

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

May 20, 2020

Online Only Via BlueJeans

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly Takaya King
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez
Councilmember Yuki Lei K. Sugimura

STAFF:

Ana Lillis, Legislative Analyst
Alison Stewart, Legislative Analyst
Laksmi Abraham, Legislative Analyst
Richard Mitchell, Legislative Attorney
David Raatz, Supervising Legislative Attorney
Clarita Balala, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Christi Keliikoa, Executive Assistant to Councilmember Tamara Paltin

Kate Griffiths, Executive Assistant to Councilmember Kelly Takaya King

Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez

ADMIN.:

Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

Michele McLean, Director, Department of Planning

John Rapacz, Planning Program Administrator, Department of Planning

Jacky Takakura, Administrative Planning Officer, Department of Planning

Livit Callentine, Planner, Department of Planning

Kurt Wollenhaupt, Planner, Department of Planning

Rowena Dagdag-Andaya, Director, Department of Public Works

Jordan Molina, Deputy Director, Department of Public Works

OTHERS:

Albert Perez (PSLU-25)

Charlene Schulenburg (PSLU-25)

Lucienne de Naie (PSLU-25 & 29)

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Daniel Boren (PSLU-29)
Ann Bassel (PSLU-29)
Leslie Spencer (PSLU-29)
Michael Schaefer (PSLU-25)
Rob Weltman (PSLU-25)
Rob Parsons (PSLU-25)
Ryan Zaikoski (PSLU-29)
Erik McLellan (PSLU-29)
Michael Binder (PSLU-29)
Vernon Kalanikau (PSLU-25 & 29)
Marian Prosser (PSLU-29)
Stephen Hynson (PSLU-29)
Alex Stone (PSLU-25)
Daniel Coltart (PSLU-29)
Duane Ting (PSLU-29)
Fred Borsum (PSLU-29)

Dr. Sujata Bhatia (PSLU-25)
Dominic Crosariol, Dominic M. Crosariol Engineering LLC (PSLU-25)
Henry Spencer (PSLU-8)
(4) additional attendees

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR PALTIN: ...*(gavel)*... Will the Planning and Sustainable Land Use Committee meeting of May 20, 2020 come to order. The time is now 9:01 a.m. If everyone can please silence any cell phones or noise-making devices at this time so it doesn't disrupt the proceedings. My name is Tamara Paltin, and I'll be the Chair of your Planning and Sustainable Land Use Committee for today. With us on the Committee, we have my Vice-Chair, Shane Sinenci. Good morning.

VICE-CHAIR SINENCI: Aloha kakahiaka kākou from East Maui.

CHAIR PALTIN: Aloha kakahiaka. We also have Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Good morning and aloha to you, Madam Chair, and blessings to my colleagues and to the general public, and aloha from beautiful paniolo country Makawao.

CHAIR PALTIN: Aloha. And we also have our Council Chair, Alice Lee.

COUNCILMEMBER LEE: Madam Chair, in case you're traveling to South Africa, you want to tell the people there, shikamoo. Shikamoo is a greeting down there in Kenya. So, they may tell you in return, aloha, but you can tell them shikamoo.

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CHAIR PALTIN: Okay. Shikamoo to you too. We also have our Council Vice-Chair, Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair, mai Molokai.

CHAIR PALTIN: Aloha kakahiaka mai Napili. We also have Councilmember Kelly King this morning.

COUNCILMEMBER KING: Aloha kakahiaka, Chair. I may...if I freeze up today, I may have to run over to my husband's computer, but we'll see how this works for today.

CHAIR PALTIN: Okay. Thank you.

COUNCILMEMBER KING: We're getting my computer worked on every day so, hopefully, the doc can fix it.

CHAIR PALTIN: Okay. And we also have last, but not least, Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, everybody. I'm calling you from beautiful Kula. And today is graduation at ten o'clock in the morning for King Kekaulike High School. Mike and I share the many residents and people who live in this community, and they'll be celebrating their COVID-19 commencement at ten o'clock in the morning. So, aloha, everybody.

CHAIR PALTIN: Ho`omaika`i. Our non-voting Committee Members are Tasha Kama and Riki Hokama, and I don't see them on the line but they're welcome to join us at any time. With us today is Corporation Counsel, supposed to be Mike Hopper. Yeah, he's on --

MR. HOPPER: Yes.

CHAIR PALTIN: --the line. Good morning.

MR. HOPPER: Good morning, Chair.

CHAIR PALTIN: And from the Administration, Department of Planning, we have Director Michele McLean. Good morning.

MS. McLEAN: Aloha, Chair. Good morning.

CHAIR PALTIN: Aloha. And Livit Callentine, a Planner, as well as John Rapacz --

MR. RAPACZ: Good morning, Chair.

CHAIR PALTIN: --Planning Administrator. Good morning, Mr. Rapacz. From the Department of Public Works, we have Deputy Director Jordan Molina. Ms. Callentine.

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And I think maybe Jordan Molina is not on yet. Okay. And for...kind of static going on. Okay.

COUNCILMEMBER KING: Chair --

CHAIR PALTIN: For...

COUNCILMEMBER KING: --you have . . .*(inaudible)* . . .

CHAIR PALTIN: Yes?

COUNCILMEMBER KING: Oh, I was just going to say you had a guest on that wasn't muted but she muted herself.

CHAIR PALTIN: Oh, right on. Thank you. For 1488 South Kihei Road representative, we have Sujata Bhatia.

MS. BHATIA: Yes, aloha.

CHAIR PALTIN: Good morning. Aloha.

MS. BHATIA: Good morning. Aloha.

CHAIR PALTIN: And for Pā'ia Courtyard representative, we have Henry Spencer. He might not be on yet. Oh, he's on. Okay. Good morning, Mr. Spencer. For our Committee Staff, we have Clarita Balala, our Committee Secretary; Jean Pokipala, our Council Services Assistant Clerk; Ana Lillis, our Legislative Analyst; Nicole Stewart, another Legislative Analyst; and Laksmi Abraham, a Legislative Analyst as well. On the agenda today, we have three items, Community...PSLU-25, Community Plan Amendment for 1488 South Kihei Road, Kihei; PSLU-29, Zoning Standards for Canopy Tour and Zipline Operations in the Agricultural District; and PSLU-8, District Boundary Amendment, Community Plan Amendment, and Change in Zoning for the Proposed Pā'ia Courtyard Project at 120 Baldwin Avenue, Pā'ia. Testimony. Let's begin with public testimony, oral testimony via phone or video conference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link and entered in code number 597 785 199. Actually, the code is 994 504 421. Testifiers wanting...as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290, and entering meeting code 944 504 421 [*sic*], also noted on today's agenda. Written testimony is also encouraged by sending your comments to pslu.committee@mauicounty.us. Oral testimony is limited to three minutes. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying, please state your name. If you are testifying on behalf of an organization or are a paid lobbyist, please inform the Committee. Staff post a link to the testifiers' login chat. So, testifiers will be able to see where they are on the list. However, please be mindful of the use of chat during the meeting. Chat should be limited to items on the agenda and should not be used to provide testimony

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or chat with other testifiers. If providing testimony, please be courteous to others by muting your microphone while waiting for your turn to testify. Participants who wish to view the meeting only without providing testimony, please view a live cablecast on *Akakū*, Channel 53. You can also visit mauicounty.us/agendas to access live and archived meeting videos. I remind Committee Members, Administration, and the public to please be patient with us as we continue to navigate through this new platform. So, at this time, I'd like to proceed with oral testimony. Staff has been monitoring people joining today's meeting by phone and by video, and we will do our best to take each person up in orderly fashion. Okay. Staff, will you please call the first person on the list to testify?

. . . BEGIN PUBLIC TESTIMONY. . .

MS. LILLIS: Yes. The first person on the list to testify is Dominic. And, Dominic, for the record, please state your full name.

CHAIR PALTIN: Thank you.

MR. CROSARIOL: Dominic Crosariol.

CHAIR PALTIN: Okay. Please begin.

MR. CROSARIOL: . . . *(inaudible)* . . .

MS. BHATIA: Actually, I'm sitting in the same room as Dominic. But I am the owner of 1488 South Kihei Road, and I see that Councilmember Kelly wants to mute me. Do you want me to speak now or later, Councilmember?

CHAIR PALTIN: Oh, was Dominic...did Dominic want to provide a three-minute testimony or did he not want to provide a three-minute testimony?

MR. CROSARIOL: On my computer --

MS. BHATIA: It's on --

MR. CROSARIOL: --it's just...

MS. BHATIA: --his computer.

MR. CROSARIOL: It's on my computer.

MS. BHATIA: We're sitting in the same room. So, it's on his computer but I'm the owner. So, if you would...is it...are you desiring something from me at the moment? Are you wanting me to say something towards the property in question? I'm not sure of what you would like of me?

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CHAIR PALTIN: Not necessarily. When we...when your item comes up, you will have an opportunity to make opening comments.

MS. BHATIA: Okay. Okay. Then --

CHAIR PALTIN: Okay.

MS. BHATIA: --Dominic --

CHAIR PALTIN: Okay.

MS. BHATIA: --is the civil engineer. We're just sitting in the same room. I don't think he has anything other than just what I would say later when you would invite me. Thank you.

CHAIR PALTIN: Okay. Let's move on to the first testifier then after Mr. Dominic.

MS. LILLIS: The next testifier is Albert Perez.

CHAIR PALTIN: Mr. Perez, can you unmute yourself?

MR. PEREZ: Good morning. I'm surprised to be first.

CHAIR PALTIN: Oh, right on. Okay. Mr. Perez, we can hear you but we can't see you.

MR. PEREZ: Oh.

CHAIR PALTIN: Do you have your video turned on?

MR. PEREZ: Yeah, I unlocked my video. So, I don't know what else to do, but as long as you can hear me.

CHAIR PALTIN: Okay. Let's get started then.

MR. PEREZ: So, you know, this property has been up before the Council --

CHAIR PALTIN: Oh, I'm sorry --

MR. PEREZ: --before.

CHAIR PALTIN: --can you mention which property you're talking about, which PSLU --

MR. PEREZ: I'm sorry --

CHAIR PALTIN: --item?

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MR. PEREZ: --I'm speaking to PSLU-25. This is the Community Plan Amendment for 1488 South Kihei Road.

CHAIR PALTIN: Okay. Thank you. Sorry about that. Please continue.

MR. PEREZ: Sure. And, you know, I just want to point out a couple of things. You know, the Kihei-Makena Community Plan is going to be coming up. It already has some provisions in there that talk about protecting the wetland resources. And I think we need to give a lot more emphasis to this. There's also some very strong language in the Maui Island Plan. Policy...sorry, objective 2.3.3 says preserve existing wetlands and improve and restore degraded wetlands. This property has a water table that's about a foot or two below the ground, and with 3.2 feet of sea level rise, we're going to be seeing it surfacing pretty soon, and this whole area is going to be having a similar problem. We don't need to be creating more problems for future property owners by allowing people to build in this area. I also want to say that yesterday, the West Maui Community Plan adopted a policy, and I don't have the exact wording, but it was basically to protect ocean and stream water quality by requiring that wetlands be preserved along with their surrounding buffers. The buffers are an essential part of an aquatic ecosystem and will have natural vegetation to shield wetlands from polluted runoff, soil erosion, toxic chemicals, and other human disturbances. So, I just like to point out that we've lost so many wetlands in Kihei. And when you lose your wetlands, you lose flood storage, which makes flooding worse for neighboring property owners, and you also lose your filtering ability. The wetlands filter out the sediments during floods. We had a big flood back in April. So, I just think we need to go ahead and file this and let this come up in the full context of the community plan review for South Maui. Mahalo.

CHAIR PALTIN: Okay. Thank you, Mr. Perez. Members, any questions for Mr. Perez? Seeing none, thank you so much for your testimony.

MR. PEREZ: Okay. Mahalo. Aloha.

CHAIR PALTIN: Thank you. Staff, will you please call the next testifier on the list?

MS. LILLIS: The next testifier is Charlene Schulenburg. Please identify yourself and the items you're testifying on. You will have three minutes to testify.

CHAIR PALTIN: Thank you. Mister...Miss...sorry, Ms. Schulenburg, can you unmute yourself?

MS. SCHULENBURG: Aloha. Can you...aloha, can you hear me?

CHAIR PALTIN: Yes, we can hear you and see you.

MS. SCHULENBURG: Oh, good. Well then, I should get in my position so you can see the wetlands. Good morning, everyone. How are you? I wanted to first of all thank all of you 'cause I know that you all sit on the Budget Committee, and you guys just went

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through a big process and that you had set aside in proviso \$200,000 approximately for wetland conservation and identification, and all the things that we talked about at that time. So, I know that it's not confirmed. I know it's still, you know, budgetary confirmation that needs to continue, but I personally wanted to really thank you guys because these are super important monies and will help identify even further how important these wetlands are as they filter all the bad stuff that happens in rains. And I don't know if you all heard but Michigan is underwater, 500-year storm is occurring right now. So, the more that we can do now to try to protect ourselves with sustainability and all of those wonderful words that we talked about, self-sustainability, resiliency, the more that we can protect ourselves now, the better off hopefully we'll be in the future. That being said, I am a citizen. I am located not too far away from this particular wetland, which is 1488 South Kihei Road, PSLU number 25. I am speaking with multiple hats on so you can tell me which one you guys want to hear from. I'm speaking as a citizen. I'm also speaking as a...an organizer with Vernon Kalanikau with the Save the Wetlands hui. I am also speaking, you know, as someone who has been caring for the wetlands myself here at Lā'ie for ten years. I've put my own money, my own time, my own resources, and talent to this. So, I have some hands-on experience but I am by no means an expert, but I do have a lot of . . . *(inaudible)*. . . regarding this particular property. I did not expect to be speaking early on. I know that Vernon may not be able to join us and he was, I believe trying to give some of his time perhaps to me. So, I will just speak and, Chair Paltin, if you can just let me know when I need to wrap up. This particular property falls within the corridor of the area of the wetlands we described from the Save the Wetlands group and therefore is part of the wetlands. You know, it's on everybody's radar. This particular wetlands has multiple complications to it. So, there's about, you know, 35 reasons I could give why it should not be developed. I'm concerned because it is a subdivision now that is being proposed. Unfortunately, we got a little bit caught off-guard because we have recently been notified that there are several agencies that have been reviewing the subdivision plans on this, and that many of these agencies have already signed off as to moving the project forward. That being said, we don't quite understand what stage this is in and why we haven't had a hearing before. And so, we're a little caught on our back feet understanding what that is. We forwarded some of these checklists to you guys last-minute this morning. We have recently become aware of them. So, we're concerned about the process. We want --

CHAIR PALTIN: Ms. Schulenburg...

MS. SCHULENBURG: --the process to be fair to everybody. Pardon me?

CHAIR PALTIN: Ms. Schulenburg, Mr. Kalanikau did contact me this morning, and he asked if you could represent the Aha Moku O Kula Kai and asked if you could be designated as a resource person. So, I'll just ask the Members at this time if there's any objection to having Ms. Schulenburg as a resource person when this item comes up on the agenda?

COUNCILMEMBERS: No objections.

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CHAIR PALTIN: Okay. Seeing --

COUNCILMEMBER KING: No objections.

CHAIR PALTIN: --that there's no objections, we'll forego questions at this time. Can you stay on the line until the item comes up?

MS. SCHULENBURG: Absolutely.

CHAIR PALTIN: Okay. Thank you. Let's --

MS. SCHULENBURG: Thank you.

CHAIR PALTIN: --move on to the next...thank you. Let's move on to the next testifier please.

MS. LILLIS: The next testifier is Lucienne de Naie, testifying on PSLU-25 and PSLU-29. Please unmute yourself and identify yourself and any organization you represent. You will have three minutes per item. Please unmute yourself.

MS. de NAIE: Aloha.

CHAIR PALTIN: Ms. de Naie?

MS. de NAIE: I...yes, I am unmuted. I'm not going to turn on my video because I don't have much bandwidth here. So, sorry. It's nice to see you all.

CHAIR PALTIN: I understand.

MS. de NAIE: I'm speaking as a private individual today. But as a person, many...not many...maybe not many people testifying today actually participated in the update of the community plan for Kihei-Makena back in the 1990s when our current plan was formulated, but I did, I attended many, many meetings between 1993 and '94, and when it was finally adopted in 1998. And it was a great intention at that time to really look at ways that we could manage and protect the wetlands that surround what was called in the community plan, the Lipoa Business District. This doesn't just mean businesses in the Lipoa area, although obviously, there are wetlands by the...where the Azeka Shopping Center was built, that was built on a wetlands and a new wetland was created. There are wetlands by Lā'ie, Saint...next to Saint Theresa's Church, and there are wetlands on this property, the adjoining property to the south, the property across the street, the adjoining property to that to the south, everywhere between Lipoa and Welakahao were wetlands, and there were muliwai, and there were fishponds, and it was a whole system. And we are really taking this out of order by not allowing this issue to be resolved in the current update of our community plan, which is coming up. Our community plan back in the 1990s recognized that this was an important area and it put in special provisions that these wetlands would be protected, would be restored, would be managed as open space. The Maui Island Plan

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built on that same principle and said, you know, we not only have to protect wetlands and create buffers around them, but we need to restore their capacity because we just had a flood like what was it, last month, in early April. And that whole section of road was flooded, in part because these wetlands have been compromised and can't absorb the water when it comes. So, really, you should defer this matter. It should be filed, and that land should be properly put in the correct category when we come to the community plan update for South Maui. And also, we should have a provision for actually purchasing and managing these wetlands, and I'm really happy that there's money in the Budget to start looking at taking care of the wetlands we have and planning for the future. So, I really urge you not to give designation that allow the development of one more wetland in Kihei. It's not what we need. Thank you very much. I'll move on to PL-29 [sic]. PL-29 [sic] is about the conditional permits for ziplines. You know of course, the ziplines that are good-faith members of our community, and there are several of these, are really doing things right. They're situating themselves on large properties. They're, you know, managing their clients that come to enjoy the zipline experience. They are, you know, giving back by, you know, planting trees and doing other environmentally-friendly things. But we have bad-faith players as well especially on ag land. And we have one right in our neighborhood in Huelo. These people without a permit, they're in the SMA District, they won't allow anybody on their land to look. They set up a zipline right along the streambed which is completely illegal, and they really terrorize the local residents that live adjacent to them, threatening to turn them into the Planning Commission if they say a peep about this illegal operation. The first week it was opened, a woman was injured. The ambulance couldn't even get down the road 'cause it's so narrow. They had to stage at Hana Highway, try to bring the woman up by stretcher. So, there are really...there are some very slippery-slidey sort of operations, and we do need a permit process. And I fully support the idea that these be confined to larger pieces of land. Like the one I'm mentioning is I think it's 15 acres is what they own in total, and it's just not enough to mute the screams and mute the traffic impacts, and so forth. So, these really need some oversight and I'm really happy this bill is being introduced. And the good-faith players, you know, have already been doing things by the rules...even without rules, but the bad-faith players have not. So, thank you for moving this forward.

CHAIR PALTIN: Thank you, Ms. de Naie. Members...Ms. Sugimura, you have a question for the testifier?

COUNCILMEMBER SUGIMURA: Yeah. Thank you, Chair. So, Ms. de Naie, nice to hear from you. And I know that you're very in touch with your Ha'ikū community. So, are you saying that there's a zipline close to you?

MS. de NAIE: Yes, in Huelo, one stream over from where I live on Waipio Stream.

COUNCILMEMBER SUGIMURA: Do you know what it's --

MS. de NAIE: Yes.

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COUNCILMEMBER SUGIMURA: --called?

MS. de NAIE: I think it's called the Jungle Zipline something. I have pictures of its sign.

COUNCILMEMBER SUGIMURA: Oh.

MS. de NAIE: They had their sign --

COUNCILMEMBER SUGIMURA: Okay.

MS. de NAIE: --illegally placed on Hana Highway every day.

COUNCILMEMBER SUGIMURA: Oh.

MS. de NAIE: Well, not --

COUNCILMEMBER SUGIMURA: Okay.

MS. de NAIE: --anymore but they did, yes.

COUNCILMEMBER SUGIMURA: Okay. Okay. I just thought maybe there was another one that I don't know of. Okay. Jungle Zipline. And thank you very much for your testimony.

MS. de NAIE: Yes.

CHAIR PALTIN: Thank you. Members, any further questions for the testifier? Seeing none, thank you for your testimony, Ms. de Naie. Staff, will you please call the next testifier please?

MS. LILLIS: The next testifier is Mike Schaefer. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You have three minutes per item. Please unmute yourself.

CHAIR PALTIN: Thank you. Mr. Schaefer, ready? Mr. Schaefer, can you unmute yourself? I don't see Mr. Schaefer on the list. Was it a telephone call?

MS. LILLIS: He may have dropped off. We can come back to him if we see him on the list again but we can move on.

CHAIR PALTIN: Okay.

MS. LILLIS: Okay.

CHAIR PALTIN: Thank you.

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MS. LILLIS: The next testifier has the last four digits 9045. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You have three minutes per item. Please unmute yourself, last four digits 9045. I've been notified that he's been dropped off as well. We'll move on to the next testifier, Daniel --

CHAIR PALTIN: Thank you.

MS. LILLIS: --Boren, testifying on PSLU-29. Please identify yourself for the record and/or any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You'll have three minutes per item. Please unmute yourself.

MR. BOREN: Do you...would it be better for me to testify now or before the zipline ordinance is discussed? I'm happy to wait.

CHAIR PALTIN: We don't...we're just going to do all the testimony at one time right now because that was really complicated last time.

MR. BOREN: Okay. Well, I just want to...I'm the owner of Skyline Eco-Adventures. I testified last time as well. So, thank you all for, you know, hearing this new ordinance as well. I think this new ordinance is much better written. The prior version I don't think quite did the...did what was intended. But I think this new ordinance is well-done. I fully support it as written. When we first started our company in 2002, we really were trying to identify large landowners where we could help to support agriculture, help to provide an alternative to development of second homes for people, and an income stream for these large open spaces. And so, Haleakala Ranch was an obvious place to look. The parcel we're on up there is a nearly 10,000-acre parcel. So, very, very large piece of land. But they at the time had what they consider their activity center, or their ranch outpost, excuse me, right along Crater Road, and they had an existing operation of Haleakala ATV tours, which you guys might remember, and Pony Express horseback riding tours, which you guys might remember as well. They've been pre-existing on Crater Road for many years. So, when we went in, met with the ranch, at that time Buzz Stluka was the CEO, they said hey, why don't you guys look to stage on the same spot so we can consolidate the activities right there on the way to the national park. So, that's what we did. We found a topography that would work for our zipline tour back in 2002 right there on the gulch on Pohakuokala Stream there and that area is within a 1,000 feet of the nearest homes. Unfortunately, that's what was set up. That's where they had staged them. So, that prior version as written unfortunately, I think wasn't well-written in the fact that, you know, in our case, the 1,000-foot restriction or even 500-foot restriction would have penalized an operation like ours on a huge piece of land with a valid agricultural operation that was staged there specifically because that's where the activities were staged on the property. So, I like how this new version is written via this, setting aside a process so that any future operator has to go through conditional use permits and conditions can be placed on them. They could require them to be farther from property boundaries or anything like that. It's great for all future operations. But current operations like

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ours were put in specific places and, you know, 18 years of track record and, you know, we have a really good relationship with the community. We're really proud of the company we built, and I think that this new ordinance does a great job of saying, hey, these activities are not appropriate on small pieces of property. If you own, you know, five, ten acres in Ha'ikū, you can't go and open a zipline for your next-door neighbors. That's not what this is intended to be. But if you are on . . .(inaudible). . . Okay. Okay.

CHAIR PALTIN: Thank you so much, Mister...

MR. BOREN: Yeah, I support this bill as written. Thank you.

CHAIR PALTIN: Right on. Members, any questions for Mr. Boren? Seeing none, I'm so glad that we were able to work this out then in that case.

MR. BOREN: Perfect. I appreciate it. Thank you.

CHAIR PALTIN: Thank you. Okay. Any further testifiers, Staff?

MS. LILLIS: Yes.

UNIDENTIFIED SPEAKER: I'm here.

MS. LILLIS: The next...oh, we're going to go down the list.

CHAIR PALTIN: I was talking to the Staff --

UNIDENTIFIED SPEAKER: Okay.

CHAIR PALTIN: --not to the testifiers.

MS. LILLIS: So, the next testifier is Ann Bassel, testifying on PSLU-29. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state all the items that you're testifying on. You will have three minutes per item. Please unmute yourself, Ann Bassel.

MS. BASSEL: Thank you. Good morning to everyone. My name is Ann Bassel. I live in Ha'ikū. I'm three properties over from the NorthShore Zipline, off of Kauhikoa Road. And I'm calling in to provide my support for this wonderful proposed ordinance and would like to see it go on to the Planning Committee [sic] to take a look at, but I really, really appreciate the changes that have been made especially the 50 acres. And I think some of the changes will allow for existing ziplines who are in good standing, unlike NorthShore, to be able to continue to operate with a conditional permit. So, I'm absolutely in favor of it and very, very appreciative that something is being done. And in our case, the COVID-19, the Governor's proclamation and the Mayor's proclamation has saved us for weeks now from the constant six days minimum of screaming, yelling, horrible loud noise. And with the exception that very typical of NorthShore

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Zipline on Sunday, Mother's Day, they had a huge group go through, and we had all the screaming and yelling, and that was not only in violation of the...both the Governor's and the Mayor's proclamations but it was also...and also including the separation of people, there's no way you can stand on a zipline platform with nine or ten people and maintain social distancing. . . .(inaudible). . . part of the agreement with the County in December of 2019, I'm sorry, 2018, that gave a permission; which we are appealing, a group of us are appealing, but any rate, that agreement also stated that there would be no tours on Sundays. So, not only was it Sunday, it was Mother's Day, and they're allowed to have special circumstances. But no matter how you look at it, Sunday, Mother's Day, was outrageous. The police were called. They showed up and they won't give a report to someone who doesn't own that property. So, I'd...that would have to be checked into. But I just want to say I really, really appreciate the ordinance and...that's proposed, and I'm very much in favor of it, and thank you.

