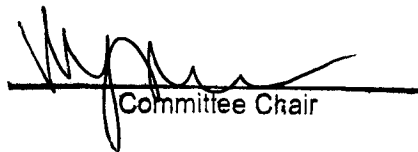


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M I N U T E S
LAND USE COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
COUNCIL CHAMBER, EIGHTH FLOOR
WAILUKU, MAUI, HAWAII
OCTOBER 29, 2008

APPROVED:



Committee Chair

Reported by:
Tonya McDade, Hawaii CSR #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner

1 CONVENE: 1:37 p.m.

2 PRESENT: Councilmember Michael J. Molina, Chair (Leave
3 3:20 p.m.)
4 Councilmember Joseph Pontanilla, Vice-Chair
5 (Substitute Chair from 3:20 p.m.)
6 Councilmember Michelle Anderson, Member
7 Councilmember Gladys C. Baisa, Member (Arrive
8 1:38 p.m.)
9 Councilmember G. Riki Hokama, Member
10 Councilmember Jo Anne Johnson, Member (Arrive
11 1:43 p.m.)
12 Councilmember Danny A. Mateo, Member
13 Councilmember Bill Kauakea Medeiros, Member

14 EXCUSED: Councilmember Michael P. Victorino, Member

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

17 ADMIN: Jeffrey Hunt, Director, Department of Planning
18 Robyn Loudermilk, Planner, Department of
19 Planning (Item No. 35)
20 Francis Cerizo, Planner, Zoning Administration
21 & Enforcement Division, Department of
22 Planning (Item No. 35)
23 Jeffrey Dack, Planner, Department of Planning
24 (Item No. 66)
25 Scott English, Lieutenant, Fire Prevention
 Bureau, Department of Fire and Public
 Safety (Item No. 35) (Arrive 2:10 p.m.)
 James A. Giroux, Deputy Corporation Counsel,
 Department of the Corporation Counsel

26 OTHERS:

27 ITEM NUMBER 35:
28 Gregg Blue
29 Additional attendees (1)

30 ITEM NUMBER 66:
31 Thomas Castleton
32 Alisa Castleton
33 Peggy Castleton
34 Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's
35 consultant)

1 Adam Radford, Vertebrate Operations Supervisor, Maui
2 Invasive Species Committee
3 Additional attendees (5)

3 PRESS: Akaku-Maui Community Television, Inc.

4 -----

5 CHAIR MOLINA: ...(gavel)...The October 29,
6 2008 Land Use Committee meeting will now come to order.

7 For the record, we have in attendance the
8 Committee Vice-Chair Joseph Pontanilla, Council Chair
9 Riki Hokama, Committee Member Bill Medeiros, Committee
10 Member Michelle Anderson and Committee Member Danny
11 Mateo; excused are Committee Members Gladys Baisa, Jo
12 Anne Johnson and Mike Victorino.

13 Good afternoon, Members.

14 COUNCIL MEMBERS: Aloha.

15 COUNCILMEMBER MEDEIROS: Good afternoon.

16 CHAIR MOLINA: We have here joining us as
17 well, from the Staff, we have the Committee Analyst,
18 Carla Nakata, and Committee Secretary, Tammy Frias; from
19 the Corporation Counsel's Office, we have James Giroux;
20 and our Planning Director, Mr. Jeff Hunt, and Planner
21 Robyn Loudermilk.

22 We have two items on our agenda, Members;
23 LU-35, a Conditional Permit for Haiku Recreation and
24 Maui Dream Cottages, and LU-66, a Community Plan
25 Amendment and Change in Zoning for the Hula Girl Gardens

1 Retail Plant Nursery in Kihei.

2 Committee Secretary, do we have anyone signed
3 up for testimony at this point?

4 MS. FRIAS: No, Mr. Chair.

5 CHAIR MOLINA: Okay. Thank you very much.
6 Members, seeing no one in the gallery as well, and no
7 one having signed up, any objections to the closing of
8 public testimony?

9 COUNCIL MEMBERS: No objections.

10 CHAIR MOLINA: Okay. So ordered. Public
11 testimony is closed for both items.

12 ITEM NO. 35: CONDITIONAL PERMIT FOR "HAIKU RECREATION
13 AND MAUI DREAM COTTAGES" (C.C. No. 02-98)

14 CHAIR MOLINA: And joining us for our
15 proceedings today we have Committee Member Gladys Baisa.

16 All right, Members, we shall go right into
17 business. We have Land Use Item 35, as I mentioned
18 earlier, a Conditional Permit request for Haiku
19 Recreation and Maui Dream Cottages. The Committee in is
20 receipt of the following: County Communication No.
21 02-98 from the Planning Director, transmitting a
22 proposed bill to grant a request from Gregg Blue, doing
23 business as Haiku Recreation and Maui Dream Cottages,
24 for a one-year Conditional Permit to operate a transient
25 vacation rental in a one-bedroom cottage on

1 approximately two acres located at 265 West Kuiaha Road
2 in Haiku; also, the Committee received a Correspondence
3 dated September 25, 2007, from the Corporation Counsel's
4 Office, transmitting a revised proposed bill entitled "A
5 bill for an ordinance granting Gregg Blue, dba Haiku
6 Recreation and Maui Dream Cottages, a Conditional Permit
7 for a one-bedroom transient vacation rental within the
8 County Agricultural District for property situated at
9 265 West Kuiaha Road, Haiku, Maui, Hawaii." The purpose
10 of the revised proposed bill is to grant Mr. Blue a
11 one-year Conditional Permit to operate a one-bedroom
12 transient vacation rental on his property.

13 So with that being said, Members, I will turn
14 matters over now to the Planning Department to give us a
15 brief overview of the application. And we also have the
16 applicant, Mr. Blue, in the gallery as well for
17 questioning -- questions from you.

18 Ms. Loudermilk.

19 MS. LOUDERMILK: Good afternoon, Members. As
20 indicated, we're here for a Conditional Permit for the
21 Maui Dream and Vacation Cottage located in Haiku. It's
22 located in the State Agricultural District, Community
23 Plan Agriculture, and it is zoned Agriculture. The
24 structure is a one-bedroom cottage, rented in its
25 entirety. Living on the property is the owner, Mr.

1 Blue, in the main farm dwelling. The public hearing
2 before the Maui Planning Commission occurred back in
3 February of 2002.

4 And the last time this item was before you, I
5 believe, was approximately a year ago. There was some
6 outstanding issues in which the applicant was required
7 to complete prior to coming back to you today. And in
8 response to the Chair's letter of October this year, the
9 Department did provide a response on October 27th, 2008.

10 And we'll be available to answer any
11 additional questions in relation to the previous
12 meetings and our transmittal to the Committee today.

13 CHAIR MOLINA: Okay. Thank you very much, Ms.
14 Loudermilk.

15 Members, we also have Mr. Francis Cerizo from
16 the Planning Zoning Administration Enforcement Division
17 as well available to answer questions. We did ask a
18 representative from the Fire Department to attend. I
19 believe that will be Mr. English. However, he will not
20 be here until 2:00 p.m. The Department of Water Supply
21 did submit a letter containing comments. It is on, I
22 guess, I believe an October 28, 2008 letter. And we
23 have Public Works Deputy Director, Mr. Miyamoto, on call
24 as well.

25 Members, questions for the Planning

1 Department? Okay. All right.

2 Seeing none, Mr. Cerizo, would you care to
3 give any additional comments with regards to this
4 matter? All right. Very good.

5 Members, would you like to hear from the --
6 any questions for the applicant, Mr. Blue? Okay. Wow.
7 Very good, Members. This is a rarity, no questions.

8 The Chair would like to ask Mr. Blue to come
9 up just for a general question. Mr. Blue, if you could
10 go ahead and identify yourself for the record.

11 MR. BLUE: My name is Gregg Blue, I live in
12 Haiku, 275 West Kuiaha. I'm the applicant.

13 CHAIR MOLINA: Okay, thank you. Thank you for
14 being here, Mr. Blue. As it was mentioned earlier by
15 Ms. Loudermilk, we did meet on this issue roughly about
16 a year ago. There were some issues, I believe, with one
17 of the zoning inspectors. Has that issue been resolved?
18 And if you could share that information with us.

19 MR. BLUE: Yes, the issue has been resolved.

20 CHAIR MOLINA: Okay. And if you could specify
21 what that issue was, just to refresh the Committee's
22 memory.

23 MR. BLUE: Well, when I purchased the
24 property, there was actually three dwellings on it. And
25 it's come to my attention, since the inspection, that

1 one of the buildings which was designated as a storage
2 shed, they didn't have -- or they couldn't find on the
3 original building permit for a bathroom. They couldn't
4 find any -- anything on there that said it had a
5 bathroom. I think it said it had a sink, but not a
6 bathroom. So when that was brought to my attention, Mr.
7 Villalon and Ms. Loudermilk came out and they brought
8 that to my attention. And since then, we've taken the
9 bathroom out of commission.

10 And I'm in the process now, because I do, do
11 agricultural activity, and have been doing so with --
12 for 20 years -- and I can document it -- of trying to
13 have the -- the designation of that storage shed changed
14 to office packing shed so that I can use it as it is.

15 CHAIR MOLINA: Okay. Thank you. Now, my
16 understanding is the application here is for a one-year
17 Conditional Permit. You're asking the Committee -- I
18 guess we received an email to consider something longer
19 than a year. Can you elaborate on that?

20 MR. BLUE: Well, since I've been in the
21 process seven years, I would like to ask for three
22 years. I certainly don't want to come back here next
23 year. So I was asking you for three years.

24 CHAIR MOLINA: Okay. Thank you. Committee
25 Members, questions for Mr. Blue?

1 VICE-CHAIR PONTANILLA: I have a question.

2 CHAIR MOLINA: Okay. Member Pontanilla?

3 VICE-CHAIR PONTANILLA: Thank you. Just
4 looking at -- application might have come through in
5 April 2002 -- in regards to the conditions, those are
6 the conditions that Mr. Blue needed to comply, Planning
7 Department?

8 MS. LOUDERMILK: Yes.

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

11 CHAIR MOLINA: Okay. Thank you. Member
12 Baisa, questions for Mr. Blue?

13 COUNCILMEMBER BAISA: No. Just a general
14 question, if you might, about this issue of a period
15 longer than one year. When is the start of the year and
16 when would it end?

17 CHAIR MOLINA: Okay. Let me direct that
18 question to the Planning Department.

19 COUNCILMEMBER BAISA: Please.

20 CHAIR MOLINA: Respond to Member Baisa's
21 question. Members, if you don't have any other
22 questions for Mr. Blue, I'll go ahead and excuse him
23 back to the gallery.

24 COUNCILMEMBER BAISA: No questions.

25 CHAIR MOLINA: Okay. Mr. Blue, if you could

1 --

2 COUNCILMEMBER ANDERSON: Wait.

3 CHAIR MOLINA: Oh, you had one for Mr. Blue,
4 Member Anderson? Okay, Mr. Blue, if you could hang on.
5 Ms. Loudermilk, if you could respond to Member --

6 MS. LOUDERMILK: Actually, I would like to
7 defer to Corporation Counsel. My understanding is that
8 with conditional permits, it's -- there's been some
9 discussion on when that one-year period is. And I -- I
10 can't answer that specific to conditional permits at
11 this point in time.

12 CHAIR MOLINA: Mr. Giroux?

13 MR. GIROUX: It's gonna depend on the language
14 we use, Chair. I -- I think sometimes we -- we put a
15 date certain. I think other times they've said when --
16 from the time the ordinance, when the ordinance is
17 adopted. I think that -- that's open for discussion as
18 far as what the intent of the body is.

19 CHAIR MOLINA: Member Baisa?

20 COUNCILMEMBER BAISA: The reason I'm
21 interested in knowing is will the -- will the applicant
22 have a full 12 months after this is approved, or is it
23 going to be eight months or 10 months? Because we know
24 how that works in terms of applying for an extension.

25 CHAIR MOLINA: Mr. Giroux, are you able to

1 respond to that question from Member Baisa?

2 MR. GIROUX: Again, it's -- I guess you have
3 to look at the mechanism of it's a -- it's an ordinance.
4 So if your intent is from giving him a year, a full year
5 from the date that the ordinance is passed, then that's
6 the language that you would use. What we usually do is
7 we put a date in there so that it's -- it's clearer as
8 far as when that permit expires. If you look at the
9 Special Use Permit, it correlates the timing with
10 whatever we do with this permit.

11 CHAIR MOLINA: Okay.

12 MR. GIROUX: So just to bring that to your
13 attention.

14 CHAIR MOLINA: Basically, a date that we will
15 decide. And, of course, with Staff's and your
16 assistance as well. So we can make that -- together,
17 make that determination.

18 COUNCILMEMBER BAISA: All right.

19 CHAIR MOLINA: And I -- I totally understand
20 your point, Member Baisa.

21 COUNCILMEMBER BAISA: Thank you.

22 CHAIR MOLINA: Thank you. Member Anderson,
23 question for Mr. Blue?

24 COUNCILMEMBER ANDERSON: Yeah. But on the
25 same subject, maybe Staff could tell us, it's hard for

1 me to remember how many of these -- and I'm not
2 separating B&B from TVR. I am looking at 'em as kind of
3 the same thing. How many of them that we have given
4 initial approval to in the recent past and how many
5 years we gave them? I'm trying to be consistent.

