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PLANNING DEPARTMENT
COUNTY OF HAWAII

Date: August 25, 2019
Purpose: Speakout Presentation to the Hawaii County General Plan (draft) at Naalehu Community Center
From: The No Longer, Not so Silent Majority Property Owners of Discovery Harbour (Owners of over 250 lots in Discovery Harbour)

To all members of the Hawaii County Government who believe their obligation is to hear the truth and make good faith effort to act responsibly on those truths.

With regards to the "Gateway Lots" in Discovery Harbour, the Final Ka'u CDP Policies 6 and 7 (see Appendix 1 & 2) were predicated on pure and simple lies. We hate to use such a harsh word as "lies" but that is what occurred.

As a result, General Plan 2040, August 2019 Draft should be updated based on this information provided below (see Appendix 3).

The recommended zoning change to "Low Urban Density" instead of "Village Commercial/Resort" was facilitated by an orchestrated effort of a very small group of individuals who used partial truths and blatant lies to misguide the Steering Committee at the Ka'u CDP Steering Committee Meeting of August 25, 2015.

The Minutes of August 25, 2015 Steering Committee Meeting, which are Public Record, clearly state the extend of how these lies led to a zoning change that was not only inappropriate but also against the wishes of a vast majority of the property owners in Discovery Harbour.

Ka'u CDP Steering Committee Chair, Patti Barry, has stated the land use designation was changed from Village Commercial/Resort to Low Urban Density as a direct result of the statements made by these individuals.

Here are the statements in the Meeting Minutes that are false:

Under Business Item 1: "Change Permitted Uses for "Gateway Lots (with NO change to subdivision CC& R's) (Ron (Ron Whitmore) advised that the last option (Shift to Urban) is the best option in relation to the CC&R's).

Under Business Item 1: "Change Permitted Uses for "Gateway" Lots (with amended subdivision CC& R's) (Ron (Ron Whitmore) advised that the last option (Shift to Urban) is the best option in relation to the CC&R's).

Under Business Item 1: "Gateway" Lots (with amended CC& R's) – not feasible, CC&R's are much too difficult to amend.

Under Next Steps #1: DH Community is very organized and familiar with the CC&R's which helps the SC better understand what the community wants and needs.

The nature of why the above are completely false statements is based on the individuals who represented themselves to the Ka'u CDP Steering Committee as "leaders" of the community. These individuals had a specific agenda against any development of the Gateway Lots, and their orchestrated effort included the following which proves the above statements false:

First, they did not provide the Steering Committee with all of the Governing Documents of Discovery Harbour. They convinced the Steering Committee that the Discovery Harbour Community Association (DHCA) had "governing power" over the Gateway Lots and the Developer. (In the minutes Ron Whitmore states: "*The Community Associations have a process for dealing with violations of the CC&R's*") This is false on two fronts, first, The Charter of Incorporation for DHCA states only Residential Lots are members of the HOA and second, the CC&R's clearly state the HOA has no approval authority over work done by the Developer. When Patti Berry was shown this information, after the fact, she tried to get the recommended zoning changed back to Village Commercial/Resort, to no avail.

Second, they represented to the Steering Committee that there was little support from the Discovery Harbour Community for the development of the Gateway Lots. There were several petitions signed by hundreds of lot owners showing their overwhelming support FOR development and presented to Ron Whitmore, however these few individuals mislead lead the Steering Committee by claiming there was not that level of support (see Appendix 4).

Third, the current CC&R's are clearly written as is to allow for development under Village Commercial/Resort zoning without any need for change or amendment. How these individuals were able to convince Ron Whitmore and the Steering Committee otherwise is beyond comprehension. Simply reading through The Charter of Incorporation; The Bylaws and the CC&R's would allow any reasonable person to determine any development of the Gateway Lots is well within the four corners of the documents.

Lastly, the statement "DH Community is very organized and familiar with the CC&R's" is a complete fabrication. DHCA has had an ongoing "battle" over the legitimacy of their Governing Documents going back to 1983. For the past 10+ years, the members of the Board of Directors have been dealing with multiple lawsuits concerning the Governing Documents; including admitting changes were done without a proper vote (see Appendix 5).

In fact, four former Board of Directors, are facing the possibility of being held personally responsible for the financial losses the Developer faces, as well as the HOA as a whole, through a current lawsuit (Case #3CC181000052) based on the Ka'u CDP Steering Committee changing the zoning solely based on the input of four individuals. The overall financial impact to all Discovery Harbour property owners hangs in the balance as well if the zoning decision is not reversed.

In conclusion, the good people of Discovery Harbour not only need, but deserve members of the Hawaii County Government to right the wrong done to them through the action taken by the Ka'u CDP Steering Committee based on a complete fabrication of the truth and change the zoning of the Gateway Lots to Village Commercial/Resort. The opportunities for economic benefits for the residents around the Naalehu area will greatly improve with the development of the Gateway Lots.

Respectfully submitted for the vast majority of Discovery Harbour Property Owners

Appendix 1.

The development of visitor accommodations and any resort development should complement the character of the area; protect the environment and natural beauty; respect existing lifestyles, cultural practices, and cultural resources; provide shoreline public access; and provide affordable housing to meet demand created by the development. (GP 2.4.9.2(a & c), 9.3(g), 14.7.2(c), 14.7.3(i), 14.7.5.9.2(a))

Appendix 2.

With the adoption of the Ka'ū CDP, Figures 2, 3, 4, 5, 6, and 7 on pages 43 through 48 are adopted as the official Land Use Policy Map for the Ka'ū CDP planning area. The land use category definitions are identical to those used in the General Plan LUPAG map (and included in the Glossary). Future land use decisions in the Ka'ū CDP planning area shall be consistent with the Land Use Policy Map boundaries, designations, and policies herein, unless the CDP and the General Plan are in direct conflict

Appendix 3.

551. The designation of any new resort areas shall require analysis of the character of the area; the immediate and surrounding environment, natural resources and beauty, cultural practices and cultural resources; shoreline public access; and nearby affordable housing concurrent with the demand created by the development. [Rationale: Based on General Plan Policies 2.4.9.2 (a & c), 9.3(g), 14.7.2(c), 14.7.3(i), 14.7.5.9.2(a)), and Ka'ū CDP Policy 6.]

Appendix 4.

Documented support or non-support can be found on the CDP website. That summary shows 185 people in support of development and 13 people opposing development.

This number includes a petition earlier signed by 134 residents of the community, in addition, another 80 plus individuals have expressed support of the conceptual development of a 40 room lodge, amenities and golf course renovation.

Appendix 5.

The charter of Discovery Harbour Community Association was involuntarily rescinded by the State of Hawaii in 1977. The current homeowners association was created in 1982 WITHOUT a vote of property owners.

The 1972 CC&R's were renewed in 1994 for a period of 10 years, then incorrectly (the Board of Directors did not obtain the legally required number of membership votes) replaced in 2006 and amended in 2008. As a result of a lawsuit filed against the HOA in 2011 all changes/revision/replacement of the 1972 CC&R's were found to be invalid. The Board of Directors simply stated the 1972 CC&R's became in effect.

The Honorable Judge Nakamoto (Third Circuit Court) has ruled there are "issues of material fact" as to the existence of the Discovery Harbour Community Association as a community association or a planned community. Also, there are "issues of material fact" as to the validity of the 1972 CC&R's. That litigation continues (Case #3CC1610000195).