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OFFICE OF THE  
COUNTY COUNCIL

MEMO TO: PSLU-54(5) File

F R O M: TAMARA PALTIN, Chair *Tamara A. M. Paltin*  
Planning and Sustainable Land Use Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO  
KAPALUA MAUKA** (PSLU-54(5))


The attached informational documents pertain to Item PSLU-54(5) on the committee's agenda.

Attachment

RECEIVED AT PSLU MEETING ON 12/3/20

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LAND USE COMMITTEE  
Council of the County of Maui  
MINUTES  
December 12, 2005  
Council Chamber

APPROVED:  


1 **CONVENE:** 9:03 a.m.

2 **PRESENT:** Councilmember Robert Carroll, Chair  
3 Councilmember Joseph Pontanilla,  
4 Vice-Chair  
5 Councilmember Michelle Anderson, Member  
6 (in 10:25)  
7 Councilmember G. Riki Hokama, Member  
8 Councilmember Jo Anne Johnson, Member  
9 (in 10:52)  
10 Councilmember Dain P. Kane, Member  
11 (in 9:54)  
12 Councilmember Danny A. Mateo, Member  
13 (in 9:04)  
14 Councilmember Michael J. Molina, Member  
15 Councilmember Charmaine Tavares, Member

16 **STAFF:** Yvette Bantilan, Substituting Committee  
17 Secretary  
18 Carla M. Nakata, Legislative Attorney

19 **ADMIN.:** Paul Haake, Fire Inspector, Department  
20 of Fire and Public Safety  
21 Alice Lee, Director, Department of  
22 Housing and Human Concerns  
23 Patrick Matsui, Chief of Planning and  
24 Development, Department of Parks and  
25 Recreation  
John Buck, Deputy Director, Department  
of Parks and Recreation  
Michael Foley, Director, Department of  
Planning  
Clayton Yoshida, Planning Program  
Administrator, Current Planning  
Division, Department of Planning  
Captain Milton Matsuoka, Department of  
Police  
Milton Arakawa, Director, Department of  
Public Works and Environmental  
Management  
George Tengan, Director, Department of  
Water Supply  
James Giroux, Deputy Corporation  
Counsel, Department of Corporation  
Counsel  
Edward Kushi, Jr., Deputy Corporation  
Counsel, Department of Corporation  
Counsel

1 **OTHERS:** Item 14: Mich Hirano, Project Manager,  
2 Munekiyo & Hiraga, Inc.  
3 David Gleason, Maui Lani 100,  
4 LLC  
5 Leiane Paci, Maui Lani  
6 Partners  
7 Cory Kimura, Bill Mills  
8 Investments, LLC  
9 Stacey Takaba, Bill Mills  
10 Investments, LLC  
11 Darren Unemori, Warren S.  
12 Unemori Engineering, Inc.  
13 Wayne Yoshioka, Parsons  
14 Brinkerhoff  
15 Ferdinand Cajigal, Engineering  
16 Program Manager, Maui  
17 District Office, State  
18 Department of Transportation  
19 Others (10)

20 **PRESS:** Akaku: Maui Community Television, Inc.

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21 **LU-14** **COMMUNITY PLAN AMENDMENT, CHANGE IN**  
22 **ZONING, AND PROJECT DISTRICT PHASE 1**  
23 **AMENDMENT FOR WAILUKU-KAHULUI PROJECT**  
24 **DISTRICT 1 (MAUI LANI)**  
25 **(C.C. No. 05-205)**

1 CHAIR CARROLL: (Gavel.) This Land Use Committee  
2 meeting of December 12th, 2005, will come to  
3 order. With us this morning, we have Vice-Chair  
4 of the Committee, Mr. Pontanilla; Members  
5 Tavares, Molina, and Hokama. Joining us later,  
6 excused for the time, are Anderson, Johnson, and  
7 Kane. And Mr. Mateo is with us now.

8 Good morning, Members.

9 COUNCIL MEMBERS: Good morning.

1 CHAIR CARROLL: We have only one item on the agenda  
2 this morning, Land Use Item 14, Community Plan  
3 Amendment, Change in Zoning, Project District  
4 Phase I Amendment for Wailuku-Kahului Project  
5 District I (Maui Lani).

6 The Committee is in receipt of County  
7 Communication No. 05-205 from the Planning  
8 Director transmitting a request from David  
9 Gleason, on behalf of Maui Lani 100, LLC, (1)  
10 for a Community Plan Amendment from Agriculture  
11 to Wailuku-Kahului Project District I (Maui  
12 Lani) for 56.655 acres, to add a Village Mixed  
13 Use District and an Open Space District and to  
14 increase maximum residential units from 3,300 to  
15 3,700 within the project district; (2) a  
16 Conditional Change in Zoning for the subject  
17 property from County Agriculture District to  
18 Wailuku-Kahului Project District I (Maui Lani);  
19 and (3) a Project District Phase I Amendment to  
20 include a Village Mixed Use District and an Open  
21 Space District, and to increase the acreage and  
22 maximum unit counts in the project districts.

23 The Committee has also received  
24 correspondence dated December 5th, 2005, revised  
25 proposed bills from the Department of

1 Corporation Counsel for this request.

2 And this morning, we have with us  
3 Mr. Yoshida. Mr. Foley is also tied up in  
4 Lahaina, the traffic, along with Ms. Johnson,  
5 who will -- they will join us as soon as they  
6 can. And our Corporation Counsel, James Giroux.

7 We will start off this morning by having  
8 the applicant give a five-minute presentation,  
9 after which the partners will give a  
10 presentation, following which we will have  
11 public testimony.

12 Could the applicant or the  
13 representative please come forward. Are you  
14 going to have the --

15 MR. YOSHIDA: Yes.

16 CHAIR CARROLL: All right. So while we lower the  
17 screen, we will have a one-minute recess.

18 (Gavel.)

19 **RECESS: 9:05 a.m.**

20 **RECONVENE: 9:08 a.m.**

21 CHAIR CARROLL: (Gavel.) This Land Use meeting of  
22 December 12, 2005, is now back in session. We  
23 will now turn the time over to the applicant for  
24 their presentation.

25 Proceed.

1 MR. HIRANO: Good morning, Chair Carroll and Council  
2 Committee Members. My name is Mich Hirano with  
3 Munekiyo & Hiraga, and our firm is representing  
4 the applicant, Maui Lani 100, LLC, with the  
5 County entitlements application before the  
6 Committee this morning.

7 The PowerPoint presentation is prepared  
8 to provide some background information on the  
9 application, and I would like to just start with  
10 an outline of the project area. The project  
11 area is 138 -- 130-acre parcel. Part of it is  
12 within the State agriculture -- or urban  
13 district now, but not part of the Project  
14 District, and components of the project are  
15 within the Project District.

16 The plan area is made up of a number of  
17 districts. There's the Village Mixed Use,  
18 Commercial/Residential District of 49 acres.  
19 This piece in this western portion of the  
20 project area. Village Mixed Use/Residential,  
21 VMXR, of 27 acres; a regional park of 19 acres;  
22 a single-family residential area of 17 acres.  
23 There's some open space areas and roadways of  
24 4 acres and 14 acres, respectively, bringing the  
25 total project area to 130 acres.

1           Access to the project site is provided  
2           by the extension of Kuikahi Road, from Wai'ale  
3           Drive to Kuikahi Road, and the extension of Maui  
4           Lani Parkway from Kamehameha Avenue westward to  
5           intersect with Kuikahi Road. This will provide  
6           regional transportation connectivity between  
7           Honoapi'ilani Highway and Pi'ilani Highway,  
8           which runs off the plan area.

9           As well, as you can see, central to this  
10          area is the adjacent 13.5-acre new elementary  
11          school site.

12          Maui Lani Development entities is made  
13          up of Maui Lani Partners. Maui Lani Partners is  
14          responsible for certain regional and overall  
15          Project District improvements that will be  
16          completed to mitigate impacts that -- caused by  
17          the development of the VMX development as well  
18          as the overall Maui Lani Project District.

19          Maui Lani 100, the applicant and  
20          landowner of the 130-acre parcel, Maui Lani 100  
21          will be responsible for mitigation of  
22          project-specific impacts such as the Department  
23          of Education Fair-Share Agreement and the VMX  
24          Affordable Housing Agreement.

25          Maui Lani Partners and Maui Lani 100,



1 LLC, are affiliated companies.

2 With respect to the overall mitigation  
3 of the development, there are three proposed  
4 agreements. To mitigate education, there's a  
5 proposed Department of Education Fair-Share  
6 Agreement. This is a per-unit contribution to  
7 the Department of Education for those properties  
8 that are being added to the Project District,  
9 and that is the 59.6-acre parcel.

10 There's a proposed park amendment, and  
11 this is in relation to the 19-acre regional park  
12 and the 8-acre existing park-zoned land within  
13 the Maui Lani Project District, and as well, the  
14 Affordable Housing Agreement.

15 In terms of existing agreements used to  
16 mitigate development of the VMX properties and  
17 the overall Maui Lani Project District, the  
18 Department of Education contribution agreement  
19 for land and improvements for the new school  
20 site that was turned over to the Department of  
21 Education in January of 2005.

22 The Maui Lani Overall Master Roadway  
23 Agreement; that's an agreement between Maui Lani  
24 Partners and the Department of Public Works and  
25 Environmental Management which sets out the

1 development and incremental development of the  
2 roadway network within the Maui Lani Project  
3 District.

4 And there's the Maui Lani Water  
5 Agreement, and it's a right-of-entry agreement  
6 between Maui Lani, LLC, and the Department of  
7 Parks and -- sorry -- Department of Water  
8 Supply. I am sorry. That Maui Lani water  
9 agreement is between Maui Lani Partners and the  
10 Department of Water Supply.

11 Some of the features of the project is  
12 the tie-in with the new Maui Lani Elementary  
13 School. This is the 13.5-acre site donated to  
14 the State Department of Education by the Maui  
15 Lani Partners. Construction started in  
16 June 2005. The opening date of the school is  
17 December 2006. And the proposed Fair-Share  
18 Agreement with the Department of Education,  
19 which covers the VMX area.

20 The park is adjacent to the 27-acre  
21 regional -- the school is adjacent to the  
22 27-acre regional park. In terms of the Maui  
23 Lani regional park, the new plan has a 19-acre  
24 park with improvements by Maui Lani 100, and the  
25 improvements include grading, irrigation, and

1 grassing. There's an 8-acre adjacent park-zoned  
2 land which will as well be improved by Maui Lani  
3 Partners. Approximately 27 acres of improved  
4 park land will be dedicated to the County by  
5 Maui Lani Partners. And the park will be opened  
6 at the same time as the new elementary school,  
7 scheduled for June 2006.

8 Affordable status, in terms of the  
9 current Maui Lani Project District, 20 percent  
10 of the units, according to the ordinance that  
11 was passed for the approval of the Project  
12 District, 20 percent of the units are in the  
13 affordable category. Of -- to date, of the 759  
14 total residential units sold in Maui Lani, 199  
15 units have been qualified in the affordable  
16 range of 80 percent of median income up to the  
17 140 percent of the median income.

18 In terms of the breakdown of the  
19 affordable housing provided, in the  
20 up-to-80-percent category, 38 units are  
21 required. No units have been provided in this  
22 category to date.

23 In the 80 to 120 percent, 148 units have  
24 been provided in this category. What is  
25 required by ordinance is 38 units.

1           In the 121-to-140-percent category, 51  
2 units are provided, and required was 76;  
3 however, the earlier, the 80 to 120 percent,  
4 overproduction of those units will, as well,  
5 meet the criteria for the 120 to 140 percent  
6 requirements.

7           Although 20 percent are required to be  
8 affordable in the Project District, Maui Lani  
9 has provided upwards of 26 percent of all units  
10 in the Project District to date as affordable.

11           In terms of the Maui Lani affordable  
12 housing program related to this application,  
13 51 percent of the VMX units will be affordable.  
14 The VMX affordable units will be built  
15 concurrently and integrated with the market  
16 housing. There will be a mix of fee ownership  
17 and rentals. There will be an owner-occupancy  
18 requirement with shared equity conditions. What  
19 is proposed is owner-occupant period of 10 years  
20 for the up-to-80-percent category, five years  
21 for the 80-to-120-percent category, and two  
22 years for the 121-to-140-percent category.

23           Maui Lani proposes to cap the interest  
24 at 8 percent in order to guarantee delivery of  
25 the affordable housing at the prices developed

1 this morning.

2 In terms of the breakdown of the  
3 affordable units, 10 percent are required to be  
4 in the up-to-80-percent; 30 percent of the units  
5 are required in the 81 to 120 percent of median  
6 family income; 11 percent at the 121 to 140.

7 In terms of sheer numbers, it's 50 in  
8 the up to 80 percent; 150 units in the 180 -- in  
9 the 80-to-120-percent category; and 55 units in  
10 the 121-to-140-percent category, with a total  
11 affordable unit count of 245 -- sorry -- 255,  
12 and market housing at 245, with an approximate  
13 total of 500 units.

14 In terms of the breakdown of the  
15 affordable units within the VMX plan area, the  
16 up to 80 percent of median family income, there  
17 will be 50 units provided, and these units will  
18 be all rental units. The 81 percent to  
19 120 percent of median family income, 150 units  
20 will be provided -- 107 of those units will be  
21 multi-family, 43 of those units will be single  
22 family. And there will be a mix of rental and  
23 fee ownership. And then the 121 to 140 percent  
24 of median family income, a total of 55 units  
25 will be provided -- 39 of those will be

1 multi-family, and 16 will be single family.

2 The affordable income categories, this  
3 table just gives a breakdown at the  
4 6.75 percent, the upper price limits for the  
5 various income categories. As you can see, the  
6 121 to 140 percent at 6.75 percent is \$330,600.  
7 These are base on HUD guidelines.

8 In terms of the rentals, the one-bedroom  
9 unit and the two-bedroom unit for up to  
10 median -- 80 percent of median family income of  
11 rent from \$1,018 to \$1,222 per month, and these  
12 rentals include utilities.

13 In terms of the summary of the Maui Lani  
14 and VMX benefits, there's a new Maui Lani  
15 Elementary School. The site was donated to the  
16 Department of Education by Maui Lani Partners  
17 November 2005. Construction is ongoing.  
18 Project is -- opening date is December 2006.  
19 Maui Lani is executing a Fair-Share Agreement  
20 with the Department for -- excuse me. Maui Lani  
21 is executing a Fair-Share Agreement with the  
22 Department of Education for the 69.5-acre area  
23 for the Change in Zoning.

24 There's the 27-acre regional park. This  
25 park will be integrated into the surrounding

1 community, and the proposed accelerated  
2 development and park improvements will be  
3 dedicated at the same time as the Maui Lani  
4 Elementary School opening.

5 Maui Lani affordable housing benefits  
6 will be 51 percent of the VMX units will be  
7 affordable and will be built concurrently with  
8 the market housing.

9 New road, regional roadway improvements,  
10 construction of Kuikahi Drive and Maui Lani  
11 Parkway will improve Central Maui traffic  
12 circulation.

13 And in terms of the water, new water  
14 source and related improvements, three wells  
15 will be developed with an estimated maximum  
16 yield of 2.2 million gallons per day, and that  
17 will be by Maui Lani Partners at no cost to the  
18 County.

19 The applicant makes a request of the  
20 Land Use Committee for action. The applicant  
21 requests that the Maui Lani -- sorry -- that the  
22 Land Use Committee recommend approval of the  
23 Maui Lani VMX Change in Zoning Community Plan  
24 Amendment and Project District Phase I  
25 Application to the full Council due to the

1 substantial community benefits and the Project  
2 District infrastructure improvements related to  
3 this project, which include: 51 percent of the  
4 units will be affordable, and no exemptions are  
5 requested; the regional park will be accelerated  
6 such that improvements will be completed and  
7 dedicated to the County to coincide with Maui  
8 Lani Elementary School opening; roadway  
9 improvements will facilitate regional and local  
10 traffic circulation and connectivity; additional  
11 2.2 million gallons of water per day will be  
12 available to the County to supplement the  
13 Central Maui water system; and Maui Lani will be  
14 paying 100 percent of these improvements.

15 That concludes our PowerPoint  
16 presentation this morning, Chair Carroll, and  
17 Members of the project team are available to  
18 answer any questions that the Committee Members  
19 may have. So thank you very much for your time.

20 CHAIR CARROLL: Thank you. We will now have a  
21 one-minute recess while we raise the screen.  
22 Stand in recess. (Gavel.)

23 **RECESS: 9:22 a.m.**

24 **RECONVENE: 9:23 a.m.**

25 CHAIR CARROLL: (Gavel.) Land Use Committee meeting



1 of December 12, 2005 is now back in session.  
2 And we have with us now Mr. Foley. The  
3 Department can make their presentation.

4 MR. YOSHIDA: Good morning, Mr. Chairman, Members of  
5 the Committee. Clayton Yoshida subbing for  
6 staff planner, Colleen Suyama, who is out sick  
7 today.

8 This project has been through a  
9 environmental assessment review process and a  
10 District Boundary reclassification with the  
11 State Land Use Commission. The Maui Planning  
12 Commission conducted a public hearing on the  
13 Land Use Applications on April 26th of this  
14 year. No public testimony was received. The  
15 Planning Commission recommends approval of the  
16 Community Plan Amendment, the Phase I Project  
17 District Amendment, and the Zoning Change,  
18 subject to seven conditions for the zoning  
19 change. They are in the proposed bill for an  
20 ordinance, but I will summarize the conditions  
21 briefly.

22 Condition Number 1 is that 51 percent of  
23 the total housing units provided within the  
24 Village Mixed Use of Maui Lani shall meet the  
25 affordable housing criteria of the County of

1 Maui. That equates to an estimated 255  
2 affordable units.

3 Condition Number 2 addresses the water,  
4 in that the applicant shall provide water source  
5 development, treatment, and transmission  
6 improvements in accordance with the requirements  
7 of the Department of Water Supply, and that  
8 these improvements shall be reviewed and  
9 approved by the Water Department prior to  
10 connection to the County of Maui water system.

11 Conditions 3 and 4 address the issue of  
12 traffic, in that the regional -- the Maui Lani  
13 Partners shall implement regional roadway  
14 improvements in accordance with the conceptual  
15 phasing planned for the Maui Lani roadway system  
16 improvements in accordance with an agreement  
17 executed with the Public Works Department.

18 And Condition 4, that Maui Lani 100,  
19 LLC, shall implement various traffic  
20 improvements as recommended in their Traffic  
21 Impact Assessment report. There are nine  
22 improvements which are listed as A through I.

23 Condition 5 and 6 address parks. In the  
24 event that portions of the 28 acres of park land  
25 identified in the Maui Lani Project District is

1 used to accommodate drainage facilities, such as  
2 detention and retention basins, additional park  
3 lands equivalent to the loss of utilizable park  
4 lands shall be provided within the Maui Lani  
5 Project District.

6 Recommended condition 6, that Maui Lani  
7 Partners shall work with the Department of Parks  
8 and Recreation to determine the park needs of  
9 the Maui Lani Project District. If it is  
10 determined that more park lands are necessary,  
11 Maui Lani Partners shall enter into an agreement  
12 with the County of Maui to provide the  
13 additional park lands.

14 And recommended Condition 7 addresses  
15 upgrade of school facilities that Maui Lani 100,  
16 LLC, shall contribute to the development,  
17 funding and/or construction of school facilities  
18 on a fair-share basis, as determined by and to  
19 the satisfaction of the Department of Education.

20 This concludes the Department's report.

21 CHAIR CARROLL: Thank you, Mr. Yoshida.

22 We will now have public testimony.  
23 Those coming up to testify have three minutes  
24 and one minute to conclude. And if anyone has  
25 any cell phones or beepers, please put them on

1 the silent mode. When you do come to the  
2 podium, please announce your name clearly so we  
3 can have it for the record.

4 Ms. Nakata, do we have anyone signed up?

5 MS. NAKATA: Mr. Chair, no one has signed up to  
6 testify.

7 CHAIR CARROLL: Is there anyone in the Gallery that  
8 wishes to give public testimony on this agenda  
9 item?

10 Seeing none, if there's no objection, we  
11 will close public testimony.

12 COUNCIL MEMBERS: No objections.

13 CHAIR CARROLL: Public testimony is now closed.

14 Members, this morning we have several  
15 departments here. What I would like to do is  
16 call the departments down one by one, and then  
17 you can ask questions of the departments at that  
18 time. Since we have Mr. Foley and Mr. Yoshida  
19 seated here already, we will start with them,  
20 and I will open the floor.

21 Any questions for Mr. Foley or  
22 Mr. Yoshida at this time? And we can call them  
23 back later, of course.

24 Seeing none at this time, thank you,  
25 Mr. Foley and Mr. Yoshida.

1 I would like now to call down Housing  
2 and Human Services, Ms. Lee. Thank you,  
3 Ms. Lee.

4 The floor is now open for any questions  
5 to Ms. Lee.

6 Mr. Mateo.

7 COUNCILMEMBER MATEO: Chairman, thank you very much.

8 Good morning, Ms. Lee.

9 MS. LEE: Good morning.

10 COUNCILMEMBER MATEO: I guess I just want to get  
11 your -- your comments regarding the number of  
12 affordable units that Maui Lani possibly or  
13 whatever could be owing the County still at this  
14 particular point. We were in receipt a while  
15 ago of numbers from various developments that  
16 was kind of broad, and this particular reference  
17 that we got shows a considerably high amount of  
18 affords still owed. I believe this total count  
19 could be indicative of the total project. Could  
20 you comment on whether or not Maui Lani still  
21 has a backlog of units that they still owe the  
22 County?

23 CHAIR CARROLL: Ms. Lee.

24 MS. LEE: Yes, thank you. As shown in the  
25 presentation, their -- they have provided a

1 number of affordables, but not all in the  
2 categories that are required. And first of all,  
3 you need to keep in mind that the total  
4 build-out is about 3300 units, and I think they  
5 have -- they have built about 700 or so. So  
6 they have -- they have a ways to go to complete  
7 the total build-out. And the requirement in the  
8 ordinance for the Project District is a  
9 concurrency with regard to affordables and  
10 market. So in that respect -- in that respect  
11 they don't really owe us that much.

12 My only concern, and I have expressed  
13 this to them, is in the very lowest categories,  
14 below 80 percent, they owe about 38 -- excuse  
15 me. Yeah, about 38 or so. And they have  
16 assured me that they will move forward on this  
17 lowest category in the near future with rentals.  
18 So overall, we really don't have a problem with  
19 Maui Lani.

20 COUNCILMEMBER MATEO: Thank you. And -- and if I  
21 could also request further comment, this would  
22 be in terms of the affordable income categories.  
23 The up to 80 percent for their rental costs for  
24 one- and two-bedroom units, could the Department  
25 comment on the -- on these two figures, because

1           they are -- you know, I guess, based on what we  
2           normally see from Section 8, as compared to this  
3           particular scale, there is a -- a considerable  
4           difference. Could you comment on what they are  
5           projecting to rent their units out for.

6   MS. LEE: For the 80 percent? What page are you  
7           looking at?

8   COUNCILMEMBER MATEO: It is not numbered. It is the  
9           affordable income category.

10   MS. LEE: Well --

11   COUNCILMEMBER MATEO: Where the -- up to 80 percent  
12           rentals, one bedroom, \$1,018; two bedrooms,  
13           \$1,222. And I believe they referenced that this  
14           cost also includes utilities.

15   COUNCILMEMBER TAVARES: It's five pages from the  
16           back.

17   MS. LEE: Okay. It's probably in the binder, but  
18           I -- but that's okay. I don't need it. Okay.  
19           Thank you. This is -- they only gave me a few  
20           pages.

21                   Okay. Comment on the one bedroom and  
22           the two bedroom. Our Section 8 program actually  
23           are -- is set up for those earning 50 percent  
24           and below of median income. As a matter of  
25           fact, even though Section 8 allows for

1           50 percent and below, at least 75 percent of all  
2           of our clients need to be earning 30 percent and  
3           below of median income. So we are really  
4           talking about the very lowest of the households  
5           with the Section 8.

6                     Up to 80 percent of median income,  
7           although it may seem a little high, the one  
8           bedroom and two bedrooms, they are -- they are  
9           really following, I believe, our schedule. So I  
10          really can't disagree with that.

11 COUNCILMEMBER MATEO: Okay. Thank you.

12                     Thank you, Chairman. I will yield the  
13          floor.

14 CHAIR CARROLL: Thank you. Any more questions for  
15          Ms. Lee?

16                     Seeing none, thank you, Ms. Lee.

17 MS. LEE: Thank you.

18 CHAIR CARROLL: We would now like to hear from our  
19          Parks representative, Mr. Matsui.

20                     Thank you. I will open up the floor for  
21          Parks.

22                     Mr. Hokama.

23 COUNCILMEMBER HOKAMA: Chairman, my question to  
24          Mr. Matsui this morning would be under --  
25          regarding Condition 6, please.



1 CHAIR CARROLL: Proceed.

2 COUNCILMEMBER HOKAMA: My understanding on  
3 Condition 6 on the recommendation for -- for  
4 Change in Zoning is that the applicant will work  
5 with the Parks Department should additional  
6 lands be required. Do you have terms of  
7 understanding how the County will be acquiring  
8 this land? By donation? By purchase?

9 MR. MATSUI: Um, right now, for those -- that  
10 26.8 acres, we are talking about them turning it  
11 all over to the County, grassing and grading it,  
12 putting in irrigation system, and doing it all  
13 at once, up front.

14 We are in general agreement with the  
15 proposed amendment to our agreement, and right  
16 now we are working out the details.

17 COUNCILMEMBER HOKAMA: So that will be completed  
18 before we make our decision, or this is after we  
19 make our decision? You are telling us to trust  
20 the Department, but we are not aware of what the  
21 Department is proposing.

22 MR. MATSUI: Well, pretty much what we have agreed on  
23 is that we would accept what is shown at  
24 26.8-acre park, and it would be graded, grassed,  
25 with irrigation system. We are talking about a

1 small restroom, some parking.

2 The Department is looking at a long-term  
3 development of the park for some active fields  
4 and also a baseball field. And so we have  
5 agreed that we would do, like, a master site  
6 plan, and they would provide some of the basic  
7 development of the park, like the grading.

8 COUNCILMEMBER HOKAMA: I understand that, Mr. Matsui.  
9 My -- my question is regarding to Condition 6 in  
10 the proposed Change in Zoning ordinance. It  
11 says if the County needs more land than what is  
12 currently proposed, Maui Lani Partners shall  
13 enter into an agreement with the County to  
14 provide the additional lands. What I am asking  
15 is is that by -- is that already agreed upon?  
16 Is it going to be donation from the partners?  
17 Have we a per-acre cost or price that we are  
18 agreeing to? I am just curious on how we are  
19 going to obtain the property. Is there an  
20 agreement how we are going to obtain this  
21 additional lands, potential lands.

22 MR. MATSUI: No, we haven't agreed on that yet.

23 COUNCILMEMBER HOKAMA: So purchase is still one  
24 option besides donation? We are going to buy  
25 it -- you are going to look at it as, what,

1 developed urban land under ag land  
2 classification? Has that been discussed and  
3 agreed to yet?

4 MR. MATSUI: My understanding of the condition is  
5 referring to that 26.8-acre park.

6 COUNCILMEMBER HOKAMA: Chairman, I am done at this  
7 point, thank you.

8 CHAIR CARROLL: Thank you, Mr. Hokama.  
9 Mr. Molina.

10 COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

11 Good morning, Mr. Matsui. You brought  
12 up the issue of the baseball field. Our own  
13 baseball stadium is in need of some upgrades.  
14 Do you know at this point what kind of specifics  
15 in terms of this proposed field, what it will  
16 have in terms of amenities? Because in the  
17 event that we do upgrade our baseball stadium,  
18 we are going to probably have to displace a lot  
19 of our youth league teams that are currently  
20 using War -- War Memorial Stadium.

21 What will this have? Could this  
22 accommodate most of our youth league teams?

23 MR. MATSUI: Yeah, the intent is not to replace it,  
24 but to be a second stadium. Because, as you  
25 know, the existing one has a lot of users, and

1           it's used all year round, so you know, we are  
2           kind of trying to duplicate that so that it  
3           would lessen the use of the existing stadium.

4 COUNCILMEMBER MOLINA: Does the Parks have any  
5           intentions of putting lights in this, I guess,  
6           second ball field?

7 MR. MATSUI: Yes, we are looking at putting lights  
8           in, parking and rest rooms, and some bleacher  
9           facilities.

10 COUNCILMEMBER MOLINA: Thank you.

11                         Thank you, Chairman.

12 CHAIR CARROLL: Any further questions?

13                         Mr. Pontanilla.

14 VICE-CHAIR PONTANILLA: Thank you, Chair.

15                         Mr. Matsui, the presentation indicated  
16           that the park will be built adjacent to the  
17           school, and you are looking at an active park.  
18           Are we going to go after the State to help  
19           support the construction of, like, say, a  
20           baseball field or any type of field?

21 MR. MATSUI: No, it's not our intent at this point.  
22           We are looking at primarily County funds.

23 VICE-CHAIR PONTANILLA: County funds?

24 MR. MATSUI: Right.

25 VICE-CHAIR PONTANILLA: Thank you.

1 CHAIR CARROLL: Further questions?

2 Ms. Tavares.

3 COUNCILMEMBER TAVARES: Yes, thank you.

4 What is Maui Lani's park requirement  
5 according to the Park Assessment ordinance?

6 MR. MATSUI: I haven't really calculated out the  
7 total, you know 500 square feet, times the total  
8 development. But with the -- with the new park  
9 land, you know, that will give them like 2,300  
10 units, 2,400 units.

11 COUNCILMEMBER TAVARES: So this is the first park  
12 that's being -- the first time parks are being  
13 dedicated to the County from the Maui Lani  
14 project in total?

15 MR. MATSUI: No, there -- there was another one,  
16 Alohilani Park, that will be -- just now is  
17 being -- going to be turned over to the County,  
18 and that's going to come to the Council. But,  
19 you know, Corp. Counsel is putting together the  
20 papers.

21 COUNCILMEMBER TAVARES: So that they are up-to-date  
22 as far as what their Park Assessment requirement  
23 has been for the development so far in Maui  
24 Lani?

25 MR. MATSUI: Yes, with that Alohilani, and then we

1           also have an existing agreement where they were  
2           going to give us a 19-acre parcel, and what we  
3           had agreed on was that, as they developed, they  
4           would give us, like -- I wouldn't say credits,  
5           but easements, until such time that, you know,  
6           there's enough easements that they could turn  
7           over that 19-acre parcel.

8                         There was -- there were also -- the  
9           agreement also said that they would deposit some  
10          agreed-upon per-acre, per-unit amount that would  
11          pay for development of roadways and sewer lines  
12          to the park and also for -- for grassing and  
13          grading and irrigation. But now that -- with  
14          this change, that agreement would -- would just  
15          be superseded by this -- the new agreement that  
16          we are trying to work with on that, for the  
17          26.8-acre park.

18                        So they do have some -- you know, we  
19          have some money that's with the County that --  
20          because they have done some developments  
21          already. Right now, we are still trying to  
22          determine, you know, exactly what -- what those  
23          numbers are.

24   COUNCILMEMBER TAVARES: Okay. Was this the  
25          agreement -- I think this is the agreement that

1 Mr. Hokama is asking about, is that -- and where  
2 are you with that agreement?

3 MR. MATSUI: Okay. Right now, we are still trying to  
4 put together the numbers of -- you know, number  
5 of units and how much was set aside in the -- in  
6 the different accounts.

7 COUNCILMEMBER TAVARES: Do you have a deadline as to  
8 when you -- or a date when you think this  
9 agreement will be completed? Because it appears  
10 to fit in Condition Number 6. So basically,  
11 that agreement should be in place prior to the  
12 Change in Zoning application being approved.

13 MR. MATSUI: If that's a requirement, then we can  
14 work together with Maui Lani and put it together  
15 as soon as possible.

16 COUNCILMEMBER TAVARES: Thank you, Mr. Chair.

17 CHAIR CARROLL: Thank you, Ms. Tavares.

18 Mr. Pontanilla.

19 VICE-CHAIR PONTANILLA: Thank you, Chair.

20 Mr. Matsui, you mentioned about  
21 Alohilani Park that's going to be turned over to  
22 the County?

23 MR. MATSUI: Yes.

24 VICE-CHAIR PONTANILLA: Is that adjacent to the  
25 proposed park areas that they are going to be --

1           that we are looking at this application, or  
2           where is that park?

3 MR. MATSUI:  It's in the -- like in the first initial  
4           phases of it.  It's like a block away from Luana  
5           Gardens.  It's a small park.  It is about --  
6           geez, I think a little over an acre.

7 VICE-CHAIR PONTANILLA:  Thank you.

8           Thank you, Chair.

9 CHAIR CARROLL:  Thank you, Mr. Pontanilla.

10           Further questions for Mr. Matsui?

11           Seeing none, thank you, Mr. Matsui.

12           I would now like to call on the  
13           Department of Water Supply, Mr. Tengan.

14 MR. TENGAN:  Good morning, Mr. Chair.

15 CHAIR CARROLL:  Good morning, Mr. Tengan.

16           Members, any questions for Mr. Tengan?

17 COUNCILMEMBER HOKAMA:  Chairman, Chairman.

18 CHAIR CARROLL:  Mr. Hokama.

19 COUNCILMEMBER HOKAMA:  Thank you.

20           My question to the Director, we have  
21           your July 19th, 2004 letter, Mr. Tengan, whereby  
22           you had at that point in time recommended  
23           development of surface water or groundwater  
24           wells in the northern half of the Waihee  
25           aquifer, and we are being told to this Committee



1           that there is a potential agreement or an  
2           agreement agreed to in concept for three wells  
3           in the Kahului aquifer. Can you tell us, do you  
4           support the change? You recommended the change  
5           from going from Waihee to Kahului?

6                        Because in the earlier part of your  
7           July 19th letter, regarding Kahului, you  
8           mentioned the concern of total quantity of water  
9           withdrawn by these wells far exceeds the  
10          estimated sustainable yield. So I am just  
11          curious, now that we have been told that the  
12          County is willing to enter an agreement to take  
13          water from these three wells in this project  
14          area. Do you have any comments you can share  
15          with us this morning, please?

16   MR. TENGAN: Yes, Mr. Chair, if I may, the State has  
17          assigned a value of 1 million gallons per day  
18          out of the Kahului aquifer; however, everyone  
19          knows that more water than that is being drawn  
20          out of the Kahului aquifer, which is kind of a  
21          vast area. It pretty much covers most of  
22          Central Maui here in the valley.

23                        We know for sure that HC&S is drawing  
24          water out in the cane fields. We know for sure  
25          that Maui Pine has a well at the cannery. And

1           there are some other private wells, in fact, a  
2           number of private wells in Kahului to irrigate  
3           their back yards.

4                        But as you know, the Department isn't  
5           the approving authority for drilling wells and  
6           pumping out of the wells.  And so if the State  
7           Water Commission feels comfortable in -- in  
8           authorizing Maui Lani to drill these wells and  
9           to pump out of those wells, then, you know, we  
10          would be agreeable to that also.

11   COUNCILMEMBER HOKAMA:  So because the State Water  
12          Commission approved the drilling of the wells,  
13          we should be comfortable that we are withdrawing  
14          above the estimated sustainable yield; is  
15          that --

16   MR. TENGAN:  Well, Mr. Chair, the -- the State Water  
17          Commission is the authority to -- to determine  
18          how much water is available.  The Department has  
19          no say in that other than to provide our own  
20          comments.  But you know, we are not the  
21          approving agency.  The State is the approving  
22          agency, and the State has approved it, so we are  
23          fine with that.

24   COUNCILMEMBER HOKAMA:  Mr. Director, did your  
25          Department give the Water Commission your

1 thoughts prior to its decision? And if it did,  
2 would you -- are you able to share that position  
3 with us this morning?

4 MR. TENGAN: Which decision?

5 COUNCILMEMBER HOKAMA: The Water Commission  
6 authorizing the drilling of these three wells.

7 MR. TENGAN: Yes. Back in July 19 -- I mean -- yeah,  
8 July 19, 2004, we did write Mr. Peter Young,  
9 Chairperson for the State Water Commission, our  
10 comments. And basically, our comments were more  
11 on the quality of the water rather than how much  
12 that can be pumped out of those wells.

13 Maui Lani has recently drilled the wells  
14 and -- and did some pump tests, and the water  
15 quality issue is nonexistent. Although there  
16 are some traces, measurable traces, they are  
17 still way below the Federal requirements.

18 COUNCILMEMBER HOKAMA: Okay. That's good to hear,  
19 Mr. Director.

20 Mr. Director, the conditions are written  
21 in a way, Number 3, Number 2 and Number 3, on  
22 the premise that the County will accept the  
23 wells and the water. Has the Department thought  
24 what if the County didn't accept the wells, what  
25 would occur, and how does this mean to the

1 conditions?

2 MR. TENGAN: Well, if the -- if the developer cannot  
3 provide the water, then there would be no  
4 assurance of water for their project. They  
5 would be in the same line as everybody else, you  
6 know, going ahead with their construction  
7 without the assurance that water would be  
8 available.

9 COUNCILMEMBER HOKAMA: Okay. I am done at this time,  
10 Chairman. Thank you. I'll relinquish the  
11 floor.

12 CHAIR CARROLL: Thank you.

13 MR. TENGAN: Mr. Chair, if I may, this kind of is in  
14 line with the -- the ordinance that's under  
15 consideration by the Water Resources Committee,  
16 I believe, regarding the identification of the  
17 water source in approving projects.

18 So what's happening here is Maui Lani is  
19 identifying the source, which are wells that  
20 they are doing right now, and as long as the  
21 wells won't be overpumped in terms of how much  
22 water that should be drawn out of those holes,  
23 and in terms of water quality, you know, beyond  
24 that, other issues are fairly -- I wouldn't say  
25 minor, but you know, they are not as important

1 as the amount of water that can be pumped and  
2 the quality of the water.

3 So it -- they are doing what the  
4 ordinance is trying to accomplish.

5 COUNCILMEMBER HOKAMA: Chairman. Chairman. One last  
6 follow-up question.

7 CHAIR CARROLL: Proceed, Mr. Hokama.

8 COUNCILMEMBER HOKAMA: Has the Department executed  
9 any type of agreement?

10 MR. TENGAN: Yes, we do. If I may find it here. We  
11 have our Right of Entry and Upgrading Agreement  
12 dated April 22, 2005.

13 COUNCILMEMBER HOKAMA: Okay. Thank you, Chairman.

14 CHAIR CARROLL: Thank you.

15 Mr. Mateo.

16 COUNCILMEMBER MATEO: Chairman, thank you very much.

17 Mr. Tengan good --

18 CHAIR CARROLL: Excuse me. Let the record show we  
19 have Mr. Kane has joined us.

20 Thank you, Mr. Kane.

21 Mr. Mateo.

22 COUNCILMEMBER MATEO: Thank you, Mr. Chair.

23 Mr. Tengan, is the Department concerned  
24 about the quality of the water at this  
25 particular point because they had in fact drawn,

1 but I don't know whether or not their testing  
2 results had been completed in terms of County  
3 using some of that source and feeding it into  
4 our -- our lines if the water quality is not  
5 appropriate? Could you comment on what the  
6 status is of the testing results, et cetera, if  
7 you are aware?

8 MR. TENGAN: Yes. The Department's concern, because  
9 of the experience we have had with prior  
10 existing wells, back in the mid '90s, when we  
11 had an emergency and we had tried to get  
12 whatever source we could on line. We looked at  
13 the well called the Reynolds well, that was  
14 under the control of Maui Lani, and there was  
15 some contamination in that well, and so we  
16 decided not to use it. So based upon that  
17 experience, we were -- you know, we were very  
18 concerned prior to development of this agreement  
19 of the quality of water.

20 However, the agreement does provide for  
21 remediation should the quality of water go  
22 afoul. There is a ten-year obligation on the  
23 developer to provide remediation up to, I  
24 believe, about \$3 million.

25 COUNCILMEMBER MATEO: And if I could just ask the

1 Department, in -- in drafting an agreement with  
2 Maui Lani and partners, Maui Lani Partners, is  
3 the Department considering considerations of  
4 monitoring of the wells just because of its  
5 proximity on the golf course?

6 MR. TENGAN: Yes. Once they are turned over to us,  
7 we will do our -- our regularly scheduled  
8 monitoring.

9 COUNCILMEMBER MATEO: Thank you.

10 MR. TENGAN: Maybe initially, we should intensify  
11 that monitoring just -- just to be sure. Then  
12 as we feel -- if we feel more comfortable, then  
13 going back to just the routine monitoring  
14 program, then we could do that.

15 COUNCILMEMBER MATEO: Okay. And at this point,  
16 Mr. Tengan, are -- are you aware of a date when  
17 the final results of their water testing, their  
18 well testing, is expected?

19 MR. TENGAN: Yes. They have provided the test  
20 results. I believe the Council should have  
21 that. There were three chemicals that were  
22 identified, one is so exotic, I don't know how  
23 to pronounce it. It is this toluene or  
24 something like that, T-O-L-U-E-N-E. The Federal  
25 standard is 1,000 parts per million. On the

1 result, was 21 parts.

2 Nitrate is NO3. It's a measurement of  
3 nitrates. The Federal standard is 45 parts per  
4 million. The result was 2.1.

5 And nitrate as nitrogen, the Federal  
6 standard is 10 parts per million, and the result  
7 was .48.

8 COUNCILMEMBER MATEO: Thank you very much.

9 Thank you, Chair.

10 CHAIR CARROLL: Thank you, Mr. Mateo.

11 Further questions for Mr. Tengan?

12 Ms. Tavares.

13 COUNCILMEMBER TAVARES: Yes, thank you.

14 You stated that in your July 19th letter  
15 to Peter Young you had stated that the  
16 groundwater was not potable and that your  
17 Department would not be interested in accepting  
18 wells in this area. And then later on, in  
19 April, your position changed, in April of the  
20 next year. So what was the change based on?

21 MR. TENGAN: Basically, the change was made in  
22 discussions with the developer and with their  
23 hydrogeologist. This hydrogeologist -- or their  
24 hydrogeologist was fairly confident that the  
25 water quality would be okay based upon an



1 existing well that they are using for the golf  
2 course. And also, the provision in the -- in  
3 our discussions, we talk about remediation. And  
4 the developer was willing to go along with some  
5 remediation provisions in the agreement, and so  
6 that was part of the reason.

7 COUNCILMEMBER TAVARES: Are you -- as a Department,  
8 are you privy to the water quality reports from  
9 the well that they use for their irrigation? Or  
10 did they share that with you? Or were there any  
11 reports? I guess that would be the first  
12 question.

13 MR. TENGAN: I don't know that we have a copy, but,  
14 you know, the test -- we were -- we are more  
15 interested in -- in the wells that they are  
16 proposing to dedicate to us. And so, based upon  
17 the results we see here, you know, they are  
18 within the Federal guidelines.

19 As far as the existing wells for the  
20 golf course, we pretty much went ahead and  
21 accepted what the hydrogeologist was saying. He  
22 is a reputable person. You know, I certainly  
23 had some faith in -- in his statements.

24 COUNCILMEMBER TAVARES: Do you know how many other  
25 wells Maui Lani has within their property that

1           they are using?

2 MR. TENGAN: No, but I would guess at least two or  
3           three more.

4 COUNCILMEMBER TAVARES: Basically, all related to the  
5           golf course?

6 MR. TENGAN: I don't know what they are using it for.  
7           But you know, like I said earlier, we are  
8           familiar with that Reynolds well. We had some  
9           tests run before we decided not to use it.

10 COUNCILMEMBER TAVARES: Okay.

11                   I have some other questions but more  
12           specifically to the agreement, Mr. Chair, so I  
13           will yield the floor at this time.

14 CHAIR CARROLL: Thank you. Further questions for  
15           Mr. Tengan? If not, I have.

16                   Mr. Tengan, have you had a chance to  
17           review the applicant's proposed revisions to  
18           Condition 2?

19 MR. TENGAN: As a matter of fact, no, Mr. Chair.

20 CHAIR CARROLL: Well, I won't ask you if you have any  
21           comments at this time. Perhaps you can do that  
22           before the end of the meeting.

23 COUNCILMEMBER TAVARES: Where is that? What are you  
24           referring to, Mr. Chair?

25 CHAIR CARROLL: The applicant has -- where is it now?

1 Ms. Nakata?

2 MR. TENGAN: Mr. Chair, I have it before me.

3 COUNCILMEMBER TAVARES: If Ms. Nakata could point it  
4 out to us, where it is.

5 CHAIR CARROLL: I have it only in my notes only. I  
6 don't have the location right now. Ms. Nakata  
7 will find it in a minute.

8 COUNCILMEMBER TAVARES: Okay. Thank you.

9 CHAIR CARROLL: And what we are referring to is the  
10 applicant had a proposed revision to Condition  
11 Number 2, and that is what I was hoping that --  
12 Mr. Tengan is looking at that now -- if he could  
13 have any comment on it.

14 MR. TENGAN: Yes, Mr. Chair. I don't see any concern  
15 that's not addressed in the agreement.

16 CHAIR CARROLL: Ms. Nakata.

17 MS. NAKATA: I apologize, Mr. Chair. I believe it  
18 was contained in the Planning Department's  
19 report under cover of a memo from the Planning  
20 Director dated April 26, 2005.

21 COUNCILMEMBER HOKAMA: What is the date, Carla?

22 MS. NAKATA: Memo dated April 26, 2005 from the  
23 Planning Director to the Maui Planning  
24 Commission. On page 2 of the two-page memo, the  
25 Planning Director stated that the applicant had

1 requested that Condition 2 be amended and noted  
2 that a copy of the proposed amended condition  
3 had been referred to the Department of Water  
4 Supply for review and recommendation.

5 It's contained in the Planning  
6 Department's amended recommendation to the  
7 Planning Commission, April 26th, 2005 meeting.

8 COUNCILMEMBER TAVARES: Mr. Chair.

9 CHAIR CARROLL: Ms. Tavares.

10 COUNCILMEMBER TAVARES: Yes, I'm sorry. The earliest  
11 document I have in my binder is May 17th, 2005.

12 MS. NAKATA: It's part of the County Communication.

13 COUNCILMEMBER TAVARES: Okay. It's part of that  
14 County Communication?

15 COUNCILMEMBER HOKAMA: Chairman, recess, please.

16 CHAIR CARROLL: We are going to take a five-minute  
17 recess. Recess. (Gavel.)

18 **RECESS: 10:05 a.m.**

19 **RECONVENE: 10:16 a.m.**

20 CHAIR CARROLL: (Gavel.) Land Use Committee meeting  
21 of December 12, 2005 is now back in session.

22 Mr. Tengan.

23 MR. TENGAN: Yes, Mr. Chair. In reviewing the  
24 communication from the Planning Department,  
25 dated May 17, 2005, under Condition 2, it's

1           somewhat different to the agreement that was  
2           entered into with the -- between the developer  
3           and the Department.  If we go to the third  
4           paragraph, as I stated earlier, the existing  
5           agreement calls for remediation up to \$3 million  
6           by the developer; however, this -- the last  
7           paragraph or the third paragraph under  
8           Condition 2, the Condition 2 response states  
9           that the developer and its successors shall be  
10          responsible for any necessary remediation, which  
11          means that it could go beyond the \$3 million, or  
12          to develop new sources to replace the  
13          contaminated wells.  So that's the difference  
14          between this response here and the existing  
15          agreement.

16   CHAIR CARROLL:  Mr. Giroux, I had asked you earlier  
17                    by correspondence if you had any comment to this  
18                    revision.

19   MR. GIROUX:  Yes, Chair.  I think there was concern  
20                    about what, you know, what this change in  
21                    condition would mean as far as how it would --  
22                    would it and how would it affect the agreement  
23                    made between Maui Lani Partners and the  
24                    Department of Water Supply.

25                    And the short answer is that within the

1 powers of zoning, the condition can be crafted  
2 in such a way that as long as it is in the  
3 context of your powers of conditional zoning,  
4 our position would be that it can go above and  
5 beyond that agreement as far as how you want to  
6 craft that. The issue is -- is -- would be  
7 what -- what is the parties' understanding of  
8 the right-of-entry agreement.

9 A couple of issues that I kind of wanted  
10 to bring, I guess, to the forefront is -- is  
11 that the agreement, the right-of-entry agreement  
12 is between Maui Lani Partners and the Department  
13 of Water Supply. These conditions of zoning  
14 would be between Maui Lani 100, LLC, and would  
15 be set down in a unilateral agreement and would  
16 run with the land. So there is a little bit of  
17 difference.

18 I think another wrinkle in this would be  
19 that the -- that the right-of-entry agreement  
20 was also presented to the Land Use Commission,  
21 which they incorporated in their order as far as  
22 the district, Land Use District Boundary  
23 Amendment. And in that, looking at that and how  
24 they crafted their condition, I saw that,  
25 although they acknowledged that Maui Lani 100,

1           LLC, is the petitioner, they did incorporate its  
2           affiliates, Maui Lani Partners, in the order.

3                   And as far as incorporating that  
4           agreement into the order, they did allow for  
5           that, but they also allowed that -- that there  
6           also be conditions that would be underneath  
7           the -- the satisfaction of the Department of  
8           Water Supply, which I guess could be taken to  
9           mean in accordance with that very agreement.

10                   So in finding a condition, it's going to  
11           be up to this body to craft a condition that it  
12           feels would adequately protect the County as far  
13           as being responsible for any type of water  
14           supply remediation or quality. That's all I  
15           have at this point.

16   CHAIR CARROLL: Ms. Tavares, did you have anything  
17           further?

18   COUNCILMEMBER TAVARES: So from what you are saying,  
19           then, a condition of zoning, then, would have --  
20           would supersede any kind of agreements that are  
21           entered into? Or that have been entered into up  
22           to this point?

23   MR. GIROUX: I think we would have to look at it as a  
24           case-by-case basis, but I think at this point,  
25           we need to look at the formulation of those

1 conditions and see how they play out.

2 But in the end, our position is that  
3 because you do have those powers of zoning and  
4 powers of conditional zoning, that if they end  
5 up being more stringent than this agreement, the  
6 most likely scenario is that it would supersede  
7 that agreement.

8 COUNCILMEMBER TAVARES: So the more stringent would  
9 apply? If the agreement is more stringent than  
10 the condition, then the agreement applies?

11 MR. GIROUX: Yeah.

12 COUNCILMEMBER TAVARES: If the condition is more  
13 stringent than the agreement, then the condition  
14 would apply. Is that what you are saying?

15 MR. GIROUX: Right. If the condition in the  
16 condition of zoning were more stringent.

17 COUNCILMEMBER TAVARES: Okay.

18 MR. GIROUX: And again, with the caveat that as long  
19 as it's within the purview of your conditional  
20 zoning powers.

21 COUNCILMEMBER TAVARES: Okay. Would one of the  
22 things within our powers be to reference Maui  
23 Lani Partners and any of their subsidiaries or  
24 affiliates so that anything that's going on here  
25 applies to whoever is in control of the land at



1 the time? Successors and assigns, I guess, is  
2 the terminology that's used?

3 MR. GIROUX: Well, I think that's an issue that needs  
4 to be brought to the table.

5 COUNCILMEMBER TAVARES: Okay.

6 MR. GIROUX: Our policy in crafting the conditions in  
7 the unilateral agreements have always been to  
8 run those conditions with the body who's  
9 applying -- not only applying for it, but who is  
10 the owner of the property because that's the  
11 power we have over zoning, is over that  
12 property, and that those conditions would run  
13 with the property.

14 In this case, where we have a parent  
15 company that is coming in and entering into  
16 agreements with the County, I think that we  
17 would have to ask the affiliate, the Maui Lani  
18 Partners, on how they feel about being included  
19 into our conditions of zoning and possibly  
20 having to enter into a unilateral agreement.

21 Because our position has always been  
22 that it's been with the owner of the property,  
23 and as far as the representations made to me in  
24 the documents that I have gotten, it's Maui  
25 Lani 100, LLC, is the actual owner of the

1 property. But that does not mean that it cannot  
2 happen, it just -- our position would be that if  
3 we could get them to agree to allow themselves  
4 to be bound, then once they do agree, then they  
5 would be bound.

6 COUNCILMEMBER TAVARES: You said these conditions all  
7 run with the land, so it doesn't really matter  
8 who the owners are. But to make the agreement,  
9 you have to -- the agreement has to be signed by  
10 the current owner of the property.

11 MR. GIROUX: Current, yeah. And -- and it would be  
12 important to have at least the name of the  
13 body --

14 COUNCILMEMBER TAVARES: Yes.

15 MR. GIROUX: -- incorporated in all of the documents.  
16 I think in using the word affiliates, and then  
17 specifically stating who we are looking at, and  
18 then going successors and assigns, I think,  
19 would cover the documentation necessary to make  
20 sure that it -- it's properly documented in the  
21 Bureau of Conveyance, and then also that anybody  
22 who is going to take over the ownership would be  
23 put on notice that they would be responsible --

24 COUNCILMEMBER TAVARES: Right.

25 MR. GIROUX: -- for those things.

1 COUNCILMEMBER TAVARES: Okay. Thank you.

2 CHAIR CARROLL: Thank you, Ms. Tavares.

3 Further discussion?

4 VICE-CHAIR PONTANILLA: Question, Chair.

5 CHAIR CARROLL: Mr. Pontanilla, followed by  
6 Mr. Hokama.

7 VICE-CHAIR PONTANILLA: Thank you.

8 The right-of-entry agreement is for how  
9 long?

10 MR. TENGAN: Mr. Chair, the right-of-entry agreement  
11 is for ten years.

12 VICE-CHAIR PONTANILLA: Thank you, Chair.

13 CHAIR CARROLL: Thank you, Mr. Pontanilla.

14 Mr. Hokama.

15 COUNCILMEMBER HOKAMA: My -- my question is for the  
16 attorney. I was listening to his response to  
17 Ms. Tavares. Maybe I should phrase it the other  
18 way for our Corporation Counsel.

19 What has higher standing, the ordinance  
20 which the Change in Zoning is, or an agreement  
21 between a Department and applicant?

22 MR. GIROUX: I think what is important is that the --  
23 to narrow that, as far as to look at this  
24 situation, as far as in this situation, what our  
25 position would be is that the powers of the

1 ordinance would be higher than the agreement.

2 COUNCILMEMBER HOKAMA: Thank you. Thank you.

3 Thank you, Chairman.

4 CHAIR CARROLL: Thank you, Mr. Hokama.

5 Further discussion pertaining to water?

6 Ms. Tavares.

7 COUNCILMEMBER TAVARES: I had a question regarding  
8 the -- the time when the wells would be  
9 dedicated to the County. And I think I saw that  
10 in two different places that had different  
11 triggers. Like, when does the ten-year period  
12 clock start?

13 I guess there was a letter, a letter  
14 dated April 26th, 2005, from the Department of  
15 Water Supply to the Planning Commission Chair,  
16 and talked about the term of the licenses for a  
17 period of ten years following the occurrence of  
18 three conditions. And on the back of that page,  
19 on page 2, it talks about the conveyance of the  
20 wells to the County of Maui, and there are some  
21 conditions there, which says, one of them,  
22 Number 2, at the end of the term of the  
23 agreement.

24 So I guess my -- my question is if the  
25 license starts or the term, the ten-year term

1 starts, it says, following the occurrence of the  
2 three conditions, and one of those is that Maui  
3 Lani has turned over possession and control of  
4 the wells to the Department of Water Supply.  
5 So, you know, help me understand how that works  
6 with the second part, Number 2, which says at  
7 the end of the term of the agreement, the wells  
8 will be conveyed to the County of Maui.

9 CHAIR CARROLL: Mr. Giroux or Mr. Tengan, are you  
10 prepared to answer?

11 MR. TENGAN: Yes, Mr. Chair. Based on that letter, I  
12 would say that the -- this would be an agreement  
13 to operate the wells, and that's why we need the  
14 right-of-entry agreement. And following the ten  
15 years, the ten-year period for this agreement,  
16 then the Department will take a look at  
17 accepting the wells as part of the County  
18 system. This provides further -- I don't know  
19 if I want to say assurance, but it provides  
20 further protection that, you know -- let's say  
21 something goes wrong with the wells in the  
22 ten-year period. Then at that point in time, at  
23 the termination of the agreement, we needn't  
24 accept the wells; however, the one problem that  
25 would remain would be how do we make up for that

1 source that we have issued up to that point in  
2 time.

3 COUNCILMEMBER TAVARES: So in your mind, when does  
4 the ten-year clock start?

5 MR. TENGAN: When this final approval by our  
6 engineering division for recommendation to  
7 accept the system, you know, upon completion,  
8 you know, following all the obtaining of permits  
9 and the inspections. And when we -- I would  
10 think that the day that we put water into our  
11 system from those wells, that's -- that would be  
12 the start of the agreement or the -- or the  
13 period.

14 COUNCILMEMBER TAVARES: So one of those is not  
15 correct, then?

16 MR. TENGAN: One of which?

17 COUNCILMEMBER TAVARES: One of these conditions as  
18 stated. You know, you have got the three  
19 conditions on the first page, and then you have  
20 the conveyance of the wells and related  
21 facilities. Number 2 says at the end of the  
22 term of the agreement. But they are conveying  
23 it before the agreement starts.

24 MR. TENGAN: They are conveying it for operation.

25 COUNCILMEMBER TAVARES: Okay. So it's being approved

1 by the Department for operation. When it is  
2 approved, then the clock starts?

3 MR. TENGAN: Right.

4 COUNCILMEMBER TAVARES: Then at the end of the  
5 ten-year period, or sooner, then it would be  
6 formally turned over to the County Water  
7 Department?

8 MR. TENGAN: At the end of the period, correct.

9 COUNCILMEMBER TAVARES: Okay. Okay. Thank you for  
10 that clarification.

11 CHAIR CARROLL: Thank you, Ms. Tavares.

12 COUNCILMEMBER TAVARES: So number -- oh, I am sorry.

13 So Number 3 should be actually reworded  
14 then? It's not -- it's not turning over  
15 possession and control, right? It's approving  
16 the system?

17 MR. TENGAN: Well, we would take possession of it in  
18 terms of operating it. The -- you know, we  
19 would operate the wells under our own conditions  
20 in the way that we operate. The developer  
21 wouldn't have any say in how we operate the  
22 wells. So that's, in my mind, taking possession  
23 of it, although we are not taking title to it.

24 COUNCILMEMBER TAVARES: Okay. Possession and control  
25 but not title. So the title is what comes in at

1 the end of the ten years if everything is --

2 MR. TENGAN: That's correct as I understand it.

3 COUNCILMEMBER TAVARES: -- hunky-dory. Okay.

4 I have another area, Mr. Chair, in the  
5 water agreement.

6 CHAIR CARROLL: Proceed.

7 COUNCILMEMBER TAVARES: In the agreement, on page 5,  
8 under Number 10, the Department of Water Supply  
9 indemnifies the grantor in regards to the well.  
10 And I am just wondering, shouldn't it be the  
11 other way around? Why is Maui Lani indemnified  
12 so that the risk is all the County of Maui at  
13 this point, right?

14 MR. TENGAN: Mr. Chair, I'd like to refer that to the  
15 attorney, here. Mr. Chair, please understand  
16 that Mr. Giroux isn't as familiar with this  
17 agreement as the attorney that represents the --  
18 or represented the Department in the drafting or  
19 in the crafting of this agreement.

20 MR. GIROUX: Yes, Mr. Chair, I did not -- I did not  
21 participate in the crafting of this document.

22 COUNCILMEMBER TAVARES: So Mr. Giroux, who was the  
23 Corp. Counsel assigned to this document? Do you  
24 know?

25 MR. GIROUX: I believe it would be the attorney



1 assigned to the Department of Water.

2 COUNCILMEMBER TAVARES: So Mr. Kushi?

3 MR. TENGAN: That's correct.

4 COUNCILMEMBER TAVARES: Well, maybe we can give  
5 someone some time to read over this particular  
6 section and explain to us, you know, what was --  
7 what was -- what was behind, just the thought  
8 behind, that the Department of Water Supply  
9 shall indemnify defendant, hold the grantor  
10 harmless from any claims, liabilities, damages,  
11 costs, et cetera, relating to the operation,  
12 maintenance -- it's almost towards the bottom of  
13 that section.

14 MR. TENGAN: Yes, Mr. Chair. As I read this  
15 statement here, basically, it's to indemnify the  
16 developer of any actions of the Department.  
17 Let's say the Department did something that, you  
18 know, created some liability, that, you know,  
19 the Department would be holding -- holding the  
20 grantor harmless for any actions of the  
21 Department, let's say there was gross negligence  
22 or whatever.

23 COUNCILMEMBER TAVARES: Okay. Mr. Chair, if we could  
24 have that section reviewed in light of what he  
25 has said. Is that actually what this says? So

1 this has nothing to do with if the wells happen  
2 to go bad, and, you know, that they are -- or  
3 you know, whatever might happen to the quality  
4 of the water in the meantime.

5 I know there's a section with the  
6 remediation that the grantor is obligated or has  
7 obligated itself to pay up to \$3 million for  
8 remediation during that ten-year period. But if  
9 we could get clarification from Corporation  
10 Counsel, either the -- either Mr. Giroux or  
11 Mr. Kushi at some point in time.

12 CHAIR CARROLL: Ms. Tavares, I was going to take our  
13 morning break and perhaps after the break --  
14 during the break, they can find out this  
15 information and come back to us.

16 COUNCILMEMBER TAVARES: Okay.

17 CHAIR CARROLL: And let the record show that at 10:25  
18 Ms. Anderson joined us.

19 Welcome, Ms. Anderson.

20 We are going to take our recess. We  
21 will reconvene at 10 to 11:00. Recess.

22 (Gavel.)

23 **RECESS: 10:38 a.m.**

24 **RECONVENE: 10:50 a.m.**

25 CHAIR CARROLL: (Gavel.) Land Use Committee Meeting

1 of December 12, 2005, is now back in session.