6 CHAIR MOLINA: I think, on average, we're
7 giving two years.

8 COUNCILMEMBER ANDERSON: For the initial?

9 CHAIR MOLINA: Yeah.

10 COUNCILMEMBER ANDERSON: Not for the renewal?

11 CHAIR MOLINA: You know, if memory serves me
12 correct --

13 COUNCILMEMBER ANDERSON: Maybe Carla --

14 CHAIR MOLINA: Maybe Planning -- Planning, if
15 you could help with us that. I know for the initial of
16 -- recent memory, it's been, on average, two years.

17 COUNCILMEMBER ANDERSON: For the initial?

18 CHAIR MOLINA: For the initial, yeah.

19 COUNCILMEMBER ANDERSON: Okay. And -- and
20 could we get that confirmed by Carla? And -- and when
21 -- and the renewals, how long have the renewals been?

22 CHAIR MOLINA: Staff?

23 MS. NAKATA: I haven't checked specifically on
24 the renewals, but for the initial granting of the TVR
25 permits, over the course of this last term, it's

1 generally been a two-year initial duration. There were,
2 I believe, four ordinances so far this term; Dantes',
3 Ordinance 3501; Samadhi Butterfly's, Ordinance 3511;
4 Helen Lu'uwai's, Ordinance 3517; and Kathleen Gildred's,
5 Ordinance 3518. They were all granted for two years.

6 COUNCILMEMBER ANDERSON: And those were all
7 first-time applications?

8 MS. NAKATA: That's correct.

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

11 CHAIR MOLINA: Thank you, Member Anderson. Do
12 you have another question for Mr. Blue?

13 COUNCILMEMBER ANDERSON: Yeah.

14 CHAIR MOLINA: Okay. Proceed.

15 COUNCILMEMBER ANDERSON: So he can sit down?

16 CHAIR MOLINA: He's awaiting your question.

17 COUNCILMEMBER ANDERSON: Mr. Blue, you've seen
18 the conditions that were listed back in 2002, from the
19 Planning Commission. Have you got any problem with any
20 of those?

21 MR. BLUE: No. I believe the only one I
22 haven't complied with is the backflow.

23 COUNCILMEMBER ANDERSON: Backflow?

24 MR. BLUE: Yeah.

25 COUNCILMEMBER ANDERSON: And you're -- you

1 don't have a problem doing that?

2 MR. BLUE: No.

3 COUNCILMEMBER ANDERSON: Okay, thanks. Thank
4 you, Chairman.

5 CHAIR MOLINA: Thank you, Member Anderson.
6 Any other questions for Mr. Blue? Okay. Seeing no
7 other question for Mr. Blue, I'll go ahead and excuse
8 you. Member Anderson, you have a question for Staff?

9 COUNCILMEMBER ANDERSON: Yeah, I just wanted
10 one more follow-up question with the Director. On the
11 current TVR bill that you're working on, what is the
12 provision for renewals?

13 MR. HUNT: The --

14 COUNCILMEMBER ANDERSON: Is that going to be
15 administratively -- I mean, I know you haven't discussed
16 it yet, but you do have something that you're working
17 from. So I'm just wondering what the intent of the
18 Department is as far as renewing permits once they hit
19 their limit, their time limit.

20 MR. HUNT: The bill that's being discussed to
21 the Planning Committee is addressing B&Bs. Though, with
22 the new definition that's being proposed, Mr. Blue may
23 meet that definition. The B&B ordinance, as written,
24 would require a one-year time period initially.

25 COUNCILMEMBER ANDERSON: But what about

1 renewals?

2 MR. HUNT: Renewals may be, I believe, up to
3 five years.

4 COUNCILMEMBER ANDERSON: Are they
5 administratively done, or are they done by the Council?

6 MR. HUNT: Administratively.

7 COUNCILMEMBER ANDERSON: So the process that
8 Mr. Blue's been through here for seven years here, in
9 the future, would be a quicker process because it would
10 be handled administratively?

11 MR. HUNT: If the ordinance as proposed is
12 adopted.

13 COUNCILMEMBER ANDERSON: And what about the
14 current B&B ordinance would allow him to get a B&B
15 permit rather than a Conditional Use Permit for a TVR?

16 MR. HUNT: The existing ordinance or the
17 proposed ordinance?

18 COUNCILMEMBER ANDERSON: The proposed.

19 MR. HUNT: I believe he would meet the
20 definition of -- of the new B&B under the proposed
21 ordinance.

22 COUNCILMEMBER ANDERSON: Which is?

23 MR. HUNT: The owner has to live onsite, and
24 then you can rent out the main unit and/or the ohana
25 unit.

1 COUNCILMEMBER ANDERSON: But he doesn't have
2 to be renting out the main unit as a B&B, all he has to
3 do is rent out the ohana, and that qualifies it as a
4 B&B?

5 MR. HUNT: Yes, it would.

6 COUNCILMEMBER ANDERSON: So there's hardly any
7 difference anymore between a B&B and a TVR?

8 MR. HUNT: The -- the -- not to get into the
9 Planning Committee's debate, but the focus of the
10 legislation is on an onsite owner.

11 COUNCILMEMBER ANDERSON: Yeah. I understand
12 that.

13 MR. HUNT: If there's not an onsite owner
14 there, then it would be a TVR.

15 COUNCILMEMBER ANDERSON: Yeah. But I mean as
16 far as the building, the use of the buildings.

17 Okay. Well, that might work out for him,
18 then. Thank you, Chairman.

19 CHAIR MOLINA: Okay. Thank you, Member
20 Anderson. Committee Members, any other questions?
21 Member Pontanilla?

22 VICE-CHAIR PONTANILLA: Thank you. When the
23 proposed B&B ordinance become law, I -- I know you guys
24 working on numbers, in, of course, different community
25 planned area. So whenever a permit, existing permit

1 expires -- well, the question would be, the number of
2 B&Bs that's out there right now, is that count gonna be,
3 you know, counts that would remain, and, from there, you
4 know, expand to whatever the number is?

5 MR. HUNT: The -- the caps that are being
6 proposed would include existing permitted B&Bs.

7 VICE-CHAIR PONTANILLA: So the existing B&Bs
8 wouldn't lose, you know, a place --

9 MR. HUNT: No.

10 VICE-CHAIR PONTANILLA: -- in regards to the
11 cap?

12 MR. HUNT: No.

13 VICE-CHAIR PONTANILLA: Okay, good. Thank
14 you.

15 CHAIR MOLINA: Okay. Thank you, Mr.
16 Pontanilla. The Chair has just one question for the
17 Department. With regards to the name of the permit or
18 -- I guess on the October 31st, '07, correspondence, it
19 says Gregg Blue, dba Haiku Recreation, to conform to the
20 name provided to State by the applicant for GET and TAT
21 purposes. Mr. Blue then sent in an email, on October
22 24th, requesting a change from Maui Dream Cottages to
23 Maui Dream Cottage. Any comments to that?

24 MS. LOUDERMILK: No comments. He --

25 CHAIR MOLINA: That's fine?

1 MS. LOUDERMILK: That's fine with us. Yes.

2 CHAIR MOLINA: All right. Okay, Committee
3 Members, any other questions for the Department? Member
4 Anderson?

5 COUNCILMEMBER ANDERSON: Thank you, Chairman.
6 So, Director Hunt, if this gets approved as a
7 Conditional Permit for a TVR, say for one year or two
8 years, and the Planning Committee's bill on B&Bs is
9 subsequently adopted, that allows for administrative
10 renewals, would Mr. Blue's permit, Conditional Permit,
11 automatically be transferred if he qualifies for a B&B,
12 or is he gonna have to come in and get this renewed as a
13 Conditional Permit through the Council?

14 CHAIR MOLINA: Department?

15 MR. HUNT: The -- the bill contains language
16 that explicitly states that if you have a pending
17 application for a Conditional Permit that meets that new
18 definition of a B&B, then we can merely process that as
19 a B&B without any new application or fee. I would
20 assume that, therefore, if you have already been granted
21 a Conditional Permit, we would follow the same course.

22 COUNCILMEMBER ANDERSON: And you would renew
23 it administratively?

24 MR. HUNT: We would renew it through the B&B
25 ordinance, yes.

1 COUNCILMEMBER ANDERSON: Okay, great. Thank
2 you. Thank you, Chair.

3 CHAIR MOLINA: Okay. Thank you, Member
4 Anderson. Committee Members, any other questions before
5 the Chair offers a recommendation? Member Pontanilla?

6 VICE-CHAIR PONTANILLA: Thank you. So the
7 period of the permit itself, should we approve Mr.
8 Blue's application, and the ordinance is approved, you
9 know, before that year end, does he still carry the two
10 year, or does he, you know, gotta go with the new
11 ordinance which you say, one year?

12 MR. HUNT: Well, the ordinance, as adopted,
13 will give him two years.

14 VICE-CHAIR PONTANILLA: Okay.

15 MR. HUNT: And then we would go from there.

16 VICE-CHAIR PONTANILLA: Good. Thank you.

17 CHAIR MOLINA: Okay. Thank you, Member
18 Pontanilla. Any other questions? Chairman Hokama,
19 followed by Member Johnson.

20 COUNCILMEMBER HOKAMA: Just a clarification.
21 My understanding, this is still in Agricultural
22 designated lands? Is that correct, my understanding,
23 Mr. Director?

24 MR. HUNT: I believe so.

25 COUNCILMEMBER HOKAMA: Okay. Thank you very

1 much.

2 CHAIR MOLINA: Okay. Thank you, Chairman
3 Hokama. Member Johnson?

4 COUNCILMEMBER JOHNSON: Yes. I just wanted to
5 -- because I was looking at the Department's request,
6 the State Land Use Commission, then their permit runs
7 consistent or will run consistent, or has it not
8 actually been granted yet?

9 MS. LOUDERMILK: I believe, technically, it --
10 it has been granted. However, the expiration date would
11 be -- has -- is gonna be tied in with the Conditional
12 Permit ordinance.

13 COUNCILMEMBER JOHNSON: Okay. So --

14 MS. LOUDERMILK: So it would cease at the same
15 time. As of right now, he does have the County's -- I
16 mean -- excuse me -- the Land Use Commission Special Use
17 Permit.

18 COUNCILMEMBER JOHNSON: Yeah. I just wanted
19 to double-check --

20 MS. LOUDERMILK: Yes.

21 COUNCILMEMBER JOHNSON: -- so that we're not
22 out of sync with the State permit and then the County.

23 MS. LOUDERMILK: Yes. No. They -- they will
24 be in sync.

25 COUNCILMEMBER JOHNSON: Concurrently?

1 MS. LOUDERMILK: Concurrently, yes.

2 COUNCILMEMBER JOHNSON: Okay. Thanks very
3 much.

4 MS. LOUDERMILK: You're welcome.

5 CHAIR MOLINA: Thank you very much, Member
6 Johnson. Any other questions before a recommendation is
7 made by the Chair?

8 COUNCIL MEMBERS: Recommendation.

9 CHAIR MOLINA: Okay. Thank you very much,
10 Members. The Chair will recommend a motion to approve a
11 bill for an ordinance granting Gregg Blue, dba Haiku
12 Recreation and Maui Dream Cottages, a Conditional Permit
13 for a one-bedroom transient vacation rental, within the
14 County Agricultural District, for property situated at
15 265 West Kuiaha Road, Haiku, Maui, Hawaii.

16 VICE-CHAIR PONTANILLA: So moved.

17 COUNCILMEMBER BAISA: Second.

18 CHAIR MOLINA: Okay. It's been moved by
19 Member Pontanilla, the second, Member Baisa. Okay,
20 Members, we have a motion on the floor. The Chair is
21 open to any consideration for amendments. The
22 application is for a one-year permit. As stated, the
23 duration of the permit is in Condition Number 2. And,
24 by the way, Members, we're working off the bill that is
25 attached to the September 25th, 2007 correspondence from

1 Corporation Counsel Giroux.

2 Any amendment considerations? Member Baisa?

3 COUNCILMEMBER BAISA: Yes, Chair. I would
4 like to move that we amend the motion to allow two -- a
5 two-year time.

6 COUNCILMEMBER JOHNSON: Second.

7 CHAIR MOLINA: Okay. It's been moved by
8 Member Baisa, seconded by Member Johnson to amend. And
9 that will be under Condition Number 2. And it would
10 read -- it currently reads as follows: That the
11 Conditional Permit shall be valid for a period of one
12 year from the effective date of this ordinance, provided
13 that an extension of this Conditional Permit beyond this
14 one-year period may be granted pursuant to Section
15 19.40.090, Maui County Code. So, Member Baisa, you
16 would like to -- you're asking for a consideration of
17 changing, after the word "period," "for a period of two
18 years?"

19 COUNCILMEMBER BAISA: Yes, Chair.

20 CHAIR MOLINA: Okay. Members, are we all
21 clear on the proposed amendment? Member Pontanilla?

22 VICE-CHAIR PONTANILLA: Thank you. Maybe Ms.
23 Carla Nakata can give us some information regarding
24 language that we have added to, you know, previous
25 permits so that we make it consistent.

1 COUNCILMEMBER BAISA: Yeah.

2 CHAIR MOLINA: Okay. And, Members, let me
3 follow up that Condition 2. That would also mean
4 amending the word -- after the word "this," as you read
5 further down, the next to the last sentence, that would
6 also read "a two-year period" as well?

7 COUNCILMEMBER BAISA: Yes.

8 CHAIR MOLINA: Okay. So, Staff, Ms. Nakata,
9 can you respond to Member Pontanilla's request?

10 MS. NAKATA: Staff believes that just changing
11 the reference from one year to two years would be
12 sufficiently clear. It would take effect on the
13 effective date of the ordinance. I think the times that
14 the Committee has struggled in the past to include a
15 specific date has been on the request for extensions of
16 the permit.

