stage by including transient owner, vacation type uses and timeshares it covers I believe what you're trying to, to prevent is this type of non-residential type use.

COUNCILMEMBER JOHNSON: And, and, and it does in a certain measure. But the terminology that's now being used in the marketplace is called fractional ownership. And therefore it's being, I guess it's being substituted for the word of timeshare and therefore my concern is that if there's no specific prohibition against that, just like at the State level where timeshare basically is synonymous with hotel. I just think it's really important for us to address that issue and we can do that in a separate form, but I am concerned about it because that is the way it's being marketed, that's the way many of these units are being sold. So I, I just want to throw that out there. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Any other considerations as it relates to this proposed amendment? Okay. Staff?

MS. NAKATA: Mr. Chair, would it be the two separate conditions then and just omitting the reference to fractional ownership?

CHAIR MOLINA: Yeah. We'll omit fractional ownership. Okay. So again if, Staff, you can go ahead and read the condition?

MS. NAKATA: So one condition would be that no transient vacation rentals or timeshares shall be allowed and further no Special Use Permit or a Conditional Permit for such accommodation shall

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be approved by the County. The next would read that no bed and breakfast home or commercial operations shall be allowed.

CHAIR MOLINA: Okay. Members, are we clear on the condition as it relates to the prohibitions? Okay. Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you, the Chair will mark it unanimous.

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

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Any other considerations for conditions for this proposal? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Not a condition. I just wanted to ask the Chair for clarification. Mr. Maloney indicated the increase in the voluntary contribution to the affordable housing fund and the communications we, we have from them dated February 5th indicates a lesser amount. Is the Chair intending to request a letter to verify the amount and the purpose?

CHAIR MOLINA: By all means, Mr. Mateo. And I see Ms. Kawahara, they will get a letter to the Committee as soon as possible --

COUNCILMEMBER MATEO: Thank you.

CHAIR MOLINA: --to indicate that change in figure.

COUNCILMEMBER MATEO: Thank you, Chairman.

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CHAIR MOLINA: Okay. Thank you, Mr. Mateo. And thank you for bringing that up. Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Chair, if I could have our poor Analyst read my original condition? Because I think I need to clarify something.

CHAIR MOLINA: Okay. This was the, the first proposed condition that you made?

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: Staff?

MS. NAKATA: That BN01 Investment, LLC and/or Pacific Rim Land, Inc. shall grade the shoulder fronting their property to provide for safe on street parking for beach access purposes.

COUNCILMEMBER ANDERSON: Okay. So that's clear because that is fronting their property which is on the mauka side of the road. And then what, what did we say about the parking signs? 'Cause I'm, I'm concerned that we're putting the signs on the mauka side, not the makai side.

CHAIR MOLINA: Okay.

MS. NAKATA: That the...

CHAIR MOLINA: Staff, if you could read that amendment?

MS. NAKATA: That the frontage right-of-way shall contain beach access parking signs prohibiting commercial use and restricting parking after 8 o'clock p.m..

COUNCILMEMBER ANDERSON: Okay. Then we're okay 'cause it's the frontage which indicates the mauka side of the road.

CHAIR MOLINA: Okay. Thank you, Member Anderson. It's a good thing, we need to make sure what we propose.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Get it clear to everyone. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. Just fast clarification. Then the no parking signs on the makai side of the road is going to remain?

CHAIR MOLINA: Member Anderson, as I interpret the condition I think that is correct. Member Anderson, do you want to clarify that for Mr. Pontanilla?

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COUNCILMEMBER ANDERSON: Well, the makai side of the road has a sidewalk so you can't park there anyway unless you're parking on the sidewalk or in the road, which is why it's good to have the no parking.

CHAIR MOLINA: As the Chair tries to recall the area, I know, I believe in my younger days I was guilty of parking in that no parking area.

COUNCILMEMBER VICTORINO: Mr. Chair?

COUNCILMEMBER ANDERSON: In your younger days there probably wasn't a sidewalk.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: I don't know how to take that, Member Anderson, but that's a good one. Thank you. Mr. Victorino?

COUNCILMEMBER VICTORINO: Well in, in my younger days there was a horse and carriage, but who's counting that far back. We said after 8:00 p.m., but we have not specified when the enforcement, when the starting point. Because almost all our signs if you have it after 8:00 p.m. you can park at 6:00 a.m. or 7:00 a.m., right? After 8:00 p.m. what time can they park again? Say, you just said what time they couldn't and I want to make sure that's clear too because let's get it all right because we don't want to come back and discuss this another time around.

CHAIR MOLINA: Would anyone like to amend the amendment?

COUNCILMEMBER VICTORINO: Sorry.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: I really, you know, I appreciate Mr. Victorino's concern, but this is a rarely used roadway, it's not like South Kihei Road where you have through traffic. We already have a prohibition for commercial use and that's who would be using it at 6:00 a.m. in the morning. So I think we're okay. If somebody wants to be there at 7:00 a.m. to have a cup of coffee, why not, on the beach. You know, as long as it's not a commercial operator parking there I think we're okay.

COUNCILMEMBER VICTORINO: So if, just for playing the devil's advocate, if I may, Ms. Anderson. Chair, if you don't mind. I want to park at 2:00 a.m., for whatever reason I want to park at 2:00 a.m. and then now maybe create a disturbance. Because you said after 8:00 p.m. but there's no starting point. I mean...

COUNCILMEMBER ANDERSON: I see what you're saying.

COUNCILMEMBER VICTORINO: Yeah. Do you understand where I'm --

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

COUNCILMEMBER VICTORINO: --trying to leading to?

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER VICTORINO: You know, and I think we've got to be cognizant that your intent is correct, but there are people that take that intent without something on the other side and say okay, well I can do it that way.

COUNCILMEMBER ANDERSON: Okay. Then maybe we should amend.

CHAIR MOLINA: Amend the amendment? Okay. I think maybe that way we can give some specified time as to when people can park again after 8:00 p.m..

COUNCILMEMBER ANDERSON: So...

CHAIR MOLINA: So, Members, we're on the condition relates to the beach parking signs and maybe we could add or amend and add to that condition a specific time when people can park.

COUNCILMEMBER ANDERSON: I move to, if I may, Chair? I move to amend the amendment to read restricting parking from 8:00 p.m. to 7:00 a.m..

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Its been seconded by Mr. Victorino, proposed by Member Anderson. We'll make it 7:00 a.m. when people can park again. Committee Members, additional clarification? Is there a need? Seeing none, then we'll go ahead and take the vote. All those in favor of the amendment signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Chair will mark it unanimous.

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

NOES: **None.**

EXC.: **None.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

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

CHAIR MOLINA: Okay. Good. Any other conditions? Staff, any other considerations for, as it relates to non-substantive changes, such as changing the year from 2002 to 2008--

MS. NAKATA: Oh, just--

CHAIR MOLINA: --considerations for, you know, renumbering of particular sections?

MS. NAKATA: Yes, Mr. Chair. In addition to changing the year of the bill, Staff I guess would like to know whether the Committee would like the bill title amended. Currently the bill title is, a bill for an ordinance to change zoning from Interim District to R-3 Residential District for property situated at Kaeo, Honuaula, Makena, Maui, Hawaii. In the past where we have, where we've had situations like this involving Interim District zoning in this area, the Committee has expressed a preference for a bill title along the lines of a bill for an ordinance to establish R-3 Residential District zoning, and that would also be parenthetically conditional zoning for property situated at Kaeo, Honuaula, Makena, Maui, Hawaii.

CHAIR MOLINA: So you're making that suggestion to the Staff [*sic*] to further clarify the matter? I mean if we don't, then what are the consequences?

MS. NAKATA: I think in the past there's been a concern expressed by some Committee Members that the reference to Interim District in this situation may be somewhat of an endorsement of the characterization, and the preference has been to just say that we are establishing the new Residential District zoning.

CHAIR MOLINA: Okay. Staff, so as I follow you then the Chair maybe will consider a bill to re-title it, a bill for an ordinance to establish R-3 Residential District zoning (conditional zoning) for property situated at Kaeo, Honuaula, Makena, Maui, Hawaii to make it much clearer. Am I

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correct? Okay. The Chair will propose that as an amendment, Members, for clarification sake. Staff, should we do that as a formal amendment then?

MS. NAKATA: Yes, please.

CHAIR MOLINA: Okay. It's been, the Chair will ask for a motion to amend.

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Mr. Victorino? Oh. Sorry. We need a motion. Would you like to make the motion?

COUNCILMEMBER VICTORINO: No. Member Baisa made the motion.

CHAIR MOLINA: I'm sorry. Member Baisa has motioned.

COUNCILMEMBER VICTORINO: And I second the motion.

CHAIR MOLINA: Mr. Victorino seconded. Any discussion? Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

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

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Staff, any other considerations?

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MS. NAKATA: The other considerations would involve the form of the bill which was presented to the Committee as a straight zoning bill. So there would need to be language added to it, a new Section 2 that would reference the conditions, reference the unilateral agreement and re-numbering of the existing Section 2.

CHAIR MOLINA: So these are housekeeping considerations then? More along the lines of that?

MS. NAKATA: Just to accommodate the conditions.

CHAIR MOLINA: Okay. Members, you've heard the suggestion from Staff. Any objections to allowing Staff to make these revisions?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you very much. Okay. With that, Members...

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Before you go on, I'd like to ask Ms. Suyama, there's something that, that concerns me about this, this consistency in change and you brought up something. Ms. Suyama, could you clarify this thing about rural roadway improvements and urban, can you clarify that for us?

CHAIR MOLINA: Director?

MS. SUYAMA: Originally when we were talking about the roadway improvements, we wanted to assure that it wasn't going to be urban standards because once you change the zoning from State Ag to State Urban and you change it from Interim to R-3 Residential, you've now urbanized it. And based upon the subdivision ordinance there are strict subdivision requirements for curbs, gutters and sidewalks to be in place as well as the roadway width and the pavement width. And I don't recall in all of the discussions that's been going on that there was any specific condition that would limit the roadway improvements to rural standards. And that's one of the conditions that I believe the applicant had also requested. Because if they go to, towards building permits they're going to be required to do the curbs, gutters and sidewalks. And I just want to make sure that the Council do not forget to put that specific condition.

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes. Thank you. I would like to yield to my colleague from South Maui because I think she has something, some amendment to bring forward.

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

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COUNCILMEMBER ANDERSON: I would, got, I got caught off guard here so I would request Ms. Suyama give me some. . .*(change tape, start 3B)*. . .of a condition in here already from the applicant.

CHAIR MOLINA: Director?

MS. SUYAMA: They originally when we talked about this roadway condition on our October 2, 2007 letter, we had proposed a condition that would take care of it. And in that condition what we had proposed that, that in order to protect and preserve the traditional rural scale and character of existing portions of Makena-Keoneoio Road as stated in the Kihei-Makena Community Plan--in this case we said Pacific Rim Land, Inc. and I guess you would also add the BN01, you know, the actual owners--or its assigns shall construct improvements to Makena-Keoneoio Road fronting the project site in the following manner: (a) pavement width shall be 22 feet, (b) existing right-of-way width is 44 feet, (c) there shall be a minimum four foot wide grass walkway between the edge of pavement and the right-of-way. And in this case you might want to change it from the edge of the shoulder in the right-of-way because you want at least that, that grass walkway and the property line.

COUNCILMEMBER ANDERSON: Ms. Suyama, what are you reading from?

MS. SUYAMA: There was a communication we sent up to the Council dated October 2, 2007 and that's in your binder. It's towards the end of Item 23 before this large document that was called Exhibit A which is the, I think it's the archaeological report that was done. Unfortunately, you don't have page numbers.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: Yeah. Because I mean I don't see October 7th in here, I see...

MS. SUYAMA: No. October 2nd.

COUNCILMEMBER ANDERSON: I don't see October, I see August '07.

COUNCILMEMBER MEDEIROS: Right before the big document.

COUNCILMEMBER VICTORINO: July...

CHAIR MOLINA: Members, would you like a brief break so we can get our bearings on this? Okay. Members, we'll take a break till 4:30 so we can get our bearings straight and get the appropriate language for this proposed amendment. Meeting in recess until 4:30. . . .*(gavel)*. . .

RECESS: 4:23 p.m.

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RECONVENE: 4:31 p.m.

CHAIR MOLINA: ...*(gavel)*... February 6, 2008 Land Use Committee meeting is now back in session. The Chair will recognize Member Anderson with a proposed amendment. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. Move to amend the main motion for a condition, what condition are we on?

CHAIR MOLINA: It's the proposed condition that I guess Mr. Victorino had asked the Deputy Director.

COUNCILMEMBER ANDERSON: It doesn't matter. I was just going to name the condition as a number but...

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Move to amend the main motion to include a condition that reads, "That in order to protect and preserve the traditional rural scale and character of existing portions of Makena-Keoneoio Road as stated in the Kihei-Makena Community Plan, Pacific Rim Land, Inc. or its assigns shall construct improvements to Makena-Keoneoio Road fronting the project site in the following manner: (a) pavement width shall be 22 feet, (b) the existing right-of-way width is 44 feet, (c) there shall be no curbs or gutters or street lights, and (d) there shall be no concrete sidewalks."

CHAIR MOLINA: Okay. Is there a motion to...

COUNCILMEMBER ANDERSON: Wait, wait, Chair.

CHAIR MOLINA: Oh. I'm sorry. You're not done? Excuse me, go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: One more sentence. "This condition shall exempt Pacific Rim Land, Inc. or its assigns from improving any portion of Makena-Keoneoio Road to urban standards."

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson and seconded by Member Victorino. Member Anderson, additional discussion?

COUNCILMEMBER ANDERSON: No. I think that this just addresses the concern that Ms. Suyama rightly brought up because, you know, ten years down the road or whatever, hopefully that it won't be ten years before they do this, but, you know, without this condition there could be the possibility of when they do their subdivision or their, go for their building permit they may be forced to do urban standards. This condition would prevent that from happening.

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CHAIR MOLINA: Okay. Thank you, Member Anderson. Staff, do you need additional clarification on the amendment?