2 Members, the Water Department -- I am  
3 going to let them go for right now. They have a  
4 little bit of research to do, and we have some  
5 of the other departments that are waiting. We  
6 are going to try to get through them so we can  
7 release them.

8 So to begin, I would like to ask -- we  
9 have our State Highways Division, Freddy  
10 Cajigal, if you could please come down.

11 And let the record show that Ms. Johnson  
12 joined us at 10:52.

13 Any questions for our State Division of  
14 Highways? This might be a fast visit for our  
15 State.

16 COUNCILMEMBER HOKAMA: Chairman. Chairman.

17 CHAIR CARROLL: Mr. Hokama.

18 COUNCILMEMBER HOKAMA: Thank you.

19 Mr. Cajigal, can you share with us some  
20 of the scheduling of the improvements as it  
21 relates to the Maui Lani application before us?  
22 I know, we are aware that one of the things that  
23 the applicant is -- is trying to accelerate, if  
24 I can use that word, is the Kamehameha entry  
25 into the properties, Kamehameha Avenue area of

1 entry. And I know of their willingness to, I  
2 guess, maybe, provide resources up front.

3 Is that something that your Department  
4 is expediting with our County Department, or  
5 is -- or you have nothing to do with that  
6 improvement?

7 MR. CAJIGAL: DOT has nothing to do with that because  
8 it is a County system. The only way we would  
9 get involved when it gets -- is if when it gets  
10 into, say, Federal -- when it becomes a Federal  
11 aid project, A Federally aided project, then  
12 that's where we can get involved.

13 COUNCILMEMBER HOKAMA: Are there any Federal aid  
14 projects within this application area that you  
15 could give comment to this morning to us,  
16 whether or not it's on schedule, ahead of  
17 schedule, or not even being considered?

18 MR. CAJIGAL: I -- I really don't know, Councilmember  
19 Hokama. I would need to defer that to Public  
20 Works because I really don't have their  
21 schedule.

22 COUNCILMEMBER HOKAMA: Thank you very much.

23 Thank you, Mr. Chairman.

24 CHAIR CARROLL: Thank you, Mr. Hokama.

25 Mr. Pontanilla, followed by Ms. Tavares.

1 VICE-CHAIR PONTANILLA: Thank you.

2 Good morning, Fred.

3 MR. CAJIGAL: Good morning.

4 VICE-CHAIR PONTANILLA: H-Pi'ilani Highway, where  
5 does the State jurisdiction come into play when  
6 you enter -- entering Wailuku? Where does the  
7 State Highway begins?

8 MR. CAJIGAL: Honoapi'ilani Highway starts at its  
9 intersection with Kaahumanu Avenue, Main Street.  
10 Actually, at Main Street it starts as High  
11 Street up to Kenui [sic], right in that -- this  
12 area. And then from there, it takes off.  
13 That's Honoapi'ilani Highway.

14 VICE-CHAIR PONTANILLA: So the intersection, the  
15 proposed intersection -- this is probably quite  
16 in the future, on kui -- Kuikahi and H-Pi'ilani,  
17 when the extension is done, then the State would  
18 get involved, or when does the State get  
19 involved?

20 MR. CAJIGAL: The only -- the State would get  
21 involved only with the improvements at Kuikahi  
22 and Honoapi'ilani Highway.

23 VICE-CHAIR PONTANILLA: And similar to Kuihelani and  
24 Maui Lani Parkway?

25 MR. CAJIGAL: Similar to Kuihelani and Maui Lani,

1           yes.

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

3 CHAIR CARROLL: Thank you, Mr. Pontanilla.

4                   Ms. Tavares.

5 COUNCILMEMBER TAVARES: Yeah, my question was just  
6 going to be about the kui -- Kuihelani  
7 connection with Maui Lani Parkway, where right  
8 now it's -- it's not a signalized intersection.  
9 And they would be working with you as far as  
10 when the warrants get to when it --  
11 signalization is required at that intersection?

12 MR. CAJIGAL: Yes.

13 COUNCILMEMBER TAVARES: Okay. And does it look like  
14 it, pretty soon?

15 MR. CAJIGAL: I hope so. It really depends on the  
16 rerouting of traffic once they open -- I know  
17 they are opening it up to Kamehameha, and  
18 basically up to the back side, once they open it  
19 up. And hopefully, we will get a feel of it as  
20 days go by. I have been working with the --  
21 with the developer in terms of the -- of when  
22 it's going to be warranted and all that, because  
23 they have been pretty good at that.

24                   In terms of signalization of the  
25 intersections, we did put in a lot of the -- the

1 dark lines at the intersection already, when we  
2 widened the highway. So it's just a matter of  
3 putting in those equipments and signals.

4 COUNCILMEMBER TAVARES: So signals can go in before  
5 they are warranted?

6 MR. CAJIGAL: No, they have to be warranted.

7 COUNCILMEMBER TAVARES: They do have to be warranted?

8 MR. CAJIGAL: Yes.

9 COUNCILMEMBER TAVARES: So help me understand why  
10 that intersection is not warranted right now,  
11 and the intersection with Liholiho on -- over  
12 here by Baldwin High School, the one that goes  
13 to Sand Hills, that intersection warranted a  
14 light.

15 MR. CAJIGAL: Um, there's about eight or nine  
16 warrants, I think, that the traffic signals go  
17 through. And for -- for Kuihelani, I can only  
18 guess that you don't have the volumes right now  
19 because it has not really opened up yet in terms  
20 of servicing what it's intended for. And  
21 whereas at Lunalilo, you do have a lot of  
22 traffic on Kaahumanu as well as side street  
23 traffic, and several accidents, and those are --  
24 those can be used in the warrants, too.

25 COUNCILMEMBER TAVARES: Okay. Thank you.

1 CHAIR CARROLL: Thank you. Further questions?

2 Mr. Pontanilla.

3 VICE-CHAIR PONTANILLA: Thank you.

4 Since the opening of Maui Lani Parkway  
5 and Kuihelani intersection, have the Department  
6 seen any improvements on Puunene  
7 Avenue-Kuihelani intersection?

8 MR. CAJIGAL: Only when they -- when they open up the  
9 Kamehameha Avenue side, we -- there's a slight  
10 decrease in the left turns coming from Kuihelani  
11 into Puunene. And we do -- but we haven't  
12 really realized its full potential yet, and I am  
13 keeping my fingers crossed that we do -- that it  
14 will soon attract a lot of the Dream City  
15 traffic, especially in the afternoon.

16 VICE-CHAIR PONTANILLA: Thank you.

17 Thank you, Chair.

18 CHAIR CARROLL: Thank you, Mr. Pontanilla.

19 Any further questions for our State  
20 Department of Transportation?

21 Ms. Johnson.

22 COUNCILMEMBER JOHNSON: Thank you, Freddy, for being  
23 here.

24 Because there's a light on Waiko Road,  
25 have you noticed that people that are coming



1 across are utilizing, instead of coming all the  
2 way through, you know, the Maui Lani area or  
3 down Kamehameha, that people are cutting through  
4 on Waiko and that's taking some of the traffic  
5 away from that intersection that would, I guess,  
6 create some kind of a warrant with Kuihelani?

7 MR. CAJIGAL: I like -- you are saying Kuihelani at  
8 Waiko? Is that --

9 COUNCILMEMBER JOHNSON: Uh-huh.

10 MR. CAJIGAL: It's really hard to tell. I really  
11 don't notice it yet.

12 COUNCILMEMBER JOHNSON: Well, they didn't do that  
13 analysis in their trans -- TIAR, did they?  
14 Traffic Impact Analysis Report? Did they go  
15 that far out?

16 MR. CAJIGAL: I -- I -- I cannot comment on that,  
17 Councilmember Johnson. I don't have it with me.

18 COUNCILMEMBER JOHNSON: Okay. With the -- when you  
19 are coming off of Kamehameha and you are making  
20 that right onto Kuihelani, headed towards, you  
21 know, the Kihei or the Honoapi'ilani Highway  
22 area, does that seem to be working smoothly?  
23 Because I mean, the few times that I have come  
24 through there, it seems to be working where  
25 there's no interference with the traffic, and I

1           guess the speed slows down a little bit to  
2           around 45 right at that intersection.

3                        Have you noticed or have there been any  
4           reports of congestion or any kind of traffic  
5           impacts that are negative in that area?

6 MR. CAJIGAL:   At Maui Lani and Kuihelani?

7 COUNCILMEMBER JOHNSON:   Uh-huh.

8 MR. CAJIGAL:   No.   The only -- we did a little  
9           improvement at that intersection, which is  
10          basically the left turns out of Maui Lani  
11          towards the airport.   And if you remember, we  
12          used to have a big, striped median.   What we did  
13          was eradicate half of the median and make it  
14          like an acceleration lane towards the airport,  
15          and it also acts as a refuge lane.   And the  
16          developer was -- helped us out in -- in that  
17          regards, too.

18 COUNCILMEMBER JOHNSON:   And do you think that if that  
19          continues to operate -- because it seems to  
20          be -- that area seems to be operating all right,  
21          and there's a real clear line of visibility.  
22          Would it be possible that we wouldn't have to  
23          yet put one more light on that?

24 MR. CAJIGAL:   Well, it -- that's why we only put it  
25          in when it's warranted.   It has to be really

1 warranted before we put in the traffic signals.  
2 The way -- the way it's operating now, it looks  
3 acceptable because we don't -- other than that  
4 little improvement that we did last -- early  
5 part this year, I don't see any more problem  
6 with that intersection so far.

7 COUNCILMEMBER JOHNSON: So there hasn't been  
8 congestion, and there hasn't been traffic  
9 backup, and there also have been no accidents  
10 involving that particular intersection?

11 MR. CAJIGAL: Not that I know of. Maybe MPD can --

12 COUNCILMEMBER JOHNSON: Okay. I really appreciate  
13 it. Thank you very much.

14 MR. CAJIGAL: You are welcome.

15 CHAIR CARROLL: Any further questions for our State  
16 Department of Transportation?

17 Hearing none, thank you.

18 MR. CAJIGAL: Thank you.

19 CHAIR CARROLL: I would like to call on our Fire  
20 Department representative. Please state your  
21 name at the microphone for the record.

22 MR. HAAKE: Good morning Chair, Council. My name is  
23 Paul Haake.

24 CHAIR CARROLL: Do you have any opening statement you  
25 would like to make.

1 MR. HAAKE: No, sir.

2 CHAIR CARROLL: Questions? Members, the floor is now  
3 open.

4 Mr. Molina.

5 COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

6 Good morning, Mr. Haake. Do you have  
7 any issues, the Fire Department has any issues  
8 with the proposed subdivision's accessibility  
9 and roadwidths for your emergency vehicles at  
10 this point?

11 MR. HAAKE: Not at this time.

12 COUNCILMEMBER MOLINA: Thank you.

13 CHAIR CARROLL: Any further questions for our Fire  
14 Department?

15 Ms. Johnson.

16 COUNCILMEMBER JOHNSON: Thank you for being here.

17 Are you at all aware if there's any  
18 intent to open up Lono onto Kuihelani, Lono  
19 Avenue? Because I know that even though it's  
20 outside of this particular area that we are  
21 looking at, because of its close proximity and  
22 also because these neighborhoods kind of meld  
23 one into the other, are you aware if that is  
24 going to be opened up, and would that impact  
25 anything in terms of service in the area within

1 the Maui Lani complex?

2 MR. HAAKE: No.

3 COUNCILMEMBER JOHNSON: Okay. So you are not aware  
4 that it's going to be opened at any time?

5 MR. HAAKE: No, I am not aware.

6 COUNCILMEMBER JOHNSON: Okay. Thank you.

7 CHAIR CARROLL: Any further questions for our Fire  
8 Department?

9 Seeing none, thank you, sir.

10 MR. HAAKE: Thank you.

11 CHAIR CARROLL: I would now like to call on our  
12 Police Department.

13 Please state your name at the microphone  
14 for the record.

15 MR. MATSUOKA: I am Milton Matsuoka.

16 CHAIR CARROLL: Do you have any opening statement?

17 MR. MATSUOKA: No, I don't.

18 CHAIR CARROLL: The floor is now open for the Police  
19 Department.

20 Ms. Johnson.

21 COUNCILMEMBER JOHNSON: I hate to have these people  
22 be sitting in the audience and then not at least  
23 ask them one question, but I really appreciate  
24 you being here today.

25 One of the things that I am concerned

1           about, of course, is the number of officers that  
2           are really capable, I guess, of handling all of  
3           the increase in the population in the Central  
4           Maui area. And can you address specifically,  
5           with regard to this development, is this going  
6           to, I guess, put further stresses on your  
7           Department if greater population expands into  
8           this area, or are you perfectly comfortable that  
9           you can handle any expansion?

10   MR. MATSUOKA: No, any time -- I think any time you  
11           have expansion, especially with the amount of  
12           residences that you are going to see, especially  
13           with, and I think -- well, part of the impact  
14           statement said that they were estimating two  
15           cars per residence. So any time you have  
16           something like that, I mean, it's going to have  
17           an impact, and I think it's going to definitely  
18           cut into our resources.

19   COUNCILMEMBER JOHNSON: Are you experiencing right  
20           now, particularly because there's been a large  
21           expansion of not just this project but the  
22           cumulative impacts of several projects in the  
23           Central Maui area, are you experiencing any  
24           shortages in personnel in just being able to  
25           service the ever-growing population?

1 MR. MATSUOKA: Well, right now, I would say a little.  
2 But I think with the major projects that are  
3 coming up in the next few years, definitely it's  
4 going to make an impact on our manpower,  
5 especially with the subdivision in Waihee and  
6 some of the other places, especially out toward  
7 Waikapu.

8 COUNCILMEMBER JOHNSON: Okay. And from the  
9 perspective of the personnel who work in the  
10 Police Department living in that area, are any  
11 of these homes, whether it's some of the market  
12 price homes or even some of the affordables that  
13 would be tied to this, are you going to be  
14 able -- at least from a Department perspective,  
15 are you going to be able to participate at all  
16 in any of that housing, or do most of your  
17 people already live in the Central Maui area?

18 MR. MATSUOKA: You know, I don't know if I could  
19 answer that. Most of the guys -- you are  
20 talking about personnel and where they are  
21 living? It's actually -- they are kind of  
22 spread out all over the island, you know,  
23 Upcountry, Kahului-Wailuku, and Lahaina. But --  
24 but I would -- I would probably say right now, I  
25 wouldn't be able to really answer that.

1 COUNCILMEMBER JOHNSON: Do you have any intention or  
2 does your Department have any intention to look  
3 at the demographics of where your personnel are  
4 spread out and what the opportunities are for  
5 housing in those areas, Central being one of the  
6 biggest areas? Have you done any studies at all  
7 to kind of look at how long a distance most of  
8 your personnel live from where they actually are  
9 stationed?

10 MR. MATSUOKA: Well, not that I am aware of, but  
11 that's something maybe I could talk to the Chief  
12 about, find out if there was one done. But I am  
13 not aware of any right now.

14 COUNCILMEMBER JOHNSON: Okay. Thank you very much.

15 CHAIR CARROLL: Thank you.

16 COUNCILMEMBER JOHNSON: And Mr. Chair, I think that,  
17 because I am aware of the problem that occurs in  
18 Lahaina, because I think there's only four  
19 officers currently that live in the Lahaina  
20 district, perhaps during our budget, we could  
21 consider funding some type of a study that would  
22 actually enable the Police Department or have  
23 outside resources to help police, fire, our core  
24 services, to know where those individuals are  
25 living in relationship to their work, and then



1 do they want opportunities to relocate to areas  
2 closer to where they work. Thank you.

3 CHAIR CARROLL: Thank you, Ms. Johnson.

4 Mr. Molina.

5 COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

6 Good morning, Captain Matsuoka.

7 Part of the project's proposal includes  
8 commercial development. Are there any types of  
9 commercial development you can see the  
10 Department might have concerns with?

11 MR. MATSUOKA: Exactly what kind of commercial?

12 COUNCILMEMBER MOLINA: Anything. Night -- for  
13 example, if nightclubs or bars or any type of  
14 operations that could go into the late evening,  
15 early morning.

16 MR. MATSUOKA: I would think that if there's any type  
17 of bar or anything, we definitely have to look  
18 into that and definitely have issues with that,  
19 or at least make our recommendations, anyway.  
20 But if it's just industrial, I don't think. And  
21 then the -- other than the impact on our  
22 personnel and our resources.

23 COUNCILMEMBER MOLINA: How about any recommendations  
24 for hours of operations? Not past eight  
25 o'clock?

1 MR. MATSUOKA: Not right now.

2 COUNCILMEMBER MOLINA: As long as it's nothing that  
3 goes late into the night, you folks would feel  
4 comfortable? Early evening hours --

5 MR. MATSUOKA: This is actually going to be  
6 residential with some commercial?

7 COUNCILMEMBER MOLINA: With some commercial on the  
8 side.

9 MR. MATSUOKA: Right now, I don't think so, but I  
10 would think the residents probably would have an  
11 issue with that.

12 COUNCILMEMBER MOLINA: Okay. Thank you.

13 CHAIR CARROLL: Any further questions for our Police  
14 Department?

15 Mr. Hokama.

16 COUNCILMEMBER HOKAMA: Quick question, Chairman, for  
17 the Captain.

18 The Department has any concerns with  
19 road, road widths? And I just bring that up  
20 because although we have not deleted from our  
21 Code overnight parking restrictions, and it's  
22 still on the books between, I guess, 2:00 a.m.  
23 and 6:00 a.m., obviously, with certain  
24 situations, with families in dwelling units,  
25 they are parking on the side streets or on the

1 side of our streets.

2 Do you have any concerns? And I bring  
3 this up because if you go from Wailuku  
4 industrial, on the back, by Foodland, all the  
5 way up to the post office, in the back road,  
6 with now people parking both sides of the  
7 street, there's times when I would say a  
8 reasonable driver would be skirting or  
9 straddling the center line. And I am not too  
10 sure if that's something that the Department  
11 wants to give comment on, but is there any  
12 concern within this project and road width?

13 MR. MATSUOKA: I believe that was one of our  
14 recommendations in the earlier request that had  
15 been made, that -- for some wider roadways for  
16 people parking on the side.

17 COUNCILMEMBER HOKAMA: Any concerns regarding whether  
18 or not we should, in the ordinance, ban  
19 overnight parking on the streets, and that they  
20 should be maintained within the lots or in the  
21 proposed parking areas?

22 MR. MATSUOKA: I am not sure. I would have to maybe  
23 do some research on that and get an answer back  
24 to you.

25 COUNCILMEMBER HOKAMA: Okay. That would be

1 appreciated, Captain. Thank you.

2 Thank you, Mr. Chairman.

3 CHAIR CARROLL: Thank you, Mr. Hokama.

4 Any further questions for the Captain?

5 Ms. Anderson.

6 COUNCILMEMBER ANDERSON: Thank you, Chair.

7 Thank you, Captain, for being here.

8 And I would note that in one of the  
9 comment letters, Exhibit 14, just as a follow-up  
10 to Member Hokama's comments, you have a list of  
11 concerns, the Department has a list of concerns  
12 that should be considered and addressed to  
13 attempt avoidance of both vehicular and  
14 pedestrian traffic congestions, one of them  
15 being roadway widths wider than standard to  
16 accommodate out-of-traffic-flow bus stops; ample  
17 on-property parking for residents, business  
18 customers and employees; and installation of  
19 raised crosswalks and speed humps; and also, a  
20 suggestion to restrict or prohibit on-street  
21 parking for the continuous flow of daily  
22 traffic.

23 Do you know if any -- there's a list of,  
24 actually, seven recommendations. Do you know if  
25 any of these recommendations were addressed by

1 the applicant?

2 MR. MATSUI: No, I don't.

3 COUNCILMEMBER ANDERSON: Okay. I am sorry for  
4 putting you on the spot because I don't see a  
5 response. I may have missed it. But the  
6 concern I wanted to bring up, Captain, was that  
7 in your November '04 letter, this is a  
8 response -- another response letter to concerns  
9 that were raised in April and October. And they  
10 bring up -- your Department brings up the fact  
11 that an elementary school is going to be located  
12 on a major thoroughfare, being Kamehameha  
13 Avenue, and that your Department raised a  
14 serious concern with vehicle and pedestrian  
15 congestion in a school zone with no alternative  
16 or alternative route -- or the fact that no  
17 alternative route exists. And then they go on  
18 to explain that other elementary schools all  
19 have alternative routes, and that this project  
20 would not present an alternative route and would  
21 cause some traffic congestion.

22 Do you know if that has been addressed,  
23 any alternative route for the school?

24 MR. MATSUOKA: I am sorry. I believe it was  
25 addressed here. I have a letter dated

1           January 4, 2005, from Munekiyo & Hiraga, and I  
2           believe they -- they do address some of those  
3           issues.

4   COUNCILMEMBER ANDERSON:   Staff just brought that to  
5           my attention.  Thank you very much.

6                    They say that -- unless you have it.  Do  
7           you have it?  Would you like to respond?

8   MR. MATSUOKA:   Excuse me?

9   COUNCILMEMBER ANDERSON:   Do you have their response?

10  MR. MATSUOKA:   Yes, I do.

11  COUNCILMEMBER ANDERSON:   Would you like to go ahead  
12           and respond, then.

13  MR. MATSUOKA:   You mean as far as whether it is  
14           adequate or not?

15  COUNCILMEMBER ANDERSON:   Yes.

16  MR. MATSUOKA:   Well, it appears to be as far as they  
17           are talking about the 85-unit subdivision, but  
18           the actual exit, I believe they say, is going to  
19           exit over 800 feet -- 800 feet to the west of  
20           the subdivision access.

21  COUNCILMEMBER ANDERSON:   That's in the January  
22           letter?

23  MR. MATSUOKA:   Yes, a January letter.

24  COUNCILMEMBER ANDERSON:   Thank you, Mr. Chairman.

25                    Thank you, Captain.

1 CHAIR CARROLL: Thank you, Ms. Anderson.

2 Any further questions for the Captain?

3 Hearing none, thank you, Captain.

4 We have one more Department to hear from  
5 before we get back from Water, and that is  
6 Public Works. Mr. Arakawa, would you please  
7 come down.

8 Do you have any opening statement,  
9 Mr. Arakawa?

10 MR. ARAKAWA: Mr. Chairman, Milton Arakawa, Public  
11 Works Department. I -- I have no opening  
12 statement but would be happy to answer questions  
13 if the Committee may have.

14 CHAIR CARROLL: Thank you.

15 The floor is now open, Members.

16 Mr. Hokama.

17 COUNCILMEMBER HOKAMA: One quick one, and this is  
18 more for the Department of Public Works,  
19 Chairman.

20 In the documents filed by the applicant  
21 as well as comments received from the State Land  
22 Use Commission, they talk about the Waikapu  
23 landfill, the old Waikapu landfill, I should  
24 say. Is your Department confident that any  
25 concerns has either been mitigated or you have

1 plans to address potential issues if they should  
2 arise from the old landfill, which is basically  
3 our responsibility?

4 CHAIR CARROLL: Mr. Arakawa.

5 MR. ARAKAWA: Councilmember Hokama, the landfill  
6 itself is a closed landfill. As you know, it's  
7 being used for temporary storage at the present  
8 time for derelict vehicles. We -- we do intend  
9 to take off the derelict vehicles from the  
10 closed landfill. But as far as the abutting  
11 uses that Maui Lani is proposing, you know, we  
12 have no problem with the abutting uses that are  
13 being proposed.

14 COUNCILMEMBER HOKAMA: We are still required to  
15 provide air monitoring tests, I guess, is the  
16 right term, for a period because of the closure?  
17 I notice the Land Use Commission made  
18 statements, something about keeping that area  
19 open regarding air quality?

20 MR. ARAKAWA: There was -- I am not totally familiar  
21 with all -- all of the discussions that went  
22 on -- went on at the Land Use Commission. I  
23 know there was some discussion regarding  
24 buffer -- some discussion of buffer zones, but  
25 to tell you the truth, I am not really familiar



1 with all of the details as discussed by the Land  
2 Use Commission.

3 COUNCILMEMBER HOKAMA: And you would agree that the  
4 buffer that the Commission has asked the  
5 applicant to provide around the landfill is  
6 sufficient to take care of the concerns of the  
7 County from a responsibility/liability  
8 standpoint versus the intended use and the  
9 resident that may be downwind of the -- of the  
10 subject site?

11 MR. ARAKAWA: Councilmember Hokama, it is a closed  
12 landfill, so you know, we do have  
13 responsibilities for monitoring. But it was  
14 closed a number of years ago, so we are  
15 confident that, you know, we will be good  
16 neighbors, and I think Maui Lani will be good  
17 neighbors to the landfill as well.

18 COUNCILMEMBER HOKAMA: So the buffer amount is -- is  
19 very much acceptable to the Department?

20 MR. ARAKAWA: It is.

21 COUNCILMEMBER HOKAMA: Thank you, Mr. Chairman.

22 CHAIR CARROLL: Thank you, Mr. Hokama.

23 Any further questions?

24 Mr. Pontanilla.

25 VICE-CHAIR PONTANILLA: Thank you, Chair.

1                   As far as the treatment plant in  
2 Kahului, is the treatment plant capable of  
3 handling the amount of waste for this particular  
4 project, especially in the VMX? In reading  
5 through the material -- materials, I understand  
6 that the developer will contribute to the  
7 expansion of the facilities out there. Can you  
8 expound on that?

9 MR. ARAKAWA: Councilmember Pontanilla, your question  
10 is a somewhat difficult one to answer in the  
11 sense that it really depends on the timing of  
12 the development of Maui Lani. There is quite a  
13 substantial amount of capacity left at the plant  
14 in Kahului; however, we have also transmitted to  
15 the Council a Central Maui Wastewater Planning  
16 Study which would look at wastewater treatment  
17 alternatives for Central Maui in the longer  
18 term. And I think once that general policy  
19 question is answered, I think I can better  
20 answer your own question as far as how we can  
21 deal with wastewater from Maui Lani and other  
22 developments within Central Maui in general.

23                   But in the short term, definitely,  
24 there's sufficient capacity at Maui Lani, and --  
25 at the treatment plant. I am sorry.

1 VICE-CHAIR PONTANILLA: Is there an agreement in  
2 regards to the contribution for any plant  
3 facility expansion?

4 MR. ARAKAWA: I am not certain right offhand for  
5 Central Maui. I am sorry.

6 VICE-CHAIR PONTANILLA: Okay.

7 CHAIR CARROLL: Thank you, Mr. Pontanilla.

8 Further questions for public Works?  
9 Mr. Molina.

10 COUNCILMEMBER MOLINA: Thank you, Chairman.

11 Mr. Arakawa, do you know, are you aware  
12 if the developer is planning on using, I guess,  
13 reclaimed water for use of the project's  
14 landscaping?

15 MR. ARAKAWA: I -- you might want to direct that  
16 question to the developer himself. But as far  
17 as the County reclaimed line, it -- it wouldn't  
18 reach the Maui Lani Project District itself.

19 COUNCILMEMBER MOLINA: Okay. Thank you.

20 CHAIR CARROLL: Thank you, Mr. Molina.

21 Mr. Hokama.

22 COUNCILMEMBER HOKAMA: Just a quick follow-up,  
23 Chairman.

24 Where does our line end in proximity to  
25 the project site?

1 MR. ARAKAWA: Within the Central Maui area, I believe  
2 the only use of reclaimed water is by the park,  
3 Kanaha Park, and doesn't extent much further  
4 than that. Most of the treated water presently  
5 goes down into injection wells.

6 We have looked at possibilities as far  
7 as extending that reclaimed line to service  
8 other uses, and one of the other uses was  
9 perhaps Kuihelani -- I mean Keopuolani Park.  
10 Excuse me. But the cost was always a  
11 prohibitive factor in any kind of decision.

12 But it doesn't extend anywhere close to  
13 Maui Lani at this point.

14 COUNCILMEMBER HOKAMA: So, let me ask you another  
15 similar question, then, Mr. Director. The size  
16 and scope of Maui Lani, does it make sense to  
17 have a regional -- just a treatment plant so  
18 that it can be utilized, reclaimed water?

19 MR. ARAKAWA: Councilmember Hokama, I -- I would  
20 prefer to defer that discussion to the Central  
21 Maui Wastewater study, which is basically a  
22 broad policy question whether or not we want to  
23 keep on expanding the Kahului plant at its  
24 existing location, or look at a new plant or new  
25 plants at alternative locations. And that study

1 is basically the study that, you know, the  
2 County needs to take a look at to make a basic  
3 policy decision as far as how we are going to be  
4 treating wastewater in the future.

5 With that, all of the reclaimed water  
6 options should also be taken into account before  
7 any kind of decision is made.

8 COUNCILMEMBER HOKAMA: Let me ask you the question  
9 this way. Is the size and scope of this project  
10 such that it would make sense for us to consider  
11 a smaller, more project-oriented type of  
12 treatment program?

13 MR. ARAKAWA: Councilmember Hokama, I think you  
14 should --

15 COUNCILMEMBER HOKAMA: Again, Mr. Director, just know  
16 that, you know, this County is very much more  
17 aware, much more informed regarding impacts from  
18 natural disasters. So I mean, everybody say we  
19 are due for one, and I hope we are not, but  
20 let's say that big tsunami comes and wipes out  
21 Kahului treatment facility. So that means all  
22 of -- mostly, a lot of Central Maui, Waikapu,  
23 Kahului, Beach Road, Waiehu, there's a lot of  
24 impact that you are well aware of.

25 So my question is does this size of this

1 type of project make sense for us to consider  
2 those kinds of -- I guess in the power field,  
3 they call it distributed management practices.  
4 Does it make sense for us to at least consider  
5 it?

6 MR. ARAKAWA: Councilmember Hokama, we have  
7 sufficient capacity right now at the plant;  
8 however, there have been smaller developments  
9 than what you are considering today that have  
10 had private treatment plants. So it's basically  
11 a discretionary decision. If the developer  
12 decides to do a private plant, they would  
13 basically fall under the jurisdiction of the  
14 Department of Health and, you know, basically  
15 wouldn't hook up to our system. So it's  
16 basically a policy decision at this point.

17 If the Council wants to have that  
18 discussion with the developer, you know, I think  
19 that's a viable question to ask the developer.

20 COUNCILMEMBER HOKAMA: Thank you, Mr. Chair.

21 Mr. Director, I just find it -- you  
22 know, might -- just might make common sense.  
23 You know, you are going to dig up a trench to  
24 put a water line, you are going to dig a trench  
25 to put the sewer, sewer line in, so why wouldn't

1 we consider putting in a reclaimed line in the  
2 trench at the same time so that we can maximize  
3 our use of reclaimed water?

4 And again, maybe just to me it makes  
5 sense. So I just pose that potential option for  
6 us as a -- as a County.

7 Thank you, Chairman.

8 CHAIR CARROLL: Thank you, Mr. Hokama.

9 Further questions for Public Works?

10 Ms. Johnson.

11 COUNCILMEMBER JOHNSON: Thank you, Milton.

12 With regard to the reclaimed water, do  
13 you know if the golf course or any of the  
14 roadway areas are already utilizing reclaimed  
15 water that the County produces?

16 MR. ARAKAWA: Within Maui Lani?

17 COUNCILMEMBER JOHNSON: Yes.

18 MR. ARAKAWA: No.

19 COUNCILMEMBER JOHNSON: Okay. Do we have any  
20 capacity that we would be able to provide  
21 reclaimed water to that area, and if so, is it  
22 the distribution and perhaps the lack of storage  
23 that's hampering that?

24 MR. ARAKAWA: The main factor in not having a line  
25 extending to Maui Lani at this point is cost.

1           Because we would have to run a reclaimed water  
2           line from the plant to Maui Lani, which is a  
3           significant distance away.

4                     If the Council decides to do or take a  
5           look at the private treatment plant option, that  
6           may provide more opportunities for the use of  
7           reclaimed water within close proximity to the  
8           private plant itself.

9                     If you take a look at, for example,  
10          Makena Resort, they have their own private  
11          treatment plant and basically use the reclaimed  
12          water for golf course irrigation. In contrast,  
13          if you look at Kihei as well, our -- our plant  
14          is quite a distance away, and our reclaimed  
15          water line is nowhere close to Makena, and it  
16          would be very expensive for us to run a line  
17          from our plant to Makena in order to provide  
18          that reclaimed water.

19        COUNCILMEMBER JOHNSON: So the option, then, if you  
20          included the cost of the infrastructure to  
21          actually access the reclaimed water, that cost,  
22          coupled with the lack of, I guess, guarantee  
23          that there would be sufficient capacity  
24          available, because that's stated I guess in  
25          Mr. Munekiyo's letter, that there may not be



1 sufficient sewage capacity when they get ready  
2 to actually build this portion of the project,  
3 do you think that would be enough of an  
4 incentive for them to at least explore with the  
5 County that possibility, then?

6 MR. ARAKAWA: Again, Councilmember Johnson, I think  
7 we are kind of getting into broader policy  
8 issues that probably would be better discussed  
9 with -- during that Central Maui Wastewater  
10 planning study. I mean, certainly, if the  
11 Council desires, you know, you can certainly  
12 enter into that discussion with the developer  
13 now. But in the longer term view, we would  
14 prefer to look at it, you know, in a broader  
15 scope, basically.

16 COUNCILMEMBER JOHNSON: Okay. And Mr. Chair, when  
17 Parks gets a chance, I would also like to ask  
18 them about who would be operating the park and  
19 then what kind of water they would be utilizing  
20 on park grounds.

21 CHAIR CARROLL: We will be calling on Parks after  
22 Water.

23 COUNCILMEMBER JOHNSON: Okay. Thank you.

24 CHAIR CARROLL: Any further questions for Public  
25 Works?

1 VICE-CHAIR PONTANILLA: I got one.

2 CHAIR CARROLL: Mr. Pontanilla.

3 VICE-CHAIR PONTANILLA: Mr. Arakawa, I -- I don't  
4 know if you receive any information from  
5 Mr. Munekiyo regarding the -- or a copy of the  
6 Land Use Commission report. If you did, if you  
7 can refer to page 32 --

8 MR. ARAKAWA: Let me take a moment to dig that up.

9 VICE-CHAIR PONTANILLA: Fine.

10 Members, correspondence of  
11 September 20th, 2005.

12 MR. ARAKAWA: Got it.

13 VICE-CHAIR PONTANILLA: Under 119, Wastewater  
14 disposal, the last sentence in that particular  
15 section, I don't know if you are aware in  
16 regards to that particular statement that was  
17 made, are you?

18 MR. ARAKAWA: No, this is the first time I am  
19 reviewing this Land Use Commission document.

20 VICE-CHAIR PONTANILLA: Okay. Fine. Thank you.

21 And in regards to this, it's basically  
22 saying some contribution from the developer to  
23 the County in regards to wastewater disposal.

24 CHAIR CARROLL: Thank you, Mr. Pontanilla.

25 Any further discussion? Any questions

1 for Public Works?

2 Seeing none, thank you, Mr. Arakawa.

3 COUNCILMEMBER HOKAMA: Chairman, one quick last  
4 question for Mr. Arakawa, please.

5 CHAIR CARROLL: Excuse me, Mr. Arakawa, please.

6 Mr. Hokama.

7 COUNCILMEMBER HOKAMA: Quickly.

8 Mr. Director, it would be the same  
9 question I posed to Mr. Cajigal. Are there road  
10 improvement projects that you are assisting the  
11 applicant to accelerate regarding traffic flow  
12 within and around the project area, that you  
13 could tell us this morning?

14 MR. ARAKAWA: As far as with this project, the main  
15 improvement that is being proposed is the  
16 extension of the Maui Lani Parkway to Kuikahi  
17 Drive extension. Of course, the Kuikahi Drive  
18 extension, all the way to Maui Lani Parkway, so  
19 it would provide an additional link between  
20 Wailuku and Kahului.

21 There are also a number of traffic  
22 signal monitorings that the applicant would be  
23 responsible for. I guess, from our standpoint,  
24 there really are no other specific improvements  
25 in the -- I take that back.

1           There's one improvement that would help,  
2           I guess, in sort of related to the -- to the  
3           application at hand. That's the Wai'ale Drive  
4           extension. That is also an -- a project that is  
5           being proposed as part of that Spencer  
6           affordable home project. That would extend  
7           Wai'ale Drive from Kuikahi to Waiko Road, and  
8           that should also help the regional traffic  
9           circulation.

10       COUNCILMEMBER HOKAMA: So pretty much everything is  
11           being dovetailed quite -- quite adequately as  
12           far as timing is concerned, in your opinion?

13       MR. ARAKAWA: Generally, yes. Generally, yes.

14       COUNCILMEMBER HOKAMA: Yeah. That -- that one area  
15           that we get comments, I get comments about, that  
16           signalization at Kamehameha Avenue, entering the  
17           project from one -- one area, that passes Luana  
18           Gardens, do you have any update for us regarding  
19           that area, please?

20       MR. ARAKAWA: I believe you are talking about the  
21           intersection of Kamehameha and Papa?

22       COUNCILMEMBER HOKAMA: Yes.

23       MR. ARAKAWA: And that is a traffic signal that is  
24           going to be put in by the applicant. And the  
25           original thought was to have that signal in

1 place prior to the opening of the school. And  
2 we were just talking with Maui Lani Partners  
3 about the timing of that signal.

4 They basically need to get all of their  
5 plans all approved by our agency, and we are  
6 looking to get that done before the opening of  
7 the school, which is going to be, as I  
8 understand, December of 2006.

9 COUNCILMEMBER HOKAMA: So we have time to make that  
10 happen?

11 MR. ARAKAWA: Yes.

12 COUNCILMEMBER HOKAMA: Okay. Thank you.

13 Thank you, Chairman.

14 CHAIR CARROLL: Thank you, Mr. Hokama.

15 Anything further for Public Works?

16 Hearing none, again, thank you,

17 Mr. Arakawa.

18 At this time, if we can call back our  
19 Water Department. And we had some questions for  
20 Corporation Counsel.

21 MR. KUSHI: Good morning, Mr. Chair.

22 CHAIR CARROLL: Good morning.

23 Who had the question for Mr. Kushi? I  
24 did not make a note of that.

25 Ms. Tavares.

1 COUNCILMEMBER TAVARES: Yes, thank you. If you give  
2 me a second to get back into that section.

3 On page 5 of the agreement, Mr. Kushi --

4 MR. KUSHI: Yes.

5 COUNCILMEMBER TAVARES: -- number 10 --

6 MR. KUSHI: Yes.

7 COUNCILMEMBER TAVARES: -- I was wanting an  
8 explanation as to the extent to which the County  
9 of Maui is going to be liable, since we are  
10 indemnifying Maui Lani. And the explanation  
11 from the Director was that it was for the  
12 actions of Department of Water Supply that would  
13 be indemnifying Maui Lani, so they are not  
14 responsible for the actions of the Department of  
15 Water Supply.

16 MR. KUSHI: Yes. Let me try and explain.

17 As I read this Section Number 10, in  
18 concert with the entire agreement, as you  
19 understand, the grantor, Maui Lani, would be  
20 developing these three well sites and  
21 transmission lines, et cetera. And for a period  
22 of ten years, if we accept the project, with all  
23 approvals, for a period of ten years, we would  
24 operate this system.

25 During that period, since we are

1 operating the system, we would indemnify Maui  
2 Lani, defend and indemnify Maui Lani as the fee  
3 owner for any sort of claims that would be  
4 brought about because of our operations.

5 Now, as you note, the indemnification  
6 section does make an exception on this next  
7 section called additional remediation equipment,  
8 so if for any reason the wells fail or for  
9 whatever reason the water is not approvable,  
10 then we shut it down, and then Maui Lani's --  
11 this remediation section would come in.

12 Now, the statement about to the fullest  
13 extent permitted by law is a creation from our  
14 office in that they would have to sue us and  
15 indemnification would have to come to this body  
16 for defense. And if it comes to -- if it goes  
17 to court and is a judgment, again, you know, you  
18 would have to approve payment of it. That's our  
19 normal indemnification section. Being  
20 government, we don't freely indemnify anybody.

21 COUNCILMEMBER TAVARES: So Mr. Kushi, in that section  
22 of Number 10, where it's about toward the  
23 bottom, that, you know, DWS will or shall  
24 indemnify, et cetera, liabilities, damages,  
25 costs, or expenses arising out of or relating to

1 the operation and maintenance of the wells and  
2 related facility, the treatment or remediation  
3 or the quality or condition of water delivered,  
4 so it is sort of limited as to what the  
5 indemnification is about?

6 MR. KUSHI: That was the intent. We tried to list  
7 everything that could possibly go wrong.

8 COUNCILMEMBER TAVARES: So let's say in the scenario  
9 where it was discovered that the pump was a  
10 faulty pump to begin with -- not to begin with.  
11 But the pump is faulty in the well, and so we  
12 are going to say that since Maui Lani installed  
13 that pump, that they will be responsible for  
14 replacing it?

15 MR. KUSHI: Okay.

16 COUNCILMEMBER TAVARES: In that kind of scenario.

17 MR. KUSHI: I am trying to envision, before we accept  
18 the system, we would have to check it out, you  
19 know, the various warranties. And let's say  
20 it's within the fifth year of the operations, it  
21 would be hard for us to go back to Maui Lani at  
22 that point in time to claim a defective pump  
23 that's been working for five years. And  
24 normally, nobody indemnifies or warranties  
25 equipment such as this for five -- more than one



1 year. So I would think we would be on the hook,  
2 as the operators, for pumps, conduits,  
3 et cetera.

4 COUNCILMEMBER TAVARES: So -- and maybe the question  
5 isn't going to be for you, then.

6 That when these pumps -- I mean, when  
7 these wells are drilled and outfitted and pipes  
8 and all that, that will all be under -- with the  
9 approval of the Department of Water Supply from  
10 the get-go as far as materials and whatever they  
11 are doing there with the wells?

12 MR. KUSHI: Yes. I think in the previous section,  
13 that the Department of Water Supply would review  
14 all their proposed plans and assure that they  
15 are up to our standards --

16 COUNCILMEMBER TAVARES: Okay.

17 MR. KUSHI: -- before they even start.

18 COUNCILMEMBER TAVARES: Thank you. Thank you,  
19 Mr. Kushi.

20 CHAIR CARROLL: Mr. Kushi, since we have you over  
21 here, in paragraph Number 11, the right-of-entry  
22 agreement including the following term: In the  
23 event that the cost of such equipment,  
24 installation, implementing, or remediation  
25 solution exceeds \$3 million in aggregate,

1 grantor shall not be obligated to install such  
2 equipment and shall have the option to terminate  
3 the license.

4 Under that agreement, would Maui Lani be  
5 required to pay the 3 million if the remediation  
6 cost exceeded that amount?

7 MR. KUSHI: Mr. Chair, the way I understand the  
8 agreement became finalized -- and let me say  
9 this. The original agreement was way less, and  
10 we negotiated it up to 3 million because I  
11 believe and I recall at that time that the  
12 amount of 3 million would be the cost to install  
13 new wells, three new wells.

14 But in any event, the agreement is --  
15 is -- is conditioned on such that if, for  
16 whatever reason, there needs to be remediation,  
17 and if the cost of that exceeds \$3 million,  
18 Maui Lani can walk away from this. And the  
19 County can -- can also walk away from it. The  
20 question does become what happens, you know,  
21 what happens to what has happened before we walk  
22 away. But their extent of damages or  
23 remediation costs would be \$3 million.

24 In essence, if -- if -- if it costs  
25 5 million to replace these -- these wells, the

1 system will be shut down and we will look for  
2 new sources.

3 CHAIR CARROLL: Thank you, Mr. Kushi.

4 Ms. Anderson.

5 COUNCILMEMBER ANDERSON: Thank you, Chair. Just a  
6 follow-up on that line of questioning.

7 Mr. Kushi, the \$3 million, you know, is  
8 for equipment, installation, and implementing  
9 the remediation solution should there be  
10 necessary to have one. Would that include --  
11 say the water is found to be contaminated with  
12 certain pollutants. Would that \$3 million also  
13 be used to treat the water to upgrade a  
14 treatment plant in order to try to remediate the  
15 pollutants in the water through treatment?

16 CHAIR CARROLL: Mr. Kushi?

17 MR. KUSHI: Member Anderson, I believe it would cover  
18 that; however, there are, on further sections of  
19 the agreement, I believe it is Section 12,  
20 beginning on page 6, under A, salinity  
21 milestones and milestones for other  
22 contaminants, which does have statements there  
23 about treatment plants. And in those sections,  
24 really, as I understand it, puts the liability  
25 on the grantor. That's all my recollection

1 about -- about that -- that section.

2 COUNCILMEMBER ANDERSON: Yeah, I see that. But it  
3 doesn't necessarily say -- it just says that DWS  
4 may -- may request grantor to implement  
5 remediation to lower the contaminant  
6 concentration to allowable levels.

7 But it doesn't make any reference to the  
8 \$3 million limit, so I am just wondering if --  
9 because in mentioning the \$3 million, it just  
10 says implementing the remediation solution. Was  
11 it meant to tie these two together or not?

12 CHAIR CARROLL: Mr. Kushi.

13 MR. KUSHI: Mr. Chair, Member Anderson, I -- I am not  
14 sure on that one. You may have to ask the  
15 grantor or the Department.

16 My -- my understanding of this, and you  
17 know, we did wrestle with this figure, is that  
18 their liability is up to \$3 million. But you  
19 know, again, before we even accept these wells  
20 and operate the system, they would have to be in  
21 compliance. And in terms of contaminants, if --  
22 let's say we accept the system in 2007, and in  
23 2010 the water proves to be not potable by  
24 Department of Health standards, we would be in  
25 violation, Department of Health -- Water Supply,

1 if we continue to issue or let water from that  
2 source. So we would not only may request, we  
3 will request pursuant to the remediation  
4 section.

5 COUNCILMEMBER ANDERSON: Up to \$3 million?

6 MR. KUSHI: Right. Well, again, whatever \$3 million  
7 will do. If the well proves to be a total well  
8 failure, then they would have to get another  
9 well at their expense up to \$3 million.

10 COUNCILMEMBER ANDERSON: And what would happen to  
11 service to those homes until a new source was  
12 found to replace those wells that were closed?

13 MR. KUSHI: Well, for one, you would hope that we  
14 wouldn't issue any further meters from those  
15 sources. Two, we would have to bring some --  
16 some existing sources to serve those -- those  
17 installed, metered properties.

18 Because this system is to be connected  
19 within our Central Maui system.

20 And again, one other point that we did  
21 discuss, for your information, is that these  
22 wells will not be blended into our existing  
23 system --

24 COUNCILMEMBER ANDERSON: Yeah, I see that.

25 MR. KUSHI: -- as part of remediation.

1 COUNCILMEMBER ANDERSON: As a remediation act, that  
2 that will not be allowed. Yeah, I see that,  
3 which I am very happy to see.

4 But you know, I know that you -- you did  
5 approve this agreement, Mr. Kushi, but I know  
6 you are not a water expert, so --

7 MR. KUSHI: Thank you.

8 COUNCILMEMBER ANDERSON: -- I won't try to get blood  
9 out of a turnip.

10 MR. KUSHI: I am not a rocket scientist either.

11 COUNCILMEMBER ANDERSON: So I guess, then, my  
12 questions would be more suitable for the Water  
13 Department.

14 So thank you, Mr. Chair.

15 CHAIR CARROLL: Thank you.

16 Any further questions at this time for  
17 Mr. Kushi?

18 Ms. Johnson.

19 COUNCILMEMBER JOHNSON: Yes, Ed, I have looked over  
20 the agreement, and it seems that there will be,  
21 of course, water credits given to the developer  
22 for developing the water source. When I look at  
23 it, this well, of course, is going to be tied in  
24 directly to serving the needs of their  
25 development, primarily because they can't be

1 assured of a water supply or water source once  
2 they move forward with this.

3 Because this is tied to a private  
4 development, it seems to me that the County, you  
5 know -- I mean, there could be a potential  
6 benefit to the County where we get additional  
7 water resources. But the downside is also that  
8 if there's any problem with the well, if there's  
9 any difficulty with the distribution, if there's  
10 any problem with the pump, all of these factors,  
11 seems that the liability is falling back on the  
12 County.

13 So why wouldn't the County just go in,  
14 Department of Water Supply, from the beginning,  
15 have the developer pay whatever the amount is  
16 that they would pay anyway, and then just have  
17 us assume the responsibility for it? Wouldn't  
18 that be cleaner than going into this convoluted  
19 agreement which seems to not favor us anyway?

20 CHAIR CARROLL: Mr. Kushi.

21 MR. KUSHI: I believe the intent of this agreement  
22 is -- is as such: One, it doesn't cost the  
23 County a dime. They are fronting all the costs.

24 Two, the capacity of these three wells  
25 would exceed their requested allocation. The

1 excess, which I believe might be in the  
2 neighborhood of about half a million -- or I am  
3 not sure. The Director can tell you -- would  
4 then be for us to use for other non-Maui Lani  
5 customers, so it would help us in the interim  
6 before we develop further sources. That's  
7 another benefit.

8 The third one is that they have agreed  
9 to monitor and at least be on the hook for  
10 remediation in terms of the quality of the  
11 water. I think those are the pluses or bonuses  
12 in looking at these -- this agreement.

13 On the minus side, of course, is the  
14 quality of the water. That's why I believe if  
15 the Department went in, we would have a concern.

16 COUNCILMEMBER JOHNSON: Now, let's just say, for  
17 example, that the quality of the water never  
18 materializes. They are not able to do what they  
19 need to do in order to go forward with their  
20 project. Where does that leave the County over  
21 the long run? Or is there no downside risk in  
22 that regard?

23 MR. KUSHI: If that situation happens, we wouldn't  
24 accept -- the Department would not accept these  
25 wells to operate; therefore, they would be



1 issued no meters. There would be no credits.  
2 They would have to stand in line like everybody  
3 else.

4 Of course, we wouldn't -- we wouldn't  
5 have the added bonus of another half a million  
6 dollars of source -- half a million gallons of  
7 source or excess capacity.

8 But it's like the Department looks at it  
9 in terms of like any subdivider, major  
10 subdivider, that they provide their own source.  
11 And this agreement would satisfy that.

12 COUNCILMEMBER JOHNSON: Can -- when we go to, let's  
13 say, draw from these particular wells -- let's  
14 assume now that the water is good and they don't  
15 have any problems.

16 When we go to draw through whatever  
17 transmission lines are put in, is that also  
18 going to be done by their development with the  
19 transmission line so that we can access the  
20 water outside of Maui Lani, or will that be the  
21 expense of the Department of Water Supply?

22 MR. KUSHI: I believe the agreement calls for  
23 transmission lines also.

24 COUNCILMEMBER JOHNSON: To be paid for by the  
25 developer?

1 MR. KUSHI: The wells, the pumps, the transmission  
2 lines. It would -- like a turnkey project.  
3 They have a separate agreement with the  
4 Department for storage.

5 COUNCILMEMBER JOHNSON: Okay. Thank you very much.

6 CHAIR CARROLL: Thank you, Ms. Johnson.

7 Any further questions for Corporation  
8 Counsel?

9 Ms. Tavares.

10 COUNCILMEMBER TAVARES: I have what seems to be kind  
11 of a minor one, but on the last page of the  
12 agreement, where you sign, Mr. Kushi, it says  
13 approval as to form, and I notice all the other  
14 documents we say get form and legality. Is this  
15 a big deal, or not a big deal, or this not a  
16 legal document because you haven't said it's  
17 legal?

18 CHAIR CARROLL: Mr. Kushi.

19 MR. KUSHI: It's still -- it's probably a mistake, or  
20 subconsciously, maybe, I didn't want to put in  
21 legality. But I would have signed it if it was  
22 form and legality.

23 COUNCILMEMBER TAVARES: Okay. Thank you.

24 CHAIR CARROLL: Any further questions for Corporation  
25 Counsel?

1 Mr. Hokama.

2 COUNCILMEMBER HOKAMA: Quickly, Chairman.

3 Just for my own information, Counselor,  
4 why would this agreement, which the Department  
5 has entered to, you have signed off, the Mayor  
6 has executed, not require Council approval?

7 It's a commitment being made for  
8 potential ownership of three wells, a  
9 distribution system. Why wouldn't it require  
10 the Council, as a formal body, agreeing and  
11 accepting the conditions that in an earlier  
12 statement you mentioned should things go wrong,  
13 the Department would need to return to us for  
14 liability claims, potential suits, or the  
15 Council then would have to decide whether or not  
16 to fund and approve.

17 So my question to you is why wouldn't  
18 they come -- why wouldn't it come to us before  
19 the execution of the document?

20 CHAIR CARROLL: Mr. Kushi.

21 MR. KUSHI: Yes, Member Hokama, that's a good  
22 recurring question.

23 We looked at this agreement as a part of  
24 a developer's commitment to provide source for  
25 its own project. As noted, there's no funding

1 requirements from the County -- the County  
2 currently. The agreement provides for an  
3 operating situation, which the Department can  
4 get into now.

5 There is a situation where, at the end  
6 of this operating agreement, that the County  
7 would then accept the property in fee simple.  
8 At that point in time, we would have to come  
9 back for acceptance. But initially, we didn't  
10 see any reason -- any requirement that it come  
11 before this body.

12 COUNCILMEMBER HOKAMA: Last follow-up, quickly,  
13 please, Chairman.

14 If we had to expend funds, Mr. Kushi, to  
15 finalize certain agreements from the executed  
16 document, that would have to come from  
17 non-General Fund sources? It would have to come  
18 from either the water development fund or from  
19 our meter charges? It wouldn't be in the  
20 General Fund expenditure?

21 CHAIR CARROLL: Mr. Kushi.

22 MR. KUSHI: Member Hokama, I am not sure. I am not  
23 too up on the categories of their budget, of the  
24 Department's budget.

25 COUNCILMEMBER HOKAMA: Okay, Chairman, maybe at

1 another meeting on the Department's operation  
2 and budget, maybe. Thank you.

3 CHAIR CARROLL: Members, it is now 12:00 o'clock. As  
4 you know, at 1:30, we have another meeting,  
5 Kapalua mauka. I have been considering how to  
6 address this, and I think the best thing we can  
7 do is recess this meeting until 3:00 p.m., which  
8 is when we would take our first recess from the  
9 afternoon meeting, and see where we are at there  
10 then. If there's no objection, the Chair is  
11 going to recess this meeting until 3:00 p.m.  
12 today.

13 Mr. Hokama.

14 COUNCILMEMBER HOKAMA: Before you make that call,  
15 Chairman, can we have a short break, just so we  
16 can make some checks?

17 CHAIR CARROLL: Two minutes?

18 COUNCILMEMBER HOKAMA: Couple minutes is fine.

19 CHAIR CARROLL: Two-minute recess. (Gavel.)

20 **RECESS: 12:02 p.m.**

21 **RECONVENE: 12:08 p.m.**

22 CHAIR CARROLL: (Gavel.) This Land Use Committee  
23 meeting of December 12, 2005, is now back in  
24 session.

25 Members, once again, if there's no

1 objection, we will recess this meeting until  
2 3:00 p.m.

3 COUNCIL MEMBERS: No objections.

4 CHAIR CARROLL: This meeting stands in recess until  
5 3:00 p.m., December 12, 2005. Recess. (Gavel.)

6 **RECESS: 12:09 p.m.**

7 **RECONVENE: 3:03 p.m.**

8 CHAIR CARROLL: (Gavel.) This Land Use Committee  
9 meeting on Land Use Item 14, Community Plan  
10 Amendment, Change of Zoning, and Project  
11 District Phase I for Wailuku-Kahului Project  
12 District 1 (Maui Lani), is in session.

13 Members, I am proposing that we recess  
14 this meeting until 3:45, in this chamber,  
15 December 12th, 2005. Any objections?

16 COUNCIL MEMBERS: No objections.

17 CHAIR CARROLL: This meeting stands in recess until  
18 3:45 p.m. (Gavel.)

19 **RECESS: 3:04 p.m.**

20 **RECONVENE: 4:09 p.m.**

21 CHAIR CARROLL: (Gavel.) This Land Use Committee  
22 meeting of December 12, 2004, on LU-14, Maui  
23 Lani Community Plan Amendment, Change of Zoning,  
24 and Project District Phase 1 Amended for  
25 Wailuku-Kahului Project District 1 (Maui Lani).

1                   Due to circumstances of time, and the  
2                   lateness of the other project, we have talked to  
3                   the applicant, and there's no objections. We  
4                   will defer this.

5 COUNCIL MEMBERS: No objections.

6 CHAIR CARROLL: LU-14 is deferred. And LU-14 --  
7                   yeah. Thank you. (Gavel.)

8

9 **ACTION:            DEFER pending further discussion.**

10 **ADJOURN:          4:10 p.m.**

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C E R T I F I C A T E

I, CHARI L. POSSELL, Certified Shorthand Reporter, State of Hawaii, do hereby certify that the proceedings were taken down by me in machine shorthand and were thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

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

DATED this 6<sup>th</sup> day of January, 2006.

  
\_\_\_\_\_  
CHARI L. POSSELL, CSR NO. 414



# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

December 12, 2005

Council Chamber

**RECONVENE:** 1:32 p.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Joseph Pontanilla, Vice-Chair  
Councilmember Michelle Anderson, Member (in 1:34 p.m.)  
Councilmember G. Riki Hokama, Member (out 3:00 p.m.; in 3:26 p.m.)  
Councilmember Jo Anne Johnson, Member  
Councilmember Dain P. Kane, Member (out 4:29 p.m.; in 4:39 p.m.)  
Councilmember Danny A. Mateo, Member  
Councilmember Michael J. Molina, Member  
Councilmember Charmaine Tavares, Member

**STAFF:** Carla Nakata, Legislative Analyst  
Clarita Balala, Substitute Committee Secretary

**ADMIN.:** Michael W. Foley, Director, Department of Planning  
Ann Cua, Planner, Department of Planning  
Michael Miyamoto, Deputy Director, Department of Public Works and  
Environmental Management  
John Buck, Deputy Director, Department of Parks and Recreation  
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation  
Counsel  
Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Robert McNatt, Executive Vice President, Maui Land and Pineapple Company,  
Inc.  
Warren Suzuki, Senior Vice President, Maui Land and Pineapple Company, Inc.  
Ryan Churchill, Vice President, Maui Land and Pineapple Company, Inc.  
Pamela English, Development Manager, Maui Land and Pineapple Company,  
Inc.  
Tom Schnell, PBR Hawaii (Applicant's Land Use Planner)  
Rick Kiefer, Kiefer and Merchant LLC (Applicant's Attorney)  
Jeffrey Pearson  
Additional attendees (26)

**PRESS:** *Akaku: Maui Community Television, Inc.*  
*Harry Eager, The Maui News*  
*Amanda Cowan, The Maui News*

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LAND USE COMMITTEE MINUTES  
Council of the County of Maui

December 12, 2005

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CHAIR CARROLL: . . . *(gavel)*. . . This recessed Land Use Committee meeting of December 7<sup>th</sup> is now back in session. The records show this is December 12, 2005 and the recessed meeting was on Land Use Item 69, West Maui Project District 2, Kapalua Mauka, Lahaina.

**ITEM NO. 69: WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)  
(LAHAINA) (C.C. No. 04-181)**

Members, I'm going to open the floor immediately to discussion as where we left off. We have . . . we can put on the board . . . we have the item's amendments that we will be putting up. We also have some from Members that we will be addressing that we don't have typed in yet because they came in at the last minute. But first I'd like to ask the Department, Mr. Foley or Ms. Cua, do you have anything you would like to address at the beginning of this meeting?

MR. FOLEY: Mr. Chairman, sorry about the delay. The one . . . one revision that we would appreciate the Committee considering would be related to the definition of height and when we discussed this at the previous meeting, I made a recommendation that was incomplete. And the . . . what the height should state, the vertical distance between . . . vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finished grade, whichever is lower. But then in addition to that which I said last time, it should also say for structures within projects that have received site plan approval in association with a Special Management Area Permit, Project Area Phase 2 approval, or Planned Development Phase 2 approval, finished grade shall be used to determine height.

CHAIR CARROLL: Thank you. Ms. Nakata, if you can get that from him. A moment while we put that up on the screen. Ms. Anderson.

COUNCILMEMBER ANDERSON: I'm sorry I was a few minutes late, Chair. Is he making a recommendation? Is the Planning Director making a recommendation to change an amendment that we've already made?

CHAIR CARROLL: Yes, he is. He is making a recommendation . . .

COUNCILMEMBER ANDERSON: On what basis?

CHAIR CARROLL: Clarification of that . . . the wording on top there so when this is reviewed at some time when we're not here, that it would be very clear . . .

COUNCILMEMBER ANDERSON: Mr. Chair, he's changing the amendment that we already voted on.

**LAND USE COMMITTEE MINUTES**  
Council of the County of Maui

**December 12, 2005**

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CHAIR CARROLL: This is a recommendation from the Planning Department. We do not have to accept it. We do not have to consider it. However, the Chair always accepts any recommendations from the Planning Department for the Committee to act on, if they choose to.

COUNCILMEMBER ANDERSON: Um . . .

MR. FOLEY: Mr. Chairman? I'm sorry, are you done?

CHAIR CARROLL: Yes, Mr. Foley.

MR. FOLEY: The reason that I was mentioning it now is that you haven't taken action yet on the zoning, nor I don't believe on the language on the Project District approval and it's very important for this change to be made because on a project of this magnitude it will be necessary to grade more than one building site at a time. And this language is consistent with the language that's being recommended to the Council for consideration by the Maui Planning Commission and the Lanai Planning Commission. Another alternative, if you don't care to take this recommendation, would be to just state that the building height shall be measured in accordance with the Code at the time of the final building inspections, and that way if it isn't changed, then we use the current definition, and if it is, we use the new definition.

CHAIR CARROLL: Ms. Anderson.