17 CHAIR MOLINA: Okay. Member Pontanilla, any
18 other responses or requests?

19 VICE-CHAIR PONTANILLA: Yeah. If, you know,
20 we gonna be consistent with all of 'em, I think we
21 should put a specific date. And maybe Corp. Counsel and
22 your staff can work on that and come out with language.

23 CHAIR MOLINA: Okay. Mr. Giroux, any
24 comments?

25 MR. GIROUX: I -- I think on the -- the

1 initial permit, it -- because the -- the way that an
2 ordinance -- I mean, if we put a date in today, what --
3 what'll happen is that it could sit on the agenda for a
4 couple years, and then that date is going to look -- you
5 know -- I mean, you know, being that the process -- we
6 don't really have that -- you know, as far as how
7 quickly we can agenda it to Council and that -- I -- I
8 think leaving it with the -- because this is the
9 original ordinance, with that effective date, is really
10 the closest way. And so when you pull the bill, it'll
11 stamped on -- on that bill. It'll -- it'll have the
12 effective date clearly stamped. And then for the
13 extensions, that's kind of when we have to kind of work
14 out how many years or, you know, to -- to adjust the
15 extension period.

16 VICE-CHAIR PONTANILLA: Good. Just so long as
17 there's a stamp date --

18 MR. GIROUX: Yeah.

19 VICE-CHAIR PONTANILLA: -- that can tell us.
20 Thank you. Thank you, Chairman.

21 CHAIR MOLINA: Thank you, Member Pontanilla.
22 Members, any other questions on the proposed amendment?
23 Seeing none, the Chair will call for the vote.

24 All in favor of the proposed amendment to
25 extend the duration of the permit from one year to two

1 years, signify by saying "aye."

2 COUNCIL MEMBERS: Aye.

3 CHAIR MOLINA: All those opposed? The Chair
4 will mark it eight-zero; with one excused, Mr.
5 Victorino.

6 VOTE: AYES: Councilmembers Anderson, Baisa,
7 Hokama, Johnson, Mateo, Medeiros,
8 Vice-Chair Pontanilla, and Chair
9 Molina.

10 NOES: None.

11 EXC.: Councilmember Victorino.

12 ABSENT: None.

13 ABSTAIN: None.

14 MOTION CARRIED

15 ACTION: APPROVE amendment to the main motion.

16 CHAIR MOLINA: Members, we are back to the
17 main motion as amended. Any other considerations for
18 amendments? Member Hokama?

19 COUNCILMEMBER HOKAMA: This would be for Mr.
20 -- Corporation Counsel. Should we have language that --
21 especially since Council is working on legislation,
22 proposed legislation -- again, we have no assurance
23 whether or not it gets enacted. But let's say things
24 move forward, should we have a severability or a portion
25 of language in this proposed ordinance that, if enacted,

1 it needs to then be in compliance with the new ordinance
2 regarding this subject matter?

3 CHAIR MOLINA: Mr. Giroux?

4 COUNCILMEMBER HOKAMA: Because I don't want a
5 Conditional Permit to be in contrary to what may be
6 potentially the new County policy through ordinance.

7 MR. GIROUX: That -- I -- I see your -- your
8 point. The -- I -- I think there's a couple things that
9 we need to look at, is that it's for two years. If
10 there is anything that's out of sync with this proposed
11 ordinance -- and -- and, again, we don't know what that
12 ordinance -- you know, what requirements are gonna do.
13 This is kind of looked at as a -- as a permit. So once
14 you get the permit, you should be able to rely on that
15 permit to -- to do what you need to do as far as what
16 you've asked for.

17 I believe that your conditions should --
18 should be clear enough that -- what you're doing right
19 now is you're establishing a policy for this permit --
20 so that those parameters should be clearly spelled out
21 in those conditions.

22 COUNCILMEMBER HOKAMA: So should a condition
23 of this permit be that if there is a new policy that
24 goes into effect, it needs to comply with the new
25 policy?

1 MR. GIROUX: That's gonna have to be a policy
2 call. Because as far as, you know -- what you're doing
3 is you're -- you're creating a situation where the
4 permit holder doesn't know what he needs to do in the
5 future. And what that might do is create a situation
6 where enforcement won't know how to enforce on that.
7 And -- and the thing is that you're looking at a permit
8 that's only gonna last two years. So at the end of the
9 two years, you do have a period of conformity because
10 they're gonna have to reapply and re-- re-up. At the
11 time of re-up is usually when you process things to make
12 sure everybody catches up with the new standards.

13 COUNCILMEMBER HOKAMA: Okay. Corporation,
14 thank you for that. I mean, we obviously already have
15 an ordinance, what is permitted and not permitted. And
16 we're still here.

17 CHAIR MOLINA: Okay. Thank you, Chair Hokama.
18 Committee Members, any other questions as it relates to
19 the motion on the floor as amended? Okay. Members,
20 seeing none, the Chair will call for the vote.

21 All in favor, signify by saying "aye."

22 COUNCIL MEMBERS: Aye.

23 CHAIR MOLINA: All those opposed?

24 COUNCILMEMBER HOKAMA: No.

25 CHAIR MOLINA: Okay. We have seven ayes; one

1 no, Chairman Hokama; and one excusal, Member Victorino.

2 The measure passes and will be moved on to the full

3 Council. Thank you very much, Members.

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

7 NOES: Councilmember Hokama.

8 EXC.: Councilmember Victorino.

9 ABSENT: None.

10 ABSTAIN: None.

11 MOTION CARRIED

12 ACTION: Recommending FIRST READING of revised proposed
13 bill.

14 CHAIR MOLINA: Staff --

15 MS. NAKATA: Mr. Chair?

16 CHAIR MOLINA: I should mention that this
17 would also include the filing of the communication.

18 Yes, Members? No objections to the filing of the

19 communication as well as part of the motion?

20 COUNCIL MEMBERS: No objections.

21 COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MV)

22 ACTION: Recommending FILING of communication.

23 CHAIR MOLINA: Thank you, Members. We'll mark
24 that for the record.

25 All right. Thank you very much, Mr. Blue.

1 And congratulations.

2 ITEM NO. 66: COMMUNITY PLAN AMENDMENT AND CHANGE IN
3 ZONING FOR THE HULA GIRL GARDENS RETAIL
4 PLANT NURSERY (KIHEI) (C.C. No. 06-247)

5 CHAIR MOLINA: Okay. Members, let's go to our
6 second item, which is Land Use Item 66, a Community Plan
7 Amendment and Change in Zoning for the Hula Girl Gardens
8 Retail Plant Nursery in Kihei. The Committee is in
9 receipt County Communication No. 06-247 from the
10 Planning Director, transmitting the following: A
11 proposed bill entitled "A Bill for an Ordinance to Amend
12 the Kihei-Makena Community Plan from Multi-Family to
13 Business/Commercial for Property Situated at Makena,
14 Maui, Hawaii." The purpose the proposed bill is to
15 grant a request from Dale Castleton for a Community Plan
16 Amendment from Multi-Family to Business/Commercial, to
17 operate the Hula Girl Gardens Retail Plant Nursery, on
18 approximately 19,499 square feet, located at 2021 South
19 Kihei Road, Kihei, Maui, Hawaii. Number 2, we have a
20 proposed bill entitled "A Bill for an Ordinance to
21 Change Zoning from A-1 Apartment District to B-2
22 Community Business District (Conditional Zoning) for
23 Property Situated at Kihei, Maui, Hawaii." The purpose
24 of the proposed bill is to grant a request from Dale
25 Castleton for a Change in Zoning from A-1 Apartment

1 District to B-2 Community Business District to operate
2 the Hula Girl Gardens Retail Plant Nursery on the
3 subject property.

4 And we have here for us today, from the
5 Planning Department, joining us we have Mr. Jeffrey
6 Dack, Planner for the proposed subject on our agenda
7 today. So at this point, I will ask Mr. Dack to give us
8 a brief overview of this application. Mr. Dack.

9 MR. DACK: Good afternoon, Mr. Chair and
10 Members of the Committee. I'm Jeffrey Dack with the
11 Planning Department, as was mentioned.

12 The subject property is located at 2021 South
13 Kihei Road in the State's Urban District. It's
14 Multi-Family in the Community Plan, and A-1 in the
15 Apartment District Plan zoning. Mr. Dale Castleton was
16 the applicant and was requesting a Community Plan
17 Amendment from Multi-Family to Business/Commercial and a
18 Change in Zoning from the A-1 Apartment District to the
19 B-2 Community Business District, principally to allow a
20 retail plant nursery on the site.

21 The applications were filed in 2000. Maui
22 Planning Commission held a hearing in October 2001, and
23 deferred action pending resolution of archeological
24 issues on a nearby property being used by the applicant.
25 Julie Higa was the planner at that time.

1 The matter was brought back to the Planning
2 Commission on May 23rd, 2006, at which time the
3 Commission recommended the Council's approval of the
4 Change of Zoning, with conditions, as well as the
5 Community Plan Amendment.

6 At the October 23rd, 2001 hearing, four
7 persons testified.

8 At the May 2006 Maui Planning Commission
9 meeting, additional written testimony was received from
10 Rob Parsons, and the Maui Invasive Species Committee, as
11 far as oral testimony from David Ching of the Mayor's
12 office. At that meeting, the Planning Commission
13 recommended approval subject to three conditions in
14 zoning; one of which would limit uses allowed on the
15 property to part of the full set of uses listed in
16 Zoning Chapter 19.18 for the B-2 Community Business
17 District.

18 Thomas Castleton, brother of the original
19 applicant, Dale Castleton, acquired the property by deed
20 dated August 27, 2008. He is requesting a change to the
21 set of uses listed in recommended Condition Number 1 to
22 delete five of the uses which the Commission included in
23 the list of recommended allowed uses for the site and to
24 add three, all as included in your binder.

25 The Department has no objections to the

1 applicant's requested change to the allowed uses. This
2 conclude the Department's report.

3 CHAIR MOLINA: Okay. Thank you very much, Mr.
4 Dack. And we, also, have the applicant, as well as the
5 applicant's representative, Ms. Hiraga, who is available
6 for any questions. And we did ask for the police to be
7 on call. We have Officer Hickle who's on call, Members,
8 should you have any issues related to traffic and so
9 forth. And we also have Deputy Director Miyamoto on
10 call as well. And we have someone from MISC, Adam
11 Radford, the Vertebrate Operations supervisor, Maui
12 Invasive Species Group, yeah.

13 So, anyway, Members, let's start off, first,
14 if you have any questions for either Mr. Dack or the
15 applicant's representative on this.

16 Staff, were we provided a copy of a PowerPoint
17 for the Committee's information, hard copy?

18 MS. NAKATA: No, Mr. Chair, no handouts were
19 received.

20 CHAIR MOLINA: Okay. No handouts, all right.
21 Well, we have Ms. Hiraga here, who I believe she might
22 have some information for us.

23 Can we go ahead, and we'll withhold some
24 questions first, and I'll allow the applicant to hand
25 out some information on your request? Thank you.

1 Members, do you need a couple of minutes to go
2 through the handout? Maybe I'll offer a brief recess,
3 maybe about five minutes or so.

4 COUNCILMEMBER ANDERSON: We're not having a
5 presentation? We're just gonna read --

6 CHAIR MOLINA: Yeah. We're just going off the
7 hard copy today. If you need some time to review it,
8 and ask Ms. Hiraga some questions, if that's the intent
9 of the body.

10 COUNCILMEMBER BAISA: Thank you, Chair.

11 CHAIR MOLINA: Okay. Why don't we go ahead
12 and do that? Members, we're gonna take a recess subject
13 to the call of the Chair to give you some time to go
14 through the hard copy. And when we return, we'll have
15 the applicant ready to respond to questions from you.

16 Meeting in recess subject to the call of the
17 Chair....(gavel)...

18 RECESS: 2:10 p.m.

19 RECONVENE: 2:15 p.m.

20 CHAIR MOLINA: ... (gavel)... The October 29,
21 2008 Land Use Committee Meeting is now back in session.

22 Members, you had an opportunity to look at the
23 hard copy of the proposal related to Land Use Item 66.
24 The Chair will now open the floor for questions to the
25 applicant's representative. We have Gwen Hiraga, from

1 Munekiyo and Hiraga, here to respond to any questions
2 you may have with regards to this application. Members,
3 any questions? If not, the Chair will start off with a
4 question. I'll yield to the area representative.
5 Member Anderson?

6 COUNCILMEMBER ANDERSON: Thank you, Chairman.
7 Ms. Hiraga, are there any changes to the request that
8 you made by letter recently?

9 MS. OHASHI HIRAGA: Any changes?

10 COUNCILMEMBER ANDERSON: The October 23rd
11 letter requesting that we add uses. You know, the
12 Planning Commission has specific uses that they're
13 requesting this property be limited to. And then you
14 asked for three additional uses; ocean-recreational,
15 non-motorized equipment rental, and sales yards, and
16 private schools or -- private schools, I guess. And
17 then a blanket one that says any other retail business
18 or commercial enterprises which are similar in character
19 --

20 MS. OHASHI HIRAGA: Uh-huh.

21 COUNCILMEMBER ANDERSON: -- that provided such
22 uses shall be approved by the Commission. So -- and
23 then you have several things you wanted deleted. So is
24 that still the request?

25 MS. OHASHI HIRAGA: Yes. In terms of the

1 request -- and I distributed the hard copy -- if you
2 take a look -- and, I'm sorry, it's not numbered, the
3 pages -- but maybe about the fourth page from the back
4 of this hard copy of what was going to be our Powerpoint
5 presentation, there is a list of recommended conditions.
6 So we are proposing to delete five uses. The awning,
7 which was noted in the October 22nd letter. And we
8 would add on, as you mentioned, three uses.