MS. NAKATA: Staff would just like leave to add in the name of the property owner, BN01 Investment, LLC and/or prior to the references to Pacific Rim Land, Inc.

CHAIR MOLINA: Committee Members, any objections to adding the specific name of the property owners into the proposed amendment from Member Anderson?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GB).

CHAIR MOLINA: Okay. So noted. Any other discussion? Okay. The Chair will call for the vote on the proposed amendment. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair will mark it 8-0 with one excusal, Member Baisa.

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

NOES: None.

EXC.: Councilmember Baisa.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: At this point, the Chair will recognize Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. And, Chair, I would like to request that Mr. Maloney come down to the podium and just to, for the record, so he could once again make his statement relative to the \$250,000 as well as the purpose and the intent of that

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voluntary contribution to affordable housing. And obviously it'll come with a request that that confirmation that we're asking him for comes before first reading.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Mr. Maloney, you're on record.

MR. MALONEY: Yes. I can confirm that the, a donation by the owners are, are for the affordable housing and it's a voluntary donation --

COUNCILMEMBER MATEO: Thank you.

MR. MALONEY: --for \$250,000.

COUNCILMEMBER MATEO: Thank you, Mr., Mr. Maloney. Is there any specifics to that 250,000 that you had...

MR. MALONEY: We were, we were hoping that it would go to an affordable housing project in Kihei district by, that's being developed by Lokahi Pacific.

COUNCILMEMBER MATEO: Thank you. And will you be able to provide that, those statements to us before first reading?

MR. MALONEY: Yes.

COUNCILMEMBER MATEO: Thank you very much.

MR. MALONEY: We'll have it to you right away, tomorrow.

COUNCILMEMBER MATEO: Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: I'd like to say thank you very much to the applicant and the landowners. Because I think, again, we appreciate your generous donation to help us with affordable housing, which has been one of our real big, big shortcomings in this County right now and I thank you very much. And I think, you know, all the landowners that have come before us lately have been very generous in that, that respect and I want, I want the public to know that we hope to use this money in very near future in getting some of these projects which Lokahi Pacific and others are bringing up so that we can take care of this affordable housing issue and making sure that the people of Maui County, especially our working people, our

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elderly and our special needs are taken care of. Thank you, Mr. Chair, for that moment. Thank you, sir.

CHAIR MOLINA: Thank you, Mr. Victorino. Members, any other discussion as it relates to this particular matter before the Chair calls for the vote? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And this assumes that this voluntary contribution of \$250,000 for an affordable housing project will be for the Kihei-Makena Community Plan Region?

CHAIR MOLINA: That is correct and I believe if you read the letter from the applicant, they're working in partnership with Lokahi Pacific. The only thing that changes from the letter now with the, with Mr. Maloney going on record here is the figure will be changed from 100,000 to 250,000.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

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

COUNCILMEMBER JOHNSON: Yes. And, you know, and I don't mean to take out my frustrations on this particular developer. But, you know, I look at the cumulative impacts to these areas of smaller projects and I just see one after the other and all of them have very good justification, all of them have I guess at least from appearance made or met most of the requirements. They have done their best to, I guess, comply with all our standards and do whatever was expected of them. But at some point. . .and there are letters, you know, on this project and a previous one that really raised concern on the part of the public that somehow every project when taken in combination with other projects has an impact on an area.

And I just personally think that at some point in time we're going to have to look at these issues and look at them in the bigger picture. I don't begrudge the people developing their property, I mean that's their right. I do have some questions about the archaeological component. I have questions about putting swimming pools right next to the ocean. I have other concerns about the overall character and nature of that area that has changed dramatically over time, even since I've been here. And some of the older buildings in the area are being raised, not necessarily on this property but on adjacent properties which will also be under development. So little by little we're losing that charm and that beauty that people for generations have enjoyed here. So I'm sure this will pass, but it will do so without my support. Thank you.

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

COUNCILMEMBER ANDERSON: Thanks, Mr. Chairman. I can certainly sympathize with Ms. Johnson. I feel the same way having spent so much time down there, it's sad to see Makena gentrified. But, you know, that train is long since left the station and these folks aren't in my

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opinion making it any worse than it already is. Sorry. I would hope that Makena could have maintained its, you know, backwoods rural character, but we got to face the facts. We live in a highly coveted place and there's people with lots of money who will pay top dollar to have a piece of that paradise. And these gentlemen are taking advantage of that and you can't begrudge them that. As long as they do this project in an environmentally sensitive way, then hopefully the impacts will be minimal. I, too, have a problem with the archaeological review, I think it, it was inadequate. But at this point in time there's not too much we can do but hope that the archaeologist who monitors this program is honest and forthright and if they find any burials or they come across anything that, you know, it's really going to be too late by then.

And that's why I think that, that's why I appreciate what the Garcias did even though they were ooked [sic] a little along to do it, they still did give us a final preservation plan which is what we should have for all sites that have significant historical remains. So be that as it may, as long as we can still preserve the beach access for our general public in this area so they can share in the beauty along the shoreline, then I don't have a problem with it and I wish them the best of luck. And thank you very much for the donation for the affordable housing, we appreciate it.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And, Mr. Maloney, you, I apologize, you can go ahead and have a seat. I know you've been standing there, we've been giving you a workout today. Members, any final discussion before the Chair makes his comments and we take the vote on the matter? Seeing none, the Chair again would like to thank the applicant and appreciates the generous contribution to the community as it relates to this matter. And again this is a down sizing and the initial zoning was for a hotel and if there's anything good out of this, at least we're not seeing another hotel in the, in this sensitive region. So we're just looking at four units and the applicant has made an effort to work with this Committee as well as the community to address the concerns. So I would like to wish them well on this particular matter. So with that being said, the Chair will call for the vote on the main motion as amended. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. We have, to clarify there's six "ayes" and two "noes", Members Johnson and Hokama. Is the Chair accurate? Okay. The vote is six to two, six "ayes" and two "noes"--

COUNCILMEMBER VICTORINO: One excused.

CHAIR MOLINA: --and one excused, Member Baisa. Thank you, Mr. Victorino.

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

NOES: **Councilmembers Hokama and Johnson.**

EXC.: **Councilmember Baisa.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

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

CHAIR MOLINA: So, Members, congratulations to the applicant. This will move on to the Council for first reading. Members, I know you're itching for a brief recess. Before we do that, I'd like to go on to briefly touch upon our next item and then we'll go ahead and take a recess.

ITEM NO. 25: CONDITIONAL PERMIT FOR "OLD WAILUKU INN AT ULUPONO" (WAILUKU) (C.C. 07-331)

CHAIR MOLINA: Our next item for consideration is LU-25 which is a Conditional Use Permit for the Old Wailuku Inn at Ulupono. The Committee is in receipt of County Communication No. 07-331, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO JANICE AND THOMAS N. FAIRBANKS TO OPERATE A TEN-BEDROOM TRANSIENT VACATION RENTAL AT THE OLD WAILUKU INN AT ULUPONO FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Janice Fairbanks and Thomas N. Fairbanks III for a ten-year Conditional Permit to operate a ten-bedroom transient vacation rental on approximately 22,532 square feet within the R-2 and R-3 Residential Districts, located at 2199 Kahookele Street in Wailuku.

And, Committee Members, we do have a presentation from the applicant. So at this point the Chair will take a recess to have the Chambers prepared for this presentation. So we will recess until five minutes to 5:00, Members? About roughly ten minutes and give you enough time to address your personal needs. Meeting is in recess until 4:55. . . .(gavel). . .

RECESS: 4:43 p.m.

RECONVENE: 4:55 p.m.

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CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for February 6, 2008 is now back in session. Members, we are on Committee Item LU-25 which is a Conditional Use Permit request for the Old Wailuku Inn at Ulupono. And to do a presentation on this, this issue for us we have Mr. Tom Fairbanks. Mr. Fairbanks, you have the floor.

Note: Computer-generated presentation.

MR. FAIRBANKS: Thank you, Council Chair. And, Council Members, thank you for your time today. In 1996 or actually 1995 after we sent our last child off to college, my wife and I were looking for something to do different in our life. Can you all hear me?

UNIDENTIFIED SPEAKER: Yeah.

MR. FAIRBANKS: Okay. So we were looking at restaurants, we were looking at doing an inn, something like that, a bed and breakfast. So we went to the, the Planning Department to ask, well, we wanted to do a bed and breakfast and we wanted to do it in Wailuku and they said oh, well that's good because we're looking forward to setting up a bed and breakfast ordinance to encourage the preservation of older homes. And I said well, that's just exactly what we want to do. So that's how we got started in this process.

And this is the home, was built in 1924, it was finished in 1924. It was built by Charles Lufkin for his daughter and son, his daughter-in-law and son when they got married. And Mr. Lufkin lived next door in Ms. Ota's house so her house is actually more significant. The Lufkin's are significant and one of the reasons why the property is on the historic register because they represented kind of the, the beginning of the merchant class on Maui, prior to that there wasn't a merchant class. Mr. Lufkin started the bank of, the First National Bank of Maui in 1900 and he had three branches on the island eventually and eventually merged them together into the Bank of Maui, which eventually became part of Bank of Hawaii. And so, the Lufkins sold the property in 1949 to the Makinos and they were, they had the shoe store in Wailuku. They were quite noted at that time and they held the property for about 27 years or a little bit longer. And the Kohnes had it for about five years and the Holmbergs and then us. And we, as soon as we got it in '96 we put it on the, we put our application in for the State Register. And we were granted that in September of that year. And then we began the rehabilitation and restoration, a re-adaptive reuse as the Old Wailuku Inn at Ulupono.

Our friend Hokulani Holt-Padilla gave us the name for the home, that's why it call it Ulupono. It's a name of the home, it's not a place name. In 1998 we were granted a B&B Permit and a Conditional Use for a seventh room. And then we maintained those permits since then. As you can see there that's a CP 98006 [*sic*]. Today we're coming before you, we, one of the reasons we're here today is we were thinking about amending it, we were looking at different ways that we could do this process and turns out we're doing it the way we are doing it today, which is to make it all into one Conditional Use. In 1998 we also had a Food Establish Permit, so we're the only one that has a Food Establishment Permit. In 2003 our CP was up for its second time

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around and that's when we went in to do this process for the total of the ten rooms. In 2005 we went before the Planning Commission to add the three rooms and the Vagabond House we call it, the additional building for a total of ten rooms. In 2007 we got Occupancy Permit which is part of our requirements and the Planning Department also, the Planning Commission gave us a unanimous approval for ten years or recommended that.

Owners, we live on the property, we've lived there, we live there the entire time except for six months when we were under construction. Someone's always home, it helps the security of our neighborhood. Historic structures used as guest houses worldwide, historic properties costly to maintain and the additional income from our guest house supports the maintenance of this beautiful old property. The historic value touches more people in our accommodations use than a single-family home were if it was on the Historic Register, so it's, it's beneficial to the public as well. An adaptive reuse of historic dwelling maintains the community sense of place which I think our home and our project has demonstrated for the past ten years.

Our mission is to share the opportunity to experience the lifestyle and hospitality of Wailuku, Maui when the sugar was king, while supporting the preservation and adaptive reuse of the historic Lufkin house. While supporting and the well being of our neighborhood. And as you can see from the letters that have been submitted, I think there's 20 letters from various community as well as our immediate neighbors of their support what we're doing. In 1994 Maui Architectural Group or some version of it was going to purchase this house and make it into an architects office and so luckily I, I got these pictures from his archive. So it's just some pictures of the house originally. In 1994 it was little, a lot of disrepair on the sidings and construction. So I'll just let you see a little bit of how the house looked like then. This is the old garage. This is from Kahookele Street, this is the main entrance and to the parking area and how you access the home now. This is the interior living room back in '94, beautiful Ohia wood floors. This is the breakfast room now which was an enclosed lanai. And that lanai was facing makai. This is the, in 1930's they moved the kitchen downstairs from the house, it used to be upstairs so this room was originally the kitchen and it was a bedroom later and it's, it's a guest room now. You'll see it renovated. It was a knob and tube wiring throughout so there was this maze of wires which all converged here. We put all new delivery of electrical and plumbing into the house in 1996.

Probably about 30 percent of our members, structural members were eaten by termites, we had to open all the walls up, you can see the entire base plate to your right is gone and so we had a lot of repairs and maintenance to get the property back up to speed. That, there was an 8x8 beam which is total paper inside a stucco wall, luckily you can see the construction of the stucco is like an inch thick so that was kind of holding up that whole side of the building. There was a nest in there, 15 feet by 15 feet, an old termite nest that was dead fortunately but it, that's where all the termites went through them and I guess that's why they never found them. This is after the restoration, in 1997. We began the beginning of 1997 on the restoration of the home and this is the complete results. This is the front of the home after the restoration and we redid the landscaping as well. This is a, a picture, an aerial view of the property in 1998 and you can see that, as Shelly noted there's 12 parking spaces but actually we have, there's a truck parked, you can see by the building, that's actually now kind of a compact space. And 14 also next to the

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fence by the main house, that can also double as a parking space as well. So we have sufficient parking on property.

We're required for ten, ten parking spaces for the guest rooms and two for the owners according to the B&B ordinance so we're in compliance with B&B ordinance which is the, I think the strictest parking you can have. Interiors now, this is the living room. Living room again. Living room looking out to the breakfast, breakfast, this is the enclosed lanai you saw earlier. This is the kitchen, now a bedroom. Same, same room. Same room. This is the, the master bedroom's bath, we restored the vanity. This is the master bedroom where Mr. Lufkin supposedly had a string that went down the laundry shoot where he could rotate his okolehau. One of the stories from the house. Mr. Makino used to have a, I guess, good card playing parties downstairs in one of the other rooms, so anyway. And this is one of our guest rooms, the Lokelani Room. All the rooms have Hawaiian quilts in the main house. . . *(inaudible)*. . . the name of the garden or the, the plant that it was there, the flower. Bird of Paradise Room, this is the original room, this room probably changed the least of all the rooms 'cause it was the kid's room originally and the bathroom is original, everything's pretty much original in this room, including the light fixtures. This is the Ilima Room, this was the maids' room, we opened it up a little bit, took away the laundry and added 'cause it was a very, very tiny room.

And then this is the, this is the part of the house that we actually converted. The garage we converted into two guest rooms with little garden lanais. So these are the two guest rooms, they, they're kind of mirror images of each other as Ilima and Hibiscus. And that's a look at the house from that side where the garage, if you remember what the garage looked like. And just some of the interior *[sic]* architectural detail that was preserved. This is the secondary structure where the three additional guest rooms are that we're requesting you to either amendment to ours, or I'm not sure of its exact words, but Simone will get it correct for me, are located and this is the first room, this is Miulana and this room we used, on this building we used Sig Zane designs for our, to carry out our theme of the garden flowers. Plumeria Room and the Puakenikeni Room.

And just, our home means harmonious inspiration. I'm going to skip through some of this so you don't have to, get you out of here quicker. We, we're very much involved in the community, we're involved with all the Wailuku Town festivals over the years. We support Punana Leo for the past eight years with materials and we help them make malasadas. We help this Halau Pau O Hi'iaka, we hosted their annual Lei Aloha fundraiser with a Christmas open house. Wailuku Union Church, they bring their carolers every year and we, we invite all the neighbors over and we have caroling and then we have everybody enjoy supper, hosted by us. And then we support many Halau and Hawaiian organizations by housing their dignitaries and stuff throughout the years. Here's one of our little things, we brought the kids over from the Wailuku Union Church for their, their preschool at Christmas time with Santa Claus. We do, we do a big thing with Christmas usually, we're, my wife's a big collector of Santa Claus's and stuff and she does a beautiful decorating as you can see. So we often have open houses. We don't have, we haven't had them every year, but we've had them three or four times already over the years, and invite everybody in the neighborhood over.

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This year we did a fundraiser for, like I said, Pau O Hi'iaka, we're going to continue to do that every year now and this is our Lei Aloha, so you got the Christmas tree with the leis and stuff. So anyway. Outdoor part of the Lei of Aloha promotion. And then these are some of the awards we received over the years. Recognition of Hawaii Historic Register, Hawaii Visitors Bureau recognized us, Keep it Hawaii award, the Kahili award for the accommodations. That year we were running against five or six major hotels and we won. Wailuku Main Street so and so on, you got all those. Let me get through here quick. We've had a lot of recognition in the press from like Travel and Leisure one of the top five, top ten B&Bs in the United States. American Automobile Association, we're a three diamond rating and so on and so on; various newspapers and stuff for the special experience that the people have when they stay with us. So we actually are impacting visitors to Wailuku and, and helping the economy in that way.

About, my daughter didn't have the exact numbers, I had statistics. We didn't rehearse our or coordinate our presentation so, but 50 percent of our visitors are from outside of Hawaii and the rest are from within the islands. Twenty six percent are probably about people visiting Maui for business, about 24 percent are visitors from Hawaii, 50 percent of our visitors from Hawaii are from Hana, Molokai and Lanai. Again the Historic Inn provides for a lot of needs to the community with a special historic experience. We create jobs, there's four employees at the Inn including my wife and my daughter and we have two other employees. We also hire outside help to do our, I mean, not our laundry but our lawns and our gardens. And, let's see. And then this has just helped to establish Wailuku as a destination. We've had a number of writers come stay with us and they've done stories about the town. In addition to that we've hired a PR person for the past ten years, she's helped us bring these people in. I've worked a lot with the HVB, a lot of their people stay with us and then they also write about the alternative visitor type experiences that there are available on the island.

We've been, we've been operating for ten years without a complaint. We've had a B&B Permit as well a Conditional Use Permit for just about ten years now as well. We don't have any on street parking, we enjoy neighbor, neighbor and broad-base community support. We live on the property in a historic home and that's where the majority of the guest rooms are. The density of the project is probably less than the surrounding neighborhood, there are a number of very small lots, over the years they were cut up into like 4,000, 5,000, 6,000 square foot lots all around us. We're not, ten rooms is not setting a precedent, you know, the Council has granted in the past Conditional Use for the Silver Cloud Ranch with 12 rooms and on more than one occasion I believe. Whoops, what do I do? Okay. Well, that's good enough.

So I just want to let you know that we have, I know that we're coming in asking for ten years on our Conditional Use, but if we were able to amend our seven room Conditional Use it would be by ten years by now already because it gradually goes up over the years. So again you wouldn't be setting any kind of precedent. . .(change tape, start 4A). . .basically had a permit for ten years and we're asking for another ten years and we haven't had a complaint. So I think those are the kinds of things to take into consideration when you're doing that as well as that we are a historic property and we are preserving it for the future and a sense of place for Wailuku. And that's all I have, does anybody have any questions?

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CHAIR MOLINA: Okay. Thank you very much, Mr. Fairbanks. Once we put up the screen, then we'll open the floor for questions. Okay. Thank you very much. Okay. Members, we're going to take a brief recess to put the screen up and we will resume the discussion on Land Use Item 25. Meeting in recess. . . .(gavel). . .

RECESS: 5:11 p.m.

RECONVENE: 5:13 p.m.

CHAIR MOLINA: . . .(gavel). . . The February 6, 2008 Land Use Committee meeting is now back in session. Members, we are on Land Use Item 25 which is a Conditional Use Permit for the Old Wailuku Inn at Ulupono. Joining us from the Planning Department we have Planner Simone Bosco to give us a brief overview on this particular item. Ms. Bosco?

MS. BOSCO: Thank you, Chair. Thank you, Members of the Council. I wanted to mention that the public hearing on this item was conducted on March 22, 2005. In your transmittal letter there is a error, it does refer to a December 14, 2004 public hearing, that's an error, there was no such public hearing on that date. Just for the record, you do have the minutes of the March 22, 2005 public hearing and that's when it took place. At the public hearing the Planning Commission unanimously recommended that the County Council grant the applicant a ten-year Conditional Permit for the operation of this ten bedroom inn which does include the new three bedroom structure. That represents an expansion from the former project which was a seven bedroom inn and that was primarily contained within the, the residence and since then the applicant has built a second structure which has three bedrooms and of which they are requesting approval for under the Conditional Permit.

The approval of this Conditional Permit as presented will allow the existing Conditional Permit for the seventh bedroom and the bed and breakfast permit to lapse. So essentially we're trying to get the Conditional Permit to apply to the entire property, okay. That way they won't need to continue to maintain the bed and breakfast permit and the other Conditional Permit. The Maui Planning Commission at the hearing modified the Department's recommendation to grant the applicant, actually we recommended a five-year extension and the Maui Planning Commission had recommended to agree with the applicant's request for a ten-year and that was the unanimous vote on that matter. No oral testimony was received at the public hearing; however, four letters of testimony in support of the application were submitted. There were no letters in opposition nor any testimony at all in opposition to this request at the public hearing. After the public hearing 19 letters were received in support of the request which have been distributed to you.

As well I'd like to note that the applicant has already obtained a Certificate of Occupancy for the primary residence, that was a requirement that the Maui Planning Commission had recommended be upheld at the County Council level. They have already obtained their Certificate of Occupancy, they did that on August 23, 2007 and you do have a copy of it there.

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That Certificate of Occupancy was only required to apply to the main dwelling because of the occupancy is so much higher for that main dwelling and Public Works had only asked that it, that the standard be stricter for that structure because there's, there's more people that can stay in that structure. So that's been done. So in consideration of that I'd like to request and recommend that the County Council drop recommended Condition No. 7 from the proposed bill. Condition No. 7 is the condition requiring that the Certificate of Occupancy be obtained. Okay.

The final matter that I'd like to, as a housekeeping matter, I'd like to mention is that the legal name on the bill should be amended, Thomas N. Fairbanks, that name has a roman numeral three after it. That's just a, it's a, it's a technicality, it needs to be his legal name so as a housekeeping matter I'd like to just put that on the record. That concludes my presentation, if there are any questions?

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Thank you very much, Ms. Bosco. Okay, we'll start first with Mr. Victorino followed by Member Anderson. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. Okay. Thank you, Ms. Bosco. I'm interesting, you know, you said you're dropping of the, the three from, just to make it a legal, that's just a technical correction?

MS. BOSCO: Adding a roman numeral three to the legal name of Thomas N. Fairbanks.

COUNCILMEMBER VICTORINO: To make it a legal, okay. Secondly the question I had for you is do they provide and I was trying to flip through this to find anything that would say that they have any kind of policy regarding quiet time, you know, that after 10:00 to 6:00 or something, 'cause most hotels or bed and breakfasts they have these rules, you know, that they, they post. Is there something within this one?

MS. BOSCO: Yes, they do have house rules and I believe it addresses quiet time.

COUNCILMEMBER VICTORINO: Quiet time.

MS. BOSCO: And that's in the staff report, I believe.

COUNCILMEMBER VICTORINO: You believe it's in the staff report? I'm skipping through that, I could not find it, if, you know, sorry. I was looking for that 'cause I was very interested in that. And the last thing I'd ask you is as far as the, the property location and it's adjacent to all the neighbors that have, you know, I read in here all the letters of support from, from various neighbors. . (inaudible). . .et cetera, et cetera, et cetera. Do you find that they have been a very

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good neighbor as far as the support for the neighborhood, all the, although the presentation was great, you know. But in your opinion a very conducive neighbor to a residential area by base?

MS. BOSCO: Yes, I do, Chairperson. I absolutely do. All the letters of testimony received, every letter, 19 of them are in praise of the applicants not only as good neighbors but as stewards of the area, good business people, very generous people. All of the letters from the immediate neighbors, very close neighbors too have been in support of the project and there's been absolutely no impact to the surrounding neighbors so.

COUNCILMEMBER VICTORINO: Thank you, Ms. Bosco.

MS. BOSCO: Yeah.

COUNCILMEMBER VICTORINO: And, Chair, this is just one, one example I wish many others would follow this because these people seem to do their due diligence, really go the extra mile to make sure not only did they have great accommodations but fit in within their neighborhood. And, you know, I've always been, you know, a little skeptical about our local towns, our small towns having these kinds of situations, but this is one example that has proven me wrong in my thinking and I'm very, very supportive of what I've seen here and what they presented to us. So thank you, Mr. Chair, and thank you, Ms. Bosco.

CHAIR MOLINA: Okay. And thank you, Member Victorino. Prior to recognizing Ms. Anderson, the Chair would just like to inform you that we do have other resource personnel as well for your consideration. We have Captain Martin from the Fire Department as well as Director Young from the Finance Department and Mr. Miyamoto from Public Works as well and, and Director Medeiros from Housing.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: So at the appropriate time we'll have them recognized.

COUNCILMEMBER VICTORINO: We will have the time to ask them questions a little bit later?
Because I do --

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: --have some questions...

CHAIR MOLINA: I'd like to get through with any questions --

COUNCILMEMBER VICTORINO: Okay. That's fine.

CHAIR MOLINA: --for the Planning Department. Okay. Member Anderson, you have the floor.

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COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. So, Ms. Bosco, previously they had been operating under a bed and breakfast ordinance and because they now have an accessory dwelling that has three rooms in it for rent, they no longer qualify for the bed and breakfast or they would for the, the main house, but since they need to get a transient vacation rental permit which is a Conditional Permit for the out building, you're telling us that it's just better to combine it all under a Conditional Permit?

MS. BOSCO: Yes. I believe it is.

COUNCILMEMBER ANDERSON: And so under the Bed and Breakfast Ordinance and the permit that they currently have for that B&B Ordinance, when, was there a time, an expiration time on that permit?

MS. BOSCO: Yes, there was. It was 2002 for the Conditional Permit. Okay, there is an existing Conditional Permit for the seventh room in the primary dwelling.

COUNCILMEMBER ANDERSON: And why was that? Why was a Conditional Permit needed for that? Why couldn't that just be under the B&B?

MS. BOSCO: The Bed and Breakfast Ordinance only allows for a maximum of six bedrooms in a dwelling. And since the applicant's wanted to also rent a seventh room out, they came in and were, they obtained a Conditional Permit from the County Council just for the seventh room in the primary dwelling. In the meantime they have had a Bed and Breakfast Permit. Okay, so the Bed and Breakfast Permit has permitted the six bedrooms within the main house all of this time, even to, to date they have a Bed and Breakfast Permit that they've maintained, it's still valid.

COUNCILMEMBER ANDERSON: And so that, let me stop you right there and then I'll let you go on.

MS. BOSCO: Sure.

COUNCILMEMBER ANDERSON: Is there any expiration or requirement for renewal of a Bed and Breakfast Permit?

MS. BOSCO: Once a year. Every year they have to, they have to renew the Bed and Breakfast Permit.

COUNCILMEMBER ANDERSON: Every year they have to renew it. And, and do they have to just renew it through the Department?

MS. BOSCO: Yes. That's right.

COUNCILMEMBER ANDERSON: And does it go to the Planning Commission?

MS. BOSCO: No. It doesn't.

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COUNCILMEMBER ANDERSON: Okay. Okay. So go ahead.

MS. BOSCO: So to keep it simple we thought this really needs to go under one permit and let's try and put it under the umbrella of a Conditional Permit since that's the appropriate permit for this use. We could continue to, I mean ask the applicants to maintain the Bed and Breakfast Permit but it's, it's onerous, it's, it's, why do it if you have a Conditional Permit and the terms and the conditions are being met? It's much more appropriate, even as far as staff time goes, to put the entire use under one permit.

COUNCILMEMBER ANDERSON: And so the, the three bedrooms in the out building, how long have, how long have they been operating those?

MS. BOSCO: That, that was 2000 and let's see, 2000...

MR. FAIRBANKS (from the audience): Three.

MS. BOSCO: 2003, I'm sorry.

COUNCILMEMBER ANDERSON: In 2003? But they don't have a permit for it? They've applied?

MS. BOSCO: They have, they have, they don't have a Conditional Permit for it, no.

COUNCILMEMBER ANDERSON: But they've applied?

MS. BOSCO: They have applied, that's the subject of this application.

COUNCILMEMBER ANDERSON: Okay. And so the, the Conditional Permit they have for the one bedroom, what was the timeframe extended to them for that?