COUNCILMEMBER ANDERSON: I just find it inappropriate for the Planning Department to come in after the fact, after we've already passed, unanimously have passed an amendment to clarify the language in the ordinance to actually be consistent with, with what is already in our County Code. And as I said, whatever it is that they're recommending, which obviously Mr. Foley was not aware of because he totally supported the language that I brought forward at the last meeting and for him now to come back and say that he recommends language that is consistent with what the department is proposing I just think is beyond the bounds. This body already made a determination that we were going to follow the County Code and there is no assurance that the language will ever be changed. And in fact, if we could get the department who is responsible for enforcing the County Code to fulfill the mandate that's already in the Code, this specific language wouldn't even be necessary. So that's all I'm going to say on the matter, Mr. Chairman. I think that topography is a really important issue, height limits is a really important issue, and you know, if we're going to respect the County Code, then . . . and just because they're doing a Project District doesn't give them the right to change the parameters in the County Code. As it currently reads, that's what the condition says, only to make their ordinance consistent with the County Code. So I think that's all I'm gonna say on the issue. Thank you.

CHAIR CARROLL: Thank you, Ms. Anderson. Ms. Johnson.

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COUNCILMEMBER JOHNSON: Yes. I would also agree with Councilmember Anderson. I think that if and when the new ordinance does pass and we're able to incorporate that, it's just like our traffic impact fee ordinances and a lot of other things. If there is a desire to come back and amend, fine, but for the time being I think that's the least of our worries. Anyway, thank you.

CHAIR CARROLL: Alright. Again, as your Chair I feel it's my responsibility to bring up anything that's from our Planning Department or Administration or any other department that feels they have something that is important enough to affect the project. Again, it is our call whether to consider it. If this is to be considered, it would have to be a motion. . . entertaining a motion to reconsider the amendment. If there is no such motion, we shall move on. Hearing none. Ms. Nakata.

MS. NAKATA: Excuse me, Mr. Chair. If I could just clarify, the height revision I believe was in the Project District bill, not in the Change in Zoning bill.

CHAIR CARROLL: Thank you. Alright, Members, moving on. We have all of the conditions on the board as was requested at the last meeting so that we could go over them one by one. And I'll open the floor to the Members now on any conditions which they would like to consider. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. I circulated a memo to yourself, Chair, that you had provide copies for for all of the Members. There's two particular items that I'd like to have considered by this body. If you take a look at the list of conditions that was submitted to us by Maui Land and Pine, under Item C, I'd like to add in three words right after the word full-time to now read, "Affordable dwelling units offered for sale shall be offered to qualified full-time Maui County resident owner-occupants only and shall be maintained as affordable for a 15 year minimum period through re-sale restrictions and buy back clauses". Item C, I'd like the body to consider the addition of "Maui County resident".

CHAIR CARROLL: Is that a motion, Mr. Mateo?

COUNCILMEMBER MATEO: So moved.

COUNCILMEMBER ANDERSON: Second.

COUNCILMEMBER JOHNSON: Second.

CHAIR CARROLL: Been moved by Mr. Mateo, seconded by Ms. Anderson. Discussion, Mr. Mateo.

COUNCILMEMBER MATEO: Mr. Chairman, thank you. I believe the inclusion of those words is really self-explanatory. In meeting the positions that has been taken by the developer or the applicant who indicates the strong desire to take care of the . . . their

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local residents as a priority, and this kind of reinforces the fact that Maui County residents are the focus of those individuals in need of housing. Thank you, Chair.

CHAIR CARROLL: Thank you, Mr. Mateo. Further discussion on the motion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah. I'd just like to make a comment, Mr. Chairman. You know, I know there's been a lot of discussion about the right to travel and whether or not it's constitutional to require that qualified buyers be residents of Maui County or the State of Hawaii. But we have something in our books right now, in the County Code, that already places as a qualifier and was approved as to legality and form by Corporation Counsel ten years ago that required a State tax return for the State of Hawaii in order to qualify as a buyer of an affordable project. So I'm fully in support of this. I think we need to take care of our residents first and foremost and not open it up to anybody else. We got a long ways to go before we take care of our resident working population, Mr. Chairman, and I'm fully in support of this and I hope the other Members are to. So thank you.

CHAIR CARROLL: Further discussion? Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Can we have comments from Corporation Counsel regarding to C?

CHAIR CARROLL: You know, before you . . . I have you go to Corporation Counsel. Ms. Nakata.

MS. NAKATA: Mr. Chair, Staff would just like to point out that the prefatory language to applicant's proposed Condition 11 does contain a phrase that says "will be offered only to full-time residents of the County of Maui to the maximum extent permitted by law".

CHAIR CARROLL: Thank you. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: If Corporation Counsel can comment on the proposed amendment?

CHAIR CARROLL: Corporation Counsel.

MR. GIROUX: Yes, Chair. I think our office has done several opinions on the matter, and you know, our concern is that if the language used is not durational that there may be . . . it may avoid those constitutional challenges. So the main thing is that there is a qualification process and then that qualification is not based on a durational status and it looks like this condition may avoid that.

CHAIR CARROLL: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Thank you.

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CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. If I can follow-up again with Corporation Counsel. The existing language that they prepared, Number 11, say you know, in reference to Maui County resident. It says that “affordable dwelling units will be offered only to full-time residents of the County of Maui”. Full-time . . . if there is a question on defining full-time, which is the reason for being specific enough in adding in full-time Maui County residents, would that take out any kind of a question based on how to determine what full-time is? Or tell me what you think is a full-time resident?

MR. GIROUX: That, that still is a little vague in a sense that there’s instances where I guess you’re going to have to show some sort of documentation that you’re, you know, within this County for a certain amount of time. I think that there are instances where, you know, you’re gonna have to look at what documentation is available in order to qualify somebody as a full-time Maui County resident. I think that, you know, Maui is such a transient island. You know, there’s people who consider Maui their home, yet have jobs that take them out of . . . off the island for, you know, significant amount of time. They may be, you know, going from island to island or going from country to country pursuing their employment, yet still considering Maui as their full-time residence. So, you know, that’s something that has to be looked at on what documentation you’re gonna be looking at and to consider somebody a full-time resident.

COUNCILMEMBER MATEO: Okay. So in essence both kinda gets to the same resolve?

MR. GIROUX: Yeah. I . . .

COUNCILMEMBER MATEO: Both being in terms of a legal interpretation, not as flexible or subject to interpretation?

MR. GIROUX: Yeah. I think the language that’s usually used is just either qualified or bona fide. I think that usually leaves it open to the person who’s reviewing whatever documents necessary to make that call. Full-time . . . that’s, that’s a hard one to call.

COUNCILMEMBER MATEO: Okay. Thank you, Chair. I’ll pass and listen to the other comments from the Members. Thank you.

CHAIR CARROLL: Thank you, Mr. Mateo. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Mr. Giroux, would . . . what type of language would you recommend for this proposed amendment that would meet the objectives of Mr. Mateo and other Members to ensure that this is . . . I guess the units are offered to Maui County residents owner-occupants. Any recommendations?

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MR. GIROUX: Like I said, the language of either qualified or bona fide would leave that up to the person or the discretion of the person who is screening and as long as they actually set up some kind of uniform manner of screening documents in order to make sure that the purpose of that condition is met.

COUNCILMEMBER MOLINA: Okay. I'm just looking at ways to strengthen the proposed amendment here to meet the objectives. Thank you.

CHAIR CARROLL: Thank you, Mr. Molina. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chair. So in this case here it would be the committee that is formed with Maui Land and Pine, a community [*sic*] as well as the union, to I guess to be the ones that would take a look at who's qualified as a full-time Maui resident? Corporation Counsel?

MR. GIROUX: I believe if that's the body that's going to be reviewing the applications, then it would be left up to them.

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

CHAIR CARROLL: Thank you. Further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: I guess my only question would be that because occasionally we do get family members who've moved to Las Vegas because they couldn't find affordable housing and lot of times the kids want to come back home. My only question would be to the maker of the motion, how would there be then some kind of an exception or some kind of a opportunity particularly for the kids that have had to leave because they couldn't find housing or police officers or whoever? How would they be treated in light of this particular amendment?

COUNCILMEMBER MATEO: Chairman, thank you very much.

CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER MATEO: Member Johnson, thank you for the question. At this particular point, they still would receive a priority but that is not the priority because they have chosen to relocate at a point in time. The priority would be to take care of those who are still here and looking or striving for the attainment of affordable homes.

COUNCILMEMBER JOHNSON: Okay. Thank you, Mr. Chair.

CHAIR CARROLL: Further discussion to the motion on the floor? Mr. Hokama.

COUNCILMEMBER HOKAMA: Chair, may I have a recess to come and approach . . . approach you, please?

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CHAIR CARROLL: One minute recess. . . .(*gavel*). . .

**RECESS: 1:52 p.m.**

**RECONVENE: 2:00 p.m.**

CHAIR CARROLL: . . .(*gavel*). . . This Land Use meeting of December 12<sup>th</sup> is now back in session. Mr. Mateo, I'm going to ask you if you would consider withdrawing your motion.

COUNCILMEMBER MATEO: Chairman, I have no problem at this point in withdrawing at this time.

CHAIR CARROLL: Any objection?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Thank you. Members, the Chair would consider a motion to accept the language in the December 9<sup>th</sup> memo that I sent to you on Condition 11. Ms. Nakata.

MS. NAKATA: Mr. Chair, if Staff could clarify. That would be a motion to amend Condition 11 of the revised proposed bill by substituting the language set forth in applicant's proposed revisions to Condition 11 transmitted by correspondence from the Committee Chair dated December 9, 2005.

CHAIR CARROLL: Thank you.

COUNCILMEMBER TAVARES: So moved.

CHAIR CARROLL: Been moved by Ms. Tavares.

VICE-CHAIR PONTANILLA Second.

CHAIR CARROLL: Seconded by Mr. Pontanilla. Discussion, Ms. Tavares.

COUNCILMEMBER TAVARES: Thank you, Mr. Chair. I think now that, you know, we can get it on the board and on the wall first and then we can do the amendments after . . . afterwards.

CHAIR CARROLL: Thank you. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much and I guess I will wait until we ensue discussion on this particular item when we can again take a look at adding conditions to it.



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CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah. Mr. Chairman, this is a motion on the floor to substitute this . . . the applicant's proposed Condition No. 11?

CHAIR CARROLL: Yes.

COUNCILMEMBER TAVARES: I would like to speak in support of that because I think that their version is much more comprehensive than what exists now in No. 11 and that if you feel this is the time that's appropriate for any amendments to this . . . to this new No. 11, and I don't know if we have to accept it first and then amendment . . . amend it or if we're going to amend it as it's being considered for exception . . . exception, [*sic*] not exception.

CHAIR CARROLL: The Chair will consider an amendment at this time--

COUNCILMEMBER TAVARES: Okay.

CHAIR CARROLL: --to amend the motion on the floor.

COUNCILMEMBER TAVARES: Okay, here we go.

CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. Chairman, I would like to on Item C, on number . . . Condition No. 11, I would like to once again add in the words "Maui County resident" after the word "full-time". So the whole . . . so that particular segment would read, "Affordable dwelling units offered for sale shall be offered to qualified full-time Maui County resident owner-occupants only and shall be maintained as affordables for a 15 year maximum period through resale restrictions and buy back clauses".

COUNCILMEMBER MOLINA: Second.

CHAIR CARROLL: Been moved by Mr. Mateo, seconded by Mr. Molina. Discussion, Mr. Mateo.

COUNCILMEMBER MATEO: Can I make an adjustment?

CHAIR CARROLL: I'm sorry.

COUNCILMEMBER ANDERSON: Doesn't matter. Skip it.

COUNCILMEMBER MATEO: Chairman?

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CHAIR CARROLL: Yes, Mr. Mateo.

COUNCILMEMBER MATEO: Because we got a second on the particular motion, I need to clarify one of the words I just used. I stated "maximum" and I had in fact meant "minimum" period.

CHAIR CARROLL: Thank you, Mr. Mateo. Alright. We had a second?

COUNCILMEMBER TAVARES: Mr. Molina.

CHAIR CARROLL: Mr. Molina. Alright. Further discussion on the motion to amend the motion on the floor? Mr. Mateo, further discussion?

COUNCILMEMBER MATEO: No discussion, sir.

CHAIR CARROLL: Further discussion? All those in favor of the motion to amend signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE:       AYES:   Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   None.**

**MOTION CARRIED.**

**ACTION:   APPROVE Councilmember Mateo's amendment, as revised, to main motion (Item C, Condition 11).**

CHAIR CARROLL: Back to the main motion.

COUNCILMEMBER MATEO: Chairman?

CHAIR CARROLL: Yes, Mr. Mateo.

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COUNCILMEMBER MATEO: Chairman, I'd like to add another condition under Item 11 that would be Item G, and that would read, "That the affordable housing units required for this project shall not be counted towards the affordable housing requirement for any other project".

COUNCILMEMBER TAVARES: Second.

CHAIR CARROLL: Been moved by Mr. Mateo, seconded by Ms. Tavares. Discussion, Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. We had this prior discussion at the last meeting we had with Maui Land and Pine and I believe their initial submission to us in our consideration for conditions, they too had included this item as one of their considerations. So I think we're consistent at this point and it just goes to reemphasizing the fact that the number of units that will be beyond the 40 to be built upfront will not be applied to any other development project. Thank you, Chair.

CHAIR CARROLL: Further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: I was just looking at the condition that we already moved I guess or we added in, which was the re-done condition or the re-done I guess section, and No. G in that states, "Affordable housing units that are provided to satisfy the requirements of this application cannot be the same units that are used to satisfy the affordable housing requirements of another application". And I just wanted to know in that context, is that essentially the same motion that . . . oh, I see. Is this another one that's being added in or is this one . . . because I have two pieces of paper here then. One is submitted from Councilmember Mateo and then the other one is highlighted in red with no I guess . . . no drafter. But I just want to clarify because I'm not understanding if this is one that's being added in by Councilmember Mateo, that was not what we just added or if this is, you know, already been done by us?

COUNCILMEMBER MATEO: The . . .

CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, the, the only difference between the one in red that you have that's been submitted by Maui Land and Pine and the Item G that I have submitted is to take a look at the word "shall". To give it more bearing, we, we want to be sure that it shall not be counted versus, you know, it cannot.

COUNCILMEMBER JOHNSON: Okay. So if I understand, Mr. Chair, then what would happen is the G that has been submitted by the applicant which we are looking at on the amended version would then be replaced by the wording in Councilmember Mateo's. Is that correct?

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COUNCILMEMBER MATEO: Yes.

CHAIR CARROLL: Yes.

COUNCILMEMBER JOHNSON: Thank you.

MS. NAKATA: Mr. Chair?

CHAIR CARROLL: Ms. Nakata.

MS. NAKATA: Mr. Chair, the wording that's on this screen has been incorporated from the Chair's memo dated December 9. It does not include any further revisions submitted by the applicant today.

CHAIR CARROLL: Thank you. Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah. Mr. Chair, just for clarification. The amendment or rather the Condition No. 11 that was submitted to you . . . to this body, which Ms. Tavares made a motion to accept does not include an Item G. So Member Mateo's Item G stands alone in its . . . I mean it's attached to this Condition 11. And I think we're getting confused by this document so I think if we just kind of put it aside and ignore it. It would be nice also if, well, to have something submitted like this, Mr. Chair, without any kind of indication who wrote it, who it's from, it just says received at the meeting. So anyway I just wanted to clarify as Ms. Nakata said, Mr. Mateo's G item is an addition to the amendment to Condition 11 as on the board.

CHAIR CARROLL: That is correct.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR CARROLL: Any further discussion on the motion to amend the main motion? Hearing none. All in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE:       AYES:     Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:     None.**

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**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE Councilmember Mateo's amendment to main motion (Item G, Condition 11).**

CHAIR CARROLL: Back to the main motion, as amended. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. I move to amend Condition No. 11, Letter F, as it relates to a November 15, 2005 transmittal from Vice-Chair Pontanilla and I guess to avoid any other confusion, as well as to your December 9, 2005 transmittal from you, Mr. Chairman. This is Letter F, the last paragraph. I am proposing that this be amended to add the words after the word "employees". I'll just read the beginning of the paragraph to clarify it for the Members, "That Maui Land & Pineapple Company, Inc. shall provide a voluntary contribution of \$500,000 to a first time homebuyers and rental assistance fund that will be held in escrow or trust and administered by Maui Land & Pineapple Company, Inc. for its employees" and after that I would like to insert the following words, "who earn up to 120 percent of the median income".

VICE-CHAIR PONTANILLA Second.

CHAIR CARROLL: Been moved by Mr. Molina, seconded by Mr. Pontanilla. Discussion, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Mr. Chairman. The intent here is to ensure that the assistance being provided by the Company goes to the folks who need the most assistance as it relates to getting rental help and the opportunity to . . . (*change tape*). . . So that is my intent behind this proposed amendment, Mr. Chairman. Thank you.

CHAIR CARROLL: Further discussion? Ms. Johnson, followed by Ms. Anderson.

COUNCILMEMBER JOHNSON: My question would be that because the way we have been operating the first time homebuyers fund, and I'm not sure that this is different or I guess the way it's being applied is different, but I want to find out and I don't know if it would be to you, Mr. Chair, or other Members. But when we go into the first time homebuyers fund, what other companies have been doing is putting in a contribution and then the individuals who would be applicants Countywide or at least in that region would be the beneficiaries of this. Now I just want to clarify that this is a separate fund. This is our homebuyers fund but a little bit different adaptation of it. I'm just not clear on what this is and I would appreciate some clarification.

CHAIR CARROLL: Thank you, Ms. Johnson. Mr. Molina.

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COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Thank you, Member Johnson, for that question. Again, this is just to clarify. This fund is being provided by Maui Land and Pineapple Company and it has no attachment to the County's first time homebuyers fund. So this is totally separate. I recall at a last . . . at one of our last meetings on this matter I believe Member Hokama brought up a similar situation on Lanai where I guess a fund was created and administered by the company there, as well as with representatives from various entities of the community. So this proposal or offering from Maui Land and Pine was I guess somewhat similar to what was conducted on Lanai, if I recall. I don't know if Member Hokama wants to add clarity to that. But again, this is a totally separate fund. This has no ties to the Maui County's first time homebuyers fund, which by the way is still in the process of the parameters to be worked out yet. Thank you.

CHAIR CARROLL: Thank you. Ms. Johnson.

COUNCILMEMBER JOHNSON: That being the case because this is a benefit, of course, for the employees that would be moving into these units. I would be I guess trying to figure out if, for example, other people came in and the majority of people who were applying for these homes turned out not to be Maui Land and Pine employees. What would happen to the contributions under that first time homebuyers fund and how would the fund be administered? And let's just say, for example, that maybe only a handful of Maui Land and Pine people were actually qualified to secure because of their . . . either their income or whatever their I guess classification was as far as an employee, how would this fund be administered then? And I guess I'm trying to look at it . . . be the devil's advocate and say, well, okay if there's half a million dollars and you have five people, they're going to qualify for it, how will it be administered?

CHAIR CARROLL: Thank you, Ms. Johnson. Well, that . . . well, Mr. . . .let's hear from Ms. Anderson before I come back to you again.

COUNCILMEMBER MOLINA: Mr. Chair, I just wanted to offer maybe to help Member Johnson get clarity on this, maybe if we could ask the applicant to try and respond to some of Member Johnson's concerns.

CHAIR CARROLL: Could the applicant or the representative, please come forward.

MR. MCNATT: Mr. Chairman, Members of the Committee, Bob McNatt with Maui Land and Pine. Kind of getting blinded by that light . . . so I can't see.

COUNCILMEMBER JOHNSON: Mr. McNatt, with regard to the \$500,000 for this first time homebuyers fund or the rental assistance fund, because I guess it's unclear at this point in time how many people would qualify for Maui Land and Pine that were direct employees. How would you envision the fund being administered? Would it be parallel to what we're looking at in our first time homebuyers or could you give us some idea of

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how you would intend to administer depending on the number of people who actually qualified?

MR. MCNATT: Yes, we were . . . we were looking at the Lokahi Pacific method of doing it and thought that there might be sort of a maximum amount that we'd provide to first time homebuyers such as a five or ten thousand dollar down payment assistance for the buyers, or for rental assistance, there would be a subsidy amount that could be provided for up to a year or two years for those that qualify. We have . . . we have, I think I mentioned before, a couple of hundred employees right now that would probably qualify for assistance for affordable housing or would qualify under the guidelines and some of those definitely will need assistance for down payments and so forth. So that's how we would do it. We would provide that for those who qualify. Does that answer your question?

COUNCILMEMBER JOHNSON: Yes, and would it be a revolving fund that they would just get a loan and they would have to pay it back or is this an outright grant?

MR. MCNATT: Well, if we model it after Lokahi Pacific, they have a . . . it's like a 15-year grace period where if they stay in the home for the 15 years, they don't have to pay it back, and we're looking at the same thing. If they sold before that time, they may have to, but there wouldn't be any interest payments during that period. The interest would be forgiven. But we'd . . . we're flexible on that. We think that might be a fair way to go.

COUNCILMEMBER JOHNSON: And as in terms of rental assistance then. Let's just assume they're not able to buy a home but they would be looking at rental assistance. How would you handle the individuals under the rental assistance portion?

MR. MCNATT: Well, it would be . . . it would be again a grant to those who need assistance to meet the rent and it could be for a period of time. It could be a lump sum to help with furnishings. It's a completely flexible program at this time. We haven't . . . we haven't figured it out. We just proposed it recently but we would . . . we would follow I think a very similar guideline to what Lokahi or the County is doing. I think we'd want to work with Alice Lee at Housing and Human Concerns to figure it out but we're very flexible on how it's administered--

COUNCILMEMBER JOHNSON: Oh . . .

MR. MCNATT: --and open . . . and open to suggestions.

COUNCILMEMBER JOHNSON: Okay. So basically though because you haven't a clear policy and you're just trying to develop a policy right now, you . . . you're not able to say exactly how this would be handled then?

MR. MCNATT: That's right. It hasn't been written into stone yet.

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COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR CARROLL: Thank you, Ms. Johnson. Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah. The first time homebuyers program that you're referencing, that Lokahi Pacific administers, that in fact is a HUD program and there are very specific criteria that must be met. And it's a great program, Mr. Chairman, because for people who have been living paycheck to paycheck, even as they are climbing up the income ladder, which is not a difficult thing to do here in Maui County. It's very difficult to put money aside for a down payment because our incomes are not rising with the cost of living, with the cost of rentals, and such. So it's a really helpful program and I admire Maui Land and Pine for putting some of this money aside for that same purpose, but I would like us to require them to administer it under the HUD guidelines so that it's fair to everybody even though it's just for their employees. But the other thing I want to draw attention to is that they are earmarking this for employees who earn up to 120 percent of the median income. I'm not sure the HUD program allows that but that's neither here nor there. It's their money. They can choose to use it how they want. But my problem with it is that they're saying employees who earn 120 percent of the median income, the HUD guidelines and all of the guidelines that we use for affordable housing, Mr. Chairman, are based on a household income. So I would like to see this geared to the household income of their employees. In other words, the way it reads right now is it would, you know, they would only count the income of their employees but what if they have an employee who is married and together they earn, you know, an income that would qualify them. I think that should be considered just like it is for HUD and for all of our other affordable programs. So the language doesn't make that clear, and would you have any problem with that, Mr. McNatt, if we changed it to "the household income of employees"?

MR. MCNATT: Isn't that what the median is based on – household income? It is. The 60,300 is based on household income in the County. So that's what . . .

COUNCILMEMBER ANDERSON: Well, yeah, but there's nothing here that clarifies that that you're using HUD guidelines. You're just saying up to 120 percent of the median income. But it is your intent?

MR. MCNATT: Yes. The median income would be the HUD median income for Maui County.

COUNCILMEMBER ANDERSON: For the household?

MR. MCNATT: Yes.

COUNCILMEMBER ANDERSON: Alright. Thank you, Mr. Chair.

CHAIR CARROLL: Thank you. We have a motion to amend the main motion on the floor. Further discussion? Hearing none. All those in favor of the motion signify by saying aye.



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COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE: AYES: Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE Councilmember Molina's amendment to main motion (Item F, Condition 11).**

CHAIR CARROLL: Members, back to the main motion, as amended.

VICE-CHAIR PONTANILLA: Chair?

CHAIR CARROLL: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: I'd like to amend 11-C again by adding the word after sale "or rental".

COUNCILMEMBER MOLINA: Second.

CHAIR CARROLL: Been moved by Mr. Pontanilla, seconded by Mr. Molina. Discussion, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Chair, I think, you know, we've discussed this enough. The only thing that we missed was including the people that also do rent apartments that we should take a look, you know, look after here in Maui County.

CHAIR CARROLL: Further discussion? Seeing none. All those in favor of the motion signify by saying aye?

COUNCILMEMBER TAVARES: Excuse me.

CHAIR CARROLL: Oh, I'm sorry.

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COUNCILMEMBER TAVARES: Mr. Chair, clarification, please, on the amendment.

CHAIR CARROLL: Yes.

COUNCILMEMBER TAVARES: Just wanted to ask our Staff if with the inclusion of the “or rental”, if that entire statement makes sense because attached to it is also this affordable 15-year minimum buyback period. So I’m just wondering--

CHAIR CARROLL: Ms. Nakata.

COUNCILMEMBER TAVARES: --if, if that’s going to jam up the interpretation of this condition or would it be more appropriate to have another condition that addresses just the rental units because I think the buyback refers only to the for sale units.

MS. NAKATA: Yes. Mr. Chair, Staff is just going to point out that the 15-year minimum period through resale restrictions and buyback clauses would normally apply to the for sale units.

COUNCILMEMBER TAVARES: So I’ll ask the question for Mr. Pontanilla maybe. Would you recommend that we have a separate condition related to the affordable rentals? Or a separate subsection of this No. 11 condition? Because Mr. Chair, I think we would like the rentals to be in perpetuity?

CHAIR CARROLL: That is correct. That has been a concern of the Committee from the beginning.

VICE-CHAIR PONTANILLA: Mr. Chair?

CHAIR CARROLL: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: I would like to withdraw my motion.

COUNCILMEMBER MOLINA: I withdraw the second.

CHAIR CARROLL: Any objection to withdrawing Mr. Pontanilla’s motion?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Motion is withdrawn. Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, may I ask for a brief recess to approach you, sir?

CHAIR CARROLL: One minute recess. . . *(gavel)*. . .

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**RECESS: 2:25 p.m.**

**RECONVENE: 2:28 p.m.**

CHAIR CARROLL: . . .(*gavel*). . . This Land Use Committee meeting of December 12<sup>th</sup> is now back in session. Members, when we have a long recess sometimes even the Chair is remiss in describing exactly where we are. When we recessed last time, we had a motion on the floor was to accept the zoning change. What we had when we left was an amendment to the main motion, the zoning change by Ms. Tavares, to change No. 11. All these motions have been to amend that amendment and that's where we are right now. Just to clarify where we're at. Alright. Now, we may proceed. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Mr. Chair, I'd like to add to Condition 11 as H, "Affordable dwelling units offered for rent shall be offered to qualified full-time Maui County resident occupant only and shall be maintained as affordable in perpetuity".

COUNCILMEMBER MOLINA: Second.

CHAIR CARROLL: There's been a motion to amend the amendment on the floor and seconded by Mr. Molina. Discussion, Mr. Pontanilla.

MS. NAKATA: Excuse me, Mr. Chair. Could Staff please ask Councilmember Pontanilla to repeat that?

CHAIR CARROLL: Could you please repeat that?

VICE-CHAIR PONTANILLA: Sure. Affordable dwelling units offered for rent shall be offered to qualified full-time Maui County resident occupant only and shall be maintained as affordable in perpetuity.

CHAIR CARROLL: Thank you. Mr. Pontanilla, discussion.

VICE-CHAIR PONTANILLA: Thank you, Chair. With this, you know, we'll keep the rentals in perpetuity and our main concern would be offering these rentals to Maui County residents.

CHAIR CARROLL: Further discussion to the motion to amend the amended . . . the amendment? Ms. Anderson.

COUNCILMEMBER ANDERSON: I may have missed this, Mr. Chairman, but has anyone defined what full-time is and what Maui County resident? I mean, who's going to define that? Who's going to qualify these people--

COUNCILMEMBER TAVARES: Maui Land and Pine.

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VICE-CHAIR PONTANILLA: Maui Land and Pine.

COUNCILMEMBER ANDERSON: --on these terms?

CHAIR CARROLL: Is that a question for Corporation Counsel or the Planning Department?

COUNCILMEMBER ANDERSON: Well, maybe the maker of the motion has an idea.

CHAIR CARROLL: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Maui Land and Pine. I've asked the question to Corporation Counsel in regards to a previous 11-C, the administration of the affordable for sale units.

COUNCILMEMBER ANDERSON: So the maker of the motion I'm assuming is fine with letting Maui Land and Pine determine that?

CHAIR CARROLL: Yes.

VICE-CHAIR PONTANILLA: Yes.

COUNCILMEMBER ANDERSON: Okay. Thank you.

CHAIR CARROLL: Further discussion to the amendment to the amendment to the main motion on the floor? Ms. Tavares, followed by Mr. Kane.

COUNCILMEMBER TAVARES: Yeah. Mr. Chair, just that as we're going through these different amendments and as they get accepted, you know, I have no problem with the Staff reordering all of the amendments so there's a parallel connection because I think this should go after C and then move D and all the rest down. But, you know, if we can leave that part of it to the Staff, and then we could re-look at it at, you know, a later date whether it be first reading or whatever. But some of this now that we're adding on may be more appropriate in a different section so that it reads more logically, I guess.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: Thank you and for some reason Member Tavares and I were kind of on the same page. But maybe a final motion or at the end without objections you can ask the body to allow you and your Staff to work to make sure that the proper order is maintained so that we don't lose the intent of all the amendments and the motions that have been made. But as far as the order and nonsubstantive changes, if you will, can be incorporated for a recommendation to the full body. The other point, Mr. Chair, I wanted to ask was a question regarding with respects to the motion on the floor - the amendment. When we referenced Maui County residents and because we're dealing with in the context of employee housing it seems because these programs are gonna benefit Maui Land and Pine, I don't know if it needs to be stated or not, but this would include people

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who work for Maui Pine who are living here. Not a housing incentive from somebody from someplace else being brought over to work for Maui Land and Pine to get an affordable house to live in which would cut off somebody who lives here in Maui County working for Maui Land and Pine. So I wanted to state that so it's on the record and that, that from my understanding of these motions or these . . . what we're discussing, that is the intent that it's not to have somebody brought from someplace else to come work, but it's somebody who lives and works here gets that first crack or that's who it's focused for and that is a condition of zoning. And if I'm mistaken in the intent, then perhaps one of the other Members who is also voting on this can state that that's not what they think and we should at least flush it out and make sure that we're all on the same page. Thank you.

CHAIR CARROLL: Thank you. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chair. That's the intent – to take care our Maui County residents first.

CHAIR CARROLL: Further discussion on the motion on the floor? Hearing none. All in favor of the motion please signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE:       AYES:   Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       None.**

**MOTION CARRIED.**

**ACTION:    APPROVE Vice-Chair Pontanilla's amendment to main motion (Item H, Condition 11).**

CHAIR CARROLL: Back to the motion to amend the main motion. Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I'd like to amend Condi . . . Item D under Condition 11. Item D requires for annual status reports to be provided to the Director of Housing and Human Concerns and to the Council. My concern with this is that of the 173 units that they're offering, 125 of the units are going to be rental units,

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and only 48 units will be for sale units. So I think it's important that we include the rental units in this report so that we can see what the disposition is of, you know, more than half of their affordable requirement. So I would like to move to amend Item D to add the language after Director of Housing and Human Concerns and the Council, "for all affordable units commencing within one year of the effective date"; and then under C where it says the number of affordable units and market priced units sold "or rented" would be added; and then D, for each unit, the sales price "or rental price, square footage, number of bedrooms, et cetera".

CHAIR CARROLL: Is that the motion?

COUNCILMEMBER ANDERSON: And then under I, excuse me, Mr. Chairman, this is like putting a puzzle together. Under I, the number of units offered for resale "or rental". And that is my motion, Mr. Chairman.

COUNCILMEMBER JOHNSON: Second.

CHAIR CARROLL: Been moved by Ms. Anderson, seconded by Ms. Johnson. Discussion, Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I think by adding this in it, it will . . . as far as my recollection, this is the first time such a large portion of an affordable housing component is going specifically to the rental market and specifically with the intent to serve the employees of one company. And so I think it's really to everyone's benefit to have the disposition of these rental units included in this status report so we can see what's happened with them. So I ask the Members for their support.

CHAIR CARROLL: Thank you. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chair. First, I'm happy to support the amendment. But I wanted to point out if we need to modify language on the component previous to I think the first part of the amendment talking about the ending five years after the last lot is sold. Is there something that needs to be . . . since I think the amendments thrust is to incorporate a rental component in this area of reporting I think there is a sunset in this Letter D condition on the sold . . . on the selling portion, but because now we're incorporating a rental component, and forgive me if I didn't catch the first part from Member Anderson's condition. Does she intend to have an ongoing reporting status with the rental? Because right now it's just reading ending at five years after for the sold part and it's silent as far as I heard regarding the rental component.

CHAIR CARROLL: Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Member Kane, for bringing that up, but . . . and I did think about it and was considering it but Mr. Pontanilla's condition regarding affordable dwelling units offered to rent shall be rented in . . . shall be held as affordable

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in perpetuity. I think that kind of took care of it so . . . I mean I think, you know, five years is enough. Five years from the time the last lot is sold. I have a feeling that since the first 40 units are going to be rental units, that's going to be some time down the road before they get their 25 or 48 lots and houses built. So I'm fine with that because there's already a condition for affordable rentals in perpetuity. Unless, unless someone . . . I'm open to anybody else who has an idea that wants to strengthen it. I'm open to it.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chair. And all I'm suggesting is because again this condition is . . . the thrust of this condition is reporting. I don't think the perpetuity component has anything to do with actual reporting and that's what this one is doing. It's for reporting. So if we're going to incorporate the rental component which is on the floor for discussion as the amendment to the amendment, that perhaps we should consider or at least consider after this vote so we can amend an amendment again if it's worthy of that. And because the thought is because it's in perpetuity we want to make sure that it's effectuated over the long-term and that reports will justify that. So for rental, for affordable, for Maui County residents, in perpetuity, if we can get a report in this case annually demonstrating that condition, then I don't think it would hurt us to have that incorporated in. So I was only asking for the clarity and I don't think it's appropriate to ask for an amendment to the amendment to the amendment. So I'm supportive of what Member Anderson is doing and once the vote is taken on this I think we should at least consider incorporating continuing the reporting on or remove the sunset. Merely removing the sunset language I think would be appropriate for us to consider and that they have an annual report on both the rental, as well as the sale part. Thank you.

CHAIR CARROLL: Further discussion to the motion on the floor? Ms. Tavares.

COUNCILMEMBER TAVARES: Mr. Chairman, I'd like to ask the maker of the motion if the amendment she was proposing in H, I think that's what she was proposing, that the reference to the rental price be inserted in Section D, instead of in Section H. Because it seems like Section H is specific to the for sale units. And I'm not . . . I might have missed that she actually put it in Section D. I might have missed that. If I could ask the maker of the motion?

CHAIR CARROLL: Ms. Anderson.

COUNCILMEMBER ANDERSON: I'm not really sure what she's asking. In D, my amendment was for each unit the sales price or rental price,--

COUNCILMEMBER TAVARES: Okay.

COUNCILMEMBER ANDERSON: --square footage, and then I don't believe I did anything to H. It was I where I added the number of units offered for resale or rental.

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COUNCILMEMBER TAVARES: Oh, okay.

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: Did you add something to F then? I kind of got lost in there.  
The number of units sold or rented to individuals in each category,--

COUNCILMEMBER ANDERSON: Yes.

COUNCILMEMBER TAVARES: --did you add to that?

COUNCILMEMBER ANDERSON: Where it says sold or rented.

COUNCILMEMBER TAVARES: Okay. Sorry, Mr. Chair. It's a little hard for me to read from  
over here because I can't quite see where the changes were.

COUNCILMEMBER ANDERSON: Did Carla . . .

CHAIR CARROLL: We'll try to make bigger print next time, Ms. Tavares.

COUNCILMEMBER TAVARES: Or I'll bring my binoculars.

MS. NAKATA: Mr. Chair?

CHAIR CARROLL: Yes, Ms. Nakata.

MS. NAKATA: Staff would point out that in Subsections E and H there are also references to  
purchaser or units sold.

COUNCILMEMBER ANDERSON: Under D?

COUNCILMEMBER TAVARES: E.

COUNCILMEMBER KANE: E and H.

MS. NAKATA: E and H.

VICE-CHAIR PONTANILLA: Purchaser.

COUNCILMEMBER TAVARES: Or renter.

COUNCILMEMBER ANDERSON: Or purchase . . . okay, then let's be consistent.

CHAIR CARROLL: Ms. Anderson.



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COUNCILMEMBER ANDERSON: Thank you, Chair. We'll be consistent. Then under E, the income bracket for each purchaser/renter of an affordable unit; and then F, we have the number of units sold/or rented. And then Carla, you said there were one other place . . . one other place?

MS. NAKATA: In Subsection H.

COUNCILMEMBER ANDERSON: The number of units sold or rented to individuals who are not qualified. Thank you, Ms. Nakata. So I guess I need to amend my--

COUNCILMEMBER JOHNSON: Just do it on a friendly . . .

COUNCILMEMBER ANDERSON: --motion to amend. How do we do that as a friendly amendment?

CHAIR CARROLL: Since this language is to clarify I believe if there's no objection, if that could be included in the original amendment?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Thank you.

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

CHAIR CARROLL: Any further discussion to the motion on the floor? Ms. Johnson.

COUNCILMEMBER JOHNSON: I just want to, first of all, thank Maui Land and Pine for actually putting this language in because originally I had inserted language in Haliimaile Project and this mirrors that language. And I think it's really going to be helpful for us to know if our affordable housing policies are working and to let us know if we're headed down the right road or not. So I do appreciate . . . *(change tape)*. . . it's sometimes a little bit cumbersome to do the reporting but I think for the Planning Department's benefit, for our benefit, we will know whether these policies are working and I'm really happy to see that this has also been supported by Maui Land and Pine. Thank you.

CHAIR CARROLL: Further discussion to the motion on the floor? Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah, Mr. Chair. I noticed that in Condition E, the reference is to potential renters or purchasers. So perhaps we can do, you know, when we fix this up that they use parallel construction throughout so that it's consistent that we're talking about, you know, renters or purchasers consistently throughout the document or the condition. Thank you.

CHAIR CARROLL: Any further discussion to the motion on the floor? Hearing none. All in favor of the motion, please signify by saying aye.

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COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE: AYES: Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE Councilmember Anderson's amendment to main motion (Item D, Condition 11).**

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, just to follow-up on the discussion from the previous amendment, and before I ask for consideration of the amendment, that Item Letter D under Condition No. 11 currently reads "That Maui Land and Pineapple Company, Inc. shall provide annual status reports to the Director of Housing and Human Concerns and the Council, commencing within one year of the effective date of the Change in Zoning," and my request to be consistent because right now we have a sunset which reads "and ending five years after the last lot is sold". Because we've incorporated a rental, which is a perpetuity clause, it seems like it would be consistent for us to continue requiring the reports in perpetuity since the housing . . . affordable housing component or renters is in perpetuity. So, therefore, I think that maybe, and if the Members feel that there's a better way to do, please I'm open, but at this point it seems like just simply removing the sunset of the reports would be the easiest way for us to simply require the annual reports. So my motion would be to delete after the word Zoning and put a period in place of the comma after Zoning, and then delete "and ending five years after the last lot is sold". That's the motion, Chair.

COUNCILMEMBER MATEO: Second.

CHAIR CARROLL: Been moved by Mr. Kane, seconded by Mr. Mateo. Discussion, Mr. Kane.

COUNCILMEMBER KANE: No further discussion.

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CHAIR CARROLL: Any further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: I think the only reason that I had inserted and we had discussed this on the Haliimaile Project was because of the fact that to keep sending in these annual reports when all of the units may be sold, and then possibly even resold when you're not talking about sales that are in perpetuity. That was why A&B had wanted to be relieved of that responsibility within a five-year period after the last lot was sold. So I have no problems with it on the rentals but I think that, you know, I just don't see as much as a reason for doing it on the for sale units extending beyond that. But I don't know. If the Members want to include it, but I just think that there's gotta be a better way of doing it and separating the two, the rental from the other units. And perhaps if we think about it more. Right now in its present form I wouldn't be supporting it, but I would like to see maybe something that's a little bit more fleshed out if this does move forward at first reading.

CHAIR CARROLL: Further discussion to the amendment? Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman. With respects . . . because the previous amendment incorporated the sale component and the rental component, the report can simply say N/A, not applicable for the sale component, and still continue with the annual report on the rental component. I would agree with Ms. Johnson if these were two separate . . . two separate conditions or, or components within a condition. If we had Letter D dealt with all the sales one, then Letter E dealt with all the rental ones, but because this body has supported incorporating both the rental and the sale for reporting purposes, that's why the motion is being put forward. So I don't see the harm in it and I don't think it would be an inconvenience for the persons responsible for reporting to come forward with saying it's not applicable in this case. Thank you.

CHAIR CARROLL: Thank you. We have a motion on the floor. Further discussion? Hearing none. All in favor of the motion signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE:       AYES:     Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       None.**

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**MOTION CARRIED.**

**ACTION: APPROVE Councilmember Kane's amendment to main motion (Item D, Condition 11).**

CHAIR CARROLL: Back to the amendment to the main motion. Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. You know, in one of the short recesses that we had, I had a chance to question Maui Land and Pine regarding this rewritten Condition 11 that has the red printing on it. And they have added this language in red in an attempt to help us with formulating the conditions that we were discussing last week. What day was it?

CHAIR CARROLL: The 7<sup>th</sup>.

COUNCILMEMBER KANE: Wednesday.

COUNCILMEMBER ANDERSON: It was Wednesday.

COUNCILMEMBER JOHNSON: Wednesday, the 7<sup>th</sup>.

COUNCILMEMBER ANDERSON: So one of the conditions that they have rewritten or they have offered added language to is Condition No. E. And so Members, I don't know if you have your red language, but I would like to move to amend . . . well, you know, that Condition E so everybody knows what we're talking about is affordable dwelling units must be offered for a minimum period of 120 days to potential renters or purchasers in the designated income bracket. If none qualify . . . income bracket, and then they have added "as shown on the attached matrix". So, you know, we've been talking all around this and this matrix is nowhere in here anywhere yet. And if this is their intention, even though I don't agree with it, I would like to offer an amendment to attach this matrix to Condition 11, Item E.

COUNCILMEMBER JOHNSON: Second.

CHAIR CARROLL: It's been moved to attach the matrix to Item . . . Item what, which Item?

COUNCILMEMBER ANDERSON: It's Item E under Condition D.

CHAIR CARROLL: Is there a second?

COUNCILMEMBER JOHNSON: I seconded already.

CHAIR CARROLL: Seconded by Ms. Johnson. Discussion, Ms. Anderson.

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COUNCILMEMBER ANDERSON: Yeah. I mean I think, you know, what Maui Land and Pine is doing is very . . . for their affordable housing component, is very specific to Maui Land and Pine. And as we have yet to finalize a new affordable housing policy for the County that would, you know, be fairly conditioned to everybody, we have to craft these specifically for each zoning change. And they're pretty adamant about this matrix. We've asked them since last August to change it. I'm not happy with the fact that . . . that so many of the units are going to be for rent. I think they could have put more forward for sale. But be that as it may, since that's what it is, let's attach it, and let's be specific so everybody knows five years down the road what it is they expect you to do and the Council condition them to do. So that's the purpose of the motion and they obviously thought it was necessary, too, because this is their language.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: Yes. Is it the maker of the motion's intent to incorporate the language that is being recommended, where it reads after the word bracket "as shown on the attached matrix" because currently it's not showing on the board as part of the motion.

COUNCILMEMBER ANDERSON: Well, that was the motion.

COUNCILMEMBER KANE: And that's why I'm asking the question, is it included? Because currently it's not on the board as included so I'm just asking if it's included.

CHAIR CARROLL: We received . . . thank you, Mr. Kane. We received this just before the meeting and that's why we hadn't had time to put this up on the board. However, everyone does have a copy and I would hope for this particular amendment if that would suffice if the Members would be satisfied with that.

COUNCILMEMBER TAVARES: Yes.

CHAIR CARROLL: Thank you. Further discussion?

COUNCILMEMBER TAVARES: Mr. Chairman?

COUNCILMEMBER ANDERSON: Uh . . .

COUNCILMEMBER TAVARES: Oh, I'm sorry. As the maker of the motion.

CHAIR CARROLL: Oh, I'm sorry.

COUNCILMEMBER ANDERSON: Well, you know, I think what I'll just do if I can further clarify or restate the motion to include the rest of the language that Maui Land and Pine has provided under Item E. The reason I didn't do that first, Members, is because I wanted a chance to explain the matrix because it's not . . . it's not even attached to this so

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that everybody was aware. But I think all of the language in the red further clarifies what the . . . what the offering is and so if I may, with no objections, continue to add the rest of the language. I think I was reading Ms. Tavares' mind. I think she was probably going to do that anyway.

CHAIR CARROLL: You know what, we're really thrashing around over here. I'd feel more comfortable if you just withdraw your motion and make a new motion.

COUNCILMEMBER ANDERSON: Fine. I'll withdraw my motion.

CHAIR CARROLL: Any objection to Ms. Anderson withdrawing her motion?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Thank you. Proceed, Ms. Anderson.

COUNCILMEMBER ANDERSON: Okay. I move to amend Item E, under Condition 11, to add all the language in red that we have before us and to read,--

COUNCILMEMBER TAVARES: Plus the matrix.

COUNCILMEMBER ANDERSON: --"Affordable dwelling units must be offered for a minimum period of 120 days to potential renters or purchasers in the designated income bracket". This is the added language, "as shown on the attached matrix". And then, after the sentence, the next sentence after the ending word of "purchaser is found" add, "provided that the affordable rental units shall not be rented to persons with incomes above the highest affordable bracket. If an existing renter's income rises above the highest affordable bracket, the renter shall be permitted to remain in the dwelling unit until the expiration of the renter's lease, not to exceed 12 months".

COUNCILMEMBER JOHNSON: Second.

CHAIR CARROLL: Been moved by Ms. Anderson, seconded by Ms. Tava . . .--

COUNCILMEMBER TAVARES: Johnson. Ms. Johnson.

COUNCILMEMBER KANE: Ms. Johnson.

CHAIR CARROLL: --Ms. Johnson. Thank you. Discussion, Ms. Anderson.

COUNCILMEMBER ANDERSON: I think . . . I think we've covered it. Thank you, Mr. Chair.

CHAIR CARROLL: Thank you. Further discussion? Mr. Kane.

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COUNCILMEMBER KANE: Yeah. And I'm sure it was intended since everything was withdrawn and we're restating a motion that--

CHAIR CARROLL: Yes.

COUNCILMEMBER KANE: --we're attaching the matrix as presented.

CHAIR CARROLL: That is your intention right, Ms. Anderson?

COUNCILMEMBER ANDERSON: Yes.

COUNCILMEMBER KANE: Thank you.

CHAIR CARROLL: Thank you for that clarification, Mr. Kane. Further discussion? Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah. Mr. Chairman, I appreciate the offers to clarify that the conditions by the applicant and this is the first time I think in this kind of format that we've seen an affordable unit matrix that is also tied to square footage of the units. And I think a lot of people have been asking us of late, when we talk about affordable units, nobody is talking about the size. We only talk about the number and the qualification at the percent of HUD median income. So, you know, this gives us a real clear direction and I hope that we can use this as a model as we go forward with other housing projects to look at the square footage of the units so that we're not, you know, looking at a three-bedroom that's 900 square feet in the future or any other time and say, oh, we met our affordable requirement for, you know, three bedrooms. So I really appreciate that the applicant has provided this matrix and happy to support the motion on the floor which includes the attachment of this matrix for further clarification. Thank you.

CHAIR CARROLL: Further discussion to the motion on the floor? Seeing none. All in favor of the motion, please signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE: AYES: Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

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**EXC.:** None.

**MOTION CARRIED.**

**ACTION:** APPROVE Councilmember Anderson's amendment to main motion (Item E, Condition 11).

CHAIR CARROLL: Members, it is about one minute to three. As you know, we had recessed the previous meeting, Land Use Item 14, Community Plan Amendment Change in Zoning and Project District Phase 1 for the Maui Lani Project until 3:00. However, we are fairly close I think to proceeding on this. So what I would like to do is I'm going to recess this meeting, I'm going to reconvene the Maui Lani Project, and then I am going to recess it until 3:45. And I think that we can . . . it is realistic time that we might know where we're at and then we are going to have to address the Maui Lani Project. Mr. Kane.

COUNCILMEMBER KANE: Before you do that, Chair, and thank you for your guidance. On your December 9<sup>th</sup> memo to us which we're dealing with Condition 11, I believe you had other conditions that you were recommending some adjustments. Is that also things that you wanted to take up this afternoon or your intentions were to handle those once we finished with No. 11?

CHAIR CARROLL: Yes.

COUNCILMEMBER KANE: Thank you very much. No objections to recess, Chair.

CHAIR CARROLL: Alright. This Land Use Committee meeting on Land Use Item 69 will stand in recess until 3:10. . . .(gavel). . .

**RECESS:** 3:00 p.m.

**RECONVENE:** 3:16 p.m.

CHAIR CARROLL: . . .(gavel). . . This Land Use meeting of December 12<sup>th</sup> is now back in session. Members, we have a motion to amend the main motion on the floor. Discussion?

COUNCILMEMBER ANDERSON: Yeah. Could you restate what that motion might be? . . . (laughter). . .

CHAIR CARROLL: Ms. Anderson. I'm sorry. The . . . we were, okay, where we might be . . . we're on No. 11. We have been amending the motion to amend the main motion all of this time. We are now back to the motion to amend the main motion which is to accept No. 11. And that's the one we've been amending all of this time in different sections in 11 and so we are back to that. Mr. Kane.



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COUNCILMEMBER KANE: Mr. Chair, so just for clarity, your December 9<sup>th</sup> memo, we were with Member Tavares' motion to amend the main motion of the zoning ordinance under conditions of replacing the No. 11 text with the one that's listed in your December 9<sup>th</sup> memo. Is that correct?

CHAIR CARROLL: That is correct.

COUNCILMEMBER KANE: And then we're back to that amendment as amended since we've gone through all the amendments now?

CHAIR CARROLL: Correct.

COUNCILMEMBER KANE: Thank you.

CHAIR CARROLL: Ms. Johnson.

COUNCILMEMBER JOHNSON: Mr. Chair, I have an amendment and it's being typed up right now for this particular section. So I have no problem on voting what's here and then when the amendment is received on the floor, my staff member is working on it, if we could just return to this, I would appreciate it.

CHAIR CARROLL: Alright. Ms. Anderson.

COUNCILMEMBER ANDERSON: Maybe I could take up a little time while she's getting that typed. Again, Chair and Members, if you look at the first page of the printed Condition 11 that has the red printing, Maui Land and Pine has further defined Condition 11, and, and the language that they've added here in the red speaks to concurrency with market-priced units and so I would move to amend . . . actually Condition No. 11 . . . I'm sorry, Members, I'm comparing the two because it doesn't . . . they don't, they don't, they're not the same. So I would move to amend Item A under Condition 11 to substitute the language in the offering received today both the black and white language, I mean black and red language for the existing Item A.

COUNCILMEMBER JOHNSON: Second.

CHAIR CARROLL: Been moved by Ms. Anderson, seconded by Ms. Johnson. Discussion, Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. If Ms. Nakata has the language that was offered today, I would request that she put that up as a substitute so everybody knows what we're . . . actually it starts with, okay . . . yes, you're on it.

COUNCILMEMBER JOHNSON: Just read it for the record.

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COUNCILMEMBER ANDERSON: It's more specific and details how the affordable dwelling units must be provided. That one, 40 . . . 40 affordable dwelling units must be completed prior to or concurrently with the completion of the first market-priced dwelling unit; and two, thereafter, one affordable dwelling unit shall be completed prior to or concurrently with the completion of every four market-priced dwelling units; and three, paragraphs 1 and 2 do not alter the maximum potential affordable housing requirement of 173 units. I think that's more definitive and clarifies the intent of what's being . . . trying to be accomplished.

CHAIR CARROLL: Thank you. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chair, and I appreciate the applicant coming forward with this written language which backs up what they said verbally last week Wednesday at the December 7<sup>th</sup> meeting when the question was asked of Mr. McNatt. So this I think puts it into writing what they represented on the floor last Wednesday. Thank you.

CHAIR CARROLL: Thank you, Mr. Kane. Further discussion to the amendment on the floor? Hearing none. All in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed. Motion carried

**VOTE:       AYES:       Councilmembers Anderson, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION:     APPROVE Councilmember Anderson's amendment to main motion (Item A, Condition 11).**

CHAIR CARROLL: Alright. We are back to the No. 11 amending . . . Ms. Johnson, do you have your . . . ?

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COUNCILMEMBER JOHNSON: If you wish to take a vote on this, it's fine. I have my amendment and it's being photocopied right now and it will be available for distribution in about two minutes.

CHAIR CARROLL: Anything further on the amendment to the main motion? That's No. 11 as we have been amending it. Hearing none. All in favor of the motion, as amended, the amendment as amended, signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

**VOTE: AYES: Councilmembers Anderson, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION: APPROVE the motion, as amended.**

CHAIR CARROLL: Thank you, Members. Alright. We have . . . you have before you my memo of the 12<sup>th</sup> to Mr. Correa, the parks, the proposed condition for development. Does everybody have that memo? The Chair would consider a motion accepting the proposed condition for the above proposed development in the memo which has been outlined No. 1--

VICE-CHAIR PONTANILLA: So moved.

CHAIR CARROLL: --and I'll read it, "The applicant agrees to enter into an agreement with the department of parks and recreation to use the park assessment fees from the Kapalua Mauka project to purchase approximately 60 acres of land for a future district park for the Napili region. The land will be located mauka of the West Maui airport and for which the shape and size will meet the satisfaction of the department of parks and recreation. The price of the land will be determined by the appraised value of the land based on its current agricultural use and upon mutual agreement of both parties". And the Chair would entertain a motion to this proposed amendment.

VICE-CHAIR PONTANILLA: So moved. No discussion.

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COUNCILMEMBER TAVARES: Second. For discussion.

CHAIR CARROLL: Discussion? It's been moved by Ms. Tavares.

COUNCILMEMBER TAVARES: I thought the maker of the motion was going to discuss first. I'm wondering why this condition is necessary because it is the . . . the money that goes into the park assessment for the West Maui Region can be used for the West Maui Region and subject to the approval of the County Council through the Budget. And you know, I'm questioning the necessity of this particular condition because it looks like the applicant is able to control how that money is spent. It shouldn't be the applicant controlling that. Now, if the applicant wishes to purchase and provide the land, and then dedicate it to the County of Maui, I think that's a different issue. So is someone from the Parks Department here?

CHAIR CARROLL: Yes. We may have Mr. Buck, if you could please come down?

COUNCILMEMBER TAVARES: Maybe they could provide some--

CHAIR CARROLL: This is an attempt . . .

COUNCILMEMBER TAVARES: --background on this?

CHAIR CARROLL: This is an attempt to address some of the concerns that were brought up previously. Mr. Buck.

MR. BUCK: Thank you, Mr. Chair. John Buck, Deputy Director of the Department of Parks and Recreation. I think the Department was proposing this condition on the fact that if we were to purchase land, we didn't want . . . we did not want to purchase it later on at urbanized rate. The intent of the Department was that we were still looking at developing. Then we've talked about it with couple of other projects just to get 60 acres out by the airport to develop a district park. We're looking at 60 acres and we wanted to be able to purchase it or come to an agreement that if we do purchase it . . . what the land assessment or the park dedication that we would do it at the agriculture rate and what monies were left over to do some development. Because their requirement for the hundred . . . 691 units is only about eight acres if we were just to go land or approximately about \$9.7 million park assessment. So we wanted to come up with some kind of agreement with the ultimate goal is to get the 60 acres we've been talking about in the Napili area.

COUNCILMEMBER TAVARES: What was the amount of the park assessment – cash?

MR. BUCK: About 9.7 million. It's based on right now the current value about 14,000 per unit.

COUNCILMEMBER TAVARES: So the cash assessment would be 9.7 million?

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MR. BUCK: That's approximate, yeah. Take that 691 times about 14,000 comes out to around about 9.7 million. And we're looking at if we were to purchase . . . if we were to take the full cash value based on today's assessed value of the property, there would be money left over to develop it, if we would take the whole cash. Our ultimate goal is to beget 60 acres up in that area because there is gonna be a State project in that area, too, that does not have park assessment. I think it's DHHL. So our intent is we're behind as far as acreage for active fields and because of the State project coming up we figure that we'll basically need the 60 acres and we want to be extra sure that we are going to get the 60 acres one way or another.

COUNCILMEMBER TAVARES: So are you trying to get an agreement with the developer now to commit to the 60 acres?

MR. BUCK: That's correct. At the current prices or get it now because we hate to come back, you know, ten years from now and that's still . . . that entire purchase, that acreage may be at urban rate versus agriculture or vice versa. Somehow in the agreement we want to get at least the 60 acres now and not have to purchase it later.

COUNCILMEMBER TAVARES: Thank you, Mr. Chair.

CHAIR CARROLL: Ms. Johnson.

COUNCILMEMBER JOHNSON: John, in this particular situation, the owner of the land, correct me if I'm wrong, is Maui Land and Pine on the land mauka of the airport. Is that correct?

MR. BUCK: From my understanding, yes, that's correct.

COUNCILMEMBER JOHNSON: Okay. Why wouldn't you just negotiate instead of this money purchase stuff? Why didn't you just negotiate having them set aside 60 acres?

MR. BUCK: That's one of the things we've come in, in preliminary discussion. We haven't yet come up with an informal agreement but our ultimate goal is to get the 60 acres as part of the condition of this project.

COUNCILMEMBER JOHNSON: Well, it just seems to me that if you're looking at \$9.7 million worth of I guess money or park assessment, are you saying that the \$9.7 million would be greater than the cost to purchase 60 acres and then . . . or is that . . .

MR. BUCK: Their current park assessment right now is about \$9.7 million. Now, if we wait farther down the road, that \$9.7 million probably would not purchase urban . . . at a urban rate. We're looking at either taking park assessment, come up with an agreement that we can purchase back that land at the agriculture rate or we can come up and they would say, hey, the 60 acres that you want, this is in exchange. Yeah, I'm not . . . we have not kind

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of finalized, but our ultimate goal is to come up with that 60 acres for the residents of that area or the overall West Side because we need additional acreage.

COUNCILMEMBER JOHNSON: Okay. What is the current regional park acreage that is makai of the airport – what is the total acreage?

MR. BUCK: I think from the Community Plan . . . *(change tape)*. . . was 50 acres that they're going to be developing that.

COUNCILMEMBER JOHNSON: So it's . . .

MR. BUCK: We're trying . . . we want 60 acres.

COUNCILMEMBER JOHNSON: So it's 50 acres that is currently in the Community Plan and we have no Community Plan Amendment that I know of to eliminate that. Is that correct?

MR. BUCK: From my understanding that's where the project Pulelehua is going where the Project Plan originally was.

COUNCILMEMBER JOHNSON: Well, that's another subject.

MR. BUCK: Yeah, but from understanding, with that project there is park land about 10 acres, but we want again . . . we're looking at additional 60 acres and that's kind of why we came up. But we still need to work it out with the developer.

COUNCILMEMBER JOHNSON: Okay. If you look at the current designation, which is Community Plan, the 50 acres makai of the airport, if you look at that, is that land totally usable I mean as far as park space as far as what the cost would be to develop the park? And I'm assuming that the developer's not gonna pay for the regional park. You're assuming that the County is going to pay for the development of the park.

MR. BUCK: That's, that's correct. The land that we are . . . we prefer up above the airport is a lot flatter than the plan below the airport 'cause there's more of a grade. Once you have more of a grade that means there's more flattening you have to do and maybe retention walls or basins, whatever. But from my understanding that's, again as you said it's another subject, but that park is being developed for something else.

COUNCILMEMBER JOHNSON: Have you received input from the community that would indicate that the community no longer wishes to have a regional park in the area that is community planned for that?

MR. BUCK: I think the community still wants a regional park up in that area and that's why we're looking at the acreage as part of this.

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COUNCILMEMBER JOHNSON: Okay. Thank you.

MR. BUCK: I may . . . may not answering your question. From my understanding there was 50 acres in that area and then I think instead of trying to get a hold of 150 acres now I think there's a plan . . . a large park where we've been identifying because of traffic and everything else, is have maybe smaller district parks like 60 acres. One in this area and then we're looking at one kind of in the where the 20/20 Project is and then we're actually looking at the Wainee Project in getting maybe additional 15 to 20 acres. So we can . . . could meet the needs of a regional park but maybe breaking it down to a little bit smaller parks, address our needs, but kind of eliminate maybe everybody going from different parts of the island to one central location.

COUNCILMEMBER JOHNSON: Okay. Thank you.

VICE-CHAIR PONTANILLA: Chair? Chair?

CHAIR CARROLL: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Mr. Buck, so the \$9.7 million would help you support to purchase 60 acres?

MR. BUCK: That's would be their . . . that would be what the current rate is for the 600 and some odd units at 13 . . . about \$14,000 a unit. It would come out to about \$9.7 million. If we were to just take the cash, that would be what it is. But we want to come to an agreement where that . . . our intent is, well, we would prefer instead of the eight acres or the nine . . . the full \$9.7 million is to come out at least with a 60-acre park. I mean we'd have it grassed so it can be usable but we haven't come up to the final discussions on that.

VICE-CHAIR PONTANILLA: So you still in discussion with the developer as far as . . .

MR. BUCK: That's correct. Either, you know, us purchasing the 60 acres or be part of a swap, or you know, somehow we get the 60 acres as part of the agreement. The condition's on part . . . agreement of both parties with the intent that we get the 60 acres.