9 The current owner, Mr. Thomas Castleton, is
10 not in the nursery business, so he doesn't intend to do
11 a retail nursery on the property. His business is
12 operating a surf school. So we wanted to make it real
13 clear to the Committee that what you're reviewing today
14 is really not a nursery application, but an application
15 for business use at this particular property. And it
16 was felt that, you know, it could possibly fall under
17 the category of business offices and agencies, but we
18 thought we'd make it real clear that, you know, it would
19 include that this use would also include like
20 non-recreational, non-motorized -- I'm sorry, not
21 non-recreational -- ocean-recreational, non-motorized
22 equipment rental, which is like the surfboards, and to a
23 surf school to have a business office, storage of
24 equipment and retail.

25 The third category or third new use that we

1 were proposing was what currently exists in the B-2
2 Zoning District as Item No. 66. And there is -- I guess
3 you could refer to this as like a miscellaneous
4 provision where if the owner of a property within the
5 B-2 Business Zoning District would like to apply for a
6 use that's not specifically listed as part of the other
7 65 uses, then they have an opportunity to come before
8 the Planning Commission to make that request.

9 In speaking with the Department of Planning on
10 this, rather than leave -- leaving it the way Item 66 is
11 worded in the County Code, we added that it would be
12 conforming to the intent of this article, which is what
13 is in the Code, but we added "and this zoning
14 ordinance." So, in other words, if it's any uses that's
15 not part of the use that you eventually may recommend
16 approval for, then they could seek Planning Commission
17 approval.

18 COUNCILMEMBER ANDERSON: Okay. You know, it's
19 kind of a catchall. And, you know, I don't know that I
20 would be averse to giving that catchall use, especially
21 with the Planning Commission's review. But, you know,
22 the two-story, is there -- is there any way that -- it's
23 my understanding that the brother bought the property
24 and he's gonna put a surf school there.

25 MS. OHASHI HIRAGA: That's correct.

1 COUNCILMEMBER ANDERSON: So is there any way
2 that we can keep that to one-story? Because my concern
3 is the folks living in -- in the Island Surf building,
4 next door, their views to the ocean go right across that
5 parcel. And I -- I think we're just gonna wipe out any
6 view they have to the ocean if -- if he gets two
7 stories.

8 MS. OHASHI HIRAGA: May I respond to that?

9 COUNCILMEMBER ANDERSON: Yeah.

10 MS. OHASHI HIRAGA: I think that, preferably,
11 you know, we -- we would like the two stories, the 35
12 feet, which is allowed in both the A-1 Apartment
13 District, the current zoning, as well as in the B-2
14 Business District Zoning. And, in fact, the B-2 zoning
15 allows for six stories in the County Code. So he is
16 agreeing to the requirements or standards of the current
17 zoning, which is A-2 -- which is A-1, two stories. So I
18 -- I believe that, you know, he's already limiting his
19 ability with the B-2 Zoning District from a six-story
20 building to a two-story building.

21 COUNCILMEMBER ANDERSON: So, you know,
22 currently, there's a State Urban District, A-1 Apartment
23 District Zoning, and Community Plan Multi-Family. So
24 there's nothing stopping him from building that up as a
25 Multi-Family use right now? Is that correct?

1 MS. OHASHI HIRAGA: No, there's nothing.

2 COUNCILMEMBER ANDERSON: So --

3 MS. OHASHI HIRAGA: Other than the fact that
4 the Kihei Community Association preferred not having
5 another apartment building right on that corner.

6 COUNCILMEMBER ANDERSON: Right. Okay. I have
7 a couple other questions, but I'll yield right now.

8 MS. OHASHI HIRAGA: Uh-huh.

9 CHAIR MOLINA: Thank you, Member Anderson.

10 COUNCILMEMBER ANDERSON: Thanks, Ms. Hiraga.

11 CHAIR MOLINA: Committee Members, questions
12 for Ms. Hiraga? Member Medeiros?

13 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.
14 Ms. Hiraga, thank you. I just wanted to be sure that
15 I'm thinking of the right property. And I think I am.
16 This is across from Kalama Park, the edge of Kalama
17 Park, close to Charley Young Bridge and Cove Park?

18 MS. OHASHI HIRAGA: Uh-huh. Yes.

19 COUNCILMEMBER MEDEIROS: That's the area,
20 right? Okay. And -- and -- and you did say that the
21 owner will be deciding not to have a retail nursery and
22 to do other business and commercial activities there?

23 MS. OHASHI HIRAGA: That's correct.

24 COUNCILMEMBER MEDEIROS: Okay. So will some
25 of that extensive growth of plants remain there, or it's

1 gonna be sold away?

2 MS. OHASHI HIRAGA: Okay. My understanding
3 from Mr. Castleton, Mr. Thomas Castleton, is that the
4 potted plants will be or are in the process of being
5 removed from the property, but the plants that are in
6 the ground, that you can see in the site photos, will
7 remain.

8 COUNCILMEMBER MEDEIROS: Okay. Yeah. That --
9 that's fairly nicely landscaped corner --

10 MS. OHASHI HIRAGA: It is.

11 COUNCILMEMBER MEDEIROS: -- of South Kihei
12 Road. So I'm glad that they have some plans to keep the
13 plants that are in the ground. Thank you, Ms. Hiraga.

14 CHAIR MOLINA: Thank you.

15 COUNCILMEMBER MEDEIROS: Mahalo.

16 CHAIR MOLINA: Thank you, Member Medeiros.
17 Ms. Hiraga, before I turn the matters back over to the
18 Committee, what are the proposed hours of operation --
19 maybe I missed that -- of the proposed surf school?

20 MS. OHASHI HIRAGA: The surf school --

21 COUNCILMEMBER MEDEIROS: Oh, you have an
22 aerial. Where did you get that?

23 CHAIR MOLINA: We have Mr. Castleton
24 available, too, if you'd like --

25 MS. OHASHI HIRAGA: Yeah, he's --

1 CHAIR MOLINA: Okay.

2 MS. OHASHI HIRAGA: The surf school business
3 will operate primarily from Monday through Friday, from
4 7:00 a.m. to 2:00 p.m., for lessons. As part of their
5 park permit to conduct the surf lessons at Kalama Park,
6 they need to vacate the park by 2:00. Okay, so the
7 actual lessons. Then they go back to their office. So
8 they may have their office closed at 3:00. But the
9 actual lessons -- you know, the hours of operation for
10 the lessons is only until 2:00. And that's from Monday
11 through Friday. On Saturdays, it's only until 12:00
12 noon. And no lessons on Sundays or in -- and State or
13 -- and/or County holidays.

14 CHAIR MOLINA: Federal holidays, too?

15 MS. OHASHI HIRAGA: Yeah.

16 CHAIR MOLINA: Okay. Thank you.

17 MS. OHASHI HIRAGA: But they may rent their
18 equipment. But they won't -- they cannot -- they are
19 not allowed to conduct any lessons.

20 CHAIR MOLINA: Thank you, Ms. Hiraga. Member
21 Baisa?

22 COUNCILMEMBER BAISA: Yes, Chair. Thank you.
23 Thank you, Ms. Hiraga, for being here. My understanding
24 if I -- if I'm remembering correct, was that the actual
25 lessons don't occur on this site, but this is where they

1 check in and check out?

2 MS. OHASHI HIRAGA: That's correct.

3 COUNCILMEMBER BAISA: So it's essentially like
4 they come in and sign up and -- but the lessons are not
5 on the property?

6 MS. OHASHI HIRAGA: No.

7 COUNCILMEMBER BAISA: So you don't have
8 classes going on there?

9 MS. OHASHI HIRAGA: No.

10 COUNCILMEMBER BAISA: Okay. Thank you.

11 MS. OHASHI HIRAGA: They are required, as part
12 of their parks permit, to have a place to check in,
13 because you can't do it on the beach.

14 COUNCILMEMBER BAISA: Okay. Thank you.

15 CHAIR MOLINA: Thank you, Member Baisa.

16 Committee Members, any other questions for Ms. Hiraga?

17 And, by the way, we do have, again, Mr.

18 Radford from MISC. I know there was an issue made about
19 Coqui frogs. And there is a letter submitted from Mr.
20 Radford which is in your binder. Also attached, a
21 certificate dated September 18th, explaining that, I
22 guess, the property is now clear, the applicant has made
23 significant progress with regards to that issue. So he
24 is waiting in the wings as well, Members, if you have
25 questions for him.

1 Okay. We're back to Member Anderson,
2 questions for Ms. Hiraga?

3 COUNCILMEMBER ANDERSON: Thank you, Chairman.
4 Ms. Hiraga, their Environmental Assessment for the
5 Community Plan Amendment was done in August of 2001, and
6 there were quite a few questions regarding historic
7 sites back then. And there had not been an Inventory
8 Survey done. And now here we are, in 2008. And the
9 most recent letter that I can find from State Historic
10 and from OHA is a letter dated June 15, 2006. There's,
11 also, a letter in here, March 2006, referencing a
12 different parcel. So the parcel that we're looking at
13 today is Parcel 12. And -- is that correct?

14 MS. OHASHI HIRAGA: Yes.

15 COUNCILMEMBER ANDERSON: Yeah. And,
16 apparently, across the street, Mr. Castleton also was
17 involved with Parcel 23, in which skeletal remains were
18 removed from the parcel back in 2000. And that there
19 was an agreement -- an agreement on -- on -- that Messrs
20 Armour and Castleton will reinter -- reinter the
21 skeletal remains within the preservation area on the
22 Pierman property. So I'm assuming -- I don't know, the
23 Pierman property, where that is. But -- and I'm looking
24 at an aerial and I'm looking, also, at a TMK map. And I
25 see a reference in the SHPD letter of June 15th, '06,

1 for a -- a Inventory Survey on the parcel we have -- the
2 subject parcel in front of us. And it asks us to impose
3 specific conditions.

4 Apparently, there is a Chinese nursery -- I
5 mean a Chinese cemetery --

6 MS. OHASHI HIRAGA: Yes.

7 COUNCILMEMBER ANDERSON: -- on this property
8 that -- you know, I can't -- in all of the
9 documentation, I see no Inventory Survey, I see no site
10 plan. I do note that the -- the Cultural Resource
11 Commission reviewed this. And so I guess what I'm
12 getting at, Gwen, is I'd like to see where these
13 historic sites are, some commitment to a preservation
14 plan to inter these -- these remains that were removed,
15 and to ensure that whatever development is done on this
16 Parcel 12, where SHPD thinks that there are more
17 burials, and that the Inventory Survey indicated that
18 there were, that we have some guarantee that that's
19 gonna happen.

20 They -- they say, in their June 6th letter, a
21 burial treatment preservation plan for the Chinese
22 cemetery should be submitted to our culture and historic
23 branch for re -- review. This is State Historic
24 speaking. So that the remains still head -- still held
25 in the SHPD repository may be reintered. Some elements

1 were relocated during unauthorized sand removal. And
2 the collection of these remains needs to be included in
3 the burial treatment plan.

4 And it says, earlier in the letter, that an
5 archeological Inventory Survey has recently been
6 conducted, reviewed and accepted for this TMK, Parcel
7 12, resulting in additional findings. And the
8 determination that the burials represented early
9 historic Chinese cemetery.

10 So can you clear that up for me, Ms. --

11 MS. OHASHI HIRAGA: Yes.

12 COUNCILMEMBER ANDERSON: -- Hiraga?

13 MS. OHASHI HIRAGA: Were you referring to a
14 June 15, 2006 letter?

15 COUNCILMEMBER ANDERSON: Yes.

16 MS. OHASHI HIRAGA: Okay. First of all, I had
17 Carla distribute what looked like this to all of you.
18 And if you flip through, on the third page, there's a
19 TMK map.

20 COUNCILMEMBER ANDERSON: Oh, I see, 23.

21 MS. OHASHI HIRAGA: Yes. So the parcel that's
22 before you today is Parcel 12. And you can see 12 on
23 the left middle section.

24 COUNCILMEMBER ANDERSON: Right.

25 MS. OHASHI HIRAGA: Far left. And the Parcels

1 25 and 23 were parcels that were referenced in the State
2 Historic Preservation Division letter. And I also need
3 to note that at that time, Mr. Dale Castleton owned all
4 three parcels.

5 COUNCILMEMBER ANDERSON: Right. And I know he
6 since sold this one to his brother, but --

7 MS. OHASHI HIRAGA: That's correct. So this
8 nursery parcel, if I could refer to Parcel 12, when I --
9 when we reviewed the SHPD letter, and the Department had
10 recommended to the Planning Commission that the
11 requirements or the conditions of SHPD be attached to
12 the SMA approval. And this project -- the nursery
13 project did not receive SMA approval because Council
14 action is needed first before any kind of SMA is granted
15 on the parcel.

16 COUNCILMEMBER ANDERSON: Okay. Well --

17 MS. OHASHI HIRAGA: So --

18 COUNCILMEMBER ANDERSON: -- I'm reading
19 directly from the June 15th, 2006 letter. And it is for
20 the Hula Girl Gardens at 2021 South Kihei Road, and it
21 is for Parcel 12. And so, you know, I just would like
22 to know where the Inventory Survey is so we can see
23 where these sites are, if the Inventory Survey was done.
24 They talk about doing burial treatment and preservation
25 plan. It's been, you know, two years. And I'd just

1 like some -- in this Change in Zoning, some guarantee
2 that this is gonna be followed through with. And I
3 think the letter from State Historic is their review.

4 And, Members, if you wanna find it, it's, you
5 know, right after the -- at the very beginning of the
6 item, it's right after the attachment showing all the
7 conditions. There's a map, and then that's the first
8 letter from State Historic.

9 And on the top of Page 2, they're asking that
10 we attach these conditions. Because you'll -- you'll
11 note that the review letter is for the Community Plan
12 Amendment and the Change in Zoning, which we have in
13 front of us. And I -- I would just like to see us
14 attach these conditions, Mr. Chairman.

15 And I'll just read 'em into the record. Given
16 the above information, we recommend the following
17 condition be attached to the subject permit application
18 -- applications should they be approved: An
19 archeological Inventory Survey, including subsurface
20 testing shall be conducted of the subject property in
21 order to determine the effect of the proposed
22 undertaking on significant historic sites. An
23 acceptable report documenting the findings of the survey
24 needs to be submitted to State Historic Preservation for
25 approval in writing. If significant historic sites are

1 identified during the survey, a mitigation plan may need
2 to be developed and be approved in writing by SHPD.
3 These comments mirror our initial comments on this
4 action as indicated above. In addition, we'd like to
5 point out that there are some unresolved issues
6 pertaining to Parcel 23, which is part of the Hula Girl
7 Gardens, also known as the Kihei Retail Nursery. A
8 burial treatment preservation plan for the Chinese
9 cemetery should be submitted to our culture -- I already
10 read that, so I'm not gonna go through it, Members. But
11 the idea being that, across the street, on Parcel 23,
12 some bones were removed. And this is also an area that
13 was used as a nursery. And I don't know if it still is
14 or not. But SHPD feels that this Parcel 12 -- we -- is
15 located in sand deposits. And this area, in general, is
16 known to contain subsurface habitation deposits and
17 human burials.

18 Inasmuch as human skeletal remains were
19 removed from Parcel 23, and they are obligated to
20 reinter them at a Chinese cemetery, I'd like us to
21 protect Parcel 12 in the same way. Because I don't care
22 if they're Hawaiian remains or Chinese remains, they
23 deserve the respect of being reinterred. And we, as a
24 body, should respect the request of SHPD. And I would
25 just ask that we put this condition on the change in

1 zoning, so we make sure that it gets done.

2 CHAIR MOLINA: Okay. And, please, when we get
3 to that point, Member Anderson, you can go ahead and ask
4 that be placed in the conditions of zoning.

5 COUNCILMEMBER ANDERSON: And so my last
6 question is, do you have an Inventory Survey or any
7 preliminary preservation plan or anything on this
8 property?

9 MS. OHASHI HIRAGA: Not for Parcel 12, no.

10 COUNCILMEMBER ANDERSON: Okay. Thank you.

11 MS. OHASHI HIRAGA: And, again, it was because
12 the Department had indicated that it would be a
13 requirement of SMA. So prior to the Maui Planning
14 Commission reviewing the SMA application, or taking
15 action on it, that would have to have been done.

16 COUNCILMEMBER ANDERSON: You know, that's all
17 well and good for the Department to say that, but in a
18 Change in Zoning Application, Mr. Chairman, we're the
19 authority. And the application requires a preservation
20 plan if there are significant sites. And so what, we
21 just shuffle off our responsibility, once again, to the
22 Planning Commission who doesn't answer to the public,
23 who has no obligation to respect the wishes of OHA or of
24 Chapter 6E, which we're obligated to do, and our County
25 Code obligates us to that. And, you know, I think by

1 the time you get to an SMA, it's a little late.

2 I mean, they can grade, pretty much, without
3 an SMA. They can put up a fence without an SMA. They
4 can do a lot of stuff without an SMA.

5 And if it's a condition of zoning, they pretty
6 much can't do anything without meeting those conditions.
7 And I just feel that it's our obligation as elected
8 officials to follow the County Code. And it is a
9 requirement in our Change in Zoning ordinance, that if a
10 preservation plan -- I'm -- we're letting 'em off of the
11 preservation plan. Let's have an Inventory Survey, at
12 least, so we know where the sites are, so that, you
13 know, they know where the sites are. If there is a
14 cemetery there, let's know it.

15 CHAIR MOLINA: Okay. Thank you, Member
16 Anderson. The Chair has one question for the Department
17 with regards to the Environmental Assessment. Members,
18 you guys were given a final copy of it. With regards to
19 the application for a surf school, does this have any
20 impact on the Environmental Assessment which was done, I
21 guess it's dated August 2001? Any comments, Mr. Dack?

22 MR. DACK: Yeah. The -- the EA, of course, is
23 prepared for a Community Plan Amendment, which is a much
24 broader change than just a surf school. Surf school is
25 -- just is a very small part of the kind of uses that

1 could be allowed within a -- within a particular
2 Community Plan area. So if the environmental review has
3 been prepared for a Community Plan Amendment which -- or
4 is applicable to broad range of uses, in changing the --
5 the uses within that -- within that broad range, it --
6 it -- it can be acceptable. Particularly if the -- the
7 more specifics of the environmental review are -- and
8 the impacts that were addressed in that are gonna be
9 smaller, or would be expected to be smaller than -- than
10 under the revised uses than -- than were actually
11 proposed. And that's the Department's conclusion in
12 this case, that the -- that the impacts would be
13 smaller. And, again, the -- the -- the EA was not on a
14 -- specifically a retail plant nursery or -- or anything
15 like that. The EA was on the Community Plan Amendment.
16 And -- and we feel that the -- the EA is -- is adequate
17 envelopes or is broad enough to -- to address the
18 changes of -- the changes of individual uses that are
19 being requested now.

20 CHAIR MOLINA: Okay. Thank you, Mr. Dack.
21 Committee Members, questions for either Ms. Hiraga or
22 Mr. Dack from the Planning Department? Chairman Hokama?

23 COUNCILMEMBER HOKAMA: Thank you, Mr. Chair.
24 Ms. Hiraga, for the Committee's understanding -- and I
25 have been listening to Ms. Anderson's questions --

1 currently, there is no structure on Lot 12, is that
2 correct? Or is there a -- a -- some sort of existing
3 structure or facility there?

4 MS. OHASHI HIRAGA: The trailer is still
5 there? Okay. The only so-called structure was a
6 trailer that the former owner was using as his office.
7 So there was a trailer on the site. And that's still
8 remaining.

9 COUNCILMEMBER HOKAMA: Is that trailer
10 considered mobile or temporary? It's not a permanent
11 set-on-the-ground type of facility?

12 MS. OHASHI HIRAGA: I believe it is mobile and
13 temporary, right. Yeah, as he's nodding yes.

14 COUNCILMEMBER HOKAMA: Okay. And second, from
15 review of the handout that you have presented to the
16 Committee dated this after -- today, the 29th, you show
17 us two photographs, a view from South Kihei as well as a
18 view from Auhana Road. And can this Committee make an
19 assumption that the plant materials that are on -- that
20 are within the photographs that you have shared with us
21 have been planted onsite by the current or previous
22 owners, and that it was not existing prior to this
23 nursery operation?

24 MS. OHASHI HIRAGA: Yeah, that's correct.

25 COUNCILMEMBER HOKAMA: So the soil has been

1 disturbed to plant the material?

2 MS. OHASHI HIRAGA: That's correct.

3 COUNCILMEMBER HOKAMA: Was there any evidence
4 of -- of previous historic remains, of burials, any
5 findings that we -- we need to be aware of from the
6 earlier disturbance of the ground?

7 MS. OHASHI HIRAGA: Not that I'm aware of.

8 COUNCILMEMBER HOKAMA: I would appreciate if
9 you can verify it with Mr. Castleton. Because I think
10 it's important for us to -- to be aware, Mr. Chair, that
11 the parcel in question this afternoon has been in some
12 sort of active agricultural -- or for the nursery
13 things, and that the ground has been disturbed, I don't
14 know what depth. I'm not an agronomist or a -- a soil
15 engineer, but I would assume that if something was
16 found, as we've practiced on Lanai, we would immediately
17 notify appropriate authorities that potential remains or
18 -- or historical significant items have been found, they
19 need to be, one, verified, two, identified, and then,
20 three, appropriately taken care of in the manner that is
21 deemed responsible and in consideration of the site. So
22 I am just wondering if there is any documentation for us
23 to be aware of?

24 And I bring up Lanai. You know, on our
25 property -- we are moving forward on our housing

1 project, 65 acres has been tilled and cultivated for 80
2 years. And we still go through an assessment because of
3 its requirement. But, basically, we know it's been
4 tilled, that we have not found anything over the 80
5 years of cultivating that acreage. So I'm wondering if
6 --

7 MS. OHASHI HIRAGA: I don't --

8 COUNCILMEMBER HOKAMA: -- these activities,
9 there's some type of documentation --

10 MS. OHASHI HIRAGA: Okay.

11 COUNCILMEMBER HOKAMA: -- of findings that the
12 owners can verify for us.

13 MS. OHASHI HIRAGA: I will double-check with
14 the previous owner, not this current owner since he just
15 acquired the property two months ago. But I will check
16 on that.

17 COUNCILMEMBER HOKAMA: Can you also share with
18 us this afternoon, Ms. Hiraga, the previous -- when the
19 previous owner obtained the property, was it already
20 being utilized in some sort of manner such as the
21 nursery, or was it just the basic rural property that
22 was purchased?

23 MS. OHASHI HIRAGA: When the previous owner
24 acquired it? I'd like to de -- check with Mrs. Peggy
25 Castleton, who purchased the property.

1 COUNCILMEMBER HOKAMA: Mr. Chair, if you would
2 allow a response, please?

3 CHAIR MOLINA: Okay. Thank you. Members, any
4 objections to having the applicant come up? Sure.
5 Members, Chair is aware of the time. We shall be taking
6 our afternoon recess shortly.

7 COUNCILMEMBER HOKAMA: Thank you, Mr. Chair.

8 CHAIR MOLINA: Ms. Hiraga?

9 MS. OHASHI HIRAGA: Yes, Mr. Chair. I just
10 checked with Mrs. Peggy Castleton, who is the
11 applicant's mother, who was the original purchaser of
12 the property. And when she acquired the property, it
13 was just vacant piece of land.

14 COUNCILMEMBER HOKAMA: Vacant land?

15 MS. OHASHI HIRAGA: So there was -- you know,
16 there was not a nursery operation in existence.

17 COUNCILMEMBER HOKAMA: Okay. And would you
18 say that the nursery operation covered all of the -- the
19 Parcel 12 as much as possible without -- within setbacks
20 or, what, just a portion of Parcel 12? Can you tell us
21 about the usage of the nursery operation, please? Was
22 it, basically, the whole parcel you're talking about?

23 MS. OHASHI HIRAGA: Basically, it was the
24 whole parcel. They were planted and there still are
25 trees in the grounds. There are a lot of potted plants.

1 And the trailer that was used as an office. And they
2 also had like certain water features that would normally
3 be available for nursery use.

4 COUNCILMEMBER HOKAMA: So is this -- is it
5 good on the Committee's understanding that a irrigation
6 system was put into -- subsurface irrigation was put
7 into place to -- for the irrigational needs of the
8 nursery?

9 MS. OHASHI HIRAGA: I believe so, yes. Drip
10 irrigation.

11 COUNCILMEMBER HOKAMA: Okay. So in all of
12 this disturbances of the ground, whether they be for the
13 irrigation system or for the planting of the material,
14 at this point in time, you can share -- tell the
15 Committee that nothing was found that was to be of some
16 sort of historical or archaeological significance?

17 MS. OHASHI HIRAGA: I will not be able to tell
18 the Committee that because I have not verified it. I
19 will have to check with the former owner, Mr. Dale
20 Castleton, that when he put in his irrigation system
21 and/or any kind of ground-altering, you know, plantings,
22 construction of his fence, because it is a fenced-in
23 property, whether there were any discoveries made. And
24 I will verify that. I can do that this afternoon.

25 COUNCILMEMBER HOKAMA: Thank you. I just have

1 a question for the Department.

2 CHAIR MOLINA: Continue.

3 COUNCILMEMBER HOKAMA: Has the Department
4 received any type of communication, verbal, fax, letter,
5 about people of concern that have mentioned any other
6 historical -- besides SHPD's comments -- regarding this
7 specific parcel or adjacent property next to this
8 parcel?

9 MR. DACK: I must admit, I'm -- I'm the third
10 planner on this project. And I have not thoroughly gone
11 through the box full of file. But what I have reviewed,
12 I have sound [sic] -- found many letters, but nothing
13 relative to that subject matter except those from SHPD
14 that I've come across.

15 COUNCILMEMBER HOKAMA: Okay. Thank you very
16 much, Department. Mr. Chair, thank you for my
17 opportunity.

18 CHAIR MOLINA: Okay. Thank you, Chairman
19 Hokama. Committee Members, what we'll do right now,
20 we're gonna take -- take a afternoon break. The Chair
21 would like to also confer with Staff on some procedural
22 matters as well. So, Members, we're gonna take a
23 recess. Let's return at 3:00 p.m.

24 Land Use Committee meeting for October 29,
25 2008 in recess....(gavel)...

1 RECESS: 2:47 p.m.

2 RECONVENE: 3:03 p.m.

3 CHAIR MOLINA: ... (gavel)...The October 29,
4 2008 Land Use Committee Meeting is now back in session.

5 Thank you very much, Members, for that recess.
6 Members, before we go any further with Ms. Hiraga, I'd
7 like to ask Mr. Radford from MISC -- I know you have a
8 very busy schedule -- would you like to provide the
9 Committee any additional comments to -- with regards to
10 your letter? And, Members, if you have any questions
11 with regards to the matter on the Coqui frogs. I know
12 we asked you here to give time out of your busy day to
13 be here with us. We would like to at least give you an
14 opportunity to say something. And if you could please
15 identify yourself for the record.