MS. BOSCO: Okay. That, 2002 subject to a request for extension which was also done. They did request an extension for that...

COUNCILMEMBER ANDERSON: At the time they received it?

MS. BOSCO: At the time, yes, at the time they were, they were required to they submitted a time extension request. At that time the Department made a decision to, instead of, instead of extending a one bedroom Conditional Permit, put the entire project under one permit, all ten bedrooms under one permit. . . .(inaudible). . .

COUNCILMEMBER ANDERSON: So when they, when they got their Conditional Use Permit for the one bedroom in 2002, how long was that permit for initially?

MS. BOSCO: Initially, initially it was a three year Conditional Permit to expire in 2002.

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COUNCILMEMBER ANDERSON: Oh. I thought you said they got it in 2002?

MS. BOSCO: No. They got it in 199...in 2000. It was, okay, the last ordinance was for a three year Conditional Permit in the year 2000 and I believe it was to expire 2002-2003--I'd have to look at the exact ordinance--and, and then they requested a renewal.

COUNCILMEMBER ANDERSON: In 2002?

MS. BOSCO: In 2002.

COUNCILMEMBER ANDERSON: And they requested a renewal in 2002 for an additional three years or five years?

MS. BOSCO: For ten years.

COUNCILMEMBER ANDERSON: For ten years. And, and so since 2002 there's been no renewal?

MS. BOSCO: There has been, on the bed and breakfast there has been.

COUNCILMEMBER ANDERSON: Right, 'cause that's --

MS. BOSCO: That's current.

COUNCILMEMBER ANDERSON: --administrative?

MS. BOSCO: But not on the Conditional Permit.

COUNCILMEMBER ANDERSON: Because, and then in 2003 they added the, the three bedrooms?

MS. BOSCO: In 2000..., that's right.

COUNCILMEMBER ANDERSON: And then at that time they applied for a Conditional Permit for all of it?

MS. BOSCO: They applied for all of it in 2002.

COUNCILMEMBER ANDERSON: In 2002? But they didn't have the three bedrooms until 2003, so that was, has since been added on to the request?

MS. BOSCO: Yeah. I'm, I would have to double check exactly when that structure was built. Do you want me to check that?

COUNCILMEMBER ANDERSON: No. No. No. That's --

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MS. BOSCO: Okay.

COUNCILMEMBER ANDERSON: --'cause what I'm getting at is the timing here. And because you're saying in the, on Page 5, Members, the first paragraph under analysis, you're saying that it is the Planning Commission's guideline to grant initial Conditional Permits for one year, the first time extension request for a period of three years, and every time extension thereafter for a period of five years provided there is full compliance, and that the property is currently eligible for a five-year time extension. Now are you saying that this is based on a policy that the Planning Commission has adopted?

MS. BOSCO: This is common practice within the Department of Planning that we grant a one year Conditional Permit upon its initial approval, the next approval is for three years typically and following that –

COUNCILMEMBER ANDERSON: Is five years.

MS. BOSCO: --the next one is five and then five thereafter.

COUNCILMEMBER ANDERSON: Okay. Because it does say in, in the County Code under extensions, Conditional Permits shall not be extended unless the terms of the initial issuance explicitly provide for same. In any case extensions must be applied for no later than 90 days blah, blah, blah. So, you know, I'm a little confused 'cause we're under certain constraints too and that are beyond this application. And so when, when they came in 2002 for a renewal did they request at that time for a five-year extension? No, they requested, they were eligible for a three-year extension?

MS. BOSCO: They were eligible for a five-year extension, they requested a ten-year extension. The Department recommended a five-year extension to the Maui Planning Commission. The Maui Planning Commission over, overrode that recommendation and unanimously voted to approve or recommend a ten-year Conditional Permit.

COUNCILMEMBER ANDERSON: And so this one year for the first year, three years for the first time extension and then every extension thereafter for five years, is that written anywhere? Is that a policy?

MS. BOSCO: No, that's not.

COUNCILMEMBER ANDERSON: So that could change with every Administration? Do you know how long that policy's been in place?

CHAIR MOLINA: Director Suyama?

MS. SUYAMA: Maybe I can answer. It's an informal policy of the Department, it's never been formalized in any kind of documentation. But as a matter of practice the Department normally

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when we do our recommendations to the Commission we have recommended for the first, you know, for the initial Conditional Permit the one year to ensure that the applicants comply --

COUNCILMEMBER ANDERSON: Right.

MS. SUYAMA: --with the condition and then after that it was informally a three-year extension and then a five-year extension. But there has been instances when people have come before the Commission saying that for whatever extenuating circumstances that they had asked for longer extensions. But the Department has normally been, you know, keeping to the one, three and five.

COUNCILMEMBER ANDERSON: Well, you know, I'd like to stick to the County Code because then we all know what the rules are. And it says Conditional Permits shall not be extended unless the terms of the initial issuance explicitly provide for same. Now if this is the policy of the Department, then I would like to see that put in every initial permit, in other words your first permit is for one year if the Council approves it and then you will have a three-year extension after that one year and then every extension thereafter would be five years. Because you guys are, you guys are adopting policy that is constraining the Council and, and I'm not saying I'm against it or for it or anything, I'm just saying we need to have consistency. And if there and I don't expect you to go back 'cause it's probably--maybe Simone knows. On their initial permit was there a provision for a time extension and did it comport with what's here?

MS. BOSCO: Would you like me to read what it says? The Conditional Permit in 2000 that was the, the first time extension states that the Conditional Permit shall be valid until December 16, 2002 provided that an extension of this permit beyond this three year period may be granted pursuant to Section 19.40.090 of the Maui County Code.

COUNCILMEMBER ANDERSON: Great. Okay. Thank you, Mr. Chair. I'm just thinking that maybe, maybe if this is the standard, that you guys should provide us with an amendment for the County Code so we can put it in the Code.

MS. SUYAMA: I can go back to the Department and discuss it with the Director as well as Mr. Alueta who's our person who does ordinance changes.

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

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes. I'd like to ask, and not all the questions may be for you and it may be for some of the other agencies. But my understanding is this is for a total of ten rooms?

MS. BOSCO: That's correct.

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COUNCILMEMBER MEDEIROS: And in the main house there is seven rooms that are rented out and in the secondary house there is three rooms?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: Now the owners live on the property?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: Do they live in the main house?

MS. BOSCO: That's right.

COUNCILMEMBER MEDEIROS: So what are the total number of rooms in the main house whether they're rented or not?

MS. BOSCO: Eleven. Nine?

MS. FAIRBANKS (from the audience): Nine.

MS. BOSCO: Oh. I'm sorry. I'm getting information, I...

COUNCILMEMBER MEDEIROS: Okay. Nine in the main house?

MS. BOSCO: Nine. Yeah.

COUNCILMEMBER MEDEIROS: And three in the secondary house?

MS. BOSCO: Yep.

COUNCILMEMBER MEDEIROS: Okay. Now is there any ADA requirements for the applicant to meet?

MS. BOSCO: I did not impose any ADA requirements, but during the CO process they would have caught that.

COUNCILMEMBER MEDEIROS: So who would impose ADA requirements if they are required?

MS. BOSCO: The Department of Public Works would require it and then they would refer that requirement to me, and there was no such requirement made from the Department of Public Works. They required a CO and during that process they would of considered that in their, in their requirements.

COUNCILMEMBER MEDEIROS: Okay.

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MS. BOSCO: Yeah.

COUNCILMEMBER MEDEIROS: And, again I guess this might be for the owners. But, so it is, it was said during the presentation and with, in the brochure I guess that the facilities rented out two people per bedroom?

MS. BOSCO: That's right.

COUNCILMEMBER MEDEIROS: So a family of three, two adults and a child would require two bedrooms?

MS. BOSCO: That is correct. That technically is correct unless we actually were to amend or. . .yeah, that is actually correct. That's right.

COUNCILMEMBER MEDEIROS: Okay.

MS. BOSCO: Yeah.

COUNCILMEMBER MEDEIROS: And would it come under the purview of the Planning Department to require an, a plan for the, both structures for an escape plan during...

MS. BOSCO: We did require that and that has been produced.

COUNCILMEMBER MEDEIROS: Okay. And can you tell me if the buildings--because both buildings are two stories?

MS. BOSCO: That's right.

COUNCILMEMBER MEDEIROS: Okay. Do they require fire sprinklers?

CHAIR MOLINA: Mr. Medeiros, if I could...

MS. BOSCO: I...

CHAIR MOLINA: Oh, hang on.

MS. BOSCO: I would defer that to the Department of Public Works.

CHAIR MOLINA: Yeah.

COUNCILMEMBER MEDEIROS: Okay. Yeah.

MS. BOSCO: Yeah.

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COUNCILMEMBER MEDEIROS: You can just say you don't know that and we'll ask the, either Department of Public Works or the Fire Department.

CHAIR MOLINA: Yeah. Mr. Medeiros, if I could interject, we do have Fire here if you would like an answer to that question. I could call them up real quickly to respond to your question.

COUNCILMEMBER MEDEIROS: Unless you want me to wait until...

CHAIR MOLINA: No. I guess I see Mr. Martin we've, he's been waiting there.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: Mr. Martin are you able to, Captain Martin, are you able to comment on Mr. Medeiros' question relating to the buildings needing fire sprinklers at this point? Yeah. If you could please come up, come on up and then we'll go back to you, Ms. Bosco, after Mr. Medeiros gets his question answered. And thank you for waiting so patiently, yeah, Captain. Appreciate you being here. . . .Go ahead.

MR. MARTIN: Good evening, Mr. Medeiros. In this particular case technically the Public Works during the Certificate of Occupancy process, building permits or inspections, it's dictated in the Building Code whether a system needs to be installed.

COUNCILMEMBER MEDEIROS: Okay.

MR. MARTIN: Not in the Fire Code. And in this, this house is, is really old, we have a lot of places out there that are existing non-conforming and the Code doesn't require necessarily for people to put anything in. And I can't think of anything in the Code that would require fire sprinklers in this particular situation, even the rooms are not enough, the heights and so forth.

COUNCILMEMBER MEDEIROS: Okay. Thank you for the response. It concerns me because in the main building there can be as many as almost 20 people if it's totally occupied by the owners or the guests. So that really concerns me and so as far as fire flow that, it's all, that requirement is met by the facilities?

MR. MARTIN: Mr. Medeiros, the fire flow again is required by another Department. Because it's on the County water system. . .

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. MARTIN: . . .that would be determined and decided by the Water Department on this particular case.

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COUNCILMEMBER MEDEIROS: So the application doesn't come through the Fire Department for review and comments and you would have, the Fire Department would have no comments about fire flow to meet your requirements?

MR. MARTIN: Yeah, that's correct. In this particular case it's a County water system, it's supplied by the County water system. The only thing that we get is the Planning Department's application in the process when it comes to our office we do review it, but there. . . unless there's a building permit that's applied for. . . but then again if it's not commercial, if it's an R-3, if it's a B&B. See that, it's a big issue right now whether something is commercial or not and some departments are looking at it such as us, if you get a single-family home and you're making it a B&B or a TVR and you got three or four bedrooms, the Fire Department doesn't consider it, you know, commercial. I mean it's a single-family home, whether you get visitors or local people in there, it doesn't make a difference to us. But some departments are saying it's business and then now we're changing it and we're requiring other steps. So it, it's a, it's a touchy situation. We don't look at it as a business.

COUNCILMEMBER MEDEIROS: You don't. I see. Okay. Because, yeah, you know, we're not talking about a regular three bedroom home here, we're talking about a structure with nine bedrooms, possibly 18 to 20 people and that would concern me, you know, for Fire Department work. Do you folks as a Fire Department in this kind of situation where you have this many bedrooms and this many people and whether it falls under commercial or not, I guess we're not sure on that, do you folks do a pre-plan of that building?

MR. MARTIN: I would like to think that the Wailuku Fire Station does an excellent job in pre-planning their area and they're well aware of their neighborhoods and I would, I would, I gotta go speak to them but I'm almost certain that, absolutely.

COUNCILMEMBER MEDEIROS: Okay. So there's no protocol for the district to do a pre-plan and submit that as having been completed to the Fire Bureau?

MR. MARTIN: Pre-plans in our rules and regs for our Department is not required to be submitted to the Fire Bureau.

COUNCILMEMBER MEDEIROS: Okay.

MR. MARTIN: They're only required to be kept in station amongst the watches in case of emergency. But nothing is required to be sent to the Fire Bureau.

COUNCILMEMBER MEDEIROS: I see. Thank you very much for your responses. Mahalo, Mr. Chairman.

COUNCILMEMBER ANDERSON: Chair.

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CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Hang on. I'll let, Chairman Hokama was next, followed by Member Anderson and Member Victorino.

COUNCILMEMBER ANDERSON: I just wanted to clarify that the fire flow has been checked by DWS and approved.

COUNCILMEMBER VICTORINO: Yeah, it's. . .*(inaudible)*. . .

CHAIR MOLINA: Okay. All right. Thank you for that clarification. We didn't have anyone here that was requested for fire, for the Water Department. However, Mr. Medeiros, if you do have concerns related to fire flow, the Committee Staff can work with you to send out a question to the Department to respond to your concern as well.

COUNCILMEMBER MEDEIROS: Yeah. I think Member Anderson, yeah, brought up some information there. But thank you for the consideration.

CHAIR MOLINA: Okay. Thank you. Before the Chair recognizes Chairman Hokama, the Chair is aware of the time. We did get commitments from Members to go till 6:00 and we do have one more item on our agenda, which was a last minute addition due to the Chair being made aware that it's time sensitive and the Chair was only made aware of that in late January. So I just want to make sure you guys are aware of that. Chairman Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman, thank you very much for my opportunity. You know, I haven't had a chance to interact with Ms. Bosco much in my tenure, but in reviewing the documentation obviously the Members have seen that I have twice voted to support the Conditional Permit, the original and the first extension regarding the seventh bedroom. But what I have found that I had hoped would have been included, including the minutes of the Commission was, was there any discussion or did your agency, you agency provide any comment regarding any changes in taxation?

MS. BOSCO: Yes. There is a proposed condition.