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

CHAIR CARROLL: Thank you. Further discussion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chairman. Mr. Buck, do you have an assessed valuation for today's ag land in that area?

MR. BUCK: No, I don't. Not offhand.

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COUNCILMEMBER ANDERSON: Well, you said that the 9.7 million would be enough to purchase that land with some left over so you must have some idea.

MR. BUCK: Well, from what information I have, we estimate about 40,000 an acre.

COUNCILMEMBER ANDERSON: Forty thousand an acre?

MR. BUCK: But I might be off a little bit but that sounds . . . currently used as ag. I was informed that's what we're paying at Ukumehame – 40,000 an acre for ag land.

COUNCILMEMBER ANDERSON: Then the cost would be 2.4 million.

MR. BUCK: Approximately, yes.

COUNCILMEMBER ANDERSON: Which would leave 7.3 million.

MR. BUCK: If we wanted to do it that way, yes. But you know, the price of land between now and when it gets assessed, agriculture may go up. What we're trying to do is . . . to get an agreement so if we did purchase the land, it wouldn't be at the urban rate but at the agriculture rate.

COUNCILMEMBER ANDERSON: Well, why would it be the urban rate? I mean how could that ever happen. The land's all ag.

MR. BUCK: I'm not . . . I'm just . . . kind of based on the information that was provided that they wanted to be sure that if we were purchasing, we'd purchase it at the ag rate instead of if it was rezoned at a different rate.

COUNCILMEMBER ANDERSON: Well, I don't think the Council's going to rezone land. They want to urban . . . rezone something that's in ag urban if they want it to be park, which bring us to Pulelehua. Because it appears to me that what they're trying to do is provide a substitute for the land that's already designated for a park, a regional park and open space in our Community Plan for this area, because they intend to use it for Pulelehua. So I think it's very inappropriate for the Department to be getting involved in any agreement because the Council has designated the plan as Community Plan for park and open space. And until they get a Community Plan Amendment to change that, you're basically negotiating something that does not comply with our Community Plan and all Administrative actions according to our County Code must comport with the Community Plan. So I can't support this, Mr. Chairman, because again, we're putting the cart before the horse. And you know, the very fact that this land designated for a regional park and for open space ag land, when it was designated in the Community Plan, specifically designated to protect future development from happening in that area because of the airport. It's in the airport zone. And you know, I just think that this is totally inappropriate to be putting a condition in that would effectively change the intent and purpose of the Community Plan. That requires a Community Plan Amendment and



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action by the Council. So I cannot support this, Mr. Chairman. I think we just take the money and put it in the bank and decide down the road. We may need that money to develop the 50-acre park in Mahinahina below the airport. Thank you.

CHAIR CARROLL: Further discussion? Members, we have a motion on the floor and the language that you have up there and even that there's several changes that would need to be made. The applicant should be "The Maui Land and Pine, Inc."; on Line No. 2, "Kapalua Mauka", should be removed; and on Line 4, "for which" should be deleted. The Chair would entertain a motion to amend the main motion to change this language.

COUNCILMEMBER HOKAMA: So moved.

CHAIR CARROLL: Been moved and seconded by--

VICE-CHAIR PONTANILLA: Second.

CHAIR CARROLL: --Mr. Pontanilla. Discussion, Mr. Hokama?

COUNCILMEMBER HOKAMA: No discussion.

CHAIR CARROLL: All in favor of the motion to amend the motion on the floor signify by saying aye?

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed?

**VOTE: AYES: Councilmembers Anderson, Hokama, Johnson, Kane, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE amendment, as revised, to main motion (Kapalua Mauka Park Dedication).**

CHAIR CARROLL: Back to the main . . . the motion on the floor. Any further discussion? All those in favor of the motion signify by saying aye.



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COUNCILMEMBER HOKAMA: Roll call.

CHAIR CARROLL: Roll call.

COUNCILMEMBER ANDERSON: Thank you.

MS. NAKATA: Council Chair Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. NAKATA: Councilmember Anderson.

COUNCILMEMBER ANDERSON: No.

MS. NAKATA: Councilmember Johnson.

COUNCILMEMBER JOHNSON: No.

MS. NAKATA: Councilmember Kane.

COUNCILMEMBER KANE: No.

MS. NAKATA: Councilmember Mateo.

COUNCILMEMBER MATEO: No.

MS. NAKATA: Councilmember Molina.

COUNCILMEMBER MOLINA: No.

MS. NAKATA: Councilmember Pontanilla.

VICE-CHAIR PONTANILLA: Aye.

MS. NAKATA: Councilmember Tavares.

COUNCILMEMBER TAVARES: No.

MS. NAKATA: Committee Chair Carroll.

CHAIR CARROLL: Aye.

COUNCILMEMBER ANDERSON: It's six noes.

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CHAIR CARROLL: Thank you. Members, if you will note the memo from the Chair, December 9, 2005. Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, are you referring to this suggested revision to Condition No. 6?

CHAIR CARROLL: Yes.

COUNCILMEMBER KANE: Since the agreement with the DOE has been executed, we suggest that the Condition be updated as follows, "That Maui Land & Pineapple Company, Inc. shall contribute to the development, funding, and/or construction of school facilities on a fair share basis", and this is the amended or the suggested revision underlined, "pursuant to the Education Contribution Agreement for Kapalua Mauka between Kapalua Land Company, Ltd. And the State of Hawaii Department of Education dated July 10, 2003." And everything else after that has been stricken, which read, "An executed agreement between Maui Land & Pineapple Company, Inc. and Department of Education shall be submitted to the Department of Planning with the Phase II Project District application." That's been stricken because it's already been carried through. I believe it's based on the . . . on your text that you provided for us, Mr. Chair, and at the appropriate time I'd be willing to make . . . entertain that motion.

CHAIR CARROLL: Now would be the appropriate time, Mr. Kane.

COUNCILMEMBER KANE: So moved.

COUNCILMEMBER TAVARES: Second.

CHAIR CARROLL: Been moved by Mr. Kane, seconded by Ms. Tavares. Discussion, Mr. Kane?

COUNCILMEMBER KANE: No further discussion.

CHAIR CARROLL: Discussion, Ms. Johnson.

COUNCILMEMBER JOHNSON: Do we have a copy of the DOE Agreement?

CHAIR CARROLL: Pardon?

COUNCILMEMBER JOHNSON: Do we have a copy of the Department of Education Agreement? Is that attached anywhere? I may have missed it in my binder.

CHAIR CARROLL: Ms. Nakata, do we have a copy of that Agreement?

MS. NAKATA: I'm sorry, Mr. Chair, Staff is not aware.

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CHAIR CARROLL: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. Because we don't know what the, you know, condition is I guess I would ask Corporation Counsel. Does the Council have any control over this anyway whether we would agree with it or not?

CHAIR CARROLL: Corporation Counsel.

MR. GIROUX: It would be under the purview of the Council as far as the timing matter. But whether you can condition what the State will approve, I think that might start getting into, you know, jurisdictional issues so . . .

COUNCILMEMBER JOHNSON: Okay. So if I understand you correctly, what you're saying is that where we could impose some type of I guess influence we could actually utilize I guess a timing, you know, to say when this would take place or what could go forward pending the contribution?

MR. GIROUX: Right. As far as timing, meaning that if you want time to actually see what the agreement is. That . . . that's what is my comment regarding timing.

COUNCILMEMBER JOHNSON: Okay, but then we couldn't state that until this is actually executed or whatever . . . and whatever that Agreement may be, whatever it may contain, we couldn't actually stipulate that prior to the development moving forward that this particular condition must be complied with?

MR. GIROUX: Yeah. I believe that would be within, you know, they wouldn't be able to get building permits or go through, you know, any final subdivision without that being executed. I believe that would be the timing issue.

COUNCILMEMBER JOHNSON: Okay.

MS. NAKATA: Mr. Chair, if I may? Staff has located the copy of the DOE Agreement. It was transmitted by correspondence dated June 29, 2005 from Ryan Churchill of Maui Land and Pineapple Company, Inc. to the Land Use Committee in response to the Chair's request dated June 28. The Agreement was dated--

COUNCILMEMBER TAVARES: July 10.

MS. NAKATA: --July 10, 2003.

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah. Mr. Chairman, it's part of the, you know, State Land Use Commission or Land Court Ordered Declaration of Conditions and it is Condition No. 6 . . . No. 2, Public School Facilities, and it's per the Agreement that Ms. Nakata just

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read to us, July 10<sup>th</sup>, that's included as an exhibit, the Educational Contribution Agreement for Kapalua Mauka and it is a fully executed Agreement. I mean I see all the signatures on this . . . on this copy. And I kind of question why we even need to have it in our Conditional Zoning if it's already a condition in the State Land Use Commission Decision and Order Packet. I know sometimes we repeat certain ones, you know, just to get the emphasis to make sure that's a condition of our change in zoning. But in a case where to me like this, it's a Department of Education requirement that we have no jurisdiction over, that I would have no problem with not having it in our conditions to zoning.

CHAIR CARROLL: This came up because of previous discussion since there was some concern and that's why the Chair brought this forward. Ms. Johnson.

COUNCILMEMBER JOHNSON: I think the . . . we still have some ability to, as pointed out by Corporation Counsel, some ability to actually, just like we have concurrency requirements for other things, to state that that has to be actually acted upon or executed.

COUNCILMEMBER TAVARES: It's already executed.

COUNCILMEMBER JOHNSON: And am I wrong about that?

COUNCILMEMBER TAVARES: It's already executed.

MR. GIROUX: My understanding is that it has been executed.

COUNCILMEMBER JOHNSON: But I'm . . . okay, but what I'm trying to determine and maybe I'm not saying it correctly. Whatever that agreement stipulates, that either monies paid or school built or land use changes made, are those things that we can then impose or have those things already taken place? Have they made their fair share contribution?

COUNCILMEMBER TAVARES: Not yet. Conditioned on this.

COUNCILMEMBER JOHNSON: And, and Mr. Giroux, I'm talking about the actual agreement terms being executed, not the agreement itself. So in other words if they say that they're supposed to dedicate "x" amount of land for a school or "x" amount of money, can we impose a condition that states until they do that, they can't construct the rest of their project?

COUNCILMEMBER TAVARES: Mr. Chairman?

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah. If we look at the agreement itself, it talks about the conditions under which the applicant will have to satisfy the terms of the agreement and on this . . . the first one is like the cash contribution. Should we pay it out of escrow and

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made payable to the State of Hawaii in accordance with the following terms and it has a whole bunch of conditions under which, you know, \$1,011 and any escalation factor applicable shall be payable within 30 days of the closing and recordation of the sale of each residential unit or lot within the project and then there's some other things after that. So I think they have some terms in there that clearly specify when the payments are due to the Department of Education and that's part of the signed agreement.

MR. GIROUX: Member Johnson, as far as my . . .

CHAIR CARROLL: Further discussion to the motion on the floor? Corporation Counsel, you have anything to add?

MR. GIROUX: If I can just comment? My understanding is that the County is going to be responsible for enforcing the terms of the Land Use Commission. So . . . and in order to do that, they check compliance before they move forward on any project or giving any permits or anything to that effect. So they . . . the County would have control over the timing of that because the project wouldn't be able to move forward without compliance being given first. So if that was the question of . . .

COUNCILMEMBER JOHNSON: If so, if I understand you, basically, the State Land Use Condition that is contained and because I . . . this is so voluminous I can't find the condition that Councilmember Tavares is speaking about, I wanted to make sure that there was some protection that would be included in this. And according to what you're saying, Mr. Giroux, there is a trigger and that the monies would have to be paid in satisfaction of that condition prior to anything moving forward. Is that correct?

MR. GIROUX: I believe that's accurate.

COUNCILMEMBER JOHNSON: Okay. Thank you, Mr. Chair.

CHAIR CARROLL: Further discussion to the motion on the floor? Seeing none. All in favor signify by saying aye.

COUNCILMEMBER KANE: Aye

COUNCILMEMBER MOLINA: Aye

CHAIR CARROLL: Roll call.

MS. NAKATA: Council Chair Hokama.

COUNCILMEMBER HOKAMA: No.

MS. NAKATA: Councilmember Johnson.

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COUNCILMEMBER JOHNSON: Mr. Chair, could . . . just for purposes of clarification, what is it exactly that we're voting on?

CHAIR CARROLL: It is up on the board. It is written out quite clearly.

COUNCILMEMBER JOHNSON: It's No. 6 and that's the blackened portion which is "pursuant to the Education Contribution Agreement for Kapalua Mauka between Kapalua Land Company, Ltd. And the State of Hawaii Department of Education dated July 10, 2003".

CHAIR CARROLL: That is correct and we have a motion on the floor. We have a roll call vote.

COUNCILMEMBER JOHNSON: Okay.

CHAIR CARROLL: Please . . .

COUNCILMEMBER JOHNSON: And, and I vote no.

MS. NAKATA: Councilmember Anderson.

COUNCILMEMBER ANDERSON: Yes.

MS. NAKATA: Councilmember Kane.

COUNCILMEMBER KANE: Yes.

MS. NAKATA: Councilmember Mateo.

COUNCILMEMBER MATEO: Aye.

MS. NAKATA: Councilmember Molina.

COUNCILMEMBER MOLINA: Aye.

MS. NAKATA: Councilmember Pontanilla.

VICE-CHAIR PONTANILLA: No.

MS. NAKATA: Councilmember Tavares.

COUNCILMEMBER TAVARES: No.

MS. NAKATA: Committee Chair Carroll.

CHAIR CARROLL: Aye.



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MS. NAKATA: Four noes, five ayes. Motion carries.

CHAIR CARROLL: Motion is carried.

**VOTE: AYES: Councilmembers Anderson, Kane, Mateo, Molina, and Chair Carroll.**

**NOES: Councilmembers Hokama, Johnson and Tavares, and Vice-Chair Pontanilla.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE motion to revise Condition No. 6.**

CHAIR CARROLL: Members, we have reached the point where we are past the time that we were supposed to convene for Maui Lani. The Chair is going to recess this meeting until 5:00 p.m. and then we're going to get right into Maui Lani. It's unfortunate we have to do this, but unfortunately, we bit off more than we can chew. Mr. Kane.

COUNCILMEMBER KANE: Before we do that, Mr. Chair, if we can call a brief recess to allow Members to check their calendars to make sure that we're in fact available until after 5:00?

CHAIR CARROLL: I will call a five-minute recess.

COUNCILMEMBER KANE: Thank you.

CHAIR CARROLL: We are in recess for five minutes. We'll reconvene at 4:00. . . .(gavel). . .

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

**RECONVENE: 4:08 p.m.**

CHAIR CARROLL: . . .(gavel). . . This Land Use meeting of December 12, 2005 is now back in session. Members, we are still in Kapalua Mauka. I'm going to call for a two-minute recess while we change over here and we are going to bring up Maui Lani and I'm going to be asking for a deferral of Maui Lani. Then we will come back to Kapalua Mauka. Kapalua Mauka stands in recess. . . .(gavel). . .

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**RECESS: 4:09 p.m.**

**RECONVENE: 4:10 p.m.**

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting of December 12, 2005 is now back in session. Before us we have Land Use Item 69. The motion on the floor is zoning change. Alright, Members, if we will go back. We are finished with No. 6. If you'll notice by my correspondence dated on the 9<sup>th</sup>, if you could please look at suggested revision to Condition No. 11, after that, we have Condition 14, but right now, Condition 11. Wait, no. We finished with not 11, excuse me, 14, 14. Sometimes it's late when it's early. . . .*(laughter)*. . .

COUNCILMEMBER KANE: Mr. Chair.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: If we can ask for clarification on the new suggested new Condition No. 14 in light of I believe this body voted with respects to the short-term rental/timeshare uses. I think there was a vote in Committee to deal with those issues and how that vote ties in to what's being suggested in your memo dated December 9<sup>th</sup> as some background and maybe Staff can assist us with understanding where we're at.

CHAIR CARROLL: I realize where we're at on that, but since . . . yeah, maybe Staff would clarify. Ms. Nakata, could you add anything?

COUNCILMEMBER KANE: It's a relevance question in other words, Chair, yeah. What's . . . where are we based on that vote that was taken on the 7<sup>th</sup> of December I think with the motion that Mr. Hokama had before us and we voted, and so that was a . . . that component was removed out. What relevance does this have or what impact of this request that you have to us based on that vote taken on the 7<sup>th</sup>?

CHAIR CARROLL: Yeah. This was generated from that meeting so . . .

COUNCILMEMBER KANE: Thank you.

CHAIR CARROLL: Ms. Nakata.

MS. NAKATA: Mr. Chair, Councilmember Kane is referring to the December 7<sup>th</sup> meeting where the Committee recommended that all references to short-term rentals including transient vacation rentals and timeshare uses be deleted from the proposed Project District bill. That having been said, I believe this condition was originally worded to ensure in the absence of a response from Corporation Counsel on a request the Chair had issued seeking clarification as to whether the park dedication requirements under Section 18.16.320 of the Maui County Code would apply to timeshare and transient vacation

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rentals. Maui Lani, excuse me, Maui Land and Pineapple Company had volunteered to apply the requirements to all dwelling units including the units in question – the short-term rental units and had offered this condition as a result. Since those short-term rental units are no longer on the table, this condition may be mute. Staff's understanding and we may want to seek clarification from Corporation Counsel, is that the park dedication requirements would by County Code apply to all the dwelling units since they are all going to be residential in nature without having to condition them.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: No. I just wanted to ask that as background before we consider this because Staff did say that that may be mute and maybe if Corporation Counsel can provide additional comment prior to us moving forward, Chair.

CHAIR CARROLL: Corporation Counsel.

MR. GIROUX: At this time, Chair, we're willing to opine that this condition would be mute because by County Code, basically, would ensure that the single-family homes would be requiring to have some sort of park dedication.

CHAIR CARROLL: Ms. Johnson.

COUNCILMEMBER JOHNSON: My only question would be that with regard to the affordable units that would be produced, are we also talking about those generating a park assessment requirement or is it only the residential units contained within Kapalua Mauka, not any units produced as a result of a requirement? I just would like to have some clarification on that.

CHAIR CARROLL: Is the Department or Corporation Counsel prepared to answer that?

MR. GIROUX: We would have to get back to you. I'd have to look at the Code.

CHAIR CARROLL: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yeah. This is important to me because I know that Parks had said that they were looking at 9.7 million in terms of a contribution for park assessment and I wanted to find . . . *(change tape)* . . . out exactly where that figure was obtained from and if it did include the affordables or not.

CHAIR CARROLL: And at this point in time, we do not have a motion on the floor.

COUNCILMEMBER JOHNSON: Okay.

CHAIR CARROLL: Well, excuse me, we have a motion . . . the main motion. We have no motion to amend.

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COUNCILMEMBER JOHNSON: Mr. Chair, then if there's nothing, if they need to do further research, I would just ask respectfully to return to the affordable housing requirement and then go to my memorandum because I did offer an amendment and I'd like to clarify it.

CHAIR CARROLL: Proceed.

COUNCILMEMBER JOHNSON: Yes. Mr. Chair, at this time you received a memorandum that says I was requesting change to Condition No. 11-D. That was based on the original proposal. Because now we're way beyond, you know, all of these particular letters, my amendment would be to place a new Section I that states, "Prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable units shall be applicable". That's my motion.

COUNCILMEMBER ANDERSON: Second.

CHAIR CARROLL: Been moved by Ms. Johnson, seconded by Ms. Anderson. Discussion, Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. And I was discussing this with Staff earlier and I know that there are many conditions that are contained within, you know, percentages and who gets what and Maui Land and Pine employees participating in the affordable homebuyers fund or the first time homebuyers fund. This is all irrespective of that. If any affordable housing policy, which we're still working on in Councilmember Mateo's Committee, is adopted that would result in maybe instead of 173 units, 250 units. Whatever it might be I would just like to see that those numbers are protected so that until we get to that affordable housing policy and we may be able because I think we're very close on having that done that just strictly the number of units would be applicable. And that's the only part I'm talking about, not any of the conditions or the matrix or anything else, but just strictly the number of units.

CHAIR CARROLL: Further discussion to the amendment to the main motion on the floor? Seeing none.

COUNCILMEMBER TAVARES: Nope.

CHAIR CARROLL: Oh, Ms. Tavares.

COUNCILMEMBER TAVARES: Mr. Chair, I'm sorry. Yeah. Thank you, Mr. Chair. I will not be supporting this amendment because I'm going to be consistent with what I keep talking about that this Project District is an extension of a resort and that this is a resort/residential and as a resort I think they should be following the chapter that has to do with hotels and affordable housing units, which is 1 in 4. And I think that what we have before us is a satisfaction of that 4 to 1 ratio for this residential . . . resort/residential development. So I think that unless we're going to change the entire hotel chapter or that

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resort . . . it's not called resort, but I guess it's hotels, unless we're going to change that, then we need to be consistent in what we're doing with hotels and resort areas, and to me this . . . **this** is a little bit, you know, different. It's not like the other subdivisions that are gonna come up that are more, you know, residential in nature where we consider residential without a resort component. So for that reason, Mr. Chair, I will not be supporting this motion.

CHAIR CARROLL: Further discussion to the motion on the floor? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I will be supporting this and I don't . . . I don't think that this is anywhere near following under the hotel requirement. These are residential units that are being built and even though they have the amenities of a resort they are still residential. In fact, we took out any possibility for them to allow for transient vacation rental, timeshare, or any such thing that could be considered comparable to a hotel. And as they are high-end exclusive residential units, I think that if this body adopts an affordable housing component or requirement that is higher than 25 per cent, then Kapalua Mauka should pony up like everybody else because they are very high-end and they will be realizing a very high profit on this project. And especially that they are earmarking these affordable units to give preference to their employees. For that reason alone, I think that this condition or this amendment should be adopted. Because if there's any chance that we come up with a higher percentage, Kapalua, of all people, should be willing to pony up. Thank you.

CHAIR CARROLL: Further discussion to the motion on the floor?

COUNCILMEMBER MATEO: Chairman?

CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. I will be supporting the recommendation being made by Member Johnson and I echo the sentiments of Ms. Anderson. I think a project this size has definite impacts that we really need to take a look at a lot closer and I think the language being recommended is not . . . is more than appropriate in addressing our specific issues on impacts. Thank you, Chair.

CHAIR CARROLL: Any further discussion to the motion on the floor? Seeing none. All those in favor of the motion signify by saying aye.

COUNCILMEMBER ANDERSON: Aye.

COUNCILMEMBER MOLINA: Aye.

COUNCILMEMBER JOHNSON: Aye.

CHAIR CARROLL: Opposed?

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VICE-CHAIR PONTANILLA: No.

COUNCILMEMBER TAVARES: No.

COUNCILMEMBER KANE: Roll call.

COUNCILMEMBER TAVARES: Roll call, please.

CHAIR CARROLL: Roll call.

MS. NAKATA: Council Chair Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. NAKATA: Councilmember Anderson.

COUNCILMEMBER ANDERSON: Aye.

MS. NAKATA: Councilmember Johnson.

COUNCILMEMBER JOHNSON: Aye.

MS. NAKATA: Councilmember Kane.

COUNCILMEMBER KANE: No.

MS. NAKATA: Councilmember Mateo.

COUNCILMEMBER MATEO: Aye.

MS. NAKATA: Councilmember Molina.

COUNCILMEMBER MOLINA: Aye.

MS. NAKATA: Councilmember Pontanilla.

VICE-CHAIR PONTANILLA: No.

MS. NAKATA: Councilmember Tavares.

COUNCILMEMBER TAVARES: No.

MS. NAKATA: Committee Chair Carroll.



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what was the result of the earlier Committee's meeting, will this necessitate coming back to Committee if we're gonna put number . . . consider putting No. 14 in at first reading? So that would be my question.

CHAIR CARROLL: Corporation Counsel. Well, that's not really Corporation Counsel's call, yeah. I don't think so. I put that inside there as a recommendation because I thought it was appropriate. The Chair thought it was an appropriate action to take at this time.

COUNCILMEMBER TAVARES: No. I guess . . . I guess the question would be, Mr. Chair, that if we don't do anything about it today, can we put this in at first reading without having the bill sent back . . . bills sent back to Committee?

CHAIR CARROLL: Corporation Counsel.

MR. GIROUX: Chair, I'd have to look at . . . look at that further. As far as what we're looking at right now is a possible amendment and right now I'm still looking at the underlying ramifications of that. So I'd like time to look at that and comment.

COUNCILMEMBER TAVARES: Thank you. Because . . . Mr. Chair, also that as was represented to us, the park assessment was based on 690 units, I believe, and that was the whole . . . the build out of Kapalua Mauka including the affordables.

COUNCILMEMBER ANDERSON: No.

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER TAVARES: That's in addition? The affordables are in addition to that? Okay. So it was just on the 690, the affordables were exempt from the park assessment?

UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER TAVARES: Okay. Thanks for that clarification.

CHAIR CARROLL: We are back to the main motion as amended. Any further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: Mr. Chair, we're only talking about 11, is that correct?

COUNCILMEMBER ANDERSON: No.

CHAIR CARROLL: No, we were talking about 14.

COUNCILMEMBER JOHNSON: Are we talking about the whole entire zoning bill?

CHAIR CARROLL: We are talking . . . no, 11 is done already.



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COUNCILMEMBER JOHNSON: Okay.

CHAIR CARROLL: We were talking about the main motion which is the motion to approve the zoning.

COUNCILMEMBER JOHNSON: Okay. And we're still are gonna await some type of an answer hopefully by the time first reading comes along with regard to the park assessment being applicable to the affordable units?

CHAIR CARROLL: That is correct.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR CARROLL: Mr. Kane.

COUNCILMEMBER KANE: And I'm sorry, just . . . as far as procedurally, we voted on Condition No. 11, as amended, as far as the substitution of the text that was done because Member Johnson . . . oh, no, see and so that's why the question is relevant. Because if you recall, Member Johnson said that she needed a couple of minutes because it was getting printed and Member Anderson said well, I can take up the time, and so we started talking about something else. So we actually haven't voted on Condition No. 11--

CHAIR CARROLL: As amended.

COUNCILMEMBER KANE: --as amended with the replacement of the text and then we went through amendments to the amendments but we never did vote on Condition No. 11, Mr. Chair.

COUNCILMEMBER ANDERSON: He's got a better memory than me.

COUNCILMEMBER JOHNSON: Yeah.

CHAIR CARROLL: Thank you, Mr. Kane. I was . . . thought we had voted on that 11. Alright. Members, I would accept a motion from the floor to approve Condition 11 except as amended.

COUNCILMEMBER MATEO: So moved.

CHAIR CARROLL: Mr. Mateo.

COUNCILMEMBER KANE: It's already on the floor.

COUNCILMEMBER JOHNSON: It's already on the floor.

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CHAIR CARROLL: And seconded by?

COUNCILMEMBER TAVARES: It's already on the floor.

COUNCILMEMBER JOHNSON: It's already on the floor.

COUNCILMEMBER ANDERSON: It's already on the floor.

CHAIR CARROLL: I'm sorry, Mr. Kane.

COUNCILMEMBER KANE: Yeah. And Mr. Chair, I apologize. If that is the case that we haven't voted on 11, as amended, then we did take an action subsequent to that discussion on Condition No. 6, which I believe would be considered out of order.

CHAIR CARROLL: Yes. You are correct.

COUNCILMEMBER KANE: So just procedurally so we can be straight and the record is clean and we don't have any later on – recalls or whatever you want to call the proper text, perhaps Mr. Chair, you want to take a brief recess just to clarify where we're at and what we need to do to get it all straight. And I apologize if I'm raising something that doesn't seem to be clear. But right now it seems like we voted on a Condition No. 6 when what we had on the floor was Condition No. 11, as amended. And so the vote on No. 6 should be done once we complete it that it should be considered and maybe you can speak to whoever you need to speak to so that we can be on the right track and move forward appropriately. I request a recess.

CHAIR CARROLL: Five minute recess. . . .(gavel). . .

**RECESS: 4:29 p.m.**

**RECONVENE: 4:37 p.m.**

CHAIR CARROLL: . . .(gavel). . . Land Use Committee meeting of December 12, 2005 is now back in session. Members, after consulting with Staff, I determined that we do need the motion to approve 11 is still on the floor, and so anything that we did after that is null and void. And now we have that motion on the floor. Further discussion? That's to approve No. 11, as amended many times. Further discussion? Hearing none. All those in favor, please signify by saying aye.

COUNCIL MEMBERS: Aye

CHAIR CARROLL: Opposed? Motion carried.

**VOTE: AYES: Councilmembers Anderson, Hokama, Johnson, Mateo, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

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**NOES:** None.

**ABSTAIN:** None.

**ABSENT:** None.

**EXC.:** Councilmember Kane.

**MOTION CARRIED.**

**ACTION:** APPROVE Condition No. 11, as amended.

CHAIR CARROLL: Members, we need to go back to Condition No. 6. The Chair would accept a motion from the floor.

COUNCILMEMBER HOKAMA: So moved, Chairman.

CHAIR CARROLL: Been moved by Mr. Hokama.

VICE-CHAIR PONTANILLA: Second.

CHAIR CARROLL: Seconded by Mr. Pontanilla. Discussion, Mr. Hokama?

COUNCILMEMBER TAVARES: Gotta amend. . . .*(laughter)*. . .

CHAIR CARROLL: Any further discussion?

COUNCILMEMBER TAVARES: Yes.

CHAIR CARROLL: All those in favor of the motion, please signify . . .

COUNCILMEMBER TAVARES: Mr. Chair?

CHAIR CARROLL: Oh, I'm sorry.

COUNCILMEMBER TAVARES: If we're backing up, we have to back up to the original so I believe we have to amend No. 6 as was amended earlier.

CHAIR CARROLL: Oh, excuse me, I'm sorry. Alright. No. 6 as we did the amendment is on the board at this time. We need to amend No. 6 as it is on the board. The Chair would entertain a motion to amend No. 6. Well, actually we need to . . .

COUNCILMEMBER HOKAMA: Chairman? Mr. Chairman?

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CHAIR CARROLL: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: To cut to the chase with respect to you, Chairman, I would say the motion to adopt a new Condition 6 would be substitution of this entire text.

COUNCILMEMBER TAVARES: No objection.

CHAIR CARROLL: Been moved by Mr. Hokama, seconded by--

VICE-CHAIR PONTANILLA: Second.

CHAIR CARROLL: --Ms. Tavares . . . Mr. Pontanilla. Discussion, Mr. Hokama.

COUNCILMEMBER HOKAMA: No further discussion, Chairman.

CHAIR CARROLL: Thank you, Mr. Hokama. Mr. Kane.

COUNCILMEMBER KANE: Just so we're clear on what we're voting on, it's the substitution is what's represented in your December 9<sup>th</sup> memo, Mr. Chairman?

CHAIR CARROLL: Yes.

COUNCILMEMBER KANE: Okay. Thank you very much.

CHAIR CARROLL: Further discussion? Hearing none. All those in favor of the motion signify by saying aye.

COUNCILMEMBER HOKAMA: Aye.

COUNCILMEMBER JOHNSON: Aye.

CHAIR CARROLL: Thank you, Members.

COUNCILMEMBER TAVARES: No.

COUNCILMEMBER KANE: No votes? Mr. Chair, there's some no votes.

CHAIR CARROLL: Oh, excuse me. All those opposed?

COUNCILMEMBER TAVARES: No.

COUNCILMEMBER ANDERSON: No

CHAIR CARROLL: We have two noes. Motion is carried.

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**VOTE: AYES: Councilmembers Hokama, Johnson, Kane, Mateo, and Molina, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES: Councilmembers Anderson and Tavares.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE motion to revise Condition No. 6.**

CHAIR CARROLL: Back to the main motion, as amended.

COUNCILMEMBER ANDERSON: Main motion for the change in zoning?

CHAIR CARROLL: The change in zoning, correct. Further discussion? Before we continue on that, in a break I talked with Corporation Counsel and he has been able to research some of the questions asked him. Corporation Counsel.

MR. GIROUX: Thank you, Chair. There were two questions. One from Member Tavares regarding Condition 14, whether if we took that out and whether it came back at first reading, would we have to send it back to Committee, and the answer on that is no. The other question was from Member Johnson regarding the affordable housing units, whether those would be assessed a park dedication and for that the answer is no also because they're not within the Project District. And as the rule states, that it's the subdivision within the Project District which would be assessed a parks assessment. But they would . . . when they were . . . when they're going to be developed on the lot that they're going to be developed on, that's the time that those units would then be assessed a park dedication. So they're not going to avoid it altogether. It's just be . . . a matter of time.

CHAIR CARROLL: Thank you. Ms. Tavares.

COUNCILMEMBER TAVARES: No. Mr. Giroux covered that last part but these offsite units will be assessed park assessment when they are being built or when they apply for the building permits on an already zoned land.

CHAIR CARROLL: If there's no objection to having myself and Staff, the numerals and the text in making sure that we have it all in order?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

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CHAIR CARROLL: Thank you.

COUNCILMEMBER TAVARES: Mr. Chair?

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: I think during that time that we were not supposed to talk about some of the things we talked about, there was that concern about the park agreement, that we had a motion and second and it was defeated ultimately. But as an exercise, we need to go through again or is it just mute at this point?

CHAIR CARROLL: Since it was defeated, I would say it is mute.

COUNCILMEMBER TAVARES: That's a . . .

CHAIR CARROLL: That would be the Chair's ruling.

COUNCILMEMBER TAVARES: Chair's ruling, okay.

CHAIR CARROLL: Further discussion on the main motion, as amended, on the floor?  
Ms. Johnson.

COUNCILMEMBER JOHNSON: Because of the fact that I've been consistent in looking at what the needs of the community are, I totally support the kinds of development that the Maui Land and Pine has been engaged in and I think that they do very high quality developments.

My biggest concern and it's been a concern right along is that today again there was an accident on Honoapiilani Highway. You can't get in and you can't get out. And if people had to live with that kind of problem everyday, I think they would be thinking a lot differently than they are because we have no circulator roads. I don't say that this is Maui Land and Pine's problem, but it is a problem when I'm looking at major development. Major development also that will serve people who are not presently living here. Six hundred and ninety, more than likely multi-millionaires, will be moving into these units albeit it's over a period of time. We will get a little bit of affordable housing and we will get some relief. That I'm grateful for. But in terms of water resources, in terms of sewage capacity, in terms of our services that we have to provide and share all throughout West Maui, when we can provide housing that really serves the bulk of our population, I think that to me is more critical.

My priorities right now are not for providing more homes to multi-millionaires, they're really providing for the local population. And if one day a project, and I know that there are some of them that are in the works, if a project comes forward whether it's Department of Hawaiian Home Lands or whether it's another 100 percent affordable

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project, will we have the resources to give to our local people? Will we have the water? Will we have the sewage capacity? IntraWest is building more resort development. Kaanapali Ocean Resort hasn't even opened up completely yet. We have all these resort development, and yes, it does help, you know, to a small extent some of our local population, but the most critical shortage is for housing for local people. When we've got four policemen that actually live on the West Side and I see the rest of them commuting everyday. I'm sure some of them, with the accident this morning, couldn't even get to work. That leaves us very vulnerable.

I would really hope that at some point in time, we as a Council are gonna look at establishing where our resources should be put and where are we going to put our local people – our working people and many of them are working poor. Until we answer those questions and until we address some of the core legislation that we have on our plate, I just really fear for what is going to happen and particularly to West Maui. Because we don't even have the luxury of having a Piilani Highway as a parallel to, you know, the beach road. We don't have those kinds of things. We just have one road in and one road out and no circulation.

So, Mr. Chair, I hold nothing against anything that Maui Land and Pine or Kapalua Land has done. They do wonderful quality projects – not finding fault with that. But what I'm looking at is where are the needs, where are the priorities, and when are we going to start taking care of our local people. So for this reason, Mr. Chair, I am going to be consistent and I will be voting no on this proposal, albeit it's a Project District and it's coming over a period of time, I'm gonna be selfish and I'm gonna say locals first. Thank you.

CHAIR CARROLL: Further discussion? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. Chairman, I'm still not convinced that this kind of high-end development is really what our community supports or even wants. Perceived gated communities is not a desirable growth expectation and the applicant's need for cash to operate is not really a consideration based on their overall finances. As large a project as Kapalua Mauka is, based on the applicant's proclaimed desire to house their employees, a larger amount of affordable units would have demonstrated their commitment since the bulk of their affordable units are predominantly multi-family. Several concessions today had been . . . had been conceded for the advancement of this project, Chairman. So much smoke and mirrors were used that for me caused much confusion and questions. Today, I will not support the motion on the floor. I will continue to take a look at this particular project on through the additional readings that we'll be going through. Thank you, Chair.

CHAIR CARROLL: Thank you, Mr. Mateo. Further discussion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I, with regret, will not be able to support this project today and I say that with all sincerity because when I first came to Maui 25 years ago, Kapalua welcomed me with open arms, and albeit it was a whole

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different management team for the most part than there is in place today, but . . . and that's why I have a hard time with this because I have a lot of good memories and good friends that are still out in the Kapalua area. But when I look at this project, it's not what . . . it's morphed. It's not what it was originally intended to be.

Originally, it was intended to be residential, high-end residential with resort amenities, but Kapalua has enlarged their project. It doubled it – taking 450 acres out of productive ag use for this high-end resort/residential project. And our Community Plan says that we're supposed to preserve existing ag lands and so I have a hard time taking ag land and putting it into a golf course for the exclusive use of wealthy people who will be living in this resort area.

I also have a hard time with their Pulelehua Project, and you know, it is the white elephant in the room, Mr. Chairman. They fully intend to fulfill their affordable housing requirement with Pulelehua. That is also taking lands that's designated for a park and to be maintained in agricultural production for, again, high-density development in an area of the West Side that really needs to have an open space and park area because of the congestion.

So given all of that I think I probably could have still gotten behind what Kapalua is doing because I do think they are a very quality organization and their intention is good in that they want to keep the density low. They want to keep it high-end, but there's no balance. There's no trade-off to the community. Even the affordable housing that they're doing, Mr. Chairman, is for the benefit of their company and I just think when you are a large company such as Kapalua Land Company, Maui Land and Pine, have so much acreage available and we are in such dire need of land for housing for our working population, that they could have stepped to the plate and offered up something to the County that we could use beyond the employees of Kapalua.

You know, I mean where's the benefit to the community as a whole? Yeah, down the road we're gonna get real property tax monies that will help us operate the County, but I don't see that as a trade-off because that's gonna happen across-the-board as the County grows, and we need to see . . . we need to see benefits to the community as a whole when we allow this amount of land to be taken out of agriculture production for the sole benefit of high-end users. You know, we're only further dividing the difference between the haves and the have nots.

If Kapalua had been more generous and had come forward with a better affordable housing component, I would have been happy to support them. But I think the community as a whole is being extremely short-changed. Kapalua has held their land for so many years there's hardly any cost in their land at all, and yet we only get 173 units. A 100 and what was it, 125 of them rentals? That's not a fair trade-off, Mr. Chairman.

So I'm sorry. I'm not able to support this and I will have more to say at our first reading. But, you know, I've read through the West Maui Community Plan over and over again.



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You know, it says that the lands north of Kapalua should be preserved in traditional ag use. It says that, that we should control the loss of productive ag lands and what they're doing are setting in motion the act of taking more of our ag lands out of production for the highest and best use which always translates . . . *(change tape)*. . . for the corporate entity and their bottom line. And you know, I don't begrudge them on that, but where's the trade-off? Where's the benefit to the community as a whole? So for that reason, Mr. Chairman, I'm really sorry I'm not able to support this project.

CHAIR CARROLL: Thank you, Ms. Anderson. Further discussion to the motion, as amended, on the floor? Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. This has been a tough one, yeah. I'm gonna take a different view from the comments made by my colleagues earlier. First of all, there's no perfect project, as we all know. I believe this project has been well planned. The applicant has made an effort to make themselves available for input from all sectors of the community. I look at this project over the long term. It will provide employment in different areas of our community. Our economy is strong right now, but sooner or later it will go down. It's just the law of averages. And we will have people that will need work.

You know, I've been going around to the various senior centers and many of them appreciate the programs that we have, but all of that is not possible without the revenue generated from real property taxes. If we start to put the clamps down on projects like this, then the issues we're gonna have to deal with are program funding shortages. Then we're going to hear from our community in that area. What about the needs of our youth? The needs of various infrastructure upgrades to our parks, our roads? So that's a dilemma we face. We could easily just stall this project. We can do nothing or move on. I choose to move on, Mr. Chairman.

Full build out of this project will take some time. It's not like we're gonna have these . . . whatever six, 700 units that's going to happen overnight. It will take time in phases. Yes, there might not be the amount of houses available for employees to purchase. The demand, however, is for more rentals on the West Side. The Company has made an offer of \$500,000 to provide assistance. Yes, for their employees, however, these employees you must remember, Mr. Chairman, they are also citizens of Maui County. They're not a separate entity. They're not just an object. The people who work for Maui Land and Pine – there's a lot of them. They are our friends, they are our neighbors, acquaintances, whatsoever. So they are citizens of Maui County and not just objects, employees, of a large entity, Mr. Chairman. So I think we need, for me anyway, we need to keep that perspective.

Yes, there will be the traffic issues, the water issues, sewage, but that's with every other project that we look at, the ones that we've approved in the past. It's a fact of life that we're gonna have to deal with. As it relates to the roads for West Maui, there is progress

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being made. Slow, slow. But I believe over time we will at least mitigate some of the traffic issues on that part of the island.

So Mr. Chairman, it's been quite a challenge. I think the Company's gone through a lot of challenges. We've gone through a lot of challenges. But I think we need at least for the sake of keeping our economy healthy and preparing for a downturn, we need to support projects like this from a kamaaina company. This is not a fly by night outfit. And I would hope that they would take into consideration the comments that we have made and as they look at the possibility of another upcoming project that they will take all this into concern, and you know, be made aware that this Council is doing their best to try and seek as many opportunities for homeownership, as well as rental assistance. So for me, Mr. Chairman, I will go ahead and make a tough decision and vote yes because it's also tough to vote yes as it is to vote no. Thank you.

CHAIR CARROLL: Further discussion on the motion on the floor? Hearing none. Roll call vote.

MS. NAKATA: Council Chair Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. NAKATA: Councilmember Anderson.

COUNCILMEMBER ANDERSON: No.

MS. NAKATA: Councilmember Johnson.

COUNCILMEMBER JOHNSON: No.

MS. NAKATA: Councilmember Kane.

COUNCILMEMBER KANE: Aye.

MS. NAKATA: Councilmember Mateo.

COUNCILMEMBER MATEO: No.

MS. NAKATA: Councilmember Molina.

COUNCILMEMBER MOLINA: Aye.

MS. NAKATA: Councilmember Pontanilla.

VICE-CHAIR PONTANILLA: Aye.

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MS. NAKATA: Councilmember Tavares.

COUNCILMEMBER TAVARES: Aye.

MS. NAKATA: Committee Chair Carroll.

CHAIR CARROLL: Aye.

MS. NAKATA: Motion carries.

**VOTE:       AYES:     Councilmembers Hokama, Kane, Molina, Tavares, Vice-Chair Pontanilla, and Chair Carroll.**

**NOES:     Councilmembers Anderson, Johnson, and Mateo.**

**ABSTAIN:  None.**

**ABSENT:   None.**

**EXC.:     None.**

**MOTION CARRIED.**

**ACTION:     Recommending FIRST READING of revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII", RECORDATION of unilateral agreement, and FILING of communication.**

CHAIR CARROLL: Members, we have come to the end of our meeting today. I know it's been a very hard day and procedurally it has been very interesting. I would like to thank all of you for your patience and I would like to thank our audience for staying with us and our television audience for joining us this day. Any announcements?

COUNCILMEMBER TAVARES: Mr. Chair?

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: Just for the sake of review, could you or Staff go through and say we have passed out of Committee three bills. Is that correct?

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CHAIR CARROLL: That is correct.

COUNCILMEMBER TAVARES: If you could name what the bills are?

CHAIR CARROLL: We have passed out three bills. The first bill that we had passed out . . . and that's these two bills were passed out on the 7<sup>th</sup>, was a "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2474 [*sic*] (1996), THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP, FROM AGRICULTURAL AND OPEN SPACE TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA), FOR PROPERTY SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, MAUI, HAWAII". The second bill was "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)". And the bill we have just passed out and voted on, as amended was a "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, MAUI, HAWAII" and to file the communication.

COUNCILMEMBER TAVARES: Thank you.

CHAIR CARROLL: Members, again, thank you for your patience and your diligence. This meeting stands adjourned. . . .(*gavel*). . .

**ADJOURN: 5:01 p.m.**

APPROVED:



ROBERT CARROLL, Chair  
Land Use Committee

lu:min:051212-2

Transcribed by: Clarita Balala

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

JANUARY 6, 2006

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, JANUARY 6, 2006, BEGINNING AT 9:05 A.M., WITH CHAIR G. RIKI HOKAMA PRESIDING.

CHAIR HOKAMA: The Council of the County of Maui shall come to order. This is the regular meeting of the sixth of January, 2006.

Mr. Clerk, please call the roll.

### ROLL CALL

PRESENT: COUNCILMEMBERS MICHELLE ANDERSON, JO ANNE JOHNSON, DAIN P. KANE, DENNIS A. MATEO, MICHAEL J. MOLINA, JOSEPH PONTANILLA, CHARMAINE TAVARES, VICE-CHAIR ROBERT CARROLL, AND CHAIR G. RIKI HOKAMA.

EXCUSED: NONE.

DEPUTY COUNTY CLERK JEFFREY T. KUWADA: Mr. Chairman, nine members are present. A quorum is present to conduct the business of the Council.

CHAIR HOKAMA: Thank you very much, Mr. Clerk.

Members, people of our County of Maui. Happy New Year! It's good to see all of us back ready to attack the people's work.

This morning, we are privileged to have Mr. Mateo giving us our opening remarks, after which, I would ask all of us to rise and say the Pledge of Allegiance in unison. Mr. Mateo.

## OPENING REMARKS

The opening remarks were offered by Councilmember Mateo.

## PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR HOKAMA: Thank you very much for your New Year message, Mr. Mateo. Much appreciated.

Mr. Clerk, shall we proceed with the agenda.

## PRESENTATION OF WRITTEN OR ORAL TESTIMONY

DEPUTY COUNTY CLERK: Mr. Chairman, we have no one signed up to testify.

CHAIR HOKAMA: The Chair will allow a addi--additional minutes for anyone wishing to provide public testimony on the agenda as posted for today's meeting, the sixth of January, 2006.

Mr. Clerk, proceed.

The following committee reports were presented.

## COMMITTEE REPORTS

### COMMITTEE REPORT

NO. 06-1 - LAND USE COMMITTEE:

Recommending the following:

1. That BILL NO. 1 (2006), entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2476 (1996), THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP, FROM AGRICULTURAL AND OPEN SPACE TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA), FOR PROPERTY

SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII" be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That BILL NO. 2 (2006), entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)" be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That BILL NO. 3 (2006), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII" be PASSED ON FIRST READING and be ORDERED TO PRINT;
4. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning"; and
5. That County Communication No. 04-181, from the Planning Director, be FILED.

CHAIR HOKAMA: Thank you very much, Mr. Clerk.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT COMMITTEE REPORT NO. 06-1 BE ADOPTED.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to adopt Committee Report 06-1. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I would like to, at this time, propose an amendment.

CHAIR HOKAMA: Please do.

VICE-CHAIR CARROLL:

I WOULD MOVE TO AMEND THE THIRD SENTENCE IN SECTION 2 OF THE PROPOSED BILL ATTACHED TO COMMITTEE REPORT NO. 06-1, BY DELETING THE COMMA CURRENTLY FOLLOWING THE WORDS "SINGLE-FAMILY", AND INSERTING THE WORD "AND" AFTER THE WORDS "SINGLE-FAMILY", AND STRIKING THE WORDS "AND RESORT RESIDENTIAL" PRIOR TO THE WORD "USES", AND STRIKING THE PHRASE "(INCLUDING TRANSIENT VACATION RENTALS AND TIME SHARE)" FOLLOWING "USES". THE SENTENCE WOULD THEN READ: "THE PROJECT DISTRICT ALSO INCLUDES 690 RESIDENTIAL UNITS (WITH AN OVERALL AVERAGE DENSITY OF 0.7 UNITS/ACRE) IN A MIXTURE OF SINGLE-FAMILY AND MULTI-FAMILY USES INTEGRATED AND COMPLEMENTARY TO THE RECREATIONAL FACILITIES MENTIONED ABOVE."

CHAIR HOKAMA: Okay. Is that a motion, Mr. Carroll?

VICE-CHAIR CARROLL: That is a motion.

CHAIR HOKAMA: Thank you.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to amend the main motion, which is attached to Mr. Carroll's January 3, 2006 memo to you the Members of the Council, whereby we are amending "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2476, THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURAL AND OPEN SPACE TO WEST MAUI PROJECT DISTRICT 2 FOR PROPERTY SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII." Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

At its meeting, the Land Use Committee meeting of December 7, the Land Use Committee recommended that all reference to "short-term rentals", including "time share" and "transient vacation rentals", be deleted from the proposed Project District



bill. At the time of that recommendation, Committee had already voted to recommend that the proposed Community Plan Amendment bill be passed.

My amendment to delete references to "transient vacation rentals" and "time share" from the Community Plan bill to conform with the Committee's intent not to permit such uses in the Project District. Further, because "resort residential" uses are not defined under Title 19, Maui County Code, and the term is used in the Community Plan Amendment bill to include transient vacation rentals and time share uses, my amendment would also strike the term "resort residential", and insert the words "and" prior to "multi-family".

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion to amend? Ms. Johnson.

COUNCILMEMBER JOHNSON: I had a question with regard to just the statement of the, the residential unit. Because residential, in my view anyway, could be construed as either long-term or short-term, and short-term sometimes, you know, may be considered, I guess, a, a vacation rental, how would that be interpreted just, if we just leave it as residential? Will that leave it in the same position that we currently have where it would be subject to interpretation whether it be short-term or long-term? And if Corporation Counsel could answer that or, you know, whoever is able to do that.

CHAIR HOKAMA: Thank you.

Mr. Moto, since Ms. Johnson had indicated comments from you, are you prepared to provide a comment at this time to her question?

CORPORATION COUNSEL BRIAN MOTO: Good morning, Mr. Chairman and Members. Brian Moto, Corporation Counsel.

In responding, I, I'm assuming the question is based upon--I'm looking here at Mr. Carroll's memo and the, the language that he's amending; and that the reference is to the phrase "and resort residential." Is that, is that reference to residential?

COUNCILMEMBER JOHNSON: No. It's the first . . . it says, "project district also includes 690 residential units." And my question is, because there's both short-term and long-term rentals or residential units, I'm not sure what "residential" implies. You know, are they, could they be used for rentals or not?

CORPORATION COUNSEL: Yes, I understand the question.

First, I, I don't have the Community Plan in front of me for, for the West Maui District. I don't, my memory is I don't believe that it distinguishes between short-term and long-term residential uses. Usually, the term "long-term" and "short-term" becomes important if you're talking about, if you're trying to distinguish between apartment and hotel uses. My memory of community plans in general is that they just refer to simply residential uses, sometimes multi-family uses. And if they intend specifically hotel uses, then, then that designation will be used.

So the terminology that's in this amendment is basically tracking the, the defined terms as used in the, the Community Plan. This kind of question is probably also useful to direct to the Planning Department who is--works with and interprets these community plans.

CHAIR HOKAMA: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. You know, my only concern is so that we don't get into a future situation where there's any ambiguity about what we mean. And because residential units imply that the person's going to be living there on a long, to me, anyway, on a long-term basis or renting it out, and, and I'm assuming that rentals would still be permitted as long as they're long-term; but, I would like some kind of answer to the question. If we need to clarify it or if the committee report and the intent, when people go back and they check this, if that's clear enough, I'm satisfied with that. But I don't want some future interpretation to be so broad that it, it would once again go back to what we're trying to avoid.

CHAIR HOKAMA: Thank you, Ms. Johnson.

I, I would say from, as your Chair, that I believe Corporation Counsel has been very consistent in their comments to the Members of the Council as far as "residential" permitted uses. We also have an opinion from Corporation Counsel that within the language of the ordinances before us, because of a Project District designation, what is not listed as permitted, "all others" means it's not permitted. So I think it was very clear in Mr. Moto's office's written opinion of what is permitted and not permitted uses within the Project District area.

If I'm in error, Mr. Moto, please, you know, make a correction.

Anything else, Ms. Johnson?

COUNCILMEMBER JOHNSON: No. The, the only other thing would be that if there would be further clarification where I, I guess, because it doesn't say "rental", you know, it probably wouldn't be appropriate to put in this section. But somehow I would like included in there that we mean long term. Now, if that's not appropriate or if that's not the intent of the maker of the motion, then I would just like that clarified.

CHAIR HOKAMA: Mr. Carroll, do you have any comments to Ms. Johnson's query?

VICE-CHAIR CARROLL: Thank you, Chair.

But, really, me and my staff researched this amendment to make sure that it was sufficient to cover our concerns and the concerns that the Councilmember has. And I am confident that the wording that we have now does reflect the intent, and I cannot see anybody interpreting it differently. I am very satisfied with the wording. I see no reason to change or modify.

CHAIR HOKAMA: Okay. Thank you.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Then just to put it on the record, we are referring to no short-term vacation rentals or transient vacation rentals, and that would involve at least, is it--and Mr. Moto, could you clarify this--is that sixty days or more, or thirty days or more? Or what would be considered long or short? Where's the cutoff point?

CHAIR HOKAMA: Corporation Counsel Mr. Moto.

CORPORATION COUNSEL: Mr. Chairman, let me first of all say that the language that we're looking at here is in the Community Plan, and the Community Plan itself, I don't know how much detail it goes into when it tries to distinguish exactly what is a short-term versus a long-term.

I think for that, you would look at zoning provisions--which would be covered under Title 19 and the zoning bill, that's the other bill that's attached to this. Technically, the floor amendment deals with the Community Plan bill, not the zoning bill that's related.

I'm sorry, I don't recall at the top of my head right now the exact number of days between "short-term" and "long-term." I'd have to spend a little bit of time looking at the, the zoning code.

COUNCILMEMBER JOHNSON: At, at some point, I would like the answer to that question, Mr. Chair. Thank you.

CHAIR HOKAMA: I believe State statute lists 180 days; and that is the basis of, of any County legislation or law also.

Anything else, Ms. Johnson?

COUNCILMEMBER JOHNSON: No.

CHAIR HOKAMA: Thank you.

Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. I'd like to maybe help clarify this.

According to Title 19, "'Short-term rental' means a transient vacation rental or use in which overnight accommodations are provided in dwelling units to guests for compensation, for periods of less than thirty days." That's Title 19, Section 19.04.040. There is no definition in Title 19 or Title 18 for just "residential." However, in Title 18, there is a definition for "long-term residential." And it states: "'Long-term residential development' means a single-family or multi-family dwelling which is occupied by an owner or lessee for a continuous period of six months or more per continuous twelve month period."

So in that, this amendment that Member Carroll is providing makes the Community Plan Amendment consistent with the amendment that we made for the Change in Zoning ordinance. I think that it, it's tied to these definitions through our, our zoning ordinance. And it may make it more clear to people down the road if we amended Mr. Carroll's amendment which says, "The project district also includes 690 residential units," if we were to just add "690 long-term residential units." I just offer that as further clarification, Mr. Chair.

CHAIR HOKAMA: Okay. Thank you very much.

Members, further discussion on the motion to amend as presented to you by Mr. Carroll? Hearing none, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

We are back to the main motion as amended. Ms. Johnson.

COUNCILMEMBER JOHNSON:

YES, I MOVE TO AMEND THE ITEM THAT WE JUST ADOPTED TO INCLUDE THE PROJECT DISTRICT ALSO INCLUDES 690 LONG-TERM RESIDENTIAL UNITS.

COUNCILMEMBER ANDERSON:

SECOND.

CHAIR HOKAMA: We have a motion to amend by Ms. Johnson, seconded by Ms. Anderson, to insert the words "long-term" between "690" and "residential" on "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2476, THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP, FROM AGRICULTURAL AND OPEN SPACE TO WEST MAUI PROJECT DISTRICT 2, FOR PROPERTY SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII". Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. I just believe that it further clarifies the intent of the discussions that we've had with regard to the people who will be living in the units, that we want them to be long-term and not short-term. Thank you.

CHAIR HOKAMA: Thank you.

Further discussion on the motion to amend, Members? Okay, seeing none, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON, KANE, MATEO, VICE-CHAIR CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS MOLINA, PONTANILLA, AND TAVARES.

CHAIR HOKAMA: Two "noes"?

COUNCILMEMBER MOLINA: NO.

CHAIR HOKAMA: Three. Okay. Motion passes: six "ayes"; three "noes", with Members Molina, Pontanilla, Tavares, voting "no."

We are back to the main motion as amended, Members. Further discussion?  
Ms. Tavares.

COUNCILMEMBER TAVARES: Mr. Chairman, if we're done with the, with that bill, I have a, another amendment I'd like to offer.

CHAIR HOKAMA: Thank you. Please.

COUNCILMEMBER TAVARES: Okay. In the Project District bill, Mr. Chairman, you have a, and Members, you have a memo dated January 5 from myself, even though you received it this morning. It was regarding a floor amendment, and it, it, if I refer you to number one on the first page, which is the intent is to revise the, quote, "height", unquote, definition of the proposed Project District bill by referencing the relevant Maui County Code provision rather than the grade.

And if you will turn to page four of, of the memo, where it starts with "MOTIONS", this is what I, I'll make the motion now.

I MOVE TO AMEND THE PROPOSED PROJECT DISTRICT BILL ENTITLED "A BILL FOR AN ORDINANCE AMENDING" CHAP-- AMENDING "TITLE 19 OF THE MAUI COUNTY CODE TO ESTABLISH WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)", ATTACHED TO COMMITTEE REPORT NO. 06-1, BY DELETING ALL REFERENCES TO, QUOTE, "ABOVE FINISHED OR EXISTING GRADE, WHICHEVER IS LOWER", UNQUOTE, AND BY INSERTING THE PHRASE, QUOTE, "AS DEFINED IN SECTION 19.04.040 OF THE MAUI COUNTY CODE", UNQUOTE, IN SECTIONS, AND I DON'T, I'M NOT GO--I GUESS I SHOULD READ ALL THE SECTIONS, 19.92.040(B)(1)(d), 19.92.040(B)(2)(e), 19.92.050(B)(4), 19.92.060(B)(1), AND 19.92.070(B)(1).

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion to amend made by Ms. Tavares, Tavares, seconded by Mr. Carroll, to amend the proposed Project District bill. Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, Mr. Chairman. I think as we discussed in Committee, a, a proposal is, is being circulated through the various Planning Commissions that address this particular part of chapter, Chapter 19, or about the, the grade and whether it's a finished grade or having to do with, with what can go on, on a piece of property. And I think that if we reference the Maui County Code either as it exist or as it's revised, or at the time that this development will take place, the law in, in, in effect at the time, because we know this is a phased-in project, will apply, rather than us going back every time and changing not just this particular project, but all other projects.

So it is more efficient, I believe, to reference the Maui County Code and whatever those provisions are at the time of permit application, for example. So I would offer this to, to help us so that we don't have to go back, and we'll be in, in step with the time, whichever the time it is. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion to amend? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair.

I think it's prudent to see what all these sections say, so to make sure that we are being consistent because she's referenced vary section--various sections within Title 19. And I thought that it was actually only going to be Title--as defined by Section 19.04.040, but there's other sections here, 19.92.050. And, and if we could just have a few minutes recess to verify that there's consistency within these definitions.

COUNCILMEMBER TAVARES: Ms. Anderson.

COUNCILMEMBER ANDERSON: Yes.

COUNCILMEMBER TAVARES: Oh, sorry. Maybe I can clarify that for you.

COUNCILMEMBER ANDERSON: Fine.

COUNCILMEMBER TAVARES: Chapter 19.92 is all about the Project District. So what we're changing is all the references within this Project District that have the height requirement are now being changed from what it was to referencing the County Code.

COUNCILMEMBER ANDERSON: Okay. I understand now. Thank you.

Nineteen-0-four point 0-four-0, says that, "'Height' means the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower." And that ties it to the natural grade, so I have no problem with that, Mr. Chairman.

I have not seen the new definition that's being promoted. And because of that, I think that's why I made the amendments in Committee to make sure that we kept this to the existing or natural grade.

I think it's quite disturbing that developers are coming in and totally changing our topography. I think Maui is quite nice the way it is and that we don't need to be blasting out rock so that adjustments can be made for drainage because they have altered the drainageway by putting in fill to allow for greater view planes.

Now, I don't know that, that is the intent for Kapalua Mauka, but I see it going on all over South Maui and it only leads to problems. So I'm, I'm fine with this amendment because it should be tied to the Code. And should this definition be changed in the future, well, we'll deal with it then when that comes forward, but.

CHAIR HOKAMA: Council will be making that determination, Ms. Anderson.

COUNCILMEMBER ANDERSON: That's right. So we'll have another shot at it. So I support Ms. Tavares' amendment.

CHAIR HOKAMA: Thank you very much.

Members, further discussion on the motion to amend? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.



CHAIR HOKAMA: Motion is carried.

We are back to the main motion as amended, Members. Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, at this time, if there are no other amendments, may I request your consideration of closing public testimony so that we can proceed without any potential interruptions to . . . to, to our voting process and procedures.

CHAIR HOKAMA: The Chair is happy to take your request under consideration. Therefore, it being nine thirty-two, Members, with no objection, the Chair is closing public testimony-- before I close it, let me just ask once more.

Is there anyone in the attendance wishing to provide public testimony on any item agenda'd for today's meeting? Okay, seeing none, with no objections, the Chair orders testimony closed for today.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Thank you. So ordered.

We are currently, Members, on a motion as amended regarding Committee Report 06-1. Further discussion on the motion as amended, Members? Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, Mr. Chair, thank you very much.