CHAIR PALTIN: Thank you, Ms. Bassel. Members, any questions for the testifier? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Ms. Bassel, for being here and testifying. So, did you say Mother's Day, they had a tour there?

MS. BASSEL: Yes, yes, yes, yes, yes, it was awful.

COUNCILMEMBER SUGIMURA: And --

MS. BASSEL: It was awful.

COUNCILMEMBER SUGIMURA: --did you also say that if you get on the zipline on the platform, there's no way of six feet of our current proclamation --

MS. BASSEL: No, not with --

COUNCILMEMBER SUGIMURA: --that we have in...

MS. BASSEL: --nine or ten people, no, no. At...and also, you have to have...the guides have to guide people in. So, they've got hands on catching them as they come off of the zipline, and then everyone's piled under these . . .(inaudible). . . There were seven or eight platforms, I can't remember how many. I mean I'd never ridden on it. But there are these little platforms and of course, they're on there, chatting, screaming, laughing, and woohoo'ing everyone who rides down. So, it's very, very noisy, and there's no way to maintain social distancing.

COUNCILMEMBER SUGIMURA: Okay. Thank you. I'm so sorry for what you're experiencing. Thank you very much.

MS. BASSEL: Thank you. I'm grateful to you. Thank you so much.

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CHAIR PALTIN: Members, any further questions for the testifier? Seeing none, Staff, let's proceed with the next testifier.

MS. LILLIS: I've been informed that the...the testifier with the last four digits 9045 has reconnected to the meeting. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You have three minutes per item. Please unmute yourself, last four digits 9045.

MS. SPENCER: Aloha. This is Leslie Spencer.

CHAIR PALTIN: Aloha.

MS. SPENCER: Can you hear me?

CHAIR PALTIN: We sure --

MS. SPENCER: So, I am calling --

CHAIR PALTIN: --can.

MS. SPENCER: --in regards to PSLU-29. I reside two properties above the NorthShore Zipline. I do support the proposed ordinance, and I thank you, mahalo. I'm...we are all very, very tired of being terrorized for years now and I beg you folks to really look into this, and I appreciate everything you do. Mahalo.

CHAIR PALTIN: Members, any questions for the testifier? Seeing none, let's move on to the next testifier please.

MS. LILLIS: The next testifier has the last four digits 3259. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You have three minutes per item. Please unmute yourself, last four digits 3259.

MR. SCHAEFER: Hello.

CHAIR PALTIN: Hello.

MR. SCHAEFER: Hello. Can you hear me?

CHAIR PALTIN: Yes, we sure can.

MR. SCHAEFER: Good morning.

CHAIR PALTIN: Can you please tell us --

MR. SCHAEFER: Okay.

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CHAIR PALTIN: --your name?

MR. SCHAEFER: Sure, my name is Michael Schaefer. I'm a resident of Kihei, representing myself and nobody else, and no organization. I've lived in Kihei for seven years now, not far north of the property that is under discussion, and I've witnessed for myself firsthand the many times that Kihei Road has been flooded because of overflow from the wetland properties that just can't be handled. I don't want to belabor the testimony that's gone before me except to say that I think this issue needs to be addressed in a larger context of the community plan that I understand is already in place, and I would recommend and hope that the Commission will instead wait for this to be included in a larger...much larger discussion on the management of wetlands. Thank you.

CHAIR PALTIN: Thank you, Mr. Schaefer. Members, any questions for the testifier? Seeing none, thank you so much, Mr. Schaefer, for your testimony today.

MR. SCHAEFER: Thank you.

CHAIR PALTIN: Thank you. Staff, can you call the next testifier please?

MS. LILLIS: The next testifier is Rob Weltman. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Rob Weltman.

MR. WELTMAN: Aloha mai kākou e nā lālā o ke kōmike o PSLU. 'O Rob Weltman ko'u inoa, hau'oli wala'au au i kēia kakahiaka i ka hui o Sierra Club e pili ana i ka 'ikamu o PSLU iwakāluakūmālima waiho i ka ho'ohuli ana o ke ana kekahi 'āpana ma Kihei. Good morning, Chair Paltin and Members of the PSLU Committee. And my name is Rob Weltman. I'm testifying this morning on behalf of Sierra Club Maui on item PSLU-25, and I am a Kihei resident. The Sierra Club has long been an advocate for consistency between the community plans and zoning designations, and for respecting the will of the community as expressed in the community plans. But sometimes we learn through experience that certain decisions were not as well-informed as they may have...could have been. In the 22 years since the development of the Kihei-Makena Community Plan, North Kihei has experienced repeated flooding of South Kihei Road and groundwater events. There's been significant research including the Southwest Maui Watershed Plan. It helps us understand the consequences of paving over the wetlands. The wetlands are one of nature's ways to slow down, absorb, and filter runoff from storms. It's too late to reverse most of the land use and development decisions that brought us to this point but we can avoid making matters worse. The 2021 County Budget sets aside money to study the best way to preserve the remaining Kihei wetlands. We urge you to not make any zoning or permitting decisions that will preempt that work or the work on the new South Maui Community Plan. Mahalo.

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CHAIR PALTIN: Thank you, Mr. Weltman. Members, any questions for the testifier? Seeing none, thank you so much for your testimony, Mr. Weltman.

MR. WELTMAN: Mahalo.

CHAIR PALTIN: Staff, will you please call the next person to testify?

MS. LILLIS: The next testifier is Rob Parsons. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Rob Parsons.

MR. PARSONS: Aloha and good morning. I believe I've unmuted myself. I hope you can hear me.

CHAIR PALTIN: We can see you and hear you.

MR. PARSONS: Okay. My name is Rob Parsons. I live in Ha'ikū. I'm testifying on PSLU-25, the wetlands parcel. While I initially supported the idea of down-classifying the community plan designation of Business/Commercial to Single-Family, I now think that the plan...your plan and goals are...community plan and goals are better served by, as previous testifiers have said, waiting and considering this in a larger regional context of the Kihei-Makena Community Plan review. I'm very familiar with this parcel. I've researched it and the surrounding area for some ten years. During that time, the owner, project consultants, and Planning Department have gone to great lengths to get the US Army Corps of Engineers to state that a mitigation...they approved to add fill to the...to elevate the parcel in the early 1990s means that it's not a certified wetland. But rather than engage in that semantical debate and its implications, I would urge you to look at the two attachments that I submitted with my written testimony. The first is a map supplied by Michael Reyes of the Southwest Maui Watershed Planning. He's a senior ecologist, and he submitted the map of nationally recognized wetlands for this area. And the second is a recent aerial photo. One of the previous testifiers noted that there was a big rain event, a rain event in early April. This is from April 7th, and it shows flood water surrounding the subject parcel. And I think both are good indicators of why this parcel is a poor candidate for any sort of development either residential or commercial. Some of you were part of the deliberations in January 2018 to deny a Change in Zoning request to develop the proposed Kihei Wellness Center. Subsequently, the owner has now proposed a four-lot subdivision on the parcel. It's unclear whether this proposal is still being considered and that should be clarified. Those who attended the site visit in 2017 may recall a detention pond that is shared by this parcel and Kihei Veterinary Center [sic]. The Army Corps' permit required that this feature be maintained in perpetuity. Over the years, the pocket wetland has become the home and nesting site of the ae'o or Hawaiian stilt and other water birds. Their ongoing presence requires compliance with the Federal Endangered Species Act due to their status as protected endangered species. But I would note that there has been zero efforts to interface with US Fish and Wildlife Service for consultation in developing a Habitat Conservation

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Plan. I can finish in a couple sentences. I would note that Dr. Fern Duvall of DLNR has stated that pocket wetlands such as this one are especially important for the survival of endangered species because the larger populations at the larger wetlands like Kanahā and Keālia are susceptible to periodic die-offs from avian botulism. And he has monitored chicks being born there for nearly the last 20 years. You can see that I had a little more written testimony. And thank you again for your time.

CHAIR PALTIN: Thank you. I see we do have some questions for you. I'll call on Member Rawlins-Fernandez. She's the only one I see at the moment with a hand up. So, Ms. Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I would like to request Mr. Parsons to be a resource for our Committee. Is that possible?

CHAIR PALTIN: Any objections from the Members?

COUNCILMEMBER KING: No objections. I support that if Mr. Parsons can stay.

COUNCILMEMBER MOLINA: No objections.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mr. Parsons, are you available to stay on for the meeting?

MR. PARSONS: Yes, I will. I can mute myself again. And if you need any input as I said, I've got a large file. I've...pretty familiar with the subject parcel and the area.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. And you were a former County Environmental Specialist. So, I believe that you have a lot to share with the Committee.

MR. PARSONS: I'd be happy to remain on.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair.

CHAIR PALTIN: Thank you . . . *(inaudible)* . . . I had a quick clarification if you don't mind. On Page 4 and 5 of your submittal, is that red rectangle the 1488 property?

MR. PARSONS: I don't know which one you have. Is that on the map or is that on the flood photo?

CHAIR PALTIN: The flood --

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: --photo, I guess.

COUNCILMEMBER KING: Chair?

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CHAIR PALTIN: Yes?

COUNCILMEMBER KING: It says in the legend that that red square is 1488 South Kihei Road --

CHAIR PALTIN: Oh --

COUNCILMEMBER KING: --if you look on the legend.

CHAIR PALTIN: --not the one with the legend, the aerial photography.

COUNCILMEMBER KING: Oh, the one that says Welakahao on the left-hand side or...

CHAIR PALTIN: Yeah, that one.

COUNCILMEMBER KING: Oh.

CHAIR PALTIN: It's the --

MR. PARSONS: I'm pulling --

CHAIR PALTIN: --red --

MR. PARSONS: --that up now.

CHAIR PALTIN: --rectangle.

MR. PARSONS: Yes. Yeah, the...that is --

CHAIR PALTIN: Okay.

MR. PARSONS: --the subject parcel. And just in front of it, you can see the roof of the Kihei Veterinary Center [sic]. So, that is the one-acre subject parcel. And the retention pond is filled with muddy water, and it's, you know, it extends all the way around to the rest of that block and across the street as well.

CHAIR PALTIN: Thank you. Thank you for that clarification. And thank you for remaining on as a resource person.

MR. PARSONS: You're welcome. Thank you.

CHAIR PALTIN: Staff, will you call the next testifier?

MS. LILLIS: The next testifier is Ryan Zaikoski, last four digits 0178, testifying on PSLU-25 [sic]. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying

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on. You will have three minutes per item. Please unmute yourself, Ryan Zaikoski, last four digits 0178.

MR. ZAIKOSKI: Director of Finance --

CHAIR PALTIN: Hello --

MR. ZAIKOSKI: --of Skyline Eco-Adventures. Hi, I'm --

CHAIR PALTIN: --Mister...

MR. ZAIKOSKI: --Ryan Zaikoski, the Director of Finance of Skyline Eco-Adventures, speaking on behalf of PSLU-29 for the zipline ordinance. To start, I'm not the best public speaker so I apologize if it sounds like I'm reading a book as I wrote it earlier. I support the proposal as written. This proposal provides justification and process clarification for future entrance into the zipline and aerial tour market in Maui County, it also creates an avenue for current grievances while not penalizing long-standing operators such as Skyline, which has been contributing to Maui's economy, reforestation, and environmental rehabilitation for over 18 years now. Being that tourism likely is not going to return throughout this coming busy summer season, our operators are going to be struggling financially to stay afloat until March of '21. And pre-COVID-19, Skyline employed upwards of 90 employees. So, it will be detrimental to our staff and Maui's economy should we need to close again in 2021 when this economy is coming back to life in order to complete a special use permit process. From a financial perspective, Skyline contributes millions annually to the Maui economy through payroll, our internal policy to giving preferential treatment to local vendors, and sales local...or State's sales and income taxes. Additionally, through the years, Skyline has donated over a million-and-a-half to environmental and local nonprofits, and we also encourage each of our employees to volunteer within the community, and we pay them for their volunteer hours. These volunteer hours can consist largely of whatever they choose but can also be used towards planting of 10,000-plus native trees and shrubs at Skyline's planted through its reforestation efforts with its employees, cohorts, and other local community efforts. I'm not aware of any grievances of Skyline zipline courses, and we've always made efforts to be good stewards of the community in which we operate. That ideology is the core component of our new hire training process, and it's constantly reiterated throughout the culture of Skyline. I encourage the passing of this proposal as written, not an effort to restrict competition but as a means to finalize the County legality of ziplines and aerial tour operators while not unduly penalizing operators who have been peacefully co-existing and contributing in their communities. And thank you, thanks for everyone's time today.

CHAIR PALTIN: Thank you so much for your testimony, Mr. Zaikoski. Any questions for the testifiers [sic], Members? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Ryan, for being here and for testifying. So, as...I think you said you're like in charge of operations, is that correct?

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MR. ZAIKOSKI: The Director of Finance.

COUNCILMEMBER SUGIMURA: Director of Finance.

MR. ZAIKOSKI: But...

COUNCILMEMBER SUGIMURA: Oh, okay.

MR. ZAIKOSKI: Yeah.

COUNCILMEMBER SUGIMURA: Well --

MR. ZAIKOSKI: We...

COUNCILMEMBER SUGIMURA: --let me ask you this question then, and maybe I'll ask somebody --

MR. ZAIKOSKI: Sure.

COUNCILMEMBER SUGIMURA: --else or if it may be more appropriate. But I was just...part of what we're asking for is each operator of a zipline or canopy must maintain the following records, and make them available to the Director or the Council if it's requested. And the last one is sign participant acknowledgements of risk and rules of conduct. So, I was just wanting to know if your...or operation or zipline operations go through rules of conduct or have written standards that you set for your operations?

MR. ZAIKOSKI: We do. We have written waivers. Our General Manager is actually in the queue to give testimony as well. He might be a better one to speak on behalf --

COUNCILMEMBER SUGIMURA: Okay.

MR. ZAIKOSKI: --of this as far as the...what's written is, you know, obviously, we have --

COUNCILMEMBER SUGIMURA: Okay.

MR. ZAIKOSKI: --liability waivers that are all . . . *(inaudible)*. . . but I'll leave that question to him actually if that's fine.

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

CHAIR PALTIN: Thank you.

MR. ZAIKOSKI: Thank you.

CHAIR PALTIN: Mr. Zaikoski, was your General Manager Daniel Boren?

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MR. ZAIKOSKI: Actually, Daniel Boren is the owner of the company. Erik McLellan, as I believe in the queue coming up shortly, he's our General Manager.

CHAIR PALTIN: Okay. Thank you. Thank you so much.

MR. ZAIKOSKI: Thank you.

CHAIR PALTIN: Members, any further questions for Mr. Zaikoski? Seeing none, thank you for your testimony, Mr. Zaikoski.

MR. ZAIKOSKI: Thank you.

CHAIR PALTIN: Staff, can you please call the next testifier?

MS. LILLIS: The next testifier is Erik McLellan, testifying on PSLU-29. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Erik McLellan.

MR. McLELLAN: Hi, everyone. Can you hear me okay?

CHAIR PALTIN: Yes, we can. Can't see --

MR. McLELLAN: Okay. Great. Thank you.

CHAIR PALTIN: --you but we can hear you.

MR. McLELLAN: Oh sorry, I'm not in a spot where I can hop on video. I apologize that I...

CHAIR PALTIN: No problem.

MR. McLELLAN: Yeah, well, I'll start. My name is Erik McLellan, and I've been the General Manager for Skyline for over 15 years. And, Ms. Sugimura, I can answer your question now or I can go through my testimony first.

CHAIR PALTIN: It's up to you.

MR. McLELLAN: Okay. Well, I'll just going to say what I was going to say, and then I'll be happy to answer any questions following. So, I just wanted to say I'm here to obviously voice my strong support for this proposal, and Danny and Ryan has mentioned a few of the points I wanted to make as well, but I want to first say I just appreciate everyone's time being here. I know it's a lot of time and can be tedious and frustrating sometimes for a lot of people, and I really appreciate the recognition of the changes that have been made to this ordinance, and Ms. Bassel and Ms. de Naie, and some of the other neighbors recognizing some of the subtleties here. And I think it's important that all these comments are understood in the context of what the intent of this proposal is, and I don't know all the other zipline operators, I do know many of

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them. I certainly can't speak for them except for Skyline but I can definitely say with a lot of confidence that I feel like Skyline and many of the other long-time operators have been a really positive part of the communities they operate in. Like Danny and Ryan mentioned, we've been operating for 18 years, and we've been contributing to the economy and communities in a lot of other ways besides just the tourism. I feel like a lot of times, ziplines and tourism in general has some negative connotations to it, but there is a way a lot of these tours operate in extremely positive way. And outside of the educational tours, we offer...we've worked very closely with our neighbors to be a good part of the community. In addition to the one-and-a-half million that Ryan mentioned, we've donated the 10,000 trees we planted. We've also donated 50,000 pounds of food to the Maui and Kauai food banks through some of our kama'aina drives. And so, I just again want to stress that I support the bill as it's written. I really appreciate the changes and the time that has been put into it. And I certainly hope and respect the opinions of everyone else in the community and hope that this addresses those concerns and moves forward as it's written.

CHAIR PALTIN: Thank you, Mr. McLellan. Ms. Sugimura, you had a question for Mr. McLellan?

COUNCILMEMBER SUGIMURA: Yeah, if he could then answer that question--thank you--regarding do you maintain rules and have acknowledgements of the rules in writing from your...or, you know, signed acknowledgements of the rules and conduct?

MR. McLELLAN: We do. Like Ryan mentioned, we do have a written waiver that everyone fills out and signs, all guests, agreeing to abide by the conduct set forth by our guides and staff. So, we go through, I don't want to get too long-winded about this, but I...we have about a two-week training program and a probably close to a 100-page manual that all of our guides are trained on, both educational and operational. So, all of these standard procedures, information that's shared with the guests is outlined in our operations and risk management protocols. Those are then shared with the guests, and the waiver covers their need to abide by those instructions. And unfortunately, we have had to remove people from tour who won't abide by those. So, it is part of the procedures that guides the managers to follow up --

COUNCILMEMBER SUGIMURA: Okay.

MR. McLELLAN: --if needed.

COUNCILMEMBER SUGIMURA: Okay.

MR. McLELLAN: So...

COUNCILMEMBER SUGIMURA: Thank you --

MR. McLELLAN: And --

COUNCILMEMBER SUGIMURA: --very much.

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MR. McLELLAN: --that's all set forth. We're...we'd be happy to share any of that documentation at any point if needed.

COUNCILMEMBER SUGIMURA: Thank you.

MR. McLELLAN: Okay. Thank you.

CHAIR PALTIN: Members, any further questions for the testifier? Seeing none, Staff, can you continue on with the next person on the list?

MS. LILLIS: The next testifier is Michael Binder, testifying on PSLU-29. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Michael Binder.

CHAIR PALTIN: Michael Binder, go ahead. I see you're unmuted, but we can't hear you.

MR. BINDER: Can you hear --

CHAIR PALTIN: Okay,

MR. BINDER: --me?

CHAIR PALTIN: Yes. Now, we can hear you and we can see you. Go ahead.

MR. BINDER: Aloha.

CHAIR PALTIN: Three minutes.

MR. BINDER: Oh, aloha --

CHAIR PALTIN: Aloha.

MR. BINDER: --from Hermosa Beach. First time I'm with you all. I'm the proud owner of Kapalua Ziplines, and I just was reading over the PSLU-29, as I've been sitting at home like the rest of you, just watching time go by. And I just wanted to reach out and tell you how much I do support from the ordinance, I'm just reading over some notes that I wrote about it. But I do support the ordinance that was written and as written. We're up in Kapalua. We're about three miles off the highway on 200 acres, and the only sounds that people hear are the sounds of the pigs, and the only sounds we hear is our guests having fun. So, we've never had a complaint as far as noise. We have obeyed all the noise ordinance and restrictions, and per our landlord, that is Maui Land and Pineapple. So, we've done everything that we can and we will always follow the rules whether it's safety or whether it's noise. We do our best to be a good neighbor. I am not from Maui, and I am lucky enough to have been married in Maui. I've been going to Maui for 20 years, and I was lucky enough to own the zipline in

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Kapalua. So, one of the things about being part of the ohana is being a great neighbor, and I will always do what I can to maintain that. And I am just kind of going over the timeline. We've been doing this for seven years. I had a partner early on, and then I've been the sole owner. So, if there's any issues, we're happy to handle them. And my GM in Maui, she's happy to take care of it, as well as any staff that we have that is just sitting on the sidelines waiting for the COVID to pass and we can get back. But like as I heard other testimonies, it sounds like it's going to be not until next year till we get back on our feet and do that. We've also done other things in the community to be good neighbors, order ocean cleanups, and doing our best to just get along with everybody and trying to do the best for Maui. The last thing is I just want to comment. There was a lady who mentioned about social distancing. And our course, since we have so much land, we can social distance our guests as tours finally come back because our platforms are very large. They're wide, they're large, and we can social distance six feet on each platform because we do have the space for each deck on each land. So, as far as land and having enough of it, we will enforce it as we open our doors, which obviously we don't know when, and we're going to do our best, as I'm sure we'll have hiccups like everybody else when we open the doors. But we can do it and...so, that's to go back on a woman who testified earlier. But with that, I appreciate everybody's time. Wish you guys a warm aloha and I appreciate all the hard work the City Council [sic] does 'cause I've been involved in city councils in other cities. So, thank you very much.

CHAIR PALTIN: Thank you, Mr. Binder. I see we have a question for you from Mr. Sinenci.

MR. BINDER: Sure. Go ahead.

VICE-CHAIR SINENCI: Aloha, Mr. Binder. Thank you for calling in from California. I just had a quick question, you know, as we in our Environmental Committee, we're looking at mitigating invasive species. So, as you go up to the Kapalua Zipline, are you taking additional precautions as far as mitigating any type of invasive species in the wao akua region?

MR. BINDER: We are...as far as invasive species, we are working, and I don't have his name so I'll...don't hold me to it, but we've been working with an ag land professional who showed us what works like the koa trees that we've been planting over the last six, going on seven years now. And we haven't had a very many invasive trees to remove if very few, but when we're shown them, usually the person will say, hey, these should be removed, these are invasive, and then we'll remove them. But I can't be certain as of the last three months if there's growth that I don't know about. But when we are told about it, it gets removed, but it's not like I'm there right now obviously every day. So, that's what I know.

VICE-CHAIR SINENCI: Okay. Mahalo for that. Thank you, Chair.

CHAIR PALTIN: Members, any further questions for the testifier? I have one question. Mr. Binder, do you make efforts to hire local people from the area at all?

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MR. BINDER: Oh, very much so. So, just so you...so the Council knows, when the original zipline company closed, which was Kapalua Adventures, when me and my partner opened the company, it was the most important thing was to give jobs back to all the people that lost their jobs with the former zipline owner. So, we made it a point to hire all the people that were living there locally to bring them back. Some obviously moved off or didn't come back, but we hired a majority of them. And then I would say of our staff, the 35 people that we've laid...are furloughed right now, I'd say 34 are left that are all local Maui residents that are taxpayers.

CHAIR PALTIN: So, no recruiting for workers from the mainland or recent arrivals?

MR. BINDER: No, my...actually, my nephew was going to come out this summer, which was supposed to be a really good summer, and it was going to be my nephew and two of his college roommates/friends. They were going to come out, but obviously, that's not happening.

CHAIR PALTIN: Okay. Thank you. Thank you for your testimony.

MR. BINDER: Thank you. Aloha.

CHAIR PALTIN: Well, Member King looks like she has her hand up. Do you have a question for Mr. Binder, Member King?

COUNCILMEMBER KING: Yes. Are you still there? Hi, Mr. Binder. Good to see you. Yeah, I had a question about, you know, when you were talking about laying people off, are your type of industry, do you qualify for that paycheck protection or no?

MR. BINDER: Yeah. So, we qualify for it, and what we're trying to do is just use our money, well, my money that I have in my personal life, before we use government assistance. I'm not a big person on using government assistance when needed. So, we're just...we have the ability when we need it, but we're so far just relying on the Michael Binder accounts.

COUNCILMEMBER KING: Okay. But you're having to lay people off then because --

MR. BINDER: Yeah.

COUNCILMEMBER KING: --you don't...*(inaudible)*... --

MR. BINDER: Yeah...

COUNCILMEMBER KING: --...*(inaudible)*...

MR. BINDER: Well, we're...we laid everybody off because there's just no business. With the ordinance that's in place with the 14-day quarantine we can't open, and I don't see it coming back. I work...I also have a private aviation company. And so, I'm really getting the worst of it on both sides. So, I'm getting people that aren't...

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COUNCILMEMBER KING: Okay. So, no...yeah, no, I understand. But you don't have a market with the local people as far as your form of entertainment?

MR. BINDER: I don't follow.

COUNCILMEMBER KING: Your market is solely visitors, not local people?

MR. BINDER: That's correct. That's correct. Through the last six-and-a-half years, we...it's always been tourism that we rely on. I would say we're probably 95 percent tourism. And even we do offer a kama`āina rate to get people in the door but it's just...it's always been tourism that...