COUNCILMEMBER HOKAMA: Okay. Can you please tell us where it, where that condition is please?

MS. BOSCO: On the draft bill you'll see Condition No. 11 reads, that Janice and Thomas N. Fairbanks shall file a supplemental public report with the Department of Finance, Real Property Tax Division identifying the property as a commercial business relative to real property taxes.

COUNCILMEMBER VICTORINO: Very good. Right there.

COUNCILMEMBER HOKAMA: Okay. And that's why I found it interesting that Finance did not give comments from agency reviews. So for this Committee's clarification my, my interpretation of Condition 11 is that it's going to continue to be treated in the manner of the bed and breakfast?

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They do not receive a, a residential category nor do they receive homeowners exemption? Is that correct?

MS. BOSCO: They will not receive a homeowners exemption. However, Condition No. 11 will most likely trigger a higher taxation rate. I don't have the Department of Finance here to speak to this issue. However, that's the intent of Condition No. 11.

COUNCILMEMBER HOKAMA: Okay. And, and, and that, that is clear with Mr. and Mrs. Fairbanks?

MS. BOSCO: They understand that.

COUNCILMEMBER HOKAMA: Okay. Mr. Chairman...

CHAIR MOLINA: Chairman Hokama, yeah, we do have Director Young here if you would like to have--

COUNCILMEMBER HOKAMA: Yeah. If Mr. Young would--

CHAIR MOLINA: --further, add further clarification.

COUNCILMEMBER HOKAMA: --please come forward.

COUNCILMEMBER VICTORINO: Mr. Chair, Mr., he wants to ask a question, I'd like to ask Mr. Martin, please if I may, before he leaves if that's all right? Because now we've strayed from what I was thought was going to be Fire and then we went into another subject matter. If that's all right with you, Mr. Chair? 'Cause my question is related to fire. . . .*(change tape, start 4B)*. . .

CHAIR MOLINA: . . . Real soon. Well, let me ask Chairman Hokama if he has objections. I would like to just continue to, to finish Mr., Chairman Hokama's line of questioning and then I'll recognize you and then we'll --

COUNCILMEMBER VICTORINO: Thank you, Chair, I just like --

CHAIR MOLINA: --we'll recognize Mr.--

COUNCILMEMBER VICTORINO: --if we're going to stay on one subject, let's stay on one subject and not move all around, then confuses us, but that's fine. I will wait my turn as far as Fire is concerned. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. And the Chair apologies if any confusion is being called, but we're trying to move things along here because of the time constraints and --

COUNCILMEMBER VICTORINO: I understand.

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CHAIR MOLINA: --and Members committing, you know, until six o'clock. And the Chair appreciates all of you putting in a long day. Director Young, if you could please come up?

COUNCILMEMBER HOKAMA: Thank you, Captain, for your indulgence. Director Young, thank you for presence this evening. I bring forward to you a proposed Condition 11 of the proposed ordinance and I would just like to get your comment please. If this would be, how does your Department or your specific Real Property Tax Division understand the condition that is being proposed and how do you see it being applied to the Fairbanks regarding this subject property please?

MR. YOUNG: Yes, Mr. Chair. Basically as stated previously in other Conditional Permits for TVRs the issue of taxation, there is a currently a Bed and Breakfast Ordinance which is very explicit in the Maui County Code that specifically outlines that bed and breakfast properties do not receive the homeowners exemption and it also, even if the owner is living on property. Relative to TVRs, though absent of a TVR ordinance in the Maui County Code, there is no direction. So in this particular case when I review it, reading this Condition 11 it does not clearly articulate that the Fairbanks or this property owner is abiding or intending that the taxation will stay the same as bed and breakfast. Because absent a TVR ordinance, what will happen on this property is that the property could be applied for, for homeowners exemption because the owners are living on property. They would be granted that homeowners exemption relative to the Maui County Code. Furthermore that application could, could also apply depending on the full circumstances, could also apply to the cottage that is on property if it's the same TMK. I did ask the Real Property Tax Division to do the analysis on this particular property and going back the past five years they were in fact receiving taxation at a rate for the Improved Residential which is afforded in the Bed and Breakfast Ordinance. However, if this property is granted a TVR classification, not a bed and breakfast classification, it would be subsequently amended to Hotel/Resort property, but would then be subject to homeowner if the homeowner applied for it, which means they would receive the homeowner rate and classification as well as the homeowners exemption.

So for 2000 and, for the upcoming fiscal year, let's use that as an example. At the current tax of a bed and breakfast they would be taxed at the current tax rate say, for example, \$4.85 per \$1,000 value. That would put their real property taxes at an estimate of a little bit over 8,000 at the current assess evaluation. However, if the homeowners rate was applied instead, take into account the effect of the homeowners exemption and then the homeowners tax rate which is currently at \$2.00, the tax bill would be subsequently reduced to \$2,800 and some change. This is actually an effect of the absence of the, of any TVR ordinance that makes it explicit in the Maui County Code and has come up previously as an issue. If Condition 11 is intended to articulate that part of the condition is that a specific tax rate would be applied, I would ask that the condition be made more clear because I think the intent was, you know, I can see that the Planning Department maybe intended or believed that operating this property as a TVR would result in a higher tax rate. And that's, if that was the intent of Condition 11, I only ask that it be made more clear and explicit.

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COUNCILMEMBER HOKAMA: Okay. Thank you very much for that, Director Young. So hearing that, Ms. Bosco, you have a revised comments for us?

MS. BOSCO: Yes. I would recommend that the County Council consider amending Condition No. 11 to specify a, an appropriate classification, tax rate classification. I would say in this case an appropriate classification would be Business/Commercial. This is not as intense of a use as a, a hotel, it's an inn. However, I defer to the County Council on that, that would be your decision which would be what, more appropriate.

COUNCILMEMBER HOKAMA: Okay. Thank you for that, Ms. Bosco. Chairman, I would just like to say on behalf of the applicants, they have always complied with the terms and understanding of the ordinances and the County's policies. And this is not something that I believe is, has, was conscious on their part to not pay their fair share of taxes. I bring it up because in the past on, on approvals that have moved forward regarding vacation rentals because of the absence of documentation as well as enactment of proper ordinances that Mr. Young brings up, we have, we are allowing on other properties vacation rentals to qualify for home, residential rates with homeowners exemptions whereby, in my point of view, are not paying their fair share of taxes. And for those of us that are, we pay the increased burden to cover those that are not. That I don't agree as part of a fair and equitable program. So I take the Director's comments seriously and that I would ask again, unless there's a comment from the Fairbanks contrary, that we would amend 11 to properly place into the document which I'm happy to support for this Conditional Permit that allows the Department of Finance and Division of Real Property Tax to properly assess and tax for the actual use which we are being, which we are considering as a Committee to approve regarding the non-permitted uses in a residential area. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Chairman Hokama. Okay. Members, I believe Mr. Victorino was, had a request to have the Fire Department representative come up.

COUNCILMEMBER VICTORINO: Well, before. . .if anyone has any more questions for the Director since he is here, the Director of Finance, I would allow that so that, you know, we don't have this constant coming back and forth, if that's all right with you, Mr. Chair?

CHAIR MOLINA: Well, well, the Chair is reading you had a sense of urgency to get the Fire --

COUNCILMEMBER VICTORINO: Okay. That's fine.

CHAIR MOLINA: --so I'm going to bring him up. Captain Martin.

COUNCILMEMBER VICTORINO: That's fine.

CHAIR MOLINA: And, Captain Martin, you may want to hang out 'cause we may have other Members that have questions for you, even you, Mr. Director Young. Okay. Mr. Victorino?

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COUNCILMEMBER VICTORINO: Thank you, Chair. And thank you, Captain Martin, for coming back. You're aware that they have a plan in here for fire escape, a plan that was drawn up showing ladders, fire extinguishers in place, et cetera?

MR. MARTIN: Mr. Victorino, yes.

COUNCILMEMBER VICTORINO: And so would that be on file with the Fire Department?

MR. MARTIN: We do have a fire inspection report –

COUNCILMEMBER VICTORINO: Yes.

MR. MARTIN: --in fact I had the chance to speak with Fire Inspector Hanalei Lindo specifically about this situation and he last inspected it in July of this, this past July, and he, he didn't have anything but great things to say. He was impressed with the fire escape plan, the smoke detectors, the fire extinguishers, and he said it was well kept. And basically he said they, they do a great job at keeping it and he had no concerns.

COUNCILMEMBER VICTORINO: Okay. So and I just wanted it to be pointed out that, that these people again like the real property tax and other, they, they do their due diligence, they do it the right way. Fire flow is not an issue because it is to the hydrant which is out of their property, which I think is like about 35, 40 feet down the road there's a fire hydrant--I'm familiar with the area--and the Fire Department which is, which is in, what, a mile, a mile and half, not even, and the rest they provide the safety. So you guys do a regular inspection so the Fire Department and those who stay there can feel fairly safe that, you know, these people have done a good job in protecting them from a fire disaster?

MR. MARTIN: That's correct, Mr. Victorino. And if you wouldn't mind, I'd just like to add a couple of things. On this particular situation we will be inspecting it every two years.

COUNCILMEMBER VICTORINO: Okay.

MR. MARTIN: We did have a situation with our, burden with, with the work and manpower. You know, there's, there's some numbers that been out there on how many B&Bs and TVRs that are out there and if we were to go and inspect it, it's going to increase our workload tremendously. And a lot of them we don't feel it's any more of a fire hazard than a single-family home. So we did have a written agreement with the Planning Department on what we are going to look at. Something with one, two bedrooms in a single-family home we're not going to come out and inspect. The fire, the chances of a fire occurring is no more or great than any single-family home and we don't come into people's single-family homes.

COUNCILMEMBER VICTORINO: Right.

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MR. MARTIN: In fact the chances that a fire will occur it's actually less because the housekeeping is usually superb. But in this particular case because the number of the bedrooms, we did previously agree that we will be inspecting this one, this particular one on a regular basis.

COUNCILMEMBER VICTORINO: Thank you. Thank you, Mr., Captain Martin. Thank you, Mr. Chair. That clarifies that matter, thank you.

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

COUNCILMEMBER MEDEIROS: Yeah. Yeah, since the Captain is up here I wanted to ask--let me know if this doesn't fall under your purview, but being that you mentioned it's difficult to decide if this is a commercial or not. In, in the plans review by the Fire Department, is there requirements by the Fire Code for fire resistant materials? I'm not sure if that's covered under Public Works or because I know that used to be under the Fire Prevention Bureau there was a section of plan review officers that went through the plans to see if there were any concerns or any requirements. Do you know in the situation like this where a property has 12 bedrooms that your review of it would review for fire resistant, fire retardant materials in construction?

MR. MARTIN: Mr. Medeiros, are you talking specifically of a 12 bedroom situation that's not in this particular case or are you specifically talking about this --

COUNCILMEMBER MEDEIROS: Yeah.

MR. MARTIN: --house in Wailuku?

COUNCILMEMBER MEDEIROS: For this applicant there's a total of 12 bedrooms.

MR. MARTIN: You know, that, that's a very good question, Mr. Medeiros. Since the house has been around a long time, there's no reason that the applicant may submit a building permit. We have a lot of places out there that, a lot of homes that we're living in today that do not meet the Fire and Building Codes of today. That's, that's just how it is and they're called existing non-conforming and the Code doesn't require the jurisdictions to go back and, and make people widen their doorways or, or put--and that's just how it was, it was built to compliance at that time.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. MARTIN: But if someone were to come in today and build a brand new similar structure and depends on how it comes in, if it comes in as a single-family home that someone wants to put 12 bedrooms under one roof, the Fire Department is not going to even see that plan. We're not going to even see it. We don't review or inspect single-family dwellings. If it came in as a 12 bedroom and they wanted to operate it as a commercial establishment, then it would come through our office and we would look at it.

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COUNCILMEMBER MEDEIROS: So because your assessment of this is it's not a commercial building?

MR. MARTIN: From a fire fighting point, fire fighting standpoint, we don't look at it as a commercial, 'cause it's all under one roof, it's one house. I do realize that there's a lot of bedrooms in there and it is quite large. In that sense we don't look at it as a commercial, but from our standpoint for fire inspections we do look at it as a commercial building, like how I mentioned to Mr. Victorino that we already had prearranged with the Planning Department that for this particular situation, in this case we will be visiting it every two years because of the number of, of bedrooms. But as far as, you know, for fire fighting it doesn't change any tactics or strategy, I mean we're going to treat everyone the same, you know, on how we're going to approach if, if something were to happen at the facility.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Captain. And, Mr. Chairman, if I can ask the Department, the Planning Department a question?

CHAIR MOLINA: Okay. Hang on, Mr. Medeiros. Any other questions for Captain Martin? Okay. Proceed, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chair. Yes. How many kitchens are in this facilities?

MS. BOSCO: One kitchen --

COUNCILMEMBER MEDEIROS: Just one kitchen?

MS. BOSCO: --per, yep, that's right. Per structure.

COUNCILMEMBER MEDEIROS: Per building?

MS. BOSCO: There's, there's, yes.

COUNCILMEMBER MEDEIROS: And so are the kitchens considered commercial certified kitchens being that they prepare meals for their guests?

MS. BOSCO: The one in the primary dwelling is a commercial kitchen and it has a Food Establishment Permit.

COUNCILMEMBER MEDEIROS: Okay. Very interesting. I may have to ask the Department of Planning, I mean Department of Public Works because it's interesting how the Fire Department doesn't get involved because in my work with the Fire Department when I used to go on inspections, commercial kitchens require a lot of special requirements and inspection by the Fire Department. So maybe the Department, Public Works can answer my question. Thank you for your response. Mahalo, Mr. Chairman.

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CHAIR MOLINA: Okay. Thank, thank you, Mr. Medeiros. The Chair would like to ask a question of the Finance Director and then call for a short recess. Mr. Young, if you could make a, a trek back up here. You're free to stay up here as well, Mr. Young, if you don't like the constant walking back and forth. I'm giving you your evening workout, and my understanding is you take a lot of walks, right, and run, running in the park. Just one question in regards to your response to Chairman Hokama with regards to the, I guess, the proposed rate, property tax rate. What would you suggest to the Committee that we consider in terms of the, for example, the homeowners rate is \$2.00 per 1,000. What would you suggest in terms of Business/Commercial? I know Planner, Ms. Bosco had mentioned a Business/Commercial rate. What would you recommend or suggest to the Committee?

MR. YOUNG: Yes, Mr. Chair. Well, I recognize that it's, it's ultimately the decision of the Council. But I think in all fairness that the taxpayer has previously been very diligent in paying their real property taxes as a bed and breakfast, and bed and breakfast by ordinance is identified as the Improved Residential. For all intents and purposes this arrangement or the permit that they're coming before you, nothing really has changed in terms of the property. The owner still lives on property, they're still operating it effectively as, as they have previously. So I can see that equity wise I, I would, I would see it agreeable and I would think it would be agreeable to the taxpayer that the rate would stay the same, Improved Residential. And that, from understanding from what, what Ms. Bosco has said, that was the intent of that Condition 11 that it would essentially stay the same. So I can see that there would be some fairness and equity issue if it was maintained at the Improved Residential rate.

CHAIR MOLINA: Okay. Thank you, Mr. Director.

MS. FAIRBANKS (from the audience): Can I just say one thing?

CHAIR MOLINA: Hang on, sorry. Members, the Chair is going to call for a recess. We shall reconvene at ten minutes after 6:00. Meeting in recess. . . .(gavel). . .

RECESS: 6:00 p.m.

RECONVENE: 6:10 p.m.

CHAIR MOLINA: . . .(gavel). . . The Land Use Committee meeting for February 6, 2008 is now back in session. And, Members, thank you for sticking throughout the evening with the Chair. It is ten minutes after 6:00 and I know many of you, several of you had some commitments after 6:00 p.m. and unfortunately, or we do have one more item to address and it was put on the agenda at the last minute due to a time sensitive concern that was expressed to the Chair. And I will not be ashamed to say that I'm very dissatisfied that the Chair was informed about this time sensitivity relating to our next Land Use Item. But we'll get into that at a later point. Members, we are continuing the deliberations on Land Use Item 25. Questions for the Department of Planning or the Finance Department? Member Anderson?

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COUNCILMEMBER ANDERSON: Yeah. I'd just like to know if, if, Ms. Bosco, are you familiar with the, the TVR bill that the Administration has forwarded to the Council?

MS. BOSCO: Only superficially.

COUNCILMEMBER ANDERSON: I'm just wondering, if my memory serves me right, will time extensions be handled administratively in the future according to that bill? Do you know? Do you know?

MS. BOSCO: I'd have to defer to the Director for that. I'm sorry.

COUNCILMEMBER ANDERSON: Maybe --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --maybe Ms. Suyama knows.

CHAIR MOLINA: Director Suyama?

MS. SUYAMA: The, the way the TVR bill was written for transient, purely transient vacation rentals is that the position of the Department was that we would map them out where they're permitted. So if you're within the areas that are mapped out for transient vacation rentals, there would be no permitting requirement. In other words we had looked at it like those areas that were identified as resort destination areas like Wailea, Kaanapali, Kapalua would. . .and Makena Resort, because they were resort destination areas, it would be within the confines of the resorts and those would be outright permitted. And the other thing that our proposed bill was that the Conditional Permit would no longer be a method by which people can get transient vacation rentals. That is what is being, was proposed and that is what is being transmitted to the Council. There has been some amendments in terms of the Lanai Planning Commission because of their unique circumstances had asked that they be excluded from that portion of the transient vacation rental and to be allowed to still continue to do Conditional Permits. But those bills are being, I believe they have been transmitted to the Council. It hasn't been scheduled for the full Council yet and then it will be transmitted to the Planning Committee for further review.

COUNCILMEMBER ANDERSON: Okay. So, I mean I don't want to stray too far in discussion of the bill. I was just hoping that there was something in there that would allow for, like the B&Bs your, you administratively extend those and I was hoping that we could do the same thing in the future for an extension of TVR permits if there's no complaints and if they've, you know, been operating for a certain number of years. In this instance they've been operating for over ten years. So, but I mean we're switching from a B&B to a TVR. That was my one question and if that, if that's not in the works, then I think for consistency even though I would like to give these folks ten-year extension, I think for consistency purposes that we need to stick with the five years. And hopefully by then we have received this bill and we can take care of any extensions

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for people that have been in business for a certain number of years that it could be handled administratively in some manner. I mean that's up for discussion. But the other question I have because now we're going from a B&B to a TVR, that means that they don't have to live on the property. Right now they do live on the property and they got their B&B under that, you know, because they lived on the property.

MS. BOSCO: May I address that question?

COUNCILMEMBER ANDERSON: Yeah. Please.

MS. BOSCO: The proposal included on site, on site owner, the owner be on site, living on site. That was the original proposed project, proposed application. And that is required --

COUNCILMEMBER ANDERSON: Is that for the TVR or for the B&B?

MS. BOSCO: For this project they proposed they would be living on site.

COUNCILMEMBER ANDERSON: Okay.

MS. BOSCO: And there is a condition on the draft bill that requires that they hold to how they proposed their application. So we would still expect them to live on the property.

COUNCILMEMBER ANDERSON: Okay. Thank you, Ms. Bosco. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Ms. Anderson. Committee Members, any other questions before the Chair offers a recommendation?

COUNCILMEMBER VICTORINO: Recommendation?

COUNCILMEMBER MEDEIROS: Recommendation?

CHAIR MOLINA: Okay. The Chair will entertain a motion for a bill, an ordinance granting a Conditional Permit to Janice and Thomas N. Fairbanks to operate a ten-bedroom transient vacation rental at the Old Wailuku Inn at Ulupono for property situated at Wailuku, Maui, Hawaii. And this would include the filing of the communication.

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. Moved by Member Victorino, seconded by Member Pontanilla. Mr. Victorino, you have the floor.

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COUNCILMEMBER VICTORINO: No, I think enough has been said. These have proven to be good tenants. But I would like to give if, if the Chair would allow a few, a quick moment for the applicant because he had addressed and wanted to respond to a number of questions that were made. I don't know if this would be the time and place. If you say no, I will accept that. But he did want to really quickly address a number of questions that were brought up, and I'm sorry we didn't get to that point before this. So I don't know if that's all right with you, Chair. If you say no, that's fine.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Well, I believe Member Hokama has a consideration. I will entertain that and if there are no objections, we'll bring the applicant up to provide some clarification. Chairman Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I moved to amend the motion by revising Condition No. 11. Whereby on the fourth line of Condition 11, Members, that it would read, "The property will be subject to the Bed and Breakfast Property Tax Ordinance --

COUNCILMEMBER VICTORINO: Second.

COUNCILMEMBER HOKAMA: --for real property tax purposes."

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Second the motion.

CHAIR MOLINA: It's been amended by Member Hokama and seconded by Member Victorino. Mr. Chairman, you have the floor.

COUNCILMEMBER HOKAMA: Thank you. And by stating that we are going to remove or delete the words, "as a commercial business relative to real property taxes." In my, in my view of taxation and fairness, Mr. Chairman and Members, and in discussions with Mr. Young, our Finance Director, and Director Suyama from Planning we have in, in, as a consensus, if I can use the word, that in fairness it is not really a hotel. And it's not really a commercial business in the true sense of our definition under taxation and zoning. So I would be more than happy to allow the applicant to continue under the real property taxation that they currently were placed as a bed and breakfast, which is Improved Residential, you do not qualify for homeowners exemptions, and that it would continue to provide then a fair return in property taxes to the County as well as assess the property owner fairly for the actual use which is pretty much a super B&B in a sense. Since we never thought of this being expanded to the level it, that this operation is and that is why when you look at type three B&Bs, you know, we've only gone up to six rooms, as I understand the Code correctly.

Again, it's just something that I believe in the future, you know, Department of Finance and the Council will need to address so that we can apply this taxation policy in a fair and equitable basis to all that fall within this type of category. And it is again as we've discussed on other matters, it

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wasn't fair on a permit to just penalize and be punitive to a single operator, and that taxation hopefully can be applied to all within a specific use. Stating that, Members, I think it is fair. As I said before, the Fairbanks have always complied with all of the rules and regulations and laws and taxes. They've always paid their taxes according to the B&B ordinance and I believe that in the spirit of continuing to, to get our fair return and to allow them the approval of the Conditional Permit, that this is a reasonable consideration for amendment. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Any other discussions on the proposed amendment? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I too will be, I'll be supporting the amendment as our Council Chair has proposed. As you know in previous discussion in the Budget and Finance Committee we had a situation where an applicant for a TVR on the Upcountry area, you know, was sitting on a property that was homeowners and, and, you know, fortunately, well in her case she was blessed to, you know, continue on with her homeowners exemption. And I think this is fair what is being proposed, the Improved Residential rate until the Finance Director and his Department can come up with a taxation for this type of business. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Staff, do you need any additional clarification on the proposed amendment?

MS. NAKATA: Mr. Chair, just in terms of word flow then. . .because the prior line starts off with identifying the property, would it appropriate to say, "Identifying the property as a bed and breakfast for real property tax purposes?"

CHAIR MOLINA: Mr. Hokama, any objections to the inclusion of that proposal?

COUNCILMEMBER HOKAMA: Chairman, I defer to our Staff and legal counsel to take care of the specific language to implement the intent of this amendment. Thank you.

CHAIR MOLINA: Okay. Thank you. The Chair, if there is no objections, the Chair will go with Staff's recommendation to include that language into the proposed amendment.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GB).

CHAIR MOLINA: Okay. With that being said, Members, the Chair will call for the vote on the proposed amendment. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair will mark it 8-0.

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

NOES: **None.**

EXC.: **Councilmember Baisa.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Now I, before we address any other considerations, I will ask the applicant, Mr. Fairbanks, if you'd like to provide some clarification. And I would ask that due to our time constraints that you try and be as brief as possible, and this was at a request from Member Victorino. And after that we will, I will recognize the Members again for other considerations related to this permit application. Mr. Fairbanks.

MR. FAIRBANKS: Thank you very much, Council Members, for staying awake and staying here through this. We really appreciate it, you know, we've been through it a long time and we appreciate you taking the extra time to make sure it's all correct, and we're not upset at any questions or anything you have. On the Conditional, well, and everything here that you're, you're not, you know, you're concerned about, remember that we are a historic home and when we were, we're doing historic preservation so it's not like. . .*(change tape, start 5A)*. . .okay, we want to get rid of this thing in five years. I think we're trying to preserve this and so if you want to use historic preservation as a hurdle to get over any inconsistencies that you can't, that might be one option. And I'm just giving you that as an option. We have, we have had a Conditional Use basically for ten years and we've had a B&B use for ten years. So that's the reason why we asked and like I said that's, that's one hurdle you could use for future situations.

Accessible room, we have one, okay. So you don't have to worry about that. It's probably 95 percent accessible, there's, there's one thing maybe that's not exactly right but it's within the guidelines. We had a person that actually stayed with us who consulted doing accessible bathrooms and stuff and he, he gave us all the guidelines, I hadn't finished it yet so we changed the things around, the shower and stuff like that. So we got everything pretty much. . .*(inaudible)*. . .so it's accessible. As far as the fire concerns, I know Mr. Medeiros is concerned, he was with the Fire Department before. Before we even started construction I brought my friends Mr. Decosta(?) in, all the old guys, none of the new guys are. . .no, they're not there, they're all promoted or whatever. But they helped me plan and do things, that's why I was able to get things like Food Establishment Permits and stuff. So before we even started, the

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Fire Department actually came in. I advised the architect what their response was, we have had three permits on the property so we've had to comply on numerous occasions, building permits that is, with the building department to make sure of water flow, all these things have been in process.

We got, to get the Occupancy Permit we had to have further inspections. The Fire Department came out twice to our property in the summer. So we pretty much, you know, and then everybody else has inspected the same things as well, fire. . .(*inaudible*). . . Well I think, I think you can feel comfortable and then because we did a complete renovation of electrical, water, we took all the interior walls off, we've put everything back with drywall, it's all, you know, it's, it's fire as you can keeping and still keeping intact with the historic preservation of the property. And I think that's all I have and we just really appreciate everybody making the effort to make this thing work for us and I appreciate that very much from you all. And we, we enjoy doing the business and we want to continue doing it for a long time, so thank you very much.

CHAIR MOLINA: Thank you, Mr. Fairbanks.

MR. FAIRBANKS: Any questions?

CHAIR MOLINA: Okay. That's okay. We, I think you've answered many of our questions at this point. Okay. Members, the floor once again is open for other considerations. I believe there was a concern expressed about the duration of the permit. Are there considerations to amend the Condition No. 1? Okay. Seeing none, the Chair would like to offer an amendment to delete Condition No. 7 based on the recommendation of the Planning Department. Staff, can we do this as a friendly amendment or would it be more appropriate to do it as a formal amendment?

MS. NAKATA: It would probably be more appropriate as a formal motion.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Thank you, Mr. Victorino, for that motion. Seconded by Member Pontanilla. Any discussions on the proposed amendment to remove Condition No. 7? Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark that down as 8-0.

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

NOES: **None.**

EXC.: **Councilmember Baisa.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

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

CHAIR MOLINA: And the Chair would like you to consider another amendment to clarify that the bill should read Janice Fairbanks and Thomas N. Fairbanks III. I believe Ms. Bosco had mentioned that earlier. The Chair would like to ask for you to consider that as an amendment.

COUNCILMEMBER VICTORINO: So moved.

CHAIR MOLINA: Okay. Moved by Mr. Victorino, seconded by --

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: --by Mr. Hokama. Any discussion? All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark that 8-0.

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

NOES: None.

EXC.: Councilmember Baisa.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you for the opportunity. In reference to what you had just mentioned a bit ago regarding the term of the permit, I, I think just listening to the Department's comments earlier regarding the term that the Planning Department uses as a guide, I'm a little surprised it's a guide, you know, I really was under the impression it was part of County Code. Because all of the, all of the prior applications that we had received was really based on the Department's recommendation to us saying that this was the recommendation and we, I took it that it was because they had some standing in Code that required it. In, in, you know, what Ms. Anderson had indicated, it's important for us to be consistent and to be able to look at an arbitrary number because somebody looked at an application regardless of whose it is, we've got to be consistent. So the Department is going to have to be consistent in looking at how they're providing these guidelines. Because we as a body had been reminded of our need for consistency and this arbitrary number is not consistent with what we have been practicing in the last number of years and especially more so with the applications we've been reviewing on TVRs. So I'm a little disturbed about it because all of a sudden we're looking at new numbers, a new game plan. Thank you, Chair.

CHAIR MOLINA: Thank you very much, Mr. Mateo. Members, any other questions? The Chair offers his comments. The Chair would like to thank the applicant as well. I am somewhat, I have some reservations on the ten year at this point based on what we as a Committee have been doing recently with regards to other permits and applications. But if that is the will of the body, then so be it. The Chair would like to disclose to you and I want to thank Mr. Fairbanks for making the Chair aware of this, that I do have a family member that serves on the board of the Old Wailuku Inn. I do not have any financial interests with this application; however, if the majority of you

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feel uncomfortable with me voting on this matter, the Chair will step down and recuse myself from this matter. So I would like to get, get feedback from all of you on that. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. I'd like to know why they have a board?

CHAIR MOLINA: Well, that might be a question for Mr. Fairbanks to answer to. Mr. Fairbanks?

COUNCILMEMBER ANDERSON: What's the point of having a board?

MR. FAIRBANKS (from the audience): The board member is my daughter.

CHAIR MOLINA: Please come up to the mic.

MR. FAIRBANKS: The board member's my daughter, she's my step-daughter.

COUNCILMEMBER ANDERSON: But why do you have a board?

MR. FAIRBANKS: Because we are a limited liability corporation or whatever, an S corporation or whatever, I don't know. Whatever, we're incorporated.

COUNCILMEMBER ANDERSON: Oh, so you have a corporate board?

MR. FAIRBANKS: Yeah. My family members.

COUNCILMEMBER ANDERSON: Okay. Thank you.

MR. FAIRBANKS: Yeah. It's just, we're not a partnership, we're just a corporation.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: Okay. Members, so I have disclosed that to you. Are there any objections? Please state so now.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GB).

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah. I don't think we, I have any objections being that you don't have any financial relationship with this applicant. Thank you.

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CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Any other comments? Okay. If not, then the Chair will proceed with participating in the vote on this matter. Member Anderson?

COUNCILMEMBER ANDERSON: Chair, in the spirit of consistency, I would like to move to amend the term to five years.

COUNCILMEMBER MATEO: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson and seconded by Member Mateo to reduce the, that is Condition No. 1 from ten years to five years. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Yeah. Mr. Chair, I wish I could support a ten-year extension, but in consideration of previous advice and also the fact that the Department has been, has been following this policy of five-year extensions, I think in the spirit of being consistent that that's what we should do.

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

COUNCILMEMBER JOHNSON: Yes. Because this is a very unique situation and also because of the fact it's a historic property, I think that we've taken the applications based on their own merit and the long standing, I guess, participation in the community, support, you know, all of the, I guess, the, the area people that have utilized this particular bed and breakfast. And because they've been in the process a long while, I know how much money and how much time that it takes to get through this. This is a very unique property and I believe that they are worthy of giving this consideration for ten years. It's not like a standard TVR or a B&B or all the other things that we have been looking at. These people have been at this for a long while and they restored a historic property that could of otherwise easily been raised and some other kind of structure been put up, which is happening all over Wailuku. So I believe it's important that what we do is support those individuals that are trying to preserve the very best that Maui has to offer. And so I believe that it is unique and it deserves the ten-year consideration. So I will not be supporting five years. Thank you.

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

COUNCILMEMBER HOKAMA: Chairman, thank you very much. With all respect to my colleagues from South Maui and Molokai, I can appreciate the, their comments and this motion at this time, Mr. Chairman. However, I think I'm the only Member here that has voted on two previous Conditional Permit approvals of this applicant regarding the same subject property, although for a smaller amount of room, total amount of room that was under consideration. They have always applied for, went through the process and received approval in the operations of the Old Wailuku Inn, Mr. Chairman. And as can be verified by the record, you know, they have had Conditional Permits that have covered a ten-year period. I can appreciate the concern of my colleagues, but this is not a first-time Conditional Permit regarding the subject property. They have always

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complied and fulfilled all the terms of conditions of previous approvals, they have applied and received the approval of a bed and breakfast operation prior to the Conditional Use processing and approvals.

And, therefore, in my point of view, Mr. Chairman, the record can be shown and be verified that the applicant does deserve by this Committee consideration of the ten-year term. I take Mr. Mateo's comments seriously and I would hope that the Department of Planning would either consider an ordinance proposal or through the use of the Hawaii Administrative Procedures Act consider promulgating applicable rules, apply it to the Department regarding these matters so that it is in black and white and can be administered fairly to all those that fall into specific categories. Stating that, I will still ask the Committee to, not support this amendment at this time and to allow the original proposal for the motion as amended to go forward. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Any other discussion as it relates to the proposed amendment on the floor which is to reduce the duration from ten years to five years?

COUNCILMEMBER MATEO: Mr. Chair?

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. I think part of, part of the...my problem in taking a look at the duration is, you know, it's not about as I mentioned who the operator, you know, who they are or where the location is, it's about the fact of us being consistent as a body and, and that is the bottom line. Because I think, personally, I have never gotten more praise and more compliments and more information about this operator than I have ever gotten on anybody else's. But it's not about that, it's about us, you know, being able to look and, and implement law and implement the Department's recommendations to us based on law and not an arbitrary change. And I think, I think as we have made changes to other operators, I think, I think it's fair, I think it's fair that we look at it across the board, and once we start making exceptions, Mr. Chair, there was no need for a law. Thank you.

CHAIR MOLINA: Thank you, Member Mateo. Any other discussion as it relates to the amendment? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I'm sure it's a difficult decision on, on this amendment for all the Members here, and, and which has been stated eloquently by both Council Chair Hokama and Member Mateo. I think we need to realize that this isn't about the applicant because we all can see what a responsible applicant this has been throughout their history of their facilities and they have complied with everything as mentioned. But, you know, for me I have to agree with Member Mateo that we need to be consistent, we've been advised about being consistent and I, I think if we don't be consistent, this may come back to us and, and we may have to deal with this again. So for me I'll be supporting the amendment to reduce it to five years as we have on other applications. Mahalo, Mr. Chairman.

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

COUNCILMEMBER VICTORINO: Thank you. And I can appreciate all my colleagues and, and, and this word consistency and I've always. . .(*inaudible*). . .and I wanted to have consistency in everything we do. However, I've always believed each issue and each circumstance has its unique value and this is one of those with the historic perspective, the applicants continued support, following through, doing all what is right as far as fire, renovation, et cetera, et cetera and including paying their taxes in an appropriate level and not hiding under the guise of homeowners or other which, for which maybe they could of and could of slipped by, but no these guys have been up forth, outstanding community members, bringing an ambience and bringing something to Wailuku Town which is vastly needed. And I think we all agree with that because there ain't much accommodations in Central Maui, let alone in Wailuku Town.

And so I would hope that, you know, all the effort they put forward and all the work they've put that these, that, you know, my, our Members here, the word consistency only seems to play when I think people think that should be consistent. First of all, the Department only has policies, not even a law, an ordinance. Okay. If you want to get consistent, let's put the ordinance and put it into law and then, and then we'll apply it, that that it's a policy, not something that somebody decided one year, three year, five years, you know, and it's not part of the ordinance. You know, we need to make changes, fine. But when we penalize these good citizens who have worked very hard to preserve a historic building, to pay their taxes on and, and all the other things about our community, I feel very slated.

And, and, and it is my town, you know, and once in a while I gotta say Wailuku is my town and I see somebody done a good job in Wailuku, the, the neighbors all appreciate them, you know. I just get very disturbed sometimes at these things, but I will let the body decide, I will let the body, I will vote against the motion. I would hope that they would consider that because ten years, five years it really comes quickly and these people have worked hard, spent a lot of money and effort doing everything right from fire on down, and, you know, a legal kitchen. I mean, you know, what else can you ask of somebody? You know, what else can you ask? And so I would really believe these circumstances and all the evidence and everything that has been put in front of us really tells me these people have done their due diligence and really deserve ten. And I hope my Members here can see fit to go with ten years and give these people an opportunity to continue providing a service so vastly needed here in Wailuku Town and in the County of Maui. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Any other discussion as it relates to the proposed amendment? If not, the Chair will call for the vote on the amendment to reduce the duration from ten years to five years. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: The Chair votes "aye". All those against?

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COUNCIL MEMBERS: No.

CHAIR MOLINA: Okay. Let's see for the record. Roll call on the amendment.

MS. NAKATA: Councilmember Mateo.

COUNCILMEMBER MATEO: Aye.

MS. NAKATA: Councilmember Anderson.

COUNCILMEMBER ANDERSON: Aye.

MS. NAKATA: Councilmember Johnson.

COUNCILMEMBER JOHNSON: No.

MS. NAKATA: Councilmember Medeiros.

COUNCILMEMBER MEDEIROS: Aye.

MS. NAKATA: Councilmember Hokama.

COUNCILMEMBER HOKAMA: No.

MS. NAKATA: Councilmember Pontanilla.

VICE-CHAIR PONTANILLA: No.

MS. NAKATA: Councilmember Victorino.

COUNCILMEMBER VICTORINO: No.

MS. NAKATA: Committee Chair Molina.

CHAIR MOLINA: Aye. What is the count, Committee Secretary?

MS. FRIAS: It's four to four, four "ayes" and four "noes".

CHAIR MOLINA: We have a 4-4 deadlock so the amendment does not pass so. . .

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CHAIR MOLINA: Okay. Thank you, Mr. Chairman. Staff, any other considerations?

MS. NAKATA: Mr. Chair, that would include the designation of the year of the bill?

CHAIR MOLINA: That is correct, from 2002 [*sic*] to 2008. Okay. If there are no other considerations, the Chair will call for the vote on the bill as amended. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? The Chair will mark it 8-0, one excusal, Member Baisa.

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

NOES: None.

EXC.: Councilmember Baisa.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

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

CHAIR MOLINA: Congratulations. This matter will move on to the Council for first reading. Members, the Chair will call for a five minute recess. Meeting in recess. . . .(*gavel*). . .

RECESS: 6:43 p.m.

RECONVENE: 6:47 p.m.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for February 6, 2008 is now back in session. It is 6:47. Thank you very much, Members, for this extended day. We have one last item to address and my understanding is we will be losing quorum just after 7:00 p.m.. So, Members, let's rock and roll and get going on this.

ITEM NO. 10: USE VARIANCE FOR PACIFIC BIODIESEL (KAHULUI) (C.C. No. 07-114)

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CHAIR MOLINA: We have Land Use Item 10 which is a use variance for Pacific Biodiesel in Kahului. The Committee's in receipt of County Communication No. 07-114, from the Planning Director, transmitting the Board of Variances and Appeals' approval of a request from the Department of Public Works and Environmental Management for a use variance to allow Pacific Biodiesel to process waste cooking oil into biodiesel within the Interim District at the Central Maui Landfill, Phase III, located off Pulehu Road, Kahului. And the Committee is also in receipt of a correspondence from the Corp. Counsel's office transmitting a resolution, well two resolutions to make it short, one which is approving the action of the Board of Variances and Appeals granting a variance to allow Pacific Biodiesel Inc. to process waste cooking oil into biodiesel on property zoned Interim at Kahului, Maui, Hawaii. And the other resolution is to disapprove the action of the Board of Variances and Appeals as it relates to this particular matter.

So before I turn matters over to the Department, the Chair would just like to make a brief comment. We are here tonight to address this item because it was brought to the Chair's attention late last month that apparently it's a time sensitive issue. And for the record, this particular item was transmitted to this Land Use Committee back in April of '07. If the Land Use Chair had been properly informed that there was a time sensitive matter, needless to say, Members, you know as well as I, all of us when we have time sensitive matters we address it as soon as possible. And I for one do not like to be told at the last minute to put an item on this Land Use agenda, which I had all my agenda's planned out, by the way, up until Budget, Members. And it puts this Committee in a difficult position to make a decision without full, thorough review of the item.

So I just want to express my disappointment with the, somebody dropped the ball and didn't inform this particular Committee. And I'm not going to single out any particular departments, but I guess a general message to all departments that please, if you have any considerations for this Committee, you had better let this Committee know if it is time sensitive upon the time of transmittal to the Committee. Otherwise, the Chair will reserve the right to not expedite any particular matters requested by departments. And I think the private entities involved as well, I think, could have also let it be known to the Committee that there was, this is a time sensitive matter. So I'm not going to expound any further on that and being that we are under some time constraints here, let us go ahead and proceed. The Chair will recognize Department Director Ms. Okuma to give us a brief overview on this matter.

MS. OKUMA: Yes. Thank you, Committee Chair and Members. And I'm sorry about the circumstances and appreciate that this matter is on the agenda. But briefly, we are here to request this use variance as a . . . due to the fact that, that we have Pacific Biodiesel's activities on this particular property. I just want to mention that Pacific Biodiesel representative Larry Zolezzi is in the audience if there are any particular questions. But Pacific Biodiesel is on subcontract with Maui EKO Systems, the composting company, and it's Maui EKO that's on contract with the County of Maui. But this use variance is important in order that the solid waste permit application to Department of Health can be completed. So we would respectfully request your favorable decision on this use variance request.

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CHAIR MOLINA: Okay. Thank you, Director Okuma. And before I open the floor up for questions, Deputy Director Suyama, can you also introduce your Planner to the Committee who's in attendance?

MS. SUYAMA: Okay. Our Planner is Trish Kapuaala, she's with the Zoning and Enforcement, Administrative Enforcement Division and I believe this may be the first time she's been before the Council for a variance, use variance application.

CHAIR MOLINA: Okay. Thank you. Planning Department, do you have any additional comments to add in to what was stated earlier by the Environmental Management Director?

MS. KAPUAALA: None.

CHAIR MOLINA: Okay. Thank you. All right, Members, the floor is open for questions. Member Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. And I, we are all well aware of the time, so we appreciate your direction regarding the, the, this matter. Just quickly so that we are very clear, the actual use of County property for, for the programs--and again I, I do not dismiss what benefits we get from Pacific Biodiesel--but on the use of our land, is there a lease agreement or license agreement with the provider? Service provider?

CHAIR MOLINA: Department?

COUNCILMEMBER HOKAMA: And if there are, do we assess them any lease or any rental or have we waived any, any considerations due the County?

MS. OKUMA: We are, the County of Maui has a contract with Maui Composting and it's Maui Composting which has a subcontract and so they have the direct contractual relationship with Pacific Biodiesel. County of Maui is not in a direct contractual relationship with Pacific Biodiesel. Our, our only contract is with Maui EKO and therefore we do, we do pay something to Maui EKO for their services. And it's Maui EKO that has the contract with Pacific Biodiesel.

COUNCILMEMBER HOKAMA: Okay.

MS. OKUMA: So it's not, yes.

COUNCILMEMBER HOKAMA: Okay. So I understand that legal thing. And I think in the future we just need to eliminate this subcontract relationship and have direct contracts with those that utilize County assets. I do not like this type of relationship. So does EKO pay the County? What is the, the authorization to be on the property, is it a license agreement again? Is it a lease agreement? A rental agreement? What is the legal agreement of, to allow them use of our property and what is, if any, the remuneration or financial understanding between the County of Maui and then the main contractor?

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MS. OKUMA: As, as I understand and I think Larry may be able to confirm this, but it, there is a licensing, it's a licensing agreement with Alexander and Baldwin in that area. Is that right, Larry?

MR. ZOLEZZI (from the audience): I don't know, to be honest with you.

CHAIR MOLINA: Hang on.

MS. OKUMA: So...

CHAIR MOLINA: Ms., hang on, Madam Director. Sir, if you'd like to come up and respond, you can state it for the record. If you could please state your name and the organization you represent.

MR. ZOLEZZI: Hi. My name is Larry Zolezzi and I'm with Pacific Biodiesel. And I don't actually know the answer to the question. Maui EKO System bids on processing waste for the County.

CHAIR MOLINA: Okay. Thank you, Mr. Zolezzi. Continue, Madam Director.

MS. OKUMA: Maybe I can just refer to, we did transmit a letter from Department of Health to the County of Maui dated January 11th and it indicates that what was submitted to the Department of Health was a license agreement between Alexander and Baldwin and County of Maui as a licensee for allowing the use of a particular parcel at the landfill, but not limited to the green waste receiving and grinding operation. So it appears at least from the record that we did submit some sort of licensing agreement which would also accommodate for the composting activity there at the landfill site.

COUNCILMEMBER HOKAMA: Okay. Because you're asking us to approve the, a Board of Variance action that will grant the variance to the subcontractor, although they, their agreement is to a contractor and not the County of Maui. And, and again, yeah, you know...

MS. OKUMA: I think, I think maybe Planning can address that. I think it was the County that submitted the application for the use variance.

COUNCILMEMBER HOKAMA: Okay. Planning Department?

MS. KAPUAALA: Yes, that's correct. The applicant was at the time Director Milton Arakawa, when he had jurisdiction over Environmental Management, on behalf of Pacific Biodiesel.

COUNCILMEMBER HOKAMA: And, and thank you for that. And I know, and we have your name and I'm sorry, I cannot, Kapuaala.

MS. KAPUAALA: Kapuaala. Yes. Thank you.

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COUNCILMEMBER HOKAMA: Thank you. It's important we pronounce your name properly, I understand. But, Mr. Chairman, what you have listed on the agenda is approving a variance to the subcontractor Pacific Biodiesel. It doesn't say County of Maui Environmental Management nor does it say EKO. We are approving a variance to a subcontractor and I just want to be very clear and my disappointment in not having them look at the, the whole financial picture. Because, one, whether it be for EKO, through EKO we already give them County money to do certain things for us which also then pays in, in return monies to Pacific Biodiesel to do certain things. And we've heard of their financial success because of the way the economy is with oil prices and what not, that now biodiesel is a very economic and highly sought after fuel alternative. Okay. But we've zeroed our fuel tax on biodiesel.

Okay. We, are, are we giving them free use of land, County land? 'Cause eventually it comes a point where we need a return as well as not create unfair competition levels whereby one entity is getting all of this government support. And that's my issue on that level. I'll quickly end. I do not agree in variance in perpetuity, not regarding this. A variance should go with the actual use and when the use ends the variance ends, or they can come in for zoning and ask for the appropriate zoning. But at this time unless we are able to amend the approving resolution to put in a clock that it goes with the permit or till the actual use ends, I will not support an in perpetuity request of a variance which goes to me against why we create proper land use categories of permitted uses. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Committee Members, any other questions for. . .*(change tape, start 5B)*. . . Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. And I wanted to ask pretty much the same questions as Council Chair Hokama. And maybe the Director of Environmental Management can respond to my question. And it, it may have been answered in some way, but the landfill land is owned by the County or do we lease it from A&B?

MS. OKUMA: There's, in terms of where this facility sits?

COUNCILMEMBER MEDEIROS: Okay. Let me be more specific then.

MS. OKUMA: Or you're talking...

COUNCILMEMBER MEDEIROS: So where Maui EKO and Pacific Biodiesel are, who owns that land?

MS. OKUMA: I believe that's still A&B property, so I refer to a letter from the Department of Health dated January 11, 2008 whereby there had been a submittal at some point along the way, I don't know when, of a licensing agreement between Alexander and Baldwin and the County which would also accommodate for the use, which would allow the activities of EKO, Maui EKO.

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COUNCILMEMBER MEDEIROS: Okay. And do you know if that agreement allows Maui EKO to sublease it to other subcontractors?

MS. OKUMA: I, you know, I haven't seen that agreement so I, I can't tell you that. But I think that would be, I mean I'm assuming that it does.

COUNCILMEMBER MEDEIROS: So what is your understanding of the jurisdiction of that property that the County has? It's just from that agreement that you mentioned?

MS. OKUMA: Yes. The licensing agreement.

COUNCILMEMBER MEDEIROS: So who in the County then has jurisdiction over that agreement and property as far as the department, agency?

MS. OKUMA: It's, it's this Department, Environmental Management.

COUNCILMEMBER MEDEIROS: Environmental Management?

MS. OKUMA: And now it would be, before it was Public Works.

COUNCILMEMBER MEDEIROS: Right. When it was executed and negotiated it was under Public Works?

MS. OKUMA: Well, you know, since I haven't seen that license agreement I would, I would have to go back and, and check that. And I might be making some assumptions which aren't true 'cause I, I don't know when that was entered into. I'm, I'm not sure who actually signed off on that from the County. So I can't say anything more about it then I've just said unless I have a chance to go back and actually look, try to get that agreement.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that. Mr. Chairman, if we can get, you know, answers on that, I think that'll be helpful in making a decision. And being that we don't have a representative from Corp. Counsel here, there's no way we can ask about that. And I, I, I tend to agree with Council Chair Hokama basically on, you know, the proposal here for the variance is clouded by us not knowing what the relationship is. And so as it stands and as I know the information to be, you know, I, I wouldn't support this at this time without further clarification. Mahalo, Mr. Chair.

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. You know, the County doesn't own this property, it's owned by A&B and it's being leased by, by an entity that is processing our, that's actually doing the work that the County's responsible for doing and that is collecting grease from, from, what do you call, grease traps. I mean here we have a system in place that's working folks. Not only does EKO System collect the, the grease, what is it, FOG--

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CHAIR MOLINA: Fats, oils and grease.

COUNCILMEMBER ANDERSON: --fats, oils and grease--thank you, Chair--and which keeps it out of our sewage treatment facilities and such. But then they also further process it through Pacific Biodiesel into a energy producing, ecologically safe fuel. So I don't know what the problem is, they've been doing it for four years. And the County's got agreements with EKO Systems, EKO Systems has a lease agreement with A&B. I don't know why, what more do we need to know?

CHAIR MOLINA: Director?

MS. OKUMA: Can I just, something for the record. I've been just shown that there's some findings of fact which actually indicate that the property is currently owned by the County of Maui. And that the, that one of the applications indicates that County of Maui is now, now the owner. So I'm referring to finding of facts which were dated, I guess it's September 28, 2006.

COUNCILMEMBER ANDERSON: Could you give us the page and item number?

MS. OKUMA: Okay. It's finding of facts before the Board of Variance and Appeals on docket number BVAV20060002, page 6, Item C on that page 6. And apparently when the Department at some way along the way submitted a Conditional Use Permit, on that application it was indicated as owned by County of Maui. So I just wanted to state that for the record, based on the Planning files.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: And it looks like on, on approximately 55 acres of land as approved by the State Land Use Commission on July 21, 1986. So where did the A&B lease come in? Is that just a confusing...

MS. OKUMA: Yeah. I, I don't know. That, I only referred to that because that's the most recent information that Department of Health had in the letter they sent us on January 11, 2008.

COUNCILMEMBER ANDERSON: Well, then the Department of Health is misinformed then. 'Cause it's saying...copy of the licensing agreement between A&B and County licensee was signed allowing use of parcel for landfill purposes. . . .So we have some conflicting information as to who is actually the property owner and if, you know, the reason I have a problem, Mr. Chair, is because this was a request forwarded by our own Director, Department of Public Works to allow a subcontractor to the County of Maui to process waste cooking oil into biodiesel for retail sales, and that they needed a variance because the zoning on the property didn't allow that. I think the zoning on the property allows much of anything since it's Interim. But it's already gone through the Board of Variances and Appeals at the request of the County. Decision and order, I might add, includes findings of fact and conclusions of law which I'd like to see more often. So I

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would like to see us approve this and why should we put a chink in what's already operating and operating smoothly?

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: It's, it's not our, I mean it's, it's the Board of Variance and Appeals that already ferreted out the facts, and just because we have a letter here from the Department of Health doesn't mean that they're right either. I believe that the Board of Variances and Appeals has an attorney on staff and when they come up with findings of facts and conclusions of law, I think we can pretty much feel confident that the decision and order is correct.

CHAIR MOLINA: Thank you, Member Anderson. Director Suyama?

MS. SUYAMA: Could I clarify something? I've been going through the information that was transmitted to the Council and as part of the findings of facts that was done by the Board of, for the Board of Variances and Appeals there is a copy of the application form that was filled out by Milton Arakawa. And Milton Arakawa, on the application it does talk about, state that if you are not the property owner, who is the owner and where is that interest from. And because that portion was not filled out in the application, I'm assuming that Mr. Arakawa knew that the landfill property was under the County of Maui.

CHAIR MOLINA: Thank you, Director. Members, the Chair is aware of the time and I know you have to leave. The Chair would like to offer a suggestion to the Committee. I didn't anticipate some of the concerns that have been brought up here and I, I for one do not like to put the Committee in a position where they have to make a decision if there's some concerns that need to be addressed. I believe Director Okuma has already written to the State to ask for a consideration because of the, you know, even if we were to move this out of Committee it still has to go to the Council for, is it two readings? Am I correct? And we don't even have a Corporation Counsel here with us tonight. So there may be some legal questions that may be brought up. I would like to ask the Director to work with Staff and if we can ask for more leniency from the State.

I don't believe it would be appropriate at this time with some of the concerns brought up to take action on this particular matter. I would like to let you know that I will bring this matter soon, hopefully before the Budget, we enter the Budget Session. I, too, have some questions, legal questions that I would like addressed. But we don't even have a Corporation Counsel here and being that we were told that given this sense of urgency at a late date, this is again why I mentioned earlier to all of you, you know, when you have submittals like this and the Chair is not informed of deadlines it makes it really difficult. And I don't want to put you all in a difficult position to make a decision here tonight if there are some uncertainties going on with some of you. And I don't know what the, the rest of you, your level of comfort is with this.

The Chair is on the fence with this and I will ask, instruct the, ask the Department to go ahead and contact the State Department of Health to ask for leniency if you will. Because the letter that Director Okuma is talking about, the January 11th letter, it's been brought to my understanding

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that it is the strongest letter sent to the State, sent by the State to the County. And if you look at the second page, it mentions in the next to last paragraph that if you are unable to complete your application including the required land use approvals to utilize this property by February 7, 2008, we intend to begin formal enforcement action. Now what that enforcement action is, possibly I would believe that would be to shut down the, the diesel production or shall I say the oil production, waste production, whatever you want to call it, and it could cause some serious consequences or cause a ripple effect throughout the community. But I would like the Department and working with the Committee Staff to ask for some additional leniency from the State, so I don't want to be paying anymore fines, we already have paid some fines to the Department of Health for other issues. So the Chair will offer that recommendation and suggest a deferral. If there's other considerations, the Chair is open to hearing from you. Members, any objections to the...

COUNCIL MEMBERS: No objections.

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

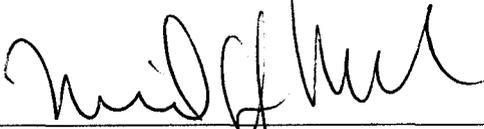
CHAIR MOLINA: Okay. So be it, Members. The Chair will recommend deferral and we will bring this matter back hopefully sometime before we enter into the Budget Session. So with that being said, Land Use Item 10 is deferred.

ACTION: DEFER pending further discussion.

CHAIR MOLINA: It is 12 minutes after the hour of 7:00 p.m., the Chair thanks all of you for this extended day and evening to address these Land Use matters. This meeting for February 6, 2008 is now adjourned. . . .(gavel). . .

ADJOURN: 7:12 p.m.

APPROVED:

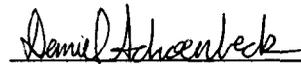


MICHAEL J. MOLINA, Chair
Land Use Committee

CERTIFICATE

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

DATED this 28th day of February 2008, in Wailuku, Hawaii

A handwritten signature in cursive script that reads "Daniel Schoenbeck". The signature is written in black ink and is positioned above a horizontal line.

Daniel Schoenbeck