I will be supporting the motion as amended on the floor, although I must admit I am a bit disappointed in what has been the wishes of the, of the Committee and the Council regarding the transient vacation rental portion of this proposed project. I still am feeling that if there is any proper place for transient vacation rentals, it is a place like this. We are going to be dealing with transient vacation rentals, or are dealing with it in my Committee presently, the Planning Committee. And I, I do look forward to lots of lively discussion regarding that. And, at the end, Mr. Chairman, I will make an announcement about our upcoming hearings in Hana, Molokai, and Lanai on this very topic.

But, you know, I will abide by the wishes of the majority of the Council. I will be supporting the project as designed, not that I think it's perfect by any means. It's not. And we all know that there are traffic considerations that have to be addressed in the near future. And, and, unfortunately, most of that's out of our hands, in particular, our direct hands since it has to do with bypasses that would be State roads or State highways. I hope that we will continue to work diligently and the Administration will work diligently to provide the traffic relief that we need on the West Side.

So, Mr. Chairman, with those little comments, I'll conclude. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion as amended? Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. Because there was much discussion in Committee, I think that many of the things that I'll just reiterate have to do with the use of our resources and the allocation of those resources to specific groups of people. I have no problem with the beauty of the Kapalua Resort area and the quality of the product that's being delivered. That is the way it's being marketed, and we have a beautiful resort area.

And I applaud the efforts of this company for many of the good things that they have done: Maui Preparatory Academy is one of them; the undergrounding of their utilities; many of the sensitive ways in which they have dealt with a lot of the, I guess, the vistas in that area; and even the golf course. There's a golf tournament slated for this weekend. So I mean as a company, they do a really fine job of delivering what they deliver.

My concern has always been, though, with any large developments, whether it was Kapalua Mauka, whether it is Amfac/JMB's proposal, whether it's another proposal that comes forward, even Pu`unoa, I have problems when we have not done our core legislation so that there create--there's created a level playing field so everybody pays equally when they come before us. That's a problem for me.

I would have hoped that we could have waited a little bit longer because at least on the affordable housing and the traffic impact fees, I think we would have come up with something that, you know, would have given us or at least the developer a, a guideline.

My other concern, though, is for water; it's for sewage. If we use up--and we're already maxed out in our sewage capacity--and we have all these other projects coming, I know that we're going to run into trouble. If a 100 percent affordable housing project comes in, where we're going to get the capacity?

We say that we want affordable housing and we want it now. Well, what if by approving these types of, I guess, future developments, even when they're coming for their building permits and what not, I don't see anything that's going to constrain the growth in West Maui in the areas which is primarily resort. The Council has no control over Kaanapali ocean resorts. We have no control over . . . They're all going to, you know, tap into sewage water, everything that we have as resources in West

Maui. And we have this one tiny, itty-bitty little road. Last night, going home, the traffic was backed up to Ukumehame, and there was no accident and there was no rubbernecking, nothing else. The one traffic light at Launiupoko, and perhaps the fact that you can no longer bump off onto Front Street, because that's closed off due to construction, but backed up to Ukumehame? You cannot solve problems by just loading on more and then hoping that it's all going to get worked out in the end. We have to get a corridor. We need to do some key things, and particularly in West Maui.

Our economy and this, the whole budget that we produce is tied into principally South and West Maui that produces the brunt of the revenues for real property. Everybody keep saying, "Oh, yeah, we're going to get all this revenue," and we're get, getting, you know, some homes in that area for rental that would be affordable. Well, that's all well and good, but when the straw is broken on the, you know, camel's back when they have that last straw where people are backed up to Maalaea every day, you are not going to get the revenues generated because it will no longer be an attractive area for people to go to. That's just the simple truth. You cannot keep repeating the same behavior, the same kinds of approvals every time and expect a different result. It cannot happen. And by adding more problems onto existing ones, you are not going to get where you want to go.

If every single thing--and this is a good company, I'm not speaking about companies that, you know, haven't taken care of their employees. This company has taken the initiative to provide some housing for their employees and some of it is affordable. That is the example.

Why did we see all of the people during the Committee meetings, huge numbers of employees saying, "I want a home." These are existing employees. These are not new employees being created by the jobs that will come with this resort development. These are existing employees. If everything is working, then why were they all sitting in the gallery asking, "When is my turn going to come?"

So there's something radically wrong if a good company who's trying to mitigate the impacts of development and provide living close to where their employment is and reduce the traffic on Honoapiilani Highway has existing employees in the hundreds that can't find a place to live. And then we go and we add more development, just open it right up, and we expect that we're going to resolve the problem. If we haven't resolved it now, then I don't think this is going to do it because these are the existing employees. What about the new employees that allegedly this resort development will create?

So these are the questions, Mr. Chair, that I have to be able to answer the people in West Maui; I have to be able to answer to the citizens who pay taxes here, "Why are

we not getting the revenues for West Maui?" because people no longer find it a pleasant trip to go down Honoapiilani Highway to an overcrowded, overtaxed infrastructure type of community.

And it's not just this. I'm not blaming Kapalua Land or Maui Land & Pine. This is the cumulative impact of all these years. And by adding more development, we're just not going to get there. We've got our work to do, and I would like to have a chance to do it before we heap on more misery.

And I've said enough, and thank you for allowing me to go on, Mr. Chair. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on your, our main motion as amended? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank, thank you very much.

Chairman, I've taken a long look at the project and tried to really reconsider and weigh varying aspects of the project that I thought initially were shortsighted and virtually inadequate. I've spent time recalling request for continued negotiations, the ability to sit and talk story about potential for a win-win situation versus a win-lose one that is really a poor result.

I still continue to, to struggle with this particular project because I still see the project with its inability to address some of today's most pressing needs, needs that the company themselves have addressed as employee needs that they need to deal and address at this particular point in time.

We dealt with a lot of smoke and mirrors, Chair. Numbers were sketchy, plans inconclusive, and noted financial needs of this particular company was extremely over exaggerated. Who are we building houses for? Questions that we all ask ourselves. Developments such as this one, Chairman, is not the priority of this community. Each of our members, each of us have taken strong positions in supporting good projects that address the resident needs for housing. Each one of us should take a moment and reflect on the words that we spoke when it came to high-end developments and meeting the needs of our resident community, and our words should be echoing in our minds.

I still have difficulty with this particular project, Chair, Chairman. And with mixed feelings this morning, I will continue to vote no on the motion on the floor. Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion, Members? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I will be supporting this motion. The many meetings that we had on this project, you know, we've heard testimony from employees as well as from the community. What they all talk about is affordable housing, infrastructure, traffic, schools, stream flows, as well as the adoption of agricultural lands. There were supporters and nonsupporters of the project.

But for me, Chair, I, I look at the benefits that is being provided, as well as the issues that concern West Maui. This project will support economic growth for Maui County. For Maui Land & Pine, it will support to keep agriculture as a viable business and, thereby, continue to ensure employment opportunities in the agricultural industry continues on. Maui Land & Pine has been in agriculture for as long as I can remember.

In the early years, pineapple was a profitable product to keep the company going. But with competition in the pineapple industry worldwide, you know, Maui Land & Pine Company is struggling just to keep the agricultural side of the business, you know, viable.

You know, with the numerous conditions that we impose on this project, you know, we have increased the insurance that the concerns that we've heard regarding affordable housing, schools, road improvements, water conservation, preservation of historical sites, and most importantly that they utilize the best management practices to prevent infiltration to con--of contam, contaminants from reaching the underlying aquifer that's in Kapalua. These will be addressed.

As far as the highway itself, yeah, we have a problem in regards to H'piilani. It's a two-lane highway. And it's been a problem for over twenty/twenty-five years now, and it, we continue to struggle with that. So local government, as well as State government and Federal government, need to be involved in creating that H'piilani four-lane highway that we all dream of. And, hopefully, one day, we'll realize the completion of H'piilani.

But for me, Chair, the benefits that it brings Maui is a lot. The issue of traffic is a great concern for me also.

So thank you, Chair. I'll be supporting this proposal as amended.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

There's been a lot of great and interesting discussion, and I respect all viewpoints my colleagues have shared with us today.

You know, this is, there's been a lot of give and take with this project. In the area of housing, the percentage is fair. It may not be the best to some, but it's fair when taken into consideration there is no formal housing policy adopted by this Council at this time. It's still a work in progress. So the question becomes do we treat the so-called "big applicants" the same as the little applicants? I mean, we're, we're in a democracy here, so our hands are tied, in my mind, somewhat. In terms of treatment, we have to treat everybody fair.

So there's been concessions made by both sides. And, you know, on the subject of the economy in which Member Pontanilla has talked about, that, to me, is also another issue here along with the discussion that has been brought about the so-called "million-dollar homes." We're looking at a company that employs a lot of people on this island, which include those who have recently, as well as long-time kamaaina. And we can have all the available units out there for purchase, but if people don't have the means to purchase them, in other words, don't have jobs that a company like this provides for, then there's no sense in people getting houses. If they don't have money or jobs, what's the, you know, what's the point here? So we need to keep that in mind when we create legislation or support legislation or deny legislation in all aspects.

The long-term health of our economy, to me, is an important priority. Yes, the economy is going strong right now, Mr. Chairman. But, inevitably, it will go down. And this project, I, in my mind, provides a long-term opportunity to keep our citizens working, to keep our families together so they can provide the means for their kids to go to school, put clothes on their backs, and opportunities for housing and other things, you know, Mr. Chairman. So that's always part of my decision-making when I look at, you know, projects like this that come online.

But, you know, part of this problem, and I can agree with Member Johnson's concern with the traffic. It's been the State over the years. We still gotta stay on their okoles because, you know, I, I blame the State for a lot of the problems West Maui is having when it comes to traffic. And it's a darn shame over--it's taken this long to get some kind of traffic relief. It's something we just gotta continue to work with the State, and it's, it's frustrating, and I agree. But you cannot just punish one landowner and be so

presumptuous that, you know, they have been the cause of all the problems of traffic. It's government in itself, you know. And, unfortunately, we don't have power over the State. But I hold the State accountable for a lot of the traffic problems that West Maui is experiencing.

So, for me, Mr. Chairman, I will support this project. And it may not be perfect, but, again, we gotta look at the long-term health of keeping our employers who provide opportunities for many of our citizens strong because if we start to deny or create legislation that could be deemed as anti-business, then we're going to have problems of a different kind, Mr. Chairman. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion.

COUNCILMEMBER TAVARES: Chair.

CHAIR HOKAMA: Yes, Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, for my second and final round on this.

Members have, Mr. Pontanilla in particular, talked about conditions and--that we've gone back and forth. And for those people who might have missed our intense and exciting Committee meetings regarding the conditions, you know, just as a review, there are thirteen conditions. In one of those conditions, there are nine sub-conditions, so there are a lot of conditions that have been placed on this project. And I would like to point out two of them.

And one--the first one is number ten, which has to do with their contribution for traffic improvements. And in the, in that condition, we also had put in there that they are going to pay to the County of Maui the amount of \$3,500 or the prevailing rate in effect at the time of final subdivision approval, whichever is greater, per unit. So we have taken into consideration, with this project, that it is tied to what future work we do in the traffic impact fee area.

The other condition that I want to point to has to do with housing, and that's under Condition No. 11. And after you get through all the alphabets there, alphabet "g" states: "That, prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply."

So I believe we've tried to look at this project, because it has always been presented to us that it is going to take years to implement the full build-out of the project, and

that it is a, a phased-in project, and may take, you know, like around ten years, as I understand; but, if we change or adopt and revise housing policies, it will be whatever is in effect because at that time, our laws will reflect what our needs are in the community in that particular period of time.

So I think we went--had quite a bit of discussion about the housing in, in light of the fact that we don't have a housing policy per se. We are working on that. I look forward to the discussions in Mr. Mateo's Committee to finalize our housing policy and codify it; and also in my Committee, the traffic impact fees that we will soon be codifying that. So we've made allowances for the future and tied this project to those future requirements.

So, for those reasons, Mr. Chair, I think we did a, a, an excellent job with the conditions of zoning and that this project and the willingness of the developers and, and Maui Land & Pine to be receptive and responsible partners in our community, I will be supporting the project. Thank you.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not--Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman.

You know, it, it is with great regret that I cannot support this project.

When I first came to Maui twenty-five years ago, I landed in Kapalua and lived there for quite some years and had a business there, and had a good relationship with Mr. Alan Simpson, Mr. Colin Cameron, various management people who were there. And back then, Kapalua had more of a family feel, feel to it. I lived there, raised my son there for some years.

And I just feel that as the second largest landowner on this island who will be reaping millions of dollars of profit from this development, which is all geared to the high-end market, people who are coming to enjoy the beautiful resources that Maui has to offer and not necessarily contribute in any way except pay their tax bill, I just don't feel that the company is giving back enough.

We have a myriad of problems here in Maui that are the result of these type of developments that we've allowed to happen in the past. And I just don't feel that it's responsible to sell Maui--Maui off to the highest bidder and not get anything in return to balance off the problems that we're facing.



H'iilani Highway, yeah, that's a State issue. But I'd like to remind everybody that over twenty years ago, Kapalua Land got four lanes to Kapalua, four lanes to nowhere, when people were still waiting for the bypass in Lahaina. So this company wields a lot of power at the State level, and I think they could have used this opportunity to get some concrete commitments from the State to get the Lahaina bypass built in a timely way so that their development, as it progresses, will not add to the problems that we already have.

As far as the affordable housing goes, you know, if that's the only thing that we're getting out of this for the residents of Maui County, I'd say it's still not enough. They're giving preference for the forty rental units, and the remaining affordable units wherever they may be, and they're giving preference to their employees, so that benefits Kapalua Land Company. It doesn't benefit the community as a whole. And, yeah, their employees are residents, but they could also be transplants from the Mainland. So where is the benefit to our community as a whole? How is Maui County and the kamaaina families who have supported this County all these years and have, have, through their hard work, afforded our ability to develop our resources and to protect those resources that need protection for our generation and future generations? How is it benefiting them? It's only going to add to the problems we have today.

So I'm very disappointed. I think Kapalua could have stepped to the plate and done a much better job of offering back something to the community for what they're taking. They're going to reap huge profits from this, Mr. Chairman, and they're taking 400-plus acres that are currently in ag, high production land, to allow these multi-million dollar residence to have less density. I don't see that as a good tradeoff for us, Mr. Chairman. We're supposed to be protecting our ag land. Our General Plan says so, our community plan say so, specifically West Maui Community Plan, says that we're supposed to keep the ag land that's currently in production in production. There's no provision to take more land out of ag, yet Kapalua made a deal with the State, traded off some land, and they're taking 450 acres out of pine for this project.

As I said, I don't see the tradeoff beneficial to the community. I don't see how this is going to improve the quality of life for the citizens of Maui County in general. It might provide a good quality of life for those millionaires who are going to go out there and buy their product and the few employees who might be given employment, but, remember, they've laid off a lot of people too. Where is the balance? I haven't seen any numbers. So I'm just extremely disappointed that Kapalua has not offered more to the community for what they're taking.

We had a hearing last night in Kihei, Wailea 670. I think they're pretty desperate to get their project passed too because they came forward and voluntarily offered to give way more money to, back to the community as far as they're giving \$5,000 a unit for traffic improvements. They're giving \$3,000 a unit for schools which may help, hopefully, get a high school in Kihei.

But, you know, I'm just sorely disappointed. I, I think that they could have been more upfront. I think it was extremely disingenuous not to tell us what their expected profits are. They're a publicly traded company and that information should be public.

I just feel that if you're not part of the solution of the myriad of problems that we have here right now on Maui, as a result of the kind of development that this represents, then you're part of the problem. So with great reluctance, I will continue to vote no on this project.

Thank you, Mr. Chairman.

CHAIR HOKAMA: Thank you, Ms. Anderson.

Members, further discussion on our main motion as amended? If not, all in favor of the motion, please say "aye."

AYES: COUNCILMEMBERS KANE, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed say "no."

NOES: COUNCILMEMBERS ANDERSON, JOHNSON, AND  
MATEO.

CHAIR HOKAMA: We have six "ayes"; three "noes"--Anderson, Johnson, Mateo. Motion passes.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chairman, for the record, BILLS NO. 1 (2006), 2 (2006), and 3 (2006), respectively.

CHAIR HOKAMA: Thank you.

COMMITTEE REPORT

NO. 06-2 - PARKS AND ECONOMIC DEVELOPMENT COMMITTEE:

Recommending that County Communication No. 04-294, from the Director of Parks and Recreation, relating to the Hula Bowl college football all-star game, be FILED.

CHAIR HOKAMA: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

MOVE FOR THE ADOPTION OF COMMITTEE REPORT NO. 06-2.

COUNCILMEMBER TAVARES:

SECOND.

CHAIR HOKAMA: We have a motion by Ms. Johnson, seconded by Ms. Tavares, to adopt Committee Report 06-2. Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

Your Parks and Economic Development Committee met on this particular subject, and because it was a housekeeping measure since we no longer have the Hula Bowl here, it has moved on, we just simply wanted to take care of this measure and recommended the filing of the communication.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chairman, there are no further committee reports. Shall we proceed with communications?

CHAIR HOKAMA: Before we do, we shall take a break at this time. Members, Council will be in recess till 10:15 a.m.

(The meeting was recessed by the Chair at 10:05 a.m., and was reconvened at 10:20 a.m., with all members present.)

CHAIR HOKAMA: The Council meeting of sixth of, excuse me, the Council meeting for 6 January--I was looking at September already--2006, shall reconvene.

Mr. Clerk, please proceed with the agenda.

The following County Communications were presented.

### COUNTY COMMUNICATIONS

NO. 06-1 - THOMAS PHILLIPS, CHIEF OF POLICE,  
(dated December 22, 2005)

In accordance with Resolution No. 85-120, informing of the receipt of \$102,983.78 in Federal Forfeiture Funds from the U.S. Department of Justice, Drug Enforcement Administration.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE: Good morning, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-1.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to file County Communication 06-1. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Chair and Members.

We have received a communication from our Chief of Police, Mr. Tom Phillips, on December 22, informing us of the intent to use these funds for law enforcement purposes in accordance with Federal Forfeiture Guidelines, and that this body will be informed of any expenditures using forfeiture funds. Thank you.

CHAIR HOKAMA: Thank you very much.

Members, further discussion on the motion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

NO. 06-2 - ALAN M. ARAKAWA, MAYOR,  
(dated December 16, 2005)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Board of Water Supply due to the resignation of Greg Smith on December 16, 2005.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-2.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-2. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

This matter relates to the resignation of Greg Smith from the Board of Water Supply, via correspondence from the Mayor's office, effective December 16, 2005. I'd like to thank Mr. Smith for donating his time to the Board.

Thank you, Mr. Chairman.

CHAIR HOKAMA: Thank you.

Members, further discussion? If not, all in favor of the motion say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

NO. 06-3 - G. RIKI HOKAMA, COUNCIL CHAIR,  
(dated December 30, 2005)

Requesting adoption of a proposed resolution entitled "AMENDING RESOLUTION NO. 05-166, RELATING TO THE APPOINTMENT OF A LEGISLATIVE ANALYST IN THE OFFICE OF COUNCIL SERVICES".

CHAIR HOKAMA: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

ON YOUR BEHALF, I MOVE THAT THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 06-3 BE ADOPTED AND THAT THE COMMUNICATION BE FILED.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Molina, to adopt the resolution attached to County Communication 06-3, and filing of said communication. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

The purpose of the proposed resolution is to make a correction in the resolution approving the most recent appointment to a position in the Office of Council Services. The change is consistent with the understanding of the office and the employee.

CHAIR HOKAMA: Thank you very much.

Members, further discussion on the motion? Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, Mr. Chairman. Thank you very much.

I'm happy to welcome Kim to, to the fold. I've had an opportunity to meet with her just basically briefly, but I understand she will be assigned to the Planning Committee, and I am looking forward to working with her this year; and I think all of us will gain a lot from her knowledge and background, too. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON, KANE, MATEO, MOLINA, PONTANILLA, TAVARES, VICE-CHAIR CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, RESOLUTION NO. 06-1.

CHAIR HOKAMA: Thank you.

NO. 06-4 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated December 22, 2005)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO CAPITAL IMPROVEMENT PROJECTS".

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-4 be referred to the Budget and Finance Committee.

NO. 06-5 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated December 22, 2005)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO THE DEPARTMENT OF POLICE".

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-5 be referred to the Budget and Finance Committee.

NO. 06-6 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated December 29, 2005)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES, THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT, TOTAL OPERATING APPROPRIATIONS,



AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)".

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-6 be referred to the Budget and Finance Committee.

NO. 06-7 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated December 29, 2005)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES, THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT, TOTAL OPERATING APPROPRIATIONS, AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)".

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-7 be referred to the Budget and Finance Committee.

NO. 06-8 - ALICE L. LEE, DIRECTOR OF HOUSING AND HUMAN CONCERNS,  
(dated December 12, 2005)

Pursuant to Chapter 2.94, Maui County Code, transmitting a copy of the proposed document entitled "AGREEMENT REGARDING AFFORDABLE HOUSING, Maui Beach Hotel/Maui Palms Redevelopment Project".

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-8 be referred to the Housing and Human Services Committee.

NO. 06-9 - MICHAEL W. FOLEY, PLANNING DIRECTOR,  
(dated December 20, 2005)

Relative to an application filed by Stan and Hassie Zitnik, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING STAN AND HASSIE ZITNIK A CONDITIONAL PERMIT FOR THE CONVERSION OF A 180 SQUARE FOOT GARAGE TO A BUSINESS OFFICE FOR AN INTERIOR DESIGNER FOR PROPERTY SITUATED IN THE R-2 RESIDENTIAL DISTRICT, AT 2144 KAHOOKELE STREET, WAILUKU, MAUI, HAWAII", and related documents.

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-9 be referred to the Land Use Committee.

NO. 06-10 - GLENN T. CORREA, DIRECTOR OF PARKS AND RECREATION,  
(dated December 12, 2005)

Transmitting the semiannual report regarding park dedications for the period October 1, 2004 through March 31, 2005.

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-10 be referred to the Parks and Economic Development Committee.

NO. 06-11 - JO ANNE JOHNSON, COUNCILMEMBER,  
(dated December 28, 2005)

Relating to the matter of the Keopuolani Playgrounds (Horseshoe Pitching Courts).

The Deputy County Clerk stated that the recommended action is that County Communication No. 06-11 be referred to the Parks and Economic Development Committee.

CHAIR HOKAMA: Thank you.

Members, you have the Chair's recommendation on the left-hand margin of your agendas regarding the County Communications? Are there any comments or considerations to be presented? If, if not, the Chair will refer to the standing committees as noted on the left-hand margin of your agenda, with no objections.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Thank you. So ordered.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chairman, there are no further County Communications, General Communications, or Resolutions. Shall we proceed with Ordinances?

CHAIR HOKAMA: Proceed.

The following bills for ordinances were presented.

ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 106 (2005)

A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.670,  
MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIRMAN, MOVE TO PASS ON SECOND AND FINAL  
READING BILL NO. 106 OF 2005.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to pass Bill 106  
of 2005 on second and final reading. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The purpose of the proposed bill is to amend the interest rate earned by taxpayers  
who prevail on their real property tax appeals from a fixed rate of 8 percent, to a rate  
based on the average rate of return on, return earned on County investments during  
the previous calendar year, rounded down to the nearest quarter percent.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the  
motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Bill 106 of 2005 passes second and final reading.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 107 (2005)

A BILL FOR AN ORDINANCE AMENDING SECTION 3.64.030,  
MAUI COUNTY CODE, RELATING TO MAUI COUNTY  
INSURANCE PROGRAM, RETENTION LIMITS

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIRMAN, MOVE TO PASS ON SECOND AND FINAL  
READING BILL NO. 107 OF 2005.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to pass Bill 107  
of 2005 on second and final reading. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The purpose of the proposed bill is to increase the maximum property and liability  
insurance deductible that the Director of Finance may purchase, from five hundred  
thousand dollars to a million dollars.

Your Committee notes that sig, significant reductions in insurance premiums may be realized by allowing the Director of Finance the flexibility to evaluate the cost savings from a higher deductible amount against the increased risk to the County to fund their higher share of losses.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Bill No. 107 of 2005 passes second and final reading. Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 108 (2005)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2006 BUDGET FOR THE  
COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES,  
CAPITAL IMPROVEMENT PROJECTS, AND TOTAL APPROPRIATIONS (OPERATING  
AND CAPITAL IMPROVEMENT PROJECTS)

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, without objections, I'd like to incorporate Bill No. 109 of 2005 into a main motion that I will proceed with, with your permission.

CHAIR HOKAMA: Pease proceed.

COUNCILMEMBER KANE: Thank you. If we can have the Clerk read Bill No. 109 of 2005 title before I proceed with the motion.

CHAIR HOKAMA: Thank you.

Mr. Clerk.

Bill No. 109 (2005) was presented at this time.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 109 (2005)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3280,  
BILL NO. 36 (2005), RELATING TO THE ISSUANCE OF  
GENERAL OBLIGATION BONDS OF THE COUNTY OF MAUI

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman.

MOVE TO PASS ON SECOND AND FINAL READING BILL  
NOS. 108 OF 2005 AND 109 OF 2005.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to pass Bills 108 and 109, both of 2005, on second and final reading. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The Department of Parks and Recreation informed your Committee that they will not be able to purchase playground equipment before the Fiscal Year '05 appropriation for the Boundless Playground lapses on December 31, 2005.

The passage of these bill, proposed bills will amend the Fiscal Year '06 budget to appropriate \$714,000 to allow the Department to complete this project. Your Committee was concerned about the disagreement between the Boundless Playgrounds and Pa Pa`ani Playgrounds volunteer groups and whether their

differences will jeopardize the completion of this project. However, the Department of Parks and Recreation stated that they can complete this project with the requested funds because various construction trade unions have volunteered to assist in the construction.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion on the motion? Ms. Johnson.

COUNCILMEMBER JOHNSON: Mr. Chair.

Also, based on my concerns, there was the communication item number 06-11, which I put into my Committee so that there at least is an opportunity for the people who are concerned about how this park is being developed to at least voice those concerns before a Council body.

I do support the concept under Bills 108 and 109. I think that it's, it's a wonderful playground. I still have concerns that I have not been able to obtain answers to with regard to the cost for maintenance, who is going to take on the responsibility if this playground equipment does not actually hold up. And because we've had past problems in that same area over by the horseshoe pitching area with salt damage, this is a project that I still have concerns about.

I think that when the two groups were working together, my understanding was that money was coming in from another, I guess it would be for a donation from a foundation through a grant, I didn't have as much of a problem with it. Also, because the community playground and the concept of reducing the cost through voluntary, voluntary labor and maintenance, would have actually incorporated or allowed perhaps additional playgrounds to be built.

My concern is that the cost is still so high for this particular playground. I think that the differences eventually could have been worked out, but I'm going to maintain my no vote just on the general principle that when I don't have all the answers and when the issues that are still lingering with regard to some of the dissatisfaction that certain people have expressed as to handicapped accessibility are still out there, I'm going to vote no again even though I totally support the concept of the playground for any child whether they have a disability or limitations or not. So I do support it; but, just in principle, I will be continuing my no vote.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you.

Further discussion on the motion before you, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS KANE, MATEO, MOLINA,  
PONTANILLA, TAVARES, VICE-CHAIR  
CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON AND JOHNSON.

CHAIR HOKAMA: We have two "noes." Is that for both bills, Ms. Johnson and Ms. Anderson?

Thank you. We have seven "ayes", two "noes"--Ms. Anderson and Ms. Johnson, on both Bills 108 and 109, thereby, Bills 108 and 109 of 2005 passes second and final reading.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 110 (2005)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2980 (2001),  
TO EXTEND A CONDITIONAL PERMIT TO MAUI EXPOSITION, INC.,  
TO ALLOW THE CONTINUED OPERATION OF THE MAUI SWAP MEET  
WITHIN THE P-1 PUBLIC/QUASI-PUBLIC DISTRICT FOR PROPERTY  
SITUATED AT KAHULUI, MAUI, HAWAII

CHAIR HOKAMA: Thank you.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT BILL NO. 110 PASS SECOND AND FINAL READING.

COUNCILMEMBER PONTANILLA:

SECOND.



CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to pass Bill 110 of 2005 on second and final reading. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

This bill proposes to amend Ordinance No. 2980 by extending the Conditional Permit for a period of two years or until the swap meet is relocated, whichever is less, to Maui Expositions, Inc., to allow the continued operation of the Maui Swap Meet within the P-1 Public/Quasi-Public District for property situated at Kahului, Maui, Hawaii, comprised of approximately . . . 4.8 acres.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Bill 110 of 2005 passes second and final reading.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 111 (2005)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.030,  
MAUI COUNTY CODE, TO REQUIRE A WATER ELEMENT IN THE GENERAL PLAN

CHAIR HOKAMA: Thank you.

Ms. Tavares.

COUNCILMEMBER TAVARES:

MR. CHAIR, VOTE--I MOVE THAT BILL NO. 111 PASS SECOND  
AND FINAL.

COUNCILMEMBER MATEO:

SECOND.

CHAIR HOKAMA: We have a motion by Ms. Tavares, seconded by Mr. Mateo, to pass Bill 111 of 2005 on second and final reading. Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, Mr. Chairman.

This just, I think, draws attention to the fact of the importance of water and its availability to our County, and that we specifically pay attention to it as we're doing planning in both the General Plan and the community plans. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion? Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman.

I want to take this opportunity to thank the Chair of the Committee, as well as the Committee members, for hearing this item as it was initiated. I think having the water element highlighted, as the Chair of the Committee, Ms. Tavares, has stated, is important enough for it to be an item that's highlighted. And having it there does require the discussion to be contained within the General Plan. Without it, there may be the opportunity for it to not be highlighted, and specific regarding supply, demand, and quality of water, that's very important for the citizens of the County. So I want to thank the Chair for bringing it forward.

I apologize for not being available at the first reading of this item, but I want to thank the Members for their favorable consideration. Thank you.

CHAIR HOKAMA: Thank you. Excuse me.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Bill 111 of 2005 passes second and final reading.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 112 (2005)

A BILL FOR AN ORDINANCE AMENDING SECTION 10.68.110,  
MAUI COUNTY CODE, PERTAINING TO HEAVY VEHICLES AND VEHICLE LOAD

CHAIR HOKAMA: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I MOVE TO PASS ON SECOND AND FINAL READING BILL NO. 112.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Pontanilla, seconded by Mr. Molina, to pass Bill 112 of 2005 on second and final reading. Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

Bill No. 112 amends the Maui County Code to allow for the restriction of certain heavy commercial vehicles from using the portion of Front Street from the Puamana end of H'piilani to where Front Street intersects at Shaw Street. In restricting unnecessary travel of commercial and other vehicles carrying heavy loads of 10,000 pounds or greater from this typical narrow portion of Front Street, it will lessen traffic

hazard risks to residents, bicyclists, and pedestrians that frequent this potential, or this portioned area.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: I want to thank the Chair of the Committee for hearing this and for listening to the concerns of the community because of the safety issues, the fact that so many children and even disabled adults, as well as walkers, joggers, come along this area, and the roadway width is really substandard.

And I also want to thank Public Works and the Police Department for giving their positive input because they really explained, I think, to the Committee members why this was important; and that when you have roadway widths that don't accommodate those kinds of conflicts, it really is important to respect the safety of all of the citizens that live in that area.

So I really appreciate the Committee members, as well as the Council, supporting this bill. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Bill 112 of 2005 passes second and final reading.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chairman, nothing further is scheduled to come before the Council.


CHAIR HOKAMA: Members, we are under "Announcements," and I would like to start the new year with Mr. Molina.

### ANNOUNCEMENTS

Members of the Council offered various announcements.

### ADJOURNMENT

There being no further business before the Council, the regular meeting of January 6, 2006, was adjourned by the Chair at 10:55 a.m.



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ROY T. HIRAGA, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

FEBRUARY 17, 2006

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, FEBRUARY 17, 2006, BEGINNING AT 9:02 A.M., WITH CHAIR G. RIKI HOKAMA PRESIDING.

CHAIR HOKAMA: The Council for the County of Maui shall come to order. This is the regular meeting of the seventeenth of February, 2006.

Mr. Clerk, please call the roll.

### ROLL CALL

PRESENT: COUNCILMEMBERS MICHELLE ANDERSON, JO ANNE JOHNSON, DAIN P. KANE, DENNIS A. MATEO, MICHAEL J. MOLINA, JOSEPH PONTANILLA, CHARMAINE TAVARES, VICE-CHAIR ROBERT CARROLL, AND CHAIR G. RIKI HOKAMA.

EXCUSED: NONE.

COUNTY CLERK ROY T. HIRAGA: Mr. Chairman, all nine members are present. A quorum of the Council is present.

CHAIR HOKAMA: Thank you.

This morning, ladies and gentlemen, we have our member from the South Maui district, Ms. Anderson, to give us our opening remarks. And after that, we shall, in unison, do the Pledge of Allegiance. Ms. Anderson.

## OPENING REMARKS

The opening remarks were offered by Councilmember Anderson.

## PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR HOKAMA: Thank you for your opening comments this morning, Ms. Anderson.

Before we move on with the agenda, let me ask everyone to please, if you have cell phones, pagers, anything that may disturb the proceedings of this meeting this morning, we ask if you'll please turn it off. The Chair will enforce the decorum of these chambers and ask you to leave should you interrupt this meeting.

Prior to moving on to the area of testimony, anyone wishing to provide testimony today on any item that has been agendized for today may make themselves known to our staff and we will be able to assist you to provide you with your opportunity to give comment this morning.

For those that will be providing comment, you will have three minutes. We ask that you please state your name. If you are representing an organization, to please state that organization's name. You will have three minutes. We are using a system that will, hopefully, assist you in helping you to gauge your time. Upon starting your testimony, you will have a green light on the podium to your right that will say that you, that the clock has started. At the two minute and thirty second point, which means you have thirty seconds left, the yellow light will go on. At three minutes, the red light will go on and I will ask that you conclude your testimony in one sentence.

If you have requested to provide testimony prior to the start of this meeting, at that point, we ask you to decide if you want to terminate your testimony then, or return for your additional opportunity of three more minutes at the end after everyone else has spoken.

Stating that, Mr. Clerk, let us proceed with the agenda.

COUNTY CLERK: Mr. Chairman, we received requests from thirteen individuals wishing to testify at today's meeting. Shall we proceed?

CHAIR HOKAMA: Proceed.

COUNTY CLERK: Our first testifier is Tom Hansen, and he'll be speaking to Bills Nos. 1, 2, and 3; followed by Joe Harrison.

CHAIR HOKAMA: Thank you.

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. TOM HANSEN [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Chairman Hokama.

CHAIR HOKAMA: Good morning.

MR. HANSEN: Good morning, Councilpersons, fellow citizens of Maui.

My name is Tom Hansen. I'm from Lahaina.

I'm speaking on my own behalf, and I rise up in opposition to this project not because I don't think Kapalua is a good company, it is. I think Kapalua is one of the most beautiful developments in the world. They have wonderful employees. Many of my ex-students work there, and they're very satisfied.

But we have a problem, and that problem is Honoapiilani Highway. This Council has passed development, after development, after development, and created a very serious--it's turned Honoapiilani *[sic]* Highway into a killer, and it has to be stopped. After the highway is improved, fine, go ahead with the development. But before that, it should not be permitted.

I wanted to say just before I preface my remarks that I disagree with Charles Makaiole Jenks when he gives you all an "F". That was bad news. In my opinion, you deserve "A's". And I, I think that he not only insulted you, but he insulted all of us who have voted repeatedly for every one of you.

But going back to Kapalua. I take notice that those of you who are voting for these gated communities for multi-millionaires from the Mainland, you're voting for 'em, but not in your own district. You're voting for 'em for South and West Maui. Those people who from--represent us from South and West Maui, and, thank God, Mr. Mateo from Molokai who understands the needs to not homogenize the population here in the islands, make it all one kind of a population, they vote against it, but you people ignore the fact that that's the wishes of those people who are in



your, who are living in that district. There are people living in West Maui and East Maui, I mean West Maui and South Maui, and they need to be considered also.

I don't really have anything other than that to say. I thank you very kindly for the opportunity to testify, and good morning to all of you. Aloha.

CHAIR HOKAMA: Aloha. Thank you, Mr. Hansen.

Members, any questions to Mr. Hansen this morning on his testimony?

Thank you very much.

Mr. Clerk.

COUNTY CLERK: Our next testifier is Joe Harrison. And, Mr. Chairman, I would note that unless otherwise noted, all individuals offering testimony will be speaking to the Bill Nos. 1, 2, and 3 on Kapalua Mauka. To follow Mr. Harrison is Jocelyn Perreira.

CHAIR HOKAMA: Okay. Thank you very much.

DR. JOE HARRISON [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

My name is Joe Harrison. I am a retired doctor from the Maui Medical Group in Lahaina. My wife and I moved to Kaanapali in 1973. The only light on the Honoapiilani Highway at that time was at Lahainaluna Road.

And also, we didn't have an emergency room at the hospital. So I was on call every second or third night and if a patient came in, I had to go to the hospital. So that highway became my second home. And I want to say that it was a good highway, has always been a good highway, and I've always appreciated it, but it has not changed essentially in the last thirty-three years. And the traffic on it is horrendous now. And oftentimes, it takes me two hours to go as far as I used, as I used to go it in thirty minutes.

I, like Mr. Hansen, have no qualms with Kapalua. My main feeling is that you ought to make sure the highway and the infrastructure is correct before you approve any more of these building projects that are going to increase the number of cars on that highway.

Thank you.

CHAIR HOKAMA: Thank you, Dr. Harrison.

Members, any questions for Dr. Harrison?

Thank you very much.

COUNTY CLERK: Our next speaker is Jocelyn Perreira, offering testimony on Bill No. 4, followed by Keoki Santos.

MS. JOCELYN PERREIRA, EXECUTIVE DIRECTOR OF THE WAILUKU MAIN STREET ASSOCIATION, INC. AND THE TRI-ISLE MAIN STREET PROGRAM COORDINATOR FOR THE TRI-ISLE MAIN STREET RESOURCE CENTER [testifying on Bill No. 4 (2006)]:

My name is Jocelyn Perreira. I'm the Executive Director of the Wailuku Main Street Association and the Tri-Isle Main Street Program Coordinator for the Tri-Isle Main Street Resource Center.

Good morning, Council Chair Hokama, Councilmembers.

I am very pleased to be here today to express a sincere thank you, thank you, thank you to all of you here on the Council who have worked and have played a important role in support of Bill No. 4 for tax exemption for Wailuku Redevelopment Area. This ordinance will assist residents, property owners, and businesses to upgrade the area and assist in long-term revitalization.

Your role and your support of the Wailuku Redevelopment Plan that was adopted in October 2000, has really helped us move Wailuku slowly but surely forward. This has been a long time in coming, and appreciation goes out to the volunteer professionals, the residents, and, yes, former Councilmembers present and, and deceased, that have worked for nearly two decades to build a solid foundation for long-term recovery of Wailuku.

Thank you also to the MRA and the Administration for responding favorably and by moving it forward here to the Council for action. Thank you so much--your support at the final reading. You are part of the success of us moving forward, and we sincerely appreciate it. Thank you.

CHAIR HOKAMA: Thank you.

Members, any questions for Ms. Perreira this morning? Thank you very much for your testimony.

COUNTY CLERK: Our next speaker is Keoki Santos, followed by Chad Beitler.

MR. KEOKI SANTOS [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Aloha. My name is Keoki Santos, twenty-seven years old from Kihei.

I don't stand here today alone. Today, I stand here with my ancestors behind me; my ancestors' whose lands are scarred and whose bones are displaced.

I think the development on this island is out of control. I think the, I think things are completely out of balance, and I think this de--development is a perfect example of that imbalance.

We need--we don't need more luxury homes on Maui. We don't need more outside people raising our home prices.

If your concern is the kamaaina of Maui, you won't allow this development to go through. We need to fix the problems we're facing, not add to them.

It's impossible for my wife and I to buy a house here on Maui. We're forced to live at home because we can't afford rent, let, let alone a mortgage. We're the people that need to be taken care of, not the millionaires from the Mainland. I feel like our local people are getting choked out. Go to the beach, there's no parking. Our, our road, our roads are crowded with, with license, excuse me, with cars that carry out-of-state license plates. We can't afford to live here, so we gotta move away.

I think your focus needs to be affordable housing and not at the cost of 80 percent luxury for 20 percent affordable. That's rubbish. Make 'em, make 'em build 100 percent affordable. And if they don't want to do that, let them build somewhere else.

Please fix our traffic problems; please fix our schools; please fix our housing crisis. Put kamaaina first.

Thank you.

CHAIR HOKAMA: Thank you, Mr. Santos.

Any questions for Mr. Santos this morning?

Thank you for your testimony.

COUNTY CLERK: Chad Beitler, followed by Francis Lydon.

MR. CHAD BEITLER [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Maui Councilmembers.

This is the first time I have been moved enough to attend a hearing here and testify. I speak for many young adults my age, and there is a feeling of helplessness and hopelessness as we watch our home and communities spiral out of control with greed and development. It is sad and frustrating watching how developments pop up and are geared for their wealthy investors to have Maui be their playground.

. . . our island and top tourist destination, Maui supports the visitors by the thousands. Who will want to come here when there is nothing but traffic jams? What about the residents? What does the future hold for someone my age and younger? We all see what is happening with the price of housing and lack of places to live. It is nothing for a rich investor to come pay millions of dollars for their second, third, fourth, or fifth home. Isn't there enough luxury properties already? Can't anyone take a stand and say, "Enough"? How many Maui families can move into one of these luxury neighborhoods? Who will benefit from a project like this?

I urge you to please consider the roads, traffic, schools, medical facilities, all the necessities of everyday life before approving another luxury project. I urge you to consider the youth in Maui and make the tough decision now instead of playing catch-up later. Please just say "NO" to anymore luxury properties.

Thank you.

CHAIR HOKAMA: Thank you.

Questions for Mr. Beitler this morning?

Thank you very much.

COUNTY CLERK: Francis Lydon, followed by Nell Woods.

MR. FRANCIS LYDON [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, ladies and gentlemen of the Council. Aloha, and my name is Francis Lydon.

I represent myself and, but also the thousands, and thousands, and thousands of residents and visitors to this island who wish to see it preserved as it, as it was in, in, in the past and, and should be.

We all know that there's a tsunami of, of development that is, that is ready to engulf this island, if it hasn't already started. There are enormous pressures on the political body of this island to approve these developments because they know--the developers and landowners know that the General Plan, the new General Plan when written will be a lot more constrictive and, and restrictive about development than the current one that is used as the guideline.

Given that as the situation, we have seen what has happened in Oahu. We've seen the cancer of development--Oahu; and what has left Oahu as it, as it leaves and encroaches on the island of Maui, if it already isn't here.

We look offshore, and you look over to Molokai across the channel, within the past year, there was a, a, there was a re--desire/request by I believe Norwegian Cruise Lines to use that island, drop anchor and use that island as a port of call and offload 5,000 people onto that island. Those people rose up and they said, "Wait a minute. Time out. Let us, let us, let us, let us not do this." And, at the same time, they used the political will and the people in their political system who, who said, "No, this is not right." And what happened is they told NCL to go hui hou, NCL went hui hou, rose their anchor and left.

Off the, off the east coast of North Carolina is a little jewel of a rock off there. It sits in the middle of the gulf stream. Like Maui, it has warm waters; it has beautiful white and red sand beaches, excellent vistas; wonderful weather, not as good as Maui. However, what they have done, those people, fifty years/sixty years ago, decided that, "Wait a minute. Let us not get wrapped up in development. Let us--let that bypass us." And they did that. And, for example, if you wish to bring an automobile on that, on that island, you must offload one first. So that island is called "Bermuda." That is also a, a, a destination resort and people live there. And it, it, it is, it is much like a little English visit village, as we, as we picture them now and . . . that time is passed by.

And I would like to come back to finish.

CHAIR HOKAMA: You may very much do so, Mr. Lydon.

MR. LYDON: Thank you.

CHAIR HOKAMA: We will be happy to recall you back.

MR. LYDON: Thank you.

CHAIR HOKAMA: Thank you very much.

COUNTY CLERK: Next speaker is Nell Woods, followed by Alexander Ross.

MS. NELL WOODS [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

As I see it, the primary function of the County Council is to make its decisions which are in the best interest of its residents. In order to do so, there is a volume of information available to you on which to base those decisions. A balance must be struck between economic interests, quality-of-life issues, traffic, infrastructure, on and on.

Kapalua Mauka will benefit only two areas over the long run: the profit line bank account of Maui Land & Pineapple; and the County tax rolls. It will have a negative effect on traffic, infrastructure, and quality-of-life for our full-time residents. At this time, it's still unclear where the majority of the associated affordable housing will be built.

As an attached condition cannot be satisfied unless and until Pulelehua is approved, any approval of Kapalua Mauka should be deferred until Pulelehua has gone through its process. If Pulelehua passes muster, Kapalua Mauka can be approved concurrently.

I realize common sense and logic are commodities which are in short supply these days. But with this body still wrestling over the fine points of its resident workforce housing ordinance, approval of any project, but especially the large ones, should be deferred until that ordinance is in place.

West Maui has been a major contributor to the revenues of the County, with very little commensurate expenditure in return. We beg you not to allow to happen in West Maui what has happened in Kihei, one of the fastest growing communities anywhere which still doesn't even have a regular high school.

We in West Maui are tired of sitting in traffic, scared of getting sick or injured and not being able to get to the hospital in time, if at all, if the highway is closed. To use a phrase from the movie, "We mad as hell and we're not going to take it anymore."

CHAIR HOKAMA: Thank you, Ms. Woods.

Any questions for Ms. Woods this morning, Members?

Thank you very for your testimony.

COUNTY CLERK: Alexander Ross, followed by Norm Bezane.

MR. ALEXANDER ROSS [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, ladies and gentlemen. Good morning, Councilmembers, and aloha and good morning.

Born and raised in Lahaina seventy years ago. I got up this morning, I had to wash my maka piapia because I had to leave early this morning in order to get here on time. I had to clear my vision to get on that roadway from Lahaina to here. And at seventy-thirty in the morning, the traffic coming from Wailuku, Kahului, and all that area was already backed up to Launiupoko outside of town--and that's early in the morning. Now days, or in the last few years, the traffic coming into Lahaina has stretched out to Olowalu; and going out of Lahaina, has stretched back to Kapa--Kaanapali.

Now, you, your vision should not be blurred with makapiapia because of that. And those things has occurred not in the last few years, but in the last twenty years. I was on the, the, the Mayor's Advisory Committee for West Maui back in the eighties. Our concept revolved around building out villages around West Maui area so that the congestion would end at the Lahaina area would not be congested. But we keep on the highway. We saw in the future that with further development, the roadway from Lahaina to Wailuku and Kahului is going to get worse. That was almost twenty-five years ago, ladies and gentlemen, Councilmembers. No mo' makapiapia, please.

Look at the problems that the West Maui people are facing because of development. Too much development. We are not asking to condemn them. We are asking to control them.

See to it that the infrastructure of West Maui is controlled so that when development occurs, it blends in without any problems. And right now, we have a problem. So, please, don't let the developers blur your vision in order to make common sense decisions.

Mahalo.

CHAIR HOKAMA: Thank you, Mr. Ross.

Members, any questions for Mr. Ross this morning?

Thank you very much for your testimony.

You need to please turn that phone off.

COUNTY CLERK: Next speaker is Norm Bezane, followed by Ulu Kalua.

MR. NORM BEZANE [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning. I'm not, probably not going to be very cogent because I did not really prepare any testimony.

But I commend Michelle Anderson for her commentary on our visitors, the whales. Unfortunately, good for the whales, they do not have to contend with some of the transportation problems that we have to contend with on this island; and they will continue to be free to move in and out. I wish that we could get to the point where we could say that about our fellow citizens as well.

I think it's important to note that the times are changing on Maui. The Council needs to take a fresh look at the decisions that it makes affecting our infrastructure.

I wish that the Council would, would have to be required to meet in West Maui, in Lahaina, in Kapalua, day after day. Then, I think the Members would begin to understand the scope of the problems that we face.

Maui Pineapple Company is a fine company. It has carefully planned its development. It's a very environmental-friendly development, I think. It has very significant resources. And I, I think that developers need to be required to make substantial contributions to the improvement of our infrastructure, very substantial contributions. They are going to be making significant dollars from their developments, and I, I think that they should be required to contribute more.

Let's see what else I have here.

I support Jo Anne Johnson's proposal to restrict the development until such time as improvements can be made in the infrastructure. Councilmembers need to step up to this challenge. These issues are, are at a combustion point, I feel. Not a day goes



by that you don't see a letter in *The Maui News* discussing these infrastructure issues, and these letters obviously represent the feelings of many, many more people that never write.

We, we testify in this, this Council meeting and, yet, every testifier, there's a, there's a call for questions, and the Councilmembers not ask we, the testifiers, a single question. This, to me, means that there's a possibility that you're not really listening to what we have to say. You don't--you're not really soliciting our opinion. So I would urge you to be more aggressive in your questioning of us.

Thank you.

CHAIR HOKAMA: Thank you, Mr. Bezane.

Any questions for the testifier this morning?

MR. BEZANE: Thank you, Michelle.

CHAIR HOKAMA: Ms. Anderson.

COUNCILMEMBER ANDERSON: Do you really think that we're not asking questions because we're not interested in what you have to say?

MR. BEZANE: No. I, I think that you are interested in what we, in what we have to say. But, I, I, I feel that many of you, you, you, in particular, understand these issues. I'm not sure that every Councilmember has a, a really good grasp of the scope of the problem, the fact that these infrastructure problems are going to have a very significant impact on our tourist industry. It's very frequent today.

And living in, in West Maui, having come here for thirty-five years, talking very frequently to tourists about the differences between Maui years ago and today, very often the subject spontaneously comes up of traffic; very often the subject comes up, the amazement that we do not have a hospital in West Maui. And we need to make these improvements. We need to step up to these challenges.

COUNCILMEMBER ANDERSON: We very much appreciate your coming.

MR. BEZANE: Thank you.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR HOKAMA: Thank you very much.

Mr. Clerk.

COUNTY CLERK: The next speaker is Ulu Kalua, followed by Dick Mayer.

MS. ULU KALUA [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning.

CHAIR HOKAMA: Good morning.

MS. KALUA: I'm a truck driver for Maui Pineapple. If anybody understands the roads, it's us. I'm speaking for the Mauka thing. I think things should be improved. And if we don't improve it, then how are you going to know what to do?

I think if anybody has to stop development, it would have been us. My family is from Lahaina, and pineapple has been my family. I've worked fifteen years. My family has worked in it, and we've seen the developments that they've had. So I am, I am for it because everybody has let everybody else in.

Thank you.

CHAIR HOKAMA: Thank you, Ms. Kalua. Ms. Kalua, if you would please.

Mr. Molina, question?

COUNCILMEMBER MOLINA: Good morning, Ms. Kalua. Thank, thank you for coming here and sharing your mana`o with us.

You know, many times in our Council meetings, we only talk about the Chief Executive Officer or the Board of Directors, but you're one of the people that are out there working and I think you see the importance of keeping a company strong.

Do you agree that a company needs to maybe diversify to help keep their employees working, feed their families, provide housing? Do, would you agree with that?

MS. KALUA: Yes.

COUNCILMEMBER MOLINA: Okay.

MS. KALUA: I--the plan is to have our people closer. We, we're traveling back and forth from the other side right now, a lot of 'em. We want to be off the roads. That's why.

So I support it.

COUNCILMEMBER MOLINA: Thank you.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Any other questions for Ms. Kalua?

Thank you very much for your testimony.

COUNTY CLERK: Next speaker is Dick Mayer, followed by Lehua Kalua.

MR. DICK MAYER [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Thank you very much.

I hope Mr. Molina ask me the same question.

I'd like to address the Council and also all the wonderful employees from Maui Land & Pine to know a little bit about what this project is all about.

This project will probably have houses that have a minimum price of four to five million dollars each. I doubt very many of you will be able to ever live in this project. This is not a project that will help employees who are in this room probably.

Number two, on this project, originally, there was school planned on this project. It has now been removed from this project. Nearby, there was supposed to be a regional park of 50 acres for all of the residents in that area of West Maui. The Company now has decided not to have that park in the neighboring area where it was supposed to be on the Community Plan, but has now suggested that it properly be put above the ka--the West Maui Airport, far away from the children and other people of West Maui who might enjoy it.

What I'm asking.

CHAIR HOKAMA: Mr. Mayer. Mr. Mayer, I apologize. I should have told you this earlier. You need to please direct your remarks to the Chair and the Members of the Council.

MR. MAYER: I will do that.

CHAIR HOKAMA: Thank you.

MR. MAYER: Councilmembers, all of the foregoing is to you as well.

The point I want to make is that this project will not help the people of Maui. It is a luxury project. As you see from the numbers on the charter in front you, the average home in Kapalua last year, this past year, was 4.7 million. That's where I got the number five million, four to five million dollars.

Second page. The Company itself recognizes very well the transportation problems that this project and other projects will have. By indicating to the Securities and Exchange Commission at the Federal level, and I'd like to read what they say, they, the Company says, not what I'm saying. It says: "If the planning and construction of infrastructure on Maui is not improved, particularly in the area of transportation, this could result in additional difficulty or the inability of the Company to move forward with its planned development projects, which could negatively impact its financial results. The roads and highway on Maui are currently inadequate to accommodate the planned growth of the island. Planning and construction of this infrastructure has not been done with a long-term perspective and coordination with the needs of the community. This lack of comprehensive planning may result in infrastructure stress in Maui and may be a major impediment to future development. Infrastructure stress can also lead to a deterioration of the visitor experience and the quality of life for residents which, in turn, can impact the Company's ability to attract discriminating customers, employees, vendors, and contractors."

The Company is saying to the, those people who invest in the Company, "Maui cannot handle this kind of a development. We do not yet have the infrastructure." What I'm asking is that you please put impact fees on this Company, commensurate with the amount of profit that they are expecting to make from this, this, this project.

I would like to come back for the remaining three minutes at the end, sir.

CHAIR HOKAMA: We will be happy to bring you back, Mr. Mayer.

MR. MAYER: Thank you very much.

CHAIR HOKAMA: Thank you.

COUNTY CLERK: Next speaker is Lehua Kalua, followed by Teri Gorman.

MS. LEHUA KALUA [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Councilmembers.

CHAIR HOKAMA: Good morning.

MS. KALUA: My name is Lehua Kalua.

My sister testified earlier and, as she said, we've worked for Maui Pineapple for fifteen years. And during those years, you get to know a company and grow with a company.

Our company's future, basically, is in Kapalua Mauka because there's five hundred people in the pineapple side that could stand to lose their jobs similarly like Del Monte in Oahu.

And so instead of discussing traffic, we'll be discussing unemployment. Instead of affordable housing, we'll be discussing homelessness; maybe social issues of alcoholism, drug use, and domestic violence. This is what the impact might be.

I, I hear my neighbors from West Maui about traffic. But in 1973, there was one traffic light, and now there's seventeen.

I'm not saying that it's not a problem. But, sometimes, I think there's a perception problem, much like when Abraham Lincoln was arguing with this other guy about something and he said, he finally said, "You know what, how many legs are on a cow?" Well, the guy said, "Four, of course." And he says, "Fine. Now, let's take the cow's tail and call it a leg. Now how many legs will it have then?" The guy says, "Well, I guess five." He goes, "Wrong. Just by calling a tail a leg doesn't make it a leg." So we have to back up and make sure that our perception is correct.

I'm not saying that there should be--shouldn't be responsibilities for Maui Land & Pine bringing in development. I'm not saying that. But I think that they're intelligent enough to understand this.

And as I stand before you, you, I watch you guys on AKAKU, and I know you're intelligent, too. And I know you have a great difficulty in making decisions to make everybody happy.

But the difference between an obstacle and an opportunity is our attitude. Every opportunity has some difficulty; every difficulty has an opportunity. Wisdom is knowing what to do; skill is knowing how to do it; and virtue is doing it.

I ask that you vote in favor. Thank you.

CHAIR HOKAMA: Thank you, Ms. Kalua.

Thank you very much, ladies for, and gentlemen, for maintaining the decorum.

Any questions for Ms. Kalua, Members?

If not, thank you very much for your testimony.

COUNTY CLERK: The last individual who signed up prior to the convening of the meeting is Teri Gorman.

MS. TERI FREITAS GORMAN [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Council Chair Hokama.

CHAIR HOKAMA: Good morning.

MS. GORMAN: Honored Members of the Council. Aloha.

My name is Teri Freitas Gorman. I was born right here in Wailuku Town when Hawaii was still a territory. My parents were born on Maui, as were their parents and their grandparents. I am a kamaaina, born during a time when kamaaina meant much more than just getting a discount for having a driver's license.

I was the first Marketing Director of the Maui Arts & Cultural Center, and I served with the Board of Directors for Ka Hale A Ke Ola Homeless Center in Wailuku. I was part of the Board of the Directors that built the place.

I reluctantly left Maui in 1996 because of the educational options available to my kids. I came home this August when my son was accepted to Kamehameha School. When I came home, I was really sad to see what happened to Maui during the nine years that I was gone.

Today, I see kamaaina families living with the stress of two or three generations under one roof. Today, I see kamaaina families moving to what we tragically call the "ninth island" because they've lost their hope of ever buying a home here. And today I see kamaaina parents who are working two, three, sometimes four jobs just to scrape the rent together.

And today, I hear "malahini" in this room, the rich newcomers telling you to vote no to development because now they've got theirs and they don't want Maui to change anymore: "Pull up the drawbridge behind me because I'm in now."

Well, today, I'm a proud employee of Maui Land & Pineapple Company. After sixteen years of working for nonprofits, I have chosen to work for a company that is unlike any other company in this State, an honorable company that cares about the community, that is committed to sustainable agriculture, and a company that has been a responsible island employer for over a century.

There is a big difference between good development and bad development. Today, you have a chance to vote for good development. Kapalua Mauka will allow our Company to revitalize our resort business. It will help us to make the needed investment in agriculture so that our lands can remain green and productive for generations to come, and it will enable us to build neighborhoods that will bring homeownership within the reach of kamaaina families again.

Where are we supposed to get the money to build affordable housing developments?

Kapalua Mauka will also provide \$500,000 to provide first-time homeowners education programs, and it will provide a rental assistance program.

So today, on behalf of my kids and their kids, I ask you to please vote yes for Kapalua Mauka.

CHAIR HOKAMA: Thank you, Ms. Freitas Gorman.

Members, any questions on her testimony?

Thank you very much.

COUNTY CLERK: Mr. Chairman, as noted, Ms. Gorman was the last individual who signed up prior to the convening of the meeting.

However, we have two individuals that have requested that they be allowed to return to complete their testimony, and they are Francis Lydon, followed by Dick Mayer.

CHAIR HOKAMA: Mr. Lydon, before you start your additional testimony, you have another three more minutes to share your thoughts.

MR. FRANCIS LYDON [concluding his testimony on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Thank you very much.

Hearing the, the testimony just recently from the, from the young woman, I, I, I am, I'm, I'm want to thinking that if the Council were to stop all development and concentrate on low-income housing, concentrate on the laws and the, and the, and how to build the, the community for low-income housing, I think that is the, that is the program in which it should be concentrated on.

I, I hear what the young woman has said, and that's, that's absolutely correct. There's a, there's a vast need for low-income housing. However, when you also have the land of this island being chewed up with development, not necessarily ML&P, but other developments, and you must deal with that, then your concentration on the key problem on this island has been fractured.

So, I, I would say that, yes, if you were to deal with the development problem and say, "Wait, a minute. Let's let, let's let it pass us by for a while." I don't--I think most of the people who have spoken here had said that, "Let's put a time limit. Let's put a 't', a timeout on ML&P's development on the Kap--Kapalua Mauka until, until the infrastructure is there." They're not saying get rid of it. They're saying hold until the island can, can catch up with what's needed to support that kind of a project and other projects up there.

I believe the State Land Use Commission met on another project yesterday up in Kaanapali. There's, there's 800 more homes that they're dealing with.

Okay, to get back to my, my position, originally, was that we have a jewel, that jewel out there in, in forty miles off the east coast of North Carolina. It's called "Bermuda." They let development pass it by. And that, that island is, is not, it is, it is a jewel; and this island is also a jewel, but it will not be a jewel if it continues and development continues to erode the fabric and the quality of life and the ambience and the mystic of this island.

I'd like to read just one excerpt from a letter here from a, a, a, a, a person in the, who had written in letters. It says, "We are from the north. And once a year, we visit the island, and, and, and we're from the frozen north, and this year is our sixteenth. The continuing development could well lead to a change in our venue for the future. We have stared at construction for the past three years and watched the road situation deteriorate. As tourists, we pay through the nose, but we would be willing to pay additionally if we had reliable infrastructure and reliable roads. Please, Maui Council, make sure that the future West Maui development allows, is, is in relation to the



available reliable road access. James "Les" Henry, Saskatoon, Saskatchewan." These letters show up in the newspaper three/four times a, a, a week.

I would ask, in closing, that the Councilmembers look at this right hand and say they have the power to push forward the, the, the quality of life on this island, or destroy it. And they can look at that hand when it comes time to vote. And in their conscience, I daresay, except for Michelle and, and for Jo Anne.

CHAIR HOKAMA: You need to conclude, Mr. Lydon.

MR. LYDON: Okay. They are, they're, they're, they were raised in the isles. They've seen what's happened to the isles, and they've seen the deterioration because the infrastructure has not kept up.

So when it comes time to vote, I ask them to look at that hand and, in good conscience, ask are they serving this island? Are they serving the island? Are they serving the people on this island? Are they serving the people that put them in the positions they are currently in?

So I would ask you to please, beg you to please, when it comes time to vote, if we vote again, to vote along with Jo Anne Johnson's amendment to put this, put this.

CHAIR HOKAMA: Your time is up, Mr. Lydon.

MR. LYDON: Okay. And, and, and just hold it, and then until we, until we get a chance to have the infrastructure catch up.

Thank you very much.

CHAIR HOKAMA: Okay. Thank you.