16 MR. RADFORD: Sure. Hello, Council Members.
17 Thanks for having me. Good to see many of you again.
18 I'm Adam Radford of the Maui Invasive Species Committee.
19 And I manage our vertebrate operations, their animal
20 invasive species control programs. So actually I'm not
21 sure if you have questions for me. I could give a brief
22 summary if that would help. And I think it might. And,
23 well, I think, largely due to the County's support, MISC
24 became more proactive in the control of Coqui frogs in
25 about 2005, identified 14 population centers. A

1 population center being a place that had a lot of Coqui
2 frogs, simply put. And the parcels all that have been
3 discussed today were considered one of those population
4 centers. And in a cooperative agreement with the owner,
5 Dale Castleton, largely, at that time, I feel we were
6 pretty successful in the removal. And I think the
7 parcel in question, mostly, was, actually, fall of 2006,
8 was the last time the Coqui frog was heard there, and I
9 think was one of our earliest eradication or success
10 stories. So of our now seven eradication areas, and we
11 have seven additional we're still working on, this area
12 was one, and one of the first.

13 CHAIR MOLINA: Okay. It was very pleasing to
14 hear that success story and hearing that our County
15 dollars is very well invested. Committee Members,
16 questions for Mr. Radford? Member Anderson?

17 COUNCILMEMBER ANDERSON: Thank you, Chairman.
18 Mr. Radford, we're all appreciative, and the neighbors
19 are all appreciative, that you went in there and forced
20 the issue and got rid of the Coqui frogs. Because it
21 was a problem for quite some time.

22 The parcel that is in discussion today is the
23 one on the triangle corner. And when you reviewed that,
24 were most of the plants there in pots?

25 MR. RADFORD: I haven't actually been on the

1 site in some time because it's been so long since we've
2 been down there, but I believe so. There's some -- it's
3 been in use for a while is my impression. So there is
4 quite a few trees that are probably in the ground. But
5 --

6 COUNCILMEMBER ANDERSON: On the parameter?

7 MR. RADFORD: Yeah. I would say the majority
8 were in pots or, as was mentioned, there was water
9 features. I think the trailer was mobile. It was like
10 everything, from my recollection, was -- was mobile --

11 COUNCILMEMBER ANDERSON: Okay.

12 MR. RADFORD: -- really, at that point.

13 COUNCILMEMBER ANDERSON: Thank you.

14 MR. RADFORD: And then I just wanted to
15 clarify as well, because the letter that you have really
16 speaks to what we're calling the Coqui-free
17 certification program, which MISC feels that at this
18 point in time there's -- we kind of have brand
19 recognition with the community in terms of our
20 endorsement of what areas or places of business may or
21 may not be Coqui-free. And the Coqui-free certification
22 program is one based on positives, not negatives. So
23 we're simply recognizing businesses that are taking
24 proactive steps to prevent the spread of Coqui frogs in
25 Maui County. Currently, this is a Maui County specific

1 program.

2 The Hula Girl Nursery was one of our most
3 enthusiastic and earliest participants. So we're pretty
4 excited about that, to use that as a success story and,
5 also, recognize their efforts, you know. So it's a
6 program that is now underway and is being launched in
7 terms of advertising, and one you may want to look for
8 if you have questions about what businesses are -- are
9 being proactive. So there will be signage. There's a
10 website. There's all the identifying features. Or you
11 could ask, you know.

12 COUNCILMEMBER ANDERSON: Thank you, Mr.
13 Radford.

14 MR. RADFORD: Sure.

15 CHAIR MOLINA: Okay. Members, any other
16 questions before I excuse Mr. Radford? Okay. Chairman
17 Hokama?

18 COUNCILMEMBER HOKAMA: Thank you. Mr.
19 Radford, does your Committee do follow-ups? For
20 example, maybe make sure you would go back and check on
21 -- on whether the site is still maintaining its
22 standards to continue this type of certification.

23 MR. RADFORD: Sure. In terms -- in terms of
24 the certification there's -- really, it boils down to,
25 largely, not just steps being taken like, say, choosing

1 a wholesaler that, you know, has a reputation to be --
2 to be proactive as well, or something, that would be a
3 step. But, also, largely, was do they have Coqui frogs
4 or not. If they do, MISC develops a control plan with
5 them or we're there once a month.

6 COUNCILMEMBER HOKAMA: Once a month?

7 MR. RADFORD: Once a month. If they do not
8 have Coqui frogs, typically we'll touch base about once
9 a month, but our schedule would be more like a four to
10 six-week. And then, on a parallel track, not speaking
11 to businesses so much as residences or hotels or other
12 areas that may be infested with Coqui frogs, those areas
13 we're typically on a four to six-revisit schedule as
14 well. And that includes that timeframe -- our guideline
15 for considering a site in eradication is a year from the
16 last time a localizing male is heard. Which only the
17 male Coqui frog makes noise. So that's -- we're there
18 on that cycle four to six weeks for a year or more,
19 until we would say, you know, they're gone.

20 COUNCILMEMBER HOKAMA: It's just the males,
21 huh?

22 MR. RADFORD: Just the males, yeah. So I
23 think it's a pretty rigorous follow-up schedule, really.

24 COUNCILMEMBER HOKAMA: Thank you very much,
25 Mr. Radford.

1 MR. RADFORD: Sure. Thank you.

2 CHAIR MOLINA: Thank you, Chairman Hokama.
3 Any other questions for Mr. Radford before we excuse
4 him? If not, thank you very much, Mr. Radford, for the
5 update. And we certainly appreciate your service as
6 well as MISC's service to the community with regards to
7 these invasive species.

8 MR. RADFORD: Well, thank you. And thanks
9 again for your support. I know, within Hawaii, our
10 County is very supportive. And it really goes a long
11 way in our efforts. So thanks.

12 CHAIR MOLINA: Okay. Thank you.

13 MR. RADFORD: Thanks for having me.

14 CHAIR MOLINA: Thank you. I would like to
15 call up to the stand -- back to the stand Ms. Hiraga to
16 respond to further questions from the Committee.

17 Members, just for your information, I -- I
18 will be relinquishing the rostrum in about 15 minutes.
19 The Committee Chair has another commitment to attend to.
20 I will turn matters over to my distinguished colleague
21 from Kahului, Mr. Pontanilla, who serves as the
22 Committee Vice-Chair.

23 So with that said, Committee Members,
24 additional questions for Ms. Hiraga with regards to Land
25 Use Item 66? Okay. Seeing -- I'm sorry. Chairman

1 Hokama?

2 COUNCILMEMBER HOKAMA: Chairman, I am
3 wondering if Ms. Hiraga was able to get some additional
4 information during the recess regarding my earlier
5 questions, if you would allow her to be able to at least
6 respond if there was some findings or information she
7 can share with the Committee this afternoon, please?

8 CHAIR MOLINA: Okay. Thank you, Chairman.
9 Ms. Hiraga?

10 MS. OHASHI HIRAGA: Yes. Thank you,
11 Councilmember Hokama and Chair Molina. During the
12 recess, I had an opportunity to contact Mr. Dale
13 Castleton, the former owner of the property. And he had
14 indicated that he has -- they have never encountered any
15 kind of graves or skeletal remains on the property.

16 And by way of history, as I had noted, Mrs.
17 Castleton had purchased the property in 1998. Prior to
18 that, it was a vacant parcel that was used at one time
19 by Goodfellow Brothers as a baseyard when they were
20 doing the Kihei road improvements. So that's where they
21 had their equipment. And prior to that, it was a
22 single-family residence. I don't have the specific
23 years from when it was used as a baseyard. But I do
24 know that, and Mrs. Castleton confirmed, that they did
25 purchase the property in 1998, and it was vacant. I can

1 verify dates and try to give more information to -- to
2 the Council Members.

3 COUNCILMEMBER HOKAMA: Chairman, if I could
4 follow up?

5 CHAIR MOLINA: Proceed.

6 COUNCILMEMBER HOKAMA: The single-family
7 residence that you shared with us prior to the
8 construction company's baseyard's use of the property,
9 would you know what type of facility it was, whether it
10 was a multistory, whether it was a post and pier? Would
11 you have any type of additional information you can
12 share? I just -- I'm just trying to understand what was
13 happening on the property prior to the current uses,
14 please.

15 MS. OHASHI HIRAGA: Okay. I don't know. I'm
16 sorry. I don't know the type of struc -- structure that
17 single-family residence was, but I'll try to get that
18 information.

19 COUNCILMEMBER HOKAMA: Okay. Thank you very
20 much.

21 CHAIR MOLINA: Okay. Thank you, Chairman
22 Hokama. Committee Members, additional questions?
23 Member Pontanilla?

24 VICE-CHAIR PONTANILLA: Thank you. While
25 you're checking on the structure, if you could also find

1 out if the particular building was hooked up to the
2 existing County sewer line in that area, or did they
3 have cesspool?

4 MS. OHASHI HIRAGA: Okay.

5 VICE-CHAIR PONTANILLA: Thank you.

6 CHAIR MOLINA: Okay. Thank you, Member
7 Pontanilla. Additional questions, Members?

8 Seeing none, the Chair is ready to then -- oh,
9 excuse me. I'd like to ask, Planning Department, if you
10 have any additional comments with regards to Member
11 Anderson's concerns related to the burial matters on one
12 of the subject parcels? Mr. Dack?

13 MR. DACK: Yes. It -- I would -- would verify
14 that the Planning Commission was looking at the
15 establishment of the wording in the -- well, basically,
16 looking at -- looking at the estab -- Planning
17 Department -- I'm sorry -- was looking at the
18 establishment of the kind of wording that was in the
19 SHPD letter through condition of approval through the
20 SMA. That is a common, reasonable way to do it.
21 Certainly, the Council can do that instead. But -- but
22 it -- it's common, very common, actually, that SHPD
23 conditions -- in fact, it's very standard, probably one
24 of the standard conditions that there's -- SHPD
25 addressed through the SM -- SMA process. So you can

1 really go either way on that, although we suggest it be
2 part of the SMA.

3 The second paragraph of -- of -- on that
4 second page that Councilmember Anderson read does apply
5 to Parcel 23. And so if you were to apply the -- that
6 -- any part of that second page, we'd suggest that you
7 apply just that first paragraph and not even the last
8 sentence. It would -- it would -- just be careful that
9 what you apply is specifically related to Parcel 12 and
10 not related to Parcel 23. Because, now, they're under
11 separate ownerships and -- and it would -- it would seem
12 -- it would be a condition that somebody couldn't
13 actually necessarily fulfill, if you were to apply a
14 condition related to a separate parcel than this --
15 other than the subject one being addressed.

16 CHAIR MOLINA: Okay. Thank you, Mr. Dack.
17 Member Anderson?

18 COUNCILMEMBER ANDERSON: You're referencing
19 the second paragraph on Page 2, is that correct?

20 MR. DACK: Yes.

21 COUNCILMEMBER ANDERSON: Yeah. Okay. No.
22 Because I think, you know, while I appreciate that the
23 Planning Department would catch this at the SMA level, I
24 still think it's important for us to put it as a
25 condition of zoning because, you know, as -- as a

1 requirement of their application, they should have
2 already done the Inventory Survey. That's in our County
3 Code, 19.510, application requirements. And -- and it's
4 there for a reason, Members, so that -- you know, if we
5 had an Inventory Survey in front of us, if we had a map
6 that showed us where these burial sites are, we could
7 put a condition on that requires them to, you know, put
8 so much of a buffer zone around it.

9 I might add, Members, that Parcel 23, where
10 unauthorized removal of sand exposed burials, and they
11 turned out to be Chinese burials from the Akina family.
12 This is a historically well-respected family in South
13 Kihei. And I just think as respect for the fact that
14 burials have already been found, a -- a cemetery, an old
15 cemetery was there -- unfortunately, all the headstones
16 had been removed. But -- what's the word? People in
17 the area identified that they -- there were stones with
18 Chinese inscriptions on 'em at one time on the property.

19 Now, granted, this is across the street, but
20 that doesn't mean that this property on the corner
21 doesn't deserve what the law provides. And in order to
22 do an Inventory Survey, which our Change in Zoning
23 requires, you have to do subsurface testing. And you
24 have to do subsurface testing that meets the standards
25 of State Historic Preservation.

1 And who are we to ignore that? You know,
2 we're not the experts; they're the experts. And here
3 they're asking us to do this. And I -- I don't know
4 what the big deal is in -- in adding this in as a
5 condition of zoning because, technically, you have to
6 get SHPD approval before you can even grade.

7 So I just think that it's important enough
8 because there has been burials found in the area, and
9 that SHPD is relating to us and to the Planning
10 Department that this is similar type property and that
11 they would expect human burials. Because it's an
12 extension of this nursery. And being that it's a
13 nursery for hotel purchasers, you know, of their
14 products, they're -- they're all on top of the ground in
15 pots. They're not subsurface. So I'd just like us to
16 -- to add that condition, Mr. Chairman. And, you know,
17 they can add it in the SMA, too. And that way, we make
18 sure it gets done. It should have been done back in
19 2001, when they did the Environmental Assessment. They
20 should have done it after May of 2006, when they were
21 again requested by SHPD. And here we are, two years
22 later, and there's still no archeological review or
23 Inventory Survey.

24 So, you know, I just feel that that doesn't
25 show our respect for the process. And I, for one, would

1 like to see this body take State Historic's
2 recommendations to heart. As well as there's a letter,
3 back in 2001, from OHA requesting the very same thing,
4 an Inventory Survey, to assure that they're all not
5 burials. And -- and, you know, I know that OHA's
6 primarily concerned with Hawaiian burials, but I think
7 any ancient burial deserves the respect of this
8 generation and developing the land on top of it.

9 And especially since it's the Akina family, I
10 think we should take the extra effort and put this
11 condition in so that they understand how important it
12 is.

13 Thank you, Chairman.

14 CHAIR MOLINA: Thank you, Member Anderson.
15 Okay. Members, at this point, the Chair -- you know, as
16 I mentioned earlier, I do have to leave. However, I
17 would like to, if there are no objections, act on the
18 first bill prior to discussing the second bill which
19 relates to the conditions of zoning. So, Members, any
20 objections or any additional comments before I make a
21 recommendation on the bill to amend the Kihei-Makena
22 Community Plan?

23 COUNCILMEMBER ANDERSON: Recommendation.

24 CHAIR MOLINA: Okay. The Chair will entertain
25 a motion for "A Bill for an Ordinance to Amend the

1 Kihei-Makena Community Plan and Land Use Map from
2 Multi-Family to Business/Commercial, for property
3 situated at Makena, Maui, Hawaii."

4 COUNCILMEMBER ANDERSON: So moved.

5 VICE-CHAIR PONTANILLA: Second.

6 CHAIR MOLINA: Okay. It's been moved by
7 Member Anderson, seconded by Member Pontanilla. Any
8 discussion? Seeing none, all those in favor, signify by
9 saying "aye."

10 COUNCIL MEMBERS: Aye.

11 CHAIR MOLINA: All those opposed? Thank you.
12 The Chair will mark it seven-zero; with two excusals,
13 Members Medeiros and Victorino.

14 VOTE: AYES: Councilmembers Anderson, Baisa,
15 Hokama, Johnson, Mateo, Vice-Chair
16 Pontanilla, and Chair Molina.

17 NOES: None.

18 EXC.: Councilmembers Medeiros and
19 Victorino.

20 ABSENT: None.

21 ABSTAIN: None.

22 MOTION CARRIED

23 ACTION: Recommending FIRST READING of revised proposed
24 Community Plan Amendment bill.

25 CHAIR MOLINA: Members, the Chair will call

1 for a short recess....(gavel)...

2 RECESS: 3:20 p.m.

3 RECONVENE: 3:31 p.m.

4 VICE-CHAIR PONTANILLA: ...(gavel)...The Land
5 Use Committee meeting is now back in session.

6 At this time the Chair would like to call on
7 Ms. Hiraga, if you have any more information in regards
8 to this particular item?

9 MS. OHASHI HIRAGA: Yes, Mr. Chair. Thank
10 you. In response to Councilmember Anderson and -- and
11 other Members' expressions of concerns and comments,
12 with regard to Page -- to the item dealing with an
13 Archeological Inventory Survey, the applicant would not
14 have any problems having it as a condition. But if I
15 could just clarify that. And it would refer to Page 2
16 of that letter that Ms. Anderson referred to. I'd like
17 to request consideration for the following condition.
18 That the condition read that, "Prior to any
19 ground-disturbing activities, an Archeological Inventory
20 Survey," et cetera. And then delete that last sentence
21 that "these comments mirror." But other than that, word
22 for word from the letter, if it's acceptable.

23 VICE-CHAIR PONTANILLA: Thank you. Members,
24 any questions for the applicant at this time? Member
25 Anderson, do you have a question? No?

1 COUNCILMEMBER ANDERSON: No.

2 VICE-CHAIR PONTANILLA: Thank you.

3 COUNCILMEMBER ANDERSON: Thank you very much,
4 though, from the applicant for agreeing to this. I
5 appreciate it very much.

6 VICE-CHAIR PONTANILLA: Thank you.

7 COUNCILMEMBER HOKAMA: Chairman?

8 VICE-CHAIR PONTANILLA: Member Hokama?

9 COUNCILMEMBER HOKAMA: Are you open to a -- is
10 there a motion on the floor currently?

11 VICE-CHAIR PONTANILLA: No --

12 COUNCILMEMBER ANDERSON: Not yet.

13 VICE-CHAIR PONTANILLA: -- there's not.

14 COUNCILMEMBER HOKAMA: I'm sorry. So we would
15 await your recommendation.

16 VICE-CHAIR PONTANILLA: Yeah. Once everybody
17 is satisfied with Ms. Hiraga, then the Chair will make
18 his recommendation on the second item.

19 COUNCIL MEMBERS: Recommendation.

20 VICE-CHAIR PONTANILLA: Thank you. Ms.
21 Hiraga, thank you.

22 MS. OHASHI HIRAGA: I have one more.

23 VICE-CHAIR PONTANILLA: Okay. Go ahead.

24 MS. OHASHI HIRAGA: Very minor. And this is
25 in discussion with the Department of Planning. On our

1 requested second condition that we clarify that the
2 retail is accessory retail, add the word "accessory"
3 prior to "retail."

4 MR. DACK: Actually, if the Department could
5 have -- could be recognized for that? A little further
6 thought on that, we'd suggest that the wording that's in
7 -- that was in the handout that -- that you received
8 today, that refers to surf school, business office.
9 We'd suggest you say, instead, Surf school, business
10 office, retail which is accessory to the surf school,
11 storage of equipment related to the surf school, and
12 retail, making it very clear that the -- the retail
13 would only be exclusively related to the surf school.

14 VICE-CHAIR PONTANILLA: Thank you. Members,
15 any questions for the Department? Again --

16 COUNCILMEMBER HOKAMA: Chairman, is that
17 something the applicant can -- is agreeable?

18 VICE-CHAIR PONTANILLA: Ms. Hiraga?

19 MS. OHASHI HIRAGA: Yes.

20 COUNCILMEMBER HOKAMA: Thank you.

21 VICE-CHAIR PONTANILLA: Member Anderson?

22 COUNCILMEMBER ANDERSON: Could I have the
23 Department reiterate what they just said?

24 VICE-CHAIR PONTANILLA: Department?

25 MR. DACK: Sure. Yeah. If you're looking at

1 the -- the handout --

2 COUNCILMEMBER ANDERSON: Uh-huh.

3 MR. DACK: -- from today, on the recommended
4 conditions, Applicant Condition Number 2.

5 COUNCILMEMBER ANDERSON: Uh-huh.

6 MR. DACK: The third item there refers to surf
7 school. So I would like to read the way we would
8 suggest it. There's just as an addition of a clause,
9 but I'll reread the whole section. "Surf school,
10 business office, retail which is accessory to the surf
11 school, storage of equipment related to the surf school
12 and retail."

13 COUNCILMEMBER ANDERSON: Well, then you've got
14 retail twice, so -- you have retail accessory --

15 MR. DACK: Because the storage of equipment is
16 related to the surf school and the retail. It's
17 modifying the first two items.

18 COUNCILMEMBER ANDERSON: I see. Storage of
19 equipment related to the surf school.

20 MR. DACK: You could say surf school and --
21 and/or retail, yeah. That would be fine.

22 COUNCILMEMBER ANDERSON: We just wanna make
23 sure that it's all related to the surf school?

24 MR. DACK: Correct.

25 COUNCILMEMBER ANDERSON: Okay. Thank you.

1 Thank you, Chairman.

2 VICE-CHAIR PONTANILLA: Thank you. Members,
3 any more questions for the Department or Ms. Hiraga?
4 Seeing none --

5 COUNCILMEMBER HOKAMA: Recommendation.

6 VICE-CHAIR PONTANILLA: -- the Chair would
7 like to make his recommendation --

8 COUNCIL MEMBERS: Recommendation.

9 VICE-CHAIR PONTANILLA: -- to move bill
10 entitled "A Bill for an Ordinance to Change Zoning from
11 A-1 Apartment District to B-2 Community Business
12 District (Conditional Zoning) for property situated at
13 Kihei, Maui, Hawaii."

14 COUNCILMEMBER ANDERSON: So moved.

15 COUNCILMEMBER HOKAMA: Second.

16 VICE-CHAIR PONTANILLA: Moved by Member
17 Anderson, seconded by Member Hokama. Members, any more
18 discussion? Member Anderson?

19 COUNCILMEMBER ANDERSON: Yes, Mr. Chairman. I
20 would like to move to amend Condition 1 of zoning to
21 delete Item C, Item E, Item F, Item H and Item I.

22 VICE-CHAIR PONTANILLA: Thank you. Is there a
23 second?

24 COUNCILMEMBER BAISA: Second.

25 COUNCILMEMBER HOKAMA: Second.

1 VICE-CHAIR PONTANILLA: Second by Member
2 Hokama. Members, any discussion in regards to
3 amendment?

4 COUNCILMEMBER ANDERSON: I might've, Chairman,
5 made a better explanation before I made the motion, but
6 these are the areas of business use that the applicant
7 requested be removed from the request, which would be
8 awning or canvas shop, custom dressmaking, a dressmaking
9 shop, nursing and convalescent home, radio and
10 television station.

11 VICE-CHAIR PONTANILLA: Thank you. Members,
12 any more discussion regarding this amendment? All in
13 favor of the amendment, please say "aye."

14 COUNCIL MEMBERS: Aye.

15 VICE-CHAIR PONTANILLA: Motion is carried with
16 seven ayes; two excused, Member Molina and Member
17 Victorino.

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1 VOTE: AYES: Councilmembers Anderson, Baisa,
2 Hokama, Johnson, Mateo, Medeiros,
3 Vice-Chair Pontanilla.

4 NOES: None.

5 EXC.: Councilmember Victorino and Chair
6 Molina.

7 ABSENT: None.

8 ABSTAIN: None.

9 MOTION CARRIED

10 ACTION: APPROVE amendment to the main motion.

11 VICE-CHAIR PONTANILLA: Members, moving on,
12 any more discussion, Members?

13 COUNCILMEMBER HOKAMA: Chairman, main motion?

14 VICE-CHAIR PONTANILLA: Member Anderson?

15 COUNCILMEMBER ANDERSON: Thank you, Mr.

16 Chairman. I would like to make a motion to add
17 additional uses. I move to amend Condition Number 1 to
18 insert, where appropriate, "ocean-recreational and
19 non-motorized equipment rental."

20 COUNCILMEMBER HOKAMA: Second.

21 COUNCILMEMBER ANDERSON: I'm gonna list 'em
22 all.

23 VICE-CHAIR PONTANILLA: Yeah, list 'em all,
24 please.

25 COUNCILMEMBER ANDERSON: "Private schools or

1 business colleges." These items would be added to the
2 category that is currently listed as D, under Condition
3 1, business offices and agencies. So we would do a
4 comma, ocean-recreation, non-motorized equipment rental
5 and private schools, comma, and then, surf school,
6 business office, storage -- retail accessory to surf
7 school, comma, storage of equipment related to the surf
8 school and, I would say, or retail.

9 VICE-CHAIR PONTANILLA: Thank you.

10 COUNCILMEMBER ANDERSON: And, lastly, another
11 category added to Condition 1, which would read, "Any
12 other retail businesses or commercial enterprises which
13 are similar in character of rendering sales of
14 commodities or performance of services to the community
15 and not detrimental to the welfare of the surrounding
16 area, provided, however, that such services shall be
17 approved by the Commission as conforming to the intent
18 of this Article and this Zoning Ordinance."

19 VICE-CHAIR PONTANILLA: Thank you. Is that
20 it? Any second?

21 COUNCILMEMBER HOKAMA: Second.

22 VICE-CHAIR PONTANILLA: Okay. Moved by Member
23 Anderson, seconded by Member Hokama. Any more
24 discussions, Members?

25 MS. NAKATA: Mr. Chair, Staff would like --

1 VICE-CHAIR PONTANILLA: Ms. Nakata.

2 MS. NAKATA: -- clarification on the reference
3 on this article since it's no longer contained in the
4 Code and it would be incorporated into the Change in
5 Zoning bill. The Committee might want to consider
6 something along the lines of the reference to the
7 chapter of the Maui County Code that's applicable,
8 Chapter 19.18, Maui County Code.

9 VICE-CHAIR PONTANILLA: Thank you. Members,
10 any discussion to what Ms. Nakata had just informed us?

11 COUNCILMEMBER ANDERSON: This article is no
12 longer part of the County Code? Could you explain that,
13 Ms. Nakata?

14 MS. NAKATA: I'm sorry if that was unclear.
15 The wording is lifted directly from the permitted uses,
16 Subsection 66 --

17 COUNCILMEMBER ANDERSON: Right.

18 MS. NAKATA: -- in Chapter 19.18. And so it
19 makes sense in the context of the Code, but not
20 necessarily in the context of this bill. The reference
21 to --

22 COUNCILMEMBER ANDERSON: Okay. I see what
23 you're saying. So I would ask for a friendly amendment,
24 Mr. Chairman, that we drop the wording of this article
25 and just have it read, as conforming to the intent --

1 ooh -- of this zoning ordinance.

2 VICE-CHAIR PONTANILLA: Thank you. Members,
3 any objections to the friendly amendment?

4 COUNCIL MEMBERS: No objections.

5 COUNCIL MEMBERS VOICED NO OBJECTIONS (Excused: MM, MV)

6 VICE-CHAIR PONTANILLA: Seeing none, thank
7 you. Ms. Nakata, can you read the amendment at this
8 time? I hope you got it all.

9 COUNCILMEMBER ANDERSON: Just the last line.
10 Just the last portion of it, "provided," or do you want
11 the whole thing?

12 VICE-CHAIR PONTANILLA: The whole thing, what
13 we just discussed, yeah. I want to be clear, too.

14 MS. NAKATA: Okay. Staff's understanding is
15 that the motion is to amend Condition Number 1 of the
16 Change in Zoning bill to add uses requested by the
17 applicant as follows, and, where appropriate:

18 Ocean-recreational, non-motorized equipment rental,
19 private schools, surf school, business office, retail
20 which is accessory to the surf school, storage of
21 equipment related to the surf school, or retail, and,
22 also, to add a use which reads as follows: Any other
23 retail businesses or commercial enterprises which are
24 similar in character of rendering sales of commodities
25 or performance of services to the community, and not

1 detrimental to the welfare of the surrounding area,
2 provided, however, that such uses shall be approved by
3 the Commission as conforming to the intent of this
4 zoning ordinance.

5 VICE-CHAIR PONTANILLA: Thank you. Members --
6 Member Anderson?

7 COUNCILMEMBER ANDERSON: Yeah. I'd just like
8 to clarify. I don't think if I -- I heard Ms. Nakata.
9 You know, I made these first two categories. I
10 mentioned them first, and then I came back and said they
11 should be added to business offices and agencies.
12 They're not separate categories, they are in addition to
13 Item D, business offices and agencies. So they would
14 just extend that category, adding, after "agencies,"
15 "ocean-recreational, non-motorized equipment rental and
16 private schools." And then we go on with a new
17 category, any other retail businesses. Is that clear?

18 VICE-CHAIR PONTANILLA: Got it.

19 MS. NAKATA: Is the surf schools reference to
20 be a part of the business reference, or a separate use?

21 COUNCILMEMBER ANDERSON: I'm sorry. Surf
22 schools is also part of that -- that category, business
23 offices and agencies.

24 VICE-CHAIR PONTANILLA: So D. would include
25 all of what you just had spoken?

1 COUNCILMEMBER ANDERSON: Yeah.

2 VICE-CHAIR PONTANILLA: Thank you.

3 COUNCILMEMBER ANDERSON: It's further
4 clarifying business offices and agency to include
5 ocean-recreation, surf schools. I guess we can take out
6 private schools. That was the language that was
7 original, but now it's more specific to surf school.

8 VICE-CHAIR PONTANILLA: Okay.

9 COUNCILMEMBER ANDERSON: And then the last
10 category starts with, "Any other retail businesses."

11 VICE-CHAIR PONTANILLA: Right.

12 COUNCILMEMBER ANDERSON: Okay.

13 VICE-CHAIR PONTANILLA: Members, got that?
14 Ms. Nakata, any questions? Okay. Any more discussion,
15 Members? If not, all in favor of the amendment, please
16 say "aye."

17 COUNCIL MEMBERS: Aye.

18 VICE-CHAIR PONTANILLA: Thank you. Motion is
19 carried with seven ayes; two excused, Member Molina and
20 Member Victorino.

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1 VOTE: AYES: Councilmembers Anderson, Baisa,
2 Hokama, Johnson, Mateo, Medeiros,
3 Vice-Chair Pontanilla.

4 NOES: None.

5 EXC.: Councilmember Victorino and Chair
6 Molina.

7 ABSENT: None.

8 ABSTAIN: None.

9 MOTION CARRIED

10 ACTION: APPROVE amendment to the main motion.

11 VICE-CHAIR PONTANILLA: Members, any more
12 discussion? Member Anderson?

13 COUNCILMEMBER ANDERSON: Thank you, Mr.
14 Chairman. I would like to move to amend the conditions
15 to add a Condition 4 that reads, "Prior to any" -- that
16 would read, "That prior to any ground-altering activity,
17 an Archeological Inventory Survey, including subsurface
18 testing, shall be conducted of the subject property in
19 order to determine the effect of the proposed
20 undertaking on significant historic sites. An
21 acceptable report documenting the findings of the survey
22 needs to be submitted to the State Historic Preservation
23 Division for approval in writing. If significant
24 historic sites are identified during the survey, a
25 mitigation plan may need to be developed and be approved

1 in writing by State Historic Preservation Division."

2 COUNCILMEMBER JOHNSON: Second.

3 VICE-CHAIR PONTANILLA: Thank you. Okay.

4 Moved by Member Anderson, second by Member Johnson.

5 Members, any more discussion?

6 COUNCILMEMBER ANDERSON: Mr. Chairman, I just
7 wanna put on the record that this is the condition on
8 Page 2 of the State Historic Preservation letter sent to
9 the County Planning Department, June 15th, 2006. And,
10 again, I thank the applicant for voluntarily agreeing to
11 this condition.

12 VICE-CHAIR PONTANILLA: Thank you. Any more
13 discussion, Members? All in favor of the motion, please
14 say "aye."

15 COUNCIL MEMBERS: Aye.

16 VICE-CHAIR PONTANILLA: Thank you. Motion is
17 carried. Seven ayes; two excused, Member Molina and
18 Member Victorino.

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1 VOTE: AYES: Councilmembers Anderson, Baisa,
2 Hokama, Johnson, Mateo, Medeiros,
3 Vice-Chair Pontanilla.
4 NOES: None.
5 EXC.: Councilmember Victorino and Chair
6 Molina.
7 ABSENT: None.
8 ABSTAIN: None.

9 MOTION CARRIED

10 ACTION: APPROVE amendment to the main motion.

11 VICE-CHAIR PONTANILLA: Members, any more
12 discussion? The Chair has one. On the Conditional
13 Zoning, Item No. 3, Chair would like to recommend that
14 we change the name -- to remove the name of Peggy
15 Castleton Hurless and Dale Martin Castleton and, in its
16 place, to add Thomas Frederick Castleton.

17 COUNCILMEMBER ANDERSON: So moved.

18 COUNCILMEMBER HOKAMA: Second.

19 VICE-CHAIR PONTANILLA: Moved by Member
20 Anderson, seconded by Member Hokama. Members, any more
21 discussion? Seeing none, all in favor of the motion,
22 please say "aye."

23 COUNCIL MEMBERS: Aye.

24 VICE-CHAIR PONTANILLA: Motion is carried.
25 Seven ayes; and two excused, Member Molina and Member

1 Victorino.

2 VOTE: AYES: Councilmembers Anderson, Baisa,
3 Hokama, Johnson, Mateo, Medeiros,
4 Vice-Chair Pontanilla.

5 NOES: None.

6 EXC.: Councilmember Victorino and Chair
7 Molina.

8 ABSENT: None.

9 ABSTAIN: None.

10 MOTION CARRIED

11 ACTION: APPROVE amendment to the main motion.

12 VICE-CHAIR PONTANILLA: Members -- Ms. Nakata,
13 do I -- any other one?

14 MS. NAKATA: Just the reference to Department
15 of Public Works and Environmental Management. Staff
16 would suggest that we change to Department of Public
17 Works wherever it appears.

18 COUNCILMEMBER ANDERSON: Mr. Chair?

19 VICE-CHAIR PONTANILLA: Short recess, Member
20 Anderson, before I do that.

21 COUNCILMEMBER ANDERSON: I was just gonna
22 suggest, Mr. Chairman, that we allow Staff to make any
23 nonsubstantive changes necessary in re-numbering the
24 categories, because we've deleted some, and, you know,
25 renaming the Department of Public Works to its current

1 title.

2 VICE-CHAIR PONTANILLA: Yeah. Okay. Members,
3 if there's no objections, Chair would like to have you
4 allow me to have Staff make any nonsubstantive changes
5 in regards to the application.

6 COUNCIL MEMBERS: No objections.

7 COUNCIL MEMBERS VOICED NO OBJECTIONS (Excused: MM, MV)

8 VICE-CHAIR PONTANILLA: Thank you. Okay.
9 Going back to the main motion --

10 COUNCILMEMBER HOKAMA: Chairman, one more --

11 VICE-CHAIR PONTANILLA: Member Hokama?

12 COUNCILMEMBER HOKAMA: -- comment, please.

13 Under Condition 3 --

14 VICE-CHAIR PONTANILLA: Yes.

15 COUNCILMEMBER HOKAMA: We've heard your
16 recommendations. I would just ask the Committee instead
17 that we might want to structure the language that the
18 party entering into agreement with the appropriate
19 County department or departments. One is because, also,
20 besides the road improvements, if there's something that
21 deals with, then, the drainage and sewer lines, you're
22 gonna need to then deal with Department of Environmental
23 Management. There is a pro -- a provision regarding
24 trees, and then you're gonna deal with Parks and
25 Recreation. So I would just ask if the Committee would

1 consider that the language be that the parties enter
2 into agreement with the appropriate and -- and
3 responsible departments of the County of Maui as maybe
4 the language. I don't know if Corp. Counsel would feel
5 that would be adequate, but there may be more than just
6 Public Works involved with this documentation
7 requirements.

8 VICE-CHAIR PONTANILLA: Corporation Counsel,
9 comments?

10 MR. GIROUX: Chair, I -- I think, you know, if
11 we're gonna look further into that, that we would ask
12 for input from Public Works and see if they -- they
13 agree with that. Because it looks like there's --
14 there's issue of road improvements and the such. And we
15 would have to see what their -- their triggers are as
16 far as if you wanna change that language.

17 COUNCILMEMBER HOKAMA: The only language we're
18 changing is the specific siting of the old Department of
19 Public Works and Environmental Management, Mr. Chair.
20 We're not making any changes in policies or
21 requirements. I am just stating that in case there's
22 additional departments that may need to be involved
23 because of this improvement --

24 MR. GIROUX: Right.

25 COUNCILMEMBER HOKAMA: -- such as the sewers

1 that we deal with another department then. So my -- my
2 suggestion is that we do this maybe catchall phrase
3 whereby -- County is not gonna sign off until all the
4 appropriate agencies has their ability to review and
5 recommend approval, Mr. Chair.

6 VICE-CHAIR PONTANILLA: Thank you.
7 Corporation Counsel?

8 MR. GIROUX: Yeah, that's -- that's fine,
9 Chair. I'm sorry. I was focusing on something entirely
10 different. I believe the Public Works Environmental
11 Management -- by Charter, I think we've already changed
12 that. That should probably be clarified because those
13 -- those two departments have been changed. As far as
14 adding additional departments, I'm not sure what -- what
15 other agreements would need to be added. So --

16 COUNCILMEMBER HOKAMA: And that's why I think
17 the language has to deal with the appropriate County
18 agency or departments.

19 MR. GIROUX: Yeah. That -- that would be
20 fine.

21 COUNCILMEMBER HOKAMA: Thank you, Chair. And,
22 Chair, I -- you know, for me, it's more of a style and
23 format. And Corp. Counsel is gonna need to review and
24 sign off and approve before an ordinance. And so I
25 would allow that as nonsubstantive changes, Chair.

1 VICE-CHAIR PONTANILLA: Thank you. Members,
2 any question to comments by Mr. Hokama? Thank you.

3 You know, in our haste, the Chair would like
4 to offer one more amendment to Item No. 3. After the
5 words "South Kihei Road," that we add "fronting
6 applicant's property." Let me read the last sentence to
7 be read. "In the interim, the applicant shall provide
8 street trees on his property fronting Auhana Road, and
9 shall provide street trees and landscaping along South
10 Kihei Road fronting the applicant's property."

11 COUNCILMEMBER HOKAMA: So moved.

12 COUNCILMEMBER MEDEIROS: Second.

13 VICE-CHAIR PONTANILLA: Moved by Member
14 Hokama, second by Member Medeiros. Any more discussion,
15 Members? If not, all in favor of the amendment, please
16 say "aye."

17 COUNCIL MEMBERS: Aye.

18 VICE-CHAIR PONTANILLA: Motion is carried.
19 Seven ayes; two excused, Members Molina and Victorino.

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1 VOTE: AYES: Councilmembers Anderson, Baisa,
2 Hokama, Johnson, Mateo, Medeiros,
3 Vice-Chair Pontanilla.

4 NOES: None.

5 EXC.: Councilmember Victorino and Chair
6 Molina.

7 ABSENT: None.

8 ABSTAIN: None.

9 MOTION CARRIED

10 ACTION: APPROVE amendment to the main motion.

11 VICE-CHAIR PONTANILLA: Okay. Going back to
12 the main motion, is there any more discussion, Members?

13 MS. NAKATA: Mr. Chair, would that include the
14 filing of the County Communication?

15 VICE-CHAIR PONTANILLA: And the filing of the
16 County Communication. Thank you.

17 All in favor of the main motion, please say
18 "aye."

19 COUNCIL MEMBERS: Aye.

20 VICE-CHAIR PONTANILLA: Motion is carried.

21 Seven ayes; two excused, Member Molina and Member
22 Victorino.

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1 VOTE: AYES: Councilmembers Anderson, Baisa,
2 Hokama, Johnson, Mateo, Medeiros,
3 Vice-Chair Pontanilla.

4 NOES: None.

5 EXC.: Councilmember Victorino and Chair
6 Molina.

7 ABSENT: None.

8 ABSTAIN: None.

9 MOTION CARRIED

10 ACTION: Recommending FIRST READING of revised proposed
11 Change in Zoning bill, RECORDATION of
12 unilateral agreement, and FILING of
13 communication.

14 VICE-CHAIR PONTANILLA: Members, that
15 concludes the agenda items for Land Use Committee. Is
16 there any announcements? If not, thank you very much
17 for being here. Thank you, Staff. Thank you,
18 Administration.

19 This meeting is now adjourned....(gavel)...

20 ADJOURN: 3:52 p.m.

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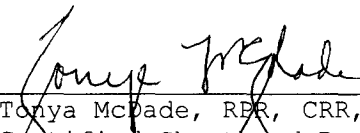
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CERTIFICATE

I, TONYA MCDADE, a Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 28 day of November, 2008.



Tonya McDade, RRR, CRR, CBC
Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner