

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 5, 2007

**Committee**  
**Report No.**

07-105

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on February 28, 2007 and August 15, 2007, makes reference to County Communication No. 04-248, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (1986) (CONDITIONAL ZONING) TO DELETE CONDITIONS 1, 2, 3, 5 AND 8 AND REVISE PERMITTED USES OF THE B-2 BUSINESS ZONED PARCEL FOR PROPERTY SITUATED AT 232 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII, AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII". The purpose of the proposed bill is to grant a request by Lahaina Gateway, LLC to delete certain conditions placed on the prior zoning change and to expand the uses permitted at 232 and 242 Lahainaluna Road (TMK: (2) 4-6-10:011, or Parcel 11; and (2) 4-6-10:012, or Parcel 12), consisting of approximately 9,303 square feet and 8,409 square feet, respectively.

Your Committee notes that the proposed bill also purports to amend an earlier unilateral agreement; however, the unilateral agreement is not attached to the copy of Ordinance No. 1585 transmitted with the County Communication.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on June 8, 2004.

Your Committee further notes that at its meeting of June 8, 2004, the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 8, 2004 MEETING" and the conclusions presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JUNE 8, 2004 MEETING", voted to recommend approval of the Conditional Zoning.

Your Committee further notes that the Council (2003-2005 Council term) referred County Communication No. 04-248 to its Planning and Land Use Committee at the Council meeting of October 5, 2004.

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At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 04-248 to its Land Use Committee (County Communication No. 05-13).

At its meeting of February 23, 2005, the Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Captain, Department of Police; a Deputy Corporation Counsel; Ferdinand Cajigal, District Engineer, Maui District, Highways Division, State Department of Transportation (State DOT); David Shimokawa, Planner, Statewide Transportation Planning Office, State DOT; James Michael Whitehead, the new owner of Parcel 11; Wendy Pogni, a new owner of Parcel 12, and her husband, Hayden Pogni; and Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.

Ms. Ohashi Hiraga distributed a map reflecting the location of the subject parcels; a chart comparing existing conditions, status of compliance with those conditions, and proposed revised conditions; and a list of proposed permitted uses for the parcels. She also distributed photographs of the subject properties and the structures on each lot.

Ms. Ohashi Hiraga displayed a poster board of the site and summarized the status of the parcels. She noted that the application involves amendments to zoning conditions for two parcels initially granted conditional zoning in 1986. She further noted that Parcel 11 was recently sold, and that the existing structure on the parcel is being remodeled and is intended for use as a furniture store. Parcel 12 was also recently sold, and the existing structure on Parcel 12 is being remodeled and is intended for use as a spa salon. The initial conditions on the parcels limited the use of the property to furniture sales and office and storage space only.

The Planner provided an overview of the application and the proceedings before the Maui Planning Commission. She noted that the application seeks to expand allowable commercial uses on the parcels. She also explained that the properties are within the Special Management Area (SMA) and the National Historic Landmark District. Therefore, if new buildings are proposed, the owners would be subject to Chapter 343, Hawaii Revised Statutes (HRS), and the SMA permit process.

Based on title documents subsequently provided by Ms. Ohashi Hiraga, your Committee notes the following with respect to the status of ownership of the parcels:

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1. Parcel 11 was conveyed by Lahaina Gateway, LLC to Barry Brown by Warranty Deed dated January 8, 2004 and recorded with the Bureau of Conveyances as Document No. 2004-007645.
2. Parcel 11 was subsequently conveyed by Barry Brown to James Michael Whitehead and Siuafu Whitehead (the Whiteheads) by Warranty Deed dated January 14, 2005 and recorded with the Bureau of Conveyances on January 19, 2005.
3. Parcel 12 was conveyed by Lahaina Gateway, LLC to Wendy L. Pogni, John T. Carr, and Barbara A. Carr (Pogni/Carr) by Warranty Deed dated January 27, 2004 and recorded with the Bureau of Conveyances on February 13, 2004.

The Committee received public testimony from two individuals in support of the proposed Conditional Zoning. The first testifier, Hayden Pogni, is married to one of the new owners of record of Parcel 12, Wendy Pogni. He testified that the property was never used as a furniture store and was left to deteriorate. He and his wife would like to open up a boutique salon spa on the property. All renovations have been geared toward restoring the house to its original historical plantation appeal.

The other testifier in support of the application, James Michael Whitehead, stated that he and his wife are the new owners of Parcel 11. Although they intend to work within the existing permitted use of the property as a furniture store, they support the proposed expansion of uses.

The third testifier, Michelle Welch, is the owner of residential property adjacent to TMK: (2) 4-6-10:010, or Parcel 10, which is the subject of a separate application being heard concurrently with the subject application. Parcel 10 is benefited by an easement across Ms. Welch's property. Ms. Welch testified that she would like to ensure that the wall recommended by the Maui Planning Commission at the rear and makai sides of Parcel 11 and at the rear of Parcel 12 remains in the Change in Zoning conditions.

The Captain recommended that the right-turn restrictions be maintained. He also recommended installing channelizing devices to prevent congestion. He further recommended that large trucks be barred from making deliveries early in the morning or late at night to minimize disturbances to nearby residents.

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The Planner indicated that physical barriers to prevent violations of the right-turn restriction had not been discussed.

Ms. Ohashi Hiraga informed the Committee that Parcels 10 and 12 share a common driveway, and Parcel 11 and a neighboring residential parcel also share a driveway. Channelization would create a problem for these shared driveways.

The Committee further discussed issues relating to sound barriers, wall height, hours of operation and deliveries, and building height.

The Committee recommended that the proposed bill be revised to increase the maximum building height in proposed Condition No. 2 from 30 feet to 35 feet, thereby making it consistent with the West Maui Community Plan. The Committee further recommended that technical and nonsubstantive revisions be incorporated into the proposed bill.

The Committee voted to recommend passage of the revised proposed bill, recordation of the unilateral agreements, and filing of the communication.

By correspondence dated March 1, 2005, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitted certain title documents for the subject properties.

By correspondence dated March 11, 2005, the Chair of the Committee transmitted the following: (1) a copy of Ordinance No. 1585 (1986), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII", which contains as an attachment a "Unilateral Agreement and Declaration for Conditional Use" dated May 29, 1986, and recorded with the Bureau of Conveyances on September 11, 1986 (1986 Unilateral Agreement); and (2) a copy of correspondence dated March 7, 2005, from Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitting title documents for the subject properties.

By correspondence dated March 16, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel revise the proposed bill to incorporate the Committee's requested revisions in addition to technical revisions.

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By correspondence dated March 17, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated March 24, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel further revise the proposed bill to accommodate the fact that two unilateral agreements would be executed, one for each of the properties at issue.

By correspondence dated March 29, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", referencing the two anticipated unilateral agreements.

By correspondence dated April 21, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel review a draft "Amendment to Unilateral Agreement and Declaration for Conditional Use" prepared by the owners of Parcel 12, and revise the proposed bill, if appropriate, to accommodate the title of the document.

By correspondence dated April 26, 2005, the Department of the Corporation Counsel transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII". The revised proposed bill clarifies that the new unilateral agreements replace the 1986 Unilateral Agreement.

By correspondence dated May 5, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel review a revised draft "Amendment to Unilateral Agreement and Declaration for Conditional Use" prepared by the owners of Parcel 12. The Chair also requested that the Department review the newly inserted language in the revised proposed bill for clarity.

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By correspondence dated May 26, 2005, the Department of the Corporation Counsel transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII". The revised proposed bill clarifies the wording of the earlier version, and notes that the new unilateral agreements shall supersede the 1986 Unilateral Agreement.

By correspondence dated March 21, 2006, the Chair of the Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., confirm the ownership and mailing address information provided for each parcel. The Chair further requested letters of authorization reflecting that the new owners of each parcel are authorizing the application initiated by Lahaina Gateway, LLC to be pursued.

By correspondence dated March 21, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel further revise the proposed bill to include reference to the applicable Land Zoning Map and to incorporate technical revisions.

By correspondence dated March 29, 2006, the Department of the Corporation Counsel transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated April 28, 2006, the Whiteheads transmitted a copy of the January 14, 2005 Warranty Deed for Parcel 11, and provided a letter of authorization dated April 28, 2006 (notarized May 5, 2006) to proceed with the requested Change in Zoning.

By correspondence dated April 28, 2006, Pogni/Carr transmitted a copy of the January 27, 2004 Warranty Deed for Parcel 12, and provided a letter of authorization dated April 28, 2006 (notarized June 7, 2006, June 9, 2006, and June 9, 2005 [sic], respectively) to proceed with the requested Change in Zoning.

By correspondence dated November 17, 2006, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitted a Unilateral Agreement and Declaration for Conditional Zoning for Parcel 11, dated November 14, 2006, from the Whiteheads.

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By correspondence dated November 20, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel review the Unilateral Agreement and Declaration for Conditional Zoning from the Whiteheads for form and legality, and also transmitted a copy of the Whiteheads' letter of authorization and Warranty Deed. The Chair noted that the property description attached to the Warranty Deed appeared to have been updated and was not the same as the property description attached to the revised proposed bill.

The Committee received a Unilateral Agreement and Declaration for Conditional Zoning dated November 24, 2006, from Pogni/Carr, submitted by Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., on November 29, 2006.

By correspondence dated November 30, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel review the Unilateral Agreement and Declaration for Conditional Zoning from Pogni/Carr for form and legality, and also transmitted a copy of Pogni/Carr's letter of authorization and Warranty Deed. The Chair noted that the property description attached to the Warranty Deed appeared to have been updated and was not the same as the property description attached to the revised proposed bill, and requested that the bill be further revised accordingly.

By correspondence dated December 8, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated December 26, 2006, the Chair of the Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmit revised unilateral agreements for both properties, memorializing the revisions requested verbally a few weeks before.

At its meeting of January 5, 2007, the Council referred County Communication No. 04-248 to your Land Use Committee (County Communication No. 07-5).

By correspondence dated January 17, 2007, the Chair of your Committee transmitted (1) a copy of a revised Unilateral Agreement and Declaration for Conditional

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Zoning for Parcel 11 dated December 21, 2006, from the Whiteheads; and (2) a copy of a revised Unilateral Agreement and Declaration for Conditional Zoning for Parcel 12 dated January 3, 2007, from Pogni/Carr.

By correspondence dated January 18, 2007, the Chair of your Committee transmitted the following to the Department of the Corporation Counsel, for approval as to form and legality: (1) the revised Unilateral Agreement and Declaration for Conditional Zoning for Parcel 11 dated December 21, 2006, from the Whiteheads; and (2) the revised Unilateral Agreement and Declaration for Conditional Zoning for Parcel 12 dated January 3, 2007, from Pogni/Carr. The Chair also requested that the revised proposed bill be further revised to change the parenthetical reference to the year of the bill.

By correspondence dated January 19, 2007, the Department of the Corporation Counsel transmitted the documents entitled "Unilateral Agreement and Declaration for Conditional Zoning" for both parcels, approved as to form and legality, along with a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating a change in the year to 2007.

At its meeting of February 28, 2007, your Committee met with the Deputy Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Captain, Department of Police; the Corporation Counsel; a Deputy Corporation Counsel; and Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.

There was no public testimony.

Ms. Ohashi Hiraga provided a computer-generated presentation, noting background information concerning the properties, the procedural history of the application, and the recommended conditions.

Ms. Ohashi Hiraga distributed a copy of Chapters 19.18 and 19.16, Maui County Code (MCC), annotated to reflect the B-2 Community Business District and B-1 Neighborhood Business District uses that the Maui Planning Commission had



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recommended be prohibited. She also provided a printout of her computer-generated presentation.

The Planner summarized the proceedings before the Maui Planning Commission.

Your Committee discussed the proposed expansion of uses. Your Committee questioned the Whiteheads' and Pogni/Carr's current and intended uses for their properties. Ms. Ohashi Hiraga informed your Committee that the Whiteheads have a wood-carving business that they are considering locating at 232 Lahainaluna Road, while the Pognis are operating a beauty salon at 242 Lahainaluna Road.

The Planner noted that the properties are in the National Historic Landmark District, but not within the County Historic District. She advised that the Department of Planning had done an environmental assessment determination, and that the repairs to the properties were considered exempt. Your Committee questioned whether an environmental assessment was required under Chapter 343, HRS, and asked that the State Office of Environmental Quality Control (OEQC) be consulted.

Your Committee also expressed concerns over the breadth of uses being permitted, and requested that further restrictions be considered.

Your Committee discussed driveway access issues. Your Committee further requested that the Department of Public Works and Environmental Management provide a copy of its comments dated October 31, 1985, as referenced in Condition No. 5 of Ordinance No. 1585.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 1, 2007, the Chair of your Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., provide a written response concerning the current and future anticipated uses of the properties by the Whiteheads and Pogni/Carr.

By correspondence dated March 5, 2007, the Director of Public Works and Environmental Management transmitted a copy of the October 31, 1985 comments.

By correspondence dated March 5, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel prepare a written request to the OEQC,

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seeking an opinion as to whether an environmental assessment would be required for the proposed zoning amendments under Section 343-5(a)(4), HRS.

By correspondence dated March 29, 2007, the Department of the Corporation Counsel requested that Genevieve Salmonson, Director, OEQC, respond whether an environmental assessment is required under Section 343-5(a)(4), HRS, in connection with the amendment of zoning ordinances for certain properties located within the Lahaina National Historic Landmark District.

By correspondence dated April 5, 2007, the Chair of your Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., respond to the March 1, 2007 request.

By correspondence dated April 20, 2007, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., responded that there is no existing business use at 232 Lahainaluna Road; and that 242 Lahainaluna Road is currently used as a beauty salon, noting the hours of operation, number of employees, and number of clients serviced at any given time. She further advised that the owners of both properties were willing to prohibit additional uses such as auctioneer establishments, banks, museums, and gasoline retailing.

By correspondence dated April 25, 2007, the Department of the Corporation Counsel transmitted a copy of correspondence dated April 20, 2007, from Genevieve Salmonson, Director, OEQC. The Department noted that it appears that an environmental assessment is not necessary at this time for this project.

By correspondence dated June 29, 2007, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., reiterated that the owners of both properties were willing to prohibit the four additional uses noted in the April 20, 2007 correspondence (auctioneer establishments, banks, museums, and gasoline retailing), and advised that they are also willing to prohibit uses such as automobile parts stores, dancing and hula studios, dry goods and/or department stores, music conservatories or music studios, and restaurants.

At its meeting of August 15, 2007, your Committee met with a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; James Michael Whitehead and Siuafu Whitehead; Hayden Pogni and Wendy Pogni; and Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc..

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There was no public testimony.

Ms. Ohashi Hiraga distributed a copy of Chapters 19.18 and 19.16, MCC, annotated to reflect the B-2 Community Business District and B-1 Neighborhood Business District uses that the Maui Planning Commission had recommended be prohibited, as supplemented to reflect the additional uses the Whiteheads and Pogni/Carr had agreed not to pursue.

Your Committee expressed further concerns over the following permitted uses: nurseries (Section 19.18.020(41), MCC); financial buildings (Section 19.18.020(51), MCC); grocery stores and meat markets (Section 19.16.020(J), MCC), and nurseries associated with day care centers (remaining portion of Section 19.16.020(F), MCC). The Whiteheads and Pognis, on behalf of Pogni/Carr, agreed that these four additional uses could also be prohibited.

Your Committee recommended that the nine uses listed in the June 29, 2007 correspondence be prohibited, along with the four additional uses of concern. Your Committee also recommended that a new condition be incorporated to read, "Any other uses not permitted by this ordinance shall require a further change in zoning."

Your Committee voted to recommend passage of the further revised proposed bill, recordation of the unilateral agreements, and filing of the communication.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions and other nonsubstantive revisions.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" for 232 Lahainaluna Road, executed by James Michael Whitehead and Siuafu Whitehead, approved as to form and legality by the Department of the Corporation Counsel; and an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" for 242 Lahainaluna Road, executed by Wendy L. Pogni, John T. Carr, and Barbara A. Carr, also approved as to form and legality by the Department of the Corporation Counsel.

Your Land Use Committee **RECOMMENDS** the following:

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1.     That Bill No. \_\_\_\_\_ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1585 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 232 LAHAINALUNA ROAD AND 242 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
  
2.     That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning" for 232 Lahainaluna Road;
  
3.     That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning" for 242 Lahainaluna Road; and
  
4.     That County Communication No. 04-248 be FILED.

Adoption of this report is respectfully requested.

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**MICHAEL J. MOLINA** **Chair**

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**JO ANNE JOHNSON** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**BILL KAUAKEA MEDEIROS** **Member**

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**GLADYS C. BAISA** **Member**

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**MICHAEL P. VICTORINO** **Member**

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**G. RIKI HOKAMA** **Member**