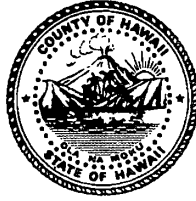


Susan L.K. Lee Loy
Council Member
District 3



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HAWAI'I COUNTY COUNCIL
25 Aupuni Street, Hilo, Hawai'i 96720

COUNTY CLERK
COUNTY OF HAWAII
2019 JUL 18 PM 12:32

MEMORANDUM

DATE: July 17, 2019

TO: Aaron S.Y. Chung, Chairperson;
and Members of the Hawai'i County Council

FROM: *SL* Susan L.K. Lee Loy, Council Member

SUBJECT: Re: Communication No. 363 – Additional information for discussion purposes.

Attached are two exhibits for information and discussion purposes:

EXHIBIT A: Letter from Mayor Harry Kim to the County Council dated December 16, 2002, regarding the Memorandum of Agreement between the County of Hawai'i and the Department of Hawaiian Home Lands, submitted prior to discussion on Resolution No. 19-03.

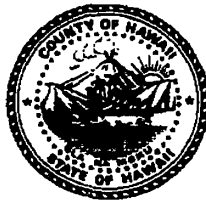
EXHIBIT B: Minutes of the County Council meeting of December 18, 2002, reflecting the discussion on Resolution No. 19-03.

Please distribute this during the discussion on Communication No. 363 in the Public Works and Mass Transit Committee.

SL:ps
Att.

Comm. No. 363.1
Ref. To: PWMTC
Ref. Date JUL 18 2019

Harry Kim
Mayor



Dixie Kaetsu
Managing Director

Peter T. Young
Deputy Managing Director

County of Hawaii

25 Aupuni Street, Room 215 • Hilo, Hawai'i 96720-4252 • (808) 961-8211 • Fax (808) 961-6553
KONA: 75-5706 Kuakini Highway, Suite 103 • Kailua-Kona, Hawai'i 96740
(808) 329-5226 • Fax (808) 326-5663

December 16, 2002

The Honorable James Y. Arakaki, Chairman, and
Members of the Hawai'i County Council
County of Hawai'i
Hilo, Hawai'i 96720

Subject: Department of Hawaiian Home Lands Memorandum of Agreement

Dear Chairman Arakaki and Members of the County Council:

Last week I transmitted to you a resolution authorizing me to enter into a Memorandum of Agreement (MoA) with the Department of Hawaiian Home Lands (DHHL) that will resolve a number of long-standing issues between the County and DHHL, and clarify our relationship.

Briefly, I would like to review what this MoA will accomplish, section by section.

Purpose and Guiding Principles

These sections set forth the reason we are entering into the MoA, and state the principles we (the County and DHHL) agreed to follow in our negotiations.

Planning Issues

The practices of the Planning Department with respect to DHHL have varied over time, but since Walmart, the general attitude has been that Planning had no jurisdiction over DHHL land. Hence, DHHL could put its lands to the uses it wanted, but Planning would not review building permits, subdivision applications, and other kinds of land use permits.

Under the MoA, DHHL will continue to have the ultimate authority to determine land use on DHHL property. DHHL will decide land use issues through its planning system, which will involve consultation with County agencies, and give due consideration to County plans, such as the General Plan. The County will consult with DHHL in recommending General Plan map designations for DHHL property.

DHHL will determine the appropriate zoning designations for its properties, based on their adopted land use plans, and communicate those to the County. Thereafter, the County

Comm. No. 39.1
File No. FIN
Presented Council
Ref. To: Council
Ref. Date DEC 18 2002

December 16, 2002

James Y. Arakaki

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Planning Department will regulate land use within that zoning district the same as for similarly zoned property. *Example:* if DHHL designated an area as RS-10 (single-family residential, 10,000 square foot minimum lot size) any subdivision of that area would have to follow the Subdivision Code; the subdivision would be processed the same as a private subdivision. For new projects, DHHL would also put in the necessary off-site infrastructure to the same extent that would be required of a private developer. After subdivision, if a lot owner came in for a building permit, the Planning Department would review the permit for conformance with setbacks, height limits, and other zoning code issues, the same as in any RS-10 area.

Public Works Issues

In the building permit process, DHHL requested that they (DHHL and its lessees) be treated like any other applicant. Therefore, under the MoA, new applicants for structures on DHHL land will go through the regular permit process. For those lessees who have unpermitted structures on DHHL land, the County and DHHL still need to address how these structures will be permitted. DHHL and DPW have discussed this and are considering some sort of grandfathering because those structures were not required to have a permit at the time of construction. This is an area for continuing discussion and collaboration.

The County has taken over the responsibility for traffic requirements on DHHL roads, including signs, markings and lights.

On engineering requirements (drainage, highways, etc.), permits will be required for land clearing, driveways, work within the County right-of-way, and so forth. Drainage will be addressed by DHHL like everyone else. The County and DHHL have discussed establishing a lesser standard for agricultural use and having existing DHHL roads brought up to that lesser standard so the County can take over their operation and maintenance. That new agricultural standard has not been established yet, but is being pursued by the County.

Relating to the Enforcement of Criminal Violations on Hawaiian Home Lands

This section clarifies that the Police Department is authorized to and will enforce violations of criminal law on Hawaiian home lands.

Relating to Real Property Taxes

This section covers the collection of delinquent real property taxes, penalties and interest.

In the MoA, the County agrees to waive the penalty and interest on all delinquent real property taxes, excluding penalties and interest, owed by Hawaiian homestead lessees as of

December 16, 2002

James Y. Arakaki

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December 31, 2001. For those homestead lessees with real property tax balances of more than \$500, DHHL will advance full payment of all real property taxes, excluding penalties and interest, to bring those bills current.

The County and DHHL agree to meet on an annual basis to evaluate the extent of delinquencies by Hawaiian homestead lessees on the Island of Hawaii and take action, if necessary, to keep delinquencies from recurring. The County and DHHL also agree to work to establish a customer trust fund by July 1, 2004 to collect real property tax payments as part of the mortgage or loan payments of lessees.

The settlement of delinquent taxes per the MoA has already been accomplished. The Hawaii County Council authorized the Director of Finance to compromise the penalties and interest owed by lessees of Hawaiian Home Lands according to the terms of the MoA (Resolution 146-01, 12/5/01). The DHHL on April 9, 2002, paid the County of Hawaii \$506,583.13 in delinquent taxes, also according to the terms of the MoA.

Areas for Further Collaboration

This section recognizes that there are issues remaining that are not addressed by the MoA. The County and DHHL agree to continue to work to resolve these issues

Termination

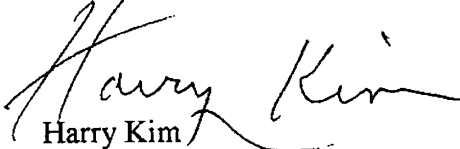
This section sets forth how the MoA can be terminated, or its provisions further clarified or waived.

Conclusion

This document is the result of over a year of work by the County and DHHL. Three joint public meetings were held to present the draft MoA to DHHL lessees and the general public (in Kona, Waimea and Hilo), and DHHL held numerous other meetings with concerned groups. In drafting this document, there has been a willingness by both the County and DHHL to arrive at a MoA that will clarify roles and responsibilities, with the ultimate goal of making things better for DHHL lessees, present and future.

I thank you for your support of this important initiative.

Aloha,


Harry Kim
MAYOR

RESOLUTION
NO. 19-03
(WAIVED/FC)
(C-39):

Authorizes a Memorandum of Agreement between the State of Hawai'i, Department of Hawaiian Home Lands and the County of Hawai'i with respect to County services and delinquent real property taxes, introduced by Mr. Arakaki, by request. {The purpose of this Memorandum of Agreement (Exhibit "A") is to clarify the respective roles, responsibilities, and obligations between the County of Hawai'i and the Department of Hawaiian Home Lands relating to land use planning, infrastructure maintenance, enforcement of laws, and collection of taxes and other fees on Hawaiian home lands.}

COMM. 39.1:

From Mayor Harry Kim, dated December 16, 2002, regarding what the Memorandum of Agreement would accomplish, which include the following: Purpose and Guiding Principles, Planning Issues, Public Works Issues, Relating to the Enforcement of Criminal Violations on Hawaiian Home Lands, Relating to Real Property Taxes, Areas for Further Collaboration, Termination, Conclusion. (Note: This communication was circulated at the meeting.)

Mr. Arakaki moved for the adoption of Resolution 19-03 and to file the related communications. Seconded by Mr. Jacobson.

ACTING CHR. TYLER: Is there any—we have Mayor Kim and Managing Director—and Mr. Ray Soon from the Department of Hawaiian Home Lands. I also see our Planning Director here. Mr. Mayor, did you and/or Mr. Soon want to make a presentation to us, sir? Thank you for being here this morning. Good morning, Mr. Soon.

(At this time, Mr. Harry Kim, Mayor; and Mr. Ray Soon, Chairman, Department of Hawaiian Home Lands, came forward to address the Members of the Council.)

MR. SOON: Good morning, Mr. Chair, Vice Chair, and other Members. I—I did not come prepared with a statement. I came to answer any questions, but I would like to say that we—the Mayor and his Administration have—have gone the extra mile in working with us in putting this together. You can—you will note that not all issues were satisfactorily completed, but we're also committed to continue to work on those.

We—we tried hard not to impose any additional obligations on either the County or the Department and its beneficiaries. We were merely trying to make clear a rather ambiguous situation that has always existed between the counties and—and the Department of Hawaiian Home Lands. We think we have gone 90% of the way and—and are committed to finishing the remaining 10% in the future.

I thank you for your consideration. I, especially, thank the Mayor and his people for a significant amount of work and aloha. Thank you.

ACTING CHR. TYLER: Okay. Are there any questions or comments for Mr. Soon? Yes, Mr. Elarionoff.

MR. ELARIONOFF: Mr. Soon--

MR. SOON: Yes?

MR. ELARIONOFF: You mentioned "90% of the way". What is "90% of the way"?

MR. SOON: What is 90—well, if you'll note on—I think it's Section 7—and 90% is clearly an approximation. There are a number of areas that we've agreed to continue to talk about that we were not, yet, settled on. One—the first being establishing some type of new County zoning for farming and pastoral activities; developing infrastructure standards that are adequate to the—to servicing more rural areas and not necessarily at—at urban level standards; working on processes for exchanging information, testimony, etcetera. And, in that way, just being more on top of what each other is doing, so we can work together. And, finally, on developing a process or better processes to reduce the likelihood of property tax delinquencies in the future.

MR. ELARIONOFF: Okay. And had this conversation level taken place only on the top or all the way down to the bottom where you're talking about people that are involved—also are aware of it?

MR. SOON: We held jointly meetings in the community—three large ones—one in Kona, one in Waimea, and one in Hilo. The Department of Hawaiian Home Lands also held meetings on the homesteads—and a very informative meeting from my perspective—with the leadership of all the homestead areas in Hilo.

We've heard from people from the bottom to the top. And, yes, there were public meetings. I'm not sure if the County did—did more meetings beyond what we did. I do know that the Mayor extended himself to talk to a lot of people individually. I don't know if they were at any other meetings.

MR. ELARIONOFF: And my very last question—

MR. SOON: Sure.

MR. ELARIONOFF: Is it possible to have three minutes of your time before you leave?

MR. SOON: Of course.

MR. ELARIONOFF: Thank you.

ACTING CHR. TYLER: Okay. Are there any other questions or comments? Yes, Mr. Arakaki.

MR. ARAKAKI: I just want to make a comment. I want to thank Mr. Soon for bringing the cooperation of his Department to the County and discussing it with Mayor Kim.

This is the first time—over two years ago—

MR. SOON: Yes, sir. You were there.

MR. ARAKAKI: I think we met for the first time. I was there. And I was very surprised and impressed that you—you brought all your division heads to discuss this. Because I think, in the past, it had been kind of contentious between jurisdictional roles between the County and Hawaiian Homes and who had the authority, didn't have the authority—and things like that.

I thank you, working with the Mayor and your department and the Mayor's department—coming this far. And I think we've come up with pretty good agreements—something that—areas that were in the, kind of, gray area. And now I think a lot of things are more clearer. It's clearer. And then, we can move on now with our lives, and I'm sure things will get better as—as we go along because you have set the course.

So, again, I thank you. I thank the Mayor for doing this. And I think we should pass it today—adopt this resolution today. And whatever needs to be done in the future, we can work with the new Administration.

MR. SOON: Thank you.

MR. ARAKAKI: But, based on all the work you and the Mayor and all the department heads have put together, I think we should move ahead with it today.

So, I'm asking this—this Council to give every favorable look at this thing and adopt this resolution. Thank you. Thank you, Mr. Soon.

ACTING CHR. TYLER: Thank you, Mr. Arakaki. Mr. Chung. Oh, I'm sorry—yes.

MR. SOON: May I just—Chair Arakaki, I would like to add that if you weren't at that first meeting, I think we would have had questions as to how far we could go in working with the Administration. But I think that your presence was instrumental in making it clear that this is a complete County effort to work with DHHL—and I appreciated you being there.

I also would like to add—for us, this is the first. And we expect to take this Agreement to the other counties. And, clearly, the—the Agreement's will differ, depending on the circumstances of each County. I think that O'ahu will be the most difficult because of the extended numbers of services that they provide. But this is an important first-step model that we will take to the other counties. And it has been your leadership—the combined leadership.

ACTING CHR. TYLER: Thank you. Mr. Chung.

MR. CHUNG: Thank you, Mr. Chairman. Ray, as you know, the district that I'm very fortunate to represent includes two very large Hawaiian Homestead areas—the Keaukaha area and the Pana'ewa area. And this issue has been of great interest to me. As you know, I would say the precursors to this specific measure that we have today—I—I voted against. And those were really on philosophical bases. I don't, really, want to go into them now because they're on record and I explained my position on—on various occasions.

But, today, I will be voting in favor of this and I'll tell you why. I'm trying to put aside all of my philosophical disagreements with this and try to look at the bigger picture. I've always felt that the reason why we have some problems with the implementation of—or why we have jurisdictional problems between the County and the State as they pertain to Hawaiian Home Lands—is because of some ambiguity on the part of the Act, as well as—and I don't want to put anybody down—but it's maybe inaction on the part of the Legislature to really define what the roles are of the various entities involved in all of this.

I'll just give you an example—and this is like really, really silly. But, prior to Mayor Kim coming on board, I would have situations in the Hawaiian Home areas where residents would call me saying that a street—those street lamps were constructed and installed but they have not been on for months, maybe even years. And it was so silly because the reason that those things weren't energized was because of the jurisdictional problems between the County and the State. And who's getting caught right in the middle? The guys getting caught would be the residents and the people who supposed to be benefiting from all of this. And it was really silly.

What I've seen throughout the last several years, which is being set forth by this Agreement, was an effort on the part of the two main entities—the Department and the County—in trying to further the intent of the Act—Prince Jonah Kuhio's vision—getting the Hawaiian people back on the land. Whether we're doing it legal or not, that's inconsequential at this point. To me, what you folks have done is more than anybody has really done in a long, long time. And for that reason alone, I have to cast my vote in favor of this. This has nothing to do with the money that we're going to receive or anything like that. Okay? That's inconsequential. It's just that the effort you folks have put into trying to further the intent of the Act, to me, deserves some kind of credit. And so, in that sense, I'm going to give you guys my vote today. Even if I voted against it on—on other—on other levels in the past, I'm going to give you guys that.

And before I close, Ray, I know you're the outgoing Director or Chairman of the Department of Hawaiian Home Lands—I wanted to thank you for all of your help over the past six years, I think, that I've been on the Council. If your successor is half as accessible as you, then he will be doing the Hawaiian people and the State of Hawai'i a great service. Thank you.

MR. SOON: Thank you very much.

ACTING CHR. TYLER: Thank you, Mr. Chung. Are there other questions or comments of Mr. Soon? Mr. Arakaki, would you take the Chair?

MR. ARAKAKI: Yes.

RELINQUISH
CHAIR:

At this time, Acting Chairman Tyler relinquished the Chair to Chairman Arakaki.

MR. TYLER: Mr. Soon, I also want to echo Mr. Chung's comments. I think your service to the community and to the whole—and to the Native Hawaiians and Hawaiian community at-large has been excellent—

MR. SOON: Thank you.

MR. TYLER: And I commend you and thank you very much as a Native Hawaiian. I thank you for the work you've done. And I appreciate the work that you and your staff have done with the Mayor and his staff and also with Mr. Arakaki in meetings you've had to come—come to this kind of agreement. I think it's—I think it's very, very important.

I wanted to ask you—when you had the public meetings, which I was not an attendee, did the beneficiaries generally feel positively about this—the direction of which it was going? I realize there's some unresolved issues, but—

MR. SOON: Honestly, I would say it's, probably, split. The Kona meeting was not nearly as well attended as the other two—and it was, primarily, positive. The Waimea meeting—I would say, on balance, it was positive. The Hilo meeting, on balance, was negative. There were many more people opposed to some of the provisions.

Some of it centered around not wanting to yield any authority to the County. Some of it centered around believing that we weren't just clarifying but, rather, giving up some rights. And some of it centered around wanting to have an agreement that was statewide as opposed to—centered on just one county.

So, yes, there were more “negative” at the Hilo meeting. But, I would say, on balance, overall—it was split.

I also would say, as you all know being public figures—typically, in a meeting like this, you're going to get people who are more “opposed” than in “favor”. We did hear from many, many people in favor—especially, people who have had difficulty getting service or had difficulty getting a building permit—and who are paying taxes and doing everything else as a citizen—both at the State and the County. We've heard from them saying, “Right on. That's what we want—is we want to be treated like any other citizen of Hawai'i County”.

MR. TYLER: Okay. Thank you. I appreciate that. And will you be having an opportunity to brief your successor, Mr. (inaudible) and his staff, to bring him up to speed so they can continue on the good work, here?

MR. SOON: We already have—Mica is going to be terrific. He has spent a great deal of time in the Department already. And more—I will serve to the end of the month and we expect to transfer as much of what I know on to him, as quickly as possible.

MR. TYLER: Okay. Well, “mahalo nui”. I really appreciate that. Thank you very much, Mr. Chairman.

MR. SOON: Thank you.

MR. KIM: Excuse me—thank you Members of the Council. In the back, also, is Ben Henderson—he is staff that we worked very closely with. Thank you both.

Having this on the agenda, at this time, with the General Council for two reasons—One, it gives me a chance to—and for those that did, I thank you so much—to thank Ray Soon. I think it will not be very long where people will realize how much this man has done for this job—now that the hoopla of the politics is over and the election is over—we can say this freely. This—Cayetano picked a great person for the Hawaiian Homes Department. He did a good job in April of the Year 2000. Prior to that, I called him because, ironically, one of our friends of Pat, from Keaukaha—and met with him, shortly after taking office—and in discussing some of the problems of the Hawaiiana issue, this was brought up. And he stated, very clearly whatever—get things done—clarify it. And I think that was a word Mr. Ray Soon used. This is, primarily, to clarify our roles.

I think this has eliminated some of the real confusion areas in regards to the—especially, Building Code and Permit system. If I may read, just in part, of this letter on April 2nd, 2002: “Members of my Administration, I have met with Ray Soon, Chair, Department of Hawaiian Home Lands and his staff for the following reasons: To establish a working relationship between the Hawaiian Homes, the County of Hawai‘i, and to discuss issues of mutual concern and develop a Memorandum of Agreement that addresses these concerns.”

And it took us all of this time, in regards to get where we are. I'm proud of what has been accomplished. And as Mr. Soon said—we still have areas that need to be resolved. I thank them for giving us all of the back taxes in the sum of \$506,583.13. And, hopefully, this Agreement, also, as Mr. Ray Soon stated—will minimize problems of delinquent taxes in the future—and those things that need to be clarified.

As to Members of the Council, to approve this with a “favorable”—I thank Mr. Chung for changing of his vote and statement of why.

In closing, I have met Ray Soon in April of 2001. Since that time, we've met a few times in community meetings and (inaudible). This guy's a special person. I think we're lucky to have him. I think the State's lucky to have him—the County was lucky to have

him—the Hawaiian people's lucky to have him. I'll always be grateful to him. Thank you very much.

One more thing—unrelated—on the Kalāhiki concerns that was brought up. I'd like to point out that we'll communicate with you later on that. But the owners were cited, last week, for a grubbing violation and it will be watched very carefully—and I'll update you on that.

MR. TYLER: Good morning, Mr. Mayor. Thank you for being here this morning and bringing your staff—and thank you for the hard work you and they have put in to this effort.

If I recall correctly, Mr. Chung and I have voted in a similar manner. When this first came up, I had some procedural questions. I congratulate all of you on effort, which I really didn't think I was going to see. Obviously, this took a lot of hard work.

I do have a question, Mr. Mayor, regarding the provisions of the Memorandum of Agreement as it relates to—and if you can't answer this, perhaps, one of your staff could—the—it's Number "H." on Page 2 and it says, "The County will advise DHHL of all violations by its lessees." And then the next sentence says, "The County will enforce land use codes and regulations on Hawaiian home lands in the same manner as with other landowners."

And my concern is that your letter also indi—your, excuse me, your letter of December the 16th, giving further explanation, indicates that you still need to address how "unpermitted structures" will be permitted (SEE COMM. 39.1). And, yet, the Memorandum makes a very definitive statement here, is that violations will be issued and actions will be taken. This seems to be inconsistent. And, if you could, perhaps, explain to me what is meant by this, since I wasn't involved and you were. Are you able to do that, sir?

MR. KIM: In part.

MR. TYLER: Thank you.

MR. KIM: If I cannot answer you satisfactory, I hope—I promise to get back to you ASAP.

In regards to that, as Mr. Ray Soon indicated—also, some of the concerns expressed by people were that if this Memorandum of

Agreement was enforced and some of the structures, like, every place else—they were not according to Code or permit would—we come in, in regards to penalties as far as all past violations. I think this was a big concern of a lot of people.

We stated to them that, administratively, we would not do that. At the present time, I think some of you are aware that we are looking into the entire Building Code and process system to see what needs to be changed. We have assured the people of Hawaiian Homes that we will not go retroactive in regards to coming in and penalizing violations of past—that refers to from here on end, as far as all permits.

MR. TYLER: Okay. So, do you anticipate that there might be some citizens who would say, "Well, you enforced this but you're not enforcing that". And how would you deal with that?

MR. ARAKAKI: May I make a clarification, Mr. Tyler?

MR. TYLER: Yes.

MR. ARAKAKI: Referring to Item 8—if you go further down, it says, "Ongoing violation and failure to comply will be referred to DHHL after the County exhausts all remedy, short of, pursuing legal action to address the violation. DHHL may institute lease enforcement proceedings in event of"...anyway, it's going back to Hawaiian Homes and they will exact whatever they need to.

MR. TYLER: Okay.

MR. KIM: And thank you for that, Mr. Arakaki and Mr. Tyler—

MR. TYLER: Yeah, I did read that.

MR. KIM: I think some of the things that Mr. Soon was talking about and, granted, 90%—these are some of the details, also, that needs to be worked out.

MR. TYLER: Okay. So—thank you. So, in terms of your most—your December 16th communication—you indicate in there that "The County has taken over the responsibility for traffic requirements on the DHHL roads, including markings"—"signs, markings and lights". Are these all the roads or are these only the roads that meet our current standards? Because there's a

different—two different standards in here. One, is the ones that meet the standards and the ones that don't. If they don't, the County could regard these as "private" roads.

And in all cases, unless my recollection of the Code is that unless the subdivision was platted before—I think it's 1966, which some of these, obviously, are—they're old homestead lots—that the acceptance of any improve—roadways or their dedication—any roadways or improvements shall not be undertaken unless they comply with Chapter 23, the Subdivision Code.

So, how does that relate to this, sir?

MR. KIM: First of all, primarily, all of those lands that have been approved, I think Mr. Aaron Chung referred to some of these as "silly". I think it even went beyond "silly", that we allowed the situation to go on for months or even years—as far as certain things that were of County jurisdiction of maintenance, including the painting of signs, crosswalks, or turning on/energizing the streetlights. And Mr. Ray Soon, pointed this out as one of the things, if we could work this out—and we did that, immediately, as far as until this Memorandum of Agreement was completed—we would turn it on and be responsible for it.

In regards to your question, as far as the "other" areas. I'm not, specifically, aware of all of the street areas and road areas—whether we did. Definitely, we will not go into areas of "privacy". These are roads that were County or maybe even "roads in limbo". which was owned by government.

MR. TYLER: Okay. So that—oh, yes, Mr. Soon. I think—

(NOTE: At this time, Mr. Soon responded from the audience area, which was inaudible.)

MR. TYLER: Okay.

(NOTE: At this time, Mr. Soon responded from the audience area, which was inaudible.)

MR. TYLER: Okay. What about the roadways that are—that don't have A/C on them?

MR. SOON: The access, is still your responsibility. I realize that (inaudible). In the case of Waimea, we take care of (inaudible). I think the spirit of the Agreement is clear and that, really, the administration working together.

MR. TYLER: Well, that's very obvious—and I appreciate the clarification from both of you. My concern was only as it relates to our County Code because we have to comply with our Code and we can't—unless we change the Code. And I see that there are some things, possibly, for different land use designations. And I applaud that because I think there's a need to look at that and I'm glad the Planning Director is involved, too.

Now, one final question, Mr. Chairman. And that is—I think it's the final one—that I see that either party with 180 days notice can terminate this Agreement. And what bearing will that have on the County's obligation for providing services to the beneficiaries in the form of infrastructure? If this—and I'm not suggesting it's going to be—but there is this termination provision and I'm concerned about that because the County, if we take over a lot of these things or we are going to be taking on long-term obligations, and if one of the parties can terminate that relationship unilaterally—what impact is this going to have over a long period of time, if any? I mean, it would have an impact—but how would we handle that, Mr. Mayor?

MR. KIM: I don't want to try to answer questions as far as legality on that because I'm really not quite sure what the answer is, as far as all of the ramifications of—however, certain things, I think, will not change—like this Memorandum of Agreement as to clarify our roles. For example, I do not think it should change regardless the existence of this Agreement or not—County's responsibilities—as far as roadways, streetlights, and those things—that clearly identified during the discussion that these are “paid for” by Fuel Tax. And if there are County roads, we should pay for it, like any other County road.

In regards to those things of where we needed the assistance of Hawaiian Homes in regards to the collection of taxes and enforcement of certain regulations, as far as Codes, those things are administrative. If the agreement is that they will not do it anymore or we don't recognize it anymore—those are the things that is now and need to be worked out.

I need to have someone go over on a piece-by-piece on what will or will not be affected. Hopefully, that this will not be terminated and, hopefully, if it is terminated unilaterally by anyone—some of these things will be agreed upon before termination.

MR. TYLER: Okay. Well, I can certainly appreciate that and that's the reason I asked the question because I can't see all these different little possible ramifications. And so, the "termination" portion concerns me. Actually, I see—I said it was "unilateral". It's not. It's by "mutual agreement". And—let's see—"DHHL and the County reserve the right to terminate"—so would that be by mutual?

MR. KIM: Unilateral.

MR. TYLER: It is unilateral. Okay. So, it's just the amendment of this to further clarify. Well, that concerns me because there are some very far-ranging ramifications of this and I don't mean to imply anything negative here at all because I think this is a very positive step. But, as we all know, sometimes the devil is in the details. And this is the first—the first go-around of this and I think it's going to—it is a step in the right direction.

I do have some reservations about the impact of this, in terms of "binding legal document" to the existing landowner—existing beneficiaries and with their dwellings. And I note that the—our new Governor has indicated, at least prior to her inauguration, that she was interested in getting people on the land and it wouldn't matter whether they were in a tent or whatever. And I don't know how that's going to fit in with this. I have no idea. But, clearly, as you mentioned, Mr. Mayor, the Building Code is being looked at and I hope that we take Maui's lead, as well, and look at traditional hale—along those lines, since you mentioned that because Maui is taking that, too.

Okay, Mr. Chairman—and thank you, both, very much for being here.

CHR. ARAKAKI: Wait, one more. Mr. Elarionoff.

MR. ELARIONOFF: Mr. Mayor, in the beginning with Mr. Tyler's questioning—did I hear you right, when you—I think you said that the "County will not enforce violations, retroactively, on Hawaiian Homes property".

MR. KIM: That's correct.

MR. ELARIONOFF: Is there going to be a double standard, then, for people who live on Hawaiian Homes property and those who don't live on Hawaiian Homes property?

MR. KIM: Right now, Mr. Elarionoff, I'm really not—there are—the Building Code violations that we have on this island, a lot of it—I hate to say it—is the fault of us in government in regards to some of the rules and regulations that are out there. Maybe have (inaudible) as I said, I think, if we go to every home on this island and look for violations—we'd probably find violations in 90%-plus, of the homes (inaudible) than those that were just built or whatever—and I have no basis for that statement in regards to the percentage.

But this is one of the main concerns in regards to residents on Hawaiian Homes. This is something we're going to have to work on how we're going to do it. I have no answers, right now, on what Codes will be changed or would not changed. I have no answer, right now, how we are going to see how we can mitigate some of the violations of the past.

I have committed to those on Hawaiian Homes Land that we would not go in and seek out violations of past, prior to this Agreement.

MR. ELARIONOFF: Okay. Thank you very much.

(NOTE: At this time, Mr. Soon responded from the audience, which was inaudible.)

MR. ELARIONOFF: Yes, please.

(NOTE: Mr. Soon responded from the audience, which was inaudible.)

MR. KIM: And if I may take this opportunity, Mr. Elarionoff, on that issue—as Mr. Tyler pointed out, some of the statements that were made by our Governor Lingle, as far as the Hawaiian Homes Land and the structures, it is—some of the things are, naturally, of concern of ours. And we will talk to Mike what our concerns are. And I'll make sure we express our concerns in regards to what we want to do here.

MR. ELARIONOFF: Very good. Thank you very much.

CHR. ARAKAKI: Okay. Any other comments? If not, let me—

MR. TYLER: Mr. Chairman, just very briefly, before you speak. Just a quick one. I wanted to say that I'm going to be voting with "reservations" for the reasons given. But I don't want anyone, here, to think that my vote is a "negative"—any way, to be taken in a "negative" way. I appreciate the work that has been done—and my vote will be a positive vote in favor of this, but I will be voting with "reservations" because of the reasons I've mentioned, Mr. Mayor. And I think from—if I were putting myself in your shoes and Mr. Soon's shoes, I think it would—given the circumstances—longstanding practice, etcetera, or lack thereof—it would be very difficult to improve upon this at this point because of some things that we just don't know.

So, I don't want you, Mr. Mayor, or you, Mr. Soon, or anyone else from the Department—I see Mr. Henderson back there, my former neighbor—many, many years ago in Kailua—to think that this—my vote of "kānalua" is going to be a negative statement. Please don't take it in that vein. It's my way of expressing a "reservation". Nothing more. Thank you very much. Thank you, Mr. Chairman.

CHR. ARAKAKI: Okay. Let me take the vote before I turn the Chair over—so nobody else talks. Mr. Clerk. Thank you, Mr. Mayor. We're going to have the Clerk call the roll. Mr. Clerk, would you please call the roll.

The roll call vote on Resolution 19-03, was as follows:

AYES: Councilmembers Chung, Elarionoff,
Holschuh, Jacobson, Leithead-Todd,
Reynolds, Tyler, and Chairman Arakaki – 8.

NOES: None.

ABSENT & EXCUSED: Councilmember Safarik – 1.

(For informational purposes, Mr. Tyler voted "kānalua" and "aye".)

CHR. ARAKAKI: Resolution 19-03 is adopted. I turn the Chair over to Mr. Tyler.

RELINQUISH
CHAIR:

At this time, Chairman Arakaki relinquished the Chair to Vice Chairman Tyler.

ACTING CHR. TYLER: Thank you, Mr. Chairman, for the opportunity to make some comments and ask some questions. Thank you for taking the Chair.

Okay. Is there a request for moving any other items out of agenda? Are there any Department Heads, here, who have to get back or anything of that sort? I'm sorry, Ms. Towle, did you have—

(NOTE: Ms. Towle responded from the audience, which was inaudible.)

ACTING CHR. TYLER: Okay. Thank you. Thank you very much. Any request? All right, Mr. Clerk, let's go to the "Order of Business", if you would please, sir, beginning halfway down—"Order of Resolutions", on Page number 3.

RETURN TO
ORDER OF
BUSINESS:

The Chair directed the Council to return to the regular order of business, and take up Order of Resolutions.

ORDER OF
RESOLUTIONS:

The Acting Chair directed the Council to proceed to the next order of business, Order of Resolutions.

RESOLUTION
NO. 262-02
(PWIRC-64)
(COMM. 807):

Accepts the dedication of a 303 square-foot roadway parcel (for road right-of-way purposes) from Onno Victor Van't Hof and Catherine Anne Van't Hof-Felsburg, situate at Kalōpā, Hāmākua, County and State of Hawai'i. Tax Map Key (3)4-4-008:060 (Por.), Lot 57-A-2 to the County of Hawai'i.

Mr. Arakaki moved for the adoption of Resolution 262-02 and Public Works and Intergovernmental Relations Committee Report 64. Seconded by Mr. Jacobson.

ACTING CHR. TYLER: Is there any discussion on this motion? Any discussion? Hearing none, I would just like to say, briefly, that I appreciate the efforts of Mr. Galen Kuba in getting clarification on whether or not there were any improvements on this property and