COUNCILMEMBER KING: Thank you, Chair. Thank you, Mr. Binder.

CHAIR PALTIN: Thank you. Further questions for the testifier? Seeing none, thank you, Mr. Binder for your testimony.

MR. BINDER: Thank you. Have a great day.

CHAIR PALTIN: And I've been informed, we have four more testifiers. Staff, can you call the next person on the list to testify?

MS. LILLIS: The next testifier has the last four digits 8887. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, last four digits 8878...8887.

CHAIR PALTIN: Okay. I don't see an 8887 on the list. They might have dropped off. Is there an 8887...78 [sic] out there?

MS. LILLIS: I don't see them either. They must have dropped off. The next testifier has the last four digits 0731. And I do see them on the list. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, last four digits 0731.

MR. KALANIKAU: Yeah, you guys can hear?

CHAIR PALTIN: Yes.

MR. KALANIKAU: Yeah, how's it? Sorry, late. This is Vernon Kalanikau. I'll be testifying on PSLU-25 and 29. I came in late not hearing what's been said about, especially PSLU-25, but I just going to do my best in the three-minute period. But, you know, some you Councilmembers remember that site visit on 2017 to that site, Sujata's parcel, and there's plenty evidence, and a lot of you, Councilmembers, back then saw the native plants and species that I pointed out. Some of you took pictures of that.

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And then we brought that back to Council to relive all that, and I remember at Council Chambers, I testified. And I also offered myself and Aha Moku at that time, and the community to work together and be proactive with Sujata, the landowner, and her team. Since then, you know, we cross paths. We say how's it. Oh yeah, we got to call you, Vern, or, you know, whatever, you know, but nothing transpired. So, just so you guys know, I left myself out there to help this lady out, and she has not gotten back. I just found out yesterday about...you know, 'cause I'm reading this agenda and the agenda, you know, just brief, you know, on 25, you know, amendment, Single-Family for approximately 43,000 square feet. When I read that, I'm thinking single-family, one house, but we find out in...yesterday that there is an attempt to turn this parcel into subdivision, you know, break it apart, meaning smaller parcels, minor SMA, that's not going to happen. We should kill this thing. We should defer it or file it, and get rid of it. It's like better we just had the wellness center back then, you know. But to break it up, lessen...I just...it's just my perception now, I might be wrong, but to break it up, lessen the SMA to minor, and then put subdivision, I don't think the community knew this was happening. And this has been going on since 2018 sometime. Okay. So, I'm just mentioning that part. The other part, and we just had that flood, some of you guys see the photoshop, and there's that square rectangular red-shaped box. That red-shaped box is behind the Kihei Veterinarian Center [sic]. If you look, yeah, get the water around that parcel, which stay dry. That dry area is elevated. So, I . . .(inaudible). . . she elevated that parcel. So, if that parcel wasn't elevated, a lot of the South Kihei Road water would have naturally go into that area where the...it's a wetland. I guess we're running out of time. So, let me talk about the 29, PSLU-29 'cause I just heard Shane bring up about invasive...importance of the species to this Mr. Binder, I think. It just dawned on me that that's something, you know, what Shane, or Councilmember Sinenci brought up that it needs to be fully addressed and stay on top of it, and follow up with this guy. You know...and so, we got to look at the visitors, you know, what they have in their backpack or what have might travel in the luggage, and what they pack to take up on the hills. So, we got to look at what the visitors may not know or accidentally take up mauka, you know. So...but I'm done testifying. And I also hope...I don't know if Char had come in yet but we did...wanted to get more time but it is what is, but thank you for your guys' time. Thank you.

CHAIR PALTIN: Thank you. Mr. Kalanikau, I see we have a question for you from Member King.

COUNCILMEMBER KING: Hi, Vernon.

MR. KALANIKAU: Oh, okay.

COUNCILMEMBER KING: Are you still there?

MR. KALANIKAU: How's it? How's it?

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COUNCILMEMBER KING: Hi. Good to hear from you. I just wanted to ask you because Char Schulenburg was on earlier, and I guess she was originally asked to represent the Aha Moku, but do you want to do it now that you're here?

MR. KALANIKAU: Yeah, if can. You know, it's more of the, you know, reliving the kuleana, yeah, and what we've talked about in the past if that helps.

COUNCILMEMBER KING: Well, I know that you were working with her, and I think she didn't think you were going to make it to the meeting, so.

MR. KALANIKAU: Yeah, correct, and correct, I left one other online training. So, you know, going back to that site, and it seems like I'm repeating again, you know, I don't see that TMK being...it is what it is, it's TMK. I see that area, Keokea and Waiohuli, one big parcel kuleana --

COUNCILMEMBER KING: Right --

MR. KALANIKAU: --and...

COUNCILMEMBER KING: --but I...my question was just if you wanted to hang around and represent the Aha Moku 'cause I know you're our representative for --

MR. KALANIKAU: Oh --

COUNCILMEMBER KING: --our area.

MR. KALANIKAU: --so she never...okay, she never go on yet?

COUNCILMEMBER KING: She did go on and she said she was willing to do that, but she thought you weren't going to show up.

CHAIR PALTIN: Mr. --

MR. KALANIKAU: Oh okay, I can...

CHAIR PALTIN: --Kalanikau, are you available to stick around when this --

MR. KALANIKAU: Yeah --

CHAIR PALTIN: --item --

MR. KALANIKAU: --yeah --

CHAIR PALTIN: --comes up?

MR. KALANIKAU: --yeah, I'm sorry about that. Sorry about that.

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CHAIR PALTIN: Okay.

COUNCILMEMBER KING: Okay.

MR. KALANIKAU: Yeah, yeah, for sure, yeah.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: Thanks, Vernon. I just...and I also want to let you know there'll be...of the seven Members on this...in this Committee, only two of us are...were around last year...last term when we visited. So --

MR. KALANIKAU: Yeah --

COUNCILMEMBER KING: --I think myself --

MR. KALANIKAU: --correct.

COUNCILMEMBER KING: --and Councilmember Sugimura.

MR. KALANIKAU: Yeah.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: So...

CHAIR PALTIN: We'll call you as a resource person when this item comes up. I'm thinking it will be a little bit after 10:30, hopefully.

MR. KALANIKAU: Oh, okay. Sure.

CHAIR PALTIN: And by call you, I mean don't...I don't mean call you on the phone. I mean if you can stay on the line or call back after 10:30.

MR. KALANIKAU: Oh, yeah, okay. I got to get my charger. Okay. Thanks.

COUNCILMEMBER KING: Thanks, Vernon.

MR. KALANIKAU: Okay.

CHAIR PALTIN: Okay. Staff, can you call the next testifier?

MS. LILLIS: The next testifier is Marian Prosser. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the

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items you're testifying on. You will have three minutes per item. Please unmute yourself, Marian Prosser.

MS. PROSSER: Hi, I'm here. Are you hearing me?

CHAIR PALTIN: Yes, we can hear --

MS. PROSSER: Aloha.

CHAIR PALTIN: --you. We can hear you.

MS. PROSSER: Hi, yes, I'm...hi, everyone. Today, I'm testifying on PSLU-29, the zipline ordinance. We live across from a zipline that's very close to our fence line, and if...I guess most of you know our plight. Anyway, I really appreciate the work that you guys have put in to amend this from the last meeting. I...I'm calling to support the changes and the amendment or the ordinance as written. I have one concern about the 50-acre rule that has been introduced this time. My concern is that even if a property were 50 acres, I think there needs to be a setback from the fence lines because even if someone had 50 acres, they could easily set up 20 feet from a fence line. And as is in our case, the DNS Zipline is set up about 50 feet from the fence line. Even if it were a 50-acre parcel, which it's not, it wouldn't take care of our problem. Because even if they had 50 acres, I believe there needs to be a setback within that 50-acre parcel so that they're not set up next to the fence lines and affecting other properties that are nearby. And that was my only concern. I really appreciate Councilmember Sugimura, everyone who's worked on this, and I support it as is but I think that's a really important discussion item that needs to be addressed by potentially including and adding a setback of any fence lines to say a 1,000 feet within the 50 acres for any of the towers, any of the parking, and any of the potential impact on the neighborhood. Okay. That's pretty much my testimony.

CHAIR PALTIN: Thank you. Members, any questions for the testifier? Seeing none, thank you, Ms. Prosser, for your testimony.

MS. PROSSER: Thank you very much for hearing me today.

CHAIR PALTIN: Thank you. Staff, will you call the next testifier? It could be --

MS. LILLIS: The next --

CHAIR PALTIN: --the last one.

MS. LILLIS: --testifier...this is the last testifier, Stephen Hynson, testifying on PSLU-29. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Stephen Hynson.

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MR. HYNSON: Good morning. My name is Stephen Hynson. I live in Ha'ikū. I live a couple lots mauka of NorthShore Zipline, and I am in favor of PSLU-29. I think the changes that were made since last week are great, and I would like to see this ordinance move forward as is. And I also would like just to make a couple comments. One, the presence of ziplines run contrary to the Ha'ikū Community Plan that was developed by the residents of Ha'ikū and Pā'ia. I'd like the Members to take that into consideration. The second item is living near a zipline is like living near an E.K. Fernandez ride, you know six days a week, and it goes on and on and on. And it's part of a research, we found out that there is a special area in the brain that processes screams. I think we all know when we hear a young child scream, one of our first things is, oh, what's going on. And imagine when you're hearing screams day in and day out, and what it does, it impacts...negatively impacts the adrenal system and it creates more stress. This is scientific fact. So, when the Council is considering how these things are located, please take in mind that they have a deleterious and negative impact on us humans. Thank you.

CHAIR PALTIN: Thank you, Mr. Hynson. Any questions for the testifier? Seeing none, thank you, Mr. Hynson, for your testimony. I noticed we have one more or three --

MR. HYNSON: Okay.

CHAIR PALTIN: --more...

MR. HYNSON: Thank you very much. Yeah.

CHAIR PALTIN: Thank you.

MR. HYNSON: Okay. Aloha.

CHAIR PALTIN: Testifiers that are signed up. Staff, can you call the next testifier?

MS. LILLIS: The next testifier is Alex Stone, testifying on PSLU-25. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Alex Stone.

MR. STONE: Aloha. Can you all hear me?

CHAIR PALTIN: We sure can. We can hear you but not see you.

MR. STONE: Yeah, the bandwidth with all you guys on, a little weird but...

CHAIR PALTIN: Understandable.

MR. STONE: All right. So, my name is Alex Stone. I'm a young community member here in Kihei. I'm representing myself but I guess being one of the last members, I can say I'm representing the younger millennial generation here in Kihei. And I just want to first

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off and say that I'm a frequent representative, not representative, volunteer of the Lā'ie wetlands for cleanup here. And that being said, I'm going to regurgitate a little bit of what has already been said in the past of, you know, Kihei has lost almost all of its wetlands already, and we've seen in the past...well, I'll talk about the groundwater events that have occurred here, flooding. I want to bring in a study that kind of brings in a unique perspective and I'll tie it all together at the end to Kihei, but this is a study that comes out of Brazil in 2018. And to keep it short, it essentially talks about the Amazon and the degradation of the ecosystems there, and it shows that when you get rid of a...an ecosystem, such as a wetland or forest, it is near to or impossible to completely bring back, replace, create that ecosystem again. And then, you know, in this case in Kihei, our wetlands, we don't have a lot of those to begin with as it is now. So, to replace it, to recreate it, to move it would be impossible. And now, I want to note that this, you know, the ecosystem in the Amazon is substantially bigger, but scaling it down to our island, you know, a wetland can have a significant impact on not only animal, you know, animal living, animal habits, their flying patterns, but also water flow both below and above that. You know, I could keep tying this together but, you know, some of what that wetland does to leaves, the fish, what that does to the island below us, what that does to the island, you know, in front of us, and it's all connected. So, with that being said, I just want to say thank you guys for your time and everyone coming in and saying their piece, and I would greatly, you know, encourage that we take our time to really do our...all of our due diligence to really see the impacts of what would happen and, you know, the real impacts that would happen of this ecosystem if we were to move forward with this subdivision, this development. Thank you.

CHAIR PALTIN: Thank you, Mr. Stone. Members, any questions for the testifier? Seeing none, thank you so much for taking the time to testify today. Staff, can you call the next testifier?

MS. LILLIS: The next testifier is Duane Ting. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Duane Ting.

CHAIR PALTIN: Hi, Mr. Ting. Can you unmute yourself? There's a little microphone thing. I can't unmute you 'cause you're muted on your end. Let's give Mr. Ting a little while to figure that out. Let's go on to the next testifier.

MS. LILLIS: Okay. The next testifier is Fred Borsum. Please identify yourself for the record and any organization you represent, or if you are a registered lobbyist. Please state the items you're testifying on. You will have three minutes per item. Please unmute yourself, Fred Borsum.

CHAIR PALTIN: Hi, Mr. Borsum. You're going to need to unmute yourself. I can't unmute you. I'm trying but it's not working. I'm not sure if you guys can...*(inaudible)*... There's a little thing with a microphone, and there's a slash through it. If you can

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press that button, that would unmute you, and then we could hear you for your testimony or not. Okay. Let's move on to the next one for now.

MS. LILLIS: That concludes the testifiers.

CHAIR PALTIN: Okay.

MS. PROSSER: Is there a possibility of my husband testifying, and excuse me, this is Marian Prosser, and my husband wanted a chance to testify if possible. His name is Daniel Coltart, and I don't know whether he can testify from my same number.

CHAIR PALTIN: Sure. Can you please --

MS. PROSSER: Okay.

CHAIR PALTIN: --have him state his name.

MS. PROSSER: Yes, his name is Daniel Coltart. Daniel C-O-L-T-A-R-T.

CHAIR PALTIN: C-O-L-D-H-A-R-T?

MS. PROSSER: I'm sorry, dear, it's C-O-L-T-A-R-T.

CHAIR PALTIN: Okay. All right. Thank you. Go ahead.

MS. PROSSER: Coltart. Okay. Here he is. Thanks.

MR. COLTART: Yeah, hi. Thanks for being there today. Yeah, I'm here to support the PSLU-29. And I'm so happy that you guys are on the job because we need help, and it's been very devastating. I've watched my wife change as a personality. It's affected us deeply 'cause we're right on the front lines. It's within 75 feet of my property at one end and about a 150 at the other, and about 300 in the middle. And it nails every single one of my house sites along the property line, and visually as well as...so, and it's been going on for the past ten or ...*(inaudible)*... on the job. And --

MS. PROSSER: We appreciate it.

MR. COLTART: --we appreciate it a lot. You know, I've been a farmer here for 42 years. You know, I make a thousand...1,200 bucks a year off of my ...*(inaudible)*... The guys zip by me, enjoying all of the trees I've planted over the last 40 years, you know, full coconuts fully-grown ...*(inaudible)*... through with this scrubland and just, you know, at my expense with the screaming so loud. It's like...and I just want to ...*(inaudible)*... You don't really realize how important peace is until it's gone. And so, we want our peace back and we appreciate the fight. Thank you so much. Aloha. I don't know if they heard anything.

CHAIR PALTIN: Thank you, Mr. Coltart. Any...

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MR. COLTART: What?

CHAIR PALTIN: Hello, any questions for Mr. Coltart? Seeing none...oh, Ms. Sugimura, sorry --

COUNCILMEMBER SUGIMURA: I have a kind of...

CHAIR PALTIN: --you're behind a little...

COUNCILMEMBER SUGIMURA: I have a point of information for you as we're getting end of our testimony. Can we ask someone from, a previous testifier to be available for PSLU-29, either Daniel Boren or their General Manager, Erik McLellan, I think was his name. So, if one of them could be available for questions.

MR. BOREN: Yeah --

CHAIR PALTIN: McLellan...

MR. BOREN: --hi, this is Danny Boren. I'm happy to be available.

CHAIR PALTIN: Oh --

COUNCILMEMBER SUGIMURA: Okay.

CHAIR PALTIN: --awesome . . . *(inaudible)*. . . --

COUNCILMEMBER SUGIMURA: Thank you.

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

COUNCILMEMBER SUGIMURA: If Council approves.

CHAIR PALTIN: --resource person if there's no objections when this item comes up?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay. So, if you can stay on the line for when this item comes up on the agenda, we'll have you as a resource.

MR. BOREN: Will do.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Okay. Mr. Ting, Mr. Duane Ting, this is your last call. If you can unmute yourself, we'll hear your testimony. If not, please just e-mail the Committee, I guess.

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Last call. Last call, Mr. Ting. Three, two, one. Okay. Mr. Borsum, last call for your testimony. Going, going, gone. All right, would anyone else like to offer...

MR. TING: I'm here.

CHAIR PALTIN: Okay. Right on. Okay. You got three minutes, Mr. Ting. We can hear you but we can't see you. But ...*(inaudible)*...

MR. TING: Good morning. I was...

CHAIR PALTIN: Identify yourself --

MR. TING: My name...

CHAIR PALTIN: --for the record and let us know what item you're testifying.

MR. TING: My name is Duane Ting. I'm talking on PSLU-29. I'm the owner of Flyin Hawaiian Zipline and partner in Maui Zipline.

CHAIR PALTIN: Okay. Go ahead.

MR. TING: Like everyone else that testified, I think this is a good writing. The one thing that I would be concerned about is going forward, instead of Corp. Counsel...the section that you guys want, the inspection records and all the other records is good; however, bringing that liability to Maui County, I think is something that I don't think they're going to...that Corp. Counsel is going to probably accept in doing that. To make it shorter, if you just ask for the insurance certificate, the insurance company requires...there's two major insurance companies that require...that handle ziplines and canopy tours. They require all of that, and they do the outside inspections. They usually require an outside company to do our inspections. So, they take that ability on. So, I don't really see any benefit in the County taking that or finding the time, or getting the staff to do that. The insurance company takes all of that. Everything that you guys ask for is inside of that record to the insurance company. And I just wanted to put that forward 'cause it was the one thing that I saw that you guys might want to tweak about is taking that liability on as far as the County-wise when it doesn't have to be. The two insurance...the two major insurance companies, they require us to do that every year, sometimes twice a year, and they come in and they audit all of that. So, it's not something that we have to waste County time or staff time, or even take that liability to Maui County. And I just wanted to tell that. Other than that, I do think there's a need for some kind of regulations on the size of property that this kind of activity can be on. I would hate to be a neighbor, a small piece of property and have a zipline tower literally feet from my porch. That sounds like a nightmare. But that's all I got to say on the ordinance as it stands.

CHAIR PALTIN: Okay. Thank you, Mr. Ting. It looks like we have a question for you from Ms. Sugimura.

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COUNCILMEMBER SUGIMURA: Thank you, Mr. Ting, for testifying. And I think you're referencing the restrictions and standards in this ordinance, 19.97.040. Also, in that section is about no...we...it says no person may consume any intoxicating substance while at the location of a zipline or canopy tour while it is open for business. So, basically, I'm just wondering if you have an opinion about that where no alcohol or of course, drugs, but at the location of the zipline or canopy tour while you're open. Do you have an opinion about that?

MR. TING: Yeah, for the sheer fact that Maui Zipline Company is on the Maui Tropical Plantation, and we do have a restaurant, we do have a bar, you know, it's all part of the grounds. So, for me, yeah, that small section right there would make a problem for me and my partner on the other course. It...that's always a --

COUNCILMEMBER SUGIMURA: But...

MR. TING: --hard one when you're doing activities in general, but like on the premise, like on the same TMK, we do have a restaurant and we do have a bar that has a liquor license but it's not...that liquor license doesn't carry out to the zipline area. So...I mean that's something that I guess would have to be figured out.

COUNCILMEMBER SUGIMURA: So, you're... 'cause what this says is well, at the location of the zipline or canopy tour while --

MR. TING: Correct.

COUNCILMEMBER SUGIMURA: --you're --

MR. TING: I guess it'd be...

COUNCILMEMBER SUGIMURA: --. . . (inaudible). . .

MR. TING: I guess it'd be --

COUNCILMEMBER SUGIMURA: Oh, so...

MR. TING: --the...what location. 'Cause the alcohol can only be consumed in a designated --

COUNCILMEMBER SUGIMURA: At the restaurant.

MR. TING: --area.

COUNCILMEMBER SUGIMURA: Right.

MR. TING: Correct.

COUNCILMEMBER SUGIMURA: Okay. So, you're not a licensed...you don't have your license to have alcohol served on your...as part of your --

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MR. TING: Correct.

COUNCILMEMBER SUGIMURA: --zipline?

MR. TING: We don't serve alcohol as part of the zipline but --

COUNCILMEMBER SUGIMURA: Yeah.

MR. TING: --we do have a restaurant and a bar on the same property.

COUNCILMEMBER SUGIMURA: But it's not your...it's not yours, right? It belongs to --

MR. TING: It's not mine --

COUNCILMEMBER SUGIMURA: --Michael Atherton.

MR. TING: --correct.

COUNCILMEMBER SUGIMURA: And he's your landlord?

MR. TING: Correct, yeah, correct.

COUNCILMEMBER SUGIMURA: Okay. Thank you for that clarification. I...we're trying to figure the wording of that just because knowing that that's Michael Atherton's Maui Tropical Plantation, 'cause I've seen your zipline there, but probably we need to finesse it more or tighten it. Thank you.

MR. TING: Thank you, guys, for taking the time to do what you're doing.

CHAIR PALTIN: Thank you, Member Sugimura. Members, any further questions for the testifier? I have a...oh, Member King has a question.

COUNCILMEMBER KING: Yeah, thank you, Chair. Just to follow up on the previous line of questioning, I don't...you're not saying that you would ever be looking...Mr. Ting, looking to get a liquor license or anything, are you?

MR. TING: Correct. Yeah, we would --

COUNCILMEMBER KING: Okay.

MR. TING: --never...that would affect the --

COUNCILMEMBER KING: I don't think --

MR. TING: --insurance coverage.

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COUNCILMEMBER KING: --yeah, I don't think we're trying to hold you responsible for what happens before or after any more than we could hold anybody else responsible for somebody going and having a drink at a restaurant then walking into another business.

MR. TING: Correct.

COUNCILMEMBER KING: Okay. Thank you.

MR. TING: Thank you.

CHAIR PALTIN: Members, any other questions for Mr. Ting? Seeing none, I have a question. I just was wondering, you have plans to move in the future?

MR. TING: So, the plan was once the development plans became concreted, that we're going to try and move the successful operation of the agricultural tourism blend of the Maui Tropical Plantation, to another location. You know, on the list, that's not the top priority but it is something that we were planning to do, and we do have some plans that are put together to move it to, you know, the 60 acres that Maui Tropical Plantation sits on, to move it somewhere else. Like we don't want to lose the successful blending and the history that Maui Tropical Plantation has brought to Maui, and we definitely don't want to lose, you know, the hundreds of employees that it employs. And so, the goal would be to come in front of you guys and make, you know, what Maui Tropical Plantation is and move it to another acceptable location.

CHAIR PALTIN: Okay. And at that time, you would follow this process to get a permit to operate? Or are you planning to somehow try to grandfather in at a different location?

MR. TING: So, for me, at the end of the day, because this is new, you know, like our plans, whether we are grandfathered in or whether we had to go through what we needed to to make a new operation, it really doesn't matter. Like for us, for Maui Zipline, it took us a year-and-a-half to go through Planning to get a letter of an acceptable use for the zipline that has both...for both of my ziplines. So, you know, for us, you know, to play by the rules and to do everything right, and to make everybody happy to make sure that, you know, everybody is taken care of and everybody sees it as an acceptable use of that TMK, like that's, you know, priority. Nobody wants to make waves, nobody wants to piss anybody off. We all live on a small island. We want to do it right and we want to make sure that everything that we do is, you know, inside of the book and accepted by everybody including the neighbors. You want to be friends with your neighbors. Nobody wants to be hated by their --

CHAIR PALTIN: Okay.

MR. TING: --neighbors.

CHAIR PALTIN: Awesome. Right on. Thank you. Anyone else? Any clarifying questions? I don't see any. Thank you so much for your testimony, Mr. Ting. Our last testifier that

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I have on record is Mr. Fred Borsum. Mr. Borsum, I just unmuted you. If you can just shoot, start talking. You got three minutes. If you can identify yourself for the record and let us know what agenda item you're testifying on.

MR. BORSUM: Yeah, hi. My name is Fred Borsum, and I am testifying on the zipline stuff you folks are talking about. I'm not normally involved with this kind of stuff but I've become involved because of NorthShore Zipline. It has created quite a bit of trouble on Kauhikoa Road. And I just wanted to make sure I called in to support our neighbors and to support what you folks are doing. Me and my family have lived on Kauhikoa Road for 48 years. It's a great place to live, great neighbors. The zipline that's been there has been an utter disaster for everybody. And again, I just want to say I really appreciate you guys working on this. And whatever you do, I, you know, all of the neighbors here appreciate it. Thank you very much. That's all I have to say.

CHAIR PALTIN: Thank you, Mr. Borsum. Any questions for the testifier? Seeing none, thank you so much for your testimony today, Mr. Borsum.

MR. BORSUM: Thank you.

CHAIR PALTIN: Okay. That brings us to the end of our list. Is there anyone else wishing to testify today? Please unmute yourself and let me know at this time. Going, going, gone. Okay. Any objections to closing public testimony?

COUNCILMEMBER MOLINA: No objections.

COUNCILMEMBER KING: No objections.

VICE-CHAIR SINENCI: None.

CHAIR PALTIN: Okay. Public testimony is closed.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR PALTIN: We're a little bit past our morning break time. Any objections to a ten-minute recess?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay. We're in recess at this time and will return at 10:50. . . .(gavel). . .

RECESS: 10:40 a.m.

RECONVENE: 10:54 a.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use meeting of May 20th return to order. The time is 10:54. And before we continue on, I just wanted

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to make a note of the written testimony that we did receive. For PSLU-25, we had written testimony from Charlene Schulenburg, Robert Aldrich, Vernon Kalanikau, Randy Wagner, Mike Moran, Patricia Stillwell, Rob Parsons, Gary Passon, Adele Rugg, Arthur and Marsha Otani, and then another one from Vernon and Charlene. For PSLU-29, we had three written testimonies from April Azar, three written testimonies from Robert Friedlander, and one from J. Scott Meidell. And for PSLU-8 in the newest form of the bill, we had a testimony from Francine Aarona. So, those written testimony I just wanted to read into the record. And I'd also like to ask if those folks watching the meeting that have not been designated as resource people, if they could please view the cablecast on *Akakū* Channel 53 or you can also visit mauicounty.us/agendas to access live and archived meeting videos so that way, I don't have to make sure I mute folks all the time, but it's just a request.

PSLU-25: COMMUNITY PLAN AMENDMENT FOR 1488 SOUTH KIHEI ROAD (KIHEI) (CC 19-68)

CHAIR PALTIN: Okay. Moving along, let's see...the first item on the agenda for today is PSLU-25, Community Plan Amendment for 1488 South Kihei Road. The Committee is in receipt of the following: County Communication 19-68, from Council...from former Council Chair Kelly T. King, transmitting a proposed resolution to transmit to the Maui Planning Commission a proposed bill to amend the Kihei-Makena Community Plan and land use map from Business/Commercial to Single-Family for approximately 43,390 square feet at 1488 South Kihei Road, Kihei, Maui, identified for real property tax purposes as Tax Map Key (2) 3-9-010:077 to make the property's land use designations consistent. Correspondence dated February 1, 2019, from Kelly King, transmitted a revised proposed resolution approved as to form and legality by the Department of Corporation Counsel entitled Referring to the Maui Planning Commission a Proposed Bill to Amend the Kihei-Makena Community Plan and Land Use Map from Business/Commercial to Single-Family for Approximately 43,390 Square Feet of Property at 1488 South Kihei Road. So, pretty much...so, just saying the same thing over again. So, I scheduled this item at a request from...Dr. Sujata Bhatia called me up and asked to be heard again as she was unable to make it the first time that this item was heard last year. At this time, I'll ask the Planning Department if they have any opening comments on this item.

MS. McLEAN: Thank you, Chair. As the Committee knows, this property is designated Business/Commercial in the community plan. And several years ago, she came in to request a Change in Zoning and with an SMA major permit to develop the Kihei Wellness Center. The Change in Zoning was turned down by the Council, and that left the property with mismatched designations 'cause the zoning is currently Residential. So, because she wasn't able to change it one direction following the community plan, she's now requesting to change it the other way, or Councilmember King has initiated the process to change it the other way so that the zoning stays Residential and the community plan gets changed to Single-Family. And this would allow the designations to match and would allow the Department to process an SMA permit for the use of the site. She did submit an SMA assessment application to do a four-lot subdivision. One

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of the exemptions in the SMA law is for a subdivision of four lots or less, with no related improvements; however, she had related improvements to put in utility lines and so forth. And so, we're not able to issue an SMA permit because the designations don't match. So, she's kind of stuck. And an exemption could be issued for a single dwelling and ohana, that we could issue an exemption for that with the mismatched designations. But otherwise, she's stuck with being able to do anything with the site with the mismatch. Thank you, Chair.

COUNCILMEMBER KING: Chair, you're muted.

CHAIR PALTIN: Thank you so much. I got yard work going on. Any questions for the Department? Member King?

COUNCILMEMBER KING: Thank you for being here, Director McLean. Just a quick question, it looks like...so, I got a...I got an e-mail, I think we all did, from some folks from Kihei who have testified today about preliminary attempts to get approval for a subdivision, but I just wanted to clarify that that goes through Public Works, that you have not been...the Planning Department is not part of that, or are you part of that preliminary approval?

MS. McLEAN: Thank you for the question. Public Works does administer the subdivision process. But because it's in the SMA, an SMA exemption or permit is also needed. And if it were just what we'd call a paper subdivision with no improvements, if it was just drawing lines on the map, then we could issue an SMA exemption for that. But her plans included improvements, the installation of utilities and driveways for those lots. And so, it would not qualify as an exemption. A permit would be needed, and because there's the mismatch in the designations, we cannot issue an SMA permit.

COUNCILMEMBER KING: Okay. And so, that's from the Planning Department, then the subdivision is actually part of...is a Public Works' issue?

MS. McLEAN: Correct.

COUNCILMEMBER KING: Okay.

MS. McLEAN: The subdivision process is, but it requires...so, it requires SMA review.

COUNCILMEMBER KING: Okay. Thank you so much. And, Chair, whenever you're ready, I can give some...a little bit of background on this issue from my perspective of having been dealing with this for the last three years.

CHAIR PALTIN: Okay. Thank you. I had a further question. Director McLean, you said that if the owner did want to build a single-family or a single dwelling, they could...you could issue an SMA exemption, and they could build it with the current zoning? Is that a true...what you said?

MS. McLEAN: Yes.

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CHAIR PALTIN: Okay. And we wouldn't have to change any community plan or anything?

MS. McLEAN: That's correct.

CHAIR PALTIN: Okay. All right. Thank you. Any further questions for the Director at this time, Members? I don't see anyone. Okay.

COUNCILMEMBER KING: Mr. Molina has his hand up.

COUNCILMEMBER MOLINA: Chair?

CHAIR PALTIN: Oh --

COUNCILMEMBER MOLINA: Chair?

CHAIR PALTIN: --sorry --

COUNCILMEMBER MOLINA: Yeah --

CHAIR PALTIN: --I didn't --

COUNCILMEMBER MOLINA: --I had my...

CHAIR PALTIN: --see you.

COUNCILMEMBER MOLINA: I had my hand up.

CHAIR PALTIN: Now I see.

COUNCILMEMBER MOLINA: Yeah, no problem.

CHAIR PALTIN: Mr. --

COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR PALTIN: --Molina?

COUNCILMEMBER MOLINA: Okay. Thank you, Chair. Just a question for Director McLean, just for clarification, so, the zoning is currently R-3 Residential. And so, now with that, could the owner subdivide it into as much as four 10,000-square-foot lots?

MS. McLEAN: Not without the community plan change because --

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: --subdivision requires consistency with the community plan and the zoning.

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COUNCILMEMBER MOLINA: Okay. And just theoretically, if it were to be developed into four units, then accessory dwellings then for each lot that is subdivided, could the owner then also build two accessory dwellings per every 7,500 square feet as well?

MS. McLEAN: Yes. R-3 has a --

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: --10,000-square-foot minimum lot size, so it could be subdivided into four residential lots, and each of those lots could be developed with...actually now, one house and two ohanas.

COUNCILMEMBER MOLINA: Okay. Yeah, just doing some simple math. So, potentially 12 structures in that area would seem kind of congested. So...okay. Thank you.

MS. McLEAN: If I could add, that degree of development would require an SMA major permit.

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: That is something that we had spoken to her about that even if we were to issue a minor permit for the subdivision itself, the overall development of the site, it can't be what's called segmented. So, they couldn't then in turn each get an exemption. We'd have to look at the whole thing. So, a major would be triggered with the first development that came in. What we recommended was to do an SMA major permit for the whole thing, for the subdivision, the subdivision improvements, and contemplate full build out, and then it could all be assessed comprehensively at one time.

COUNCILMEMBER MOLINA: Okay. Great. Thank you. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Member Sinenci, looks like you got a question.

VICE-CHAIR SINENCI: Thank you, Chair. Yeah, Director McLean, we had a...we received written testimony from Mr. Parsons, and he mentioned that the site is a habitat for the ae'o or the Hawaiian stilt. And was there any input about the site from the US Fish and Wildlife? He mentioned Habitat Conservation or endangered species, does that apply to this site? Director?

MS. McLEAN: Thank you for the question. The Department previously went through agency review on this project quite a few years ago when the initial Change in Zoning was applied for. And at that time, we did receive comments from the Army Corps of Engineers, and I would like to correct a statement that the testifier made. We didn't push for any position for the Army Corps of Engineers. We circulated the application for agency comment as we always do, and the comments that we received from the Army Corps stated that the property did not contain wetlands. Now, that doesn't mean it doesn't contain habitat. Wetlands to an...to the Army Corps is a certain thing.

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And so, under the Army Corps' definition and under their regulations, they stated it wasn't a wetlands. And, you know, anecdotally, I've heard that it does serve as habitat. But more recently, we have not circulated for agency review yet. So, we don't have fresh comments from the Army Corps or the Fish and Wildlife Service.

VICE-CHAIR SINENCI: Thank you, Director. Thank you, Chair. You're mute.

CHAIR PALTIN: Sorry, guys, my husband is lawnmower'ing. Member Lee, followed by Member Sugimura.

COUNCILMEMBER LEE: For Director McLean, Director McLean, okay, we've heard about what could be done in terms of maximum use of the lot, of the area. What was the actual intent of the landowner to use this property for residential --

MS. McLEAN: She...

COUNCILMEMBER LEE: --purposes?

MS. McLEAN: She applied for or submitted an SMA assessment application to create a four-lot Residential subdivision. Beyond that, I don't know what her intentions were whether it was to sell the lots. You'd need to ask her.

COUNCILMEMBER LEE: Okay. So, the landowner doesn't have to disclose the total plan for the property, like she can subdivide it to four lots, and then she doesn't have to disclose that she's going to do ohana dwellings to you?

MS. McLEAN: Through the SMA process, and again, we didn't get very far in it because of the issues that I've mentioned, but we would assume full build out for analysis purposes. I don't believe she had indicated one way or the other, whether her intent was to restrict the development of lots to just one dwelling or if she anticipated full build out. But without that being established, we've assumed full build out as we did our assessment.

COUNCILMEMBER LEE: Okay. Thank you.

CHAIR PALTIN: Thank you, Member Lee. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. So, Director, when you talked about the Army Corps of Engineers, I guess, I remember that site visit that we did and going to the property last term, and I think that...was it that water feature is actually drainage? It's not really a formal wetland that we've been hearing about. Do you know that?

MS. McLEAN: When it comes to things like that, we rely on the agencies with jurisdiction. And all I can say is that at that time, the Army Corps said that the property did not contain wetlands. I don't have that old comment in front of me but I remember saying that at the Council meeting and...but again, that doesn't mean it...there's not habitat. I mean a great deal of Kihei used to be very active wetlands and were filled decades

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ago, wisely or not. But again, we rely on the agencies with jurisdiction over particular issues, and that's what the Army Corps said back then.

COUNCILMEMBER SUGIMURA: Yeah, thanks for that clarification 'cause I remember that, I think there was a letter also from Army Corps of Engineers, but I remember that discussion. But thank you.

CHAIR PALTIN: Okay. Looks like I have Member King again and Member Sinenci again. I just wanted to check in with Member Rawlins-Fernandez before I go on second chances. Did you have any...you want a turn?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure. Mahalo, Chair. I just have one question for now for Director McLean regarding the assessment of full build out. So, in taking whatever action we take, the property owner would have the authority for full build out, is that correct or...

MS. McLEAN: Well, right now, because of the inconsistency between the zoning and the community plan, we can't issue an SMA permit for what was requested. So, it would take the Council changing the community plan to establish that match for that to be processed. So, what's in front of you today is just initiating that process for the Planning Commission, and then it would come back to you. So, there's still quite a few steps before we would get to that point. But let's say if at some point in the future, the Council were to adopt that community plan amendment, then we would go through the SMA process, and conditions on development could be placed at that time whether it's regarding wetlands or drainage or density. But we haven't ventured too far into that process because of the mismatch.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that thorough response, Director. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. And if I might just cut in line and add on to your question, I just was wondering, that SMA process that you were speaking about, that's not within our realm, that's wholly within the Planning Commission --

MS. McLEAN: That's correct --

CHAIR PALTIN: --Director?

MS. McLEAN: --...*(inaudible)*... yes.

CHAIR PALTIN: Okay. All right. Thanks. Just clarifying that. I'll take Member King, followed by Member Sinenci.

COUNCILMEMBER KING: Thank you, Chair. And thanks, Director, for your comments and your answers. And one of the things that I recall saying, and I've got my staff looking for it right now, but of course, none of us are near our files, hard copy files, but I do

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remember seeing a letter from the Army Corps of Engineers with conditions on it for this property. And one of the conditions said to maintain the wetlands. So, I...and I remember that was an inconsistency because they're basically acknowledging that there are wetlands on that area and yet they're saying there's no wetlands on the area. So, we had that back and forth, and that was before...that was with Mr. Spence when he was Director, and it was very confusing because it was on his stationary that we...that these conditions were on there. And I think that's one of the things that, you know, the community still acknowledges this as part of a larger wetland area and, you know, the habitats being part of it. So, I'm hoping to find that document. But I think you recall the document because we were all kind of confused by it. But also, I wanted to ask you if...so this has not gone to the Planning Commission yet, and it can't go to the Planning Commission until it passes through the Committee or the Council?

MS. McLEAN: The Planning Commission has not considered a community plan amendment for this property. And --

COUNCILMEMBER KING: And --

MS. McLEAN: --so...

COUNCILMEMBER KING: --they won't...they need it to come from the Council or no?

MS. McLEAN: It could...community plan amendments can be initiated by the Council like you have in front of you, or the Department can initiate them, or applicants can apply for them.

COUNCILMEMBER KING: Directly to the Planning Commission?

MS. McLEAN: The applicant could submit a community plan amendment application that would come to us, we would take it to Commission, and then forward it to Council.

COUNCILMEMBER KING: Okay. All right. Yeah, I'm just...I'm trying to go through the process in my mind because, you know, originally, there was an intent in...when I originally proposed this because there were other inconsistencies. But the other inconsistencies that we fixed had to do with an urgent occupancy certificate for the restaurant over at Sarento's. That was that misaligned, the Hotel community plan amendment. So, this one is a little different for me, and I'm kind of leaning towards supporting the community on this one, Chair, just to let you know. All right. Thank you.

CHAIR PALTIN: Okay. Thank you, Member King. Member Sinenci, did you have another question for the Director?

VICE-CHAIR SINENCI: Yeah, thank you, Chair, which is along the same lines as Member King. Director, so across makai side of the property is considered wetlands? Sorry.

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MS. McLEAN: Well, I recall the one letter from the Army Corps that said that the property did not contain wetlands but there could be another letter, or if we go through agency review again, they will have new comments, and they may say that the property does contain wetlands. So, I can't say one way or the other. That's not under my authority. But the agency review process would give us new information from the Army Corps and other agencies.

VICE-CHAIR SINENCI: Oh, I meant across the street if you knew makai --

MS. McLEAN: Oh, I'm sorry.

VICE-CHAIR SINENCI: --side of the highway?

MS. McLEAN: Well, this property is on the makai side of South Kihei Road. Yeah, in that broader vicinity, yes, I do believe there are indisputable wetlands, yes.

VICE-CHAIR SINENCI: Okay. Thank you. 'Cause it just seems that sometimes wetlands don't always abide by boundary lines. They just --

MS. McLEAN: Right.

VICE-CHAIR SINENCI: --kind of take its natural course. Thank you.

MS. McLEAN: Yeah, and --

CHAIR PALTIN: Member Sinenci...oh...

MS. McLEAN: --in Kihei, there are also recreated wetlands, which is odd, but there are, they're acknowledged.

CHAIR PALTIN: Member Sinenci --

VICE-CHAIR SINENCI: Thank you.

CHAIR PALTIN: --maybe we can save that question when we bring up Mr. Parsons as a resource person. I see in his written testimony, it says wetlands based on the National Wetlands Inventory. But if there are no further questions for Director McLean, I'd like to ask the applicant for her opening comments. Oh, Member --

COUNCILMEMBER KING: Mr. --

CHAIR PALTIN: --Molina --

COUNCILMEMBER KING: --Molina.

CHAIR PALTIN: --one further --

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COUNCILMEMBER MOLINA: Yeah...

CHAIR PALTIN: --question for --

COUNCILMEMBER MOLINA: Yeah, for...

CHAIR PALTIN: --Director McLean?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Just a...either Director McLean or possibly Member King, you know, because of the testimony that we've received so far, there are people...majority of folks have been expressing concerns. Now, has...historically, has there been any discussion about the County possibly acquiring these lands to preserve the wetlands? And I know we had Mr. Kalanikau here as a resource, have there been any other assessments made by Hawaiian cultural specialists related to this project? Because...and I note that in Mr. Parsons' letter, he mentioned that there was a proposal to build an Ace Hardware there over years ago, and there was some controversy. So, can I get your thoughts, Director or Member King, on these issues that are --

COUNCILMEMBER KING: Oh --

COUNCILMEMBER MOLINA: --brought up?

COUNCILMEMBER KING: --well, I can...Chair, if I can just...I'll respond first then --

CHAIR PALTIN: Member King?

COUNCILMEMBER KING: --ask the Director's response. So, in the community, there's been a lot of talk about that. There's been nothing formal on the County side that I know of as far as making proposal. But we did have a discussion with the landowner in the previous term when we did a site visit about potentially bringing this property into a greater wetland project for South Maui. And I don't know what happened with that. This...to me, this four-lot subdivision kind of came out of the blue. I didn't realize that that was being worked on. But the community pushed back against the rezoning of it into Business because there's another business down the road that's...that was the same thing, it was a Single-Family, it was rezoned to Business because it was a veterinarian who worked out of his house. And there was a huge promise back then made to the community that this doesn't mean we're going to march along and redesignate all these other businesses. So, that's what the community wanted to make sure of was that okay, we'll deal with this one because, you know, this is a community veterinarian, but we don't want all these properties to go Business, and then there was the attempt to rezone that property into Business. So, that's been sort of the greater wish of the community would be, you know, to either acquire these lands. I don't think anything has been done formally. Certainly, I haven't been part of it with the landowner but maybe Director McLean would know anything further about that.

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CHAIR PALTIN: Director McLean?

MS. McLEAN: Thank you, Chair. I'm not aware of Administration initiatives to acquire the property.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: And...

COUNCILMEMBER KING: The desire is there...the desire from the community but nothing has been done yet.

CHAIR PALTIN: Members, any --

COUNCILMEMBER MOLINA: Okay.

CHAIR PALTIN: --further questions for --

COUNCILMEMBER MOLINA: Yeah.

CHAIR PALTIN: --Director McLean?

COUNCILMEMBER MOLINA: No.

CHAIR PALTIN: Seeing none, I'll ask the applicant at this moment for any opening comments that she has to make. Ms. Bhatia?

MS. BHATIA: Yes. Aloha, Chair. Aloha, to all the --

UNIDENTIFIED SPEAKER: Aloha.

MS. BHATIA: --Members. Thank you so much for taking the time to listen to me today. I'm here...I'm not a developer. I'm just an ordinary citizen that when I moved to Maui in 2005, I was looking for a place to practice. I'm an orthodontist, and I wanted to have my own little space where I could practice my trade. And I was led to this property by the realtor and they said, this is in the Business/Commercial District, and this is where you will be able to practice a business. And right next-door to me was a veterinarian. And at that time, I was told, and I was shown the Army Corps of Engineers, the 404, and I have all that documentation that you guys were asking for. I have the letters from the Corps of Engineers. I have a letter from the Fish and Wildlife. I have a very recent e-mail from the Corps of Engineers, all stating the exact same thing. And if you would share my screen in a little bit after I'm done talking, I will show you all those letters that say this is not a wetland. This...so, when I first...so, I bought the property thinking I'll set up my orthodontic practice on it. And because there was no place in Kihei where like-minded professionals could practice together, so if we were to refer...if an orthodontist was to refer to an oral surgeon or to a periodontist, they would have to then go across town to get that referral, and a lot of

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patient care would be lost in the process because people don't take the time to go unless it's just next door. So, at that time, it seemed like a good idea to have a collection of specialists, like-minded specialists, to all practice in the same place because there was room to do that. So, that's the path. I didn't make much of it. I thought I will just have this be a wellness center where like-minded people will come together and serve the community of Kihei. All the uproar about it not...it being a wetland, all of that came and went. And I was busy establishing my practice. I was busy taking care of business. And I wasn't as much into the day-to-day stuff. I turned it over to a gentleman called Mr. Munekiyo. And I thought it was a simple process, and it went on and on. It went on for ten years. It took every ounce of our savings. We had to liquidate our 401k to keep the application going. Like I said, I'm not a developer, I'm just an ordinary citizen who bought that piece of property. And after that whole ten-year arduous one requirement after another, after another, after another, when we...when it came to Council, it was turned down because the same character of people that are here today were there then as well and saying exactly the same thing, that this is a wetland. Once and for all, it has been determined not by me but by the Army Corps of Engineers who has the final say on this, and I will bring the letter up if I will be allowed to share the screen, this is not a wetland. It has been mitigated by Permit Number 91-088 by a previous owner. And the pond that they referred to is a mitigation feature. That was required at that time for the infill to be done. And I wish that it was not in-filled. I wish all of the South Kihei lands were not in-filled. The biggest in-filled property you know is Charlene Schulenburg's property. If you look at the previous Maui maps, you will see that her property was wetland, and she is right next to the ocean. So, she is truly the wetland. So, if anybody needs to give up their property to redeem wetlands, it needs to be Charlene Schulenburg's property. Mine is an inland property with no communication with the ocean or any other stream. And it has been in-filled by two...previous two owners ago. And I have a written e-mail from the Army Corps of Engineers as recent as four months ago reiterating the same thing. It's basically saying we've determined there is no wetlands on this property. The pond is a mitigation feature. And yes, it has wildlife, and I am a passionate animal lover. I have communicated with the Wildlife people, and I have a letter from them, they agree with the Army Corps of Engineers, it's not a wetland, it's a mitigative feature. And because it's a water body, it has animal life in it. But they gave me all the terms that I need to take, all the precautions I need to take to preserve that wildlife, and I will do that to the letter, to the letter. That pond will be maintained in perpetuity. But can I tell you what's going on on that property right now? I was not aware that there were going to be so many testimonies. I thought this was a simple process today. So, I didn't come prepared for all the neighbors there to come and testify. But can I tell you what's on that property right now? There are eight illegal encampments on that property. I get a phone call almost every week, two to three times a week from the neighbors saying that illegal activities, loud music, there's human feces in that pond. There is no way wildlife will survive in that pond. The eight encampments have completely destroyed that property. We called the Police, they tell me the same thing. There is too much overgrowth on that property and encampments will keep coming up. So, you know what, if Vernon was that committed to that property staying a wetland, he would go and clean up that mess so that feces is not going into....there's human feces, there's injections, there is...you should talk to

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the neighbors, or I can forward you the letters that I have been getting on a regular basis by the neighbors on how unsafe that property is at the moment. But there is no way with all that trash that they are throwing into that pond that wildlife is going to survive. But it is a mitigated manmade pond. It is not the wetlands. These same character of people came with the same arguments, said exactly the same things, but they can't override the letter from the Army Corps of Engineers and the letter from the Fish Life...the...it's from the Fish and Wildlife Service, and it's signed off by Michelle Bogardus. It's undisputed by these authorities that this was in-filled back when all of Kihei was in-filled. And yes, Char, your property is in-filled. This...the train has already left the station on this property. It's already not a wetland. And I have permission to build a house on it. The reason I wanted to subdivide it is I wanted to be a good steward of the property. When I was applying for rezoning for B-2, everybody came up and said to me, we need houses in Kihei, the community needs houses. We don't need another commercial building. There's commercial buildings sitting vacant. So, now, whether we like it or not, it's important to remember that it will be developed with one house, one big house, and an ohana on it, or we can build four affordable houses on it, and more people can afford it now with the economy downturn. That's all I'm asking. Because whether you bring it to conform with the community plan, I have permission to build one house on it and an ohana. So, that property, you have to remember, all the naysayers that are there today, that I have the permission to put one house and an ohana on it. So, will you want to see a 10,000-square-foot monstrosity with the whole thing paved over for parkings of trucks, and who knows what on it, or would you like to see a prudent four-house development...four-lot development and more people can afford a house in this downturn economy? And as far as I'm concerned, every cent of my saving is now in that property. I have a newborn baby. I think you'd like to see the picture, and I need to recover the money that has gone into that property. So, today, if you turn down this application, then I must get a commitment from the Chair that this will be acquired by the County. I will sell it for appraised value, but I cannot be asked to continue to pay the property taxes on it. There's a water meter I pay on every month. I pay property taxes more than what a one-acre property would be required to pay because it's in a Commercial-zoned area. I've done that year after year. I'm a good steward of the community. I am not a developer coming here to ruin the...I practice in this community. I want --

CHAIR PALTIN: Okay.

MS. BHATIA: --...*(inaudible)*... So --

CHAIR PALTIN: Members --

MS. BHATIA: --I need --

CHAIR PALTIN: --any --

MS. BHATIA: --to share --

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CHAIR PALTIN: --questions --

MS. BHATIA: --the screen. I would like to --

CHAIR PALTIN: --for the applicant --

MS. BHATIA: --share the screen --

CHAIR PALTIN: --at...

MS. BHATIA: --and show you the letters. Can I please do that? Can I please --

CHAIR PALTIN: Okay.

MS. BHATIA: --share the screen? Okay. Are you able to see my screen now? No, not yet?

CHAIR PALTIN: No.

MS. BHATIA: ...*(inaudible)*... Adobe?

MR. CROSARIOL: ...*(inaudible)*...

MS. BHATIA: Are you able to see it now? Can you control it please?

MR. CROSARIOL: Yeah.

MS. BHATIA: Are you able --

CHAIR PALTIN: Yes --

MS. BHATIA: --to see my --

CHAIR PALTIN: --we can see it.

MS. BHATIA: --screen? Okay.

CHAIR PALTIN: Yes.

MS. BHATIA: This is the letter from Fish and Wildlife. The first paragraph clearly states, the plan includes...well, if you can read it, I don't have to read it out. But while the property is in the middle of the Kihei wetland, the lot in question does not contain wetlands or waters of the US per previous consultation and permitting with the US Army Corps of Engineers. Can we shift to the other? And then --

MR. CROSARIOL: Yeah.

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MS. BHATIA: --they...I reached out to them so I could be honorable with the wildlife that's on...in the water body that exists right now. That's the mitigated pond. And this is the letter from the Army Corps of Engineers that clearly states the existing pond is not a wetland or water of the US.

MR. CROSARIOL: That capital letters...

MS. BHATIA: It...with capital letters, because they are tired of being asked the same question over and over again. This is not a wetland. This was...and the permit number is right underneath it. That was the permit number that was used by a previous owner to mitigate, as was done by all the other previous owners that have now in-filled South Kihei, and that includes Char...that includes Char Schulenburg. Her property...

CHAIR PALTIN: Ms. Bhatia, can we stick to your property and --

MS. BHATIA: Yes --

CHAIR PALTIN: --not bring --

MS. BHATIA: --I'm --

CHAIR PALTIN: --in the other...let's just --

MS. BHATIA: --doing that.

CHAIR PALTIN: --stick to --

MS. BHATIA: ...*(inaudible)*...

CHAIR PALTIN: --the issue at the hand. We have no jurisdiction over other things. So, let's...we have a limited amount of time.

MS. BHATIA: Sure.

CHAIR PALTIN: And so --

MS. BHATIA: I just wanted to read --

CHAIR PALTIN: --let's just stick to this --

MS. BHATIA: --this letter.

CHAIR PALTIN: --one issue.

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MS. BHATIA: And then I also have a very recent e-mail from them stating the exact same thing. So, they've basically repeated themselves. They've said this is not a wetland. So --

CHAIR PALTIN: Do you have the recent --

MS. BHATIA: --I wanted to...

CHAIR PALTIN: --e-mail to show us?

MS. BHATIA: Yes, I do. You have the recent --

CHAIR PALTIN: Okay.

MS. BHATIA: --e-mail?

CHAIR PALTIN: Can you pull it up?

MS. BHATIA: Yes, I can. It's this right here.

CHAIR PALTIN: What...right now, we're seeing a gray screen.

MS. BHATIA: Oh...

MR. CROSARIOL: ...*(inaudible)*...

MS. BHATIA: Okay. I'm sorry. So, if you go back and share...see where the share screen is? I think it's only allowing Adobe documents, but in a minute, I can figure it out. If you go back to where the sharing is and make it a different format, make it Google Chrome. Make the sharing --

CHAIR PALTIN: Okay.

MS. BHATIA: --Google Chrome. Yes, we got it. So, this is the latest later. It's dated May 10, 2019. And it says the same thing. Subject water...

CHAIR PALTIN: Okay.

MS. BHATIA: But is this the letter? No, that's...is that the same letter or is it additional one?

MR. CROSARIOL: No, they said they looked at it. They do not...you do not need another letter. We've mentioned to them that it was for a four-lot subdivision. 'Cause the original one was for the Kihei Wellness Center, which was a...which took up the entire property. So, we just wanted to show them that we're looking at doing a four-lot residential subdivision. And they said oh, that's fine. You could use it to do a four-lot --

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CHAIR PALTIN: Okay.

MR. CROSARIOL: --residence.

CHAIR PALTIN: All right. Members, any questions for the applicant at this time?

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: And, Ms. Bhatia, will you please stop sharing your screen, as well as submit those documents to PSLU.committee@mauicounty.us?

MS. BHATIA: Yes, ma'am, I will do that. I've --

CHAIR PALTIN: Okay.

MS. BHATIA: --stopped sharing my screen. I hope that it has done that.

COUNCILMEMBER KING: It's still sharing.

MS. BHATIA: Okay.

MR. CROSARIOL: Press the unshare.

MS. BHATIA: Okay.

CHAIR PALTIN: Okay.

MS. BHATIA: Okay.

CHAIR PALTIN: Member Lee, you had a question for the applicant, followed by Member King.

COUNCILMEMBER LEE: Thank you. Hello. Have you done a recent appraisal of your property?

MS. BHATIA: Yes. I have not done an official appraisal. I have a letter from the County appraising the...just the usual County appraisal letter that I get every year from the County saying that my property taxes have now gone up because the appraisal is now this and this.

COUNCILMEMBER LEE: Well, can you share with us the value of your assessment?

MS. BHATIA: Yes, it is valued at \$1,000,988 [sic].

COUNCILMEMBER LEE: So, an option would be for the County to purchase the property?

MS. BHATIA: Yes, ma'am. I want to be done. I have a daughter I need to raise. I need to get off this treadmill. You kept me on this for ten years now, yes.

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COUNCILMEMBER LEE: Thank you.

CHAIR PALTIN: Okay. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, the last letter that you shared with us, Ms. Bhatia, is...it said that the jurisdictional determination expires this June, June 2nd, and it requested that you apply for a new one. So, have you done that yet?

MS. BHATIA: They say only do that if someone asks you to do that because they don't...it's just...they just churn out another letter. That's all. Because usually, people have built something by then, and then they don't need to keep reissuing it. But it's just...

COUNCILMEMBER KING: Okay. I just read it...I just...the letter you just shared with us, I just read that it said that we suggest if you're about to expire in the next six months that you reapply.

MS. BHATIA: We can do that.

COUNCILMEMBER KING: So...but you have...

MS. BHATIA: It's not a problem.

COUNCILMEMBER KING: You haven't --

MS. BHATIA: It's not...

COUNCILMEMBER KING: --done that yet?

MS. BHATIA: Yes. It's just a...

MR. CROSARIOL: Yeah, we talked to them. I talked to them, and they said basically...

CHAIR PALTIN: Can you please identify yourself for the record, Mr. Dominic?

MR. CROSARIOL: Dominic Crosariol. So, yeah, I talked to the Corps about that, and they said...well, we mentioned to them about the situation with the community plan. And they said that well, just when you're ready to go for the next one, just submit another request, and they're going to come out and look at it again.

COUNCILMEMBER KING: Okay. Thank you for that. And then the other question I have for you is you said you're paying taxes on...based on a Business but you're not zoned Business, you're zoned Single-Family. So, why would you...so, are they charging you taxes based on...they're not supposed to be charging you taxes based on the community plan, I don't think, unless I'm wrong. And maybe Director McLean could...knows that. But my understanding is they're supposed to be charging you taxes based on what your property is actually zoned, which is Single-Family.

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MS. BHATIA: I know that my property taxes are higher than a one-acre vacant lot anywhere else in Kihei. So...

COUNCILMEMBER KING: Right. Well, it would be the...we don't have a designation for vacant land separate from Single-Family use. So...but that's the zoning. So, I just wanted to make sure that you weren't getting taxed as a Business because you're not zoned Business.

MS. BHATIA: All I can tell you is that I have compared the property taxes that other vacant landowners are paying and mine is significantly higher. It's not only a little bit higher, it is significantly higher. And I --

COUNCILMEMBER KING: Okay.

MS. BHATIA: --assumed that it was because it was in... 'cause Business lot...

COUNCILMEMBER KING: Well, vacant land is not a zoning...it...not a zoning designation. So, it's --

MS. BHATIA: So, I . . . *(inaudible)*. . . --

COUNCILMEMBER KING: --the zoning designation...

MS. BHATIA: --. . . *(inaudible)*. . . why I'm being charged more. I have compared...

COUNCILMEMBER KING: Well, maybe they...no, but what I'm saying is maybe the other vacant land isn't Single-Family, maybe it's something else, maybe it's Ag. If it's Ag, it's going to have a lower rate. So, the zone...the --

MS. BHATIA: I...

COUNCILMEMBER KING: --taxation should follow the zoning, not the fact that it's vacant, and not the community plan designation.

MS. BHATIA: I've compared it with other R-3-zoned lots. I compare it apples to apples.

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of information.

CHAIR PALTIN: Point of information, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Paltin. So, I went on to mauipropertytax.com *[sic]*, and the property is tax class Non-Owner-Occupied/Residential. Mahalo, Chair.

CHAIR PALTIN: Okay.

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COUNCILMEMBER KING: So, you --

CHAIR PALTIN: And just to --

COUNCILMEMBER KING: --get the --

CHAIR PALTIN: --follow...

COUNCILMEMBER KING: --same tax rate as anybody else with that same designation.
That's what...

CHAIR PALTIN: And then just to follow up on Member King's question, have you ever filed an appeal on your property taxes?

MS. BHATIA: No, I've never done it.

CHAIR PALTIN: Why not?

MS. BHATIA: You know, Member Paltin, I run a practice that takes up a lot of time, and I have a newborn baby. I don't have time to do a lot of the administrative stuff. And I could, I will, I just...and now, with the latest thing, I couldn't because we weren't allowed to go, the County was closed. But I...David Galazin, I showed it to him, and he had recommended that I appeal the amount of taxes that I'm paying on it. But that's not --

CHAIR PALTIN: Oh.

MS. BHATIA: --the point. The point is year after year, after having drained our entire savings to try to get some closure on this lot, even year after year, we continue to put more money --

CHAIR PALTIN: Okay.

MS. BHATIA: --into this.

CHAIR PALTIN: Sorry to interrupt. Member King, were you done with your questions?

COUNCILMEMBER KING: Yeah, I just...I did get a...my...from my office, it's being taxed as Non-Owner-Occupied/Residential, and the assessment was 1,088,200 for 2020, for the current year.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: All right. Thank you.

CHAIR PALTIN: Any...Member Molina?

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COUNCILMEMBER MOLINA: Yes, thank you very much, Madam Chair. And thank you, Dr. Bhatia, for your overview of this. First of all, for the record, how long ago did you buy the property and who was your realtor? And were you made aware of the concerns about this property from the community prior to you purchasing this property?

MS. BHATIA: No, I was told that it is a one-acre R-3-zoned in a Business/Commercial. That because it's a Business/Commercial community plan, that it would be very simple to have this conform to the community plan because that's what they did on Kauai. At that time, I was told in Kauai, wherever they drew the line for it to be a commercial area, all the lots were automatically given that zoning. So, I was at that time, I just moved in 2005. I've been practicing on this island for 20 years. I had a practice in Kihei at that time or through...for the past ten years, I've practiced in Kihei. I've recently relocated to Wailuku because my husband is a farmer, and he farms in one of the ag lots here. So, we moved to Wailuku about four years ago to have him continue to do his farming. But prior to that, we were living in Kihei. And your question was...I was told that...by the realtor that in Kauai, anything within that perimeter was automatically rezoned. So, it was just a matter of putting in an application, and it would take up to three months to get it to conform to the community plan, that it was an automatic thing that the County was obligated to do. So --

COUNCILMEMBER MOLINA: Okay.

MS. BHATIA: --I didn't think anything of it but it's not --

COUNCILMEMBER MOLINA: Okay.

MS. BHATIA: --my world.

COUNCILMEMBER MOLINA: Yeah.

MS. BHATIA: My world is --

COUNCILMEMBER MOLINA: Yeah.

MS. BHATIA: --straightening teeth, and that's what I do. So, I --

COUNCILMEMBER MOLINA: So --

MS. BHATIA: --I didn't think anything of it.

COUNCILMEMBER MOLINA: --Doctor, just, yeah...Doctor, just one last thing, so are you comfortable with sharing with us who the realtor was?

CHAIR PALTIN: And what year you purchased it?

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MS. BHATIA: I can get you...I don't remember. So much has happened in that time period. I can find it for you. That shouldn't be difficult --

COUNCILMEMBER MOLINA: Okay.

MS. BHATIA: --to do, yeah.

COUNCILMEMBER MOLINA: All right. Okay. We'd appreciate it if you could provide us that information at some point.

MS. BHATIA: Sure.

COUNCILMEMBER MOLINA: Thank you very much, Doctor. Thank you, Chair.

CHAIR PALTIN: Do...and do you recall what year you purchased the property in?

MS. BHATIA: I want to say 2000...either '07, '08, or '09, one of those three years.

CHAIR PALTIN: Okay.

MS. BHATIA: And I've --

CHAIR PALTIN: Member...

MS. BHATIA: --paid my water bill ever since I've acquired it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Two thousand ten.

CHAIR PALTIN: Member Rawlins-Fernandez?

MS. BHATIA: ...*(inaudible)*...

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Paltin.

CHAIR PALTIN: Member Rawlins...

COUNCILMEMBER RAWLINS-FERNANDEZ: The...mahalo, Member...mahalo, Chair. So, on the mauipropertytax.com [sic], it says that there was a conveyance in 2010, the valid sale. So, it looks like the property --

MS. BHATIA: Ten?

COUNCILMEMBER RAWLINS-FERNANDEZ: --was purchased in 2010 to answer --

MS. BHATIA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: --your question.

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MS. BHATIA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. Okay. So, I love your idea of having a center of specialists. I think that's great if it could be somewhere else. And so...

MS. BHATIA: So, I don't want to do that anymore. I just...

COUNCILMEMBER RAWLINS-FERNANDEZ: That wasn't my question. My question is, so you said that you have been on this hamster wheel for ten years, and you were banging your head against the wall basically, and spent all your savings and your 401k. Oftentimes...so, I come from a strong community of advocates to protect our environment. And oftentimes --

MS. BHATIA: ...*(inaudible)*...

COUNCILMEMBER RAWLINS-FERNANDEZ: --I wonder why --

MS. BHATIA: ...*(inaudible)*... --

COUNCILMEMBER RAWLINS-FERNANDEZ: --people --

MS. BHATIA: --...*(inaudible)*... --

COUNCILMEMBER RAWLINS-FERNANDEZ: --...*(inaudible)*... --

MS. BHATIA: --but this is my environment too.

COUNCILMEMBER RAWLINS-FERNANDEZ: --their property instead of like continuing to pursue it and not listen to what the community is saying. So, that's my...my question is, why didn't you sell, you know, in the ten years that you had the property and knew that it wasn't going to go through?

MS. BHATIA: I wasn't sure if it would sell because of the controversy with it. I'm...I am happy to sell it if there's a buyer out there. If...one of the people that are being testimonials today are so committed, I'm committed to selling it to the County for the appraised value. I just --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. BHATIA: --have put so much --

COUNCILMEMBER RAWLINS-FERNANDEZ: ...*(inaudible)*...

MS. BHATIA: --money into it that at some point, it was...we have to be able to protect our future, to be able to recover the money that we have put into it.

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COUNCILMEMBER RAWLINS-FERNANDEZ: So, to clarify, in the ten years, you never tried to sell?

MS. BHATIA: Never.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, you stayed on this course and chose to --

MS. BHATIA: We had to do it to --

COUNCILMEMBER RAWLINS-FERNANDEZ: --with all of these...

MS. BHATIA: --have it recover the monetary value that had gone into it because it's hard to sell a property that has controversy associated with it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah --

MS. BHATIA: So --

COUNCILMEMBER RAWLINS-FERNANDEZ: --and I'm sorry the...

MS. BHATIA: --it was...

COUNCILMEMBER RAWLINS-FERNANDEZ: And I'm sorry that you were duped by a realtor. Mahalo, Chair.

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

CHAIR PALTIN: Thank you. Any further questions for the applicant? Okay. I do have...Member Sugimura, a question for the applicant? Go ahead. Oh, you're muted. I can't hear you.

COUNCILMEMBER SUGIMURA: Oh, yeah...I...so, I don't have a question for the applicant. But just listening to this, I believe the Army Corps of Engineers and whatever the Fish and Wildlife that basically said that this is not a, you know, a...what the community is basically saying, you know, that it...and I believe the science of it, you know. And so, therefore --

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: --I've...

CHAIR PALTIN: If...

COUNCILMEMBER SUGIMURA: I'm . . .*(inaudible)*. . . --

CHAIR PALTIN: Wait --

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COUNCILMEMBER SUGIMURA: --frustration.

CHAIR PALTIN: --if you're on discussion, we're not quite there yet. I...we're still on questions. Can you hold it to the discussion part? Thank you. Okay. I just had a quick question for the applicant. You said that you had contracted Munekiyo to represent you from Zoning Change to align the property. I just was wondering why are they not here today?

MS. BHATIA: They are not representing me for this. We...I stopped the representation after the Business/Commercial was denied.

CHAIR PALTIN: Oh --

MS. BHATIA: ...*(inaudible)*... --

CHAIR PALTIN: --okay. So...

MS. BHATIA: --...*(inaudible)*... Dominic, who's a civil engineer. He's helping me. So, Munekiyo --

CHAIR PALTIN: Oh, okay.

MS. BHATIA: --is no longer representing me.

CHAIR PALTIN: Okay.

MS. BHATIA: He was only --

CHAIR PALTIN: So, you only had...

MS. BHATIA: --representing me for the Commercial...the rezoning to conform to the community plan. That was the representation he did. And I was referred to him by the County because they told me that he represented the previous owner so he would have the most information. So, I was asked to go to him and contact him to see if they could have the lot conform to the community plan.

CHAIR PALTIN: So, you had him from 2010 to about 2017, or 2018, and then when the Business didn't pass through, then you ended ties with him, and then that brings us up to this point? You've been working with Mr. Rosario *[sic]* from after the Business-Country Town...or Business zoning till today?

MR. CROSARIOL: No, I've --

MS. BHATIA: He's...

MR. CROSARIOL: --been...I've been on this the entire time from the beginning.

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CHAIR PALTIN: Oh, okay.

MR. CROSARIOL: I'm just...the...I'm the last one here.

CHAIR PALTIN: Oh, okay.

MR. CROSARIOL: I'm working on the project with her. We're just...

CHAIR PALTIN: And in...

MR. CROSARIOL: From the moment...

CHAIR PALTIN: So, from 2010 till 2017, Munekiyo never advised you that you should appeal the property taxes or that wasn't a part of the situation --

MS. BHATIA: No, they didn't --

CHAIR PALTIN: --with the...

MS. BHATIA: --stop representing me in 2010. They just stopped representing me after it went to Council. So, I don't...was that in 2018? So, they've represented me for eight years. And no, I was never told by anyone. The first person who said to me to appeal was David Galazin when I went to him because he had been part of the proceedings for the property to conform to the community plan. He was part of that proceedings, and so was Director McLean. So, when I finally went to him and I said, David, I need to know how to use this property. Actually, we went...to be able to use this --

CHAIR PALTIN: Okay.

MS. BHATIA: --property and to be able --

CHAIR PALTIN: Thank you.

MS. BHATIA: --to recover my...and then that --

CHAIR PALTIN: You --

MS. BHATIA: --he said, you know, the first --

CHAIR PALTIN: --answered my question.

MS. BHATIA: --thing you need...

CHAIR PALTIN: Thank you.

MS. BHATIA: Well --

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CHAIR PALTIN: Okay.

MS. BHATIA: --he was the first --

CHAIR PALTIN: Members --

MS. BHATIA: --one...

CHAIR PALTIN: --any further questions for this applicant? If not, does anyone have any questions that they'd like to ask for the people that we've designated as resources? Member King?

COUNCILMEMBER KING: Yes, Chair, if we could bring up Mr. Parsons who was kind of part of this whole process at the beginning and understands the letters. I believe that the clarity of those letters needs to be...that what was stated was that that pond was not a wetland but there was an acknowledgement that the surrounding area is all wetlands, and that was part...the maintenance of the pond/wetland was part of the conditions. But I think Mr. --

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: --Parsons --

CHAIR PALTIN: Let's --

COUNCILMEMBER KING: --...*(inaudible)*... information.

CHAIR PALTIN: --call him up. Mr. Parsons, are you still on the call and available as a resource? I do see a Rob.

MR. PARSONS: Hi. Hi.

COUNCILMEMBER KING: That's him.

CHAIR PALTIN: Hi.

COUNCILMEMBER KING: Excellent.

CHAIR PALTIN: Okay. Did you hear Ms. King's question or do you need her to --

MR. PARSONS: Yes, I've been --

CHAIR PALTIN: --repeat it?

MR. PARSONS: --listening to the proceedings.

CHAIR PALTIN: Okay. Can you answer her question for her?

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MR. PARSONS: Can you be a little more specific with the questions so that I --

COUNCILMEMBER KING: Yeah, there --

MR. PARSONS: --. . . *(inaudible)*. . .

COUNCILMEMBER KING: --was a...yeah, there was a letter that we were dealing with that was, you know, it's been a...I don't know a year-and-a-half, but I...and I have the hard copy in my office, which is not where I'm located right now. But there was a letter that...a conditional letter that had a list of like four things, I think for the property. And one of them was...said that the requirement to maintain the wetlands. Then that was what was confusing a lot of us between the Planning Department and the Council, and other testifiers is that...but the letters that we've been shown seem to be very specifically saying that the retention pond is not a wetland. And so, I don't know if you can clarify that for us.

MR. PARSONS: That is exactly the debate that I referred to. It's a semantical debate more than anything, I believe in my written testimony that I referred to. And it seems to me that the landowner and Planning Department, and consultant, have taken the position since the Army Corps stated that this retention pond was part of a mitigation effort back in 1992 or '93, that it is not a wetland. I...the two things I would encourage you folks to do, Michael Reyes has provided the map from the National Wetlands Inventory, and it seems to refute what the Army Corps has stated. And that may just be...when they make a jurisdictional determination, that may or may not be as part of the National Wetlands Inventory. Every wetland does not necessarily have a pond at any given time. Some...you can look at a field and it may be designated wetland, and that's because it's necessary for flood storage. So, it may be temporary wetland, or in this case, a tidally influenced wetland where the water table is so high on the surrounding property that there are salt crusting's throughout that block, and you can walk around and just about put your foot through the dirt into the water table. I think it would be prudent to at some point, have Michael Reyes as a senior ecologist who studied the Southwest Maui Watershed extensively, to provide where he drew that wetlands inventory map from. My feeling is if it walks like a duck and quacks like a duck, it's a wetlands. And whether or not you want to call it that, you still have as part of the Army Corps mitigation in the '90s, a obligation to maintain the retention pond in perpetuity. And that's I think, Councilmember King, what you were referring to in the letter that you recalled. So, whether they call it a wetlands or retention pond at that time is a little bit irrelevant to the fact that it must be maintained in perpetuity. So --

MS. BHATIA: And it will --

MR. PARSONS: --one of the...

MS. BHATIA: --be maintained in perpetuity.

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COUNCILMEMBER KING: Excuse me, excuse me, please, please let him finish.

MR. PARSONS: So, I first...the retention pond is on two parcels. It's on the parcel where Dr. Kehler developed the Kihei Veterinary Center [sic], which subsequently went through a Change in Zoning. So, there was scrutiny at that time upon the retention pond. And it was pointed out by people in the community, and I still have photos in my file, that there was not adequate fencing to keep out feral cats and mongoose, and there should have been because as I stated, there are Federally-protected endangered species that have been using this retention pond for nesting and feeding for many, many years. So, I...it's hard to take the promise that we'll always take care of the wildlife when there has not been a good-faith effort to contact US Fish and Wildlife and establish a Habitat Conservation Plan, the same as the operators of the wind turbines do, and they get incidental take permit if there's any harm to the species. And one can only think that it would be extremely disruptive to have extensive building go on right adjacent to where they're nesting. So, I hope that answers your question.

COUNCILMEMBER KING: Well, yeah, that...it does, thank you. But then also, because you've been around for much of the last ten years, do you recall this project coming up after the purchase in 2010? 'Cause the first...I mean when I was on the Council, that was the first I'd heard of any attempt to develop this property. So, were you involved in any, as a member of the previous Administration's cabinet or staff, do you recall attempts being made or just going through the process for the last ten years?

MR. PARSONS: Previous to 2010, when the property was transferred, no. I...as I alluded to in my testimony, there was I think in the early 2000s an effort, Ace Hardware was interested in developing the...that property. You, as a South Maui resident, may remember better than I. But as you and other Members have pointed out, there has been community sentiment against large developments in that area. And the one thing that I didn't get to in my written testimony is how that got its current community plan designation since that's basically what your resolution is about, or the proposed ordinance is to change the community plan designation. The Kihei-Makena CAC, Community Plan Action Advisory Committee [sic], recommended Residential. The Planning Commission recommended Residential. The Planning Department recommended Residential for this entire block including this parcel. Only when it went to the Council Planning Committee, the fourth step in this, were those recommendations overturned to put it in Business/Commercial. So, that gives a little bit of the background to the discrepancy in the zoning and the community plan designation. And that's why, I and some of the other people who testified said maybe the best thing to do is go through the update of the community plan process and take a second look so that everybody...

COUNCILMEMBER KING: Oh, that...but that decision that was made at the Council Committee at that time, was that...was there a reasoning behind that that you recall?

MR. PARSONS: Yeah, I've read those meeting minutes, and they actually brought in a representative from the Army Corps. But I...my take on it was you had to kind of read between the lines. It sounded like there was someone who wanted to develop

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something in there, and that this action was taken so there could be commercial development in this area.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: Kind of like Ma`alaea then. Okay.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: Any further questions for Mr. Parsons? In gallery mode. Anybody have any further questions for Mr. Parsons? I don't see anybody. Oh, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to follow up on Member Sinenci's question. I really wanted to hear the explanation to that. Member Sinenci had asked about wetlands being on both sites.

CHAIR PALTIN: Mr. Parsons, are you able to answer wetlands on both sides of the parcel?

MR. PARSONS: I would refer to the Wetlands Inventory map that was in my written testimony. And I think Charlene Schulenburg may have also submitted it. And we both obtained that from Michael Reyes. So...

CHAIR PALTIN: And to follow up, do you know what year this is from, this nationally recognized wetlands paper?

MR. PARSONS: I'm pulling it up on my screen. And if there's no date on it that you can see, then I don't, off the top of my head, no.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, did you want to ask that question of our other resource, Ms. Schulenburg or Mr. Kalanikau?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure, if either are able to answer that question. Just looking at the aerial photo of it, that...I think that's likely why Member Sinenci had asked the question. 'Cause it --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: --looks like it.

CHAIR PALTIN: Okay. The --

MS. SCHULENBURG: This is --

CHAIR PALTIN: --aerial --

MS. SCHULENBURG: --Charlene --

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CHAIR PALTIN: --photo...

MS. SCHULENBURG: --Schulenburg. Sorry. I'm available.

CHAIR PALTIN: Okay. Before we take up Ms. Schulenburg, nobody else had any questions for Mr. Parsons? I don't want to be just jumping back and forth. I can only see Member Sugimura, Member Sinenci, Member Molina, Member Rawlins-Fernandez, and Member King. Ms. Lee...Chair Lee, no questions? Okay. All right.

MR. PARSONS: I'll mute --

CHAIR PALTIN: Thank...

MR. PARSONS: --myself.

CHAIR PALTIN: Thank you, Mr. Parsons. Ms. Schulenburg, do you have knowledge about wetlands surrounding 1488 South Kihei Road?

MS. SCHULENBURG: Yes, I do. I have a lot of information. Was the question that was posed the date of the letter of the Wetland Inventory map?

CHAIR PALTIN: Oh, that was my question. Sure --

MS. SCHULENBURG: Oh --

CHAIR PALTIN: --if --

MS. SCHULENBURG: --okay.

CHAIR PALTIN: --you would like to answer --

MS. SCHULENBURG: I...

CHAIR PALTIN: --it, that would be great.

MS. SCHULENBURG: So, Michael Reyes sent that to Rob Parsons and myself fairly recently. And that comes up on an ongoing basis on the actual Wetland Inventory Federal site. So, you can pull that up. There's no official date other than Michael, you know, highlighted the lot in red, and then looked up that specific lot. But it's an ongoing database. So, that is a non-dated item, but I can certainly look up when Mike pulled that up and e-mailed that to us.

CHAIR PALTIN: Okay. And then I don't know if Member Rawlins-Fernandez or Member Sinenci wanted to ask your question about surrounding wetlands.

MS. SCHULENBURG: So --

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CHAIR PALTIN: Okay.

MS. SCHULENBURG: --what's the question again?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure, Chair. I'll ask the question. So, the question is whether there are wetlands mauka and makai of the parcel in question?

MS. SCHULENBURG: Correct. There...both. There's jurisdictional wetlands mauka and makai of this particular lot that we're talking about.

CHAIR PALTIN: Okay. Thank you. Any further questions for this resource person? Seeing none, I just had a question, have you any idea why the...this National Database and the Army Corps of Engineers don't seem to be in communication with each other as to what is designated wetlands and what isn't designated wetlands? Are they both Federal agencies?

MS. SCHULENBURG: Yes, they're both Federal agencies. What my understanding is is that there are several letters from the Army Corps of Engineers to...regarding this particular lot. If you read them all in their entirety, back to back, in succession of dates, they call this wetland a wetland several times. The only thing that they're making a jurisdictional determination on in these letters is the mitigation pond itself. They need to say it's not a 404 or 401 jurisdictional wetland...body of water that they are in charge of anymore. So, there's a huge distinction when you read all of these letters. And I know that there's been spot-readings, you know, of a sentence or two. And so, that can be completely misconstrued and taken out of context. So, when you...when, you know, as doing research on this, as I have as Rob Parsons has, and you read these letters in succession, they call it infill wetland in the June 2, 2015 letter. They call it an adjacent wetland in that same letter. They also make reference to it in many of the other letters. They keep repeating that the pond, the mitigation pond only, is not a jurisdictional wetland. There would probably need to be an actual onsite visit, which has not been done since probably 1991. The letters that keep being referred to is their...the Army Corps commenting on the work that was done for the mitigation pond, and that was done correctly, and therefore it's...that pond is not a mitigation pond. They keep repeating that. But they have not been onsite. And they do ask for a new JD several times. And so, do all the other letters from the biologists, to the Fish and Wildlife group, and all the other, you know, institutions that took a look of...look at this and actually wrote letters very specifically about what the concerns were and what the needs were. So, it...for me and my layman understanding, there is no question that this is a wetland. And back to Rob's point and Maui Tomorrow's point, and Lucienne de Naie's point, and a whole bunch of other people's points, you know, culturally, as we're going forward and learning about the wetlands and trying to steward and take care as a hui, you know, we are realizing that, you know, culturally, this is a wetlands. There's so many elements to a wetland. And I did speak specifically to HILT, and I spoke specifically to Scott Fisher, who's willing to be our hui partner. And although HILT does not want to get involved, you know, politically at all, I spoke to him about this and he said to be sure to mention

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that, you know, there's a lot with the title, the large title influence that's going on because this is...this property is located about 500...or excuse me, 500 feet from the shoreline. And so, it is being directly affected, and they're...you know, it causes areas that are more moist and whatnot. You know, they would need to get in and have permission and whatnot since it's a privately-owned lot to get in there and actually do some of the hydrology measurements, the notations of what the fauna and plant life is, and especially, what the natural habitation is, and what that...those patterns are with the bird life and whatnot, and they are using the pond. And it says in the actual Army Corps of Engineering [sic] description of mitigation that these ponds aren't just for flood mitigation. It's also for the habitat mitigation. Because an acre of land is basically being completely altered, and the birds need somewhere to go. So, despite the problems with the homeless and the, you know, feces or whatever, that is exactly one of the reasons why, you know, this isn't a bad idea for the County to perhaps purchase this, you know, and alleviate some of the pain, and yet put it into, you know, either a land trust or into proper stewardship hands. So, I could go on and on, but I think that may answer your question.

CHAIR PALTIN: Yes, thank you very much. Members, any further questions for this resource? Seeing none, thank you so much for taking time out of your day. At this time, would anyone like to make a motion? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay. Mahalo, Chair. Oh, it looks like the District representative wants to make a motion.

CHAIR PALTIN: Okay. Member King?

COUNCILMEMBER KING: Chair, yeah, I'd like to --

CHAIR PALTIN: Yes.

COUNCILMEMBER KING: --make a motion to file this item --

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

COUNCILMEMBER KING: --and if I can get a second. Okay.

CHAIR PALTIN: Okay. I have a motion to file the item from Member King, and it's been seconded by Member Rawlins-Fernandez. Member King, as the movant, would you like to start the discussion?

COUNCILMEMBER KING: Yes, thank you, Chair. I think this issue, we've been going round and round about whether this is a wetland. I don't think there's any question if you look at this map that it's a wetland. But I think the bigger issue is the community plan amendment and the fact that the community is not ready to step into this as we're ready...as we're at the beginning of going into the South Maui Community Plan. So, I would like to have that discussion at the community level, you know, once we get started on the South Maui Community Plan. And, you know, I'm very open to a

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purchase of this land if that's another way we can move into. But I think as far as having the community having to deal with this as an ongoing issue and whether or not we can subdivide, this is clearly within the sea level rise inundation zone, not to mention the wetland and the SMA and all the other issues. So, for our community, it's a huge environmental issue. And I do...I don't know what transpired at the purchase...at the point of purchase of this land. I did look up the fact that it was purchased for 775,000. And so, there's been an increase in value if it's over a million to date. And maybe that could help make this...the owner whole. But, you know, we can't make any promises of course. We have...we're not making that kind of a motion right now. But I just think that this issue, the community plan, we need to go through the process of the community plan on a holistic basis and not piecemeal it together, which is what this is doing. There's...to me, there's not the urgency of development here because we're not...I don't think we're going to...our community would support a subdivision here, it's just the wrong place for a subdivision. And if the landowner does want to go ahead and build a home, that's squarely within her jurisdiction to do with her current zoning. She's still going to --

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: --be...if she doesn't live there, she's still going to be a nonresident. So, you have to deal with whatever the taxes are for being a nonresident. But anyway, that's...my thought is just let's just file this away. This was a motion to send it to the Planning Commission, and I don't think we're anywhere near ready to do that.

CHAIR PALTIN: Okay. Thank you. Member Rawlins-Fernandez as the seconder of the motion?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I echo what Member King stated. And that perhaps the community plan will be a discussion in updating the community plan and will help to, you know, fix the situation better than at the Council level. And it is in the inundation zone and sea level rise. I...while, you know, I guess a house being built on the parcel is within the right, I...it doesn't seem like it would be a smart thing to do. I, you know, like Chair Lee and Member King said, you know, purchasing the property for protection in perpetuity of this wetland is something that, you know, I could be supportive of. I know that's not what's before us right now. But I just wanted to point out that in 1988, it seems like there was like a \$200,000 conveyance, and then in 1989 a \$275...\$275,000 conveyance. And in 2010, it went up by \$500,000 to 775,000 in 2010, which is kind of where...when Kihei was, you know, growing really quickly, and land was probably really valuable. I wouldn't support, you know, spending a whole lot of taxpayer dollars for someone's bad decision, business decision. I don't think it's for the taxpayers to have to make up for, you...realtor's, you know, not doing a good job at informing their clients on what properties could be used for certain activities. And so, mahalo, Chair.

CHAIR PALTIN: Thank you. And I did see Member Lee had her hand up, but I did ask Member Sugimura to hold her discussion. So, Member Lee, do you mind letting Member Sugimura go?

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COUNCILMEMBER LEE: Not at all.

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: Member Lee can...

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Chair can go first, and then I'll speak after her.

CHAIR PALTIN: Okay. You guys are too kind. Member Lee?

COUNCILMEMBER LEE: Okay. Thank you, Madam Chair. Yes, I still look at this a little bit differently in that it appears the buyer thought this was actually in...this piece of property was actually intended for business purposes, and initially tried to get the zoning in compliance with the community plan. But as we know in Hawai'i, it's very difficult to go through the land use process within the same decade. So, yeah, I'm not surprised it took her ten years. But unfortunately, that's the way it is around here. So, I think, you know, we ought to help her in a sense that she's been through an ordeal of which she didn't realize what she was getting into. And since the community continually comes out against any...it seems like any development over there, whether it's residential or business. So, in a sense, that's kind of a taking. So, I believe that we need to really strongly consider purchasing the property, that way we can preserve it, and then she can be made whole again. Thank you. So, I don't know if you want to file this for...but also maybe the subject matter be sent to the EDB Committee for consideration. Thank you.

CHAIR PALTIN: Okay. Okay. Member Sugimura, followed by Member Molina.

COUNCILMEMBER SUGIMURA: My discussion was along that lines of here we have jurisdictional agencies, you know, with the Army Corps of Engineers, and is it Division of Wildlife...the two letters that were shared, and the more recent one of the e-mail from Army Corps saying that this is not a wetland. And then we have community members who come out and say, I don't know what their authority is, but in light of the fact that we're government municipalities, I kind of believe the Army Corps of Engineers' letters, and if they have reiterated then and again now, that it is not a wetland, then I consider that to be factual, unless if the Army Corps of Engineers decides to change their determination. And I am also concerned, and I was going to ask that question about is this a taking where you have a resident or a person who bought property and is trying to do something. I mean her first round was trying to preserve that mitigation pond because of the cry of the community. So, she was going to do this wellness center and preserve the, you know, the wetland or the mitigation pond, whatever you want to call it, but that was turned down. And so, she's back again with that, you know, trying to solve another problem, which is housing, and we have the same people who are saying we need to preserve this wetland, then I'm with Member Lee. I mean if it's so precious to the community, and if the Mayor would

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approve, then let's look at purchasing it if it's that precious, you know. I mean if you think that's the role of this body to make decisions that are going against, you know, the will of the applicant by saying that the greater community's voice is louder even if you have a Army Corps of Engineers saying that's it's not a wetlands, but if that's what the community wants to do, and if we can convince the EDB Chair to hear it, and then send a recommendation up to the Mayor, and if he wants to buy it, then that's the process we'll go through. But I think right now, we sound like we're at a standstill. I mean if you send this to the community, the CPAC when South Maui comes up, we're going to hear the same thing. So, we're going to be talking about the same thing except it's going to be five years down the road or however long it takes to get this done. But I think we're all beating at the same drum and that we need to really call the shot the way it is. I mean if we don't want it, we don't want it, but let's figure out, can we purchase it, you know, just to be fair. And if those voices from the community are greater and better than the Council's, which sounds like it is, then let's address the problem and move it forward, and don't keep on spinning wheels on this. 'Cause this sounds like the discussion that we had during the last term of which the applicant has come forward and changed her plan based upon what the residents told her. And now that she's changing it, we're telling her the same thing. So, let's face the issue and make a right decision to support her if you think that's what it should be. 'Cause I think you take it to the community plan, you're going to hear the same thing that we've heard last term and this term. So, that's my opinion, Chair. Thank you for letting me speak.

CHAIR PALTIN: Thank you, Member Sugimura. And I'll take Member Molina, followed by Member Sinenci.

COUNCILMEMBER MOLINA: Yeah, thank you very much, Madam Chair. And, you know, I sort of feel for the property owner going through all of this. And as it stands right now, the property owner can build a structure and a accessory dwelling if I'm correct with the current zoning. Of course, there's the other option, and I did bring up the subject matter of the County purchasing early on, one of my first questions. So, I just want to make sure I got in the record on that too. So, that is an option that can be considered by the Administration, and even us, and of course, the property owner should she choose to go that route. So, I think if we send this over to the Planning Commission, then, you know, more of the same is going to follow, more testimony, and I guess more agony if you will for the property owner. So, I think for all practical purposes, Chair, your motion to file or your recommendation to file, I think is the appropriate action --

COUNCILMEMBER KING: That was my --

COUNCILMEMBER MOLINA: --for today's --

COUNCILMEMBER KING: --motion.

COUNCILMEMBER MOLINA: --purposes. Yeah. Okay. Who was...okay, Member King's --

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CHAIR PALTIN: Member --

COUNCILMEMBER MOLINA: --motion --

CHAIR PALTIN: --King.

COUNCILMEMBER MOLINA: --sorry, yeah. And...okay.

CHAIR PALTIN: Okay.

COUNCILMEMBER MOLINA: All right. Thank you. So, I'll support the motion on the floor.
Thank you.

CHAIR PALTIN: Thank you, Member Molina. Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. And yeah, I'm also supportive of the motion to file. I...and I appreciate everyone's discussion including the testifiers and our resource people that's been part of this for the last couple years. I mean like we're just...I'm...I know I'm just hearing this. This is coming back up for this Council. But I did want to, you know, push that, you know, if we could get some of the agency input from the US Fish and Wildlife, Habitat Conservation, I think it will...if some Members are suggesting purchasing the property and putting it Conservation, I think those agencies will only strengthen our resolve and our intent to purchase, to protect it. That was my comment.

CHAIR PALTIN: Okay. Thank you, Member Sinenci. Does anybody need a second and final?
Member King?

COUNCILMEMBER KING: Thank you, Chair. And thank you, Members, for the support to file this 'cause I think you are all right, this is, you know, this discussion will just go round and round if it goes to the Planning Commission. I do...well, the point I wanted to make was, and I, you know, the last conversation I had with the landowner, with Dr. Bhatia, was on the property when we walked off after the site visit. And we did, you know, I did discuss with her at that time, you know, what about the potential for buying it. And she indicated that she wanted to work with the community and possibly sell it, or at least turn it into a wetland preservation area, which is...where...what the community wanted. The community did not want housing on that property and did not want a subdivision. That's not what we asked for. But I understand the greater cry for affordable housing is what the landowner is referring to. But that...I just want to make clear that that...what we're trying to do here is honor the community and the community plan process because this is our community. And, you know, we're not bound by what somebody told a developer ten years ago. I'm really sorry that that's been going on, and that's what...how it was represented, that if it had a community plan designation that it would be really easy to overturn the zoning because that's not always the case, and it's becoming harder and harder to change zoning. But I can't answer to that, Dr. Bhatia, because I wasn't around then, and I wasn't part of that discussion. So, I think, you know, the...there's

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an intent here to want to work with you on the potential purchase, but I just want to make sure that we're not doing this, that, you know, because I don't want to start a precedent for people saying...coming to us and saying well, I was told something really wrong by my realtor, and now you have to come and buy my property. That's not what's going on here. What's going on here for the community is seeing the value in restoring those wetlands to what they used to be and using them for that flood overflow when we...cause that's a critical spot. So, I just, you know, that's to me the value of this purchase, not necessarily as much as I feel for you, and it's not necessarily an attempt to make somebody whole who maybe was told the wrong thing because this is going to happen again. We're not in...we're not...we can't control what every realtor tells every purchaser of land. If, you know, it's sort of the buyer beware. If you really want to know what's going on, go talk to your Councilmember and ask them, okay, I see there's a difference in community plan and zoning, how difficult is this, you know, can I get a business here. But we can't be responsible as Councilmembers for what every realtor is telling every land purchaser. So, let's not...I mean I don't see this as a...I don't see that as a taking because she purchased a piece of land that was Single-Family Resident, and she can do a single-family resident there if she wants, but we're not taking anything away. But what we could do by making a...and by negotiating the purchase of this land, is hopefully a win-win where the developer is...or the landowner is out of this situation she wants to get out of, and then the community can add this to our inventory of protected wetlands in the area. So, that's where I'm kind of at...going at. And I would support sending this over to, you know, making a referral for this to EDB if our Budget Chair is willing to do it.

CHAIR PALTIN: Thank you, Member King. Does anybody else feel the need for a second and final? Looks like no. I'll just take this opportunity as the Chair, I'll support the motion. You know, the...what really did it for me, and I don't put that much faith in the Army Corps of Engineers just looking at the gates they put on Kahoma Stream, which was a horrible, horrible idea, and it's added to a lot of sediment buildup behind those gates, I'm kind of more realistic as to what happens, you know, when it rains a lot. And I believe that Mr. Parsons' aerial view of the property during the last rainstorm is what kind of did it for me. You know, to put four affordable housing in the middle of all that flooding, and then when there's a big flood, and who are they going to call, they're going to call our Fire, our Police, you know, to help them out. I think that's just a bad recipe for disaster. You know, I remember living in Hilo in a area that flooded--or not living, my friend lived there and I spent so much time I almost lived there--but every time it rained, you know, we have to put sandbags out. And, you know, I do have friends that live on South Kihei Road, that deal with the flooding every time it rains, and I...that's kind of what did it for me in this choice is looking at the reality of just, you know, last month I believe it was. And, you know, I do feel for the applicant. I'm sorry but something does need to be said for personal responsibility in your investments. I was a little bit appalled at the characterizations of other testifiers and, you know, asking our po'o of `Aha Moku `O Kula Kai to clean up a property that she owns, you know. We need to be responsible for our own properties and our own investments. But that being said, I do understand having been swindled by a realtor and not understanding the situation is a horrible place to

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through this one real quick, if they're willing to stay on. I realize that it's 12:30, but Member Kama has moved her meeting to Friday. So, just seeing if, taking a quick poll...Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. I just have a couple of quick questions. And if maybe, Member Sugimura can...well, I'll yield to Member Sugimura as the initiator of the legislation if...to give her the privilege of just making a few brief comments, and then I have a couple of questions. Because this matter affects our districts, so. And I know we're pressing for time but just a little bit of that so we can at least share our thoughts and maybe...there may be some questions 'cause in testimony, there was some questions brought up. So, I would like to ask if you'd consider giving Member Sugimura the floor first, and then I'd like to ask a couple of questions. Thank you.

CHAIR PALTIN: Sure, sure, I just was doing a quick poll if Members were willing to hang in there for this item. If you can give me a thumbs-up if you're willing to stay. Okay. All right. And then, yeah, Member Sugimura, if you can give a brief one, followed by Member Molina, followed by Member...or Director McLean, brief one. Yes, Member King, did you have a question?

COUNCILMEMBER KING: Yeah, I just wondered maybe Member Sugimura could, in your overview, tell us why there's a resolution to an ordinance. So, it looks like we're...I can't...it looks like we're approving --

COUNCILMEMBER SUGIMURA: So...

COUNCILMEMBER KING: --a resolution that has an ordinance attached to it.

COUNCILMEMBER SUGIMURA: So, basically, what we're doing in the process is Title 19. So, we're referring this proposed legislation to the planning commissions, which is the process. So, that's what the resolution is for, it's just to forward it once it's approved by you and this body to then forward it to the planning commissions for comment, and then it will come back to us.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER SUGIMURA: So...

COUNCILMEMBER KING: Thank you for that.

COUNCILMEMBER SUGIMURA: Yeah, to get the community input. And I...you know, before we start, I just want to thank...and actually, Member Molina and I worked on this together. So, the comments from the community, it really does also involve Mr. Molina office and mine for trying to put this together. So, I want to first say that. And maybe the difference in the conversation that we had from the first meeting to this one is that basically, what we tied the conditional use permit to is acreage. So, properties that have now 50 or more acres in continuous TMKs, that they would fall within this

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ordinance where they would be under special use and not have to get a conditional use permit. And then the other things we did was tighten up the language for insurance as well as...I tried to do the alcohol one, which I think Member King and...King brought up, and it sounds like under 19.97 on Page 2, item number C [sic], where we try to address alcohol, intoxicating substance while at the location of a zipline or canopy tour while it is open for business, you cannot consume intoxicating substances. Can we just say, and maybe Director can say if this could be changed, so that you cannot have a liquor license for your operations. 'Cause I think they all don't serve alcohol but because they are on such large parcels of land, and a good example was the Maui Tropical Plantation one that they have that restaurant, and it's all on the same acreage, but it's not part of their business, so I wonder if Director McLean can help us with that. And the other thing is that we talked about in that last meeting, the capping, I think this came from Member Sinenci, capping the number of ziplines. And I think we said 20, and by looking at the...I actually did research after, Mr. Sinenci, so there's total number of ziplines that are in operation including one on Lāna'i, soon to be when they're operation, their golf course conversion comes up, there's going to be a zipline on Koele portion, but altogether, I think there's ten. So, I changed this to 15, if you don't mind, just because I think to take us for another 10, and I don't think we can find that much property to go there. On the concern about insurance, which is 19.97.040, Restrictions and Standards, I checked with that, and maybe the Corp. Counsel or the Department could comment on that, but the language that talks about insurance, which will include a duty to defend the County if the County is sued as a result of operation of the zipline or canopy tour, I wonder if the Department can make a comment to that or Corp. Counsel because I think that's standard language, and I would need advice on that. But pretty much, those are the two items that if I could have comment.

CHAIR PALTIN: Thank you, Member Sugimura. Yes, it's very clear that you really did a lot of work in your homework and took a lot of things into account along with Member Molina. I just wanted to point out the correspondence from the Planning Department on the Granicus also lists the ten current zipline, actions, and all their information if guys wanted to do a deeper dive. At this time, Member Molina, did you want to say a few words as well?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair, and thank you for bringing this back as well, and to, Member Sugimura, for, you know, doing yeoman's work on this as well. Just one quick thing regarding Section 19.97.030, where it says Districts in which permitted, I know that the changes made, the requirement of 50 acres for zipline operations; however, it appears ziplines can, based on what's currently in the bill now, ziplines can operate in any district with a conditional permit. My concern is that, you know, I would prefer to just keep it...keep Residential Districts out of this, restricting ziplines in Residential Districts for, you know, obvious reasons, you know, like what the folks out at Kauhikoa Road have been experiencing. 'Cause I certainly wouldn't want some loud zipline operating near me and people screaming and all of that stuff. So, you know, I know today's actions we're going to be forwarding this to the planning commissions. So, that might be something for them to look at, and maybe and make recommendations to us about that. But for me, my preference will

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be just restrict ziplines in Residential Districts totally. And then also for Section 19.97.030(C), which allows ziplines on smaller parcels by super majority vote by the Council, can I get a comment from Corp. Counsel's opinion about this provision, and that if they're okay with a provision that requires a two-thirds majority approval of a conditional permit under special circumstances instead of a simple majority?

CHAIR PALTIN: You wanted to --

MR. HOPPER: Well, there --

CHAIR PALTIN: --ask...

MR. HOPPER: --were several questions...oh, sorry.

CHAIR PALTIN: Go ahead --

MR. HOPPER: Yeah, there were several...

CHAIR PALTIN: --Mr. Hopper.

MR. HOPPER: Oh, thanks.

COUNCILMEMBER MOLINA: ...*(inaudible)*...

MR. HOPPER: There's...it's highly unusual to have something like that without making a change to 19.40 or...and making that clear for conditional permit. It's also generally very strange to have a...an ordinance that says these uses are not permitted but talk about you can do a conditional permit for them, but then to say in the conditional permit, here are limitations. That's odd because the Council is adopting a conditional permit. And so, the Council is sort of saying a future Council can't adopt an ordinance to change this. That's a bit different, which is why sort of in our last discussion, we had looked at...in our last discussion, we had sort of looked at going for the special permit route, which I see this ordinance does do. It talks about the ordinance as are permitted in certain districts including the Agricultural District as a special use. And so, you'd need to go to the Planning Commission to get that. And it is common to have standards enacted for, which are required by the special permits. As far as the conditional permit requiring a two-thirds majority, that's something that's definitely very different, and we have to look at that closely certainly as it goes through the Planning Commission to see if that's something that we would be okay with, just because it's sort of inconsistent with the adoption of an ordinance. In...at times that there is a requirement there, I think the Charter mentions them in the event if a Planning Commission, in looking at an ordinance, recommends one thing and the Council does something different. So, there's times where a two-thirds majority is required. The thing to look at would be whether that's required by ordinance or not. And so, that's an issue we would have to look at. It's definitely I would say unusual because you're tying the hands of a future Council, which is

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something that generally we wouldn't do. And if that was done, we want to be amending 19.40, which goes into the criteria for conditional permits rather than a separate section on restrictions and standards that says you can get a conditional permit under this other section but here's the limitations. So, that's something that's different and that we would want to look into. And in fact, the conditional permit standard is supposed to be for something for a use you could not have anticipated in the district, otherwise, what's normally done is a Change in Zoning. You know, a conditional permit is very powerful. It actually lets you do any use you would like in any zoning district without getting a Change in Zoning. So, that's not to say, that hasn't been utilized before. There's been a lot of uses allowed by conditional permit. But just be aware that that's sort of unusual and we would want to look at that before approving. Again though, this is something that you can discuss with the Planning Commission should you move this forward because it's got to go through that review process before the Council could consider adopting it.

COUNCILMEMBER MOLINA: Okay. Thank you very much, Mr. Hopper, for your assessment. Thank you, Madam Chair.

CHAIR PALTIN: Thank you. At this time, are there any opening comments from the Planning Director McLean?

MS. McLEAN: Thank you, Chair. I had exchanged some e-mails with Councilmember Sugimura and suggested an approach similar to what Mr. Hopper just said. So, what we can do, I would love to get this process going. I think the Committee is anxious as well. We can work with Mr. Hopper on a rework of the bill and take them both to planning commissions at the same time, so that when it returns to the Council, you have options that have all been considered by the commissions so that you can then decide what path you want to pursue. I would just hate to get into the situation where we take this bill through and it comes back to you, and then we decide, oh, we should amend this different section of the Code instead, but the Commission hasn't reviewed that. So, we'll cover all bases. If you do want to move this out today, we'll make sure that all bases are covered so when it comes back to you, you can come up with a final version that works for the Council.

CHAIR PALTIN: Members, any objection to that? Member Sugimura?

COUNCILMEMBER SUGIMURA: No objections. I really like that to just...to get this moving forward to support the community, which I think we heard loud and clear, you know, the agony. I can't believe they had the zipline going on Mother's Day. That's so terrible under the COVID-19 conditions. But I wanted to get Mr. Hopper's opinion or statement just because a testifier questioned about the insurance that we put in here that the...their insurance would basically indemnify, I guess is my word, or defend the County. So, is that standard language or do you take that out?

MR. HOPPER: I think you could use that and you can say shall defend, indemnify, and hold harmless the County if you want to put that in there. Now, I would say that there's case law that goes into the County is generally not liable for if a...if it grants a permit,

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and then something goes wrong and someone sues the County, the general rule is the County is not liable there, but it's...it...we certainly do in cases of granting permits, variances, and other things have language like this that requires that if you do get a permit and someone sues us because of it, you need to carry insurance that will protect the County in the event of a lawsuit. So, I think this is language you could have. I think there's similar language for downhill bike tours, things like that, although that's a bit different because it involves the use of actual County roads in some cases or roads the County might maintain. But in any case, you can include this language. I'd maybe recommend defend, indemnify, and hold harmless as language. But I don't think it's off base for the County to say that if these uses are going to be permitted, that there's insurance requirements for them.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: And what...

COUNCILMEMBER SUGIMURA: And then the other comment --

CHAIR PALTIN: Oh...

COUNCILMEMBER SUGIMURA: --was about, Mr. Hopper, about alcohol consumption or substance...intoxicating substances while on the location. So, maybe when you do a revamp of this, if you could...I was just thinking for this specific business not to have a liquor license just because of the Maui Tropical Plantation where you have this, you know, large acreage but there is that restaurant that doesn't even belong to the zipline. So, there's a concern about this being interpreted too broadly that doesn't affect the zipline business. So, when you do the rewrite, can you, I don't know, say you're not allowed to have a liquor license or something, which I think none of them serve alcohol. They don't do it anyway but I can understand just because of the variety of businesses that we see in the community that we want to just be sure, and liability. So, I wonder if you could, you know, look at that. And the other thing that a testifier brought up was setbacks. And I think that if we put setbacks into this ordinance, it may be a problem because of the existing businesses. I checked, and that would be a problem with some of the existing businesses. And then the last one, which was kind of interesting to me, which I never even thought about is a fine, you know, and especially it got to me about having the zipline going on a illegal day, which is Mother's...and Mother's Day, and having all these visitors, COVID-19, you know, against all the rules and what the whole community is trying to do, and then you get these COVID-19, COVID idiots I think, right, is what they're called, you know, violating what the whole community is trying to do. So, can we do fines also?

CHAIR PALTIN: Or what about revocation of the permit? Revoke...revoke the permit if they're not going to follow the rules. It's a conditional permit. So, you know, if they're going to do whatever they want, should they still continue to hold the permit?

COUNCILMEMBER SUGIMURA: Yeah --

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MR. HOPPER: Well, I...

COUNCILMEMBER SUGIMURA: --I like...

MR. HOPPER: Oh...

COUNCILMEMBER SUGIMURA: Go ahead, I'm sorry. I'm sorry, Mr. Hopper.

MR. HOPPER: Sorry, there were a few questions there. I'll wait for you to --

COUNCILMEMBER SUGIMURA: No, I'm done.

MR. HOPPER: --conclude.

COUNCILMEMBER SUGIMURA: I'm done.

MR. HOPPER: I didn't want to interrupt, I'm sorry.

COUNCILMEMBER SUGIMURA: Sorry, sorry.

CHAIR PALTIN: Go ahead, Mr. Hopper.

MR. HOPPER: Okay. Thank you. There are a few questions there. I mean the issue of fines, the County Code already has a fine section for...it's 19.530.030, that's a universal sort of enforcement section for Title 19 of the Code. And so, anybody who would violate this section would be subject to...if they did a zipline without a permit, they'd be subject to a fine of up to a \$1,000 per day. That's the cap by the Charter. The Charter doesn't let you a fine any more than \$1,000 per day for that type of violation. As far as COVID-19 violations though, that can...that's I think a separate potentially criminal matter that could be enforced if there is evidence of something like that going on. You've...I may imagine you've heard of the cases of people being arrested for those situations. So, I think that's a totally separate issue whether it's a zoning violation also or not. And as far as the conditions, yes, I think that you can look at...I think the conditional permit section, again, there's a whole section in 19.40 of the Code that goes over what conditional permits are, and how to deal with them. And I believe it would have language related to revocation of a permit, the special permit as well. And I think in fact, the conditions of those permits generally say that if you don't follow the conditions or violate any conditions, that the permit may be revoked. You could put that into that ordinance too, but it may not be required if that language is already there. So, that was, you know, with the enforcement section. With respect to alcohol, we would sort of need to know exactly what you want. If you want to exclude a situation where it's on the same parcel, you could have clarity that if there's a licensed establishment on the parcel that doesn't restrict their...the serving there. But if you're talking about you just don't want anybody while operating or participating in the zipline to...have, you know, consume alcohol, you can specify that, and we could work with the Department on that issue. And I didn't remember what the other question was, but those are the two that I did remember.

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COUNCILMEMBER SUGIMURA: Got it. Very good.

CHAIR PALTIN: Member Sugimura, did you have any that weren't answered or you had all your questions answered?

COUNCILMEMBER SUGIMURA: Yes, I would like to hear from the rest of the Committee about the penalty portion --

CHAIR PALTIN: Proposed...

COUNCILMEMBER SUGIMURA: --or the revocation of the permit.

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: And...

CHAIR PALTIN: Would anyone else like to weigh on...weigh in on penalties or revocations of the permit?

VICE-CHAIR SINENCI: Chair?

CHAIR PALTIN: Member King, followed by Member Sinenci.

COUNCILMEMBER KING: Yeah, Chair, I kind of agree with what's been said about the...the fines are kind of built-in. That's the Planning Department has the right to fine for violations. But the conditional use permit, you know, if you violate the conditions of it, you should get it automatically revoked. So, I'm not sure that we need to put anything specific in there unless there's some reason why our fine system wouldn't apply to this particular type of permit. But I'm --

CHAIR PALTIN: Mr. Hopper --

COUNCILMEMBER KING: --pretty --

CHAIR PALTIN: --and Miss...

COUNCILMEMBER KING: --satisfied.

CHAIR PALTIN: Mr. Hopper and Director McLean, any comment on if the fine system wouldn't apply to this permit?

MR. HOPPER: The 19.530 says that you can be fined for any violation of Title 19, and this language is in Title 19. So, I think it already provides for the maximum possible fine that you could have at this point and the process for that fine. So, I don't think there's a need to duplicate that.

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CHAIR PALTIN: Okay. Thank you. Member Sinenci?

VICE-CHAIR SINENCI: Chair, I believe Member Sugimura had a question about setbacks of Mr. Hopper.

CHAIR PALTIN: Oh, good catch. Mr. Hopper, did you have any comment on Member Sugimura's question on setbacks?

MR. HOPPER: I do think that's more of a policy question. If you want the ziplines to be set back from other neighboring properties, that's something you could put in. And I think Member Sugimura was correct that if there are existing businesses that have that, that might create problems for them. So, that's correct. So, I think that's something the Committee can discuss and how it will affect existing businesses, whether they'd be grandfathered in or how to deal with that, or it would be something to discuss. But I think that's mostly a policy issue. The legal issue would be how it would apply to existing businesses. So, we should look into that, see how it would affect people and certainly be aware of what effect it would have, you know, it...whatever regulation would have on something that's existing and lawful at the time. So, that...those would be my comments.

CHAIR PALTIN: Does that satisfy your question, Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, and I think from what I heard from the testifiers is there's some existing businesses who, you know, like from...that started that have a conflict with the setbacks but that's where they were designated to be placed. I think it was Haleakala Ranch people kind of asked the groupings of the commercial type, or I don't know, those kind of businesses, recreation businesses, to be at a certain place. So, there might be a problem there from what I heard from them, but yet, they're not yelling and screaming --

CHAIR PALTIN: Causing...

COUNCILMEMBER SUGIMURA: --and irritating their neighbors, right? So, it's like --

CHAIR PALTIN: Yeah.

COUNCILMEMBER SUGIMURA: --a whole 'nother kind of circumstance.

CHAIR PALTIN: For me, I would --

COUNCILMEMBER SUGIMURA: And we...

CHAIR PALTIN: --hope that whatever future Council would take that into account when granting the conditional permit. Is it possible that on a case-by-case basis when the Council grants the conditional permit at that time, they can determine what an appropriate setback would be, Mr. Hopper?

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MR. HOPPER: Again, I think that that's normally how you handle conditional permits now. There's not any use under a conditional permit that I know of where you have standards and the Code for it. Again, the whole purpose of a conditional permit is to provide for a use that the Code did not anticipate. And so, to provide standards, I think is leaning toward that type of use being a special use that you would list in which districts you would like to allow it and say, here are the standards for that use. That being said, I don't think there...that it's necessarily illegal to provide something like that. But yes, typically, a Council would determine on a case-by-case basis if it's granting conditional permits, the conditions of those permits. That's the purpose of it. So, setbacks could be something there. If you want it to be done by special permit, you could establish setbacks in the ordinance and say the Planning Commission can grant special permits but they've got to abide by the following parameters. That's done in several instances in the Code that I'm aware of.

CHAIR PALTIN: And just to follow up, the special permits are granted by the Planning Commission and the conditional permits are granted by the Council, and that's the difference. And the reason we're going the conditional permit route is because we want to have the control rather than the Planning Commission because we're elected by the public. Is that correct, Member Sugimura and Mr. Hopper? Mr. Hopper --

COUNCILMEMBER SUGIMURA: So...

CHAIR PALTIN: --on the technical part?

COUNCILMEMBER SUGIMURA: Yeah, so, I...that is correct, you know, because of the community loud voices that we heard. And I think Mr. Molina also had a question about that. So, could you ask him, Chair, if you don't mind? I don't mean to conduct your --

CHAIR PALTIN: Sure thing.

COUNCILMEMBER SUGIMURA: --meeting.

CHAIR PALTIN: Member Molina, did --

COUNCILMEMBER MOLINA: Yeah --

CHAIR PALTIN: --you have a --

COUNCILMEMBER MOLINA: --thank you.

CHAIR PALTIN: --question, Member Molina?

COUNCILMEMBER MOLINA: Yeah, I do. Just staying on the same topic of the setbacks, which is very interesting. So, Mr. Hopper, from what I...how I'm interpreting what you're saying, so, assuming we have an ordinance that's passed, the setback issues, now those can be established after an ordinance goes into effect, right? I guess

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you...like you said, depending on the company that's going for the conditional use permit. So, we have that flexibility then of establishing setbacks even after the ordinance is passed?

MR. HOPPER: Well, this gets into the potential conflict with an ordinance that dictates what a future Council will have to do for granting conditional permits because conditional permits are granted by ordinance. And normally, it's up to the Council whatever conditions you want to place on it. Now, if you go into an ordinance like this one and say, in the future if a Council is going to grant a conditional permit, it has to do X, Y, and Z. You know, that's an intent to limit the Council in the future and their authority to pass an ordinance. I mean technically, the Council in the future could pass another ordinance to amend the previous ordinance and change that if it wanted to. So, that's why it's a bit odd to do that. But generally speaking, yes, if you leave it open for the Council and someone applies for a conditional permit, just like any other use, the Council could consider which conditions would be appropriate to that conditional permit. The same thing would be true of a special permit by the way. If a planning commission is reviewing a special permit, you can set parameters, but if you don't, the commission could still say for example, you need a setback of this amount of feet in the case because maybe they get testimony from neighbors when they go out for public hearing that says you cannot...oh, this is a very loud use in there. So, yes, generally speaking, the Council can establish, by an ordinance, its conditions. The question that I would have is if you establish something now that says conditional permits have to do this, if a future Council can do something different from that, and that would be questionable, then why I wouldn't necessarily recommend adopting standards that will bind a future Council in granting conditional permits. It's just very odd, and I don't know if we've...if the Code has done that before, but --

COUNCILMEMBER MOLINA: Okay.

MR. HOPPER: --we can look into that.

COUNCILMEMBER MOLINA: All right. Okay.

COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBER MOLINA: Thank you, Mr. Hopper. Thank you, Chair.

CHAIR PALTIN: Okay. So, any further comments or discussion, questions? If not, I can make my --

COUNCILMEMBER MOLINA: Recommendation.

CHAIR PALTIN: --recommendation. Oh, Member Sugimura, did you have a question?

COUNCILMEMBER SUGIMURA: So, you know, we asked Daniel Boren to be a...to standby, I wonder if he has any comments as we're talking about all of these, you know, additional things, if you don't mind.

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CHAIR PALTIN: Sure thing. Daniel Boren, how's it going?

COUNCILMEMBER SUGIMURA: Yeah.

MR. BOREN: Good. How are you guys?

CHAIR PALTIN: Good, good, thanks --

MR. BOREN: Yeah.

CHAIR PALTIN: --for bearing with us.

MR. BOREN: Oh, of course, of course.

CHAIR PALTIN: Cool.

MR. BOREN: Yeah, no, I just...I mean again support all the work you guys are doing. I think that what Mr. Hopper said is interesting because I feel like you're faced with two real issues here. One is what do you want the standard to be for every future operator? And it sounds like from what Mr. Hopper said like the conditional use permit is going to let you do whatever you want in the future for setbacks or...in fact, we have a conditional use permit right now for Hawai'i Zipline, and it limits how many guests a day we can take, the days we can operate, all that kind of stuff. So, those are the conditions that are placed on our operation on Kauai. So, the future operators is one issue, but the other issue that you guys are going to...just whatever you write into the ordinance today is going to regulate the businesses that have been around for a long time. And so, that seems like that wind the thread of like allowing, setting a precedent that you want, and --

CHAIR PALTIN: That's right.

MR. BOREN: --you know, not harming other businesses. So, I feel like the law as written does a great job of that.

CHAIR PALTIN: Thank you.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR PALTIN: Thank you, Mr. Boren. All right. You guys, ready for the recommendation? Okay. Members, the Chair will entertain a motion to recommend adoption of proposed resolution entitled Referring to the Lāna'i, Maui, and Molokai Planning Commission a Proposed Bill to Amend for the Comprehensive Zoning Ordinance Relating to Canopy Tour and Zipline Operations; incorporating any nonsubstantive revisions and those that we've discussed regarding defend, indemnify, hold harmless, and the alcohol situation, including plain language edits to the resolution title; and filing of County Communication 19-94.

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COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR PALTIN: Moved by Member Sugimura and seconded by Member Molina. Member Sugimura as the movant, do you have any further discussion that you wanted to share with the Members? No? Okay. Oh, yes?

COUNCILMEMBER SUGIMURA: I'm sorry. No further discussions but thank you everybody. I look forward to seeing this come back with what the different commissions have to say about it. And I appreciate Mr. Molina, for all your hard work on this too. So, thank you. And then, and all the residents who have been enduring this for years, I apologize on behalf of the community, and let's hope that you get some peace. Thank you.

CHAIR PALTIN: Thank you, Member Sugimura. Member Molina as the seconder...seconder?

COUNCILMEMBER MOLINA: No, no further discussion, Madam Chair. Thank you.

CHAIR PALTIN: Okay. Anybody else feel the need for a discussion or are we ready to call for the question?

COUNCILMEMBER KING: Call for the question.

CHAIR PALTIN: Looks like we're ready to call for the question. All those in favor, please say "aye" and raise your hand.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Member Rawlins-Fernandez, are you voting with us today? I guess that --

COUNCILMEMBER KING: Keani?

CHAIR PALTIN: --could be an "aye."

COUNCILMEMBER KING: Keani? I don't see --

CHAIR PALTIN: I'll take --

COUNCILMEMBER KING: --Member --

CHAIR PALTIN: --that --

COUNCILMEMBER KING: --Lee --

CHAIR PALTIN: --as an --

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COUNCILMEMBER KING: --either.

CHAIR PALTIN: --“aye.” Okay. They might be in another meeting. But like on the floor when you don’t say anything, they consider that as an --

COUNCILMEMBER KING: Right.

CHAIR PALTIN: --“aye.” So, one, two, three, four...we’ll consider that six “ayes” and one excused, in favor of the motion to adopt. Good job, Members. Okay. We have one more item on the agenda. Do you guys want to take a lunch break and come back, and we’ll just take over Member Kama’s...

COUNCILMEMBER SUGIMURA: No, let’s...

COUNCILMEMBER MOLINA: Okay. Go for it.

COUNCILMEMBER SUGIMURA: Let’s finish.

CHAIR PALTIN: Oh.

COUNCILMEMBER MOLINA: Let’s finish.

CHAIR PALTIN: Member Rawlins-Fernandez, did you want to vote on that last one?

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

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry, Member Paltin.

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

CHAIR PALTIN: You want to retake a vote ‘cause my Staff said I have to count it as five. Did you want to vote or no?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry, I...can you repeat the motion?

CHAIR PALTIN: Sure. The motion was to adopt proposed resolution referring it to the planning commissions.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, yeah.

CHAIR PALTIN: Okay. All those --

COUNCILMEMBER RAWLINS-FERNANDEZ: Of course, yes --

CHAIR PALTIN: --in favor --

COUNCILMEMBER RAWLINS-FERNANDEZ: --yes --

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CHAIR PALTIN: --of the motion --

CHAIR PALTIN: --one more time? Okay. Now it's six...the motion passes with six and one excused, Member Lee.

CHAIR PALTIN: Sure.

NOES: None.

ABSENT: None.

MOTION CARRIED.

CHAIR PALTIN: So, I heard one vote to push on through. Is everybody else down to push on through? Or is anyone getting cranky? Push on through?

CHAIR PALTIN: No --

CHAIR PALTIN: --no cranky?

CHAIR PALTIN: Okay. All right. Let's push on through in that case.

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**PSLU-8: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN
AMENDMENT, AND CHANGE IN ZONING FOR THE PROPOSED
PĀ'IA COURTYARD PROJECT AT 120 BALDWIN AVENUE (PĀ'IA)**
(CC 17-126)

CHAIR PALTIN: Let's see...the next item on the agenda is PSLU-8, and that's the District Boundary Amendment, Community Plan Amendment, and Change in Zoning for the Proposed Pā'ia Courtyard Project at 120 Baldwin Avenue, Pā'ia. The County...the Committee is in receipt of the following County Communication 17-126, from the Planning Director, transmitting the following, it's basically three bills to...for a District Boundary Amendment, Community Plan Amendment, and Change in Zoning. And this item was scheduled at the request of Member Molina. Any opening comments from the applicant...oh, wait, Planning, Planning first, sorry. Any opening comments from the Planning Department?

MS. McLEAN: Thank you, Chair. Just repeating what we previously have discussed with the Committee that this is a greatly scaled-back version from the proposal that went before the Planning Commission in response to community concerns and wishes for the proposal to follow the existing community plan, and to establish zoning that's consistent with the existing community plan designations. And it would also open the door for the County to acquire the large Public/Quasi-Public piece for the development of a parking lot, which is much needed in Pā'ia Town. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. Members, questions for Director McLean? Okay. I did have one question, Director McLean. I sent correspondence to the Managing Director, and I just was wondering, I didn't get any response back. And so, I just was wondering if you had any talks with the Administration, if the Administration supports the donation of land, and if the property is developed...is used as a parking lot, who will develop it, and if they plan to use free or paid parking lot, and who will operate and maintain the parking lot, and just questions along those lines. Did you have any discussions with the rest of the Administration as to those items?

MS. McLEAN: Not within the timeframe since your last Committee meeting. But previously, I had spoken with the Mayor who was in support, as well as the County Department of Transportation and the MPO Executive Director. And the discussion...so in terms of the County being in favor of acquiring the parcel or being given the parcel, yes. In terms of who would develop the parking lot, that's something that we're still in discussion with the property owner because the County could be donated the raw land, and then the County could develop it, or there have been discussions with the owner actually developing the parking lot, and then selling it to the County just for the cost of the development. So, the land itself wouldn't have a value to the County. It's just the...for them to recoup the cost of developing it. So, that can be laid out in a memorandum of agreement. So, that hasn't been determined one way or the other.

CHAIR PALTIN: And...

MS. McLEAN: And...sorry, Chair --

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CHAIR PALTIN: Free or --

MS. McLEAN: --go ahead.

CHAIR PALTIN: --paid parking? Sorry, free or paid parking --

MS. McLEAN: Yeah...

CHAIR PALTIN: --and maintenance?

MS. McLEAN: There hasn't been a talk about free or paid parking for this area in particular. It has been discussed for Wailuku, Lahaina Town, and Pā'ia Town in a broader context, but I haven't...it hasn't been discussed for this property in particular. But the Department of Public Works is the one that maintains the other County parking lot in Pā'ia. So, I believe they would be responsible for this one as well.

CHAIR PALTIN: Okay. Oh, maybe that would be more along the lines of a question for the Deputy Director when we call him up. Mr. Molina, did you have any opening comments on this item? Deputy Director, sorry, Deputy --

COUNCILMEMBER MOLINA: Oh, sorry.

CHAIR PALTIN: --Director Molina, did you have any opening comments on this item?

MR. MOLINA: Good afternoon, Members of the Planning and Sustainable Land Use Committee. Jordan Molina, Deputy Director of Public Works. No comments to the change of scope other than just getting clarification. I haven't reviewed any of the recent documents, but the last submittal was just a letter from the developer kind of roughly describing the change. Generally speaking, regarding parking lots, Public Works has been stuck with them. It's questionable whether it's appropriate use of Highway Fund 'cause they're not within the roadway. And kind of parallel with the Wailuku Civic Complex, all this work went in to build this facility without really any discussion about who's going to be responsible for operating and maintaining this facility. And so, I expect Public Works will get stuck with it without really getting any sort of resources to support that effort. So, similar concern here. But yeah, I mean, parking is needed, it's just we'd appreciate having that conversation sooner than later because building in the frontend is the easy part, getting stuck with it in the long-term maintenance is the part nobody addresses, and...except for us. So, that concludes my comments. Thank you.

CHAIR PALTIN: Questions for Deputy Director Molina, Members? Member Sugimura, followed by Member Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: I just want to thank the Deputy Director for his honesty. It is addressing a big problem about...we only talk about the frontend, we don't talk about the backend. But thank you for taking on all the parking lots.

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CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Deputy Director Molina, and mahalo for your comments on this. I was actually going to try to get information on the backend on what kind of costs are we talking and...just so that we know 'cause the...you know, oftentimes we're like yeah, that's great, you know, and then we take it on, but then the cost of maintaining it, it's part of the overall picture that everyone needs to consider. So, I don't know if you would have that kind of information on the assessment of this. But do you have like kind of a roundabout figure?

CHAIR PALTIN: Or maybe the cost of maintenance of one of our existing parking lots?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, approximately the same size or something?

MR. MOLINA: Yeah, Madam Chair and Member Rawlins, currently our efforts are minimal. I mean we respond to requests as they arise. We can definitely put together some information on what costs have been incurred in maintenance on some of our parking lots. But I believe in Member Sugimura's Committee, you know, you guys had a conversation about the parking plan that was recently completed by the Management Department, and we support kind of getting that established and under our belt as far what is the County's parking management plan and using, you know, ideally using this new parking lot as kind of a, you know, pilot project or a launching point to enact that program as opposed to this ad hoc process that's been going on currently. Thank you.

CHAIR PALTIN: Any further question, Member Rawlins-Fernandez?

COUNCILMEMBER KING: Chair?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director Molina. Mahalo, Chair.

CHAIR PALTIN: Okay. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, thank you for being here, Mr. Molina...Molina two. So, I have...so, most of the...it seems like most of the parking lots in South Maui are managed by the Parks Department because they're like adjacent to parks that we have, and those are maintained and managed. So, I think there's a...I guess my question is, is there a park nearby or anything? Because some of the areas like the one we just...the latest purchase for South Maui was that one next to the condo in North Waipuiani, and that went into Parks and Rec Department because that's a parking lot that's adjacent to a beach park. So, is there anything nearby where this property is that we're talking about that could be construed as a park? Or is that, you know, I mean there's a certain category is I'm assuming that you

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end up taking on as Public Works if they're not adjacent to a park or not relative to a beach park.

CHAIR PALTIN: Point of information, I think that we're considering a Change in Zoning to Business-Country Town. So, it's adjacent...it will be adjacent to whatever businesses come up. And I would imagine those would be the primary users. This portion of, I think nearly three acres, is going to be sandwiched between an...the agricultural portion, and then they want to change about one acre, and it will be primarily business uses. So, I would imagine that the parking would be for Pā'ia Town as a whole and the businesses that are there rather than a park. Please correct me if I'm wrong.

MR. MOLINA: Madam Chair and Member King, yeah, so, I guess there's enough separation from either Lower Pā'ia Park or even Baldwin Park. That this...I mean it will probably be a stretch to rope those in with the Parks responsibilities there. Also, the fact that those are kind of just dirt lots too, so the maintenance is minimal. Yeah, I mean, I guess I don't know how to...what else to add other than it seems just that this would be a Public Works --

COUNCILMEMBER KING: Okay. So --

MR. MOLINA: --...*(inaudible)*...

COUNCILMEMBER KING: --you don't anticipate having a charge for this? This would be sort of...I mean who maintains that parking lot when you first come into Pā'ia from Baldwin Park side, you know, on the right-hand side, the mauka side of the road, there's that parking lot there? Is that a --

MR. MOLINA: We do the --

COUNCILMEMBER KING: --private...

MR. MOLINA: --maintenance...no, that's --

COUNCILMEMBER KING: You do this?

MR. MOLINA: --our --

COUNCILMEMBER KING: Public Works?

MR. MOLINA: --parking lot, yes.

COUNCILMEMBER KING: Okay. So, Public Works does the maintenance on that. So, it will be similar to that I suppose. And your intention is not to pave it but just to leave it dirt?

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MR. MOLINA: Like I've mentioned, we haven't really been involved in that part of the discussions.

COUNCILMEMBER KING: Okay.

MR. MOLINA: So, like Wailuku Civic Complex, our involvement was kind of limited to just the street improvements and not the facility and the operation or maintenance of that facility.

COUNCILMEMBER KING: Okay. All right. Thank you.

CHAIR PALTIN: Thank you, Deputy Director Molina. Any further questions for the Deputy Director? Seeing none...oh, Member Molina?

COUNCILMEMBER MOLINA: Yeah, sorry.

CHAIR PALTIN: Question --

COUNCILMEMBER MOLINA: Thank you.

CHAIR PALTIN: --for Deputy Director Molina from Member --

COUNCILMEMBER MOLINA: Yes...

CHAIR PALTIN: --Molina.

COUNCILMEMBER MOLINA: Yes, Deputy Director Molina, very familiar last name. Just quick question, we can use General Funds, as well as Highway Funds to, you know, should this measure pass and we get the land, and we decide to do parking lot improvements? General Funds can be used for this as well, yeah --

MR. MOLINA: Yeah --

COUNCILMEMBER MOLINA: --. . .*(inaudible)*. . .

MR. MOLINA: --I would agree that General Fund is the more appropriate use. Highway Fund is...gets questionable being --

COUNCILMEMBER MOLINA: Yeah.

MR. MOLINA: --that these parcels are outside of the right-of-way.

COUNCILMEMBER MOLINA: Okay. All right. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Member Molina. Any opening comments from the applicant, Mr. Spencer, at this time?

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MR. SPENCER: Yes, can you hear me?

CHAIR PALTIN: We can hear you. Thank you.

MR. SPENCER: Okay. Thank you very much. Thank you, Chair, and thank you, Members. I understand all of the questions regarding funding and maintenance, and those are all critical questions that will be needed...will need to be answered at some point in the future. I think what we're looking at here is we're talking about the opportunity for the County to get these three acres into their hands. And the way it's...the condition as I saw it as written is that the County doesn't have to accept it but the County...I'm obligated to offer this, the three acres to the County for a future parking lot. And so, all those other questions, I believe will be answered down the road. The other thing about Public/Quasi-Public designation is that the County is not limited just to a parking lot. Let's say the amount of parking there, I think we calculated out even including a bus loop and a...the way the ordinance is written with planting and dividers, et cetera, is somewhere around 350 parking spaces. And in Public/Quasi-Public, you can also do government buildings. So, let's say you needed some kind of a County service building for...from some department or something, that the opportunity down the road is also there to account for that need. So, I just wanted to throw that out there. My other part of my opening comment would be that given that we have essentially eliminated a proposed development from the request, and that historically, the Planning Department and the Council have looked at a reduction like this as not requiring going back to the Planning Commission, and the fact that when we do in fact propose development down the road, we will have to go to the Planning Department for...which includes a public component to the process, I would request that you don't adopt the resolution that requires this to go back to the Planning Commission at this point. I think that's all I have to say. I can't hear. Could you guys hear me?

CHAIR PALTIN: Yes, we could totally hear --

MR. SPENCER: Oh, okay.

CHAIR PALTIN: --you. Sorry, I had a pigeon in my house, and I was dealing with it. So, sorry.

MR. SPENCER: Okay. Thank you.

CHAIR PALTIN: Members, any questions for the applicant? Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. And, Mr. Spencer, thank you for bringing that interesting option out that, you know, I'd never even consider like potentially besides a parking lot and a bus loop, you could even in the future for the North Shore area, maybe a satellite DMV office as well. That's something that could be considered. So, I think this donation of land has some, you know, a lot of options. So, I appreciate it. Your thoughts, Mr. Spencer?

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MR. SPENCER: Three acres --

CHAIR PALTIN: Go ahead, Mr. --

MR. SPENCER: --is...

CHAIR PALTIN: --Spencer.

MR. SPENCER: Three acres is a substantial amount of land, which, you know, when you stand there and look at it, there's opportunity for more than just the parking lot if the County decides down the road that it wants to do a mix of parking and whatever else. So, that's my comment.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Spencer. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. Any further...any other Members have questions for the applicant? I have a question if nobody else has a question. Okay. So, my question, it sounds like, and I just wanted to clarify, this donation of three acres has no strings attached to it? The County can...the donor won't...of the real property, won't dictate what the County will do with the property? Is that correct, Mr. Spencer?

MR. SPENCER: We will need to fulfill our parking obligation for the one acre of commercial or Country Town Business for whatever that ends up being. But that is a...it's a fraction of what the amount of land that's available and for the number of parking spaces that you would do. I think it came out between anywhere from 66 spaces up to 90-something spaces out of the 350, which is more than enough to satisfy not only short-term parking needs for the rest of the community of Pā'ia but the long-term needs as well.

CHAIR PALTIN: Okay. So --

MR. SPENCER: But other than --

CHAIR PALTIN: --you...

MR. SPENCER: --that, the answer is no.

CHAIR PALTIN: Okay. So, you would need the County out of these 3 acres, to provide a minimum of like 60 to 90 spaces, parking spaces?

MR. SPENCER: Yes, and again, as part of the process of a memorandum and through our discussions, we had previously stated that we would cover the costs of our parking needs, above and beyond donating the land.

CHAIR PALTIN: Okay. And that memorandum...

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MR. SPENCER: Is yet to be negotiated and written. But it's been in our discussions with the Planning Director, the Mayor, et cetera, when we met, I think it was last fall, is that correct, Michele?

MS. McLEAN: Yeah, in that ballpark. We lost the Chair, and the Vice-Chair.

COUNCILMEMBER LEE: Really? Who's the Vice-Chair?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, there, Member Sinenci is the Vice-Chair.

COUNCILMEMBER LEE: Okay. It must be the pigeon.

VICE-CHAIR SINENCI: We'll go ahead and take a quick recess to get the Chair back on.
So --

COUNCILMEMBER RAWLINS-FERNANDEZ: No objection.

VICE-CHAIR SINENCI: --Members...thank you. The PSLU Committee meeting is now in recess --

COUNCILMEMBER RAWLINS-FERNANDEZ: At the call --

VICE-CHAIR SINENCI: --for the next...

COUNCILMEMBER RAWLINS-FERNANDEZ: --of the Chair.

VICE-CHAIR SINENCI: Call of the Chair. Thank you. . . .(gavel). . .

RECESS: 1:25 p.m.

RECONVENE: 1:27 p.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use meeting of May 20th return to order. The time is 1:27 p.m. Thank you, Members, for that brief recess for technical issues. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Deputy Director Molina is leaving. I had a quick question for him.

CHAIR PALTIN: Oh...

COUNCILMEMBER RAWLINS-FERNANDEZ: I don't know if he left already. He signed --

CHAIR PALTIN: One --

COUNCILMEMBER RAWLINS-FERNANDEZ: --off?

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CHAIR PALTIN: --thirty . . . *(inaudible)* . . .

COUNCILMEMBER RAWLINS-FERNANDEZ: If not, I can --

UNIDENTIFIED SPEAKER: Oh...

COUNCILMEMBER RAWLINS-FERNANDEZ: --follow up...oh, there...okay, real quick.

MR. MOLINA: Okay. I got two minutes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry. Oh, you disappeared again. Okay. In the Budget, is there a line item currently for parking lot maintenance? If not, I can talk story with you about it after. I think he is gone.

MS. DAGDAG-ANDAYA: Oh, Chair, this is Rowena.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: --aloha --

CHAIR PALTIN: Miss...

COUNCILMEMBER RAWLINS-FERNANDEZ: --Ms. Dagdag --

MS. DAGDAG-ANDAYA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: --Andaya.

MS. DAGDAG-ANDAYA: You know, I'm sorry I wasn't there for the beginning part of this meeting, but in the line item budget, or for...this is in regards to Fiscal Year '21?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh yeah, just any. I was just wondering if there is a line item for parking lot maintenance in general.

MS. DAGDAG-ANDAYA: It's...well, or in general, you know, we do have a budget for parking lot maintenance in our Highways. So, our district would cover it under their operations but that's just for maintenance, you know, small incidental items. But if it's for a large CIP project, that would have to...you know, if it's specific to this project, we don't have anything in the Budget right now specific for this parking lot.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director. So, in the Budget, 'cause I understand we maintain multiple parking lots, is it the practice of allocating funding for a particular parking lot, or would we as the Council give the, you know, allocate to Public Works a general amount for the maintenance of all the parking lots?

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MS. DAGDAG-ANDAYA: Chair, this is just generally covered in our Operations Budget. I don't think it's specific to any one particular or, you know, the...any particular project. So, like say, \$500 for one parking lot versus 3,000 for another parking lot. It's just an overall, you know, it's just part of our operations, our overall operations and maintenance.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Director. I just wanted to make sure that Council will uphold, you know, responsibilities to ensuring that Public Works get the...gets the resources it needs for whatever decisions that, you know, we impose upon you. Mahalo. Mahalo --

MS. DAGDAG-ANDAYA: Oh --

COUNCILMEMBER RAWLINS-FERNANDEZ: --Chair.

MS. DAGDAG-ANDAYA: --thank you, Chair. And if I can add one more thing, you know, if it is an issue, if the funding is an issue, we will let the Mayor know, and then ask for any monies in the Budget. So, if it's for, you know, for getting additional parking lots or we're being asked to maintain additional items, we'll let the Mayor know, we'll let the Council know what impact it has to our operations so we can adjust the Budget accordingly.

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

CHAIR PALTIN: Thank you. So, my question to Mr. Spencer is, our one condition of zoning we have is as represented to the Maui County Council, Pā'ia 2020, LLC, and the David R. Spee Revocable Trust shall offer to dedicate the property designated as area B in Exhibit "A" attached hereto to the County of Maui at no cost to the County. Should we put provided that 90 stalls...90 parking stalls are available for your business purposes as part of that condition? 'Cause if we were to move it onto first reading right now, that's nowhere in our paperwork's that we have.

MR. SPENCER: My answer is that that would be appropriate for us. We were willing to take a leap of faith and just look at negotiating this whole process once we went to doing a memorandum with the County regarding how the property was going to be developed. And so, it would be appreciated if that was in there.

CHAIR PALTIN: Okay. Members, any objections to adding on to the conditions of zoning, provided that 90 parking stalls to be improved by the applicant are designated for their use?

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Just a suggestion, you may not want to specify the amount if between now and the time that it's developed, the requirements change. You could say may...you

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could say required...parking stalls required by the proposed development or something like that.

CHAIR PALTIN: Oh, good one. Yeah, thanks, required --

MR. HOPPER: It could be less --

CHAIR PALTIN: --by --

MR. HOPPER: --too.

CHAIR PALTIN: --proposed --

MR. SPENCER: It easily could be less.

CHAIR PALTIN: --development. Okay. Provided that parking stalls required by the proposed development and improved by applicant are designated for the use of the applicant. And I guess my other question is, would those stalls that are required by proposed development, would they then be free stalls or would they be pay stalls? If the County manages the overall lot and sets aside the correct number of parking for you, do you have objection if the whole parking lot was a paid parking lot, or is that a...is each development required to provide free parking?

MR. SPENCER: The way I understood it in our conversation last fall with the County is that they would just be random spaces, not specifically designated to the development so that, you know, anybody in the...using the parking lot could park anywhere. Does that answer the question? And that if the County decided it was going to be a paid parking lot, that they were generating income, that would be, and we could perhaps like they do in other places, if you use one of the particular shops in the development, you get a validation or something like that. But we're open to coordinating with what the County decides to do if it's a free parking lot, if it's a paid parking lot. If it is a paid parking lot, we're not going to be getting the income from it. It's going to go to the County or however...whoever they charge with managing it. Does that make sense?

CHAIR PALTIN: Yes. Mr. --

MR. SPENCER: Okay.

CHAIR PALTIN: --Hopper, can you let us know if that is a legal arrangement, if that passes your muster? Or, Director --

MR. HOPPER: Well, the --

CHAIR PALTIN: --McLean?

MR. HOPPER: --issue...yeah, the...I would say the issue would be mostly with Planning. They would have to determine that they've met the parking requirements that are

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required by the ordinance. So, I...it sounds like they've had discussion on this and were okay with the arrangement. But I would, you know, that would be the clarification is that when they come in for a Certificates of Occupancy, they would need to show the type of parking like where the parking would be, and that would have to be sufficient.

CHAIR PALTIN: Okay. Director McLean, can that meet your requirements?

MS. McLEAN: Yes, Chair. I would suggest language that says something like except for the land area needed to accommodate the parking required for the development of area A. And so, what would happen over time is the property would be subdivided, and area A plus the area needed for its parking that would be zoned Public/Quasi-Public would be one lot, and then the remainder of area B would be another lot that would be deeded to the County. So, there would be one parcel with split-zoning for the Business plus a little bit of Public/Quasi-Public for its parking, and then a separate lot would be the County lot for parking. And so, they could be distinct. They could function together, but I think that's a cleaner way to spell out the condition.

CHAIR PALTIN: Okay. This is getting a little bit more tricky. Mr. Hopper, can you confirm that for us again that all these discussions and the changes, that it does not need to go back to Planning Commission to vet this out, this type of thing out?

MR. HOPPER: I'm okay with that issue. The ...*(inaudible)*... Commission as I understand, it looked at a variety of options. And so, I'm okay with that issue at this stage. The issue of the developer reserving part of the property for his own parking needs, that's something I wasn't aware of the discussion I've been on. I was asked to draft a condition that would simply turn over the land to the County or require a dedication of the land to the County, which is what I did. I'm not saying there's a problem. I mean if the development is going to put a condition that say the developer reserve sufficient stalls to satisfy the parking requirements of lot A, that's the way to do it so they could dedicate the property and subject it to an easement for parking purposes or something. Or as Director suggested, you could say except that a portion of the parcel may be retained by the landowner to provide required parking for area A. I think either way would be...I think they're both possible ways to deal with the issue. But that's not a discussion I had. I didn't realize there would need to be a reservation. So, those are the two ways I could think of again off-hand, doing that, but I don't know if there's been more detailed discussions. But I was asked to draft a condition simply dedicating the property over to the County, which the condition would ...*(inaudible)*... If you want to be more specific, I think that's probably a good idea to say either that the number of stalls required by parcel A may be reserved or otherwise retained by the developer, something like that.

CHAIR PALTIN: Thank you, Mr. Hopper. I also wasn't aware of that, and that's why I didn't put it in. You came in really broken up. So, I'm going to ask if Mr. Mitchell is on the line, if he can give us an opinion on...with all these discussions about parking, to confirm again on record that this does not need to go back to the Planning

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Commission. Mr. Mitchell, if you're there? And you come in less broken up than Mr. Hopper.

MR. MITCHELL: I had both my phone on and the computer on trying to make sure I had connectivity.

CHAIR PALTIN: Okay.

MR. MITCHELL: Can you hear me --

CHAIR PALTIN: We --

MR. MITCHELL: --clear?

CHAIR PALTIN: --can hear you good, yeah, we can hear you good now. Thank you.

MR. MITCHELL: Can you hear me, Chair?

CHAIR PALTIN: Can you hear...yes, we can hear you. Can you hear us?

MR. MITCHELL: Yes, I can now, yes.

CHAIR PALTIN: Okay.

MR. MITCHELL: I was listening to Mr. Hopper's answer to the same question, and I'm not sure if I actually heard his opinion on whether or not it needed to go back to the Planning Commission. I guess the question is whether this is substantially different than what the Planning Commission approved in the past. And so, it appears to me that that's the concern that we have. We would like to probably get Corporation's Counsel's clear opinion on that issue.

CHAIR PALTIN: Yeah, that was the problem. I couldn't hear him well either. So, that's why I asked for your opinion. He was coming in like staticky-garbled.

MR. MITCHELL: Right. Is Mr. Hopper --

MR. HOPPER: Can I try again?

MR. MITCHELL: --still there?

CHAIR PALTIN: Yes, he's still...we can still see him. Okay. You want to try one more time, Mr. Hopper?

MR. HOPPER: Yes, hopefully, I will come through better. Hopefully, I will come through a bit better. Can you hear me?

CHAIR PALTIN: I can hear you now.

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MR. HOPPER: Okay. Yeah, as far as going to the Planning Commission, the opinions we've had in the past from our office have basically said unless the action is an entirely new proposal, it does not need to go back to the Planning Commission. In this case, I don't have a problem with taking action today to approve the ordinance as to form and legality with the dedication of the land to the County. The Commission had discussed that parcel being Public/Quasi...I'm sorry being Business-Country Town. The community plan designation as I understand it is Public/Quasi-Public, and this would be...make the parcel in conformance with that community plan designation. In the end, it's up to you if you want to send it to the Planning Commission, but I do not believe that is required prior to you passing this ordinance with the modification to the condition.

CHAIR PALTIN: Okay. Thank you so much. I think we heard most of it. Mr. Mitchell, did you hear it okay, and do you concur?

MR. MITCHELL: Yes, I did hear a clear response that time, Chair, and I agree with what Mr. Hopper has just said.

CHAIR PALTIN: Okay. So, there is no need to go back to the Planning Commission unless as a policy decision, Members would like to go to the Planning Commission.

MR. MITCHELL: That's correct.

CHAIR PALTIN: My concern is we weren't aware that...of the requirement for the 60 to 90, or however required by proposed development. And for me, I don't want to leave things up to chance and...I mean the way that I interpreted the condition was that the area B would be donated to the County, and I thought that there were no strings attached or no other necessary things. And now, it seems like we have to kind of get the condition more accurate. Mr. Spencer?

MR. SPENCER: To further that, I am good with the condition as written and with dealing with the issues of parking needs for the Country Town Business portion at a later date. But I am good with the condition as written that we are donating the land with no strings attached. Okay.

CHAIR PALTIN: Okay. And would you be okay with --

MR. SPENCER: Just to make...

CHAIR PALTIN: --also...the --

MR. SPENCER: ...*(inaudible)*...

CHAIR PALTIN: --standard condition that, you know, everything should be developed as was represented to the County Planning and Sustainable Land Use Committee? I think we have standard wording on that as well, although we're not quite sure about what it is.

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MR. SPENCER: I was made aware of that by Ana, and yes, I understand that that's a standard language and that...yeah, because in the future, I'm going to have to go back to the Planning Commission for any plan that we develop to actually move forward on that portion of land anyway. It's going to be a full Planning Commission process. So, yes, I'm okay with that language, and yes, I'm okay with the simple condition to move forward.

CHAIR PALTIN: Okay. Members, anybody else has any concerns or questions for the applicant? Nobody else? Okay.

COUNCILMEMBER SUGIMURA: Call for the question.

COUNCILMEMBER MOLINA: Recommendation.

CHAIR PALTIN: The only thing I would ask is maybe between now and first reading, if you can tighten up on that memorandum of understanding, and we can have an amendment at first reading to reflect the true needs, maybe something along the lines of what Director McLean said, and if it can be worked on with Mr. Hopper to reflect that. I would prefer to pass it with the actual criteria because, you know, maybe Administration change or whatever, and then you can't get your Certificate of Occupancy, you know what I mean. Okay. All right. Yes, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I was just going to say that I support that.

CHAIR PALTIN: Okay. So --

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you.

CHAIR PALTIN: --there is a commitment from Mr. Spencer, Ms. McLean, and Mr. Hopper to work together on tightening up that first condition to reflect the true needs of the situation, and we'll add in a second condition that based on what was represented to the Planning Committee...Planning and Sustainable Land Use Committee, this project will be developed in substantial compliance with what was represented. No objections to that as well? Okay. All right. I'm ready to give my recommendation.

COUNCILMEMBER MOLINA: Recommendation.

CHAIR PALTIN: The Chair will entertain a motion to recommend passage of the proposed bills on first reading entitled: "A Bill for an Ordinance to Change Zoning from Interim District to B-CT Country Town Business District and to Public/Quasi-Public, Conditional Zoning, for a Property Situated at Pā'ia, Maui, Hawai'i, Tax Map Key (2) 2-5-005:063 (Por.); A Bill for an Ordinance to Amend the State Land Use District Classification from Agricultural to Urban for a Property Situated at Pā'ia, Maui, Hawai'i, Tax Map Key (2) 2-5-005:063 (Por.)"; incorporating any nonsubstantive

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revisions and those that we spoke of today; and filing of County Communication 17-126.

COUNCILMEMBER MOLINA: So moved.

VICE-CHAIR SINENCI: Second.

CHAIR PALTIN: Moved --

COUNCILMEMBER LEE: Second.

CHAIR PALTIN: --by Member Molina, seconded by Vice-Chair Sinenci. Member Molina, as the movant, you have any discussion to add?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. First of all, thank you for bringing this matter up from the...again, from the previous May 4th meeting, and also choosing to put the appropriate bills on the agenda today. And to Mr. Spencer, for working with the community and revising his proposal to achieve, you know, collective support for this matter, and also to Aunty Mopsy, who's sort of been the conduit for the community, the Council, and the developer in addressing this issue 'cause this donation of land is going to certainly be a huge benefit to the community. And of top of the additional revelation by Mr. Spencer, that we could also consider it for not only the parking aspect but a potential satellite DMV for the North Shore area, which I don't believe has one 'cause I know you have a satellite office in Lahaina, Upcountry, and other areas. So, I think this...there's a lot of options with this. So...and I know there's other bills we're going to vote on, but I'm just...I thought I'd do my spiel right now in full support. Thank you.

CHAIR PALTIN: Thank you, Member Molina. Member Sinenci, any discussion on this matter as the seconder of the motion?

VICE-CHAIR SINENCI: I'm supportive, Chair --

CHAIR PALTIN: Okay.

VICE-CHAIR SINENCI: --at this time.

CHAIR PALTIN: Any...

VICE-CHAIR SINENCI: Thank you.

CHAIR PALTIN: Thank you. Any other Members have any discussion on this item? Seeing none, I'll call for the question, all those in favor please raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. The measure passes unanimously, seven-zero.

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VOTE: **AYES:** Chair Paltin, Vice-Chair Sinenci, and
 Councilmembers King, Lee, Molina,
 Rawlins-Fernandez, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending **FIRST READING** of Change in Zoning
 bill, **FIRST READING** of District Boundary
 Amendment bill, **RECORDATION** of unilateral
 agreement, and **FILING** of communication.

CHAIR PALTIN: All right. And this concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members, for hanging in there. The time is now 1:51, and this meeting is adjourned. . . .*(gavel)*. . .

ADJOURN: 1:51 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:200520:acqp

Transcribed by: Ann Carmel Q. Pugh

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CERTIFICATE

I, Ann Carmel Q. Pugh, 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 11th day of June, 2020, in Kihei, Hawai'i

A handwritten signature in cursive script, appearing to read 'A. C. Pugh', is written over a horizontal line.

Ann Carmel Q. Pugh