Mr. Clerk.

COUNTY CLERK: Our last speaker is Dick Mayer, who will conclude the roster of those individuals signing up prior to the convening of the meeting.

MR. DICK MAYER [concluding his testimony on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Thank you for having me back again.

I've given you a list of conditions that I would urge you to consider, and I would urge you to send this project back to Committee where the impacts of this project could be looked at.

On the very first page on this, the page with the, the table of all the revenues that this company will be earning from this project, it will be earning somewhere in the order of \$4 billion from the Kapalua Mauka project.

And what I'm asking is that you seriously, seriously consider putting appropriate impact fees. At present, you have appropriately, in the conditions, \$3 million out of 4 billion. That wouldn't be the cost of even one house on this project. That, tho--that money would be used to solve the problems that these people have to deal with everyday: the lack of a hospital in West Maui; the lack of schooling in West Maui--these kids going to school in a tent at Kam III, Lahaina, Lahainaluna is 240 students over capacity. We need to get the appropriate funding, not to mention the roads themselves. So I'm making various recommendations that I would hope you would implement.

Most important of all is the question of housing on this island. That's the item in the General Plan. It's the item many of you ran on. And what I was very pleased to see, this morning's newspaper, the headline which read, "Tavares: Make 80 percent affordable." And in the article, it said that Charmaine Tavares and Jo Anne Johnson are urging that 80 percent of projects be made affordable. I think that standard or one very close to it is the appropriate one. Even if you were to add Pulelehua to this project, the percentage of total affordable housing is probably in the order of 25 or 30 percent.

Please house the people who want houses who are here in the assembly today who have come out and taken the interest in affordable housing. Let's make sure they get the housing whether it be 30, 40, 50, 60, 80 percent. That's the message that I think should go out from this Council. And I think the people of Maui in this upcoming election are going to be looking very carefully to see which Councilmembers voted for affordable housing and which voted for 690 super-expensive homes at Kapalua.

Please vote according to the needs of the people of Maui. And I thank you.

CHAIR HOKAMA: Thank you, Mr. Mayer.

There shall be order in this chambers.

Any questions for Mr. Mayer? Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Chair.

Mr. Mayer, I'll give you the opportunity to respond to the question that I asked earlier of a testifier.

MR. MAYER: Please repeat. Do you remember exactly the wording?

COUNCILMEMBER MOLINA: Okay. I was hoping you would.

MR. MAYER: Okay.

COUNCILMEMBER MOLINA: But, anyway--

MR. MAYER: I was, I think it was regarding . . .

COUNCILMEMBER MOLINA: --just, well, the, the question basically dealt with company viability, and do you think a project like this or it's important for a company to diversify in order to survive to keep workers employed and people to help pay their mortgages, and jobs, and so forth?

MR. MAYER: Yes, I certainly do. And what has happened is the company has sold several very large parcels of land in Central Maui, excuse me, in, in Upcountry Maui. The Hui was sold; three large parcels in Pukalani have been sold; and several large parcels in Lower Kula, I'm not sure whether they've finally gone through the final sale or whatever. The company reported over \$30 million worth of revenue last year from land sales, which they are intending to put back into the pineapple operations to keep them viable.

So I think the company is well on the road. They have leadership that's building and using that, those monies to improve the Cannery operations. They . . . they have invested in the Superferry to get their product, their fresh fruit off the island. I think they're doing exactly that. But in addition to that, what they need to do is provide housing for all these workers who are clamoring to be able to move out of their parents' homes, out of the small ohanas, and that's what I'm asking you to make sure that they do.

COUNCILMEMBER MOLINA: One more question, Mr. Chair.

Well, the company may be on it, on the road, but they're not quite there yet.

My question relates to an article that appeared in *The Honolulu Advertiser* yesterday. It states, "Del Monte workers may get State help." As you well know, Del Monte is ceasing operations on Oahu, and there's a Senate bill currently being proposed to

provide taxpayer dollars grants to help these workers who will be losing their jobs to buy their homes, low-interest mortgages, rent supplements, loans for down payments, etc.

One of the workers was quoted as saying, speaking for the rest of them who are losing their jobs, that a big concern for them, the two major concerns are keeping their homes and, of course, keeping their jobs.

Can I ask how do you respond to--you see the workers here. You know, many of 'em don't have the glamorous titles. Many of 'em are the frontliners. They're just trying to survive to make ends meet. How do you respond if Maui Land & Pine goes down because they are not allowed to diversify? Your comments, sir.

MR. MAYER: I think that they have diversified. Their, their entire Kapalua hotel operation, all the condos that have been built out in the past, are a sign that they have already diversified. I think the efforts I have mentioned before, the Superferry being allowed to, to ship this fresh fruit out at a greater rate, are all efforts that they are making to diversify. I don't think pineapple will go out based on whether this project goes through or doesn't go through.

I think this is a multi-billion dollar land investment, and I think it will help the company's bottom line. I would hope that it would help the workers themselves, something on a much smaller scale. I'm not saying--I didn't say no afford, no luxury homes. But 690 luxury homes adding to the congestion of West Maui is not the order. If Pulelehua had come first to you with affordable homes first, I would have been more open to that. That hasn't been the case. And that's one reason why, in the suggestions I've made to you in the conditions, I've said put the affordable housing first. Make sure Pulelehua's project, if it's going to be approved by the Land Use Commission and you, goes first before the luxury homes. That's what's needed on this island prior to this thing. And I don't think the pineapple company will go out of business because of that. And I think the workers' jobs are safe.

I'm more concerned, actually, that West Maui will no longer be able to grow pineapple because of the congestion. The Company has said publicly, I believe, that the highway is so congested that they have difficulty shipping the pineapple from West Maui over to this side of the island. And that's why I'm asking, let's fix that highway. Let's get it approved so that the pineapple industry can stay viable.

COUNCILMEMBER MOLINA: Thank you, Mr. Mayer. I think you've answered my question.

I would just hope that these workers don't lose their jobs because it will be very difficult to explain to them what you have just told us, so.

MR. MAYER: Thank you.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

CHAIR HOKAMA: Thank you.

Further questions? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

Thank you very much, Dick, for coming. I haven't had a chance to read all these conditions; but, you know, at the last meeting, we had a Maui Pine executive, Brian Nishida, told us that when the Board of Directors voted to reinvest in pineapple, that the vote passed only by one vote. So that makes me nervous. That means one Board of Director could change their mind, and Maui Land & Pine would no longer reinvest in pineapple.

So, and you just said some \$30 million in land sales have already been directed towards that reinvestment. So do you feel that we should put any kind of a condition in that would, that would, because we're being told that this is needed to keep pineapple viable, and because we're just one vote away from losing pineapple, do you think that we should have a condition here that compels them to stay in pineapple for a certain period of time?

MR. MAYER: That would be a, a certainly a major step forward for the, for the, protect the workers. And if the company is seriously interested in protecting the workers, and I think they are, then I think a condition like that, and part of the way is that, is, is that they would be able to stay viable is by improving the roads, because that will allow them to get the, the pineapple out of West Maui.

There are many workers here from West Maui whose jobs may be jeopardized, that may only be the Haliimaile plantation, and then the West Maui workers would be out. So whatever you can do to help the workers by putting in conditions to that effect to sort of ensure that one vote doesn't change in the Board of Directors of Maui Land & Pine, I think will be all to the, to the good.

COUNCILMEMBER ANDERSON: Okay. Thank you very much.

CHAIR HOKAMA: Thank you.

Further questions?

MR. MAYER: Thank you all.

CHAIR HOKAMA: Thank you, Mr. Mayer.

COUNTY CLERK: Mr. Chairman, we'll continue--shall we continue with the next group of individuals who signed up subsequent to the beginning of the meeting?

CHAIR HOKAMA: Proceed.

COUNTY CLERK: Our first speaker is--and, again, unless otherwise noted, all individuals will be offering testimony on Kapalua Mauka. Our first speaker is Keenan Reader, followed by Eugene Seradilla.

MR. KEENAN READER, MAUI PREPARATORY ACADEMY [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Aloha. Good morning.

My name is Keenan Reader, and I'm here today representing the Maui Preparatory Academy.

I'm here to speak to the Council this morning on behalf of Maui Land & Pine's contributions to improving education in West Maui.

For my first years, four years at, on Maui, I've worked as the Director of Counseling at Lahainaluna High School. Although my time there was enjoyable, I've decided to move on to Maui Preparatory Academy this year because of the opportunities I felt it would offer the children of West Maui.

However, I must be honest with you this morning. I was a bit hesitant at first. I wasn't sure if I should take the job. Would Maui Prep be a school for only the wealthy at Kaanapali and Kapalua communities? Would all the students be from white, privileged backgrounds? After all, the students that made my job at Lahainaluna High School great were those students that strived to overcome obstacles in life and make things better for their families. I love the fact that my job was to send students to college, and most of these students that I helped would be the first in their family to go to college.

Although I was assured by the school leadership that this would not be the case, I was very wary. How could this be true? How could the students I worked with at Lahainaluna High School whose parents often worked eighteen-hour days and multiple jobs for their families, how could they afford \$8,000 in tuition? How could a single mother of three with a rent of \$1,800 a month possibly afford the tuition?

I'm proud to tell you that I made the right choice. Our student body at Maui Preparatory Academy is truly a diverse representation of West Maui. About half of our students are on scholarship, many of them full tuition. Many of our parents work multiple jobs and long hours in an effort to provide what is best for their family.

In five years when we graduate our first class, many of my students will be the first to attend college in their families. This has all been made possible by the generosity of Maui Land & Pine. Maui Land & Pine has contributed thousands of dollars in scholarship money for our students, and they've continued to let us know that they will do so in the future.

Although I've changed the name to protect the privacy of my students, I would like to close by telling you about one of my students. "Susie" is a student in my sixth-grade math class. She's a foster child. Her parents were incarcerated for drug abuse and sexual abuse. Life has not been kind to this innocent child.

The first day of school, she came in to the Kapalua Bay Hotel where we were housed. She didn't smile or talk to anyone. However, during her short time at MPA, she's excelled. She's received A's in all of her classes. However, most important, she goes home happy every single day. She has even made a lot of friends, and even with the rich kids in Kapalua. She loves school and is challenged daily. She feels supported and loved by her classmates. "Susie" is one of many students on an \$8,000 scholarship supported by Maui Land & Pine.

Thank you.

CHAIR HOKAMA: Thank you, Mr. Reader.

Members, any questions for Mr. Reader this morning?

Thank you very much for your testimony.

COUNTY CLERK: Eugene Seradilla, followed by May Fujiwara.

MR. EUGENE SERADILLA [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning and aloha.

My name is Eugene Seradilla. I am the Executive Housekeeper of Kapalua Land Company.

I'm here to ask you to vote yes for the Kapalua Mauka project. Why? Maui Land & Pineapple Company vision is to create a sustainable company becomes the employers of choice. By incorporating affordable housing into each of its project, it's allow, it allows us for us to offer our employees something that their barely can do, an opportunity to own their homes on Maui. The hundred seventy-three affordable units that will be available through this project combined with the first-time home buyers and rental assistance program is a step in the right direction.

I have so many employee who live in Kahului and Wailuku area, and they wish if they can find a better place to live closer to Kapalua area, they would love to.

Living in Kahului, Kahului and Wailuku area is hard . . . if you work in Kapalua area. You have to drive at least forty-five minutes to one hour. It is exciting to have an opportunity to, for our employees, to have, to have home, homes in Kapalua area.

You have already received a petition from over 400 of our employees who support this project. Many are here today. I have brought a copy of a petition. Please vote yes for Kapalua Mauka project.

Thank you for your time. Mahalo.

CHAIR HOKAMA: Thank you, Mr. Seradilla.

Any questions for Mr. Seradilla, Members?

MR. SERADILLA: Thank you.

CHAIR HOKAMA: If not, our staff will be happy to take whatever you have for submittal.

Mr. Clerk.

COUNTY CLERK: Next speaker is May Fujiwara, followed by Bob McNatt.

MS. MAY FUJIWARA [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Aloha, Council Chair Hokama and Members of the Council.

My name is May Fujiwara, a resident of West Maui. Throughout the years that I have lived in West Maui, I have been witness to the many contributions that Maui Land & Pine has done for our community. Maui Land & Pine is a vital part of our community



and is a very reputable firm and has been here for a long time, and I'm sure will continue to be here in the future.

From Kapalua Mauka, 173 much needed affordable units will be realized which will provide housing primarily for their employees. A first-time homebuyers and rental assistance program will be created to assist their employees into their own homes.

Inadequate infrastructure is a great concern for many of our West Maui residents. However, Maui Land & Pine's 20-year build-out period will allow for the gradual absorption of population and development of infrastructure.

I understand that Kapalua Mauka is important to the continued success of Maui Land & Pine.

I ask you to please vote yes on the Kapalua Mauka project today so that Maui Land & Pine can continue to play a major important role in our community.

Thank you for allowing me to speak.

CHAIR HOKAMA: Thank you, Ms. Fujiwara.

Members, any questions for our testifier?

Thank you very much.

COUNTY CLERK: Bob McNatt, followed by Sharon Mart--Mat, Matin.

MR. BOB McNATT, MAUI LAND & PINEAPPLE COMPANY [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Chair Hokama and Members of the Council.

I'm Bob McNatt with Maui Land & Pineapple Company.

I'd like to tell you this morning that the Company's core values include strong support for the community, enhancement and protection of the environment, and continuous striving for excellence in everything that we do.

You can see that if you've been to Kapalua. You can see the, the support for community in excellence. You can also see it if you've been to Pu'u Kukui Preserve in our protection of the environment. And you can see it if you talk through our pineapple fields and, and see the hard work that our, our employees have been

doing. You can also see it reflected in the faces of our employees who are here today.

We are a company who has always supported the, the community as best we can and we'll continue to do so through affordable housing, through trying to get improvements done to the infrastructure. We've built more or assisted with the construction of more affordable housing in the last twenty years than we have market-rate housing. We have employed--we have offered housing and assisted our employees with that housing to the, to the greatest extent of anybody on the island that I can think of. We will continue to support affordable housing and hope to build as much as we possibly can, and we'll do so.

We also have done a lot in, in order to get the infrastructure improved. And by that, I mean primarily the roads.

I have personally served on two committees. I'm still serving on one, the Pali to Puamana Task Force, to try to create a new corridor from the Pali to Puamana and beyond. I also served on the committee, committee under the leadership of then Senator Jan Buen, to help improve traffic in West Maui; and we were able to accomplish getting \$4 million approved by the Legislature to add an additional lane from Lahainaluna to Shaw Street. That, that is still pending with the Department of Transportation. And that's one of our issues, is dealing with the Department of Transportation.

We are absolutely committed to working with the Department and with the County and the community to get the improvements done as quickly as we can. And I will assure you that we would like to, with the approval of Kapalua Mauka, form a task force and invite those who are interested from the West Maui community and the greater community and the Council to assist us in dealing with the State to get those road improvements done as quickly as we can. Yes, the improvements, the lack of improvements hurt our businesses. But Kapalua Mauka is not, is not the problem. It's a long-term project. It's offering, for the first time, to pay its fair share to improve or provide funds for regional transportation improvements.

So we ask for your support, not only now, but also going forward to solve some of these problems.

Thank you very much.

CHAIR HOKAMA: Thank you, Mr. McNatt.

Members, any questions for Mr. McNatt?

MR. McNATT: Thank you.

CHAIR HOKAMA: Thank you very much.

COUNTY CLERK: Sharon Matin, followed by Kekai Keani.

MS. SHARYN MATIN, WEST MAUI PRESERVATION ASSOCIATION [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Good morning, Councilmembers.

CHAIR HOKAMA: Good morning.

MS. MATIN: My name is Sharon Matin, and I'm here on behalf of West Maui Preservation Association, an all-volunteer grassroots organization attempting to preserve West Maui and provide community benefits that we have been unable to receive to date.

We all have our horror stories of traffic. My personal one is being trapped in the dryer of the carwash for twenty minutes after leaving Planning Commission, constantly looking over my back to see if a new car would be coming in starting through the mechanical machine that would either hit me or I was going to get very wet finding the emergency stop button.

We have our children subjected to being stranded with their parents unable to pick them up. It, it, it's become a vital health and particularly safety matter to us. It's not just simply spending more time in the car. It's become critical. I've gone four days with no mail or paper.

You know, we, we had an electrical problem because of wind blowing down some power poles. For one week, no one on West Maui could drive on the roads and we had no electricity. When we have a road closure, my home at Kono--Honokowai and everyone above me, we cannot each reach Kaanapali, much less Lahaina for basic services. It's, it's become very critical. And I know of nothing, as a lawyer and administrative law judge, that requires overriding the safety of the public and the ability to engage in commerce, getting to work. That impacts a lot of us.

The tourism industry, a mainstay of West Maui, oh, goodness, I can't tell you how many people have told me they won't go to Lahaina anymore. They're not going to sit in traffic. That's not why they come to vacation, to sit in traffic and wait an hour and a half to get to your location. They're, they're no longer taking the planes to Maui.

We have residents that are now exiting--some to the Big Island, and others back to the Mainland. You know, that's not what, what we should be allowing to happen as responsible members of the public and as the government that represents those constituents. No matter which district you serve, you have had the votes from West Maui for your position, and they deserve your foremost attention.

Because I had information from the two Interventions and archived information by which we establish standards in those two Interventions, if I can have freedom, either by questions if I overrun time, I would like to share with you some of the standards of the past. I understand there has been some concern about assessing too many standards on a particular singular developer.

I go back to . . .

CHAIR HOKAMA: Ms. Matin. Ms. Matin, you need to please conclude.

MS. MATIN: All right. I would welcome any questions by Councilmembers.

CHAIR HOKAMA: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Sharon, the conditions that you're speaking about, I believe that one of the conditions, from my understanding, was Condition No. 7 that was attached to all of the North Beach development. And because I have not in--been intimately involved in that, is that condition, I guess, comparable to the conditions that we, as a Council, were asking?

MS. MATIN: I believe so.

There were some problems with that condition. It was intended to attach to all of North Beach. It required Amfac to, originally, it was tied to the bypass itself which, at one point in time, did have funding and enabling legislation but, by agreement with Amfac and Department of Transportation, it was changed to widening the Honoapiilani Highway from two lanes to four lanes. Interestingly, at the time that condition was addressed and the widening was discussed as an alternative, our own governmental department head stated that, that widening of Honoapiilani from two to four lanes was to reach maximum seven years later. The 1993 road E.A. was what triggered those reports.

So in 1993, our own government officials predicted that widening would be a maximum in the year 2000. We're in the year 2006. No new roads have happened.

And to get primarily back to your question, the reason is because the condition was poorly worded. It was a condition that attached requiring that the bypass or alternative mitigation be implemented. Well, at that time, the alternative mitigation was an appropriate standard. Widening of the highway was something like \$30 million.

Subsequently, that has been watered down primarily by advice of Corp Counsel that other mitigative measures can be reduced to donations of 1.2 or 1.8 million to the slush fund that seems to go into the, to go to the coffers, but never results in the roads for which it was intended. Specifically, Starwood agreed to 3.8 million to provide the Lahainaluna Bypass overrides and completion. It hasn't happened. Now that was for eleven acres. If you transfer that to the current project of 925 acres, you know, \$3.8 million should be multiplied by a factor of 10. That was the standard that we utilized in making sure that each developer was basically following the same rules. The standards were attempted to, as much as possible, match. And I would suggest that is the last viable standard we have to work from. It has since been watered down.

COUNCILMEMBER JOHNSON: So one of the--and, and I appreciate your giving information. One of the, I guess, questions or criticisms of putting conditions that seem to target only one developer, if I understand you correctly, what you're saying is that, no, these conditions have existed with other resort development, and much more stringent and strict conditions even though they may not be interpreted, you know, from what their, originally, I guess purpose and intent was. But that, if I understand, and correct me if I'm wrong, what you're saying is that those conditions were probably even greater than the condition which we had tried or I had tried to place on this particular development. Is that right?

MS. MATIN: That is absolutely correct.

COUNCILMEMBER JOHNSON: Okay. Thank you very much.

CHAIR HOKAMA: Thank you very much.

Further questions for Ms. Matin?

Thank you very--Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah, just out of curiosity. Sharon, thanks very much for coming. You said that you've gone four days without mail?

MS. MATIN: Yes.

COUNCILMEMBER ANDERSON: How did that happen?

MS. MATIN: When we have a Pali problem or an accident, the road is simply closed. It's four hours for a minor accident, seven hours or more for a fatal. A Pali fire can be all day, all night, and into the next day.

COUNCILMEMBER ANDERSON: Oh, so you're saying from the closure of the road.

MS. MATIN: Yes.

COUNCILMEMBER ANDERSON: I, I misunderstood. I thought you meant four days in a row you didn't get mail.

MS. MATIN: That is correct. Four days in a row, we were without mail or paper. It was a combination of a fatal accident, a small accident, and several Pali fires. That's not uncommon for us. It happens many times a month.

COUNCILMEMBER ANDERSON: Wow. Thank you very much.

MS. MATIN: Thank you.

CHAIR HOKAMA: Thank you.

Further questions, Members? Thank you very much for your testimony.

MS. MATIN: Thank you so much for your concern over this project. We appreciate your assistance very much.

CHAIR HOKAMA: Thank you.

Mr. Clerk.

COUNTY CLERK: Next speaker is Kekai Keani *[sic]*, followed by Patricia O'Brien.

MR. KEKAI KEAHI [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Aloha. My name is Kekai Keahi. I'm from Lahaina--born and raised.

I was going talk about the traffic, but you guys heard them all already. But there's, I don't know if there's something, well, there's something that has to be considered also.

Hawaiian Homes in Lahaina. I don't know if you guys take that into effect, I mean account, but you got 104 houses coming up, Leialii, first phase; second phase, 205; Mahinahina, Honokowai-Puukolii area, 1,000-plus probably. Hawaiian Homes, yeah. And this is one Federal Act passed in 1921, Hawaiian Homes Commission Act, which means pretty much, to me, we have precedence over what, what going on in, in Hawaiian Homes, and there's nothing you guys can do about it, yeah.

But knowing that, allowing--the other thing about Hawaiian Homes is, is alleviating [*sic*] the need for affordable homes by, in Lahaina, at least by 1,300 to 1,500 homes.

Saying that, a project like this that is, what, 690 homes for millionaires basically; and 100-something for affordable homes. Chum change that; chum change that. Like how I see in the paper with Tavares and Johnson where 80 percent should be affordable. Shucks, maybe go 100 percent affordable, then maybe the people who work in the, the plantation, the pineapple plantation, can get their homes. Yeah. I don't know. But so if you get these Hawaiian Homes that going be coming online, and they say going come on pretty soon. Like Hawaiian Homes already started with the first phrase of Leialii; second one coming in three years; maybe Mahinahina-Puukolii area, in maybe ten. So you looking within the next ten-plus, around ten years, we're going have another 1,500 homes, not counting the project that Kapalua like put up; and not counting that they still building that Westin Hotel out there. They going build . . . which is a multimillion dollar, I mean, crazy what they was going sell their, their, their rooms at. You know what I mean. Then you get Kua'u Subdivision that's still building, yeah. No forget, it's not done. They still building. Launiupoko and one proposed project in Olowalu. So where going end? You know what I mean.

No matter what, Hawaiian Homes going go in. And I, I, to me, I think there's a precedence that just because it's a Federal bill, a Federal Act that was passed through Congress.

So, you know what, you like see traffic? And the reason why I, I saying this about Hawaiian Homes is because, you know what, basically, brah, period, the Hawaiians is the most displaced people in Hawaii; and we should get this land over here and should get those homes . . . But what going happen is we going block everybody out with traffic because we allowing all these rich people coming inside. Well, I don't know if going get traffic because I hear some guys only going live here two weeks a year. They going have their houses just on the hillside, living two weeks a year. I don't know. But this is, this is one thing I wanted for say.

The other thing is, for some reason, I was talking to this tourist guy on the beach. He says, "Wow. There's a housing boom here. Everybody has the opportunity to buy one house." I was, "Yeah. Funny, but for, for some reason, from what I see, my

observation is just like we get more homeless now." Is that because we cannot afford homes anymore? And people say, "They homeless. They lazy or they're addicts." Brah, I see, I talk to guys that get two jobs, but they homeless because they cannot afford rent, they cannot afford one house. Is that their fault, or is it our fault as, as one community, as one society that we supposed to be helping these people rather than giving them out to this millionaire people. You know what I mean.

But, basically, that's what I get for say. Me, I talking more from o' here. I'm not so much from the books and stuff like that, but I talking from over here. That's it.

CHAIR HOKAMA: Thank you, Mr. Keani *[sic]*.

Any questions for Mr. Keani *[sic]* this morning? Keahi this morning? Thank you very much for your comments.

COUNTY CLERK: The last speaker is Patricia O'Brien.

MS. PATRICIA K. O'BRIEN [testifying on Bill No. 1 (2006), Bill No. 2 (2006), and Bill No. 3 (2006)]:

Aloha kakahiaka.

Excuse me, Councilmembers.

My notes are written on my Council calendar because I wasn't planning on speaking, but I got a little bit into this.

Sunday, I had a party, had an impromptu party and I invited all my neighbors. I live in a very diverse neighborhood. I live in Wahikuli Terrace. I've lived there over thirty years. I know all my neighbors. We all came together into my 792-square-foot home and we discussed a few things.

And one is, at this party, we talked about the need for greed, TV shows, right? Need for greed. Everybody is greedy right now. We understand that. I've been at a few County Committee meetings with a few of you Councilmembers where I've seen the need for greed and you did what you needed to do. But that's, you know, we're now living with it.

Development's going to happen; change is going to happen. That's okay. But I'm sitting there talking to my neighbors--I'm representing my neighbors because they're all working two to three jobs to put their kids through school, and they have to travel all over the island. And so, they said, "Why don't you go to the meeting?" And they



said, "We read in the paper that Jo Anne Johnson said everybody should show up." So Jo Anne Johnson's very popular in my neighborhood. So they said, "Kathy, if you get a chance to go, 'cause you're off, will you go?" So they said, "Talk about the need for greed, development, change is happening, and just leave a few words with 'em."

Again, I've lived in Lahaina thirty years. I didn't leave for nine years. Like 90 percent of you in here, we stuck it out. Like, you know, the earlier speaker, you know, had to leave. Well, you know, the rest of us, I go to the school. I don't have kids. I work at the school; I help out. We all stick it out.

I'm sorry that people in pineapple perhaps might lose their jobs. This will be a sensitive issue here. But you know what? I'm fifty-five years old. I had fourteen jobs or careers; eight businesses here; and my company I'm currently working for is probably going to go out of business. They filed bankruptcy. They're going out of business. There's going to be approximately 40,000 of us on the streets all over the country. It happens. Change happens, and sometimes change is good.

You folks right here have a chance to make some changes. And I'm thinking in terms of, with the need for greed, greed is out there, it's high; but don't give into this particular, not this particular development, but this whole trend--this development we're talking about right now, of course--but the trend. If you say no right now, these investors and developers are going to come back with better ideas. I know you people are smart. I know a lot of you are in real estate and lawyers. Op--there's always options. You can keep working on things. And if you say no to them right now, they're going to come back with ideas, maybe money, maybe ideas on how to get roads built quicker and faster so they can have their developments happen, because there's a need for greed and there's money to be made out there.

So maybe for all of us, you know, use it to your advantage. You folks have the power. Please, I'm asking you right now, just hold off--little more time. I know things take too much time in, in politics; but, I've lived in West Maui a long time, as these people have, and we need your help. We desperately need your help. So many Councils before have not helped us. Please help us.

Thanks for your attention.

CHAIR HOKAMA: Thank you, Ms. O'Brien.

Questions for Ms. O'Brien?

Thank you very much for your testimony.

Is there anyone else that wishes to provide testimony on any item that we have agendized for today's meeting? Please make yourself known and we will provide an opportunity for you to share comment.

Seeing no one coming forward, Members, with no objections, testimony for today, the seventeenth of February, 2006, shall be closed.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: So ordered.

Members, we will take a recess at this time before we get into the work of the Council. We shall be in recess till ten-forty.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:27 A.M., AND WAS RECONVENED AT 10:48 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: We shall reconvene the Council meeting for the seventeenth of February, 2006.

Mr. Clerk.

COUNTY CLERK: Mr. Chairman, before we proceed, I would note that our office has received a substantial amount of emailed and--emailed testimony, along with petition forms. There is approximately an inch worth, and those copies have been duly distributed.

CHAIR HOKAMA: Thank you.

Members, with no objections, the Chair would recommend accepting the testimony provided, as noted by the Clerk.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Okay. Thank you very much. So ordered.

Mr. Clerk.

**MINUTES**

The minutes of the regular meeting of December 20, 2005 was presented at this time.

CHAIR HOKAMA: Thank you.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT THE MINUTES OF THE REGULAR COUNCIL  
MEETING OF DECEMBER 20, 2005 BE APPROVED.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Kane, to adopt the minutes of the regular meeting of December 20, 2005. Mr. Carroll, further discussion?

VICE-CHAIR CARROLL: No discussion.

CHAIR HOKAMA: Members, any further discussion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

The following committee reports were presented.

### COMMITTEE REPORTS

#### COMMITTEE REPORT

NO. 06-15 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Contract No. C3505 between the County of Maui and Fong Construction Company, Limited, for the construction of the Kihei Recycling and Redemption Center at the South Maui Community Park in the amount of \$768,944, be FILED; and
2. That Contract No. C3506 between the County of Maui and David P. Ting and Sons, Inc., to design/build a steel building for a recycling Materials Recovery Facility (MRF), Phase I, in the amount of \$1,257,079, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIR, MOVE TO ADOPT COMMITTEE REPORT 06-15.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to adopt Committee Report 06-15. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The Council, if you all remember, a couple of months back referred specifically Contract Nos. 350, ah, C3505, which was for an amount of \$768,944, and Contract No. C3506, for a dollar amount of \$1.275 million, to the Budget and Finance Committee because of some concerns of improper certification.

I'd like to cite Section 9-18.2 of the Charter of the County of Maui which states: "Before execution, contracts involving financial obligations of the county shall also be certified by the director of finance as to the availability of funds in the amounts and for the purposes set forth herein."

This represents the mandate of the people of this County and ensures that there are checks and balances in government so that government does not overspend.

Your Committee was concerned that these contracts were not properly, properly certified as required by the Charter, and that there was a lack of oversight in the execution of these contracts.

Your Committee was informed by the Director of Finance that these contracts have since been cancelled.

Your Committee was also concerned, Mr. Chair and Members, that the Department of Public Works and Environmental Management were able to fund Contract No. 3506 through an inappropriate transfer of previous year's appropriation without Council approval.

Your Committee was concerned that the cancellation of the contracts, which was stated by our Director, were to construct a recycling and redemption center, and a materials recovery facility that would be hampering recycling efforts in the Kihei district as well as the rest of the County.

Finally, your Committee was concerned about the lack of accounting for the \$4 recycling surcharge which the Administration requested and the Council approved in the Fiscal Year 2004 Budget. To date, we have not been able to account for that \$4 surcharge, and it has not been tracked and so there are efforts now that, that is going to be tracked.

So, as you can see, Mr. Chair and Members, during the Committee work, we tried to get to the bottom of this; and we are hoping with the Administration's cooperation, that we can work towards correcting some of these issues and oversights, including working to strengthen the internal controls of oversight when it comes to the contracts and how they're supposed to be applied.

Again, this dealt with almost \$2 million, and the Committee, by no means, discounted the fact that this could also be happening on the smaller contracts. And our Director of Finance, Mr. Young, has assured us that they're going to be working very aggressively to close any potential loopholes for this type of issue.

So, with that, we are recommending from the Committee that the contracts, or the cancelled contracts be filed.

Thank you, Chair.

CHAIR HOKAMA: Thank you, Mr. Kane.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COMMITTEE REPORT  
NO. 06-16 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That BILL NO. 7 (2006), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO THE DEPARTMENT OF POLICE" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 06-5, from the Budget Director, be FILED.

CHAIR HOKAMA: Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIRMAN, MOVE TO ADOPT COMMITTEE REPORT 06-16.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to adopt Committee Report 06-16. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Chair and Members.

The proposed bill will allow two Police Evidence Specialists and one Evidence and ID Technician to work in the Investigative Services Program. The EP count in the Mayor's proposed Fiscal Year 2006 Budget did not properly reflect the transfer of these positions from the Technical and Support Services Program to the Investigative Services Program in the Department of Police.

The work performed by these employees is related to investigative matters, and the transfer does not create a shortage in the Technical and Support Services Program.

Thank you, Chair.

CHAIR HOKAMA: Thank you, Mr. Kane.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: For the record, BILL NO. 7.

CHAIR HOKAMA: Thank you.

COMMITTEE REPORT  
NO. 06-17 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That BILL NO. 8 (2006), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES, THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT, TOTAL OPERATING APPROPRIATIONS, AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 06-6, from the Budget Director, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIRMAN, MOVE TO ADOPT COMMITTEE REPORT 06-17.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to adopt Committee Report 06-17. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The purpose of the revised proposed bill is to increase carryover and savings from the Wastewater Fund and the appropriation for the Wastewater Fund Reclamation Facilities Program - Wastewater Fund by \$825,000, which was represented, due to increases in overall electrical costs.

An increase in electrical cost is primarily due to a large increase in the energy cost adjustment charged by Maui Electric Company, Ltd., which reflects the utility's actual cost of fuel.

During the Committee hearing, it, it was brought to our attention that the additional carryover savings that is being recognized is available because the Wastewater



Division conservatively estimated the wastewater revenues and actual revenues are well above the Fiscal Year 2006 Budget estimate.

As a side note, Mr. Chair, we did make a point that the body, the Committee, and this Council take note of that as we quickly approach our 2007 Fiscal Year Budget discussion. Thank you.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: For the record, BILL NO. 8.

COMMITTEE REPORT

NO. 06-18 - COMMITTEE OF THE WHOLE:

Recommending that RESOLUTION NO. 06-7, entitled "AUTHORIZING SETTLEMENT OF MEGAN KAINA, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. CV 04-00608 DAE" be ADOPTED.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO APPROVE COMMITTEE REPORT NO. 06-18.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt Committee Report 06-18. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

Your Committee of the Whole met on January 31, 2006, to address the Megan Kaina versus County of Maui case.

The complaint alleges damages arising from the death of Lisa Tomita Kaina as a result of a police shooting in Paia.

Your Committee discussed this matter in both open and executive sessions with the end result being Committee support for the adoption of a resolution authorizing settlement of the case.

CHAIR HOKAMA: Thank you.

Further discussion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: RESOLUTION 06-7.

COMMITTEE REPORT

NO. 06-19 - COMMITTEE OF THE WHOLE:

Recommending that RESOLUTION NO. 06-8, entitled "INDEMNIFYING CARLTON HELM, RONALD SAGARIO, CHRISTINA WILLIAMS, KELLY PAUOLE, JAMIE WINFREY, HAROLD MANAOIS, AND KAENA BROWN IN BARBARA KALANIKIEKIE KAAPUNI, ET AL. V. CARLTON HELM, ET AL., CIVIL NO. CV 04-00449 SOM LEK" be ADOPTED.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO APPROVE COMMITTEE REPORT NO. 06-19.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt Committee Report 06-19. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

At the January 31, 2006 meeting of the Committee of the Whole, the Committee considered the resolution which, to, which was to indemnify Carlton Helm, Ronald Sagario, Christina Williams, Kelly Pauole, Jamie Winfrey, Harold Manaois, and Kaena Brown in the Barbara Kalanikiekie Kaapuni versus Carlton Helm case.

The case alleges Supreme Court and U.S. Constitution violations of plaintiff's rights.

Your Committee supported a resolution to indemnify the aforementioned individuals.

Thank you.

CHAIR HOKAMA: Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: RESOLUTION 06-8.

CHAIR HOKAMA: Thank you.

COMMITTEE REPORT  
NO. 06-20 - COMMITTEE OF THE WHOLE:

Recommending that RESOLUTION NO. 06-9, entitled "INDEMNIFYING BEAU H. K. SPENSER IN CIVIL NO. 05-1-0391(1), KITTY ATCHLEY V. COUNTY OF MAUI, ET AL." be ADOPTED.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO APPROVE COMMITTEE REPORT NO. 06-20.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt Committee Report 06-20. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

Your Committee of the Whole, on January 31, 2006, considered a resolution entitled "INDEMNIFYING BEAU SPENSER, KITTY ATCHLEY V. THE COUNTY OF MAUI CASE."

This matter includes allegations of damages arising from a motor vehicle accident involving a County vehicle operated by a County employee on June 23, 2002, in Kahului.

Your Committee voted to support the resolution indemnifying Mr. Spenser.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: RESOLUTION 06-9.

CHAIR HOKAMA: Thank you.

COMMITTEE REPORT

NO. 06-21 - COMMITTEE OF THE WHOLE:

Recommending the following:

1. That RESOLUTION NO. 06-10, entitled "URGING THE STATE LEGISLATURE AND THE STATE DEPARTMENT OF LAND AND NATURAL RESOURCES TO EXPEDITE THE DEVELOPMENT OF A PUMP-OUT FACILITY AT MAALAEA HARBOR AND TO PROVIDE IMMEDIATE FUNDING TO SUPPORT INTERIM ONSHORE WASTEWATER PUMPING OF COMMERCIAL VESSELS" be ADOPTED; and
2. That County Communication No. 05-383, from Councilmember Michael J. Molina, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO APPROVE COMMITTEE REPORT NO. 06-21.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt Committee Report 06-21. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

May we have the Clerk read the resolution in its entirety.

CHAIR HOKAMA: Mr. Clerk.

*(The resolution was read in its entirety.)*

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman.

Since the resolution was approved by the Committee, the Department of Land and Natural Resources stepped up to the plate and kicked in \$30,000 towards this project; the Pacific Whale Foundation kicked in 10,000; and the Tri-Isle Resource Conservation & Development Council has offered 30,000; and the Hawaii Tourism Authority approved the County request for 60,000 in funds. So progress has been made towards keeping our waters clean for our residents, visitors, and of course our precious marine life.

I'd like to thank Lynn Araki-Regan from the Office of Economic Development and County of Maui Environmental Coordinator, Coordinator Rob Parsons, for working with the Council with regards to this matter.

Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

I'd like to thank Member Molina for bringing this resolution forward. Obviously it worked--before we've even passed it, we've got the money.

And I'd also like to thank, again, the people from "Pump, Don't Dump", because I truly believe it's their initiative that forced this issue to the surface and made government respond. And, to me, that is democracy in action and that's how it should work. And, so, I thank them for all the personal time that they sacrificed to go out and make this issue foremost in the minds of, of everybody--residents, tourists, and government.

And I think it's also appropriate to thank those boat operators who took the initiative on their own to retrofit their boats and to pay for the pump-out that they've been doing for some time now; and that would be the Trilogy operation, Pacific Whale Foundation. And I know there's one other, and I apologize. I don't remember their name. But all of them need to be congra--congratulated, too, because they have set the example.

So this, this is a real, a really fun resolution because we've already accomplished what the resolution asks for.

So for all of those out there who had a part in this, thank you very much. The whales thank you. All of the people who use our nearshore waters on the South Shore appreciate the effort because it will, it will help ensure that they have clean nearshore waters to play in.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. I, too, would like to echo my thanks to the people that through their activism, through their demonstrations, and through their public awareness campaigns influence the decisions that government makes. I think it's a wonderful example of democracy and also the power of a small group of people having an influence over the larger benefits and welfare to the community. It really is a wonderful example.

And I also want to thank Lynn Araki-Regan and the Department of Economic Development and also our, Mr. Rob Parsons, who's our environmental coordinator, because sometimes we look at things and we question, "Well, is that appropriate? Is that an appropriate use of money?" And I know there were a few eyebrows raised about the expenditure of County money for what would ordinarily be a State function. And that's reasonable to question it.

But I think it's proven that it has served the best interest of the public because this is about economic development. If there is stuff floating in the water, if any tourist gets a staph infection, if anyone sends back a report to the Mainland that Maui is not a safe place to be because it has substandard health conditions, then you know what, that message goes out probably more loudly than anything we could say.

So I say to the people who made this possible, mahalo. And, as Ms. Anderson said, the whales thank you and we thank you, and particularly the people that were doing the patrol on the beach. They didn't like stepping over what they were stepping over. So I really do appreciate it.

Thank you very much, Mr. Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Thank you.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 06-10.

CHAIR HOKAMA: Thank you



COMMITTEE REPORT

NO. 06-22 - COMMITTEE OF THE WHOLE:

Recommending the following:

1. That BILL NO. 9 (2006), entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF HEALTH" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 05-249, from the Director of Finance, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO APPROVE COMMITTEE REPORT NO. 06-22.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt Committee Report 06-22. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

Your Committee of the Whole met on January 31, 2006, to discuss a bill which would allow the Mayor to enter into an intergovernmental agreement with the State regarding the Statewide Program on Parking for Persons with Disabilities, and which was, the bill was to include that the County get back \$9,495 as compensation for helping administer the program.

Now, although the State Constitution mentions the County share in the expense with the State for this program, your Committee expressed dissatisfaction with the reimbursement from the State, which amounts to roughly 25 percent, with the County paying a much larger amount to administer this important program.

Your Committee recommended a resolution urging increased compensation from the, for, increased compensation, I should say, for the County of Maui; and that it be sent to the Governor, State Legislature, DCAB, and HSAC, and that will be further discussed later in the Committee of the Whole.

And I do want to reiterate the Committee's intentions for the delay and the several meetings we were involved with this matter was not to hamper the services for our special needs community, but, rather, to help save our County money and with, having, with the County having a more equitable distribution of cost to implement this program with the State.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you.

Further discussion on the motion? Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. In Committee, we had lengthy discussion about the actual cost of these services. And because I do support the persons with disabilities, the handicap placards, I mean my husband has one, so without question I support the program. But what I don't support is fiscal irresponsibility when we are not collecting the proper amount for the services that we are rendering. If we don't give the bill to the State, what is going to happen is they're never going to pay anything other than the minimal amount that we give them the bill for. So if you don't ask, you are not going to get that amount.

So for me, Mr. Chair, I, I learned, you know, at least through the Committee, that there was unlikely to be any disruption in services as a result of this because right now we have no agreement. We haven't been collecting any money.

While \$9,495 is nothing to, I guess, write home about, it is the principle that we're trying to get the State to at least reimburse us so we don't cost shift once again onto the backs of Maui County's taxpayers.

So although I support the program, I do not support being fiscally irresponsible, and I think this is fiscally irresponsible. So I will be voting no on this.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion on the motion, Members?

The Chair will call a very, very short recess, subject to the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:13 A.M., AND WAS RECONVENED AT 11:15 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: We shall reconvene the regular Council meeting of the seventeenth of February, 2006.

Members, there is a motion before you to adopt Committee Report 06-22. Further discussion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

I want to echo the same sentiments that Ms. Johnson just shared.

We discussed this pretty fully in Committee on several occasions. And, you know, basically, so, so the public understands, we're taking on a State responsibility and they're not reimbursing us for the cost of that responsibility. And while a, a "No" vote on this will not threaten the program--in fact, I think it might improve the program by allowing people to just mail in their request for their, their placard, should the State take this over, I, I, too, can't support it because once again we're given, we're given a State mandate and we're not given the, given the funds to fulfill that mandate, so our taxpayers are, are feeling the brunt of what the State is shortchanging us.

So for that reason, I, I also will be voting no on this, Mr. Chairman. We, we in Maui County are carrying the weight of the State more times than, than we should be. And every time we do that, we're taking money out of County taxpayers' pockets and using it to fund a State responsibility. So I can't support it for that reason.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion? Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman.

As was stated by previous speakers, this was a very difficult discussion for all of us. And I think what we did agree on is what was shared by both of my colleagues, both

from South and West Maui that, in this case, the State, it's the Committee's feeling that it is not picking up their fair share of what's going on with this.

However, what we're voting on, Chair, is we're voting on allowing the County of Maui to enter into or authorizing the Mayor to enter into this intergovernmental agreement. And if we have a majority of "No" votes on this, then we would deny the Mayor that authorization, and, therefore, we would get zero, not \$9,495.

So, again, there's no dispute on the amount. We all want to get the 30,000; and, in fact, we think there's more. Based on our calculations, we felt that there was over \$40,000 that is due back to the County for providing this service.

But I want to make clear, as well, that if there is a majority of "No" votes on this, then we will be dealing with what occurred last term. If you recall, Members, that it came back in the very end of the fiscal year in May and June, and we ended up reluctantly, kicking and screaming for some of us, supporting allowing the Mayor to enter into the agreement so that we can get a dollar amount that would help reimburse the amount of work that we're doing, just a partial amount. Unfortunately, here we are back again.

I will also note that back in November, we had the Executive Director of DCAB here, and the question was specifically asked in the Committee to get more money. And they came very forthright, and came back and said, "No. The money is not there to provide you with the full amount that you're asking for."

So I wanted to make that clear as well that some--that's information that was provided to us. And I encourage the Members, as difficult as it is, to, to vote "Yes" on this; and that we can take our steps through a legislative process somehow in our abilities to communicate with the State that this is an issue that we need to discuss. Because the alternative of just cutting off the service, which could be a potential, and just dealing with the State doing this service by themselves, and them already telling us that they're going to do it via a mail-in, I can assure you, will have negative consequences to our citizenry, especially the ones directly impacted by the fact that they have a disability to deal with in their lives.

Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion? Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I would just like to say, along Mr. Kane's line, that if we did not approve this and the State did take it over, it is not helping our people out there that need the service. The State, yes, they would do the service; but, they would do with what was more economically feasible as they had indicated, perhaps with mail-ins being one of the options but not, not necessarily the service that we need for our people.

So I would hope everyone would support this.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I'm going to be supporting the resolution. And I think that Member Molina offered a resolution to the State of Hawaii--copies to the Governor; our State, and State legislators, you know, senators as well as the representative--in regards to our feeling in the reimbursement that we have from the State.

I know that \$9,000 doesn't cover the cost and, and by going with this resolution, at least we take the first step in, in letting our legislators know that, you know, we're not happy.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion, Members?

The Chair would add, for your information, I have, along with Mr. Kane, we were both at the Legislature Wednesday/Thursday. There are many considerations before our Senate and our House of Representatives that, at this point, the State agencies, particularly in the area of land use reclassification, is going to ask the Counties to do the work and the Counties to pay for the State's responsibilities the way the current proposals are draft--currently drafted before them.

I think, well, I ask you to take that into consideration that the motion that they are going into will continually, if it passes, to place a financial burden on the County taxpayers' base.

And it is interesting in light of their \$600 million surplus that they're asking each individual County to pay for the State's responsibilities. They have recognized that and, yet, they are going to mandate the County Planning Departments, our Executive Branch, to do their work.

You are, your are obviously aware of the Chair's sentiment, strong sentiment regarding the unfair recompensation to this County. But I will also take note the comments from Mr. Kane and Mr. Carroll also has great merit.

There being no further discussion, the Chair will ask for the vote. All in favor of the motion please say "aye."

AYES: COUNCILMEMBERS KANE, MATEO, MOLINA,  
PONTANILLA, TAVARES, VICE-CHAIR CARROLL.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON, JOHNSON, AND  
CHAIR HOKAMA.

CHAIR HOKAMA: The Chair votes "No." We have six "ayes"; three "noes"--  
Ms. Anderson, Ms. Johnson, and the Chair.

Motion passes. Committee Report six, 3-22 is adopted.

Mr. Clerk.

COUNTY CLERK: For the record, BILL NO. 9.

COMMITTEE REPORT  
NO. 06-23 - LAND USE COMMITTEE:

Recommending the following:

1. That BILL NO. 10 (2006), entitled "A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. 3061 (2002), THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP, FROM AGRICULTURE TO WAILUKU-KAHULUI PROJECT DISTRICT 1 (MAUI LANI) AND AMEND PART III.D.5, PROJECT DISTRICTS, OF THE WAILUKU-KAHULUI COMMUNITY PLAN" be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That BILL NO. 11 (2006), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS, AND CHAPTER 19.78, MAUI COUNTY CODE, PERTAINING TO WAILUKU-KAHULUI PROJECT DISTRICT 1 (MAUI LANI)" be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That BILL NO. 12 (2006), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO WAILUKU-KAHULUI PROJECT DISTRICT 1 (MAUI LANI) (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII" be PASSED ON FIRST READING and be ORDERED TO PRINT;
4. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning"; and
5. That County Communication No. 05-205, from the Planning Director, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT COMMITTEE REPORT NO. 06-23 BE ADOPTED.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to adopt Committee Report 06-23. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

The purpose of the first proposed bill is to grant a request from David Gleason, on behalf of Maui Lani 100, LLC, for a Community Plan Amendment from Agriculture to Wailuku-Kahului Project District 1 (Maui Lani) for 59.655 acres, to add a Village Mixed Use District and an Open Space District, and to increase the maximum residential units from 3,300 to 3,700 within the Project District.

The purpose of bill number two is to grant a Project District Phase 1 Amendment to include a Village Mixed Use District and an Open Space District, and to increase the acreage and maximum unit count in the Project District.

The purpose of bill number three is to grant a Conditional Change in Zoning for the subject property from County Agricultural District to Wailuku-Kahului Project District 1 (Maui Lani).

And I would like to offer an amendment to bill number three, the zoning bill at this time.

CHAIR HOKAMA: Mr. Carroll, you may.

VICE-CHAIR CARROLL: Oh, after, after a second.

CHAIR HOKAMA: Mr. Carroll, would you care to propose your amendment at this time?

VICE-CHAIR CARROLL: Thank you, Chair.

I WOULD MOVE TO AMEND THE PROPOSED CHANGE IN ZONING BILL ENTITLED "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO WAILUKU-KAHULUI PROJECT DISTRICT 1 (MAUI LANI) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII", ATTACHED TO COMMITTEE REPORT NO. 06-23, BY ADDING TO CONDITION NO. 2, EXHIBIT "2" TO THE CHANGE IN ZONING BILL AND EXHIBIT "B" TO EXHIBIT "3" TO THE BILL, THE FOLLOWING PHRASE:

"AS AMENDED BY THE AMENDMENT TO THE RIGHT OF ENTRY AND OPERATING AGREEMENT DATED FEBRUARY 16, 2006." THIS PHRASE WILL BE INSERTED AFTER THE DATE OF THE RIGHT OF ENTRY AND OPERATING AGREEMENT, AND BEFORE THE PARENTHETICAL TERM "AGREEMENT".

COUNCILMEMBER TAVARES:

SECOND.



COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Ms. Tavares, to the proposal as stated in Mr. Carroll's memo to you, Members, dated the sixteenth of February 2006. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I believe the amendment is self-explanatory, and I'd open the floor to the other Members.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion to amend? Having none, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

We are back to the main motion as amended. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I WOULD LIKE TO ADD A FURTHER AMENDMENT. I WOULD AMEND TO PROPOSE THE CHANGE IN ZONING BILL BY ADDING A NEW CONDITION TO NUMBER 8 TO EXHIBIT "2" TO THE BILL, AND TO EXHIBIT "B" TO EXHIBIT "3" TO THE BILL, TO READ AS FOLLOWS:

"ON-STREET PARKING SHALL ONLY BE ALLOWED TO THE EXTENT THAT A MINIMUM 10-FOOT WIDE TRAFFIC LANE IS MAINTAINED FOR EACH DIRECTION OF VEHICULAR TRAVEL ALLOWED."

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to amend Exhibit "2" in the change in zoning bill, and in Exhibit "B" to Exhibit "3" by adding a new Condition No. 8, as stated by Mr. Carroll.

Discussion? Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

That second amendment addresses the concerns raised by the Department of Police in its recommendation that street parking be allowed only on streets that are wide enough to allow parking on either side, while still allowing two-way traffic with, without having to straddle the center line to alleviate the Department of Planning's concern over dictating a piecemeal basis the width of the individual street within the subject property.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion to amend? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

We are back to the main motion as amended. Mr. Carroll.

VICE-CHAIR CARROLL: No further discussion?

CHAIR HOKAMA: Short recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:28 A.M., AND WAS RECONVENED AT 11:29 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: The regular Council meeting of the seventeenth of February, 2006, shall return to order.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. I would like to propose an additional amendment.

I MOVE TO AMEND THE PROPOSED ZONING BILL ATTACHED TO COMMITTEE REPORT NO. 06-23 BY ADDING THE WORDS "(PORTION)", IN PARENTHESIS, AFTER REFERENCE TO THE TAX KEY *[sic]* MAP NUMBER ON PAGE 1, EXHIBIT "3", TO THE PROPOSED BILL ON THE FIRST PARAGRAPH OF PAGE TWO THAT LINE 6 OF EXHIBIT "3" TO THE PROPOSED BILL.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to amend Exhibit "3" to the change in zoning bill as stated in his memorandum to you, Members, dated 16 February 2006. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I think this is self-explanatory. This is a nonsubstantive change, and I would hope for the Committee's approval.

CHAIR HOKAMA: Thank you.

Further discussion on the motion to amend before you, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON, KANE, MATEO, MOLINA, PONTANILLA, TAVARES, VICE-CHAIR CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is adopted.

Members, we are back to the main motion as amended. Discussion? Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah, thank you, Mr. Chairman

I'm happy to support this proposal before us today. Maui Lani has been around for numbers of years, probably twenty or thirty or so. And I am happy to see that the, the phased in build-out is going more or less according to schedule and that there are homes being provided for our community through this project, and also that they are going to be trying, and I'm waiting to see a Village Mixed Use actually get built and the Village Mixed Use portion of the commercial. And for people who are not familiar with that term, it means that the, it goes back to really the way we used to be, which was store owners lived above their stores and so it allows for a mix of uses within a commercial core so that it's more like our older towns like Makawao, Paia, Wailuku, and Lahaina; so there'll be a mix of residences and commercial.

So, I'm, I'm anxiously awaiting to see how this plays out. I know that several projects are looking at this type of, of use in their commercial core. And I am, like I said, I'm anxiously awaiting an implementation of, of this, this new way of looking at commercial cores within our, our villages or our towns. Thank you.

CHAIR HOKAMA: Thank you.

Further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: I, I also will be speaking in support of this measure. I think it's really important to see how people on their own have actually improved not only just the, the infrastructure that surrounds this project, but try to improve on the opportunity for people to actually have home ownership.

I think this is one of these situations where the developer was not compelled to do many of the things. They have seen the need and they have recognized that in order to make their entire project viable, they have stepped forward and with the affordable at 50 percent, that is extremely generous. Were the profit margin on this, because of the cost of the infrastructure that they've already committed to put in, including their commitment on water, their profit margin is not as great as other projects that are coming forward now. So in proportion to what they will be gaining on this, to me, I

think they should receive the support and the recognition from the community that they are doing things in a way that is pono, and I appreciate that.

Thank you very much, Mr. Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair. I'll be supporting this project.

Having recently toured some Village Mixed Use on the Mainland, you know, talking to the people out there, it seems to work out really good. It lessen the number of infrastructures because of the confinement of the village itself. You know, it kine a brings back memory. Right down the street, Kaohu Street, is a type of building that we probably see--store on the bottom, living quarters on the second floor.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion, Members? Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah, thank you, Chair.

I just think it's worth noting that these folks stepped forward and offered 50 percent affordable, and I don't know anybody else that's done that. I think it's very commendable and for that reason alone, I support their, their approval today.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion on the motion as amended, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: For the record, BILL NOS. 10, 11, and 12, respectively.

COMMITTEE REPORT  
NO. 06-24 - PARKS AND ECONOMIC DEVELOPMENT COMMITTEE:

Recommending the following:

1. That RESOLUTION NO. 06-11, entitled "AUTHORIZING ACCEPTANCE OF A DONATION FROM LAUNIUPOKO ASSOCIATES, LLC TO THE DEPARTMENT OF PARKS AND RECREATION, COUNTY OF MAUI, PURSUANT TO SECTION 13-8, REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, AND CHAPTER 3.56, MAUI COUNTY CODE"; and
2. That County Communication No. 05-328, from the Director of Parks and Recreation, be FILED.

CHAIR HOKAMA: Thank you.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

MOVE FOR THE ADOPTION OF COMMITTEE REPORT NO. 06-24.

COUNCILMEMBER TAVARES:

SECOND.

CHAIR HOKAMA: We have a motion by Ms. Johnson, seconded by Ms. Tavares, to adopt Committee Report 06-24. Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

Your Committee met on this particular measure on February 2, and we also made a site inspection. This purpose of this donation is, or the purpose of the resolution is to authorize acceptance of the donation from Launiupoko Associates, LLC, to the Department of Parks and Recreation; and it's pursuant to Section 13-8, Charter of the County of Maui. And we are accepting, at this point, a donation of \$25,250 from Launiupoko Associates.

In addition, you did receive correspondence that was from--and, and, if you have not, I apologize--but during the Committee meeting, I had inquired about the worth of the use on the part of the County, of the County for the parking lot that is mauka of Launiupoko Park. And that particular value is also stated, but it is not a part of the resolution because the developer indicated they had no intent to take that as any kind of a deduction and they may not even be taking what we are granting as a deduction.

So because, when the subdivision was originally approved that led to this park assessment, I believe under the old formula, the total amount was \$83, then I believe the developer felt compelled that this was certainly an inconsequential amount of money in comparison to the impact that the residents of the Launiupoko Subdivision will have on that park. So I applaud them for at least stepping forward to offer this and to give the parking because right now, the park is really stressed. There are so many people, and particularly when we have events.

So I welcome this and I would ask for the support of the Members in accepting this donation. And the formula for at least the park assessment in the particular situation that I just outlined with regard to the \$83 has since been revised.

Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 06-11.

COMMITTEE REPORT

NO. 06-25 - PUBLIC WORKS COMMITTEE:

Recommending the following:

1. That RESOLUTION NO. 06-12, entitled "ACCEPTING THE CENTRAL MAUI WASTEWATER RECLAMATION FACILITY STUDY AND CONCURRING RECOMMENDATIONS AND LONG TERM PLAN", be ADOPTED; and
2. That County Communication No. 05-366, from the Director of Public Works and Environmental Management, be FILED.

CHAIR HOKAMA: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I MOVE THAT COMMITTEE REPORT NO. 06-25 BE ADOPTED.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Pontanilla, seconded by Mr. Molina, to adopt Committee Report 06-25. Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Mr. Chair.

Committee Report 06-25 details the review by your Public Works Committee of a transmitted study entitled "Central Maui Wastewater Reclamation Facility Study", and recommendations from the Department of Public Works and Environmental Management relating to how the County of Maui can best meet the wastewater treatment and disposal needs for the Central Maui Region for the next 20 to 30 years.



Your Committee received a presentation of key elements of the study by the Wastewater Division Chief and various consultants to this study.

The Committee received cost-estimate examples for various options considered by the study, as well as comments from the Finance Director regarding the County's ability to finance the various options considered by the study.

Your Committee reviewed the arguments in support of maintaining the facility, its current, in its current location, as opposed to abandoning it at some point in favor of a facility in a more geographical favorable, favorable location.

Your Committee voted to accept the study and the Department's recommendation for: one, leaving the existing Kahului/Wailuku Wastewater Reclamation Facility at the current site; two, strengthening the facility to withstand a 100 tsunami event; three, mitigate shoreline erosion; and, four, to implement the long-term plan of action to service the Central Maui Service Area.

Your Committee recommends adoption of this Committee Report and the filing of the County Communication 06-25 *[sic]*.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion on the motion?

COUNCILMEMBER TAVARES: Mr. Chair.

CHAIR HOKAMA: Ms. Tavares.

COUNCILMEMBER TAVARES: Thank you--while we're fighting for the raising of the hands here.

I think that this wastewater study that was done has taken a, a few years to complete, but I believe it was a pretty thorough study and part of the study was regarding the cost--a, a big part of the study was the cost of, of putting or moving the plant from its present site.

I believe that through the process of the General Plan review and update, that this will issue will be discussed in more detail; and we'll, we'll wait to see what happens with that.

I do not blame the Department for coming in and wanting to, to have a sense of direction because, as we'll recall, Members, at every budget session, and I think at every budget session, there has been appropriations for some improvements at the existing wastewater treatment plant; and every budget session, we go through this debate about to move or not to move the Central Maui Wastewater Treatment Plant.

So at least this way, you know, we know that we've got these, this information. Basically, we're giving them the go-ahead to focus on the Central Maui Wastewater Treatment Plant where it is now, but not totally eliminating a future facility or facilities, 'cause that's the other thing that will need to be discussed during the General Plan process, is are we going to have one huge central wastewater treatment plant for Central Maui, or are we going to look at smaller plants scattered throughout the Central area or as needed. And I think as was pointed out in our discussions, these smaller, the smaller plants--and some of them are being actually required of various projects that are being built now that they have to provide their own sewage treatment plants. Technology has changed so that these plants are much more efficient and reliable than they've ever been in the past, and we may want to look at, as a community, decentralizing some of our facilities, especially these important infrastructure facilities, and not depend on one central location. This applies not just to wastewater, but also water, power, whatever--landfills, etc.

So I, I think that, you know, I applaud the Department for sticking with this study and presenting a very clear picture to us during the Committee of what all the options are and what the costs are associated with those options.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very--thank you very much, Chairman.

Chairman, during, during Committee, I supported the, the resolution with reservations. And, today, I will also support this with reservations. And the reason for that is because my own feeling that the report in itself was not really as conclusive as Administration wanted us to believe it was.

I still see the need for connectivity because the plant at it, it, at its existing site is questionable whether or not it can actually withstand a direct tsunami hit. The question of power and fuel along this Pacific coastline as well are additional concerns that also needs to be addressed as well.

So I wasn't convinced that to shore up existing plant will take up of the problems that, that could occur; and because of that, the need for connectivity between existing plant and a plant further inland just makes more sense.

So with that, Chairman, I, again, will be supporting this with reservations.

Thank you.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman.

It is with regret that I am unable to support this resolution, and I do appreciate the Chair's work and, and the Department's work in bringing forward this resolution. And as my colleague from up, Upcountry stated, this, as also the Department stated, that this is going to help them set their direction.

The reason I can't support it, Mr. Chair, is for a couple of reasons.

One of the reasons had to do during the Committee, and although I'm not a Committee member, I had the opportunity to sit in a part of that Committee work. And the community participation process that was provided to the, the cross-section of volunteers of this group, I felt was a, a process that didn't provide any "Yes/No" questions, but it ranked all the areas of concerns that were developed.

And I felt almost as if the process was a "blind leading the blind" process and that the actual detailed professional information wasn't incorporated into those discussions. It was basically trying to extract out information from the public's perception who really didn't have the expertise and the know-how overall. There were some people that had some more, more expertise than others. And I felt that the process, the public process was led for a outcome that they desired versus having it play out and then coming forward with some forthright information. And that's my opinion, and it is by no means meant to disrespect any conclusions that had been drawn by my colleagues. But that's how I felt.

Coming from a sales background, many sales people who are successful in sales understand you don't do a "Yes/No". You do options of "Yes's" And I think in this case for the type of work that we do, we're not here to sell people on a desired result, a car, a refrigerator, etc. We're here to let them know what information is out there and what's the best decision that we can make based on all the information all the way through. And I don't think that was achieved in this process.

Second, I'm not confident with the, the work that was done to conclude that there isn't any additional financial resources available to this County for this work. It was stated--and right in the committee report, it reads: "The Director of Finance responded to the Committee's questions regarding the County's ability to finance the various options considered by the Study." And, "He stated that while the original facility had been constructed with the assistance of State and Federal funds, the current assessment concluded that no significant portion of future expenses would be available from any source other than the County."

And I just--I'm not willing, at this point in time, with the information that we have, to accept that as a reason why we should go ahead and support fortifying the existing area or the existing facility. I, too, believe that it should be something more aggressively pursued from the financial component as far as something away from the ocean, which brings me to my final reason that makes it very difficult.

One of the main items in the resolution under the "Be it resolved" clause, the, of number two, regarding that the Council would concur with the recommendations. The second one is, it reads: "Strengthen the existing Wailuku/Kahului Wastewater Facility to withstand a 100 year (20 foot high) tsunami event"; then the third one is the one where they talk about: "Mitigate shoreline erosion through the construction of shoreline erosion structures or beach nourishment."

I don't think we've--I think the jury is still out on determining whether or not hardening or providing structures to harden this particular area, I don't think there has been enough analysis done to see how it's going to impact the adjacent areas that are going to be subject to erosional issues.

And I think many Members on this body in past discussions have recognized that hardening has caused problems in other areas. Look at Kihei and look at the erosion states of Kihei with the hardening in front of Kalama Park. And if you notice, there's a lot of issues down there that still have to be figured out in how we're going to alleviate that type of erosion and the loss of beachfront.

Right next to this area is Kanaha Beach, and this is probably one of the premiere areas for recreation by a lot of our citizens. And I think we need to do a little more work, a little--be more aggressive in our due diligence in understanding what are the consequences of us deciding to move forward with this project in this manner.

Finally, Mr. Chair, I just want to state that this is a tough one because it does deal with, no matter what, as Member Tavares stated, we were provided with the numbers. And even if we do the fortification of the existing facility, we're still talking of upwards of a \$120 million.

Okay. And if we do move it in with the option that they talked about, one major component or one major facility, they're talking of close to half a billion dollars. Huge, huge numbers. And, yet, if you've noticed, there really hasn't been much focus on these issues. It's been passing discussion, and I think it's about time that we start having that focus and understanding more clearly how we're going to take care of this issue because as we've seen, and we're, we're a visual species, we watch TV, and with what happened in Indonesia on the, the twenty-sixth of December a couple of years back, or the other year, with that tidal wave and how it hit, there's, there's some serious issues that we need to look at and see how we would be impacted in the event of a, a, a scenario that has occurred.

So it, it's with regret. I, I had strong reservations. And, for me, Mr. Chair, it's enough for me to vote no on this resolution.

Thank you.

CHAIR HOKAMA: Thank you. Excuse me.

Further discussion on the motion? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair.

While I am not a member of this Committee and, unfortunately, was not available when they met on this issue, I, I did get a chance to have the study and proposal from the Department to strengthen the current facilities presented to me. And, at that time, I, I found I did have some issues with what they are recommending.

And so I'm not going to be able to support this resolution. I support accepting the study; but, I, I can't say that I concur with the Department's recommendations to fortify the current facility. And one of the reason being, as Member Kane just mentioned, they want to mitigate shoreline erosion through the construction of shoreline erosion structures or beach nourishment.

And there is currently a, with, without really clarifying exactly what that means, it was told to me that they plan on nourishing the beachfront fronting the facility part of the wastewater reclamation plant.

And, and the problem I have with that, Mr. Chairman, is that there's already a hardened structure on the shoreline just adjacent to that. So if you're going to put beach sand on the beach next to that hardened structure, you might as well just throw the money in the ocean because as the high wave events happen, that beach sand is going to be eroded away against that hardened structure.

My, my discussion with the Department people who came and presented this to me, was that they should just entirely move it, remove the harden structure and extend the 20-foot wall that's going to be put up in front of the, the holding tanks or what do you, whatever you call those, those tanks, those ponds--trying not to use disagreeable language, but you know what I mean, those ponds--and just extend that 20-foot wall rather than harden the shoreline in front of that facility; and then maybe move the overflow pond to the other end of the facility of which there's plenty of room to do that.

So, and nobody ever got back to me that they were going to change their plans or that it was brought back to the Committee for that reason. And I just think that we need, need to be mindful of all of our best practices when we're moving forward with anything. And, yes, it's very important that we do something to protect this facility should we have, God forbid, a tsunami. But, at the same time, we want to make sure that the efforts that we take are in line with the best practices that this County has already adopted.

And our Beach Management Plan clearly states, as was adopted by this Council several terms back, we should not be hardening the shoreline.

And if we're going to be using very valuable and fast disappearing sand reserves for beach nourishment, we better make sure that, that sand has a good chance of, of remaining there. And if you're, if you're putting beach nourishment or beach sand to nourish, nourish a beach next to a hardened surface, it's not going to stay there.

So for that reason, for all those reasons, I can't support the resolution today.

CHAIR HOKAMA: Thank you.

Further discussion? Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Even though I am not a member of the Committee, I also met with the Department and reviewed some of the options. Having lived in the U.S. Virgin Islands and having gone through several tropical storms and hurricanes, and having had our power plant and our sewage facilities compromised, it, it's really a problem.

But I think that the money, for me, is going to be a huge issue because I have done a little bit of legwork, and I did have an opportunity to meet with Mr. Ed Case. And as he indicated to me, Federal funds, not just here in the State of Hawaii, but funds that are available or that would have been available in the past for public projects, they've been disappearing for years; and this year is going to be particularly bad.

So while I don't agree with everything that is in the resolution, I feel that we have to be fiscally responsible and look at the monetary implications of whatever direction we go. Doing nothing--I mean if there was . . . a tsunami tomorrow, what are we going to do? We have to deal with it. We don't know when mother nature will strike and, unfortunately, it's never convenient and it's never pretty, but we have to deal with it.

I think that because we also have the environmental protection laws, we also have the Department of Health issues that are involved, we have the Federal as . . . as well as State regulation, it's a long, cumbersome process that is going to take a lot of public input, and it's going to take many, many years even if we were to relocate what we have. But I think that we should explore all the options.

I think that Ms. Tavares is right. The information that will be provided to our General Plan Advisory Committee will also perhaps give us some basis on which to make future decisions. But the money, unfortunately, many times during periods of hardship never comes in until after the disaster occurs. That's sad, but that's the way the Federal government works. And having seen that before having lived through it, that is something I don't like, but it is a reality. And to take \$120 million plus dollars to relocate this, of the public's money, I have a big problem with that, too.

So, I, too, have my concerns, but I will be supporting the resolution because I think financially, at this point in time, with the options that we have at least, or at least from what I've been able to gather, the options that are available to us, I don't see any other choice right now.

So, anyway, thank you, Mr. Chair. And I will be supporting the measure.

CHAIR HOKAMA: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair. Just a final comment in regards to this resolution here.

You know, we saw what happened to Katrina. We saw what happened in South East Asia. We have an opportunity here, or the Department has an opportunity here, with this resolution, to go ahead and study the wastewater treatment plant as far as moving the plant, strengthening the plant. I'm sure the Department is going to be using their best engineering methods.

One thing sticks in my mind is that, you know, we have an opportunity here this morning to approve something that will strengthen the facility to withstand a 100-year tsunami event.

If we don't do nothing and something happens five, ten years from now, we are to blame.

For me, strengthening the existing facility is a key issue. We've invested almost \$50 million in that plant; and one tsunami can just wipe out \$50 million of investment. When I say \$50 million, the initial plant cost us 9.6 million. A new plant elsewhere, like Mr. Kane had said, will cost half a billion dollars. And there's no guarantee that, you know, we're going to have Federal or State monies to do this. Or, if when it becomes available, you know, we may be looking like thirty, forty years down the road.

So, you know, this will give the opportunity to the Department to, to take a look at the existing plant if we need to strengthen the facility to ensure that it withstands a 100-year tsunami event, you know, that's some satisfaction, as far as I'm concerned, regarding the facilities and, and the service that we provide our community here on Maui.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you, Chair.

I thought I'd offer my comments as well on this. It seems like we're caught between a rock and a hard place here. The way I see it, I guess I'm going to go with the rock. Better to start with something now.

And I do concur with the Members who have concerns about this. There's no perfect plan. But, you know, we're, I think we're due for something. I don't, I don't like to be a doomsayer, but it's been a while since we had our last tidal wave.

Mr. Chair, you know, we can, many of us can recall the last one, I think, was like back in 1960. And prior to that, it seemed to be coming in increments of every twenty years or so. Here we are in 2006, forty-six years have elapsed and, you know, I just hope it stays at least for another forty-six years we don't get any type of potential disaster.



But it's not perfect, but it's, it's something. So, for me, I prefer to do something sooner than later. But either way, it's a case of, "Pay me now or pay me later," if you remember those old commercials. We're going to have to pay through the nose for either this type of fix or a long-term fix, Mr. Chair. So I'll support the resolution on the floor.

Thank you.

CHAIR HOKAMA: Thank you.

Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

I just want to make it very clear that I, of course, support strengthening this facility to protect us should a tsunami happen.

The reason I'm voting no is because the resolution asks in its "Be it resolved," that the Council concurs with the recommended plan; and, and I can't vote that I concur because I don't.

I'm sure they're going to come up with a good plan. I, I hope that they will reconsider their plans as far as putting further structures along the beach and/or any beach nourishment unless they remove the harden structure that's there already. I can't see that it serves a purpose today, so I think they should remove it and, and let that beach replenish, replenish itself, and allow us to have that nice long strip of sand go all the way down to Kanaha. And so that's the only reason I'm not concurring with this resolution, because I don't. But I certainly concur with the fact that we need to strengthen the facility that we current, currently have.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair, my second and final opportunity. And, like Member Anderson, I'd like to clarify.

And, and I, whether intentionally or unintentionally, I hope that a "No" vote doesn't imply that we don't support having something accomplished. We're not--I'm not implying by my "No" vote we don't do anything about our current facility. That's the farthest from our, from our conclusion from all of this.

There's obviously a lot of things that need to be done, and it's, it's, it's, in my opinion, probably one of the biggest things that we should be talking about publicly and engaging the public in this.

However, it has been told to us, through the Administration, that this is going to be their vehicle for their direction, this is the fork in the road; and that according to what I heard and what was represented to us, that this resolution will close the door on the other options. And it's read right there: "Leave the existing at the current site and expand it in the future." That's what it reads. Okay.

And like Member Anderson, I don't concur with that. It's a "This or that," and nothing else. And I believe that we do have enough resources to provide us with greater options. And, in fact, through testimony at the Committee level, one of the members of the group who participated also came forward with recommendations for consideration. I think Mr. Mateo mentioned his comments of having smaller areas or other self-contained systems, not just a central system.

And so I cannot support the resolution because it just says, "This one or that," and that's it. And I want to make it clear that whatever ends up going on, we're all going to be working towards understanding how significant this is. And believe me, because of capacity, Member Molina said it himself, it's not a matter of "if", it's a matter of "when" the next one comes.

No matter which decision we make today on this, whether it is a yes or a no, either way, if something happens that's catastrophic and devastating, I honestly don't feel like one vote today is going to decide whether we made the right or wrong. We've made a decision to go a direction. If something happens and we leave it there and something happens, we can say, "I told you so," and it happens on the other side, too, either way. This is a tough one.

So I, I respect the position of, of, of what I see as the majority of Members who support this, and we're going to move forward with doing that because that's the official position of this body if that's what it comes to be. But I also ask that it's respected why there are issues and that people cannot concur with the reasoning behind it; and that there's other ways and, I believe, opportunities for us to look at those in the future.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion, Members?

I would say that, Members, your Chair just will share with you that the question regarding the hardening--hardening or strengthening is a budgetary issue and, therefore, that issue will be part of the Budget and Finance Committee's responsibility and jurisdiction to make a decision on in the future regarding possible funding and moving that concern forward.

The other thing that the Chair would, Chair will share with you at this time, and I would ask Mr. Moto to give comment if he feels appropriate. The Chair's view of this resolution, Members, is to give a sense of where this current sitting Council at this snapshot of time feels what is the best direction.

I do not consider this a legislative mandate. And, therefore, it is your Chair's position that would, it will not bind future Councils to this position. It is a nonbinding resolution, in your Chair's opinion.

And I want the Department to be very clear on that. It is a current Council's decision of what it sense is the directive--direction it wants the County to go in. The very next Council, after this election, may have a totally opposite position. And so the Chair shares that with you.

Mr. Moto, any comments you wish to share with the Members before the Chair ask for the vote?

CORPORATION COUNSEL BRIAN MOTO: Good morning, Mr. Chairman and Members.

The resolution is, as the Chair stated, is, is not a legislative act. Ordinances are legislative act, and this one is in the form of a resolution. It is a resolution that is subject to amendment or to repeal by a Council at any time, and is an expression of the sense of the Council as of the date of passage.

CHAIR HOKAMA: Thank you very much.

Further discussion on the motion before you as it regards to Committee Report 06-25? And just as a point of clarification, Members, the Chair will state that the filing is of County Communication 05-366. Okay, there being no further discussion, Members, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS JOHNSON, MATEO,  
MOLINA, PONTANILLA, TAVARES, AND  
VICE-CHAIR CARROLL.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON, KANE, AND  
CHAIR HOKAMA.

CHAIR HOKAMA: The Chair counts six "ayes", three "noes"; Anderson, Kane, Hokama.  
Committee Report 06-25 is adopted.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 06-12.

COMMITTEE REPORT  
NO. 06-26 - PUBLIC WORKS COMMITTEE:

Recommending the following:

1. That RESOLUTION NO. 06-13, entitled "AUTHORIZING THE EXCHANGE OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE", be ADOPTED;
2. That RESOLUTION NO. 06-14, entitled "AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE EASEMENT ON COUNTY OF MAUI REAL PROPERTY TO HALE JOCELYN FIELD, TRUSTEE OF THE BETTY E. STRAUSS LEGACY TRUST DATED FEBRUARY 12, 1995, WITH FULL POWERS TO SELL, MORTGAGE, LEASE OR OTHERWISE DEAL WITH THE LAND; HALE J. FIELD AND RAND NOOTEBOOM, FOR UNDERGROUND PRIVATE WATERLINE PURPOSES", be ADOPTED;
3. That RESOLUTION NO. 06-15, entitled "AUTHORIZING ACCEPTANCE OF A DONATION OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, FROM RAND NOOTEBOOM, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and
4. That County Communication No. 05-114, from the Director of Public Works and Environmental Management, be FILED.

CHAIR HOKAMA: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I MOVE THAT COMMITTEE REPORT NO. 06-26 BE ADOPTED.

COUNCILMEMBER MOLINA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Pontanilla, seconded by Mr. Molina, to adopt Committee Report 06-26. Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

This committee report details your Public Works Committee review and recommendation of adoption of three resolutions that will provide remedy for County construction of roadway portions completed outside an existing right-of-way along Kahakapao Road accessing the Kahakapao Water Treatment Facility located in Makawao.

Your Committee reviewed the circumstances that produced this situation and sought assurance from the departments involved that procedures have been implemented to prevent similar situations from being repeated.

The resolution for con, considered adoption include action that will allow for the exchange of real property, including portions of the roadway; a granting of private line, waterline easements crossing the roadway to property owners; and authorizing the acceptance of a donation of real property.

I would like to acknowledge the patience of the landowners neighboring the roadway, and ask the body's support of these measures that will allow for the Kahakapao Road to remain in its present location, rather than having to construct a road in the location legally described and removal of the existing road.

Your Committee recommends adoption of the report as contained in the resolution and filing of the County Communication.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

COUNCILMEMBER TAVARES: Mr. Chair.

CHAIR HOKAMA: Yes, Ms. Tavares.

COUNCILMEMBER TAVARES: May I request a short recess to approach the Chair.

CHAIR HOKAMA: Yes. But before that, I'll allow the Clerk to note for the Council the number of the resolutions by the action just taken on Committee Report 06-26. Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION NOS. 06-13, 14, and 15, respectively.

CHAIR HOKAMA: Okay, thank you very much.

The Chair, Members, will call a very short recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:14 P.M., AND WAS RECONVENED AT 12:15 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: The regular meeting of the count--County Council on the seventeenth of February, 2006, shall return to order.

Members, we have . . . completed the reports of our standing committees. Before we move further on the agenda that is still remaining for Council consideration and action, the Chair is well aware of the time and the need for a midday break. I will state, though, that for those that may be very much interested on the actions that the Council will be taking regarding Kapalua Mauka or the Maui Redevelopment Agency, we'll be taking that after our midday break to allow each, not only the Members, but you that are interested, sufficient time to take care of your requirements.

And the Chair is recommending, Members, a recess till 2:00 p.m.

COUNCILMEMBER MOLINA: No objection.

COUNCILMEMBER PONTANILLA: No objections.

COUNCILMEMBER TAVARES: No objection.

CHAIR HOKAMA: So being.

VICE-CHAIR CARROLL: Concur.

CHAIR HOKAMA: Thank you. Okay, Members, so we shall take up our matters after the return of the midday break.

The Council shall be in recess till 2:00 p.m. this afternoon.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:17 P.M., AND WAS RECONVENED AT 2:05 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: The regular Council meeting for the County of Maui, September, excuse me, February 17, 2006--wishful thinking on your Chair's part--is back in order. My apologies for that misstatement, Members.

Mr. Clerk, let us proceed with the agenda please.

The following County Communications were presented.

## COUNTY COMMUNICATIONS

NO. 06-37 - DAVELYNN M. TENGAN, PROSECUTING ATTORNEY,  
(dated January 30, 2006)

Informing of the Department of the Prosecuting Attorney's intent to expend \$60,000 in forfeiture funds for equipment purchase and upgrade.

CHAIR HOKAMA: Thank you.

Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIR, MOVE TO FILE COUNTY COMMUNICATION NO. 06-37.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to file County Communication 06-37. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chair and Members.

This communication from our Prosecuting Attorney, Ms. Davelynn Tengan, notes to us that these funds were obtained through the Department's enforce efforts and must be used only for law enforcement purposes and not to supplant the law enforcement resources of the local agency.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Clerk.

NO. 06-38 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,  
(dated January 26, 2006)

Transmitting thirty-one contracts for November 2005 for filing with the County Clerk.

CHAIR HOKAMA: Thank you.

Mr. Kane.



COUNCILMEMBER KANE:

MR. CHAIRMAN, UNLESS THERE ARE ANY MEMBERS WHO WISH TO REQUEST FOR A REFERRAL OF SPECIFIC CONTRACTS WHICH ARE THIRTY-ONE CONTRACTS FOR THE MONTH OF NOVEMBER 2005, I MOVE TO FILE COUNTY COMMUNICATION NO. 06-38.

COUNCILMEMBER MATEO:

SECOND.

CHAIR HOKAMA: Thank you. We have a motion by Mr. Kane, seconded by Mr. Mateo, to file County Communication 06-38. Mr. Kane.

COUNCILMEMBER KANE: I yield the floor to any Member who has a request, Mr. Chair.

CHAIR HOKAMA: Thank you.

Members, any request for referral of specific items to the finance portion of Mr. Kane's standing committee? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Chair, is this for contracts for the month of November--

COUNCILMEMBER KANE: Yes.

CHAIR HOKAMA: Yes.

COUNCILMEMBER PONTANILLA: --as well as December?

CHAIR HOKAMA: Specifically, just November at this time, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Okay. I'll wait for the next one.

CHAIR HOKAMA: Okay. Thank you.

Are there any requests by the Members regarding this specific item, contracts for the month of November?

Mr. Kane.

COUNCILMEMBER KANE: Thank you, Chair. Seeing no Member making a request, that, that motion is to file the County Communication that includes the thirty-one transmitted contracts for November of 2005. Thank you.

CHAIR HOKAMA: Thank you.

No further discussion? All in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

NO. 06-39 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,  
(dated February 2, 2006)

Transmitting fifty-one contracts for December 2005 for filing with the County Clerk.

CHAIR HOKAMA: Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chair.

UNLESS OTHERWISE REQUESTED, MOVE TO FILE COUNTY  
COMMUNICATION NO. 06-39.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to file County Communication 06-39. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Chair. I yield the floor.

CHAIR HOKAMA: Thank you.

Are there any request by Members for consideration of referral to Finance of Budget and Finance? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

I would like to have Contract No. C3597, as well as C3607, be referred to Public Works Committee for discussion on the, the details of the contract and what it entails.

CHAIR HOKAMA: Okay, thank you.

Mr. Pontanilla, can you please once more repeat the two contract numbers.

COUNCILMEMBER PONTANILLA: Contract No. C3607, which is the Central Maui Landfill Phase I and II Closure, as well as--for Fiscal Year '05, as well as Central Maui Landfill Phase I and II Closure, Fiscal Year '06.

CHAIR HOKAMA: Okay, thank you.

COUNCILMEMBER PONTANILLA: And then the other contract is Contract No. C3597, which is the Wailea--Wai--Waiale Dump Closure--7190 *[sic]*.

CHAIR HOKAMA: Okay, thank you very much.

Are there any further requests by the Members regarding contracts for the month of December 2005? If not, Mr. Kane.

COUNCILMEMBER KANE: Mr. Chair.

As your Committee Chair for the Budget and Finance Committee, we have no objections to receiving Contract Nos. C3597 and 3607 into Committee. And, so, without objections, the filing would include all of the contracts for the month of December 2005, which is a total of forty-nine.

CHAIR HOKAMA: Okay, thank you.

Mr. Pontanilla, the Chair, Chair's understanding is you want this to go to Finance Committee or to your Public Works Committee?

COUNCILMEMBER PONTANILLA: Maybe the Finance Committee.

CHAIR HOKAMA: Okay. Finance does have the responsibility of the overview and oversight regarding the expenditures of, of County funds, so the Chair would support you in the referral to Finance.

COUNCILMEMBER PONTANILLA: Finance Committee.

CHAIR HOKAMA: Yes, thank you.

Okay, Members, you've heard that all other forty-nine contracts shall be filed, expect for the two that has been requested by Mr. Pontanilla for referral to Finance. Any further discussion or request? Having none, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Thank you.

Mr. Clerk.

NO. 06-40 - ALAN M. ARAKAWA, MAYOR,  
(dated January 30, 2006)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Council on Aging due to the resignation of Delafied Kribben on January 27, 2006.

CHAIR HOKAMA: Thank you.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-40.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-40. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

This matter deals with the resignation of Delafied Kribben from the Council on Aging, effective January 27, 2006, via correspondence from the Mayor's office. I'd like to thank this individual for serving our community in this capacity.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion carried.

Mr. Clerk.

NO. 06-41 - ALAN M. ARAKAWA, MAYOR,  
(dated January 30, 2006)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Board of Variances and Appeals due to the resignation of Keone Ball on January 30, 2006.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-41.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-41. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

Effective January 30, 2006, Keone Ball resigned from the Board of Variances and Appeals via correspondence from the Mayor's office. I would like to thank Mr. Ball for his service to our community.

CHAIR HOKAMA: Thank you.

Members, further discussion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion carried.

Mr. Clerk.

NO. 06-42 - ALAN M. ARAKAWA, MAYOR,  
(dated January 30, 2006)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Board of Water Supply due to the resignation of Sally Raisbeck on January 30, 2006.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-42.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-42. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

Via correspondence from the Mayor's office dated January 30, 2006, they have informed us of the resignation of Sally Raisbeck from the Board of Water Supply. I'd like to thank Ms. Raisbeck who many of us know real well for all of her hard work on this Board.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you.

Members, further discussion? Ms. Anderson.

COUNCILMEMBER ANDERSON: I would just like to echo that. Sally has, you know, been a wonderful community activist all these years and has offered her highly intelligent opinion that's helped us in many instances. And I'm sorry that she's had to resign from this position, and, and I just want to send out a great, big thank you to her for all her years of service.

Thank you.

CHAIR HOKAMA: Thank you.

Further discussion, Members, on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion carried.

Mr. Clerk.

NO. 06-43 - ALAN M. ARAKAWA, MAYOR,  
(dated February 8, 2006)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Fire and Public Safety Commission due to the resignation of Leonida Molina on February 6, 2006.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-43.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-43. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

Your Committee has been informed via correspondence from the Mayor of Leonida Molina's resignation from the Fire and Public Safety Commission effective February 6, 2006, due to personal concerns. I'd like to thank Ms. Molina for her participation on this Commission.

CHAIR HOKAMA: Thank you.

Further discussion on the motion? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much, and I'd like to echo the sentiments expressed by Member Molina, and to also express my, my gratitude for Mrs. Molina for her diligence and participation in the Commission throughout the last number of years, especially during the last number of months with, with family difficulties. So mahalo.

Thank you.



Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

NO. 06-44 - ALAN M. ARAKAWA, MAYOR,  
(dated February 8, 2006)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Urban Design Review Board due to the resignation of Craig Murayama on February 7, 2006.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-44.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County Communication 06-44. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

This matter deals with Craig Murayama's resignation from the Board of Variance and Appeals effective February 7, 2006. I'd like to send out my thank-you's and appreciation to Mr. Murayama for serving our community in this capacity.

CHAIR HOKAMA: Thank you.

Further discussion, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Clerk.

NO. 06-45 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,  
(dated February 6, 2006)

In accordance with Section 3.16.020C, Maui County Code, transmitting two reports  
on settlement of claims as of December 31, 2005.

CHAIR HOKAMA: Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 06-45.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to file County  
Communication 06-45. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

This matter deals with two reports on settlement of claims. One report delineates the  
claims paid from the Claims, Settlements and Judgments account, and the other  
report delineates the claims paid from the Self-Insurance account. Thank you.

CHAIR HOKAMA: Thank you.

Members, further discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried. Thank you.

Mr. Clerk.

NO. 06-46 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated January 31, 2006)

Transmitting the "FISCAL YEAR 2006 - SECOND QUARTER CAPITAL  
IMPROVEMENT PROJECTS IMPLEMENTATION REPORT".

The County Clerk stated that the recommended action is that County Communication  
No. 06-46 be referred to the Budget and Finance Committee.

NO. 06-47 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,  
(dated February 7, 2006)

Transmitting copies of the Finance Director's Quarterly Report for Fiscal Year 2006  
as of December 31, 2005, and the Capital Improvement Project Report as of  
December 31, 2005.

The County Clerk stated that the recommended action is that County Communication  
No. 06-47 be referred to the Budget and Finance Committee.

NO. 06-48 - LYNN A. S. ARAKI-REGAN, ECONOMIC DEVELOPMENT  
COORDINATOR, (dated February 7, 2006)

In accordance with the Fiscal Year 2003 Budget, transmitting a copy of the "Maui Solar Roofs Initiative Quarterly Report, October 1 - December 31, 2005", submitted by Maui Electric Company, Ltd.

The County Clerk stated that the recommended action is that County Communication No. 06-48 be referred to the Budget and Finance Committee.

NO. 06-49 - ALAN M. ARAKAWA, MAYOR,  
(dated February 8, 2006)

Transmitting a copy of a letter dated February 7, 2006, from Scott Matsuura, Chair, Salary Commission, informing of salary increases for the Mayor, Managing Director, Directors and Deputy Directors, Fire Chief and Deputy Fire Chief, and Police Chief and Deputy Police Chief.

The County Clerk stated that the recommended action is that County Communication No. 06-49 be referred to the Budget and Finance Committee.

NO. 06-50 - LLOYD Y. GINOZA, BUDGET DIRECTOR,  
(dated February 9, 2006)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2006 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES, THE DEPARTMENT OF WATER SUPPLY, TOTAL OPERATING APPROPRIATIONS, AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)".

The County Clerk stated that the recommended action is that County Communication No. 06-50 be referred to the Budget and Finance Committee.

NO. 06-51 - THOMAS M. PHILLIPS, CHIEF OF POLICE,  
(dated February 2, 2006)

Transmitting a proposed resolution entitled "AUTHORIZING ACCEPTANCE OF A DONATION FROM VISITOR ALOHA SOCIETY OF HAWAII TO THE DEPARTMENT OF POLICE, COUNTY OF MAUI, PURSUANT TO SECTION 13-8, CHARTER OF THE COUNTY OF MAUI (2003), AND CHAPTER 3.56, MAUI COUNTY CODE".

The County Clerk stated that the recommended action is that County Communication No. 06-51 be referred to the Committee of the Whole.

***(THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 06-51 WAS ADOPTED LATER IN THE MEETING AND ASSIGNED RESOLUTION NO. 06-16. COUNTY COMMUNICATION NO. 06-51 WAS THEN FILED. See pages 99 through 102 for discussion.)***

NO. 06-52 - LYNN A. S. ARAKI-REGAN, ECONOMIC DEVELOPMENT COORDINATOR, (dated February 10, 2006)

Transmitting a proposed resolution entitled "ESTABLISHING A SISTER-CITY RELATIONSHIP WITH MIYAKOJIMA CITY, MIYAKO ISLANDS, OKINAWA, JAPAN".

The County Clerk stated that the recommended action is that County Communication No. 06-52 be referred to the Committee of the Whole.

NO. 06-53 - MICHAEL W. FOLEY, PLANNING DIRECTOR, (dated February 1, 2006)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING RICHARD M. SWORD, PH.D., INC. A CONDITIONAL PERMIT TO OPERATE A PSYCHOLOGIST OFFICE ON PROPERTY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII", and related documents.

The County Clerk stated that the recommended action is that County Communication No. 06-53 be referred to the Land Use Committee.

NO. 06-54 - MICHAEL W. FOLEY, PLANNING DIRECTOR, (dated January 30, 2006)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3000 (2001), AS AMENDED BY ORDINANCE NO. 3206 (2004), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO ALLOW FOR THE CONTINUED OPERATION OF A RETAIL GROCERY STORE AND SNACK BAR WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT PUKO`O, MOLOKAI, HAWAII", and related documents.

The County Clerk stated that the recommended action is that County Communication No. 06-54 be referred to the Land Use Committee.

NO. 06-55 - MICHAEL W. FOLEY, PLANNING DIRECTOR,  
(dated January 4, 2006)

Transmitting a draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL, M-2 HEAVY INDUSTRIAL, AND R-1 RESIDENTIAL DISTRICTS TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR THE MAUI BUSINESS PARK PHASE II PROJECT FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII", and related documents.

The County Clerk stated that the recommended action is that County Communication No. 06-55 be referred to the Land Use Committee.

NO. 06-56 - JO ANNE JOHNSON, COUNCILMEMBER,  
(dated January 26, 2006)

Relating to Chapter 5.16, Maui County Code, pertaining to taxicab operations.

The County Clerk stated that the recommended action is that County Communication No. 06-56 be referred to the Parks and Economic Development Committee.

NO. 06-57 - GLENN T. CORREA, DIRECTOR OF PARKS AND RECREATION,  
(dated January 27, 2006)

Transmitting a proposed resolution entitled "ACCEPTING LAND DEDICATED FOR PARK AND PLAYGROUND PURPOSES AND WAIVER OF COMFORT STATION PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE".

The County Clerk stated that the recommended action is that County Communication No. 06-57 be referred to the Parks and Economic Development Committee.

NO. 06-58 - MILTON M. ARAKAWA, A.I.C.P., DIRECTOR OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT, (dated February 6, 2006)

Transmitting a proposed resolution entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY INTERESTS AT WAILUKU, MAUI, HAWAII". This is in conjunction with the Market Street Improvements Federal Aid Project No. STP-3405(1) (Wells Street to Mokuhau Road).

The County Clerk stated that the recommended action is that County Communication No. 06-58 be referred to the Public Works Committee.

NO. 06-59 - MILTON M. ARAKAWA, A.I.C.P., DIRECTOR OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT, (dated February 10, 2006)

Transmitting a proposed resolution entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT KIHEI, MAUI, HAWAII FOR NORTH-SOUTH COLLECTOR ROAD".

The County Clerk stated that the recommended action is that County Communication No. 06-59 be referred to the Public Works Committee.

NO. 06-60 - MILTON M. ARAKAWA, A.I.C.P., DIRECTOR OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT, (dated February 7, 2006)

Transmitting a proposed resolution entitled "AUTHORIZING MAUI ELECTRIC COMPANY, LIMITED TO REPLACE AND INSTALL A UTILITY POLE ON AINAKULA ROAD, KULA, MAUI".

The County Clerk stated that the recommended action is that County Communication No. 06-60 be referred to the Public Works Committee.

CHAIR HOKAMA: Thank you.

Members, you have your Chair's recommendation on the left-hand margin of the agenda. The Chair is open to requests and considerations. Mr. Molina.

DISCUSSION AND ACTION RELATING TO  
COUNTY COMMUNICATION NO. 06-51

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

IF THERE ARE NO OBJECTIONS, I MOVE THAT THE REQUIREMENT OF COMMITTEE REFERRAL AND RECOMMENDATION FOR THE PROPOSED RESOLUTION TRANSMITTED BY COUNTY COMMUNICATION NO. 06-51 BE WAIVED PURSUANT TO SECTION 5(H) OF THE RULES OF THE COUNCIL.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to waive the requirement of Committee referral and recommendation pursuant to the Rules of the Council. Mr. Molina.

COUNCILMEMBER MOLINA: No, no, no discussion. I'll give my thoughts later after this.

CHAIR HOKAMA: Thank you.

Any discussion on the motion to waive the requirement of Committee referral and recommendation? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON, KANE, MATEO, MOLINA, PONTANILLA, TAVARES, VICE-CHAIR CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Mr. Molina.



COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

I WOULD LIKE TO MOVE THAT THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 06-51, ENTITLED "AUTHORIZING ACCEPTANCE OF A DONATION FROM VISITOR ALOHA SOCIETY OF HAWAII TO THE DEPARTMENT OF POLICE, COUNTY OF MAUI, PURSUANT TO SECTION 13-8, CHARTER OF THE COUNTY OF MAUI (2003), AND CHAPTER 3.56, MAUI COUNTY CODE", BE ADOPTED.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Molina, seconded by Mr. Kane, to adopt the proposed resolution attached to County Communication No. 06-51. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.

The purpose of the proposed resolution is to accept a donation of two brand new 2006 Honda All Terrain Vehicles valued at \$10,416 to the Department of Police, County of Maui, from the Visitor Aloha Society of Hawaii. And needless to say, much mahalo to them for assisting our Police Department.

AND AS PART OF THIS MOTION, I WOULD LIKE TO INCLUDE THE FILING OF COUNTY COMMUNICATION NO. 06-51.

COUNCILMEMBER KANE:

SECOND.

CHAIR HOKAMA: Okay. The Chair will recognize the motion to include the filing of said communication, with no objections from the Members.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Thank you. So ordered.

Further discussion on the motion, Members, which is to adopt the attached resolution to County Communication 06-51 and filing of said communication? Ms. Anderson.

COUNCILMEMBER ANDERSON: I'd just like to know where they got such a good deal 'cause I'd like to go get myself a new SUV. Two, two brand new 2006 Honda All Terrain Vehicles for \$10,416. That's pretty great.

CHAIR HOKAMA: ATV's, now, Ms. Anderson.

COUNCILMEMBER JOHNSON: ATV's, not SUV's.

CHAIR HOKAMA: They're those little--

COUNCILMEMBER ANDERSON: Oh, ATV.

CHAIR HOKAMA: --outdoor four-wheel all terrain--

COUNCILMEMBER ANDERSON: Yeah, yeah, yeah. I guess I couldn't use one of those.

CHAIR HOKAMA: --All Terrain Vehicles.

COUNCILMEMBER KANE: We all got excited.

COUNCILMEMBER ANDERSON: Yeah, I was getting pretty excited.

COUNCILMEMBER MOLINA: It's a good deal.

COUNCILMEMBER ANDERSON: That, that's a nice donation.

Thank you, Chair.

CHAIR HOKAMA: Thank you.

Further discussion on the motion before you, Members? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion is carried.

Thank you, Mr. Molina.

Members, any further considerations for your Chair regarding the recommendation of referrals to standing committees? If not, referrals shall stand as recommended on the left-hand margin of your agenda.

Mr. Clerk.

COUNTY CLERK: Mr. Chairman, for the record, the resolution, resolution attached to County Communication 06-51 is numbered 06-16.

CHAIR HOKAMA: Thank you.

The following bills for ordinances under "Unfinished Business" were presented.

## UNFINISHED BUSINESS

### ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 1 (2006)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2476 (1996), THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP, FROM AGRICULTURAL AND OPEN SPACE TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA), FOR PROPERTY SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII

CHAIR HOKAMA: Thank you.

Members, the Chair will be, with no objections, directing the Clerk to bring up Bill No. 3 first for consideration. One of the reasons is that the Chair is recommending this action at this time is that of the three bills that comprise the Kapalua Mauka package, if I can use that term, Bills 2 and 3 have already motions as amended of the current status. Bill No. 1 has no motion before it for adoption or consideration, and I believe that it is your Chair's opinion that if there are adjustments or considerations, more than likely it will be with Bill No. 3.

So with no objections, Members, the Chair will direct the Clerk to bring forward Bill No. 3, and the Clerk shall read the title of the proposed ordinance.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Okay, thank you. So ordered.

Bill No. 3 (2006) was presented at this time.

COUNTY CLERK: We have before you Bill No. 3, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (CONDITIONAL ZONING), FOR", FOR, "PROPERTIES SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII".

And, Mr. Chair, if we could note, as you noted, bill, Bill No. 3 does have, was postponed from the February 3 meeting; and it also has attached to it the motion to pass second reading as amended.

(ORDINANCE NO. \_\_\_\_\_  
BILL NO. 3 (2006)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM  
COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO  
WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)  
(CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON  
THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY,  
AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII)

CHAIR HOKAMA: Thank you.

Members, is there any questions regarding the current status of Bill No. 3? You have a motion before you to pass on second and final reading as amended.

First, let me recognize Mr. Carroll, as Chairman of our Committee, if he has additional comments at this time. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

Just since it's been a meeting, I'd like to say that this bill proposes to change zoning from County Agricultural District and Interim District to West Maui Project 2 District (Kapalua Mauka) (Conditional Zoning) for the property situated on the Southeasterly side of Honoapiilani Highway, Honokahua, Napili, Lahaina, Maui, comprised of approximately 924.8 acres.

Two amendments were approved at the last meeting, and I'd like to read both amendments.

Number one, the Council amended the affordable housing condition in the change of zoning bill to ensure that additional opportunities are given to potential . . . purchasers and renters at affordable prices. The amendment to this condition also gave the County a right to purchase the affordable housing dwelling units that remain unsold at the affordable price. Further, if the County declines to exercise that right, it would receive 80 percent of the difference between the sale price of the affordable offering price to be used for the affordable housing purposes.

Number two, the Council further amended the change in zoning bill by amending Condition No. 2 to require that only non-potable water be used for irrigation of any golf course within the project.

And I'll turn the time over to the Members.

Thank you.

CHAIR HOKAMA: Thank you.

Before the Chair opens it up to the Members for further discussion on the floor, Mr. Clerk.

COUNTY CLERK: Mr. Chairman, I was remiss in notifying the Council that the revised unilateral has been recorded and our office has received the certified copy.

CHAIR HOKAMA: Thank you for that.

Members, we are able to continue decision making on this bill since the amended unilateral has been recorded and received by the Clerk's office.

Further discussion? Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, thank you.

If there is no objection by you or the body, I would like to call back Mr. Bob McNatt from Maui Land & Pine to further clarify a statement he made in his testimony.

CHAIR HOKAMA: Members, any objections?

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Okay, thank you.

Mr. McNatt, will you come forward to the podium. State your name for the record and, of course, your position and entity that you represent.

MR. BOB McNATT: Mr. Chairman and Members of the, of the Council.

My name is Bob McNatt. I'm with Maui Land & Pineapple Company. I'm the Executive Vice-President of Community Development.

CHAIR HOKAMA: Thank you.

Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, thank you.

Mr. McNatt, when you were testifying, at the end of your testimony, I think I heard you say something about continuing work with the community on a committee or something like that. What, what was that, that you were referring to?

MR. McNATT: Yes, thank you, Member Tavares.

What I, what I was saying was that, that we understand there's a lot of frustration with traffic in West Maui in the community, and we appreciate the difficult decision that you are, are dealt--going to be dealing with this afternoon.

But what we want to do is commit totally to getting the Lahaina Bypass built in West Maui. And to do that, we want to form a working group made up of citizens of City and County officials, businesses, those who testified today who are concerned about traffic, and others, and immediately begin preparing and, and forming that committee to meet. And, in fact, we'll put out an announcement next week. We'll hire staff to run the committee and to, to pursue whatever avenues we can to get the bypass and other regional road improvements completed in West Maui; and we are totally

committed to this effort. We'll provide the funding for it. We'll hire a PR firm. We'll do whatever it takes to, to make this working group successful.

That's, that's what I was alluding to this morning.

COUNCILMEMBER TAVARES: Okay. Thank you for clarifying that.

MR. McNATT: If I may, I also wanted to just kind of quickly on the, on the funding for traffic improvements. We have, we have agreed to the condition to pay our fair share of fees, and we'll pay whatever fee that the Council adopts in the future as part of its 14.62 deliberations on the traffic fees

There was a comment by Mr. Dick Mayer that we're going to make four to five billion dollars on Kapalua Mauka, which simply is not true. We don't know what we're going to make on Kapalua Mauka. We've stated that before in the public hearings. It's a long process, a very difficult project to implement over a long period of time, fifteen years or so. It will be three years before we ever sell the initial home in Kapalua Mauka, or, or build the initial home. We still have to do a significant amount of infrastructure improvements and upgrades to the golf course and so forth, so it's a, it's going to be a long process. And, of course, that, any traffic generated from the project will be several years down the line; and, at the end, it will be relatively minimal. So we don't know what the profits going to be in an uncertain economic environment over probably several cycles.

I also wanted to point out that, that development, our development division and our land sales has supported agriculture in a big way over the last few years. And I want, I want to remind you that from the year 2000 to 2005, our Maui Pine operations has lost \$42 million. That's in the last five years. Overall, the Company has made about \$22 million during that time from land sales and, and the minimal amount of development that we have done in Kapalua.

We will be making an announcement today. We'll be putting out our financials for 2005, and Maui Pine lost \$11.4 million in 2005. But overall, the Company made \$14.6 million. A lot of that was some of those so-called "non-core" land sales that we, that we did last year and some development in Kapalua.

As you can see, land development and land sales is supporting pine in a big way, and we are continuing to do that and are intending to do that because we, we feel very strongly that pine needs to survive and agriculture needs to survive to keep this island green.

We are committed to doing that. We have created a, a brand new marketing and, and, and pineapple program, as defined by Brian Nishida last, I guess, two weeks

ago when Brian was here, where we're committed to changing the model for our pine to a whole, fresh product, a premium product that we think will ultimately, with a lot of investment, turn the corner and begin to prosper and make money.

So as I said that we're totally committed to volunteering whatever we can to make, get the bypass done, improve traffic, and help the community.

Thank you very much for asking.

COUNCILMEMBER TAVARES: Okay. When you talk about your time, the timeline and the build-out of the project, if this were approved today, when do you estimate that you would even be moving dirt around in the project?

MR. McNATT: Probably about early next year we would start to be able to move dirt for the golf course and, and infrastructure. We have millions of dollars worth of infrastructure to, to do over the next couple of years after we start. So it, it would likely be, take us about a year to two years to do infrastructure work, and, and then probably in the third year or so, houses can start to be built.

COUNCILMEMBER TAVARES: Okay. Thank you.

MR. McNATT: You're welcome.

CHAIR HOKAMA: Thank you.

Further discus--further discussion; any further questions for Mr. McNatt this afternoon?

Okay, if none, thank you very much for being here this afternoon.

MR. McNATT: Thank you so much, Chairman.

CHAIR HOKAMA: Okay. Members, we do have a motion as amended before you.

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR HOKAMA: Ms. Anderson.

COUNCILMEMBER ANDERSON: I'd like to ask the Clerk when they received the unilateral agreement.

CHAIR HOKAMA: Mr. Clerk, if you can respond to Ms. Anderson's question, please.



COUNTY CLERK: Yes, Mr. Chairman. We received the unilateral agreement on.

COUNCILMEMBER ANDERSON: The reason I ask, Mr. Chairman, is because we don't have a copy of that in our binder, and in fact we have a unilateral agreement dated December 23, '05. And I think it would be appropriate for, for us to have a copy of that unilateral agreement if it's been received.

COUNTY CLERK: Yeah, I received it on Wednesday, the fifteenth. It was recorded on February 13.

CHAIR HOKAMA: Okay.

COUNCILMEMBER ANDERSON: I think it's inappropriate for us to have a unilateral within this, attached to this bill and referenced as an exhibit when it isn't the actual unilateral agreement that we voted on.

CHAIR HOKAMA: Okay. It is your Chair's understanding that the amended unilateral is on those two amendments that was voted on at the last meeting, and that the applicant was required to have those two amendments included in the existing and, therefore, that is why you now have the amended unilateral agreement.

Mr. Clerk, any further comments?

COUNTY CLERK: Yes. Mr., Mr. Chairman, just to note, the copy in the binder is a copy of the amended unilateral agreement in the form prior to its recordation. And I should note, I guess, that the binders are prepared following the posting of the agenda. The unilateral agreement is returned separately, so I guess we could, if you, if you wanted us, we could distribute copies in the future, although it probably wouldn't be in the binder because it's, when the binder is being distributed, the unilateral agreement is in the process of being recorded at the Bureau of Conveyances on Oahu.

COUNCILMEMBER ANDERSON: My point, Mr. Chairman, is that the unilateral agreement attached to the bill was an original UA from December, so the current UA, which has amend, the amendments that we made at the last meeting, we don't have.

COUNTY CLERK: Mr. Clerk, can you respond to . . .

COUNCILMEMBER ANDERSON: And, and my concern is that an inappropriate UA is attached to the bill as an exhibit.

COUNTY CLERK: May we have a short recess, Mr. Chairman?

CHAIR HOKAMA: Okay. The Chair will grant a short recess so that the Clerk may follow up on Ms. Anderson's comment. Recess till two forty-five.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:40 P.M., AND WAS RECONVENED AT 2:52 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: The Council meeting for the seventeenth of February, 2006, shall return to order.

Members, the Clerk's office has passed out the revised and recorded unilateral agreement that is attached to Bill No. 3, Draft 1, of 2006. Further questions for-- Ms. Anderson.

COUNCILMEMBER ANDERSON: No. Thank you, Chair. I appreciate your taking the time to get us this. I think that whenever we pass legislation, we should have the appropriate bill and its unilateral agreement in front of us to verify that it's all been correctly recorded. Thank you.

CHAIR HOKAMA: Thank you for your question.

Yes, Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. I, my question, and if you can refresh my memory, I believe the condition that was attached that I had included which prohibited last time the development on the thirty-two acres, is that attached to a different document?

CHAIR HOKAMA: That is a part of Bill No. 2, Ms. Johnson, and that would be as it regards to the project.

COUNCILMEMBER JOHNSON: Project District.

CHAIR HOKAMA: Project District.

COUNCILMEMBER JOHNSON: Okay. That, that, I just wanted to make sure because I couldn't remember which one it was attached to.

CHAIR HOKAMA: Yeah. And I'm sure Mr. Carroll, at the appropriate time, will make comments regarding that condition on Bill No. 2.

Okay, Members, before you is Bill No. 3, Draft 1, with the revised unilateral recorded agreement. Current status once more is a motion to pass on second and final reading as amended. Do we have questions or discussion? Mr. Carroll, you have any further thing to add at this time? Okay, thank you.

The floor is open to our, the Members. Ms. Johnson.

COUNCILMEMBER JOHNSON: I had a question of Corporation Counsel. Because the items that we have made within this bill were some of the things that had not necessarily been discussed in Committee, I would just like to place on the record whether these changes create a substantive issue and what status this leaves us at, at this point. Thank you.

CHAIR HOKAMA: Thank you.

Mr. Moto, are you able to respond to Ms. Johnson's request?

CORPORATION COUNSEL: Yes, Mr. Chairman.

The changes that have been incorporated in Bill No. 3, Draft 1, that is before you now over the past two meetings, I believe, in my opinion, did not result in a bill that was changed so significantly as to constitute a new bill or new piece of legislation.

The, the, the basic nature of the bill is, remains as it was at first reading, which was a bill to change zoning. The designations and classifications and basic intent of the bill remains the same, although some of the conditions have been modified. Therefore, I don't believe that the, the bill requires passage at first reading again, but can be passed by the Council at second reading.

CHAIR HOKAMA: Thank you, Mr. Moto.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, hearing that, Mr. Chair, because what we do in this bill will actually, I guess, end the discussion or change the nature of the discussion on the other items, I'm going to basically address some of the issues that have been raised previously and to once again try to convey to the Members of this body why I feel and why I believe that at the very least, this bill should go back to Committee.

People have written, they've called, they've done everything that they can do to basically get the attention of all of the Councilmembers to give their opinions on what they believe is really important to them, what their wishes are. And for me, it's very difficult to maintain my silence. And even though I got one e-mail that criticized me for trying to influence, through the use of the media and public opinion, other Councilmembers, if that is what I have to do to get the attention or to get an outcome that is going to be satisfactory to my community who is impacted by this, whether for the good or for the worst, I'm going to do that because that is my job; that is what I

was elected to do. And I think that other Members have, on occasion, written letters to the editor, editor; they've written editorial opinions. I don't find that something that to me is not part of the democratic process. Education and alerting your community when you believe that they either may be unaware or that they need to have their voices heard before this Council, I think it's important. So I just want to clear the air on that, that we, as a body, make a number of decisions. We don't always agree on everything, but I think each one of us is duty-bound when we feel passionately or when we feel strongly about an issue, that we share that with others; and I will always continue to do that, Mr. Chair.

I find it interesting that at this late hour and particularly when my amendment came forward last time, which was basically from everyone that I've heard from, probably not strong enough because most of the congestion doesn't have to do with the bypass, it has to do with Honoapiilani Highway's location. But most of the individuals that I spoke with were in support of that.

But I find it interesting that today, and also after hearing Mr. Mayer read the "Look Forward" from the SEC 10-K filing of the applicant, that they also acknowledge there is a problem; and now, at this late hour, they want to come forward and talk about it. The appropriate place for that discussion is in Committee.

I think the frustration of my community is not so much that they feel that Kapalua Land or Maui Land & Pine is not a good steward, they are. And I don't think you heard anyone say, "Oh, just down this project," although we've received some testimony that basically would indicate they don't want us to approve anything. And for affordable housing, I certainly would hope that they would reconsider their position. But at least from my perspective, those discussions, all of those things should be done in Committee. So I am trying to do the best that I can for my community.

I think the 10-K filing would indicate, when it's read, that there is a problem. Even the applicant acknowledges there, there is a problem. To equate that somehow we're against the Company or that we're not in support of past actions that they've taken, that is totally misrepresenting, even some of the testimony today of the individuals who came forward, they're saying, "Look, take either a time-out, send this back to Committee, rework some of the conditions, because we don't think we're quite there yet." They're not saying "No." And I think that deserves, at least from what I've heard from my community, I think that deserves to at least be followed.

When I look at corporate structure--and, and this weekend, I believe there was, you know, it was an old, I guess, replaying of an issue that was at Honokahua, and it was so interesting to kind of look back at what was extremely controversial situation in West Maui, which had to do with the burials near where the Ritz-Carlton stands

today, and to listen to the pleas of the Hawaiian community. I mean it was very moving. I was totally moved because I had forgotten, oh, my gosh, yes, an entire hotel was relocated because it was the right thing to do.

You had an individual who was the head of this corporation, and I like to think of him, Colin Cameron, with very fond memories because he was quite a gentleman. But he was the leader of a corporation that I believe acted always with humility and the best interest of the community at heart. And I, I would look at him as a, you know, just somebody who gave a really good example of what community leadership is about and what corporate leadership and corporate stewardship is about. But Colin is no longer the head of that company. He passed away many years ago, and like everything else, corporations change. They're not what they once were. He was a patriarch that I think everyone admired, and he was extremely generous in everything that he did.

You fast-forward to modern day and a corporate entity now is different than it was then. Mr. Steve Case has a massive holding in this company. Decisions oftentimes don't consider all of the impacts on the communities that are made today in the corporate world. And I look at a decision that was by the new leadership to dispose of a community asset which housed Hui No`eau. And for me, that asset was really symbolic of everything that we stand for in this community. It was tradition; it was values; it was something that was a treasure that for years, the community, I believe, had always envisioned as being part of the public corpus.

But it was explained that while this was a corporate decision, it wasn't anything that was really done to the disrespect of the community, it was just simply a corporate decision. Corporations don't have hearts. They have bottom lines. They have stockholders. They have people that have interest that are outside this community. But, for me, I'm more concerned about the stakeholders in this community than I am about the stockholders or about the bottom line for Mr. Case. When I buy stock, usually it plummets. So there's no guaranty of any kind of a return on investment. That's perhaps my bad judgment, but it's the nature of what happens when you buy stock or ownership in a corporation. You look at the decisions that are made by corporations now and, for me, this is a corporate decision.

We heard earlier in past testimony that there was a corporate decision that was reversed because, originally, pineapple was going to come out of West Maui because the roads were so bad, and it was be, going to be relocated to other fields or other areas that were since becoming vacant.

So that decision, however, was revisited. So we were told there was a one vote difference in that decision. Just the mere fact that the size of this project district has doubled has instantly gobbled up more than 400 acres of additional pineapple land,

actually creating even more of a threat to pineapple. Looking down the road, I can't see that with global pressures, pineapple is going to survive.

Look at what happened to your own island, Mr. Chair, on Lanai. Corporate decisions happen all the time.

I heard Mr. Molina mention, you know, the closure by Del Monte of the plant. And what is going to happen to the workers?

We have no assurance. We can't compel a corporation to continue to exist and, as Mr. McNatt put it, lose money. So my concern is largely due to corporate decisions that are made in a board room far from here that impact our lives every day. And they're corporate decisions that, while everybody has the best of intentions, sometimes things don't work out.

I was going through old materials: Amfac, new and improved, talks about how much money Amfac was losing, very similar to this scenario that we're looking at today with Maui Land & Pine. They made a decision to diversify the company, corporate decision. And it says, "With the success of this move toward smaller individual businesses, it's key to Amfac's future survival, says Grottke. Separating the businesses into six units--Amfac Golf, Amfac Sugar, Kaanapali Estate Coffee, Amfac Water, Amfac Land, and Amfac Property Development--allows each to operate independently and to more tightly control cash flow. Grottke says it should also be easier to determine how well each area is performing." Well, guess what? Amfac Golf is gone. It's now the property of the State. They may manage, but they no longer have that as an asset for the corporation. Amfac Sugar is gone. Kaanapali Estate Coffee is gone. The Water Division was sold.

So these developments--and this was a company that got what they asked for. They got their approvals at North Beach. They got exactly what they asked for, and they still folded because they bled off the assets of each one of these divisions. They cannibalized their own company to satisfy a bottom line, and that's what corporations do.

For us to think that any decision that we make here is going to either ensure or cause one way or the other for this company to, I guess, collapse, it's not with us. These are decisions that will be made by other people, and they will decide based on market conditions.

Thailand has pineapple and labor. You look at the Philippines. You look at other areas that are flooding the market with pineapple. And for us--I mean even our sister city relationships where we share some of our, I, I wouldn't call them trade secrets, but some of our tech, technological advancements. It's a global economy. It's not

controlled by us. And corporate board members will make a decision much like these corporate board members made a decision, even though they got what they wanted.

So for us to say, "Oh, well, this is the death now of the company," believe me, stockholders know. They are far more studied and far more well-versed than we are in how to operate in market conditions, and they respond differently than we would. But we don't own this corporation. We don't have anything to do with it. But, you know what, we will be giving a massive increase in value, huge increase on the bottom line. And I'm all for golden parachutes; I'm all for wonderful bottom lines and stock guarantees to people who are not stakeholders, but stockholders. I'm all for that because you know what, if corporations do well, that's great. But I have to live with the people in this community who expect more. If you're going to make huge profit, you know what? There was another issue before us this morning. They came forward, Maui Lani, they're providing 50 percent. Their profit margin is so much thinner, and yet they did what I believe is the right thing. They came forward with 50 percent housing and much more modest prices overall. Now perhaps their land is different, but they came forward with substantial contributions of infrastructure, school site, lots of things, lots of goodies for the public and, therefore, we could say or I could say as a Councilmember, "All right. The tradeoff is worth it." It's worth it because I'm getting something that is going to help, actually, to get my community in a position where I believe it wants to go, not where it's being forced to go.

So for me, I look at that and I cannot continue to support something that I don't believe has been thoroughly thought through. Yes, Maui Preparatory Academy is a wonderful thing. That's great. It's a private school that I supported, that many of you supported. I, I don't criticize that. That was a good decision. But there was also a six-acre school site that was supposed to have been contained within this Project District. So for me, Mr. Chair, it's, it's hard to continue to support a billion-dollar project because we're giving in land worth an increase on their bottom line, which is substantial. And what we are getting back in proportion is not there, not when you compare it to other entities that I've just mentioned.

One other thing, and that is the condition number seven that is tied to North Beach. I asked one of the testifiers about it this morning, and I reread that condition. And it basically is it, it is tied to the entire North Beach subdivision. And while I don't agree with the current interpretation, the condition basically reads that prior to any further development occurring at North Beach, the Lahaina Bypass shall be completed, or other mitigative measure. Now what ended up happening was the other mitigative measure was up for interpretation, and the interpretation was that the other mitigative measure in, in order for Kaanapali Ocean Resorts to go forward, was the widening of Honoapiilani Highway from Kaanapali Parkway to Honokowai. And that facility is still not completely open, and we are already seeing signs of congestion.

So for me, yes, I can't blame Kapalua Land for that, but it's the cumulative impacts of all of the development that has occurred over time that have brought us to this day. Those projects don't come before us. But, you know what, that condition was there. And I heard other Members of this Council say, "Oh, it's not fair. Nobody else is held to that standard." Well, they are held to that standard. They are, because Condition No. 7 held other people in a resort-residential zoning area and hotel zoned area to that standard.

So why shouldn't it apply to others? It should. But we don't get a chance to discuss that in Committee. We have to say up or down because the Chair doesn't want this back, can't be bothered.

You know, and I'm not saying that we haven't spent a lot of time on this. I'm not saying that--we have. But, for me, I have to be able to justify, is the negative impact of anything that's going to be added on to the serious conditions that already exist, is what I'm doing and the conditions that are put in this, are they going to mitigate anything that might be brought forward. I, I have no proof of that. You heard, you know, people say today, "Oh, these people are hardly going to be living here at all. Oh, they're not going to be even in the community because these are multimillionaires that live up on the hill. They won't, they won't be a burden. They're not going to be traveling on the highway." And yet when you read their Draft Environmental Impact Statement, "Oh, yes. This is good for the economy because these people will be shopping in our stores; these people will be residents. They're going, going to be contributors. They're going to be here taking a, an active role in our community." So which is it? Are they going to be absentee landlords, or are they going to be contributing members of our community that really support everything that's in the Draft EIS?" So I'm not even sure about that.

The other component is the tran--Traffic Impact Analysis Report, as Councilmember Anderson brought up last time. The TIAR goes from the north and comes and dead-ends at Honokowai, basically, right where the sewage plant ends. How are people, you know, I mean, what, are they going to materialize magically at Honokowai? Teleportation is something that is way into the future. But I mean how can you say that it doesn't have regional impacts? What about all the people that will be working to support this community? What about the construction traffic? What about the dump trucks? What about the service people that will serve the needs of this community, and the pool boys, and the baggage handlers, and the people that mow the lawns, and still the pineapple workers?

And believe you me, I can only say that I think by most of the people who would buy in an area that is as prestigious as Kapalua, they're not going to want pineapple bugs flooding, you know, around their lanai while they're trying to have a dinner party. It's just--it doesn't mix. Even the overspray. It will become an issue, and then where will



the people be who work in pineapple? They will be gone, just like sugar and just like everything else is.

So, Mr. Chair, I really believe that we have to think about what we do. My community has come out, done everything that they've done. I've implored you. I gave impassioned pleas. And you know what, it is what it is. If you don't want it to go back to Committee, if Members disrespect the wishes of the majority of the citizens that live in West Maui, then that is what they do. I have always tried with every single Member of this Council, when they tell me something about their community, I listen. I don't always maybe vote the way that they would wish me to vote on certain projects; but, you know what, I listen and I consider. Right now, my community feels as if it's, it's being made irrelevant. It's like, "Well, you know, we'll worry about that tomorrow. We'll worry about affordable housing. We'll worry about all these other problems. It's going to resolve itself." It doesn't. It never does.

That's what past Councils did. That's what my predecessor did. And if anybody could have fixed anything for West Maui, that should have been done a long time ago because he was an employee of Maui Land & Pine or Kapalua Land. He should have been doing what now we are faced with doing. And he should have taken a leadership role and come forward and spoken out on behalf of his community, but he didn't. I am. And I'm asking you, at the very least, Mr. Chair, send this back to Committee so that we can put in conditions that are reflective of changing conditions in the environment, but also that will at least meet some of the concerns that have been raised by my community. I ask for that. And I implore other Members to please consider it because I would do no less for their communities.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you, Ms. Johnson.

Further discussion on the motion as amended before you, Members? If not.

COUNCILMEMBER MATEO: Chairman, Chairman.

CHAIR TAVARES: Carroll.

CHAIR HOKAMA: Mr. Carroll, as our Chairman, the Chair offers you the opportunity to speak last. So Mr. Mateo has indicated a willingness to share his comments.

COUNCILMEMBER MATEO: Chairman, thank you very, thank you very much.

Sometimes, it just might be easier to deal with the issues before the problem actually starts. And I think we just heard a few minutes ago Mr. McNatt saying you--he wants

the ability to have the opportunity to kuka kuka or talk story with the community in, in addressing the issues that the community has raised.

Projects that, that divides the community, sometimes you really need to take a look at, at its full merit. So before the runaway happens, maybe the time is now. Maybe you need to have that discussion now. Maybe two sides or three sides should be able to sit down and do exactly what Mr. McNatt wants to do, address the problems now. Why let it reach a boiling point or a point where the community will explode all together? It's hard to deal with it now. The community is divided. And you look at, you look at the people right behind us, nobody is saying Maui Land & Pine is the bad culprit or the bad figure. What we're saying is that one project that they have proposed is the project or is the, the whole problem, or is the whole issue that is continuing to divide West Maui. Let's address the issue now so we can develop a win-win situation: a win for the Company; a win for their employees; and a win for the people who live in West Maui.

That's exactly what I heard a few minutes ago, the opportunity to deal with the traffic issues; to deal with, with the water issues and everything else that might compound the growth of this project happening there. Because this project is just one of many that's going to be coming down the, down the pipe.

So let's be realistic. Let's avoid the fight. We're wasting bad energy. We're wasting our time. Let's get together; let's talk, as Mr. McNatt has said, and let's see if we can reach a resolve. The need is to address the issues of the people who are here today, who are here now, who are residents now. Let's not compound it. Give us the opportunity or give the community the opportunity to have additional say in trying to see what can and what cannot work. But, but go that, go that route; go the extra mile.

And that's, for me, at this particular point, Chairman, I heard, I heard Mr. McNatt's words and I heard the questions that Member Tavares asked Mr. McNatt. And taking that into consideration, I hope we as a body heard there is a wanting to talk, there is a wanting to reach a resolve. So before we move forward, give them the opportunity to talk; give them the opportunity to reach resolve. That is the right thing, Chairman.

Thank you.

CHAIR HOKAMA: Thank you, Mr. Mateo.

Further discussion before the Chair recognizes Mr. Carroll? Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair.

You know, I appreciate what Member Mateo just said because outreach on this project to the community happened many years ago, many years ago. And were it not for the efforts of citizens in our community who out--who did an outreach to Lahaina, well, island-wide, many people wouldn't even be aware of what we're about to do today, so, you know, I appreciate what Mr. McNatt said. It's a good offer, but it's a little bit too little too late.

And, as I said before, if we deny this project, you can be darn sure Kapalua Land Company would be at the State, would be in the Governor's Office, making sure funding was appropriated for the Lahaina Bypass because somehow through come--some kind of magic wave of the wand, Kapalua got their four-lane highway twenty-five years ago when Lahaina was still suffering in gridlock.

So I would hope that this body would have taken the time to read these letters that we have received from the residents of West Maui begging us not to approve any more development, large-scale development on that side until the road problems are fixed; until they get a hospital so that people don't die en route to Maui Memorial; until the schools are adequately served.

West Maui is already at capacity, over capacity; and we are only further burdening the citizens of West Maui by passing this out. There's nothing in this, in this project that is going to benefit the, the citizens of West Maui. It's only going to be a burden to them with more construction trucks on the road that they're going to have to be competing with for space.

I mean, you know, this is unprecedented to me, Mr. Chairman. We got a letter from a broker, a well-known real estate broker on the west side, asking us, "No more development in West Maui." We got letters from well-known restaurateurs on the west side asking us, "No more development until you fix our problems"; from school teachers; from, from vacation rental people; from the professional people of West Maui, right down to the people who are working three or four jobs to keep a roof over their head. They're all asking us, Mr. Chairman, "Please don't burden us with any more development until you solve our problems." I think that's a fair request. I think it's more than fair.

Ms. Lowson from Lowson & Associates, one of the premiere real estate agencies on the west side, she tells us that there are already 104 active residential listings above \$3 million in Maui County.

There's over 160 active lots listed for over a million dollars in Maui County. All of the listings in Maui County are over \$500,000 for the most part. Do we need more

high-end housing for offshore people who may or may not live here; who make take our resources, our resources full-time? You have to allocate the water whether they're there full-time or not; and they may only be there one or two months out of the year. We are further dividing our community, Mr. Chairman, by, by allowing this kind of development. There's no balance here. There's going to be more people who have and less people who have-not, and in between is a mess--no schools, no hospitals, no adequate roadways.

And, and Kapalua had the opportunity with this large development to step to the plate and help solve all those problems, and they have not offered anything in the way of alleviating those problems in assuring us that they're going to help alleviate those problems, like it's not their responsibility.

And, you know, I'm not singling them out, but they're before us. We have the opportunity with this, with this proposal to make a difference for the people of West Maui and for the people who live all over this island and have to commute to West Maui because they can't afford to live there.

As I said before, Mr. Chairman, I don't think that we're getting, we're getting enough back to the community to allow 900 acres to go for lux--more luxury development. At the same time, they're tearing down Colin Cameron's beloved Kapalua Bay Hotel to increase their profit margins even more with a more dense development. It might be less rooms or less, well, not really because they're building condos, and maybe the units, the number of condos are less than the number of hotel rooms, but there's going to be more people in each condo. So they're increasing the density and they're increasing their profit margins.

We have no say over that, Mr. Chairman. It's going to happen whether we like it or not. What do we get back for that? Where are all those employees going to go that are going to be out of work for how many years? Well, well, they're going to have to go somewhere else.

I'm very disappointed in Kapalua, Mr. Chairman. And I had a, a love fest with Kapalua for many years. They welcomed me with open arms, just like Kapalua Bay, and made a home for me and my son when I first moved here. But the company has changed since then, Mr. Chairman. Colin Cameron and the executives that he had in place running that company are no longer there. It's a whole different animal, and it's an animal with large assets behind it. And I think that they could have stepped to the plate a long time ago and said, "You know what, we're going to be making billions from this." And, yeah, it might be stretched out over fifteen years, but they got Haliimaile coming up. I hear they want to build a city in Haliimaile. They got the residences at Kapalua. They still have land out there that's, that's being developed and sold, Kapalua. So this isn't their only one shot to make it or break it. Good

heavens, this is, this the cherry on top. And if they were truly sincere as a corporate entity about the welfare of the people of Maui County, they would have offered more than they have offered now. They would not budge on their affordable housing one bit.

So what are we getting? Forty little rentals that they're going to give to their employees; and then the rest of it, we don't know where it's going. A hundred and thirty-three more affordable units, they couldn't tell us where it's going to be because they're hoping that Pulelehua will be passed so they can put it there. We, you know what? They're going to add another eight hundred to a thousand homes on top of that at Pulelehua. So who is really benefiting from all of this? Kapalua Land Company. They're the ones, and their stockholders are the only ones who are really going to benefit from what's happening here.

You know, when, when the Project District 2 was first designated in our Community Plan, it was designated as an affordable housing project, Mr. Chairman. It was supposed to be a further extension of Napili Hau. They got their Project District 1 at the same time. So this was to balance out what was happening out there.

But in 1995, they came and they pleaded with the Council to allow them to take that Project District 2 and put it into resort residential. And what was the excuse, Mr. Chairman? "We don't need affordable housing anymore because we've got 6,000 units coming online from Villages of Leialii and Puukoli." That's fifteen years ago. What have we got? Hopefully, couple hundred at, at Leialii online to come on, but they're DHHL homes. And, you know, more power to the Hawaiians who get lucky enough to get a piece of that, but Villages of Leialii were for the working residents of Maui County, not just for Native Hawaiians.

So, you know, I read the minutes when the Planning Commission, this past weekend. I went back and read the minutes when the Planning Committee of the Council changed Project District 2 from an affordable housing project to this resort residential project. And to a number, every single Councilmember, including our current Mayor, said, "Well, the only reason I'm going to change this is because we've got those 6,000 affordable units coming online."

We also were promised back when they got their Project District 2 designation that the bypass would be built. None of that has happened, Mr. Chairman, yet they still want to go forward with this without giving us adequate fair share fees to take care of the problems that we have in West Maui. If there's anybody on this island who could afford to do that, it's Maui Land & Pine; and not just afford, Mr. Chairman, I think are obligated from the years of benefits they have received from Maui County. I think they're obligated to give back to the community to help with the, getting the bypass

built; to help with getting adequate medical facilities--at least emergency care; to help with the schools.

I'm sorely disappointed, Mr. Chairman. You know, we're not obligated, as a body, to allow the largest landowners on this island to develop out their land to the highest and best use, to the highest and best profit, to build more luxury homes. We are not at all obligated. But, yet, everybody seems like, you know, we're obligated; that if we don't do this, somehow Maui Land & Pine's pineapple operation is going to fold, or if we don't allow A&B to, to build out another hundred acres of housing, somehow their cane operation's going to fold.

You know, I think that we have the power to motivate these companies to build what we need for our working residents in this County, Mr. Chairman, by saying no to everything else.

Our, our State Plan, our County General Plan, they both require that as a priority, decision makers must give priority to the development of housing that our resident population can afford.

Now, there's not a word in there about affordable housing. Affordable housing used to be for low-income people. Now we talk about affordable housing for every single one of us in the room here. We're, we're allowing a runaway train, Mr. Chairman, to destroy Maui; and it's all about greed, and it's all about profit, and it's all about corporate bottom line.

We're the decision makers. It's our job to keep Maui no ka oi by the decisions that we make, Mr. Chairman. And I don't think that it, it really is meant to be the policy of this County to displace our local population with the world's elite, but that's what's happening.

Right now, Mr. Chairman, there are more people on this island who were not born here than there are kamaaina-born generations on Maui. Why is that? Because our local pop--population is fleeing Maui to find a quality of life somewhere else that will allow them to have a home.

I think we're going in the wrong direction, Mr. Chairman. I think we have more than enough high-end housing for the world, world's wealthy to come and share in Maui's beauty. We have more than enough. And until we take care of our resident population and the infrastructure needs that we have right now, I just can't see further separating our community with more people who have, forcing the rest to be have-nots once again.

You know, now we have, on our island, one out of every four people are visitors. It's another thing that we, that we've allowed to happen against our General Plan. We've allowed the visitor industry to take over this island in all manner, in all reaches of this island.

You know, we're full of aloha here. We're all about sharing, but we gotta draw a line somewhere and to make sure that our resident population and our kamaainas can continue to call Maui home. Because, Mr. Chairman, they are the ones who make Maui no ka oi. They are the ones who live aloha. They are the ones who know what it means to care for your neighbors and know who they are. And once they're gone, who's going to replace them, Mr. Chairman? What will Maui's demographics look like then?

You know, I'm a child of the sixties, and what I'm about to say is just not a saying or a phrase that came out of the sixties, it's in my blood, Mr. Chairman, because I saw that by actively promoting a cause, you could effectuate change. And that saying is, "If you're not part of the solution, you're part of the problem." And I don't see Maui Land & Pine, Kapalua Land Company, offering to be part of the solution.

So, as I said, we're in this situation right now because of the very same decision that's being made today has been made in previous years over and over and over again. So I don't know how this body expects things to be any different if we keep making the same kind of decisions.

I'm sorry for the people of West Maui, Mr. Chairman, because this is going to further degrade their quality of life. And for those who think it isn't, you just get on that highway and you travel it every day back and forth, and you see what it does to your quality of life, you see what it does to your home life in the amount of time you have to spend with your children. And throw in a couple of big construction trucks in front and behind you. See how that makes your day.

I'm sorry Kapalua could not have come forward and said, "We're asking for a lot from you, and so we're willing to give back a lot." They didn't do that. They refused to give anything except what they were, what they wanted to give. Twenty percent affordable housing for their, for their employees, Mr. Chairman, not for all the working people of Maui County to get an equal share at it. And we, like I said, we don't even know where most of it's going to be. And I can just hear it right now, "If you don't let us build Pulelehua, you're not going to--we're not going to have any place to build these affordable units." But they can take 400 acres out of pine to beautify their million dollar homes, but they can't tell us where they're going to put their affordable housing.

You know, Mr. Chairman, I don't think this is the appropriate way to plan Maui County. I feel somewhat extorted.

Pulelehua is being planned on ag land, ag land that gives West Maui what little open space they still have, plus a fifty-acre regional park right below the airport, which this Council time and time again in years past, have said it's not appropriate place to build. But now Maui Land & Pine, with their new corporate strategy, feels that it's totally appropriate to build there. You know, I'm sorry, Mr. Chairman, I don't think it is. And they're just ramming it through against our Community Plan.

Any time a, a major land developer comes forward with a plan that is in direct contradiction to our Community Plan, how are they building on behalf of our community? They're not. They're building on half--on behalf of their bottom line, Mr. Chairman.

So, like I said, I'm, I'm sorry I can't support this because I see this as a very sad direction for West Maui; and that there's dozens and dozens of people who are begging us not to do this. How they're going to, how, how do they feel about government now?

School teachers--I'm going to read this, Mr. Chairman, into the record because this is from a school teacher on the west side, and I think what she has to say really reflects the feelings of many of the people who sent us e-mails and letters and called us, and it actually reflect, reflects my feelings in many ways:

*I've lived on Maui my whole life and I've never felt more sadness, frustration, or growing bitterness. I feel as if Maui is selling out to all the rich people from the Mainland, and it's edging out all the local people.*

*I work as a full-time teacher, and I'm barely making it here. I'm also a full-time coach for high school kids, and some of the attitudes that I'm dealing with from these rich incoming families is astonishing. They have no respect for our ideals or values, and it sickens me.*

*Please say no on Kapalua Mauka and Wailea 670 because how are those developments supposed to make my life better? Will I be happier because I'll get to sit in more traffic? There's nothing in all of these developments that is helping to make Maui a better place for the people from here. Of course, the multimillion dollars homes that are being built help the rich incoming transplants, but they are ruining the quality of life for all of us who are working lots of different jobs just to be able to stay on Maui.*



*I'm so frustrated with the traffic, lack of mass transit, growing drug problems, lack of schools and medical facilities, that I think it is absolutely ludicrous to keep allowing these high-end resort developments to keep being built. They give back nothing in the big picture. Proportionately, they give back peanuts. We are giving away quality of life, and I think, and I think most local people would agree, that quality of life is priceless.*

*Please vote to defer these developments and stop giving our land away to the rich. I love Maui because Maui is Maui. It's not Oahu, it's not Southern California, but it sure is getting difficult to tell the difference.*

That's from a teacher born and raised here, Mr. Chairman.

Thank you for my time.

CHAIR HOKAMA: Thank you.

Further comments by the other Members of the body? If not, Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. I shall be unique and be brief.

There's been a lot said in this chamber--public testimony, comments by Members, and e-mails and telephone calls we've been receiving. And I'm just going to try to briefly answer some of those things.

One of the things was, was the process that we had. As Chair of the Land Use Committee, I had many calls. We went to Kapalua. We made every effort to make sure that the community was informed; and I'm sure Ms. Johnson made every effort to make sure the community was informed. I made sure that we had a site inspection with transportation for any members of the community that wished to go. We had hearing at the Lahaina Civic Center. And, incidentally, at those, only one person even had any questions. We had no comments against at that time.

We have had open meetings. We have given every Member and the public every opportunity to bring forward all of their concerns. We only had a bigger turnout after Mr. Mayer and Ms. Johnson put something in the paper, which I applaud. Any time we can get the public more aware, that's terrific.

I found it interesting that my office received better than two to one in support of the project after their reading the paper.

There's been--said that the Members are not responsive to the community. I would differ. I have friends and family in Lahaina, and everybody over here has friends and family in Lahaina. I go to Lahaina. I know what the traffic's like. I know what the people are like, and I listen to all of them and I think we all do. And it has been inferred that some of us don't and some of us don't know what's going on, in public testimony and in other places.

I feel that my Committee, which is comprised of every Member of this Council, was well informed. All the information was made available to them. There are concerns about the community, and I feel that with the information they have, they will make the decision that they feel is correct today.

I do have problems with Councilmembers that disagree with other Members and hold them to fault. Because you have a difference of opinion with someone, there's no, excuse me, it's no reason to fault them that they are unresponsive to the community and they don't listen. It is a difference of opinion. And assuming that you are the one that is right and the, the statements that you make are flawless, and that you can make statements saying that, "Well, there's been no other way that this, something could be, and there has been no other solution, and that it's absolute." Well, anyone can tell you that nothing is absolute.

I would hope that the general public, those in the gallery, my fellow Councilmembers, could realize that the Committee again has done everything possible to address the concerns of the community. And I know that they will make the decision, the best decision they can today.

Thank you.

CHAIR HOKAMA: Okay, thank you.

Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Chairman.

While this would be a little out of order, I know you wanted to have Mr. Carroll the opportunity to have, I guess, the last say before you do, but I just wanted to thank Mr. Carroll for his comments.

Thank you. It's nice to be appreciated.

We're all equal members here, Mr. Chairman. All of us are independent in our thinking, and I would hope that we treat each other with respect and not bash each other for taking a different stance on this issue.

So, thank you, Mr. Carroll, and I appreciate your leadership in this Land Use Committee.

Mr. Chairman, I'm not going to try and add in other elements to this particular item. For example, we had discussions on Pulelehua and Haliimaile. That is not on our agenda today, so I will confine my comments and do my best to keep it germane to what is on our Council agenda today, and that is Kapalua Mauka.

First of all, the comments made about "offshore people", it seems to categorize "offshore people." Puts them in a negative light. But, you know, when you think about the makeup of Maui County, we're all, many of our ancestors were offshore people, and that's what helped make Maui County special.

So I would just ask that how we use the term "offshore people" be used very sensitively because, you know, I'm part-Hawaiian. My mother was born and raised on, on the west side. My father's ancestors came from Spain many, many years ago. And many of us in this room was born here on this island in this County, and we have ancestors that were from offshore, and they were offshore people and contributed greatly to this community in which many new offshore people appreciate. And I welcome all offshore people, as long as they're willing to contribute to our community. Let's work together and not categorize them and treat them as something else, whether they're rich or they're poor.

Yes, get rich people coming here, Mr. Chair; but, there's also, we got an increasing number of homeless people that have come from offshore. There's people of modest incomes that have come from offshore. And I think it's imperative upon all of us as citizens to work together and welcome. We cannot stop growth, Mr. Chairman, so we got to work with it and do the best we can.

So with that being said, Mr. Chairman, I will now like to get into a little bit about Kapalua Mauka. To say there's been some interesting intense discussion is, you know, is a, I can't think of that term, you know. You know what I'm trying to say.

We have on the one hand, a long-time kamaaina major employer of this island with, that employs a lot of people on this island. And they are trying, at least from what I've been hearing from them, are trying to sustain their operations to maintain an industry that I can safely say we all appreciate, and that is agriculture.

But as you look at the state of agriculture throughout the whole State right now, Maui is pretty much the only island in which agriculture is thriving. And the benefits of agriculture is you have the open space, you have the greenery. That's why people love to come to Maui. I can remember laughing at tourists when they would come and take pictures of the pineapple fields or the sugar cane fields. But then after I left this island to go to places like New York and overseas and Asia, then I understood why they took pictures of our green fields and our open space, and it's because of agriculture.

And sometimes we have to consider the importance of employers that maintain this very industry in which many of our citizens, both newcomers and long-time kamaaina, have bene--benefited from.

When I mentioned earlier today about what happened with Del Monte on the island of Oahu, it sent a shudder through me, Mr. Chairman. When you read the plight of these people, suddenly, they wake up one morning and they find out they're not going to have a job or their job's going to be terminated real soon, their very existence just trying to survive with their home and their job, it's very traumatic. I've been in that position before where you walk into work one day and you, you're told you don't have a job anymore. It's different when you're single, Mr. Chairman. But when you have spouse and children to feed and educate, believe me, it's much, much more difficult, you know.

And the end result of this Del Monte thing is now the State Legislature has come up with a proposed bill to assist these people; and that's taxpayer dollars, Mr. Chairman. A lot of money because a particular company, for whatever decisions they made, has decided to cease operations. It appears that maybe they made some unwise decisions, maybe they didn't want to take a chance on diversifying. I don't know. But the one fact remains, they are going out of business.

Now, imagine if Maui Land & Pine went out of business. I'm just trying to think of a potential scenario. We would be getting a lot of phone calls, maybe more than about Kapalua Mauka--a lot. Just like when 9/11 happened, Mr. Chairman, people just turned to the County for help, begged for help, "What can we do?" Well, we could be in that situation if Maui Land & Pine goes under. Maybe they'll be fine for the next hundred years, maybe not. We don't know. I don't have a crystal ball in front of me. It seems like some people out there do have a crystal ball; but, me, I don't.

All I see, Mr. Chairman, aside from numbers, I see these people in this gallery here today, as well as people on the street, the ones who don't have the glamorous titles; the one who don't have the real fancy paying jobs, the front-liners, the hard workers, the kamaaina, the recent offshore new people just trying to make ends meet to try

and survive in the economy that we have. That's what I see, Mr. Chairman, and that's what I tie into this subject matter here today.

And we all want affordable housing; but, unfortunately, we have difficulties with the permit process and there's many roadblocks. And, ironically, that's some of the stumbling blocks as to why we don't have a, a big supply of affordable housing. And simple economics will show if you have a limited land supply and you put more roadblocks in, hey, you better believe it your housing prices will go up without a doubt, Mr. Chairman.

On the subject of traffic, I can agree with everyone. It is a major concern. But as I stated at one of our last meetings, Mr. Chairman, the traffic jams are not just related to one project or speculation of a future project coming up. There's many, many different factors.

You have tourists and locals from different regions of Maui County loving to, love the idea of coming over to West Maui to congregate. Eh, I love going to West Maui to congregate, recreate, everything else. And of course, with, with Maui's worldwide popularity, what can you do to stop that? Shall we just shut down the visitor industry and ban all visitors, ban all recreation? I don't think so.

And what about schools? Schools contribute to traffic. Even the opening of the new Maui Preparatory Academy, that contributes to traffic.

How about whales? We're talking about whales today. People love whales, and they congregate towards the area of the west side. Many people I know come here specifically to look at the whales. It's a big thing.

And of course, the traffic lights. One of our favorites, the one at Launiupoko. That contributes to traffic as well.

So, Mr. Chairman, I think, for me, you have to look at the whole picture, and not just focus your attention on one particular possible project that could come up.

And, yes, in this particular project, many of us would probably wish there were more affordables made available, but that's the deal that was struck.

And it was interesting, we had a testifier today that mentioned that with the high-end housing that's in this project, it may actually possibly reduce traffic. I mean, if you went to, say, 80 percent affordable, 100 percent affordable, you actually might have more traffic potentially. I mean if this project passes, I'm sure many of the clientele that will be buying this so-called high-end housing will probably be part-time residents anyway, so it goes with that, Mr. Chairman.

To the applicant, Mr. McNatt, who is here representing Maui Land & Pine, I thank you for coming on record to tell us that you are going to make a commitment to form a task force and, if possible, provide resources to address the traffic situation. And, you know, the Company's integrity is on the line with this. Many of us will be watching. And I would hope the outcome of this task force and bringing in other entities of heavy influence, we can get some of our traffic problems on the west side mitigated.

I would hope that it will strong--send a strong, desperate message to our State officials, our Governor, and especially the Department of Transportation to expedite this process because, yeah, we've been waiting many, many years, thirty-plus years, Mr. Chairman.

You know, West Maui is said to be the, a major source of revenue for Maui County and, yes, it is. And, again, what may contribute to the traffic is the proliferation of businesses in West Maui. So, again, it's not only just one possible--one project that could come up. It's already there.

And many of the guys who are complaining, many of the people have many businesses. And apparently the businesses are successful, they're attracting people. But with success, come problems, too. West Maui, unfortunately, is the victim of its own success.

But I would hope Mr. McNatt and the higher ups of Maui Land & Pine push aggressively because if the traffic gridlock continues to worsen, there's going to be negative ramifications, both economically and on the quality of life for people on the west side. And it will be cause, be a cause for many of us to rethink the issue of traffic and development on the west side, and consider other alternatives, Mr. Chairman, alternatives that we have to consider to protect and benefit the citizens of West Maui.

So I will leave it at that, Mr. Chairman. I thank you.

CHAIR HOKAMA: Thank you, Mr. Molina.

Further discussion? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

You know, this is one project, well, I've had another project that we listened to couple years back, and, and it was 201-G project that divided the community, and this is similar to that. You know, this project, Kapalua Mauka, you know, we've heard a lot

of testimony from employees from the Maui Land & Pine Company, as well as people from the west side community. One of the major issues that they talk about is the lack of highway infrastructure.

And I think Mr. McNatt offered Maui Land & Pine and their staff to create the task force to see what can be done to, to alleviate traffic in the West Maui area. And I thank Maui Land & Pine for doing that.

Two years ago, we talked about affordable housing. There were none in Lahaina--zero. Yeah, we may have twenty-million dollar homes, but we don't have any affordable housing there. In fact, West Maui is the area that is the most depressed as far as affordable housing.

So we have a responsibility there to, to work with some of these developers to create affordable housing--and I think our General Plan says that., our Community Plan says that. Schools, stream flow, reduction of agricultural lands, yeah, will affect the west side community.

When I look at this project, I, I look it as, you know, as, as, as a . . . continuing our economic growth for Maui County. You know, we provide a lot of service to a lot of organizations here in Maui County. And, and, generally, we utilize tax dollars as part of the contribution that we, we do for all of the nonprofit that comes to us here in Maui County.

As for Maui Land & Pine, I, I look at this development as a shot in the arm to keep agriculture alive in Maui County. As my colleague next, next to me had eluded, you know, Maui Land & Pine is the only pineapple company in the State of Hawaii that is in operation now. Del Monte closed down, you know. Now we got 700 employees that are unemployed. And, and I hate to see 1,100 employees unemployed if agriculture disappears from Maui, especially, Maui Land & Pine.

You know, people in the back didn't come here to listen to us, well, they came here to listen to us to see what we can do to keep agriculture alive at Maui Land & Pine. And if this project will put some financial shot in the arm to enhance their agricultural business, you know, we should take a real hard look at that. I think Mr. McNatt mentioned that in 2005, they lost \$11 million in the pineapple industry. You know, how many companies would like to lose \$11 million every year.

If this is a way that they can keep agriculture viable here in Maui County, you know, we, we really need to take a real good look as far as this particular project inducing that financial help.

We all know that pineapple, the pineapple industry is a worldwide industry; and, and for them to compete in a worldwide industry, you know, we, we need to support our agricultural business here in Maui.

I think we added a lot of conditions to the project itself to ensure that schools are taken cared of, affordable housing is taken cared of. And, in fact, on the affordable housing portion, should our affordable housing policy is approved by this Council, it may not be 20 percent. It could be 30 - 40 percent affordable housing. So they don't get away free on the affordable housing. We still have a policy, still have a condition, that we had included in there that the policy will take precedence.

Traffic, there is Traffic Impact Fees that is put upon every developer here in Maui County. We still need to work on our Traffic Impact Fees. As a Council, we have, you know, if the fees are higher prior to this project commencing, they pay the higher impact fees that is noted in this particular condition.

So I think with all of the conditions that we have added, you know, some of the problems will be, hopefully, be resolved.

And listening to testimony this morning for and against, you know, it, it just brings back, you know, memories in regards to a divided community two years ago.

So, with that, Chair, I thank you for giving me this opportunity. Thank you.

CHAIR HOKAMA: Thank you, Mr. Pontanilla.

Members, further discussion? Ms., Ms. Tavares.

COUNCILMEMBER TAVARES: Yeah, Mr. Chairman, I didn't know if you wanted to take a break before continuing or, or not. I do have some things I would like to share. I was going to wait until we got to Bill No. 1, but if you would prefer all the discussion to go on with Bill No. 3, I'll be happy to, to share my thoughts at this time.

CHAIR HOKAMA: I am, what the Chair had intended, because I think everyone here, not only the Members, would enjoy an ability to stretch their legs also, that the Chair, prior to the vote, was going to take a very short recess for the Members to take care of their needs, personal needs. And, so, unless there is an objection, the Chair is happy to provide the break at this time, a very short break.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Okay, Members, why don't we just give everyone ten minutes to stretch and take care of their needs. We'll be in recess till four-twenty.



(THE MEETING WAS RECESSED BY THE CHAIR AT 4:11 P.M., AND WAS RECONVENED AT 4:42 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR HOKAMA: The regular Council meeting of Septem--excuse me.

COUNCILMEMBER TAVARES: September on your brain.

CHAIR HOKAMA: Tells you where I may want to be--February 17, 2006, is back in order.

Members, we currently have before you Bill No. 3, Draft 1. The motion before you is to pass this bill on second reading as amended.

We've already had discussion, started discussion. Is there further discussion?

Before I recognize the Members, let me just share with you. In consultation with staff, as well as Mr. Moto, the Chair will be recommending, after discussion on this bill before you currently, the Chair will be asking for a postponement on the vote; and then the Chair will prefer to direct the Clerk to bring back Bill No. 1, first to do, have the Council make a decision on the Community Plan Amendment first. That will be followed by Bill No. 2, which the Project District bill; and then we will take up for final action on this application, the Bill No. 3, Draft 1, as amended, for this final decision making.

Stating that, we are still under discussion of Bill 3, Draft 1. Ms. Tavares.

COUNCILMEMBER TAVARES: Yes, thank you, Mr. Chair, and thank you for that, for that break.

As I was saying earlier, I was going to wait until we talk about Bill No. 1, but I think because this has the most detail in it as far as the conditions of zoning, that it is appropriate to talk about it at this point in time.

You know, it's, this decision is not an easy one for a number of us. There are people from both sides telling me that this is a no-brainer. And, you know, they were no-brainers, but it's not easy.

We've seen the community become divided again, and not only on this issue. We also came from another meeting on Wednesday night, I believe it was, in Paia; and that one wasn't such a divided community, but we had very frustrated individuals telling us how they felt about a certain issue.

Now, once again, we have frustrated individuals sharing with us their frustration with the traffic, their frustration with not being able to find housing, all kinds of things. And it just happens to be that this is Kapalua Mauka coming through the pipeline. These, all these other projects that got approved, the projects that already had zoning that don't come before us, there is not a way for people to express how they feel about that. And all, all of the cumulative impacts, as we talk about a cumulative impact, all of those impacts are here now. We're not predicting that they're going to be there once they start building this. They exist today.

It is my sincere hope, and maybe I'm just too idealistic about our community, but I really believe this. Our community can come together to become one voice and get it done. With Maui Land & Pine footing the bill, at least, for the organization of the task force, for supporting it with staff and bringing people together, I would like to see everyone who's here in this room, whether you're saying vote no on Kapalua or vote yes on Kapalua. We vote no on Kapalua, we've still got a traffic problem out there; we vote yes on Kapalua, we still have a traffic problem out there.

So when are we going to address this problem? All of this energy and time that has been spent communicating with us here at the Council, that time and energy can also be expended in getting the road done, pushing whoever needs to get pushed to make the decisions.

And I, for one, will make a commitment that I'll work with this task force; and I'll help to take the message wherever, whether the message is here at the Council, the message is at the State or at the Federal level, wherever it is because it's something we all have to do. It's not like Lahaina is someplace that we don't go to. We go there often.

You know, a couple of things have been said about agriculture. And I would much rather support a kamaaina company such as Maui Land & Pine, and I don't care that they're a corporation. They've been here on this island for ages. They helped make this island. I even worked for them one summer. And their dedication or rededication to agriculture, I would much rather support a company like this than to support another company that comes out, wants to build timeshares or whatever, and then they're gone. And the money doesn't stay here for sure. They don't hire as many employees Maui Land & Pine has.

And then what is the alternative? It's not like we haven't see this throughout the State of Hawaii. As agricultural endeavors fail, we see what happens. We don't have to speculate about this. Just look at our history. And we don't have to look very far. Just look at Pioneer Mill. So what do we have in the place of the agriculture for growing homes? Do they need to come to us for approvals? Not if they're going to stay in ag.

So is this was the future would hold for us if this company is not given the opportunity to grow their company and to provide a little more stability for their company and our people eventually in our community in the long run?

Lanai Pine went down. Molokai Pine went down. The last pineapple operation is here on Maui now. Look at the sugar that's throughout the State. There's only two companies, I think, now that exist--HC&S and somebody else.

Sooner or later, that's going to change, and we've got to be ready for that change. But if we don't, if we don't participate in this, by this kind of action, if we don't allow them to have their subsidiaries or whatever it is, their diversified economic portfolio, to succeed, then there is going to be a greater problem, I think. Now maybe I'm trying to see too much into the future, but that's what I have a sense for right now.

This Company has done a lot of things that they don't have to do. They are not required to provide employee housing. They have. Which other company on this island has provided employee housing voluntarily?

We're hearing about affordable housing, and, yes, I'm on the front page of *The Maui News* this morning about my 80 percent affordability. But you know how many people are telling me that can't be done? They're all the developer, or they're, they're developers and contractors. It doesn't matter that what we need to look at is this seriously.

I do not consider Kapalua, and I've said this from the beginning, I don't consider Kapalua Mauka as a residential project, a housing project. I see it as an extension of the resort operation at Kapalua.

The evolution of tourism has gone from little motel looking things, three or four bedrooms, or three or four rooms with little kitchenettes, to sort of fancier hotels that might have outdoor dining; the next generation, they had spas; and now you've got complete self-contained resort hotels, mega resort hotels. I see this as the next evolution in, in the resort area, where there are individual residences that are in a resort residential area.

So, yes, their 20 percent is, is, and I haven't been arguing about the 20 percent because that's my view of this particular thing, and maybe that's wrong, but that is my view. And as I said, I'm not going to give up on this 80 percent affordable. And when the numbers come out, you'll see what it looks like. But it has to be done for all of us here. We're hearing the same thing, the same frustrations. And it's not we only attack one thing, we have to address all of the things in Maui County that affect us, our quality of life.

I mean, we got, in the last week, we got water, housing, and development; and they're all intertwined. We're all in this together, but it's only when we are together and working toward, you know, some common goal, pool our resources. Everyone has information and energy that can help us move this vehicle to where we want it to be.

I am putting my trust in Kapalua, trusting their word that they're going to work toward resolution of this. And if it doesn't work out, I'm not going to predict what I might or might not do--I'm just going to stay positive. It has got to work out because too many things are riding on it for our present residents.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you, Ms. Tavares.

Is there further discussion on Bill No. 3, Draft 1, for second reading as amended?  
Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman.

Just a side note regarding this. On today's agenda, a resolution was passed that didn't get much fanfare other than today's discussion, brief, that talked about an issue that's going to cost the taxpayers of Maui County, if it's effectuated, upwards of \$120 million or more--one project.

This body, and not this one in particular, but the Legislative branch of government, along with the Administrative branch of government, in its history, made a decision, a very conscious decision, that we were going to go for the high-end versus the quantity, the Waikiki look. And I think this continues that trend of an extension, which I concur with Member Tavares that I would concur with her that I look at this in a similar fashion, that this, this shows an extension of that resort component of our community in our island economics.

The density is less than one. The revenue that's going to be generated is going to be millions of dollars per year annually in property taxes. And, yes, there's going to be some questions and issues of quality of life.

But we've made the decision over thirty or forty years ago, and we've come down the path. And I think Kapalua Mauka represents an extension and a continuation of a philosophy that's going to assist us in taking the weight off of the person who is not as successful or, from an economic perspective, is unable to carry the weight or the burden.

We have already made--taken steps, this body in particular, have already taken steps to reflect that from a tax policy, that we are interested in protecting our residents; and that a lot of our revenue came from the hotel industry. The top ten hotels paid approximately 40-something percent of the revenue that this County has received. And a project like this, as well as a few other projects that are out there that represent a similar face, if you will, is going to also contribute heavily to the tax base to help offset the pressure on our residents and our citizenry that are at the lower and middle end of the spectrum of economics here in Maui County.

And we made, again, a conscious decision to do that because the alternative is the very thing that many people are trying to compare us heading down the road to; and I would respectfully disagree. We have not taken the same path, and we continue to not take that same path. If we did, Maui would have had a half a million people today. If people go back and look at the history of the growth of the island of Oahu, they grew very, very quickly and are now at close to a million people on an island that's smaller than this one, and have forty-story buildings throughout; and we haven't done that here.

It's a difficult one. And we know when we took this job that we're going to face the scrutiny of our decisions. And we all know to, to take away from any type of inappropriate language, dang if we do and dang if we don't. If we decide one way, we're going to have a lot of people who are going to be upset.

And it's true. We all get elected by the citizenry of the County, not by districts, so we all represent. And there's a reason they did that. It's not district; it's not just my colleague from West Maui's district of West Maui. It's all of our districts. We all represent those folks, and we all make painful decisions. It wasn't difficult for the "Yes" votes in the Wailuku district for all the houses that got, projects that got approved, literally thousands of houses with similar infrastructural issues. And, yet, I did not hear the cry that I heard for West Maui because there's a lot more people that understand and know that, yes, there's going to be challenges to accept these decisions that we make, but we're part of the United States. We cannot limit people from coming here, the offshore people that we talk about. So, yeah, it's going to be challenging.

I'm going to vote yes, Mr. Chair. The difficulty of my yes vote was primarily tied to the transportation issue; and I think all of us are feeling that, you know. Although I may have faith or I'm trying to bring myself to have the faith in the Company, you know, it's just going to come down to the engagement of the, of the community. Member Johnson talked about engaging the community, and I agree with her. That's what it's going to take. If it's not going to be because we've voted on it and it failed two weeks ago, then so be it, we move on. Life goes on. And if the Company is willing to come forward and offer an alternative to that, then great. I think that's good that we

embrace that, and I hope they're genuine; and that, in the end, all they have is their word as far as how they represented this community over the long term. Overall, they've done a great job for the most part in a lot of people's eyes. Some people feel differently. But I think all of us can agree that Maui Land & Pine, overall, has done a good job in this community and, and done well.

And although there's change, hopefully, they continue to demonstrate their genuineness to this community. Yeah, it's going to be a tough one. And my vote is with reservations because I know that there's a lot of stress. But, you know what, it's a yes vote. It doesn't matter if it's with an "R" next to it or not, but it's not a slam-dunk. And Member Tavares said it, it's not a slam-dunk either way.

So we're sitting here and we're listening. We've heard it. I have friends, too. Just like Member Carroll said, we have friends and family. And you know what, the more people you talk to, the more you see the diversity of what they see from their perspective. A lot of 'em are way on the end of, "No way. None--'nough already. Nothing. Zero." And then you have others on the other side, and there's a whole lot in between. The more people you ask, the more you're going to find out and the more you're going to see the mix.

The call, the calls for my office, Mr. Chair, finally, not maybe as the percentage like Member Carroll's two to one, but there were more in favor. For me, personally, I'm not going to base my vote on 78 people or 123 people sending me, you know; and I got 87 for and 63 against, therefore, I'm going to go for. Because we all know it's a bigger picture than that. We all know that there's a hundred and something thousand people that live in this community every day, and we're all struggling through the same paths and trying to make a, make a go.

And I think this body, collectively, is trying to do its best to serve this community--and respecting that diversity. And, you know, it's been emotionally charged at times; and I know and I hope, I genuinely hope, Mr. Chair, and I'm sincere with this, I genuinely hope that some of the comments that were made earlier are thought about and would be willing to come forward and apologize, maybe not to the public, because may--I don't think they would do that. But realize that sometimes emotions get away from us, and we say things that maybe we, we don't really mean. You know, accusing an individual person of the ills of, of a community, I think is a little farfetched; and it's, it's not deserved. We work in a body that is inclusive, and it's a "we" thing here. None of us individually has any power whatsoever. It's a collective body, so you can never hold somebody individually accountable or give them all the credit for something that officially happens in this chamber, or doesn't happen--and we need to remember that.

Thank you, Chair.

CHAIR HOKAMA: Thank you, Mr. Kane.

Members, further discussion on the motion before you before the Chair ask to postpone further deliberations? Okay, if not, with no objections, Members, the Chair will postpone decision-making on Bill No. 3, Draft 1, 2006, with the status to remain that the motion passes for second reading as amended.

**MEMBERS VOICED NO OBJECTION.**

CHAIR HOKAMA: Okay. Thank you. Bill is postponed.

Mr. Clerk, please bring up Bill No. 1.

Bill No. 1 (2006) was presented at this time.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 1 (2006)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2476 (1996)  
THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP,  
FROM AGRICULTURAL AND OPEN SPACE TO  
WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)  
FOR PROPERTY SITUATED ON THE SOUTHEASTERLY SIDE OF  
HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII

CHAIR HOKAMA: Thank you.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

This bill proposes to amend the West Maui Community Plan and Land Use Map from Agricultural and Open Space to West Maui Project *[sic]* 2 (Kapalua Mauka) for property situated on the southeasterly side of Honoapiilani Highway, at--oh, I'm, we already have a motion on the floor for this bill, don't we?

CHAIR HOKAMA: Mr. Carroll, the Chair will be happy to entertain a motion for second and final reading for Bill No. 1.

VICE-CHAIR CARROLL: Oh, I'm sorry, Chair. I thought we already had a motion at the last meeting for this bill that's why.

CHAIR HOKAMA: We chose not to take any parliamentary--

VICE-CHAIR CARROLL: Thank you.

CHAIR HOKAMA: --position on this item.

VICE-CHAIR CARROLL:

I WOULD MOVE THAT BILL NO. 1 PASS SECOND AND FINAL READING.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Carroll, seconded by Mr. Pontanilla, to pass Bill No. 1 on second and final reading. Mr. Carroll, please.

VICE-CHAIR CARROLL: Thank you, Chair.

Again, this bill proposes to amend the West Maui Community Plan and Land Use Map from Agricultural and Open Space to West Maui Project District 2 (Kapalua Mauka) for property situated at the southeasterly side of Honoapiilani Highway, Honokahua, Napili, Lahaina, Maui, Hawaii, comprised of approximately 474.8 acres, expanding the West Maui Project 2 *[sic]* District to an area of approximately 924.8 acres.

The Council amended the proposed Community Plan Amendment bill to delete references to transient vacation rentals and timeshare, to conform with the Committee's intent not to permit such uses in the Project District.

The Council further deleted references to resort residential uses and clarified that the 690 residential units are to be long-term residential units.

Thank you.

CHAIR HOKAMA: Thank you, Mr. Carroll.

Members, further discussion on the motion to pass Bill No. 1 on second and final reading? Yes, Mr. Carroll made the motion, Members, and Mr. Pontanilla did duly second the motion.

Ms. Johnson.



COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

Because I think it's futile to try and have this recommitted at this point because I believe that the will of this body is to just vote this up or down, I'm not going to entertain a--I was going to make an amendment, you know, to try and recommit this because I really think that's the appropriate action.

And I think at this point in time, I've heard the Members. They don't seem to want to recommit this. They feel that it's more appropriate to pass it. I think we could do a better job. I think we could do a better job on this entire bill.

I'm doing the best I can based on what I believe is in the best interest of the majority of people that I serve. While others may not agree with that, this is a democracy. And on this Council, the majority rules. So whether I like it, whether my community likes it or not, they will have to, and all of us, ultimately, will have to live with the decisions that we make. And it's not just the people here now. It's for generations to come.

So I hope that when we cast our votes, we're very, very clear about where we've come in the past and where we're going to.

I find it really interesting that one of the guiding principles that is coming forward in Bill 84 has been the participation of over 1,700 people in Focus Maui Nui, people who never came out to anything, but they expressed their opinions and that, basically, is helping to frame and guide some of the General Plan Advisory Committee's direction.

One of the things that I recall that was a top priority was to provide for the citizens to provide opportunities to diversify; provide for education; provide infrastructure; seek balance. All of these were values that a much wider body than the employees of Maui Land & Pine or Kapalua Land, and even the people that came to testify today, much wider range of people; and it was over many months that they did their work. Those values are absent from this because there is not balance--690 homes. I have nothing against people that have worked hard in their lives and they made money. That's not the point.

But right now, the people that we're talking about providing for aren't even here. They're somewhere else. And, yes, as Councilmember Molina said, yes, they're offshore. I came from offshore, and I'm not saying that everyone that comes here doesn't have a heart or doesn't embrace the culture, but many of those people will purchase in this whole area as an investment. Maui is a commodity to them to be marketed, to be sold to the highest bidder.

When I have people coming out, and I just was aghast at people coming out, at least in my community, who have never spoken out on any major development before for anyone, even having perhaps greater impacts on this, they did, they did not speak out; but, on this one they did. So something is different. And it's not, I'm not going to blame Maui Land & Pine or Kapalua Land. It's not their fault. It's the time; it's the pressure; it's the development; it's the loss of open space; it's the fact that North Beach is going to be built out and all of the places where people used to go are going to be gone.

I remember many years ago, and I wasn't a full-time resident then, but I remember when a former Mayor came to West Maui; and he has his mind made up. He was going to widen Wainee Street, and this was a public meeting to just announce "Wainee Street is going to be widened." Done deal. And he had a meeting with the community, and the community spoke out. And you know what, that Mayor listened. He respected at least that there was some other way around this. I would love to have that opportunity, but I won't get it, our community won't get it. We can improve, I believe we can genuinely improve on what we're doing. And as Councilmember Mateo said, we can make this into something that is a win-win. And although this is the Project District, I still think that by gobbling up double the space that was originally intended for the original Project District, not to mention the State land that is now in private hands, and the fact that the roadway or the trail system that was supposed to have been opened that was attached with the original conditions to Pineapple Hill and the Plantation, Site 19, still not open to the public. Commitments were made. Are they honored? I don't know. Sometimes institutional memory fades. But I remember. Now, maybe it's government's fault that we haven't held their feet to the fire, and we have not opened that because I was told that, "Oh, the County needs to accept it." Well, when has it been offered, when has it been introduced? I haven't seen it. But these are things that happen over time. They're decisions that are made; they're actions that are taken; they're voices that are heard.

And while some Members may disagree completely with my philosophy, I believe that my community, the community in which I live, every day that I travel to this side, I have to sit in that. And if I get cranky, so be it. I don't like sitting in traffic any better than the next person, bumper-to-bumper. And every time when this happens, people, they get angry; they're frustrated.

And as Councilmember Tavares said, you know, it, it spills over into other areas whether it's water, whether it's sewage, whatever the issue might be. People are taking to the streets now, Mr. Chair. They're not waiting for government any longer. And you have a tiger, I believe, we have a tiger by the tail.

So, for me, to compare Central Maui, you know, and this area, to West Maui, well, we only have one road in and one road out. There is no other way in and out of West Maui. And when the road goes down, we're cut off; lives are at stake.

But it's frustrating to look at a company that has a record of exemplary treatment, not only of their employees, but they have led by example; they have always tried to do the right thing. This is the one time where I think they had an opportunity, even if it was just simply saying, "Yes, we understand the reason for that condition," because a similar condition that was even more restrictive was applied to North Beach, resort residential, but they don't want that. That is where I have a problem. Hold people to a standard that has been established whether it was done by me or past Councils or past interveners. But I believe that the doubling of the size in this Project District also is gobbling up and sprawling; and I don't think it's smart growth at all. So I don't know where we're going with this, Mr. Chair, but I will be continuing to vote no on all these measures. I would have preferred and I could have at least tried to work with the developer and work with the other Members of the Council to draft something that I thought provided some level of parity, some equity, comparing this sweeping land change that we're thinking of making, compared to what the impacts will be. I don't know the answers, but I only know I lived in an area that was destroyed through the actions that are identical to the ones that we are about to take today--and it wasn't pretty. And to travel seven miles for an hour, seven lousy little miles, took us over an hour; and that was leaving before traffic began. The Virgin Islands was America's paradise. And I, you know, whether you like it or not, today I refer to it as "America's paradox" because it was a victim of its own success.

So I will not apologize to anyone for speaking out when I believe that the best interest of my community are not being served.

Thank you, Mr. Chair.

CHAIR HOKAMA: Thank you, Ms. Johnson.

Further discussion on the motion before you, Members. If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS KANE, MOLINA,  
PONTANILLA, TAVARES, VICE-CHAIR  
CARROLL, AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON, JOHNSON,  
AND MATEO.

CHAIR HOKAMA: Chair recognizes three "noes": Ms. Anderson, Ms. Johnson, Mr. Mateo. Any correction to the Chair's understanding of the count? If not, the motion passes; six "ayes", three "noes." Bill No. 1 passes second and final reading.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 2 (2006)  
DRAFT 1

A BILL FOR AN ORDINANCE AMENDING TITLE 19,  
MAUI COUNTY CODE, TO ESTABLISH WEST MAUI PROJECT  
DISTRICT 2 (KAPALUA MAUKA)

CHAIR HOKAMA: Thank you.

Members, the current status of Bill No. 2, Draft 1, before you is passage for second reading as amended. Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT BILL NO. 2 PASS SECOND AND FINAL READING.

COUNCILMEMBER PONTANILLA:

SECOND.

CHAIR HOKAMA: My, it, my, my error, Members. I should have made it much more clearer. We currently do have a motion before you, and that is for second and final reading as amended.

The Chair would ask, Mr. Carroll, if you have any opening comments as our Chairman regarding Bill No. 2 with the current status, Mr. Carroll. My apologies.

VICE-CHAIR CARROLL: Thank you, Chair.

This Bill No. 2, this bill proposes to amend Title 19, Maui County Code.

CHAIR HOKAMA: You need to turn off that phone, please.

I'm sorry, Mr. Carroll.

VICE-CHAIR CARROLL: By adding a Chapter 19.92, entitled "West Maui Project District 2 (Kapalua Mauka). This bill proposes to establish the development standards for the West Maui Project District 2, comprised of approximately 925 acres.

We have the two amendments on this bill. The Council amended the Project District bill to clarify that the definition of "height" is based on the definition in the Maui County Code. All references to "finishing or existing grade, or whichever is lower," were eliminated. The Council also amended the Project District bill to prohibit dwelling units on these portions of the property within the Kapalua Mauka project district that Maui Land & Pineapple Company, Inc., obtained as a result of a land exchange with the State. The Council amended Section 19.92.080A of the bill relating to density of the Kapalua Mauka project to read: "No more than six hundred ninety dwellings shall be developed in the Kapalua Mauka project district, provided that no dwelling units shall be allowed on those portions with *[sic]* Tax Key *[sic]* Nos. 4-3-01:006 and 4-3-01:008 that are within the project district."

Thank you.

CHAIR HOKAMA: Thank you, Mr. Carroll.

Mr. Kane.

COUNCILMEMBER KANE: Yeah, I'm sorry, Mr. Chair. Just a point of clarification.

The motion on the floor as amended is the Draft 1 of Bill No. 2? Is that correct? Is that's what, what we left it on two weeks ago, was the Draft 1? Or is Draft 1 something that was the result of.

COUNTY CLERK: The amendments that were offered at the February 3 meeting; and the subsequent motion was to postpone the main motion as amended till today.

COUNCILMEMBER KANE: Okay. I, I--thank you, Mr. Chairman, just for clarify--clarification. Thank you.

CHAIR HOKAMA: Thank you for the question.

Members, we are under discussion on Bill No. 2 for second and final reading as amended. Further discussion? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS KANE, MOLINA,  
PONTANILLA, TAVARES, VICE-CHAIR CARROLL,  
AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON, JOHNSON,  
AND MATEO.

CHAIR HOKAMA: The Chair counts Ms. Anderson, Ms. Johnson, Mr. Mateo as "no" votes. The Chair says six "ayes", three "noes". Bill No. 2, excuse me, yeah, Bill No. 2, Draft 1, passes second and final reading as amended.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 3 (2006)  
DRAFT 1

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM  
COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO  
WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA)  
(CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON  
THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY,  
AT HONOKAHUA, NAPILI, LAHAINA, MAUI, HAWAII

CHAIR HOKAMA: Members. I'm sorry, Mr. Clerk.

COUNTY CLERK: And as a reminder, there, there, there is a motion pending.

CHAIR HOKAMA: Thank you.

The current motion pending before you, Members, is that Bill No. 3, Draft 1, status is passage on second read--second and final reading as amended.

Mr. Carroll, any further comments?

VICE-CHAIR CARROLL: I cannot think of anything that has not been said twice already, so the Chair of the Land Use Committee has no further comment.

CHAIR HOKAMA: Okay. Thank you.

Members, the Chair gives one last opportunity. If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS KANE, MOLINA,  
PONTANILLA, TAVARES, VICE-CHAIR CARROLL,  
AND CHAIR HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: COUNCILMEMBERS ANDERSON, JOHNSON,  
AND MATEO.

CHAIR HOKAMA: The Chair rules six "ayes"; three "noes", Ms. Anderson, Ms. Johnson,  
Mr. Mateo. Bill 3, Draft 1, passes second and final reading as amended.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO.  4  (2006)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48,  
MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY  
TAX EXEMPTION WITHIN THE WAILUKU REDEVELOPMENT AREA

CHAIR HOKAMA: Mr. Kane.

COUNCILMEMBER KANE:

MR. CHAIRMAN, MOVE TO PASS BILL NO. 4 OF 2006 ON  
SECOND AND FINAL READING.

VICE-CHAIR CARROLL:

SECOND.

CHAIR HOKAMA: We have a motion by Mr. Kane, seconded by Mr. Carroll, to pass Bill  
No. 4 on second and final reading. Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman and Members.

The purpose of the proposed bill is to provide real property taxes--exemptions to  
encourage property owners to make building improvements that will result in new  
amenities, more jobs, an increased tax base, and restored pride in the Wailuku  
Redevelopment Area.

The adoption of a property tax abatement ordinance is part of the Wailuku Redevelopment Plan which was developed pursuant to Chapter 53, Hawaii Revised Statutes, the Urban Renewal Law.

This Plan includes specific strategies and actions to eliminate slum and blight conditions, and was adopted by the Maui County Council of, of 2000-2001, I believe, Resolution No. 00-151.

This proposed bill will provide a real property tax exemption for the incremental increase in building valuation primarily attributable to qualifying construction work for a period of seven years.

This proposed bill will not exempt any appreciation in land value, only building value. This proposed bill will not diminish any of the requirements imposed by Chapter 104, HRS, sometimes referred to as the "Davis-Bacon Act", which requires every laborer and mechanic performing work on the job site for the construction of a, construction of any public work project to be paid no less than prevailing wages.

We did send, as a Committee, because with the Committee's agreement, we did ask to postpone to today's date, and we were provided an opportunity and the Members concurred to allow me as your Chair, Mr. Chairman, of the Budget and Finance Committee, to send a letter to Corporation Counsel, primarily asking three questions that we were able to pose to our Corporation Counsel. And, and, forgive me, I don't know if Mr. Moto has a copy of that letter with him. Thank you.

The, the questions, Mr. Chair, if I may, and, and I would ask the body's indulgence, as well as yours, Chair, if Mr. Moto can be provided some time to respond to the three questions, because we were unable to get a written response. But if I may, I'll read the three questions that we asked for the response to.

First, we asked Corporation Counsel to please confirm whether Chapter 104 of the Hawaii Revised Statutes applies to all building or development of a public work project on County property.

Second, we asked, "Does Chapter 104 of the Hawaii Revised Statutes apply to a private property owner who constructs a building that will be leased or to eventually be purchased by a government agency?"

And, third, "Does Chapter 104 of the Hawaii Revised Statutes apply to a private property owner who receives Federal, State, or County funds for its development?"



We felt these were questions that were necessary to be responded to, so that we could address some of the concerns that were brought forward to us prior to second and final reading, Mr. Chair.

So, at, at this point, without objection, if Mr. Moto is prepared to respond, I'd appreciate a response from him.

CHAIR HOKAMA: Thank you.

Mr. Moto, are you prepared to give Council comment at this time?

CORPORATION COUNSEL: Yes, Mr. Chairman. I'll try to summarize.

First of all, let me state that because these questions are asked in the abstract, they're, they don't come with any specified facts or circumstances, the advice that I'm about to give will, of course, be subject to change in light of specific facts and circumstances as they arise, and in light of the law as it then exists.

However, there are some things we can say generally on the subject based on the law as it currently exists. Also, I'm going to skip over any brief summary of the purpose and nature of Chapter 104 because Councilmember Kane, in his introductory comments, summarized the basic intent and purpose of the law.

First, in answer to question number one, "Please confirm whether Chapter 104 applies to all building or development of a public work project on County property." The answer is, generally, yes, it will. Let me state how, how we get to that conclusion. First, it's important to note the definition of "public work", and I think if you hear and understand this definition, the other answers will also make a great, make some sense.

Chapter 104 of the Hawaii Revised Statutes defines "public work" as "any project, including development of any housing pursuant to section 46-15 or chapter 201G," and I know that you know what 201G is. Chapter 46-15 is a rarely used State law that allows Counties to develop experimental and demonstration housing projects, but to continue on with the definition, it's any project, including 46-15 or 201G projects, "and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes." In other words, municipal bonds.

Now, there is a, an exception for small projects in the definition of, in the introductory section of 104-2, it states that if a project is less than half a million dollars and some 201G projects or 46-15 projects, and if the developer is a nonprofit, then 104 doesn't apply. But those are probably the min--small minority of cases since most projects are, are, for one thing, larger than \$500,000, or, or are likely to be.

The second question, "Does Chapter 104 apply to a private property owner who constructs a building that will be leased to or eventually purchased by a government agency?" Now, in answer this question, I'm going to make an assumption, and the assumption is that the private project that is being developed is really being developed as part of an overall cooperative venture or, or plan of development with the, with the County government; and that it's not a situation where a private developer builds a building on private property and then some years later, it's leased or sold to the government for completely separate reasons.

But assuming that it is a private development project, in which the government has been involved from its inception, then the answer to number two is that, yes, it will probably be treated as a public work and, therefore, subject to Davis-Bacon wages. And the reason is because government resources or funds are being used to directly or indirectly undertake the project. And, in any event, when the time comes to actually undertake such a project, the Davis-Bacon Chapter 104 type analysis will have to be done in order to make sure that the law is complied with.

Finally, Mr. Chairman, number, question number three, which asks, "Does Chapter 104 apply to a private property owner who receives Federal, State, or County funds for its developments?" I'm going to divide this question into two parts, and the reason is that Chapter 104 is a provision of State law. If the project, if the private property owner is receiving Federal funds solely, I'm going to make that assumption, then, in all likelihood, the private property owner is going to be subject to the Federal Davis-Bacon, Davis-Bacon Act provision, so it's going, he's going to, it, the developer, will be subject to Federal law and regulations.

If the private developer receives State or County funds, it will be subject to Chapter 104, Hawaii Revised Statutes. If the developer receives both Federal and State or County funds, which is possibly the case, whether in the form of grants or loans, then it will be subject to both laws. But whether it's subject to, whether the developer is subject to Davis-Bacon under the Federal law or under State law, essentially, the outcome will be the same; and the, the, the test will be the same.

Is the work that's being undertaken, does it meet the definition of "public work", which I just read to you earlier, meaning is it a project where real or personal property is being refurbished or constructed or maintained using funds or resources from the government and from public revenues.

CHAIR HOKAMA: Thank you, Mr. Moto.

Mr. Kane, questions for Mr. Moto?

COUNCILMEMBER KANE: No. No questions for Mr. Moto. I want to thank him for providing the response.

Mr. Chair, as a result of the response, I will continue to request to the Members for favorable consideration of what we have before us. I think it's in line with the proposed specific strategies and actions to eliminate slum and blight conditions in our Wailuku Redevelopment Area as a part of Chapter 53, which is the Urban Renewal Law.

And I think we've demonstrated the intent to, to preserve a situation that I know there was, there were concerns; and they were, I think, legitimate concerns. But I think the bill as written provides the protections for, for wages that are, are supposed to be intact in this area.

Now, this is primarily a, a tax abatement issue. But, never, nevertheless, I think this information was important to allay any fears that this would lead to having work done in our, in our Wailuku Redevelopment Area, with less than acceptable standards of construction practices.

So I'm asking the Members for their consideration favorably. Thank you.

CHAIR HOKAMA: Thank you.

Members, any further questions or discussion on the motion before you? If not, all in favor of the motion please say "aye."

AYES: COUNCILMEMBERS ANDERSON, JOHNSON,  
KANE, MATEO, MOLINA, PONTANILLA,  
TAVARES, VICE-CHAIR CARROLL, AND CHAIR  
HOKAMA.

CHAIR HOKAMA: Opposed, say "no."

NOES: NONE.

CHAIR HOKAMA: Motion passes unanimously. Bill No. 4 passes second and final reading.

Thank you.

Mr. Clerk.

COUNTY CLERK: Mr. Chairman, we have no further business scheduled for today.

CHAIR HOKAMA: Thank you.

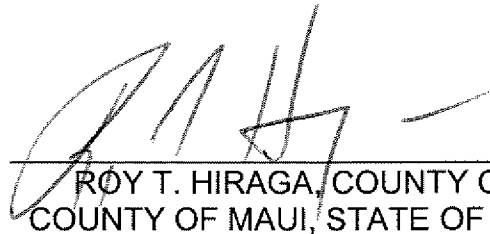
Members, we are under "Announcements." Who would like to start this afternoon? One of the first times I got volunteers--and multiple ones at that. I'm going to ask Mr. Kane to go first since normally he always waves me off. So, Mr. Kane, why don't you start the announcements for us this afternoon.

### ANNOUNCEMENTS

Members of the Council offered various announcements.

### ADJOURNMENT

There being no further business before the Council, the regular meeting of February 17, 2006, was adjourned by the Chair at 5:44 p.m.

  
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ROY T. HIRAGA, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII