

AFFORDABLE HOUSING COMMITTEE
Council of the County of Maui

MINUTES

July 3, 2019

Council Chamber, 8th Floor

RECONVENE: **9:04 a.m.**

PRESENT: VOTING MEMBERS:

Councilmember Tasha Kama, Chair
Councilmember Michael J. Molina, Vice-Chair (out at 10:50 a.m., in at 10:52 a.m.)
Councilmember Alice Lee
Councilmember Keani N. W. Rawlins-Fernandez
Councilmember Riki Hokama (in at 9:32 a.m., out at 10:50 a.m., in at 11:15 a.m.)
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura

NON-VOTING MEMBERS:

Councilmember Tamara Paltin

STAFF: Alison Stewart, Legislative Analyst
John Rapacz, Legislative Attorney
Stacey Vinoray, Committee Secretary

Don Atay, Executive Assistant to Councilmember Shane M. Sinenci

ADMIN.: Linda R. Munsell, Deputy Director, Department of Housing and Human Concerns
Jeffrey Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel
Michelle McLean, Director, Department of Planning

Representatives of Kipa Centennial, LLC and Hope Builders, LLC
Tom Welch, Attorney
Kyle Ginoza, Owner Representative

Dave Ward, Project Manager, Olowalu Elua

Seated in gallery:

Clyde “Buddy” Almeida, Housing Administrator, Department of Housing and Human Concerns

OTHERS: Additional attendees (25)

PRESS: *Akaku--Maui County Community Television, Inc.*
 Kehau Cerizo, Reporter, The Maui News

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ITEM AH-1(1) AFFORDABLE HOUSING PROJECTS CHAPTER 201H, HAWAII REVISED STATUTES – INDEPENDENT DEVELOPMENT OF POLANUI GARDENS WORKFORCE HOUSING PROJECT (LAHAINA)

ITEM AH-27 DISTRICT BOUNDARY AMENDMENT FOR POLANUI GARDENS WORKFORCE HOUSING PROJECT (LAHAINA)

ITEM AH-1(2) AFFORDABLE HOUSING PROJECTS CHAPTER 201H, HAWAII REVISED STATUTES – INDEPENDENT DEVELOPMENT OF MAKILA RURAL EAST WORKFORCE HOUSING PROJECT (LAHAINA)

ITEM AH-28 DISTRICT BOUNDARY AMENDMENT FOR MAKILA RURAL EAST WORKFORCE HOUSING PROJECT (LAHAINA)

CHAIR KAMA: . . .(*gavel*). . . It is now 9:04 a.m. and this is the reconvening of the Affordable Housing Committee's meeting of June 25, and we're meeting today on July 3rd at again 9:04 a.m. I'd like to call this meeting to order and ask everyone to please silence their cell phones. So, this morning I just want to welcome all of our Committee Members. Good morning, Mr. Shane Sinenci.

COUNCILMEMBER SINENCI: Aloha kakahiaka, Chair.

CHAIR KAMA: Good morning, Vice-Chair Mike Molina.

VICE-CHAIR MOLINA: Aloha kakahiaka, Madam Chair.

CHAIR KAMA: Good morning, Ms. Alice Lee.

COUNCILMEMBER LEE: Madam Chair, in Marshallese yokwe.

CHAIR KAMA: Yokwe. Thank you. And good morning to our Council Vice-Chair Keani Rawlins-Fernandez, good morning.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair.

CHAIR KAMA: And also, good morning to our non-voting Member Tamara Paltin, good morning.

COUNCILMEMBER PALTIN: Aloha kakahiaka, Chair. Thank for allowing me to be here and participate.

CHAIR KAMA: Of course, absolutely, you're part of our team. And also, good morning to our Councilmember Yuki Lei Sugimura, good morning.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

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CHAIR KAMA: Also, Council Chair is Kelly King is not, is a non-voting Member of the Council and I expect her to come in shortly, and also Mr. Riki Hokama who had an appointment this morning and he'll be with us shortly also. So, thank you all for being here. So, also from the Administration we have Ms. Linda Munsell from the Department of Housing and Human Concerns, good morning.

MS. MUNSELL: Good morning, Chair.

CHAIR KAMA: We also have from Corporation Counsel, Mr. Jeff Ueoka, good morning. We also have our Committee Staff, Ms. Alison Stewart our Legislative Analyst, good morning. Also, we have with us Stacey Vinoray, our Committee Secretary, good morning, and also John Rapacz, the attorney. Good morning, John.

MR. RAPACZ: Good morning.

CHAIR KAMA: Thanks for all your hard work. Also, we have with us the project developers, Mr. Tom Whitten, good morning, Tom. Tom Welch, yes, thank you, and Mr. Kyle Ginoza.

MR. GINOZA: Good morning.

CHAIR KAMA: Good morning, Kyle. So, this Committee is reconvening from our June 25th meeting, and it is my intention to entertain motions on the resolutions and ordinances before us at some time during this hopefully morning, if not this day. And so, the items on the agenda are as follows, AH-1(1) Affordable Housing Projects (Chapter 201H, Hawaii Revised Statutes) (Independent Development of Polanui Gardens Workforce Housing Project (Lahaina)), AH-27 District Boundary Amendment for Polanui Gardens Workforce Housing Project (Lahaina), AH-1(2) Affordable Housing Projects (Chapter 201H, Hawaii Revised Statutes) (Independent Development of Makila Rural-East Workforce Housing Project (Lahaina)), and AH-28 District Boundary Amendment for Makila Rural-East Workforce Housing Project (Lahaina). So, I hope that the Members have come prepared with any modifications and conditions that they would like to propose for the 201H projects. We can consider them when a motion is on the floor with respect to each of the 201 projects. To help your discussion, Staff has prepared a table of exemptions that was requested in the 201H application, and what standards would apply if Council chose not to agree to requested exemptions. So, Staff, could you please pass out the table to the Committee? It's this one, Alison, yeah?

MS. STEWART: . . .*(inaudible)*. . .

CHAIR KAMA: This one.

MS. STEWART: The one that's stapled?

CHAIR KAMA: Yeah, the one that's stapled.

MS. STEWART: It's in the packet.

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CHAIR KAMA: Well, this is the only one I wanted them to have right now. So, last week we left off with the departments answering our questions. But if you still have questions for the project proponents, now would be our opportunity to ask them. So, Councilmembers, would you like to proceed with any other questions that you might have?

COUNCILMEMBER SUGIMURA: Chair?

CHAIR KAMA: Or would you like to, yes --

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR KAMA: --Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: By reviewing what we did the last, I wonder if we could have-- the Department, Housing and Human Concerns, if we could--overall project statements, I guess is what I'm curious to hear from you. I think we heard from other people. I was just curious what you have to say about the project.

CHAIR KAMA: So, let me just continue on. So, is that what you would like to do, is that your preference today, Council, to be able to ask questions if you haven't already asked of the developer?

COUNCILMEMBER SUGIMURA: Oh, developer?

CHAIR KAMA: Yeah. But we can, well, but we can ask --

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR KAMA: --the Housing Director, too. Okay. Go ahead, Ms. Munsell.

MS. MUNSELL: Thank you, Chair. Thank you, Councilmember. Good morning, my name is Linda Munsell. I'm the Deputy Director for the Department of Housing and Human Concerns. I know that you've all had an opportunity over the last several meetings to hear a lot about this project. So, I'm not going to go into any of those details associated with it. I think that that ground is pretty well covered, plus we've got departments to answer questions, and the developer if you still have some of those. The one thing that I will tell you that is that the Department is, the Department of Housing and Human Concerns is in support of both of these projects. They will both meet and in fact exceed their statutory requirement to provide workforce housing under our 201H Hawaii Revised Statutes. Together, they're going to bring an additional 100 workforce housing units to West Maui. To try and put some things into perspective, I know that you're all aware that the County of Maui needs something on the order of 14,000 housing units to be built by 2025. In West Maui, the data indicates that to meet demand of our residents alone, we should be building about 250 units every single year. Current data indicates that less than 400 units have been completed or are currently under

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construction in West Maui since 2015. That's an average of only 100 units per year. Of those 400 units, only 245 are workforce or affordable units. Between now and 2025, we will need more than 1,500 new units for our West Maui residents. Although there are a number of units in planning, we currently estimate that because of various barriers, similar to the barriers faced by these two projects, only another 3 or maybe 400 units will be built in the next 6 years, maybe half of those will be workforce or affordable units. At the end of your deliberations on these projects, it will be the decision of this Committee, and eventually the Council, whether or not to add an additional 100 workforce units to that count. Over the last few meetings you've heard both pros and cons in regard to these projects. When all is said and done, this Committee will be asked to weigh the relative need for workforce housing against the concerns which have been raised. Each one of you here will have to weigh the merits of both sides of that argument. As we all know, there are no perfect projects. There will always be a reason not to build. It will be up to you to decide on which side of the scale it makes most sense for you to stand. We really appreciate your time today. We appreciate the difficulty of the decision that you're going to be asked to make today, and we would like to thank you for your consideration and request your assistance by approving these projects and helping us to move 100 more workforce families into actual homes. And I'm here to answer any questions if you have any for me.

CHAIR KAMA: Thank you. Yes, Mr. Molina?

VICE-CHAIR MOLINA: Yeah, thank you, Madam Chair. Good morning, Ms. Munsell. Just a quick clarification. Regarding the June 12, 2019 letter from Director Tsuhako, the third paragraph it states, the applicant is proposing the development of a workforce housing project that will include 46 affordable single-family residential lots, and 4 live/work units. Can you clarify what these live/work units are, and what income levels these four units will be sold to?

MS. MUNSELL: So, the work, those are live/work units --

VICE-CHAIR MOLINA: Oh, live/work, sorry.

MS. MUNSELL: --yeah, live/work units. Those actually, that will be determined at the time that they enter into a workforce housing agreement with the Department. So, it's far too early at this stage to determine that. Once they're getting closer to pulling permits, we'll actually enter into a workforce housing agreement that will outline those kinds of details.

VICE-CHAIR MOLINA: Okay. Alright, thank you. Thank you, Madam Chair.

CHAIR KAMA: Thank you, Mr. Molina. Any other questions, Council?

COUNCILMEMBER SUGIMURA: Chair?

CHAIR KAMA: Yes?

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COUNCILMEMBER SUGIMURA: So, I'm going to guess that you're probably the expert on the history of our housing. And I know that on the west side there's Puukolii Villages Mauka project and the Pulelehua project, and Kahoma Village project. So, I'm wondering what the status of those? 'Cause those will also add housing to the west side, is that correct?

MS. MUNSELL: That's correct. So, when we look at housing that's going to be constructed, or is under construction, we're always looking at what are the actual barriers that they have to overcome. Right now, the Pulelehua project is in their planning stages. They will still have to go back to the Land Use Commission to make some changes there. So, although we anticipate that they might start their phase one in the next six years, it will really depend on how they move forward. The other potential projects that we have looking at, we do expect the Pailolo project to actually start construction. That's one of the Howie Kihune projects, that's another 42 affordable units. So, when I talk about units that might be constructed, we're always trying to weigh whether they can overcome things. We think that one will roll forward. There is the Star Noodle project that you guys are actually going to be hearing about at the next Committee meeting. It's changed its name a couple of times. But we always usually refer to it as Start Noodle. That's going to bring another maybe 89 potential affordable units to the west side. That project is pending funding right now. So, they're lining up, when you construct these projects, you have to, especially if it's an affordable multi-family rental project, look at all of your finance structures. They're lining up some, about \$50 million worth of State funding, but they're asking for some assistance from the County as well from our Affordable Housing Fund. But you'll get to hear about that. So, there's the Keawe Street Apartments that's a potential. Of course, that's got some barriers. You guys have been talking about that a little bit at public meetings. So, whether that again, that's going to be a decision that the Council needs to make. There are of course the other lately projects which we don't consider possible in the next six years, Makila Farms, which is the third project in this group. I think that you're going to hear from them in August. So, you'll get to take a look at the potential for that project. There is another Vince Bagoyo project in Olowalu that might come before you in the near term. Everything else is far, what we think to be far out. That doesn't mean they can't leap from one list to another. I know that there is a West Maui Villages Project on the west side that might get revived. A lot of them, I think that the one that you had mentioned to us before has an infrastructure barrier that keeps it from moving forward. So, it all, all of it will depend on, you know, decisions that we're going to make, you know, here at the Council, the folks here are going to make at the Council on whether these projects move forward just like this one.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR KAMA: Yes, Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Munsell. I just was wondering if you had the most current update on how many units for Makila Farms?

MS. MUNSELL: Thank you for that question. It looks like there's 34 total units in that one.

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COUNCILMEMBER PALTIN: And when was it that you, when was it that was the amount that when, as of what date?

MS. MUNSELL: This is off of our list of projects. I think that's updated by the Housing Division every six months. So, unless something has changed that we aren't aware of, and that's always possible, it happens.

COUNCILMEMBER PALTIN: Okay. Thanks.

CHAIR KAMA: So, I have a question, Ms. Munsell. So, what is the total units anticipated on the west side within the next five years?

MS. MUNSELL: So, if every, if, okay, it depends. Our guess is that somewhere between 300 and 400 units might actually be constructed. If these projects are added to that list, then it's potentially another 100. It will depend on decisions that you guys make. So, if coming up you don't approve affordable housing funds for the Star Noodle project, for instance, we'll, I'll take 90 units essentially out of my count. So, it's really hard to predict. This is just based on the time that it takes for projects to move forward and in our estimation, and of course a lot of that can change depending on decisions that are made.

CHAIR KAMA: So, I'm going to ask the question in a different way.

MS. MUNSELL: Okay.

CHAIR KAMA: So, let's say we don't approve Star Noodle, you take 90 away, we don't approve today, you take what, 100 away, and if we don't approve what others might be, so already, if we don't approve just two projects, we're what, 200 away?

MS. MUNSELL: My guess would be the Pailolo Place would go, that's the Aina Lani Howie Kihune project, that would be 42 units. Maybe if Mr. Chang can get through Land Use, he might start phase one of the Pulelehua project, and that's a total of 240 units, 150 of those are market, so, only 90 of them are affordable units. That's a lot of if on that. It's a lot of if on all of them.

CHAIR KAMA: Okay. Thank you. And so, are there any other questions, Council? Yes, Keani Rawlins-Fernandez? You have a question?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, mahalo, Chair. For the Olowalu Mauka development, is DHHC responsible for ensuring that all of the affordable housing units that are promised are built?

CHAIR KAMA: Ms. Munsell?

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MS. MUNSELL: I'm not familiar with the name Olowalu Mauka, they often change their names. So, is that one of these projects that we're talking about? Or is it a different project?

COUNCILMEMBER RAWLINS-FERNANDEZ: It's not one of the Makila projects. It's not one of the three that are adjacent to each other. It's a separate project that I believe was approved in 2000.

CHAIR KAMA: Go ahead, can you answer that?

MS. MUNSELL: So, the way that it works, if it's a newer project we've become much smarter about how we track these. In the old days, we didn't require them to build the affordable units at the same time or prior to the market units. Any workforce housing agreement that we enter into requires that the workforce housing units be built first or concurrently with, and those are tracked. So, we are always looking at and receiving reports as those projects are under construction and tracking the units.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo for that. So, until the time that the Department got smarter in tracking and establishing policy to ensure that the affordable houses are built, does the Department have that information on whether the total amount of affordable houses that was part of the project were built? I don't know at what year the Department got smarter about it, so.

CHAIR KAMA: Go ahead.

MS. MUNSELL: Has it been constructed; the project is finished?

MR. UEOKA: Chair?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. Member Rawlins-Fernandez, in 2.96, so, I believe that goes back to 2006, 2007, in there it requires that before building permits are issued for the market units, that the residential workforce housing units are constructed. And typically for the 201H projects, we track that language also into the residential workforce housing agreement. So, usually, I can't say 100 percent 'cause I don't review the process, but typically for building permits, they won't be issued unless the affordables, or residential workforce housing units are being built simultaneously or before the market units. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, and that was 2006 onward? So, anything...

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: I don't know. I wasn't here before 2006. But I know for Maui Lani and Kehalani, those were done through project districts and conditions of zoning. So, I

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believe the Department of Public Works, through the building permit issuance process is cognizant of the requirements and Housing does follow-up and makes sure the counts are up to date. So --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. UEOKA: --I don't want to say forever. But as far as I know. Thank you, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, I wanted to make sure that I was directing this question at the right Department. So, it sounds like DHHC is the correct Department. Basically, the reason I'm asking this question is we received testimony that another project that Mr. Martin owned, didn't complete the 33 promised houses, only 24 of the 33 were completed. So, I just, I wanted to find out if, I went to the Planning Department to find out if this was fulfilled. But that was the wrong Department. So, now that I have you here.

MR. UEOKA: Do you know which project that was?

COUNCILMEMBER RAWLINS-FERNANDEZ: It just says the Olowalu Mauka development.

MR. UEOKA: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: And I have...

MR. UEOKA: We, the Department can follow-up I'm sure with the developer and Housing Division. Thank you.

CHAIR KAMA: Do you want to respond, Ms. Munsell?

MS. MUNSELL: Yes, yeah, once we know the name of the project, and thank you...

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Olowalu Elua Associates.

MS. MUNSELL: Yes, we can have staff take a look at the statistics and find out where they are with that and we can give you a report. That's not a problem.

CHAIR KAMA: Thank you. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And the reason that this question, or this Council should get this question is because Mr. Martin is applying for this project, the Polanui project, and if there is a record of not fulfilling these affordable houses, then I don't know how confident we can be that all of the affordable houses will be built. Mahalo. Do you think you can get that information today for us?

COUNCILMEMBER LEE: He's in the audience. Why don't you ask him?

CHAIR KAMA: Well, I'm not sure if --

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COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

CHAIR KAMA: --Member wants to do that. She was directing her questions.

COUNCILMEMBER RAWLINS-FERNANDEZ: I'll wait until he gets to the floor and then I'll ask again.

CHAIR KAMA: So, we could do that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Good idea.

CHAIR KAMA: So, do you want to, so, do you have any other questions for Ms. Munsell?

COUNCILMEMBER RAWLINS-FERNANDEZ: For Ms. Munsell? No, not at this time. Thank you, Chair.

CHAIR KAMA: Thank you. Ms. Lee, did you have a question?

COUNCILMEMBER LEE: Yes, Madam Chair, I'm thinking that it would delay the proceedings by having the Housing Director go back and check her records when we have the developer in the audience, and he could probably answer the question in like ten seconds. Okay. I mean, why don't we bring him down?

CHAIR KAMA: I have no problem. Ms. Keani Rawlins?

COUNCILMEMBER RAWLINS-FERNANDEZ: I don't mind waiting until it's that time for him to come down.

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then I'll ask him the question.

CHAIR KAMA: I figured that.

COUNCILMEMBER RAWLINS-FERNANDEZ: If he's in the audience, then he heard my question.

CHAIR KAMA: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then when he comes down, he can answer.

CHAIR KAMA: Yes, I figured that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Lee.

COUNCILMEMBER LEE: Okay.

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CHAIR KAMA: Thank you. Yes, Ms. Paltin?

COUNCILMEMBER PALTIN: I had a question for Mr. Ueoka. Is it possible that one of the conditions of the 201H's that Mr. Martin is applying for be that before we move forward on anything of that, he satisfies the conditions in other projects he's doing, like this Olowalu Elua? Could that be a legal condition?

MR. UEOKA: You guys are authorized to modify the project and condition it. I just would caution you. If you do require that, and there is something that needs to be done and all his projects, I understand he's doing a lot of projects right now, you also put in a timeline of he has to commence work on this project within two years after. That's typically a modification you put in. So, just be aware of that if placing this condition on. You might want to be more specific as to exactly what you want him to finish versus all and everything.

COUNCILMEMBER PALTIN: Like say just condition 2, 4, 8, 11, 12, 14, 19, 32, and 33, or something like that?

MR. UEOKA: You may also want to be careful that you're tying together, I'm not sure one the ownership interest of these, they might be under two different companies. So, you could possibly be saying company A cannot move forward unless company B does something it was supposed to do. And I'm not sure how the ownership works. So, I would just caution you there also.

COUNCILMEMBER PALTIN: If the ownership is all the same guy, then it's not a problem. But if it's different guys, then it's a problem?

MR. UEOKA: I would say potentially could be because you're conditioning, you're basically requiring someone else to do something before the applicant could do something potentially. I don't know enough about the ownership and how it's worked out here to...

COUNCILMEMBER PALTIN: Maybe just go on the past track record and see moving forward if it's somebody we should trust to do business with?

MR. UEOKA: I think that's a decision for you guys as policymakers, that would be within your realm, yes.

COUNCILMEMBER PALTIN: Thank you.

CHAIR KAMA: Any other questions, Councilmembers? Okay. So, with, if there are no further questions, Members, the Chair would like to entertain a motion to recommend adoption of the proposed resolution entitled...

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I'm sorry, Chair?

CHAIR KAMA: Yes?

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COUNCILMEMBER RAWLINS-FERNANDEZ: I think the Council was pau with their questions for Ms. Munsell. But we had additional questions for, well like for example the developer himself was going to answer my question.

CHAIR KAMA: Okay. Just...Mr. Molina?

VICE-CHAIR MOLINA: Yeah, thank you, Madam Chair, for your consideration, from my prior term on the Council as the Land Use Chair, any big projects we would also go through the proposed conditions to see if the Members will support the conditions and, you know, so, that might be another step prior to voting, for your consideration, Madam Chair.

CHAIR KAMA: Okay. Brief recess. . . .(gavel). . .

RECESS: 9:29 a.m.

RECONVENE: 9:31 a.m.

CHAIR KAMA: . . .(gavel). . . Okay. So, I think this is what we're going to continue to do. We're going to ask if you all have questions of the developer, and then get your questions out of the way, Mr. Molina, if that suits you. And then, we can do the conditions after they've questioned or have asked. Does that sound good with you all? Okay. Okay. The Chair would like to recognize Mr. Riki Hokama who just graced our presence. Good morning, Mr. Hokama. Okay. So, I think Ms. Keani Fernandez, did you have questions for our...and so, before you all respond, can you please identify who you are and the project that you represent so that the Council knows who they're talking to. Okay. Okay. Go ahead, Ms. Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, Mr. Ginoza, okay, so, I guess you heard my question. Were the 33 homes completed at Olowalu Elua?

MR. GINOZA: Good morning, my name is Kyle Ginoza. I'm the owner representative for both the Kipa Centennial and the Hope Builders projects. So, both the Polanui and Makila Rural-East projects respectively. And for that question, we need further detail to better understand what one you're talking about. So, if you can provide us with the documentation then we can look into it in the meantime for the meeting. But I'm not prepared to answer it at this time, unfortunately.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Perhaps I can make the question a little easier. Are there still outstanding affordable houses that need to be built and in the projects that Mr. Martin is involved in?

MR. WELCH: Yeah, good morning, Tom Welch, I'm the attorney for both of these projects. Aside from the 201H, or the affordable housing projects that are ongoing now in process, to my knowledge, there's none, there's no unfulfilled obligations on any of Peter

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Martin's prior projects. The Olowalu Mauka subdivision was a consolidation resubdivision where no new lots were created. So, we'd be curious to see what was being referred to by Councilmember Paltin on that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. It was just, we received testimony, and I was trying to verify with the departments in the past couple of days. But I went to the wrong department. I went to Planning instead of Housing to find out. So, mahalo for your response.

CHAIR KAMA: Yes, Member Paltin?

COUNCILMEMBER PALTIN: I can clarify some, I guess I'm referring to a document from the Department of Planning dated April 26, 2010, and it's addressed to Mr. Peter Martin, Olowalu Elua Associates LLC, and it's for a failure to comply with a Special Management Area use permit for the Olowalu subdivision located at Olowalu, Maui, Hawaii, TMK (2) 4-8-003:005 10 portion, 41, 42, 43, 50 portion, 63 portion, and 78 portion, and (2) 4-004:011 [sic] 12, 13, 14, 15, and 16, SM1 99\0021. And so, the first condition not met was the project was to commence no later than September 30, 2002, which it did. However, condition number two states that the project shall be completed within five years after the date of initiation. Failure to complete this project within the five-year period, coupled with no recorded and/or approved time extension requests may indicate that this SMA use permit 99-0021 has been automatically terminated. Condition number four, final construction does not appear to have been completed and current construction does not appear to be in accordance with preliminary subdivision plans received on November 9, 1999. Dirt fire roads do not appear to have been completed according to the Uniform Fire Code with the road ending in a locked gate at Honoapiilani Highway. The preservation plan is not fully implemented, few greenways have been installed, bikeways are not evident, and highway improvements for ingress and egress off the Honoapiilani Highway have not commenced. The interior road system as originally designed on the subdivision plan does not appear to match what was constructed, that which was constructed. The road identified as Luawai Street at the Olowalu Mauka subdivision sign is not in agreement with the plans filed with the County and appears to have been constructed without revisions to the subdivision map. Condition number eight, full compliance with government regulations has not occurred as the project is out of compliance with both the SMA conditions and the Conservation District use permit, condition as noted in this letter. Condition 11, the property has not been developed in substantial compliance with the representations made to the Maui Planning Commission. At this time, it appears this failure to develop the property in accordance with the SMA may lead to the revocation of this SMA use permit. Condition 12, infrastructure improvements including roads, traffic-related improvements, greenways, and possibly drainage has not been completed prior to final subdivision approval and bonds are not on file with the County per the wording of condition number 12. Condition number 14, the roadways do not appear to have been constructed in substantial compliance with the greenway plan. The greenways do not appear to have been completed per the application plan and neither have improvements been made for a channelized intersection and means of ingress and egress from the Honoapiilani Highway as noted in the subdivision plans. Condition number 19, the preservation plan

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has not been implemented. There is no evidence of viewing platform construction for historical sites number 4710 and number 4718 as outlined in the Department of Land and Natural Resources letter of March 7, 2002. The growth of invasive species of trees and little bushes is evident especially at the important site number four, Kawaihoa/Kaiwaloa Heiau. Little to no maintenance appears to be occurring on numerous sites. There is no interpretative signage evident at the sites. The condition of the petroglyph viewing site in the Olowalu Valley is in very poor condition. There is no interpretive signage. The red railings are unsafe, and conditions deteriorated, and the platforms for viewing are nonexistent. Condition number 32, no roadway improvements for ingress and egress from the Honoapiilani Highway to the mauka subdivision have been initiated per the Environmental Assessment and the subdivision plans. The originally approved highway improvements consisted of driveways A, B, C, and D, as noted in the final EA and plans submitted to the Commission for review and approval. Driveways A, B, C, and D are depicted on the original subdivision plans that were included in the traffic study and EA submitted by the developer in connection with the issuance of the SMA. The developer is now proposing a relocation of driveway D. The revised proposal was discussed with the Maui Department of Transportation in 2003. However, no EA has been completed to date, although a draft EA is being processed by Munekiyo and Hiraga Inc as of late 2009. This relocation of driveway D may be problematic in its connection with the internal road system for the development, the increase in traffic in this area, and the plan originally approved by the Commission. The relocation of driveway D does not connect to an approved Olowalu Mauka subdivision access road approved in the original subdivision. Failure to complete a channelized intersection according to plan with left-turn lanes, acceleration lanes, bike lanes, and paves shoulders is a violation of the SMA conditions. Although there was a caveat to hold off on developing the highway improvements if a phasing plan for a project development was agreed to, no phasing plan is evident at this stage of the development. There should have been roadway improvements as initial phases of the project have been completed. There is no evidence of this phasing plan on file with the DOT. The inability of the developer to move forward on this critical road improvement signals noncompliance with SMA conditions. The efficacy of a relocation of driveway D from that originally proposal is not evidenced in any updated traffic report analysis on file. The original Olowalu Mauka roadway system connects to the original location of driveway D, not the relocated driveway D as proposed. And condition number 33, the roadway light within the subdivision needing a maximum wattage of 100W HPS does not appear to have been completed. In conclusion, the Olowalu subdivision is in noncompliance according to a project site visit held January 22 for conditions 2, 4, 8, 11, 12, 14, 19, 32, and 33 as approved by the Commission on September 19, 2000. So, that's the notice of warning I think that Ms. Rawlins-Fernandez was referring to.

MR. WELCH: Thank you.

CHAIR KAMA: Mr. Welch?

COUNCILMEMBER PALTIN: From Jeff Hunt, the Planning Director at that time.

CHAIR KAMA: Would you like to respond?

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MR. WELCH: Yes, I'm not prepared to respond with respect to the compliance with each one of those deficiencies. One assumes that since Jeff Hunt's tenure and now it's either, things have either been cured, or substantially underway, or in process. I'm not able to report, but...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I have an update --

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: --on that notice of violation as of April 18, 2019 there were still conditions that were not satisfied and were to be satisfied by the deadline of June 30, 2019. So, that's this year that they're still in noncompliance.

CHAIR KAMA: Would you like to enter that into the record?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure.

CHAIR KAMA: Okay. Thank you. So, would you like to respond, Mister...

MR. WELCH: Chair, thank you. I'm not prepared to --

CHAIR KAMA: Okay.

MR. WELCH: --deal with the details of that. I haven't been brought up to date on the status.

CHAIR KAMA: Okay. Thank you. Yes, Ms. Lee?

COUNCILMEMBER LEE: Can we ask the Planning Director to come down to answer those questions? Maybe she has information?

CHAIR KAMA: Ms. McLean, are you able to join us here next to Ms. Munsell? So, Ms. McLean, would you like Ms. Rawlins-Fernandez to repeat the question?

MS. McLEAN: Please?

CHAIR KAMA: Can you?

COUNCILMEMBER RAWLINS-FERNANDEZ: I didn't really have a question. I just, I was in correspondence with Planning Director McLean, and I asked if there were still any issues with compliance from the project that we received notice on from a testifier. And it was from Ms. McLean that I got this most recent notice of warning from April 18, 2019.

CHAIR KAMA: Okay. Thank you. So, I think now you're going to respond to Ms. Lee's. Ms. Lee, would you like to ask your question to Ms. McLean?

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COUNCILMEMBER LEE: Ms. McLean, so, do you have anything to add or, you know, provide clarification on this apparent, isn't this a violation, that you consider a violation? And how do you normally handle these kinds of things?

MS. McLEAN: I believe what you have before you are notices of warning. And notices of warning are not violations. A notice of warning is just that it's a warning that we believe there is potentially a violation of a permit condition. And it gives an amount of time for the alleged violator to come into compliance. And if that doesn't happen, then at that point we may issue a notice of violation, and it's a notice of violation that will have initial fines and then daily fines that will accrue until the violation is cured. With the notice of warning, we, they typically include an amount of time to come into compliance and what often happens is we get contacted by the alleged violator who explains the situation or what steps they intend to take to come into compliance. And once that dialogue begins, then we work with them to achieve compliance. And that might take a longer period of time than what we initially set out. But as long as they are actively engaged in pursuing compliance, then we don't proceed to violation and fines.

COUNCILMEMBER LEE: Has that dialogue begun?

MS. McLEAN: Yes, and when I received the inquiry from Councilmember Rawlins-Fernandez, I simply didn't have time to go and look and see what that dialogue has been, and if any of those items had been fully satisfied or what ones were still in the works and what kind of progress has been made on them. But I am aware that there has been ongoing dialogue with them since those notices of warning, the recent notices of warning were issued.

COUNCILMEMBER LEE: So, there's been dialogue, has there been progress in, for compliance?

MS. McLEAN: There has been, I can't be specific. But I know that it's not at a stalemate or anything like that. We are working to achieve compliance.

COUNCILMEMBER LEE: Well, how serious are these noncompliance issues?

MS. McLEAN: We take any noncompliance seriously. Sometimes it's in the eye of the beholder, what might be important to one person or community member may not be important to another. So, we don't really make a judgment call unless it involves severe environmental or health or safety impacts. Some of them, my recollection is that, and we're working to improve this, that they don't have, the original conditions didn't have deadlines in them. And so, it's hard to say this has to be completed by a certain timeframe. But clearly, there are also times when we can say, you know, no progress is being made on this, and we need to make sure that there is some effort towards compliance in some way, and that's what that dialogue is about.

COUNCILMEMBER LEE: Okay. So, the other question would be, apparently this developer has had a number of developments. And so, have you found this particular company,

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developer, does he, is there a pattern of noncompliance? Or does he generally, you know, meet his conditions?

MS. McLEAN: I don't think there's a pattern of noncompliance. With this particular subdivision there have been ongoing noncompliance issues that we've been working with them on. Most of, my understanding is that most of the developments haven't required discretionary review. They haven't been in the SMA, they haven't required land use changes. So, they don't have conditions that go with them, or conditions at least that we would enforce. And so, they've followed the black and white requirements of the administrative review process. And as far as I'm aware, there haven't been any compliance issues with those in all of the developments that they've undertaken.

COUNCILMEMBER LEE: So, it appears then, because this is a project what, over ten years old, since then, in general, you've tightened up your review processes and guidelines and requirements so that there isn't more opportunity for all these discretionary types of interpretations of what's required. Is that correct?

MS. McLEAN: We are doing a better job to make sure that conditions are more clear to the applicant, to the Department, to the public, to the Council if it's something that requires Council review, and so that whatever that expectation may be, we can be sure that it will be followed through on. And in this particular case, I, there were expectations that are outlined in those conditions. And so, it is important to us that those get fulfilled.

COUNCILMEMBER LEE: Alright, thank you.

CHAIR KAMA: Yes, Ms. Keani Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, I just wanted to say for the record that I think, you know, if we put conditions on anything, then, I mean, if they're important enough for us to make them a condition that they would be important. And so, the 2019, April 18, 2019, notice of warning that you sent to me, it has three conditions that are still not satisfied from 2010. So, at what point, I mean, I understand that you said that there's no deadline, which is problematic and it's something that this Council should take that lesson from and ensure that there are deadlines so that they are enforceable. So, this is the, so, the issue, this warning was sent, notice of warning was issued on February 25, 2010. And so, three of those conditions are still not satisfied as of April 18, 2019. So, because there's no deadline, there's never a time that this could be enforced and a violation cited? Director?

CHAIR KAMA: Go ahead.

MS. McLEAN: If we felt that the discussions were not making progress, and that we didn't see that compliance would be achieved at some point, then we could consider issuing a notice of violation that would come with initial fines and daily fines. And with the exception of routine notices of violation like for vacation rentals that we do, more than I care to recall, we have, we request Corp. Counsel to review those. So, that if we did get to that point, that we wanted to issue a notice of violation, then we would draft that and

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send it to Corp. Counsel, and they review our evidence to make sure that it's sound. And so, we would feel, even though there's not a particular deadline, we would say, you know, this is the demonstration of our evidence that compliance is not being met, and we wish to proceed with violation and fines. So, again, I apologize for not looking into the detail of what progress may or may not have been made since April. I don't know if the applicant wishes to give you a status. I don't know, I can certainly follow-up and get back to the Committee if you want to hear it from our side. But that would be the next step if we felt like, okay, this isn't going anywhere, we've tried. Then, we would draft a notice of violation and work with Corp. Counsel to make sure that we had a good basis to do that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director. And mahalo for, you know, finding these documents and getting them over to me as quickly as you did. I appreciate that. Mahalo, Chair.

CHAIR KAMA: Thank you. So, I have a question. Ms. Munsell, is this common practice with developers? Has this been common practice? Where, so, what I'm getting at is that they don't complete a previous project and then they go ahead and come back for approvals for a new project, and then it just keeps on rolling over, and over, and over to the extent that we have not just this one project, or developer, that we could potentially have others?

MS. MUNSELL: Chair, I'm not positive what common practice is. For developers we have seen where a developer will be working on one project and then start another project, have multiple projects in the works at the same time. Often, they've, depending on the scope, the size of their project, they might have a project that's going to last ten years. And in the meantime, they might have another project. So, it wouldn't, I think in my limited experience it wouldn't be unusual to have multiple projects going on at the same time.

CHAIR KAMA: Thank you. So, Members, yes, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. I'm, I have a question for Corp. Counsel. So, we did a quick research on the DCCA to find out based on Corp. Counsel's comments about putting conditions on other projects where there may be other partners involved in the organization. And DCCA, for Olowalu Elua Associates LLC, the agent name is just Mr. Martin, and there are no members listed. So, my office did a quick search on Kipa Centennial LLC as well, what is the requirement of the organization being registered with DCCA, or the Hawaii State Department of Taxation?

CHAIR KAMA: Go ahead, Mr. Ueoka.

MR. UEOKA: I'm not 100 percent sure if businesses should be registered in the State of Hawaii just to conduct business. I think that's a legal requirement. I do believe we do a brief check for the 201H application process. But I don't think I personally checked on Kipa Centennial or whoever is doing Makila Rural-East. I did not personally check. But they should be licensed in the State of Hawaii to be doing business in the State of Hawaii.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. So, if you find that it's not, then what happens?

MR. UEOKA: Typically, we would ask them to fix it. And generally speaking, it's a relatively simple process for, to be registered with DCCA.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo.

CHAIR KAMA: Yes, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a question for the Planning Director, Ms. McLean, which is I'm wondering, are there any instances where an SMA permit would be cancelled? Or once you get the permit then you kind of have, there's no deadline? Can you answer that? MS. McLEAN: That's a really good question because oftentimes, well, typically an SMA permit has a deadline to initiate development and then a deadline to complete development once it's been initiated. And often, projects are built and finished when there's supposed to be. And so, that permit technically expires because those deadlines have been met. But then those conditions remain in perpetuity if there are ongoing requirements. So, the validity of SMA permits is an ongoing, no, there are ongoing requirements even though those timeframes have been met. In terms of revoking permits, we have revoked permits for failure to meet those initial deadlines. But typically, once a project has been initiated and is substantially underway, that would take consultation with Corporation Counsel if we were to consider revoking or cancelling that permit because of the investment that's already been made and the physical improvements that have already been done and what the standing of all that would be. So, I don't know of a case where we've done that once substantial work has been performed that we've done something like that. That would be something pretty serious that we'd have to talk to Corp. Counsel about.

CHAIR KAMA: Thank you. Ms. Rawlins-Fernandez, if you would, and Council, allow Mr. Dave Ward to come and talk about Olowalu Elua? No objections?

COUNCILMEMBERS: No objections.

CHAIR KAMA: Mr. Ward? Please introduce yourself. Tell us who you are and who you represent. At this time, it would be Olowalu.

MR. WARD: Good morning, Madam Chair, my name is Dave Ward. I really know very little or nothing about these Makila projects. But I did spend about ten years of my life trying to get Olowalu Town processed. So, I do know quite a bit about Olowalu Elua and Olowalu in general.

CHAIR KAMA: So, would you like to ask your question of him?

VICE-CHAIR MOLINA: Madam Chair?

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CHAIR KAMA: Yes?

VICE-CHAIR MOLINA: I'm sorry, just a quick point of order.

CHAIR KAMA: Yes?

VICE-CHAIR MOLINA: Because we're discussing another project --

CHAIR KAMA: Yes.

VICE-CHAIR MOLINA: --is it okay with Corp. Counsel that we can do this, so we don't violate any Sunshine Law parameters? And I guess what are the parameters of types of questions to be asked as it relates to another project being discussed? And, you know, with our agenda today relates to two other projects and --

CHAIR KAMA: Yes.

VICE-CHAIR MOLINA: --so, I just want to make sure we're cool with the Sunshine Law police, you know.

CHAIR KAMA: Thank you. Mr. Ueoka?

MR. UEOKA: Well, I don't make the decision on whether it's okay or not. But I can advise you that it does appear that from the line of questioning here that --

CHAIR KAMA: It's okay.

MR. UEOKA: --asking about this other project is related in the sense that --

CHAIR KAMA: Yes.

MR. UEOKA: --you're looking at the overall, the --

CHAIR KAMA: Character.

MR. UEOKA: --I don't mean this offensively, but the credibility of the developer at this time. So, thank you.

CHAIR KAMA: Thank you.

VICE-CHAIR MOLINA: Thank you.

CHAIR KAMA: Thank you, Mr. Molina. Yes, Ms. Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair, and mahalo, Member Molina, for clarifying that on the record. Okay. So, let's see, my question was about compliance. So, are you now in compliance?

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MR. WARD: So, I'd like to just make sure that the Chair and the Members understand kind of how this has rolled out for Olowalu Elua. So, I believe what you're talking about is 33 conditions from an SMA that was granted in 2001. So, that's where the basis of this begins. In about 2003, there was a final compliance report that was submitted and approved by the Department of Planning for those 33 conditions. And then, in about 2010, and I believe this is the letter that you're talking about, in about 2010 there was a notice that was provided, as Ms. McLean mentioned, myself and some other members met with the then Director and some of the other staff and provided a response over time to all of those conditions and received a letter back from the Planning Department stating that all of those conditions had been met. So, there have been two points in time when all of the conditions for the SMA have been confirmed by the Planning Department that they have been met. There is now a letter that you mentioned back from a few months ago. Myself and other members of Olowalu Elua have met with the Planning Department, have discussed these conditions, have responded to the conditions, and we're still working out the details of a final letter hopefully from the Planning Department that will confirm again that the conditions of the SMA have been met.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR KAMA: You're welcome.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Ward.

CHAIR KAMA: Ms. Tamara Paltin?

COUNCILMEMBER PALTIN: So, do you know if it was because of a property owner within the subdivision not being satisfied with the conditions that after the conditions were said to have been met, then, you were then issued a notice of warning for noncompliance? I mean, it seems kind of like an odd situation where two times you were told that it was met and then we're still here today. So, I mean, do you have an explanation for that?

MR. WARD: Are you asking for the 2010 notice of warning? Is that what you're asking about?

COUNCILMEMBER PALTIN: I thought you had said in 2003 you got...

MR. WARD: So, okay, excuse me, so, in 2003, so, standard practice for conditions of SMA, so again, SMA approved by the Planning Commission, conditions are attached. Typically, a project will submit to the Planning Department not based on any problem or anything else. They just want to complete their conditions. So, they submit to the Planning Department for review and approval a final compliance report for the project. And so, that's just standard practice from 2003.

COUNCILMEMBER PALTIN: So, they submitted their final compliance...

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MR. WARD: But, excuse me, I just want to quantify, I don't remember if it's exactly 2003. It's roughly that timeframe. I just want to be clear. I've got the document in my office. I just, you know, I didn't even know I was going to have any questions on this today.

COUNCILMEMBER PALTIN: So, they submitted for a final compliance in early 2000 sometime?

MR. WARD: Yeah, 2003-ish.

COUNCILMEMBER PALTIN: And then, but it wasn't accepted, is that what you're...

MR. WARD: No, it was accepted and approved.

COUNCILMEMBER PALTIN: So, but they weren't in compliance?

MR. WARD: They were in compliance.

COUNCILMEMBER PALTIN: Then, I don't understand how there's a notice of warning for noncompliance if they were in compliance in early 2000 but notice of warning in noncompliance in 2010.

MR. WARD: So, again, in 2010 there was a letter and notice of warning that was submitted from the Planning Department and we went through the conditions again, and satisfied all the, satisfied the Planning Department that the conditions had been met. So, that was done in 2010. And now, in 2019, there's been another notice of warning.

COUNCILMEMBER PALTIN: Okay. I'm not understanding how come if you were in compliance, as time goes on, you're not in compliance. Is it, does it, is it like firebreaks that needs to be maintained and it's like it slips out of compliance?

MR. WARD: You know, it, by the way, all of the conditions in the 2010 letter, none of those conditions are the conditions that are now being looked at in 2019. So, they're totally separate conditions. And I don't disagree with you. But we are working with the Planning Department to resolve issues when we receive notice of violations.

COUNCILMEMBER PALTIN: So, it's, is it movable dirt that like moves, or is it like they weren't, the Planning Department wasn't thorough when they issued a certificate of compliance and they didn't check each condition individually? Was it due to a landowner's complaint that now something that was out of, that was stamped in compliance is now out of compliance years later? I don't understand how that...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I can give my Member Paltin an example. So, if you let me.

CHAIR KAMA: Go ahead.

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COUNCILMEMBER RAWLINS-FERNANDEZ: In 2018, there was a notice of warning for noncompliance with the shoreline access requirement, which was a condition, number 30, and then, it lists the condition. So, I think, that would be an example of how that was, that condition initially was satisfied, and then, if the shoreline access is blocked, then now it's not satisfying the --

COUNCILMEMBER PALTIN: Thanks.

COUNCILMEMBER RAWLINS-FERNANDEZ: --condition. Mahalo, Chair.

CHAIR KAMA: You're welcome.

COUNCILMEMBER PALTIN: Thanks.

CHAIR KAMA: You're welcome. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, I'm listening. You know, just in general, these people that work in the community give their all. When I was just kind of curious, this project, Olowalu, I don't know, you know, it in detail. But when I started running for office, I used to get posted on my Facebook account, which I do often, you know, these harassing e-mails about, you better not support this project, and it was just this wrath from the community. I was like, I don't know anything about this. I'm just decided to run for Council. So, it's a project that maybe there's people out there that don't like it. I want to just commend them. Mr. Ward has worked super hard on this for years. And listening to him talk about putting things in compliance, or working on it, it's going to happen. I truly believe it's going to happen. And we can all wish that things are perfect. But life doesn't work perfect. And the conditions that were laid upon any developer, that's why we have a housing crisis, right? Because we have put on so many conditions and these guys are trying to comply. I think it's going to happen.

CHAIR KAMA: I think it's going to happen at some point too. But --

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR KAMA: --it's not going to happen unless we keep moving the agenda along.

COUNCILMEMBER SUGIMURA: Right, and so --

CHAIR KAMA: So, thank you.

COUNCILMEMBER SUGIMURA: --that's what they're trying to do.

CHAIR KAMA: Okay. So, can we move along?

COUNCILMEMBER LEE: Wait.

COUNCILMEMBER SUGIMURA: Thank you.

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COUNCILMEMBER LEE: Wait, wait, wait.

CHAIR KAMA: Thank you. Yes, Ms. Lee?

COUNCILMEMBER LEE: I'll make it really fast. David, so, if this condition where you're supposed to keep this access clear, then somehow it got blocked, is that what happened?

MR. WARD: The condition that you're talking about, this is actually the one time I was not at, or one of the one times I was not at a meeting. But we did have a follow-up meeting, and this was discussed. That condition was resolved. It was submitted to the Planning Department in writing and there was never a response. But to my understanding, that gate was shut for a very short period of time. And it was resolved immediately, as soon as it wasn't...as soon as Olowalu Elua was notified.

COUNCILMEMBER LEE: Okay. I just needed to find out --

MR. WARD: Yes.

COUNCILMEMBER LEE: --the outcome of that.

CHAIR KAMA: Thank you.

COUNCILMEMBER LEE: Thank you.

CHAIR KAMA: Thank you. Thank you, Members. So, I'm assuming that you all have exhausted your questions. So...

COUNCILMEMBER RAWLINS-FERNANDEZ: No.

CHAIR KAMA: No? Ms. Rawlins-Fernandez --

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry, I...

CHAIR KAMA: --what would you like?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, I have questions about the process. I've been working really hard to understand this process and, you know, I've been working with Corp. Counsel to get a better understanding about what the, you know, what the Council has the authority to do and not to do. And so, in reading the memo that we received, or, you know, the comments from the State Office of Planning--mahalo, Mr. Ward--it says that under 201H-38, it allows, you know, us to exempt the housing project from certain statutes, ordinances, et cetera. However, it says that, you know, based on the statutory language at best, a 201H housing project may be provided an expedited 45-day DBA, district boundary amendment, process but it cannot be fully exempted from the DBA process. And so, I spoke with Corp. Counsel,

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and he can correct and anything, you know, that is not completely accurate, but basically, he said that, you know, since this is, it's less than 15 acres, it's 14.6, that, you know, it's under our jurisdiction and that, you know, the Council has the power to do the process. And so, I believe that process is under Maui County Code 19.68, and he can correct me if that's wrong. And, but basically, what the State Office of Planning is telling the Council, or yeah, as the decision makers of this project, is that we can expedite the DBA process, but we cannot fully exempt it. And the DBA is on the exemption, the list of exemptions. And so, you know, perhaps Corp. Counsel can comment on that.

MR. UEOKA: Thank you, Chair.

CHAIR KAMA: Yes, Mr. Ueoka?

MR. UEOKA: Thank you, Chair. Yeah, Member Rawlins-Fernandez, that's generally how we interpret it. It's 205A, State land use boundary stuff give the power under 15 acres to the County. The County created Chapter 19.68 to go over State land use district boundaries. In the process, what they're doing is, like you said, exempting from the process. As you know, we have a separate DBA ordinance on the agenda. And that will be voted on. So, the exemption here that you're granting is, I guess, expediting the process, just like you said. So, there is a DBA ordinance separately going to be considered by this body. And of course, it is an exemption from the process. So, that is up to this body to decide whether or not to grant the exemption. However, I feel we are following the laws in regards to this process and maybe I'm overstepping here but the State did grant the County the authority to do under 15 acres, district boundary amendments. So, that's the State's, the State gave the power to the County and you guys are acting within your authority I believe. Thank you.

CHAIR KAMA: Mr. Hokama?

COUNCILMEMBER HOKAMA: . . .*(inaudible)*. . .

COUNCILMEMBER RAWLINS-FERNANDEZ: No, I wasn't. But if you wanted to weigh in on like, on this specific thing and then I'll...

COUNCILMEMBER HOKAMA: If you would allow me?

COUNCILMEMBER RAWLINS-FERNANDEZ: Go ahead, Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. And thank you to my colleague for allowing me to cut in. We understand, yeah, what the State law is regarding 15 acres or less. We can make the call for the State. Can the Council, yeah, remand it back to the State Land Use Commission and we say we don't want to do this? You have the staff; you can make your report of findings of facts, conclusion of law, okay, which we don't do.

CHAIR KAMA: Mr. Ueoka?

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COUNCILMEMBER HOKAMA: So, is the Council, can reverse it and say we appreciate being given the choice, but we're going to boot it back to the State Land Use Commission?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: I'm sure we could try and do something. But currently, it's State law under 205 that makes that distinction clear that under 15 acres the County authority...

COUNCILMEMBER HOKAMA: Can make the decision, right?

MR. UEOKA: I'm not...

COUNCILMEMBER HOKAMA: We're not the sole discretionary authority, right?

COUNCILMEMBER RAWLINS-FERNANDEZ: Is it may or shall?

MR. UEOKA: I'm not overly familiar with 205 and the way it is sitting today. We can probably discuss this in Committee at some time like in more detail. But right now...

COUNCILMEMBER HOKAMA: No, I agree. I just wanted to know if at this point in time that is an option for this Committee.

MR. UEOKA: Right now?

COUNCILMEMBER HOKAMA: Yeah, to say, you know what --

MR. UEOKA: I believe...

COUNCILMEMBER HOKAMA: --we're going to deny and remand it back to the Commission.

MR. UEOKA: I don't think you can do that right now 'cause the County did adopt a policy in Chapter 19.68, Maui County Code, and we probably should be following that right now. And I...

COUNCILMEMBER HOKAMA: One of our choices is to deny.

MR. UEOKA: Those are your choices, correct. But to order it remanded back to the State Land Use Commission, I don't know if we have the authority to do that right now.

COUNCILMEMBER HOKAMA: Can the applicant take it to the Commission?

MR. UEOKA: That, I'm not sure what the Commission would say, being that it's under 15 acres, so it'd be under the jurisdiction of the County. And there is a County process established. It'd be similar if you guys in a, in the regular process denied it, I don't think the applicant could go to the State Land Use Commission and try and get it approved there if the Council denied it. So, I'm really unclear on that right now. In front of me I'm just aware of the 201H process and there's currently an exemption from

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the process and a separate ordinance for the DBA in front of you guys. Thank you, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, really quickly.

CHAIR KAMA: Yes, go ahead, Miss...

COUNCILMEMBER HOKAMA: Thank you, Chair. Thank you, Ms. Rawlins.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Hokama. Can we get like a, like the actual law? 'Cause I know Mr. Ueoka is giving us a lot of thinks, and it's not like 100 percent certainty. Like this is what the law says. So, what Member Hokama is saying could be possible. But Mr. Ueoka doesn't have the time right at this second to look it up. I know he's looking it up now. And so, I don't know if we can call --

CHAIR KAMA: Yes, Mr. Ueoka?

COUNCILMEMBER RAWLINS-FERNANDEZ: --a quick recess to allow Mr. Ueoka to review it so that when he advises, gives us legal advice, that they're, you know, they're certain.

CHAIR KAMA: Yes, Mr. Ueoka?

MR. UEOKA: Thank you, Chair. Two oh five dash three point one C, district boundary amendments involving land areas of 15 acres or less except this provided in subsection B shall be determined by the appropriate County land use decision making authority for the district and shall not require consideration by the Land Use Commission, pursuant to Section 205-4, provided that such boundary amendments and approved uses are consistent with this Chapter. Thank you, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, in reading that language, Mr. Ueoka, do you understand that to, the interpretation of that as the Council would then not have the power to ask the State Land Use Commission to review it? 'Cause that wasn't what I heard.

MR. UEOKA: I guess my statement isn't that you don't have the power not to ask the State Land Use Commission to review it. I don't think you can order the State Land Use Commission to review it. And I think there is a process established by this Council through County Code for the County to review it. So, it would almost be like you're ignoring your own Code and going another way. So, that's my only statement. But again, this body has a lot of...

COUNCILMEMBER RAWLINS-FERNANDEZ: It gives us the power to --

MR. UEOKA: Yeah, this...

COUNCILMEMBER RAWLINS-FERNANDEZ: --to direct it the way...it gives us the power to make that decision.

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CHAIR KAMA: And we said yes in 19...

MR. UEOKA: I'm...

COUNCILMEMBER RAWLINS-FERNANDEZ: To make that decision on whether we're going to review it or not.

MR. UEOKA: I guess this body can always make a decision on whether they want to review something or not. I'm not saying you can't do that. I'm saying I don't believe you have the authority to tell the State Land Use Commission --

COUNCILMEMBER RAWLINS-FERNANDEZ: Right.

MR. UEOKA: --you review it. So, again, it's within your scope of authority to review this matter in front of you today. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. I know we did get comments from the Land Use Commission, and they thought that it was inappropriate because of the segmentation and the parcelization for us to make these decisions.

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. I guess it's up to this . . .thank you, Chair, I guess it's up to this body to determine whether or not it wants to review it in regards to what you're saying, segmentation and parcelization. That's up to you guys. I'm not aware of anything explicitly not allowing it in the sections we're looking at for 205 or 19.68. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR KAMA: Ms. Paltin...oh, I'm sorry, were you good?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, go ahead, go ahead, Chair.

CHAIR KAMA: Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Actually, when Mr. Ward came up, I did have a few more questions for Ms. McLean if that's okay.

CHAIR KAMA: Oh, yes, Ms. McLean?

COUNCILMEMBER PALTIN: So, I just was wondering because of the testimony that we received attached to that notice of warning, what is the potential for monetary fines and damages for these...on violations?

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MS. McLEAN: There's always the potential. It would depend on how quickly and how seriously the alleged violator is working to resolve the issues. So, if they disregard us, if they make no effort at compliance, and that would be a situation as I described earlier, then we would consult with Corp. Counsel to see about pursuing to violation and what fines would be appropriate. But if they're making progress, if there are impediments toward compliance, for example if there's, if there are cultural or natural resources that might be impacted by what they're supposed to do, or if they need other permits or if there are other issues where it's going to take time to achieve compliance, then we wouldn't go ahead with issuing violations and assessing fines.

COUNCILMEMBER PALTIN: Okay. And then, based on what you were saying before like as far as timeline and like that, it was represented to us, I believe, that for these projects, that the start, it would be a five-year project. It would start within two years and then finish with three years from the start date and then kind of based on what you were saying previously, there's really nothing after the start that holds them to the three-year finish date. That's just a number and we have no control if it goes beyond 3 years, 5 years, 10 years, 20 years, as long as they're like moving dirt around it's, that how it is? Or...

MS. McLEAN: If the project hasn't been completed, then typically we would do time extensions for them to complete. But then once construction is completed and those two different timeframes are no longer applicable, there are conditions that remain in effect in perpetuity. And so, those are in perpetuity, they don't have an expiration date.

COUNCILMEMBER PALTIN: So, a start to finish three years really doesn't mean much because time extensions and whatnot? I mean, it could be much longer.

MS. McLEAN: Well, the time extension process for an SMA permit is up to two years, if it's a time extension, for up to two years.

COUNCILMEMBER PALTIN: This one isn't SMA though. This is like just the developer's representation to the Council that they would be finished in like five years, two years to start, and then three years. I don't think it's even a condition. It was just what they told us.

MS. McLEAN: For the 201H projects that you're considering today? Yeah, we, the Planning Department, I don't think has a role in enforcing that condition or that kind of thing.

COUNCILMEMBER PALTIN: So, it's not even a thing. It's just a, it's just a representation, it's not anything that could be enforced or anything?

MS. McLEAN: Well, that's something I'd want to get guidance from Corp. Counsel on. Because again, with 201H's, we don't process them. So, it doesn't follow the regular Code and rule requirements that apply to all the other permits that we handle. If there, I mean, there are conditions on these projects. And ones that involve land use compliance I would assume fall to the Planning Department. But other ones --

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COUNCILMEMBER PALTIN: Like the timeline.

MS. McLEAN: --I don't know what Department would be responsible for enforcing that, and if those aren't met, what the recourse would be. I know what the recourse is for not following up with Planning conditions, or conditions that we enforce. But in terms of noncompliance with other provisions or representations, I would defer to Corp. Counsel on who has the authority to oversee those and if the timelines need to be extended, how does that get accomplished and what kind of penalties or repercussions there might be for noncompliance.

COUNCILMEMBER PALTIN: Corp. Counsel, would you care to...

MR. UEOKA: Thank you, Chair.

CHAIR KAMA: Yes?

MR. UEOKA: Generally speaking, Member Paltin, the, all the 201H's I've seen, the modifications contained are typically things that go more towards the project shall do this, or be started at this point, and it shall do this and that. And those things are typically enforced through, you won't get your building permits if you don't comply with the modifications and stuff. I've never seen like a, an ongoing requirement or anything. And deed restrictions and stuff that need to be recorded on the property, we can accomplish through our residential workforce housing agreements. I guess we've never had any real issues with enforcement on what the 201H's are supposed to be doing.

COUNCILMEMBER PALTIN: Or the timeline or anything, it's just a representation. It's not an enforceable action?

MR. UEOKA: The ones that we typically with, well actually not even, it's not that common anymore. But before, the bigger problem was the 201H's wouldn't get started. But recently, I think most of the past few have been started. And the one that, the glaring one I know that hasn't started did not have a time, a time factor built into it. So, I'm not really aware of any big issues with compliance with 201H modifications right now. But if Council wants to put in something and the developer is agreeable to it, you can include a penalty provision, or some sort and we'll try and figure out how to enforce it if we need to moving forward. Thank you.

CHAIR KAMA: Ms. McLean, did you want to weigh in on this?

MS. McLEAN: Thank you, Chair. Yes, it just occurred to me that the projects in front of you today also have a district boundary amendment that go along with them. That's a much more straightforward, clear way. If you were to impose conditions and put them on the district boundary amendment ordinance then, we would have clear enforcement authority. And that would just be a, our standard enforcement project, process.

COUNCILMEMBER PALTIN: Including timelines and whatnot?

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MS. McLEAN: It could include timelines, yes.

COUNCILMEMBER PALTIN: Okay. If I may, Chair?

CHAIR KAMA: Yes.

COUNCILMEMBER PALTIN: I had a question for our Legislative Attorney.

CHAIR KAMA: Yes, absolutely. Mr. Rapacz?

MR. RAPACZ: Sorry, Chair, I didn't hear the question.

CHAIR KAMA: Tamara Paltin has a question for you.

MR. RAPACZ: Yes?

COUNCILMEMBER PALTIN: I just had a question for him because he used to work in zoning and he's an attorney, and I just was wondering if you could provide commentary on the State Office of Planning response to these projects.

MR. RAPACZ: The issue of whether we are properly complying with the procedure?

COUNCILMEMBER PALTIN: Their opinion as to whether this is a, even a segmentation and the exemption of, exemptions for ag lots that are not affordable houses, and basically their whole comment letter is pretty, I mean, if you can break it down to, for me, what it's saying.

MR. RAPACZ: Okay. I'll try to do that. In terms of the district boundary amendment procedure, I think if you look in the last sentence of their paragraph number one...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, can Mr. Rapacz speak a little louder?

MR. RAPACZ: Sorry, I am speaking directly into, is that better? Okay. Thank you. They conclude based on the statutory language at best a 201H housing project may be provided an expedited 45-day DBA process but cannot be fully exempted from the DBA process. And I believe that under its authority in 201H and under an exemption in 201H, the Council is proceeding through a DBA process. It is not the normal one that would go to the Planning Commission and then to the Council. But that is, if the Council grants the exemption for the district boundary amendment process, then this is the proper way to do it. You are doing it according to the law. That's my understanding.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, really quickly? I also wanted to just bring all of the Members' attention to what Mr. Rapacz is referencing right now. It was just distributed by Staff, and that's the Office of Planning letter. So, and it was also highlighted for everyone's ease and convenience.

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MR. RAPACZ: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Rapacz.

MR. RAPACZ: Thank you.

CHAIR KAMA: Thank you.

MR. RAPACZ: On the issue of parcelization or segmentation, that's going to be up to you folks to decide. This area was proposed for a single development in 2015 under a district boundary amendment that went to the Land Use Commission, a petition was filed with the Land Use Commission for the entire area as one project. That was eventually withdrawn, and now it presents as three projects. And so, the question for you folks is whether to consider, or to what extent to consider the overall impacts of all three projects together, or whether to separate the projects and separate the impacts and consider those separately. And that's going to be your call on the extent to which you would assess the cumulative impacts of all three.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: Thank you. Madam Chair, what was your intent today to deal with the 201H application first, and then district boundary amendment?

CHAIR KAMA: That was the intent, the 201H, the district boundary, 201H, district boundary. Just...

COUNCILMEMBER LEE: 'Cause we're spending a lot of time on district boundary and not the 201H application. So, I'm just asking which order is your preference.

CHAIR KAMA: That was the order that I was preferred.

COUNCILMEMBER LEE: Yeah, because, I mean --

CHAIR KAMA: So --

COUNCILMEMBER LEE: --then we ought to stick to the questions and discussion on the 201H, and then go to the other one.

CHAIR KAMA: Okay.

COUNCILMEMBER LEE: Or, unless you want to flip, it's up to you.

CHAIR KAMA: Actually, no, it's up to you. I'm only one-ninth of all of you.

COUNCILMEMBER LEE: Well, I just want to ask...

CHAIR KAMA: Yeah, so --

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COUNCILMEMBER LEE: Okay. But...

CHAIR KAMA: --do you guys want to spend time doing the DBA?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

COUNCILMEMBER LEE: Okay. Okay. But the --

CHAIR KAMA: Yes?

COUNCILMEMBER LEE: --clarification is, from Corp. Counsel, one has a time limit, right, and one doesn't. Is that correct?

CHAIR KAMA: Yes, go ahead, Mr. Ueoka.

MR. UEOKA: Forty-five days from submittal.

COUNCILMEMBER LEE: For the 201H?

MR. UEOKA: For the 201H...the DBA. However, typically, in the modifications, they are linked to each other. So, if they don't get the DBA within six months, I believe it says in these applications in the modifications that the 201H entitlements go away also. The 201H exemptions will disappear if they don't get DBA within six months also. So, they are linked. But approval-wise for you guys, 45 days for the 201H or it's approved automatically. Thank you.

CHAIR KAMA: So, it's up to you. Do you guys want to do the 201H that has a 45-day window, or not even 45 left, but what's left, and if we don't do anything about it, it goes through without any modifications.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR KAMA: And then they have six months to do the DBA.

COUNCILMEMBER LEE: So, if the 201H application is approved and the DBA is not, then what?

MR. UEOKA: Chair?

CHAIR KAMA: Yes, Mr. Ueoka?

MR. UEOKA: Thank you. Through the application it does state, I believe, that the exemptions are lost from the 201H process. The entitlements and exemptions are lost.

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COUNCILMEMBER RAWLINS-FERNANDEZ: And point of information, that is actually what happened with the Makila Kai project, that the 201H application was approved, and then the DBA was denied or disapproved --

CHAIR KAMA: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: --and the project stopped.

CHAIR KAMA: Right.

COUNCILMEMBER LEE: Well, you know, considering that people are trying to make a case against approval of the DBA, we might as well take it up first and vote that up or down so that we can proceed. If it's voted up then we ought to proceed with the 201H after that, but not continue to mix up the discussion as we have been in the last hour, Madam Chair.

CHAIR KAMA: Okay. Thank you. Okay. So, then if we're going to...yes, Ms. Keani Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think Mr. Rapacz wasn't --

CHAIR KAMA: Oh, I'm sorry, John?

COUNCILMEMBER RAWLINS-FERNANDEZ: --finished.

MR. RAPACZ: Was there a particular question you wanted me to follow up with?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I wasn't sure if you were interrupted or if you completed answering Member Paltin's question.

MR. RAPACZ: No, there may have been a third part to the question. I think I answered the first two. I don't recall what the third was.

COUNCILMEMBER PALTIN: So, you know, just in general that the State gives us this authority, and yet, when they were consulted on, this letter doesn't seem like they're supportive of us granting these exemptions. And I was wondering if that was your interpretation of the State's Office of Planning letter. Am I on, near what it's saying?

MR. RAPACZ: Yeah, I would agree. I would say they are very critical of the proposal. They raise specific issues pertaining to the process, the segmentation or parcelization. The question of whether in general it is appropriate to use agricultural lands for this type of, what they call urban development. The question of whether the remaining agricultural lots that will be one-acre are truly likely or appropriate to be used as farms under the State law. So, in general, yes, I think they've been pretty clear that they don't think this is an appropriate project for the, at least for the Agricultural District.

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COUNCILMEMBER PALTIN: Thank you, Mr. Rapacz. My next question would be for Mr. Ginoza as the developer's representative. And I was wondering if you could walk us through a notification that the, some of the Launiupoko residents received on June 25 regarding water consumption, 25th, 2019. I guess last Friday or so.

CHAIR KAMA: Mr. Ginoza?

COUNCILMEMBER SUGIMURA: What did they receive?

MR. GINOZA: I'm sorry, what was that letter? I'm not aware of the letter.

COUNCILMEMBER PALTIN: Oh, I thought you were the representative of the, from West Maui Land Company, a request to reduce use by 20 percent for the people that are currently living over there. I can give you a copy.

CHAIR KAMA: He probably needs the letter.

COUNCILMEMBER PALTIN: Or, oh, Ms. Vinoray has a copy.

CHAIR KAMA: Members, it seems like they do not have a, an answer right away. So, I am going to call for our morning break and we will reconvene at 10:48. Recess, brief recess.
...*(gavel)*...

RECESS: 10:38 a.m.

RECONVENE: 10:50 a.m.

(Excused: RH, MM)

CHAIR KAMA: ...*(gavel)*... The Affordable Housing Committee of July 3rd will now reconvene. And, okay, so, before we took our break, our recess, we were about to go into the discussion with the DBA's first. So, I just want to make sure that I heard you all right. So, yes, Ms. Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I was the one that supported doing the DBA first. But Member Lee is correct, we were advised by the, our OCS attorney that if we don't take the 201H application first, then we don't have the details of what it is that we are amending with the district --

MR. UEOKA: Chair?

COUNCILMEMBER RAWLINS-FERNANDEZ: --boundary.

CHAIR KAMA: Yes, Mr. Ueoka?

MR. UEOKA: Now, that Member Rawlins-Fernandez did mention that, actually, you do need to take the 201H first because it gives you the exemption from the process.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Right.

MR. UEOKA: So, you can't...yeah, thank you.

CHAIR KAMA: I knew she was going to come to that. Okay. So...

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that learning lesson.

CHAIR KAMA: Okay. So, we're going to take the 201H project first. Let's take Polanui. And before we do, I would like to actually know what are some of your conditions that you might have for the project. So, if you...yes, yes, Ms. Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, before we go into the conditions, since it was brought to my attention that Kipa Centennial is not registered with our State DCCA, and is not registered with the Department of Taxation, I wanted to get comments from our OCS attorneys --

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: --on what that means for this application.

CHAIR KAMA: Mr. Rapacz?

MR. RAPACZ: Thank you, Madam Chair. And just for reference, I know the Members won't have it in front of them, but the Hawaii Administrative Rules Title 15, Chapter 307 are the rules that go into detail on how to administer the 201H process. And in Section 15-307-24 entitled, Eligible Developer Information Required Determination by Corporation, it lists I believe 17 items that are supposed to be submitted to, in this case, the Department of Housing and Human Concerns, which affect eligibility. One of those is a item number 7, that's Section A7, a current certificate of good standing from the Department of Commerce and Consumer Affairs, tax clearance from the Department of Taxation, and certification of compliance with Department of Labor and Industrial Relations requirements. So, that should have been submitted by the developer to be assessed for whether or not the developer qualifies as an eligible developer.

COUNCILMEMBER LEE: Madam Chair?

CHAIR KAMA: Yes, Ms. Lee?

COUNCILMEMBER LEE: Are you done? Are you done? Madam Chair, I support your suggestion of going with Polanui first because it appears that there is ongoing mounting information that keeps coming up on the other one. So, if we take Polanui first, which doesn't seem to have as many concerns, perhaps we can get through that one, and then take the other one that seems to have a lot of additional information. Is that okay with everybody?

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CHAIR KAMA: What is the pleasure of the body? Mr. Molina?

VICE-CHAIR MOLINA: . . .*(inaudible)*. . .

CHAIR KAMA: Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. So, we're, the question is to take them individually --

CHAIR KAMA: Yes.

COUNCILMEMBER SINENCI: --'cause from reading the land use and Mr. Rapacz mentioned about separating them into three or taking them as one. Or is that part of the DBA that we're doing? 'Cause he mentioned something about...

COUNCILMEMBER LEE: We have two projects. And I was wondering if we could take one at a time, and the first one being Polanui because it doesn't seem to have as many complications as the second one. And, you know, I mean, it's great that we keep getting, you know, more and more paperwork. But let's take the one that's not getting all the paperwork first is what I'm saying.

CHAIR KAMA: So, I think...

COUNCILMEMBER SINENCI: I'll yield.

COUNCILMEMBER SUGIMURA: That's fine.

COUNCILMEMBER SINENCI: Yeah.

CHAIR KAMA: Okay.

COUNCILMEMBER SUGIMURA: Let's do that. Let's complete.

CHAIR KAMA: Okay. So, Members, did any one of you have written any one of your conditions on a piece of paper? Did you folks write it out? Or you just going to put it on the floor?

COUNCILMEMBER SUGIMURA: Nothing in writing.

CHAIR KAMA: Nothing in writing? Okay. So, do we have any conditions that you all would like to put on the floor? I'd like to put my conditions on the floor if you would all allow me to?

COUNCILMEMBER SUGIMURA: Please proceed.

CHAIR KAMA: Okay. Thank you.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: So, I think there was some confusion about who the developer for Polanui is, and it is Kipa Centennial. So, their application is incomplete.

CHAIR KAMA: Okay. Mr. Ueoka, would you respond to that please?

MR. UEOKA: Chair --

CHAIR KAMA: Yeah.

MR. UEOKA: --whether or not it's incomplete, I'm not sure. I believe Mr. Rapacz was reading from 15-307-24 --

CHAIR KAMA: Yes, he was.

MR. UEOKA: --eligible developer information required --

CHAIR KAMA: Yes.

MR. UEOKA: --determination by corporation. The last sentence before it goes into the laundry list is information requested may include but is not necessarily limited to. And then it goes through all those matters. And number seven is a certificate of good standing from the Department of, or DCCA tax clearance from DOTAX and certificate of compliance with DLIR. So, to say that you're just going to, if you want to, you may bounce it for that reason. But that's the may include, so, it's up to you guys right now.

COUNCILMEMBER RAWLINS-FERNANDEZ: So --

MR. UEOKA: And I'm sure those are matters that...

COUNCILMEMBER RAWLINS-FERNANDEZ: --Mr. Ueoka, if it's not limited to, then that means it can include more. But that's the minimum requirement?

MR. UEOKA: It says may include but is not necessarily limited to, yeah, may include, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right, so, it could be more, but those are required?

MR. UEOKA: I don't know if they're required. It's a may, may include.

COUNCILMEMBER RAWLINS-FERNANDEZ: May include more.

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MR. UEOKA: May include but is not necessarily limited to, yeah. Yeah, I'm not sure, but it is something that they could fix, I believe. I'm not sure why it isn't complete right now. But that is up to you guys to determine.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I'd like to save this Committee all the discussion of going through conditions 'cause I'd like to move we disapprove for incomplete application and then I'll need a second.

COUNCILMEMBER SINENCI: Second.

CHAIR KAMA: Okay. So, there's a motion on the floor to disapprove this application, there's been a, by Member Rawlins-Fernandez. There's a second by Member Sinenci. Do I have that right?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR KAMA: Okay. Any discussion? Yes, Ms. Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I moved to disapprove the application because not all of the information was submitted to the DCCA, including being registered with the DHHC, including being registered and in good standing with DCCA. Also, not being registered with our Department of Taxation.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. I'd like to ask the Housing Director if she is satisfied with the way the applicant submitted his application. And, Corp. Counsel, in your mind is it complete?

MS. MUNSELL: Chair?

CHAIR KAMA: Yes, Ms. Munsell?

MS. MUNSELL: Thank you for the question. If we were not happy with the application, we would have not have forwarded it to this body.

COUNCILMEMBER LEE: Corp. Counsel?

MR. UEOKA: Same, we're satisfied. We are okay with the application as submitted. But it's up to you guys, of course. Thank you.

COUNCILMEMBER LEE: Therefore, I will be voting no on the motion.

CHAIR KAMA: Thank you. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just, my reasons for voting with this motion is because I had a question for Corporation Counsel, if we're dealing with somebody

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who's not registered in the State and we have, as Councilmembers, we go into litigation perhaps and where would we be sending, you know, the litigation to, you know, I mean, who we'd be dealing with as far as, you know, going to litigation in case something like this happens?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. If that's the issue, you guys probably could put a condition, or right now that they clear this up before you get to even first reading of the Council. And then, that would satisfy your issues at that point. Thank you.

CHAIR KAMA: Any other discussion? Yes, Mister...

COUNCILMEMBER SINENCI: Follow-up? So --

CHAIR KAMA: Yes.

COUNCILMEMBER SINENCI: --if we do disapprove, it doesn't stop the project, we're just stopping the 201H application? The developer can still go back to the HHFDC, correct? And go through the State process? Is that correct?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. Yeah, that would be a Council would be disapproving it. HHFDC can also submit. But it would be coming in front of you guys again because ultimately it is the decision-making authority within the County that would...

COUNCILMEMBER SINENCI: But it would be, I mean, that would be the State agency that would be going to first, right? I mean, the HFDC [sic]?

MR. UEOKA: If I may?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you. Mr. Sinenci, what would be happening is right now DHHC was working with the developer, and DHHC submitted the application via the Mayor's Office. So, if HHFDC were to do it, I believe there was a project last term, Wailuku Apartments, where HHFDC just submitted it directly to the Council. So, that's the only difference. It's who the body is going through. But it always comes to the County Council. Thank you.

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

CHAIR KAMA: Okay. Yes, any other...yes, Mr. Molina?

VICE-CHAIR MOLINA: No, I just want to make comments. You know, Madam Chair --

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CHAIR KAMA: Yes.

VICE-CHAIR MOLINA: --the other week we dealt with a very large project. It took years, the I's were dotted, the T's were crossed, everything seemed complete. It seems at this point some, we're going through a State, using a State process and now from the State offices they're saying things are not complete. So, I like to deal with things that are completed, not done half, you know, half you know what. I'll just leave it at that. Thank you.

CHAIR KAMA: Thank you. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I'm going to be voting against the motion as I would like to see this project move forward and I think it's something that the project itself can fix as it was suggested, before first reading I would imagine. But if, I stand by the Department and what Corp. Counsel was telling us that this is a good project, and that it's our responsibility. Just Office of Planning, State of Hawaii, and, you know, just the Land Use Commission, State Land Use Commission, I really want to fight for home rule. This is our project and that the comments that, you know, are being made regarding this project from the State agencies, this is not their project. They made their determination, it's in our hands, and I want us to move forward. I'm going to be voting against the motion and I want us to take it up and build houses for working families and for people to have a good neighborhood to live in. So, Chair, let's call for the vote.

CHAIR KAMA: Okay. Miss...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes, Ms. Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: For my second and final.

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: So, similar to Makila Kai, which came to the previous Council and was disapproved and is planning to resubmit its application in about three months, you know, they can go and they can fix it, and then, they can come back again when it's complete because, you know, I don't think we should get into the practice of approving incomplete applications. I think that's a terrible precedent to set, you know, it's an incomplete application. And, you know, we're not even discussing the merits on it right now. We're just discussing the fact, you know, that it's incomplete, and that we should not be approving an incomplete application.

CHAIR KAMA: Thank you. Ms. Lee?

COUNCILMEMBER RAWLINS-FERNANDEZ: And one last question --

CHAIR KAMA: Oh, I'm sorry.

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COUNCILMEMBER RAWLINS-FERNANDEZ: --sorry, Chair. This question is for Ms. Munsell. Were you aware that Kipa Centennial was not registered with the Hawaii DCCA and the Department of Taxation?

MS. MUNSELL: Chair?

CHAIR KAMA: Yes, go ahead.

MS. MUNSELL: No, I wasn't. The Administrative Rules for the 201H says that the application may include. It doesn't say shall include. And so, we did not verify that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, our Department is not thoroughly reviewing the application for completeness and was not aware that these two important things to do business in Hawaii is not done. To do business in Hawaii you need to be registered with DCCA and Department of Taxation.

CHAIR KAMA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. Regardless of what was said, it's just one person's opinion. It is the professionals that review these applications, and they both said several times that this application was complete according to their rules. So, as far as I'm concerned, it can go forward for review. We're not approving this project. It just can go forward for review. Thank you.

CHAIR KAMA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of --

CHAIR KAMA: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: --information, I guess. I'd like to get the comments from our OCS attorney on what may include but not limited to is, it means, because as I understand it --

CHAIR KAMA: Mr. Rapacz?

COUNCILMEMBER RAWLINS-FERNANDEZ: --it's like, it's including this, it can include more, but this is the minimum.

MR. RAPACZ: Thank you, Chair. I would agree that may include is not mandatory, not a requirement. The section is entitled information required. But it says that essentially the, let's see, the information will be provided, will be on forms provided by the corporation along with any additional information. Information requested may include

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would be just a list of, let's put it this way, the form would not have to have all of these items on it. The form could have just some of them. And in terms of 201H, it doesn't appear that the--I'm trying to read the exact language here--that the information regarding the current certificate, et cetera, must be on the form. So, I don't know what was on the form that DHHC uses, but I agree that this section in the Administrative Rules does not require that that item be on the form for an eligible developer.

COUNCILMEMBER RAWLINS-FERNANDEZ: Is, are businesses required to be registered with our Department of Taxation to do business in Hawaii?

MR. RAPACZ: That's my understanding, yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Thank you.

COUNCILMEMBER SINENCI: Question, Chair?

COUNCILMEMBER LEE: Call for the question.

COUNCILMEMBER SINENCI: Well, I had a --

CHAIR KAMA: Mr. Sinenci?

COUNCILMEMBER SINENCI: --question for Mr. Rapacz. Was, is there any potential legal ramifications dealing with a developer that is not registered in the State of Hawaii? Potential risk.

CHAIR KAMA: Mr. Rapacz?

MR. RAPACZ: Thank you, Chair. Well, that could introduce some complications, yes. And I agree with Corp. Counsel that those things maybe could be handled before first reading. But yes, that would make it more complicated.

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

CHAIR KAMA: Okay. All those in favor of the motion, which is to disapprove this project, please...that's what your motion was right? That's what your motion was, Keani Fernandez? To disapprove?

COUNCILMEMBER RAWLINS-FERNANDEZ: This item, yeah, so, the 201H application.

CHAIR KAMA: Yes, the 201 app. Okay. All those, oh, let's take a roll call vote. I don't want to...okay. So, Mr. Sinenci?

COUNCILMEMBER SINENCI: Aye.

CHAIR KAMA: Mr. Molina?

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VICE-CHAIR MOLINA: Aye.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: No.

CHAIR KAMA: Ms. Fernandez?

MS. COUNCILMEMBER RAWLINS-FERNANDEZ: Aye.

CHAIR KAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No.

CHAIR KAMA: And I'm going to vote no.

VOTE: AYES: Vice-Chair Molina, Councilmembers Rawlins-Fernandez and Sinenci.

NOES: Chair Kama, Councilmembers Lee and Sugimura.

EXC.: Councilmember Hokama.

MOTION FAILS.

CHAIR KAMA: So, let me see, one, two, motion fails.

COUNCILMEMBER SUGIMURA: Motion fails.

CHAIR KAMA: Thank you. Brief recess until 11:15. . . .*(gavel)*. . .

RECESS: 11:10 a.m.

RECONVENE: 11:15 a.m.

Note: All Voting AH Committee Members are present and Non-Voting CM Paltin.

CHAIR KAMA: . . .*(gavel)*. . . The Affordable Housing of July 3rd will now reconvene. Okay. So, Members, thank you very much for participating in the last vote. And so...

COUNCILMEMBERS RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: Now that Member Hokama is back, since there was no prevailing side, I'd like to move for a reconsideration.

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CHAIR KAMA: Members, what is your preference?

COUNCILMEMBER SINENCI: Second.

CHAIR KAMA: So, the question is, Ms. Fernandez is asking for a reconsideration. Yes, Ms. Lee?

COUNCILMEMBER LEE: Can we have Corp. Counsel give us a reading on this if there was no prevailing side, what happens? But, let me put it, there was a, one side failed because the person who made the motion, that motion was, that motion failed. Now, you can give us your reading of this.

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. Yeah, I believe there, I...

CHAIR KAMA: Yes?

MR. UEOKA: Typically, we defer to you guys, or to this body on the decision on how you run your own procedures. We don't make legal rulings on it. You guys might want to check with Council Services on that, rather than Corp. Counsel.

COUNCILMEMBER LEE: Because technically, it wasn't a tie. The motion failed. Okay. So, the maker of the motion and the second person and whomever voted for that motion failed. So, do they have a right to reconsider, ask for a reconsideration? That is the question. So, who would answer that question?

CHAIR KAMA: Mr. Hokama's pointing to me. Mr. Rapacz?

MR. RAPACZ: Thank you, Madam Chair. And just preface this with saying that I am relatively new in these questions. I am trying to contact David Raatz just to be sure. My understanding is that...

COUNCILMEMBER HOKAMA: Point of order, Chair. Procedure is within the authority of the Members and the Members only, not the Staff, not Corporation Counsel. Okay. Procedure is within the Members' control. We decide what we will accept or not accept regarding parliamentary procedure. As our Chair, you will make a ruling on --

CHAIR KAMA: Okay.

COUNCILMEMBER HOKAMA: --Ms. Lee's...

CHAIR KAMA: I think what Ms. Lee was trying to do is try to get some kind of a legal opinion from Corp. Counsel, from, if not Corp. then from what we consider our attorneys. So...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, it's not a legal issue.

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COUNCILMEMBER HOKAMA: This is a procedural question.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

COUNCILMEMBER HOKAMA: This is a procedural issue.

COUNCILMEMBER RAWLINS-FERNANDEZ: It's a procedural issue.

CHAIR KAMA: Okay. So, then that would become OCS'...

COUNCILMEMBER RAWLINS-FERNANDEZ: No, ours.

COUNCILMEMBER HOKAMA: No, ours, not OCS'.

CHAIR KAMA: Ours? Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, it's three, three --

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: --and it's our decision if we would like to take the vote again.

COUNCILMEMBER SUGIMURA: So, she can hold the vote is what you're saying? Just...

COUNCILMEMBER HOKAMA: No, the Chair needs to make a ruling.

CHAIR KAMA: The Chair gets to make a ruling?

COUNCILMEMBER HOKAMA: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: It was the tie. And now that we have an odd number --

COUNCILMEMBER SUGIMURA: . . .*(inaudible)*. . .

COUNCILMEMBER RAWLINS-FERNANDEZ: --of Councilmembers...

CHAIR KAMA: Yes, Mr. Molina?

VICE-CHAIR MOLINA: Yeah, Madam Chair, maybe we should have, review the Council Rules --

CHAIR KAMA: Okay.

VICE-CHAIR MOLINA: --if there is anything that indicates in there about Committee before we proceed.

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CHAIR KAMA: Brief recess. . . .*(gavel)*. . .

RECESS: 11:19 a.m.

RECONVENE: 11:21 a.m.

CHAIR KAMA: . . .*(gavel)*. . . So, the Affordable Housing Committee of July 3rd will now reconvene again. So, this is the Chair's ruling. The Chair will not allow the reconsideration and that's my ruling. Yes, Mr. Molina?

VICE-CHAIR MOLINA: So, Madam Chair, what is your recommendation?

CHAIR KAMA: That we continue the process that we said we wanted to do, was to be able to take the 201H's and look at their considerations --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: --or modifications? Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I move to disapprove the Polanui Gardens 201H application due to it being an incomplete application.

COUNCILMEMBER SINENCI: Second.

COUNCILMEMBER LEE: Wasn't that the exact same --

CHAIR KAMA: Yes.

COUNCILMEMBER LEE: --motion she had?

CHAIR KAMA: Yes. But she did it before Mr. Hokama was here. Now, he's here. So, there's a motion on the floor and there's a second.

COUNCILMEMBER LEE: Well, I disagree.

COUNCILMEMBER SUGIMURA: Me too.

COUNCILMEMBER LEE: I need a ruling on that one. I mean, why don't you ask somebody else to make the motion, I mean, you know, we're gonna go through this...

CHAIR KAMA: Wait, wait, wait, wait, wait, hey, hey, hey. This is the process, right?

COUNCILMEMBER LEE: Yeah.

CHAIR KAMA: We all said we wanted...

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COUNCILMEMBER LEE: We need to find out.

CHAIR KAMA: Okay. So, Mr. Ueoka?

COUNCILMEMBER RAWLINS-FERNANDEZ: It's a procedural matter.

MR. KAPU: You all failed.

COUNCILMEMBER RAWLINS-FERNANDEZ: Not legal.

CHAIR KAMA: If you continue to speak out of turn or in the galley, we'll ask you to be removed.

Note: Ms. Stewart approaches Chair Kama.

CHAIR KAMA: Okay. So, under the Rules, you can't ask the same question to be reconsidered.

COUNCILMEMBER SUGIMURA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Even when a new Member joined?

COUNCILMEMBER LEE: Can we proceed with the...

COUNCILMEMBER SUGIMURA: Let's proceed.

CHAIR KAMA: The modifications?

COUNCILMEMBER LEE: Yeah, she's not recognizing.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry.

CHAIR KAMA: Yes?

COUNCILMEMBER LEE: Can we proceed with the discussion on the --

COUNCILMEMBER SUGIMURA: Project.

COUNCILMEMBER LEE: --Polanui --

CHAIR KAMA: Yes.

COUNCILMEMBER LEE: --project?

CHAIR KAMA: Yes.

COUNCILMEMBER SUGIMURA: Okay. Chair?

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CHAIR KAMA: Yes?

COUNCILMEMBER SUGIMURA: Proceed, proceed with going through the 201H process.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, Chair, if someone else makes the motion that would be acceptable?

CHAIR KAMA: No.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

CHAIR KAMA: It doesn't matter who makes the motion.

COUNCILMEMBER LEE: You're right, for reconsideration because the --

CHAIR KAMA: Right.

COUNCILMEMBER LEE: --three lost on that side.

CHAIR KAMA: Yes.

COUNCILMEMBER LEE: Yeah.

COUNCILMEMBER SINENCI: That's just for the reconsideration, though?

CHAIR KAMA: That was just for the reconsideration.

COUNCILMEMBER SINENCI: I can make the motion.

COUNCILMEMBER LEE: It's the same motion. It's the same...

CHAIR KAMA: Are you going to make a different motion?

COUNCILMEMBER SINENCI: From a different person, yeah.

CHAIR KAMA: Are you going to make a different motion?

COUNCILMEMBER SINENCI: Yes, I move to disapprove the Polanui permit, the application due to an incomplete permit.

CHAIR KAMA: That's the same motion. It's the same motion.

COUNCILMEMBER SINENCI: But from me, I'm making the motion.

CHAIR KAMA: I know, but it's the same motion.

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COUNCILMEMBER SUGIMURA: It's the same motion.

CHAIR KAMA: You can't make the same motion.

COUNCILMEMBER SINENCI: Oh, I thought was it was the different person making the motion.

CHAIR KAMA: No, it's not about the person, it's about the motion.

COUNCILMEMBER SINENCI: Okay. I redact.

CHAIR KAMA: Yes?

COUNCILMEMBER LEE: I suggest we take a lunch break.

CHAIR KAMA: You want to take a lunch break?

COUNCILMEMBER LEE: Yeah.

CHAIR KAMA: If you want to take a lunch break, then this is what I'm going to ask you all to do.

COUNCILMEMBER SUGIMURA: Calm down.

CHAIR KAMA: We're going to take a lunch until one o'clock. And while you're eating lunch, I would like for you to write your conditions or modifications in writing. You can type it out, you can write it out, it doesn't matter. But at one o'clock we're going to return with the modifications that you all will have in your possession. So, recess for lunch until one o'clock. . . .*(gavel)*. . .

RECESS: 11:25 a.m.

RECONVENE: 1:01 p.m.

CHAIR KAMA: . . .*(gavel)*. . . The Affordable Housing Committee of July 3, 2019 will now reconvene again. So, Members, I'd like to ask if all of you have your written conditions and if you have, if you'd like to read them into the record and then hopefully if we can find consensus on some of them, then we can go ahead and move forward. So, Mr. Sinenci, do you have any conditions or modifications?

(Note: TK, SS, MM, AL, KRF, TP in at 1:01 p.m., RH in at 1:03 p.m., YLS in at 1:05 p.m.)

COUNCILMEMBER SINENCI: To the Polanui, yeah?

CHAIR KAMA: Yes, for Polanui.

COUNCILMEMBER SINENCI: Oh, okay, we had some...

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CHAIR KAMA: That's the only one we're working on.

COUNCILMEMBER SINENCI: Alright, and we had come up with some from the testifiers as well that came up. So, under for fire, we had to install a water tank suitable for 120,000 gallons of water storage in case of fire. Be maintained in perpetuity a fire break as recommended by the fire, Maui Fire Department, Fire Prevention Bureau for boundaries around the subdivision. I believe it was up to 100 feet for a fire break. And also, when Captain Haake was here he mentioned about the fire-wise construction. So, to provide credits or funding for each home to install fire-wise construction such as the highest fire safe roofing materials, for instance, so, that was for fire. For water, the private water systems are expensive to develop and maintain and places the burden on homeowners. So, the development maintenance cost for the water systems will not be passed on to the affordable housing section and properties during the affordability period. For Planning, conditions for each Agriculturally-zoned market lot an annual report shall be submitted by the applicant to the Council listing the agriculture activities, crops, and income derived from agriculture. No short-term rental home permits or bed and breakfast permits, or conditional permits for rentals less than six months shall be permitted. Those are just some that, general ones that we have at this time, Chair. Thank you.

CHAIR KAMA: Thank you, Mr. Sinenci. Mr. Molina? Ms. Lee?

COUNCILMEMBER LEE: Madam Chair, you know, I'm ready to vote. It appears that we don't have enough support for this project or even the next one. So, to, you know, waste time running around the mulberry bush talking about conditions that we're not going to even use, why don't we get down to brass tax and vote on the projects right now, save everybody a lot of time and anxiety. So --

CHAIR KAMA: But let's continue on the roll...

COUNCILMEMBER LEE: --we're missing, we're missing...oh here, she's coming now.

CHAIR KAMA: Okay. So, well let's...

COUNCILMEMBER LEE: Because the thing is, Madam Chair, is if we don't have enough votes, and we saw from how, what happened earlier, yeah, that we don't. So, why are we going through this exercise? Why don't I just make a motion right now, vote for the project approval, and then more than likely it's going to fail, and then we all can go home happily ever after, you know. And that'll be the end of that. We wouldn't be wasting anymore time of our Staff, of ourselves, and our departments, and the developer and his team.

CHAIR KAMA: Okay. Well, let me just ask the other Members if they have any conditions or modifications. And if not, then we can do what you asked. Yes, Miss...

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COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, and since we're on that topic, over the break it was brought to my attention that under Roberts Rules, that Member Hokama, since he wasn't there for the vote, the three-three vote, that he would be able to ask for a reconsideration. So, if he wanted to ask for a reconsideration on that vote, then we could vote that way as well. Mahalo, Chair.

CHAIR KAMA: Okay. So, do you have any modifications or no, Ms. Fernandez Rawlins?

COUNCILMEMBER RAWLINS-FERNANDEZ: I do. I have a lot.

CHAIR KAMA: Okay. Do you want to read them into the record?

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Okay. One, lower AMI from 140 percent to 80 percent in perpetuity, and all workforce housing units are distributed as outlined in 15-307-2 HAR, and 15-307-26 for very low, low, low moderate, and moderate-income households, and that ten homes be offered in each category for a total of 50 affordable workforce housing units. So, two, the lottery for sale of these homes will be administered by the County's Department of Housing and Human Concerns to ensure the process and subsequent sales are just and fair. Three, all properties must be owner-occupied and owner may not own another property through trust, LLP, LLC, incorporation, or any other business organization. A, if they...four, developer must work with the Department of Fire and Public Safety to develop exit routes that are approved by MPD and our Fire Departments. Five, developer must pay a pro-rata share for public highway improvements to address traffic and safety issues. Six, cul-de-sac design not allowed, streets must connect within the subdivision and with neighboring streets and subdivisions for increased walkability, bike-ability, and reduction of traffic concerns within the project. Seven, market-priced lots must conform to all State and County requirements. Eight, increase the ag lot size from one acre to two acres, to conform with agriculture requirements, and follow the Maui Island Plan. Nine, developers must comply with HRS Section 11...no, it's HAR Section 11-62-1.1B and install an onsite wastewater treatment facility. Ten, developer will subsidize or completely furnish all ATU's for workforce housing units of this project. Eleven, if ATU's are to be used, expand the State minimum separation of three feet between infiltration surface and groundwater table to six feet. Twelve, this development may not have housing credit according to 2.96, Section 050A4. Only 100 percent affordable projects are eligible for housing credits. Thirteen, require that the developer show the Council adequate and consistent water supply before subdivision. . Okay. Mahalo, Chair.

CHAIR KAMA: Thank you, Ms. Rawlins-Fernandez. Mr. Hokama? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: I guess, can we have that in writing? Is --

CHAIR KAMA: Yes.

COUNCILMEMBER SUGIMURA: --did that get passed out --

CHAIR KAMA: Yes.

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COUNCILMEMBER SUGIMURA: --and I missed it?

CHAIR KAMA: Yes, we're going to.

COUNCILMEMBER SUGIMURA: Okay. Nothing, nothing to add.

CHAIR KAMA: Okay. So, I think, Ms. Lee, now, I think...oh wait, Mr. Rapacz, question. So, can we have Staff collect all the things and kind of like collate them so that everybody has it in front of them and then we can have a better discussion? Okay. We're going to recess until...Staff, how long do you think you'll need? Mr. Rapacz? Stacey?

MR. RAPACZ: . . .*(inaudible)*. . .

CHAIR KAMA: Okay. Until 1:15, we are now in a brief recess. . . .*(gavel)*. . .

RECESS: 1:11 p.m.

RECONVENE: 1:12 p.m.

(Note: No change in attendance.)

CHAIR KAMA: . . .*(gavel)*. . . Recess is now unrecessed. Okay. So, Ms. Paltin, could you please read your conditions into the record?

COUNCILMEMBER PALTIN: Sure, thank you, Chair. I'd like to, Chapter 2.80B, Maui County Code, General Plans and Community Plans, the exemption that is granted from the General Plan and community plans, I'd like that to apply only to the workforce lots identified as W-1 through W-50. Chapter 12.08, MCC, driveways, an exemption granted to exempt the project from the driveway permit and inspection fees for the workforce housing, I wouldn't like to exempt that, as well as the traffic and roadway improvements in West Maui. Pretty much, you know, all the exemptions that's requested in this, I'd like it to just apply only to the workforce units and not to the market-rate units.

CHAIR KAMA: Right. So, did you indicate that somewhere on the sheet in the front of you, that you only wanted it to apply to the workforce housing units?

COUNCILMEMBER PALTIN: It's, yeah, it's not super identifiable by the sheets that I have. But I didn't want to take everybody's time by reading everything that I have.

CHAIR KAMA: Okay. So --

COUNCILMEMBER PALTIN: But also...

CHAIR KAMA: --real quick, can you just, during the recess, can you just workforce, WHF [sic] it or something?

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COUNCILMEMBER PALTIN: Yeah, so, also...

CHAIR KAMA: WFH. Okay.

COUNCILMEMBER PALTIN: --no CPR's, no short-term rentals, no Airbnb. If it's not started within two years of the --

CHAIR KAMA: Approval date?

COUNCILMEMBER PALTIN: --by the end of 180 days from the effective date of this resolution, if they have failed to receive Maui County Council's approval of a State Land Use District Boundary Amendment from Ag to Urban, that the 201H expire. The developer shall act in good faith and with its reasonable best efforts to complete construction of all residential workforce housing units with all related roads and infrastructure not later than five years from the effective date of the resolution. The height of all buildings, including but not limited to the residential workforce housing and all homes be constructed on lots sold shall be limited to one story. The developer shall develop all workforce housing units before or concurrently with the development of market-rate lots. The developer shall develop non-potable water for irrigation with a yield sufficient to meet the non-potable water demand of all the existing dwellings in that service area for Launiupoko Irrigation Company before being offered to new homes. And that the County of Maui shall have the right to deny the issuance of subdivision approval if this isn't met. The developer shall record in the Bureau of Conveyance of the State of Hawaii restrictions permanently providing for the following, the residential workforce housing units shall by deed restriction be owner-occupied for a period of 30 years, provided however that if no loans are approved due to the 30-year deed restriction, the developer may request of the Council of the County of Maui via resolution an adjustment of the deed restriction. The developer shall not sell the units at market rate. The project shall comply with all applicable requirements of Chapter 2.96, MCC, and Chapter 201 HRS. The project shall be developed in strict compliance with the representations made to the Maui County Council in obtaining approval of this resolution and that the Department of Housing and Human Concerns shall oversee the distribution of all affordable units via lottery. No affordable units shall be promised or pledged to applicants prior to such lottery. Thank you.

CHAIR KAMA: Thank you. Okay. So, now we'll go into recess and Staff can collect it and make copies, redistribute. Thank you. And we will reconvene at 1:25 p.m. We are now in recess. . . . *(gavel)* . . .

RECESS: 1:18 p.m.

RECONVENE: 1:37 p.m.

(Note: TK, MM, AL, KRF, RH, SS, TP, YLS in attendance.)

CHAIR KAMA: . . . *(gavel)* . . . The Affordable Housing Committee of July 3, 2019 is now reconvened once again. So, Members, you all should have in the front of you I think

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four sheets of paper that we had copied that has my conditions, Shane's conditions, Keani's conditions, Tamara's conditions. So, I want to make sure that you all have that in front of you. And so, what my staff was trying to do was try to get and take a look at some of the conditions that may have similar types of conditions on it. And so, what we do have, and I think maybe the easiest one to begin with would be Mr. Sinenci's. So, if everyone has Mr. Sinenci's paper, it kind of looks like this, it's half a page, half a sheet. You got it, everyone? Okay. So, his first one it says number one, affordability provision for 30 years, not 10 years. And that's almost similar to what Tamara's, so, Tamara's is this, it says exhibit B on the top, so, if you want to pull that out and take a look. So, number 6a over here is similar to what Shane was speaking about affordability for 30 years. So, does that look like something you folks want to speak to, have consensus on? Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, I realize that we're going to discuss this. But I think this is, kind of has big implications for the developer to be able to do this project. So, I wonder if you would allow a comment from the developers --

CHAIR KAMA: Sure.

COUNCILMEMBER SUGIMURA: --on this.

CHAIR KAMA: Okay. Mr. Ginoza?

MR. GINOZA: Yes, regarding the 10 to 30-year deed restriction, we wouldn't be in favor. We could not do the above 10-year deed restriction. Thank you.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR KAMA: Thank you. Also, moving on, on Shane's page number seven...

COUNCILMEMBER SINENCI: Chair?

CHAIR KAMA: Yes, Shane?

COUNCILMEMBER SINENCI: I just wanted to speak to that 30 year one just real quickly on account our main priority is to provide affordable homes for the lower AMI and below. And this project only keep affordability status for ten years at which time as in the past, homes will likely be sold at market rates, this has greatly diminished our affordable homes inventory and that's forced families to move out of state. So, that is why we're putting in this 30 years because we've lost a lot of affordability inventory due to people putting it on the market right at the ten-year anniversary, and then now we gotta start all over again. So, that was my impetus. Thank you, Chair.

CHAIR KAMA: So, what we're wanting to do is just try to get consensus on all of the conditions. We're not making any, we're just allowing the developer to just tell us yes, no, and then, we're just going to keep moving on until we get all of the conditions that

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we can all have some consensus about and talk about that at that time. Yes, Ms. Paltin?

COUNCILMEMBER PALTIN: Oh, I just was wondering if the developer could please explain their expected profit margin for their investors?

CHAIR KAMA: Well, okay, hold on to that question 'cause let's do the conditions first. Can we do that?

COUNCILMEMBER PALTIN: Okay.

CHAIR KAMA: And then but hold on to that. Okay.

COUNCILMEMBER PALTIN: 'Cause it kind of ties into the 30 year and...

CHAIR KAMA: Right, so, when we have that discussion as a Council, then that would have to be part of that discussion to, for that decision making.

COUNCILMEMBER PALTIN: Okay.

CHAIR KAMA: Okay. Thank you. So, again, on Mr. Sinenci's number seven on the page, it says no short-term rental homes, et cetera. It's similar to what Tamara has on her page on 6c. So, if you want to read that it says use of operation of any dwelling on the 49 lots for, and it...so, they're similar, so, yes, Tamara, did you want to say something?

COUNCILMEMBER PALTIN: I meant to say use or operation of any dwelling for transient, the 49 lots, sorry, can you strike that?

CHAIR KAMA: Transient?

COUNCILMEMBER PALTIN: Yeah.

CHAIR KAMA: So, everyone put the word, transient, on your pages. And so, does that sound like something that we can all agree to, that that's what we want the wording to be, and what the understanding is? Okay. Thank you. So, those are two things that we all have consensus on. And then, there is Keani, Keani's number one is similar to my number three. So, my number three looks like this, it has Polanui on the top. And so, Keani wants to lower the AMI from 140 to 80 percent in perpetuity. And it just goes on from there. And mine talks about lowering it, and I have the income categories right there. So, these two are pretty much similar. But we can probably bring them up when we talk about what the categories actually are going to be, and what we actually are going to agree on. So, do we agree that these two are kind of like the same and they're similar? Okay. Okay. So, aside from that, so, that was a similar, that was similar, so, I think there are three similarities. And then, and I think, Tamara, you had your number one A and B is part of the reso already. So, we don't probably need to take that up 'cause it's already in the reso. Is that okay with you, Tamara?

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COUNCILMEMBER PALTIN: Yes.

CHAIR KAMA: Okay. Thank you.

COUNCILMEMBER SUGIMURA: So, delete that?

CHAIR KAMA: Okay. So...

COUNCILMEMBER PALTIN: . . .*(inaudible)*. . .

CHAIR KAMA: Yes?

COUNCILMEMBER PALTIN: The lottery one I think is, my lottery one is similar to Keani's lottery one.

CHAIR KAMA: Okay.

COUNCILMEMBER SUGIMURA: What number is that?

COUNCILMEMBER PALTIN: On hers it's number two, and mine it's...

CHAIR KAMA: What number is yours, Tamara?

COUNCILMEMBER PALTIN: Sorry...

COUNCILMEMBER SINENCI: Chair, just a question. Are we gonna vote on these afterwards?

CHAIR KAMA: We're gonna have a discussion about them. Right now --

COUNCILMEMBER SINENCI: Discussion?

CHAIR KAMA: --we're just trying to figure out what's the similarities so that we don't --

COUNCILMEMBER PALTIN: Number ten, sorry.

CHAIR KAMA: --. . .*(inaudible)*. . .

COUNCILMEMBER SINENCI: Thank you.

CHAIR KAMA: Okay. So, Tamara's number ten is similar to Keani's number two. Okay. So, now we all should have one, two, three, four. So, do we all have our sheets of paper in the front of us? And I think, I'm trying to figure out where to start, the simplest would probably be with the shortest. Is that okay with everyone? Okay. So, the shortest conditions are, were mine, I only have three conditions. So, if you wouldn't mind bearing with me we'll all walk through each of these conditions. But I want to let you know that I was trying to poll for another recess date. Chair has not approved any recess dates 'cause there are no recess dates. So, because you're all going to be gone

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and we don't have the turnaround time that we need. So, if not, if we don't and are not able to do anything, we have to complete by today, then, we're just going to discharge it to the full council and they're going to be able to, I mean, at that time then we'll be able to continue if we don't finish here. So, I just wanted to let you know that. Yes, Tamara?

COUNCILMEMBER PALTIN: I just was wondering how late we're going to go to? I can go until tomorrow morning if you want.

CHAIR KAMA: Did you all hear that? The Councilmember farthest from here is willing to go until tomorrow morning. What is the pleasure of the Council? And the other Member, more far, what is your, what is your pleasure?

UNIDENTIFIED SPEAKER: At the will of the body.

CHAIR KAMA: Okay. Mr. Molina?

VICE-CHAIR MOLINA: Wrap it up today as long as it takes.

CHAIR KAMA: Wrap it up as long as it takes. Ms. Lee, the closest Member?

COUNCILMEMBER LEE: If I had my way, we would wrap it up in 20 minutes. But apparently, I'm not having my way.

CHAIR KAMA: You're one-ninth of the way.

COUNCILMEMBER LEE: I have a tee time at nine o'clock, so any time before 8:00.

CHAIR KAMA: Any time before 8:00. Okay. And the Member that needs to fly on the plane here?

COUNCILMEMBER PALTIN: Did she mean eight o'clock tonight, or eight tomorrow morning?

CHAIR KAMA: Ms. Lee, would you like to clarify that please, for Ms. Paltin?

COUNCILMEMBER LEE: Generally, I don't golf at night.

COUNCILMEMBER PALTIN: Sorry, not a golfer.

COUNCILMEMBER LEE: I know, you're a surfer.

CHAIR KAMA: Ms. Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think I'm actually the farthest away --

CHAIR KAMA: Yeah.

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COUNCILMEMBER RAWLINS-FERNANDEZ: --Councilmember. So, yeah, I have a flight that I scheduled for tonight. But this is really important and I'm willing to stay as long as it takes. I know my children would be really happy if I go home tonight. And I'm, you know, with the mindset of Member Lee that if it is what it is, then we can vote and just be pau. So, I'm not super clear why we're going through the motions of doing this if it's kind of clear, the direction. But, I mean, if it's not clear, then I understand and yeah, so, I'm willing to stay as long as it takes.

CHAIR KAMA: Thank you. Mr. Hokama, is your plane waiting for you?

COUNCILMEMBER HOKAMA: That wouldn't make a difference, Chair --

CHAIR KAMA: Okay.

COUNCILMEMBER HOKAMA: --'cause I'm ready to vote, and I'm like Ms. Lee, I mean, why regurgitate the same thing over and over?

CHAIR KAMA: Okay. Thank you. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, yeah, I'm willing to stay as long as we need to. This is important for our community and you all can come to my house for dinner.

UNIDENTIFIED SPEAKER: More far.

COUNCILMEMBER SUGIMURA: True.

CHAIR KAMA: Okay. Okay. So, let's just push on as much as we possibly can. And it's at least...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: If Member Lee would like to move to reconsider the earlier vote, you were on the prevailing side.

COUNCILMEMBER LEE: Madam Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER LEE: I would like to move to reconsider the previous vote.

CHAIR KAMA: And you may.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR KAMA: Alice can...yeah.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Second, sorry.

CHAIR KAMA: Alice can move and make the motion.

COUNCILMEMBER HOKAMA: Second.

CHAIR KAMA: Riki seconded the motion. So, it's moved, we have a motion on the floor to...

COUNCILMEMBER LEE: Approve.

CHAIR KAMA: To approve?

COUNCILMEMBER LEE: Everything.

CHAIR KAMA: What's everything?

COUNCILMEMBER LEE: Both projects and the district boundary amendments, everything.

CHAIR KAMA: With or without modifications?

COUNCILMEMBER LEE: It doesn't matter because they would be included in the Committee report. And if we vote no, it really wouldn't matter. So, in other words...

CHAIR KAMA: I think we have to take each one individually. Mr. Rapacz...I mean, Mr. Ueoka?

COUNCILMEMBER SUGIMURA: Ueoka.

CHAIR KAMA: Is it one sweeping motion, or four individual?

MR. UEOKA: I think if the body desires to do it in one big motion, you may.

COUNCILMEMBER LEE: Okay. So, if I may speak to the motion?

CHAIR KAMA: Yes, you may speak to the motion to approve.

COUNCILMEMBER LEE: Okay. All, yeah, all four.

CHAIR KAMA: The two projects and the two DBA's?

COUNCILMEMBER LEE: Yes, yes. So...

CHAIR KAMA: With or without modifications?

COUNCILMEMBER LEE: Okay. With modifications.

CHAIR KAMA: Okay.

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COUNCILMEMBER LEE: Okay. I did want to ask, before I begin my explanation, I did want clarification from Mr. Welch, the project, the developer's attorney on the question that was brought up earlier about the requirements from DCCA.

CHAIR KAMA: Okay. But let's kind of like back up to your motion again, sorry. According to Mr. Rapacz, the motion should read, is to adopt the resolution.

COUNCILMEMBER LEE: Okay. I move to adopt the resolution approving the Polanui project and also approving the Makila Rural-East project 501, both 501...

CHAIR KAMA: Two oh one.

COUNCILMEMBER LEE: I mean 201H's, and also --

CHAIR KAMA: The district...

COUNCILMEMBER LEE: --the district boundary amendments for both projects.

CHAIR KAMA: Okay. Staff, did we get that motion?

COUNCILMEMBER LEE: So, John, is that correct?

CHAIR KAMA: And it was...

COUNCILMEMBER LEE: And with modifications.

MR. RAPACZ: Thank you, Madam Chair --

CHAIR KAMA: Yes?

MR. RAPACZ: --Member Lee, yeah, we have to be clear which resolution, it would be approving with modifications on each of the 201H --

COUNCILMEMBER LEE: Yes.

MR. RAPACZ: --and recommending approval of the bills for ordinances approving the district boundary amendments with conditions.

COUNCILMEMBER LEE: Okay. That's my motion, then.

CHAIR KAMA: So, there was...so, Alice made the motion and Riki made the second. Okay.

COUNCILMEMBER LEE: Yeah.

CHAIR KAMA: Thank you very much.

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COUNCILMEMBER LEE: So, if I can speak to the motion?

CHAIR KAMA: Yes, you may. Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of clarification real quick. So, initially, you said moving for reconsideration. So, you scratch that, and this is just a totally new motion?

CHAIR KAMA: Yeah.

COUNCILMEMBER LEE: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo.

COUNCILMEMBER LEE: Okay. Any more questions, everybody? Okay. Moving on, Mr. Welch, did, can you give that clarification so I can start on my explanation for my motion?

MR. WELCH: Yes, thank you. The application is not incomplete. In connection with that, the point that was raised earlier that they're not registered to do business in Hawaii, it is a Colorado LLC, it is in good standing in Colorado, it was, the certificate of good standing was provided with the application. And all they do so far is own land. And owning land in Hawaii is expressly exempt from the registration requirements. And what we're doing here is deciding whether or not Kipa Centennial will in fact be doing business on this project. And if it is approved, then registration will be done. It's a very simple process. In fact, I think I called my secretary to ask her to go ahead and register it today. It should not be a technical obstacle to the application being approved.

COUNCILMEMBER LEE: So, I'm speaking for myself when I say that I am committed to affordable housing and wherever I can, I will support projects that are affordable. There was criticism about the projects being, or segmenting, and I just want to...which circumvents State and County laws and processes. Well, I just want to remind everybody a 201 project by its very definition is a circumvention of a number of laws and the Code. It circumvents in this case, a Change in Zoning process, it circumvents the planning, community plan amendment process, it circumvents paying for fees, and meeting other sections of the Code. It's a massive circumvention. But the reason for the circumvention, it is to promote affordable housing and it's really what it amounts to is a subsidy for our people. For those who cannot afford market homes, this is what we do in order to provide affordable housing, we circumvent the laws. But this process was meant to do that. So, you know, when you talk about circumvention, remember, it's from the day one we're circumventing with 201H's. And then secondly, this, as mentioned, this project is not perfect, but neither is any other project. The idea that we haven't had many affordable homes built in West Maui in the last ten years is a real concern to me. And, you know, I remember one person saying, oh, just build it in Central Maui. Yeah, they have been, everybody's been building in Central Maui. I think we have our share, in fact, beyond our share. But we keep taking more and more homes because other places reject them. You know, everybody wants affordable

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housing until it's in their, on their street or in their neighborhood. I hope people will be more welcoming, you know, and, you know, show the aloha spirit. Yeah, we have to share. And traffic will always be a problem for every project. So, Madam Chair, I am voting in favor of this project knowing unfortunately we probably don't have enough votes to pass it through. But thank you for letting me speak. Thank you.

CHAIR KAMA: Any other discussion? Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I too will be supporting this project as I stand with my fellow Councilmembers speaking about how we need to support working families. And particularly, our firefighters, the people who we work with, the Police Department, our educators, people who, and our hotel workers, people who work really hard every day just to put a roof over their heads and food on their table. And very interesting, I went to visit the area, I just drove around. And there's a lot of really beautiful homes there, super beautiful. And I think some of them probably came before us in this project or the earlier one with Greg Brown last year and said enough, you know, not in my back yard. And at some point, our community welcomed them, or us to live in the community. And I think it's with that same open arms that I wish that we would let everybody have a roof over their heads and be, you know, provide this opportunity. I just want to make a statement about Peter Martin. So, just through the years of learning about Mr. Martin, I don't know if any of you remember, but this same piece of property he was looking at to provide places for the homeless. And that's when I first met Peter Martin. I just thought what an amazing person, you know. His land at Launiupoko, he wanted to make it available. And it didn't go, I wasn't in the Council, but it didn't go, it didn't get passed. But, so, that homeless, or people could, you know, put up tents or have some kind of temporary housing. Recently, I met with him and he was talking about some of his projects. And I just want the Members to know that when he speaks about providing homes for working families, he has tears in his eyes just talking about the process when their name gets pulled and they get to live there, you know, have some place that they can call their home. And this is a person that you probably won't know unless if you sit and talk to him. But I think it's with this kind of heart that he wants to do this affordable project. He doesn't have to. And as you all know, that he can build more mega-mansions easily. He doesn't have to come and get Council approval. But that's where we're pushing developers if we do not support affordable housing, workforce housing, you know. And so, I take this job kind of seriously like that. And there's never a perfect project, there's never a perfect situation. But how can we open our hearts and allow for projects like this to happen and fit in with the other mega mansions that, you know, that are so lucky to live in Launiupoko and have the beautiful ocean views and, you know, I think the project is trying to work wholeheartedly for, you know, the water concerns that we heard about and the septic systems and, you know, they try to find solutions and I'm going to support this project because I hope that it gets built. I hope that other Members, you know, you can look at this and open your hearts up and know that this is about neighbors that we care about, people that are living in their cars, people that will never have this opportunity to have this beautiful property. And the developer is providing this opportunity. So, Chair, I'm going to be voting to support this along with the motion made by Member Lee. But I just really wanted to say that, all of this, and I think it's important, really important.

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CHAIR KAMA: Ms. Paltin, did you have something?

COUNCILMEMBER PALTIN: Thank you, Chair. Yeah, that was beautiful. And so, anyway, you know, the truth of the matter is that we're an island nation with limited resources. And if we continue at this rate, there won't be, we won't meet our goals. It's not going to pencil out that after ten years it becomes double worth of what you originally bought it. Last night I was at a PTA meeting and there were several people that lived in the 100 percent affordable that was just built in the Kahoma flood area. And, you know, they were offended that they were solicited to support this not smart growth project. And they said that people in their neighborhood are already looking to cash out after ten years, and they're going to double their money. And I was like, where are they going to move to, you know? It's like they said, well, you know, their kids graduated, they can move to the mainland and buy a bigger mansion. And we've lost out on our affordable inventory. And, you know, I think that if we're going to be solving the problems of affordability, then we need to pick and choose which laws we're going to circumvent, and if we're circumventing laws, why don't we circumvent laws on speculation? Why don't we circumvent the laws of all the apartments in West Maui that have been grandfathered in as TVR's? There's way more than 88 TVR's and short-term rentals in West Maui. So, I mean, why aren't we doing circumvention that actually solves the problem, that doesn't just give lip service to the problem. And for me, you know, we gotta do better than this. This is not good enough. It's not going to solve the problem. It's just going to; it's going to give 100 people a lottery ticket to double their money in ten years. That's all it's going to do. It's not solving the problem. We gotta do better.

CHAIR KAMA: Thank you, Ms. Paltin. Any other...yes, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. You know, I, when it comes to the 201H and circumventing, I think it doesn't circumvent the DBA, correct, for the 201H? I think the 201H is a great process, and we really need that process to create more affordable homes. However, it seems like when we're, you know, fast tracking and putting us on a 45-day time limit doesn't, you know, if it's a good project, great. But if there's some concerns and issues about a project, then it almost seems to work against the whole process. And for me personally, I have a serious problem with putting families into eminent danger when we're putting them into a prone fire area with high winds, low brush, and that really contributes to a safety hazard, you know, especially if there's, you know, numerous cul-de-sac's, no exit rows, roads, for potential evacuation. So, for me, that's safety issue, water, if you have enough water to fight a 2-hour fire, a 10-hour fire, a 24-hour fire. So, those things I'm concerned about putting this project where it's situated. Previously, this project has, was discussed at over 11 Council meetings. And from what I understand, the sentiment was for the developer to use maybe possible other lands that he owns within central Lahaina for more urban scaled affordable housing where it would be easier to tie into County infrastructure systems such as water and sewer. There is nothing new about the project and its problems. Launiupoko is already widely known for the County's failure in enforcing Ag-zone lots. So, by approving this project, today we continue the shortfalls of our own policy making. So, I

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think we should learn from our past mistakes, move forward, and create more, some truly affordable housing for this County. Thank you.

CHAIR KAMA: Any other discussion? Mr. Molina?

VICE-CHAIR MOLINA: Yeah, thank you very much, Madam Chair. Well, let me first start off by commending the developer, Mr. Martin. You know, he's making an effort. Now, whether it's the best he can do, you know, that's subject for debate. But it's never easy, especially in this area. I was previously on the Council years ago when a project I think Mr. Martin was involved with, the Puunoa, and that was a very contentious project. It never made it, but it had a lot of debate. And for just some reason, I remember hearing a testifier saying earlier that maybe this area is maybe cursed, or there's some pilikia with building in this area, you know, large-scale projects. But these are the red flags for me is, as it was mentioned by some of my colleagues the fast-tracking process for these two projects. My preference would be for this to have gone through the more, I guess the longer process, but more traditional process to go before the Planning Commission, then eventually come to our Land Use Committee, and then we can have more time to have this project, these projects vetted out. You know, our backs are against the wall with a 45-day clock ticking on a project of, you know, this magnitude, so, that's one. The uncertainties with water, I don't know if it was mentioned, but the cultural aspect of the stream use. That and as well as the residents, the existing residents, they're complaining about the water pressure going down. And I started to think, if you add another 100, 150 units, then what then? What's going to happen to the folks, the residents, more and more complaints. And then, who's on the hook for that, the County as well. The CPAC process, the West Maui CPAC, they're still in the process of addressing the community plan. My preference would be to have waited to see what the community wants in this area, respect what the community is saying because these folks are going to be the ones affected by projects like this and others the most. And with regard to affordable housing, in a perfect world I'd like to see it 100 percent affordable, or maybe more than that. But that's not the realities of it. The affordables proposed here, it's just for ten years. And then after ten years you can turn around and sell it for the market rate. I mean, it's the society we have, or the system, the economic system, capitalism. I mean, you know when you buy a house for \$200,000 25 years ago, you're not going to sell it, if you want to sell it today, you ain't gonna sell it for \$200,000. It's just common sense, you know, if somebody's willing to pay a market rate amount for your house, you sell it. And then, we're back to square one, so then, no more affordables again. It would be nice to have affordable units proposed in perpetuity. But that's not the case here. And so, that in a nutshell for me, Madam Chair, is just there's a number of red flags that I'm just not willing to move forward on this at this point. So, and I know the process is a, you know, I get the word circumvention kind of has a negative connotation to it. I mean, I understand why you have it. But then, there's also a reason why you not have it as well because you need to hear from the community on this. And so, thus far, I've heard more opposition towards this project than I've heard support for it. So, it's tough because all of us support affordable housing. We do need housing on the west side. And that's part of the frustration. Maybe Mr. Martin didn't have to come to us with this project because we had previously approved projects, Pulelehua, you know, Villages of Leialii. And then,

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we've got a couple of other projects on the backburner that was stated to us by Ms. Munsell. So, that's the tragedy, you know, all these projects that was approved before, where are they? You know, we could've had a number of units put out there already. And, you know, Mr. Martin wouldn't have to have done this proposal. So, that's the frustrating part. So, my no vote is not a condemnation of this project but more out of frustration for why these previously approved projects weren't, you know, built. So, that's the sad part about it. But my understanding is Mr. Martin has property in other areas such as Wainee, maybe that site could, you know, possibly be looked at for a future project as well, and then, the Star Noodle and some other affordables. So, there are other areas that we can consider. But whatever the fate of this project, you know, so be it, if it passes, it passes, if, you know, if not, so be it. But those are my concerns, Madam Chair. Thank you.

CHAIR KAMA: Thank you. Any other discussion? If not...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo.

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: I will be voting against the motion. I know it comes to you as probably a surprise. I absolutely support affordable housing. As my colleagues who have voiced their reasons for not voting in support of this project, I support affordable housing but not any cost. And as with my colleagues, I support affordable housing that is done responsibly. This is not about not supporting affordable housing. This is about doing what's right. This problem of lacking affordable housing for our community is not one that we're just going to continue to build sprawl and build our way out of it, especially when these affordable houses flip out of affordability in a mere ten years and then we're right back to where we were. The previous Council disapproved the Makila Kai project and I believe they got that right. We know that this project was previously one large project before it became three separate projects. And it went before the Land Use Commission, the State Land Use Commission. But because it had required an EIS, the developer withdrew his application before the Land Use Commission. The impacts of these three projects are the same as it would be if it was one large project. And in fact, my understanding of what I read, and we didn't get to that discussion, but I believe that it would just still require an EA. And, you know, the State agencies that commented on these projects were not favorable. And I think that their comments should mean something. And, you know, I think Member Hokama got it right in 2017 at the Makila Kai project when disapproving it in saying that, you know, 100 percent affordable. I mean, that's really what we need. So, yeah, I'll be, you know, voting against the motion to support approval of this project. Mahalo, Chair.

CHAIR KAMA: Ms. Lee?

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COUNCILMEMBER LEE: Thank you, Madam Chair. I just wanted to make a couple points. First of all, there are two primary factors that contribute to the lack of housing in West Maui and every region. And they include government regulations, or over regulations, and a lack of adequate infrastructure. So, my thinking when I came back on the Council was, I was going to do everything in my power, along with my colleagues, to fight these tough issues. Because what's happened over time, unfortunately, as the issues became tougher, the Council and County government simply abdicated its responsibility to others, to the developer. Oh, developer, you take care of homelessness, you take care of providing for the low-income families, you take care of everything. But that's our job, and this is what I like about you, Madam Chair, is that you're not afraid to find ways to help those in need. And I think it's our job, the government's job to take care of the very low end. We take care of the zero to 100, and private developers take care of 100 and above because we can't build homes and keep people down. Their house is their only way up. Their house is the only way they can achieve upward mobility. If they can't use their house as leverage to pay for college educations, medical bills, pay off credit cards, then what's the sense of even having a house? You may as well rent. But what we need to do is provide a range of houses for our people, not just so that they can live in the house, or require them to live in the house forever, for 30 years and not get nothing out of the house. Let them be in a position to move upwards. And that's how, that's what we need to do, is our job is to give people options. And right now, we're not giving them options. So, I'm hoping that our whole view and vision and plan for action is going to change so that we can focus our government money on heavily subsidized housing on the low end, and let the developers take the medium and upper gap homes forward. Thank you, Madam Chair.

CHAIR KAMA: Thank you, Ms. Lee. Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I gotta disagree on for West Maui that it's government regulations and lack of infrastructure. West Maui's the best place to live in the world.

CHAIR KAMA: Well, Ms. Paltin, I just want to hold you up for a minute. This discussion must be germane to the motion on the floor and the motion on the floor is to approve with modifications. It's what the reso says. So, I don't think that talking about how great Lahaina is, is part of the, the motion --

COUNCILMEMBER PALTIN: I'll get to the point.

CHAIR KAMA: --in terms of the reso. Okay. Go ahead.

COUNCILMEMBER PALTIN: So, you know, when you have a really desirable place to live, not much else matters. I mean, they're selling multi-million-dollar homes with lack of infrastructure in the west side. It's not like, I mean, I don't want to put any other place in Maui County down, but you don't have multi-millionaires like stumbling over themselves to buy land in someplace not as desirable as West Maui, you know. So, I mean, it doesn't matter how easy we make it if we don't deed restrict it to more than ten years, it's not going to fulfill the inventory because everybody likes to --

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CHAIR KAMA: Everything is . . .*(inaudible)*. . .I

COUNCILMEMBER PALTIN: --live in West Maui. It's the best place in the world. It's, I mean, people come, Maui Visitors Bureau did their, a really good job. All the west side hotels did a really good job. Everybody wants to come live in West Maui so that nobody that has to work to serve these people has a place to live, that's the reason. It's not because of government regulations. If anything, it's lack of government regulations in letting all these places become TVR's, and STRH's, and then, people don't have a place to live. And then, that's compounding everything. It's not government regulations, it's lack of, and it's because of the desirability that West Maui is facing this horrible crisis. And I'm suggesting that we don't play by the same rules that got us into this position. But we, you know, look at other circumventions that will actually solve the problem. We can't --

UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER PALTIN: --there's no way with 201H that we can build ourselves out of this problem unless it's 100 percent affordable, like how Kahoma is 100 percent affordable, like how, you know, Waiale Elua is 100 percent affordable, like how the Kihune's one by the sewage treatment plant is 100 percent affordable. It's not like it's never been done before. One hundred percent affordable has been done, and that's one step in the right direction. But there's other tools that we should employ to solve this problem.

CHAIR KAMA: Thank you. So, Ms. Lee, so, I think you wanted to complete your motion to have it include that, to include the filing of the communications and other substantive...

COUNCILMEMBER LEE: Yes.

CHAIR KAMA: Okay. Non-substantive. Okay. Just wanted to make sure that, the Staff wanted to make sure you did that. Okay. Got it. So, I'm going to call for the vote.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: Before you call for the vote --

CHAIR KAMA: Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: --so, in case it is approved, or in case it does, if it's disapproved and then it comes back to us, there are project proposal minimum requirements in HAR 15-307-26 Section 5 that discusses the financing of the project. So, I didn't find that information anywhere. So, if you know, this does come back to the Council, or if it does move forward, I believe that this information, and I believe it does, is required, it is not a may, it's a shall, shall contain this information and it doesn't. So, yeah, so just that.

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CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: In case it moves forward and in case it comes back to us that it contained that information 'cause it . . . *(inaudible)*. . .

CHAIR KAMA: Okay. Members, are you ready for the question?

COUNCILMEMBER LEE: Question.

CHAIR KAMA: One Member, two Members, I need at least four.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, point of clarification?

CHAIR KAMA: Thank you. Yes?

COUNCILMEMBER RAWLINS-FERNANDEZ: What are the modifications?

CHAIR KAMA: They're all in the front of you.

COUNCILMEMBER RAWLINS-FERNANDEZ: All of them?

COUNCILMEMBER SUGIMURA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: All...

CHAIR KAMA: All of those in the front of you.

COUNCILMEMBER SUGIMURA: That came with the project.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, all of the...

CHAIR KAMA: The pages that are, you should have four.

COUNCILMEMBER RAWLINS-FERNANDEZ: The documents that was distributed by Staff?

CHAIR KAMA: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR KAMA: All those in favor of the question say "aye."

COUNCILMEMBER LEE: Aye.

CHAIR KAMA: Aye.

COUNCILMEMBER SUGIMURA: Aye.

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CHAIR KAMA: All those opposed, no.

COUNCILMEMBER SINENCI: No.

VICE-CHAIR MOLINA: Roll call.

CHAIR KAMA: Roll Call. Mr. Sinenci?

COUNCILMEMBER SINENCI: No.

CHAIR KAMA: Mr. Molina?

VICE-CHAIR MOLINA: No.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: Aye.

CHAIR KAMA: Ms. Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: No.

CHAIR KAMA: Mr. Hokama?

COUNCILMEMBER HOKAMA: No.

CHAIR KAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Aye.

CHAIR KAMA: And I will vote yes. So, Staff, did we get those numbers?

VOTE: AYES: Chair Kama, Councilmembers Lee, and Sugimura.

**NOES: Vice-Chair Molina, Councilmembers Hokama,
Rawlins-Fernandez and Sinenci.**

MOTION FAILS.

CHAIR KAMA: Okay. So, motion fails, correct?

COUNCILMEMBER LEE: Correct.

CHAIR KAMA: Okay.

COUNCILMEMBER LEE: I think...

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CHAIR KAMA: Yes, Ms. Lee?

COUNCILMEMBER LEE: I think, Madam Chair --

CHAIR KAMA: Yes?

COUNCILMEMBER LEE: --we have to vote to disapprove.

CHAIR KAMA: To disapprove, right?

COUNCILMEMBER LEE: Yeah. Yeah, right?

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: I move to disapprove the...

CHAIR KAMA: What are you voting to disapprove?

COUNCILMEMBER RAWLINS-FERNANDEZ: All four items. Can I say that?

CHAIR KAMA: The resolution?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay. Oh, we have to take it separately.

CHAIR KAMA: You want to take...

UNIDENTIFIED SPEAKER: . . . *(inaudible)*. . .

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. Together and four, right?

CHAIR KAMA: We're going to call for a recess --

COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR KAMA: --until 2:30. . . . *(gavel)*. . .

RECESS: 2:23 p.m.

RECONVENE: 2:30 p.m.

CHAIR KAMA: . . . *(gavel)*. . . The Affordable Housing Committee of July 3, 2019 is in reconvenience [sic], hopefully for the last time. So, the Chair's looking to entertain a motion to adopt both the resolutions, to disapprove the two 201H projects, and to file the communications regarding the DBA's.

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COUNCILMEMBER HOKAMA: I'll make the motion to move, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR KAMA: So, Mr. Hokama has moved, and Councilmember Fernandez Rawlins has second. Discussion? Hearing none...yes?

COUNCILMEMBER SUGIMURA: As we heard a lot of discussions about people's feelings, that this project is going to be only ten years affordable and then it'll, you know, people will make money off of it, there's a portion of the law that I wonder if maybe just for education for all of us called shared appreciation and I wish somebody, Mr. Ueoka, or the Director could educate us about what happens to an affordable project? Because money comes back to us, so it's not like the person gets to, you know, make mega bucks. Can anybody, or do I...Mr. Ueoka, or somebody, Mr. Ueoka?

CHAIR KAMA: Mr. Ueoka, would you like to take that real briefly?

MR. UEOKA: I'll try to be brief, Chair. In 201H there's a requirement that basically says there needs to be a shared appreciation restriction on the subsidized homes. It doesn't keep them at affordable rates. It just, the County will get some of the money if it is sold. But it can sell for whatever price, and basically the calculation per 201H is original fair-market value minus purchaser's original base purchase price, divided by the original fair-market value rounded to the nearest 1 percent. Net appreciation is calculated as follows, current fair market value of dwelling unit is originally purchased excluding any capital improvements by the purchaser subsequent to original price, purchaser's original base price, oh I'm sorry, minus purchaser's original base price, actual sales cost incurred, if any, any shared appreciated equity agreements entered into on or after August 27, 1999 shall not be eligible to deduct sales cost. So, there's a provision in there. So, thank you, Chair.

COUNCILMEMBER SUGIMURA: So, can you give it to us in layman's terms?

CHAIR KAMA: Mr. Ueoka?

MR. UEOKA: I hate simplifying these things, but basically, if it is sold at market price, there's a subsidy ratio calculated, and we'll get a percentage of that. But obviously, it's a little more complicated from what you heard. Thank you, Chair.

CHAIR KAMA: Thank you, Mr. Ueoka.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR KAMA: Thank you, Members. So, if no other discussion, I'd like to call for the question. All those in favor of the motion please say "aye."

COUNCILMEMBERS: Aye.

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CHAIR KAMA: All those opposed.

COUNCILMEMBER LEE: No.

COUNCILMEMBER SUGIMURA: No.

CHAIR KAMA: No. Okay.

COUNCILMEMBER LEE: I think three “noes.”

COUNCILMEMBER SUGIMURA: Three “noes.”

CHAIR KAMA: Three “noes,” and four “yeses.” Thank you. Oh, did you want to do a roll call vote? Okay. Mr. Sinenci?

COUNCILMEMBER SINENCI: Yes.

CHAIR KAMA: Mr. Molina?

VICE-CHAIR MOLINA: Aye.

CHAIR KAMA: Ms. Lee?

COUNCILMEMBER LEE: No.

CHAIR KAMA: Ms. Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Aye.

CHAIR KAMA: Mr. Hokama?

COUNCILMEMBER HOKAMA: Aye.

CHAIR KAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No.

CHAIR KAMA: And I’m no. Thank you.

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VOTE: AYES: Vice-Chair Molina, Councilmembers Hokama, Rawlins-Fernandez and Sinenci.

NOES: Chair Kama, Councilmembers Lee and Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: None.


MOTION PASSES.

ACTION: Recommending ADOPTION of proposed resolutions to disapprove both 201H projects and FILING of communications for both district boundary amendments.

CHAIR KAMA: So, at this time there doesn't seem to be anything else on the agenda unless somebody else sees something that I do not. Okay. You good? Okay. So, Members, thank you very much for a job well done. Thank you for all your discussion. Thank you for your candidacy, for your honesty. Thank you to all the departments who are here. And know this though, that while we did not allow this to go through, that the developer can go ahead and sell his lots, they're ag lots, to whomever he wants for however they want. And our people will never be able to get that view on that mountain top. So, just know that, I would've loved the mountain top view. But maybe that's not the place. But thank you. So, this meeting is now adjourned at 2:34 p.m. . . .(gavel). . .

ADJOURNED: 2:34 p.m.

APPROVED:



TASHA KAMA, Chair
Affordable Housing Committee

ah:min:190703r:mt

Transcribed by: Marie Tesoro

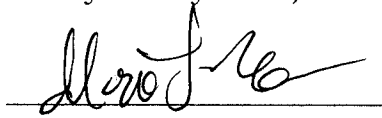
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CERTIFICATE

I, Marie Tesoro, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 29th day of July 2019, in Wailuku, Hawaii

A handwritten signature in black ink, appearing to read 'Marie Tesoro', is written over a horizontal line.

Marie Tesoro