

COMMITTEE ON PLANNING

37th Session

Hilo, Hawai'i

Tuesday, November 23, 2004

The meeting of the Committee on Planning was called to order at 1:42 p.m. in the Councilroom, Hawai'i County Building, by Mr. Leningrad Elarionoff, Chairman.

ATTENDANCE:

Present:

Mr. Leningrad Elarionoff, Chairman
Mr. J. Curtis Tyler, III, Vice Chairman
Mr. James Arakaki, Member
Mr. Aaron Chung, Member (Came in Later)
Dr. Fred C. Holschuh, Member
Mr. Bob Jacobson, Member
Mr. Joe Reynolds, Member
Mr. Michael Tulang, Member (Came in Later)

Absent & Excused:

Mr. Gary Safarik, Member

Also Present:

Mr. Chris Yuen, Planning Director
Ms. Connie Kiri, Legislative Auditor (Came in Later)
Mr. Skip Bethea, Legislative Auditor Assistant (Came in Later)
Ms. Charmaine Doran, Legislative Auditor Assistant
Ms. Jeanette Aiello, Council Services Supervisor (Came in Later)
Ms. Laura Moses, Council Services Assistant II

CHR. ELARIONOFF: Good afternoon. I'd like to call this meeting to order. I welcome you to the Hawai'i County Council Committee on Planning, 37th Session. Before we begin, I'd like to introduce the members of the Committee that are present today. Bob Jacobson on the left, next to him sits Fred Holschuh, next to Fred sits James Arakaki, Chair, and on my immediate left is Curtis Tyler, the Vice Chair. On my far right is Joe Reynolds, and I am Leningrad Elarionoff, Chair of this Committee. We start off with please turn off cell phones.

STATEMENTS
FROM THE
PUBLIC ON
ITEMS ON
THE AGENDA:

The Chair directed the Committee to proceed to the next item on the agenda, Statements from the Public on Items on the Agenda.

SUSAN
O'NEILL:

The Chairman called the first speaker, Susan O'Neill, who made the following statement regarding Bill 163, proposed revisions to the General Plan:

MS. O'NEILL: Thank you for this opportunity to speak to the Committee. I have three things I'd like to say related to the General Plan. One is a statement of thanks to Mr. Arakaki and the leadership you have provided in listening to the community and helping the Council to do so, to take the time to try to have a General Plan that is well thought out and the best it can be. It is very much appreciated. I know it's been a team effort, but I understand you've been kind of a leader in all of that, so thank you for all of that. I want to thank you, too, Mr. Elarionoff. I'm not used to saying "Mr." I sincerely want to thank you and your staff for the untold hours that I know have been put in on these many revisions and community meetings and so on. That is appreciated by the community very, very much. I think the willingness to defer action until we are ready as a Council and a community on this is particularly important, and I also believe that urging the next County Council to make the implementation of the General Plan needs to be a very, very top priority, which I'm quite sure it will be, whether it is adopted by the next Council or this Council, however that works out. We have work to do as an island. We have many districts and many constituencies, but the whole island is very ready for this, and it's very much needed.

I also urge that there be continued opportunity for input from the community regarding the plan, regarding how community development plans are developed, and so on. The really key element of community involvement is something that we support strongly.

Lastly, we're talking about the needs of communities, and we're talking about the needs of people. It was brought to my attention recently that we must also consider the needs of the land in all further decisions. Thank you very much.

CHR. ELARIONOFF: Thank you. Could you wait one moment, please? Dr. Holschuh.

DR. HOLSCHUH: Thank you, Mr. Chairman. Good afternoon, Susan. I want to thank you for all the work you've done in the community and your concept of the district wide community development and so on and so forth. I won't go into all the details, but I really appreciate what you've done. Thank you. Thank you, Mr. Chairman.

CHR. ELARIONOFF: That comes to the end of our public statements.

Comm. 847:
(Bill 365)

AN ORDINANCE AMENDING THE STATE LAND USE BOUNDARIES MAPS, H-14 AND H-25 FOR THE COUNTY OF HAWAI'I, BY CHANGING THE DISTRICT CLASSIFICATION FROM THE AGRICULTURAL TO THE RURAL DISTRICT AT OULI, SOUTH KOHALA, HAWAI'I. COVERED BY TAX MAP KEY 6-2-11:9.

(Applicant: Arthur & Diane Maher) (Area: 5.0067 acres); and

(Bill 366)

AN ORDINANCE AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO RESIDENTIAL AND AGRICULTURAL (RA-2a) AT OULI, SOUTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 6-2-11:9.

(Applicant: Arthur & Diane Maher) (Area: 5.0067 acres)

From Mayor Harry Kim, dated October 19, 2004, transmitting a letter and the above bills from Planning Commission Chair Fred Galdones.

CHR. ELARIONOFF: Can I have a motion to file Communication 847 and approve Bill 365?

Mr. Tyler moved to close file on Communication 847 and recommend passage of Bill 365 on first reading. Seconded by Dr. Holschuh.

CHR. ELARIONOFF: Moved and seconded. Discussion? Mr. Yuen, please.

MR. YUEN: Good afternoon, Mr. Chair and members of the Committee. These two bills are continuations of a trend that we've seen before, and we've had a number of similar actions. That's rezonings of these mostly 5-acre lots in the Aina Kona area and other nearby subdivisions off of Kawaihae Road, to allow two lots, typically two to three acres. The areas are not prime agricultural. They do have water and other infrastructure on site to support a rezoning to this limited degree, and so we've recommended quite a number of these, and quite a number of them have already passed through the Council.

CHR. ELARIONOFF: Okay. Mr. Mooers, do you have anything to say?

GREG MOOERS:

At this time, Mr. Greg Mooers, representative of the applicant, came forward to address the Committee.

MR. MOOERS: Just to point out that this property is a CPR presently, and there are two units, and as a result of this action the CPR would be cancelled, and it would become two subdivided lots in compliance with the Subdivision Code.

CHR. ELARIONOFF: Okay. Thank you. Dr. Holschuh.

DR. HOLSCHUH: Thank you, Mr. Chairman. Good afternoon, gentlemen. I just wanted to ask somebody a question. Somewhere in the Planning Commission report -- well, actually throughout the document -- it talks about building a house on either lot, which makes sense, and then on Page 8 of the Planning Commission under valuable, cultural, historical and natural resources, in the second sentence, it says, "There is a single family dwelling on the property." Yes or no?

MR. MOOERS: No.

DR. HOLSCHUH: So that's an error?

MR. MOOERS: That's correct. The lot is vacant at this time, so the error is in the Planning Commission report.

DR. HOLSCHUH: Okay. You knew that before?

MR. MOOERS: No, I did not.

DR. HOLSCHUH: Okay. I'm not being critical. I was just surprised to see that.

MR. MOOERS: Not unless they've built the house between the time I left home today and now.

DR. HOLSCHUH: Thank you. Thank you, Mr. Chairman.

CHR. ELARIONOFF: Thank you. Mr. Tyler.

MR. TYLER: Thank you, Mr. Chairman. Good afternoon, Mr. Yuen and Mr. Mooers. Thank you for being here. I made the motion because I'm in support of this, but you know, Mr. Yuen, the information that comes up from the Planning Department indicates that the soil conditions, because they're "E," or very poor, and the soil conditions would preclude such intensive agricultural activities from being conducted. I think you and I know and everybody knows that anything can grow almost anyplace on this island, including in solid rock, as long as you have the resources to take care of it. There's a lot more soil here than there is in most of Kona. I support what's going on here, but this idea that because you have a Class E soil means you can't do agriculture is nonsense on this island. I know it's based on the A list system, but we just ought to get rid of that, because if that were the case all my ancestors would have starved to death within a few years of one another after they arrived here, because we have very little soil here. This being one of the oldest parts of the island, there's a lot more soil here, so it's kind of like the idea of if it's not in the SMA (Special Management Area), we don't have to comply with the CZMA (Coastal Zone Management Area) and that kind

of thing, so I support this, because this is the trend and everything else, but if we keep saying this long enough, somebody's actually going to believe they can't do any farming out there, which we know is not true, as long as you've got water. Thank you.

CHR. ELARIONOFF: Thank you. Kind of hard to grow sweet potatoes. Okay. No other lights on? On the floor we have a motion to file Communication 847 and approve Bill 365. All those in favor, say "Aye."

The motion to close file on Comm. 847 and recommend passage of Bill 365 on first reading was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Reynolds, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Safarik,
and Tulang.

CHR. ELARIONOFF: Motion carries. Let's go to the next one, which is Bill 366. Can I have a motion to approve Bill 366?

Mr. Tyler moved to recommend passage of Bill 366 on first reading. Seconded by Dr. Holschuh.

CHR. ELARIONOFF: Moved and seconded. Mr. Tyler.

MR. TYLER: Mr. Chairman, I note the restrictive covenant to prohibit second dwellings and CPR's, and that's good, and I also notice, Mr. Mooers had mentioned, that the CPR is going to be cancelled after this, and that's good too, because now we're getting more in line with what's going around, and I appreciate that the applicant is willing to come forward to do this. I just wanted to amend Condition H to utilize the language that we've been using the last three or four months. Hopefully you'll regard this as a friendly amendment.

Mr. Tyler moved to amend Bill 366, Condition H , by inserting the standard language, "The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements." Seconded by Dr. Holschuh and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Reynolds, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Safarik, and Tulang.

CHR. ELARIONOFF: Let's go back to the main motion, which is Bill 366, as amended. All those in favor, say "Aye."

The motion to recommend passage of Bill 366, as amended (to Draft 2), on first reading was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Reynolds, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Safarik, and Tyler.

CHR. ELARIONOFF: Motion passes.

Comm. 848:
(Bill 367)

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) AND RESORT-HOTEL (V-1.25) TO MULTIPLE FAMILY RESIDENTIAL (RM-2.5) AT AUHAUKEAE 1st, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-5-9:67 AND PORTION OF 54 (Applicant: Kona Hale Alii, LLC) (Area: Parcel A - approximately 169,762 square feet; Parcel B - approximately 103,751 square feet; Total: Approximately 6.2 acres).

From Mayor Harry Kim, dated October 19, 2004, transmitting a letter and the above bills from Planning Commission Chair Fred Galdones.

CHR. ELARIONOFF: Can I have a motion to close file on Communication 848 and recommend approval of Bill 367?

Mr. Tyler moved to close file on Communication 848 and recommend passage of Bill 367 on first reading. Seconded by Dr. Holschuh.

CHR. ELARIONOFF: Moved and seconded. Mr. Yuen.

MR. YUEN: This is a rezoning proposal that involves two properties off of Hualalai Road. If you're familiar with Hualalai Road, coming up from the intersection with Kuakini, you pass the Regency Elderly Housing Project, and then there's a big curve to the left. This is on the south or Keahou side of Hualalai Road. There are two parcels there: One is currently zoned (Resort-Hotel) V-1.25, which allows 35 units per acre. The other parcel is currently zoned A-1a. We all recognize, I think, that this is within the urban core of Kailua-Kona, and that these will be urban areas. The applicant is proposing to rezone both to RM-2.5. This would allow multi-family buildings at a density of about 17 units per acre. It's actually a downzoning of the V-zoned parcel, but an upzoning of the (Agricultural) A-zoned parcel. I think their plan is to do a multi-family residential property at a lower overall density, but somewhat more units. There's a lower density than permitted by the current zoning of the V property, but they more than make up for that by the RM property. There are many significant historic sites on these properties. The biggest cluster is located makai of the area that they are asking to rezone. They are planning to preserve that area.

They do have preservation sites within the area to be rezoned as well. One of the proposed conditions of rezoning is that the preservation plan would include the makai area, which would still be zoned AG-1a, so that we make sure that those are still covered by the conditions of zoning and that there is a long term preservation plan in effect for those sites, and that they're not just out there in this other lot.

The other condition, besides the historic sites issues, that I'd like to make sure there is no misunderstanding on this, is on the affordable housing side. The condition is that they comply with the affordable housing policy. We are hoping that the Council does adopt a new affordable housing policy, somewhat stricter than the current policy. We want it to be clear to all rezoning applicants that they would have to comply with the policy. If the policy is changed and it is written in a way that affects prior rezonings that have not actually fulfilled their affordable housing requirements, then the new policy would apply to this rezoning. They wouldn't be grandfathered in to the old policy. The new policy will be written in a way that applies to all zonings that have an affordable housing requirement that has not yet been met.

CHR. ELARIONOFF: Thank you. Mr. Fuke.

SIDNEY FUKU:
BOB SAUNDERS:

At this time, Mr. Sidney Fuke, representative of the applicant, and Mr. Bob Saunders, co-developer and also applicant's representative, came forward to address the Committee.

MR. FUKU: Good afternoon, Mr. Chairman and members of this body. Seated to my left is Mr. Bob Saunders. He's the applicant's representative as well as the co-developer on this project. Mr. Yuen's presentation is accurate. I'd like to just kind of provide a little background information for the benefit of the Councilmembers. However, I'd like to initially direct your attention to Exhibit A in the proposed ordinance, the last page wherein it identifies the subject properties that are scheduled for consideration by this body. I'll walk you through on that if I may, Mr. Chair. If you look at that area identified as Parcel B, and that portion of the land that's immediately abutting Hualalai Road, that property is presently zoned Resort 1.25, and the previous owner of that property, which was then subsequently bought by Mr. Saunders and his group, had plans and was ready to apply for a building permit to construct 80 units of condominium on that particular project. I can just show you for illustrative purposes what that project looks like.

MR. SAUNDERS: Sure, and I must make a correction. The current owners were planning to build this higher density property, and changed.

CHR. ELARIONOFF: How many units did you say they were planning to build?

MR. FUKU: They were going to do 80 units on this, roughly on a little more than two acres of property, and they were basically permitted and ready to go. Then they felt that it would be a better project overall if they were to acquire the properties to the south and then spread the density over a larger area of land. That's that area identified as Parcel A, which would result in a rezoning from AG-1 to RM-2.5, and in so doing, however, they would increase the density from 80 units to 92 units, and so that would be an overall increase of 12 units. However, the project would be developed over roughly about a 6-1/2 acre area and spread out, so you'd have a much more tastefully designed project rather than the plan that he had shown you earlier, which was already permitted. That was a monolithic, four-story structure, running the length of Hualalai Road.

In this revised proposal, subject to the Council's favorable consideration on this, the project would be spread out roughly on 6-1/2 acres of land, and the structures would be basically two and three stories in height. So from the developer's standpoint, it represents a much more tastefully designed project.

MR. SAUNDERS: We're proposing, instead of that monolithic building that you saw, four stories over a garage, this would be a series of two-story with loft buildings, four-plex buildings. So they are individual buildings that are positioned around the site. We thought, in talking to the community, it was much more in keeping with the Kona lifestyle. We think it will be better received in the market.

MR. FUKU: So, essentially then the balance of the property, again, if I can direct your attention again to the proposed zoning map, the balance of the property in Parcel A would still be kept in the A-1 zoning district, and as the Director had indicated, that area will be set aside for a preservation area, and it's called right now for a preservation plan relative to that. So essentially what you'll be looking at, if it's approved, as opposed to an 80-unit condo over a 2-1/2 acre property, you'd basically have 92 units over a six or seven acre area, with about three acres of perpetual open space, which would be on the makai portion. It would be one that I think provides a much more visual relief along Hualalai Road and in this general area, rather than what was already permitted.

I know that there are concerns relative to the fact that this is rezoning an Agricultural 1-acre to a Multiple Family 2.5. However, when you look at it in the total context of things, like 12 additional units combined with having a much better designed project, archaeological preservation, and as the Director had indicated, a provision for both impact fee as well as an affordable housing requirement, which there would be none if the developer were to proceed with what is already permitted, I think that these kind of spell for quite a bit of enhancement over both in terms of fulfilling social policy, as well as a design policy for this particular area.

CHR. ELARIONOFF: Mr. Yuen, do you have anything else to say?

MR. YUEN: No, unless Councilmembers have any questions.

CHR. ELARIONOFF: Thank you. Mr. Tyler.

MR. TYLER: Thank you, Mr. Chairman. Good afternoon, gentlemen. Thanks for being here. I know we also have Dr. Rechtman in the audience today who did the archaeological update inventory survey, and Mr. Chairman, I had an opportunity to attend the Hawai'i Island Burial Council meeting last Thursday in Kona when Mr. Saunders and Dr. Rechtman were present, and the Burial Council reviewed their proposed burial treatment plan. As I'm sure you noticed, there's an area there where there are some burials, and they'll be preserved in place. Isn't that correct?

MR. SAUNDERS: Correct.

MR. TYLER: First of all, let me say that I'm familiar with the previous project, inasmuch as one of the designers came and spoke to me about it. I can say without any hesitation that the proposal before us today is a very, very significant improvement to the Kona way of life as outlined in the master plan for Kailua-Kona dated 1994. Subsequently, Mr. Saunders came and spoke with me about his role and some of the new directions they were thinking about, and I must say that it was right in line with what I had spoken to the fee owner or the

representative of the fee owner about some years ago, because this property, as the Director has pointed out, the lower portion of it has very, very significant cultural resources located on it. As I told the Burial Council last Thursday, the significance of these cannot be underestimated, because in this ahupua'a, directly across the street and makai, very near where the makai edge of Kuakini Highway is, is where, as I understand it from reading the reports of those who were there, since I was not in 1803, was the residence of the Queen Mother, Keopuolani, who was the mother of Kamehameha II, Kamehameha III, and Princess Nāhi'ena'ena who had an untimely juvenile death. So this is very significant, and I appreciate that the applicant understands this. One of the concerns that I expressed at the Burial Council, and I've spoken with Mr. Fuke as well as Mr. Saunders about this, was this proposal really only deals with the mauka half of the property and doesn't address the makai half.

I wanted to ask you, Mr. Yuen, since we have seen so many cultural resources desecrated over the years, despite conditions to the contrary, I'm going to be proposing an amendment which I've circulated today. I talked with Mr. Fuke, and he helped me work on it, to ensure that this area makai be put into the Open district, since there is no conservation zoning, and that there be, as the applicant has indicated to the Burial Council as well as to me, as well as in this report, that there's going to be no further disturbance of that, that would in any way compromise those resources. Have you had a chance to review that, Mr. Yuen?

MR. YUEN: Just this minute, yes.

MR. TYLER: Okay, well we just finalized it a little while ago, and I'm wondering, you've been the Planning Director long enough to know the kinds of pitfalls and opportunities that you and your staff encounter on a daily basis with respect to significant cultural resources, do you think that this will address at least some of the concerns that the State Historic Preservation Division has? We have received testimony from them. I don't know why it was dated July 21st, but in any case, it's from the resident archaeologist. It's going to address some of them. is it not?

MR. YUEN: Yes. It would address the issue of other allowed uses on the AG-1a property. The reason for including this area in the preservation plan was where this was going, and as far as we would be trying to control a development on the lower side and preserve those sites, would be that -- our anticipation would be -- that many of the sites would be identified as preservation sites in the preservation plan. Then, in any subdivision plan, we would require that those be entered and mapped, including the buffers around them, on the subdivision plan. Then this becomes the base of the tax maps. So, then you have a very convenient source of control if anybody comes in for something like a grading permit on the lower part of the property. Or, say, somebody came in to build a house on it,

which would be possible under the AG-1a zoning. We would not prohibit the building of the house with the current zoning, but any disturbance for the house or for the driveway would have to avoid the preservation sites and their buffers. So that would be the strategy for doing that, and that would work if the applicant does not object to rezoning the property to Open and it being permanently Open. That would also work, and, of course, we have no objection to that in the Planning Department. The Open zoning itself does allow some kinds of uses that could destroy historic sites. For example, you could put a tennis court there or a swimming pool or other kinds of recreational facilities in Open zoning.

MR. TYLER: What do you suggest we do? The applicant has indicated at the Burial Council that there is a covenant that runs with the land that indicates that they cannot do anything down there on the lower half, and Mr. Saunders, you correct me if I'm wrong, but I believe you made this representation to the Burial Council.

MR. SAUNDERS: Right, and I believe the language we see in here is in part taken from that covenant that's running with the land.

MR. TYLER: Essentially, when you purchased the land from Lanihau Partners or Lanihau Corporation, they inserted in a condition in there that would preclude you from disturbing ---

MR. SAUNDERS: We mutually agreed to that language that's currently on the deed, correct.

MR. TYLER: Right. It's on the deed, but in addition I want to be sure that no person is going to approve any grubbing and grading permits in this lower section, and so what I'm looking to try to do here, Mr. Yuen, Mr. Fuke and Mr. Saunders, is to insert a condition that says that the upper portion of the property will be RM-2.5, the lower portion will be Open, and that there will be no grubbing or grading permits issued in the lower section that would in any way compromise any of the cultural sites, and that no grubbing and grading permits would be allowed in the upper site until such time as buffers approved by SHPD (State Historic Preservation Division) would be in place. That's a little bit different than the language that's been circulated, but is that going to suffice?

MR. YUEN: I think what we have in the ordinance now, plus this amendment, would be fine, and we would have it under good control with both of these. We would have had it under reasonably good control with just what we have presented, but if they have no objection to the rezoning to Open, that's also fine with us, and it may have some benefit to them from a tax point of view, and if they're not going to develop the property, they shouldn't have to pay taxes on it, on either the AG-1a zoning.

MR. TYLER: Well indeed, that's what Mr. Saunders and I discussed quite some time ago, was that there might be a tax advantage to this, because it's not going to have any use for development, other than what's already there. Is that right, Mr. Saunders?

MR. SAUNDERS: Right. I have a question, though. Would this language we're talking about preclude us from coming in and maybe removing some dead kiawe and things that are on the property?

MR. YUEN: No, because you're talking about hand removal, and you don't need a grading or grubbing permit, and in fact you can grub up to an acre without a grubbing permit.

MR. TYLER: Well, that's the scary part, see?

MR. YUEN: That's an overall problem, but once we have the preservation plan in place, then that would be a violation of the preservation plan. We would be a violation of the conditions of zoning to destroy any of these sites. But in response to Mr. Saunders' question, no, none of these conditions would prohibit that. The preservation plan in fact might even call for them to remove kiawe trees that may be destroying walls. Sometimes natural growth like that can really hurt these sites. They would be allowed, certainly, to go in and cut kiawe trees and clean up around the sites.

MR. TYLER: That was the intention. This would be hand clearing. Normally what it is, is there's a temporary buffer area. If it's a preserved site, there's a temporary buffer area, which is usually very large, and that no mechanical equipment other than hand equipment is allowed in there for clearing. Then there's a permanent buffer into which there's no intrusion by anything that would destroy the site.

Mr. Saunders, I need to ask you another question. So, it was your intention when you entered into this mutual agreement with the former landowner -- you and your applicant -- to preclude any development of the makai portion. Is that correct?

MR. SAUNDERS: Period.

MR. TYLER: Other than preservation of it.

MR. SAUNDERS: Yes.

MR. TYLER: And so it would be preserved in perpetuity, including improvements to take out the alien species and things like that, that might be compromising, like a tree growing in the middle of a heiau or something.

MR. SAUNDERS: Well, I guess we didn't get to that level of detail, but the idea is, big picture, that three acres is not messed with, period.

MR. TYLER: Okay. Thank you. That's what I understood you to say, and that's what you told me when we met some months ago. Now, Mr. Yuen, how could we ensure that this would be like this in perpetuity, because as you pointed out, Open designation would allow certain kinds of activities, which might not be conducive to the preservation of this area. What would we have to do?

MR. YUEN: Well, these conditions really do very much limit the development of the property. Aside from public purchase, you don't actually have site control of the property, so there's the possibility of people doing things by way of violation that's a threat.

MR. TYLER: Well, sure I understand. People could move in there unbeknownst before declaring, and they could create problems. We've seen this in other sites. I know, based on my conversations with Mr. Saunders, that it is the intention of himself and the applicant to make sure that this area is protected. There's another parcel, which is Parcel 55 I think to the south, which is also part of Auhaukeae, and which is not under the control and not the subject of this discussion. It also, and I'm sure Dr. Rechtman could share some thoughts on that, too, contains significant sites. But that's not the subject of this. That's a different landowner as well. Mr. Fuke, did you have anything? I didn't give you an opportunity to say anything.

MR. FUKU: No. I was just going to comment that you were going to raise two points: One is to make sure that there are sufficient safeguards for that area that's under consideration for zone change, and proposed Condition J already requires that they must have an approved archaeological preservation and a burial treatment plan prior to the submitting of any plans for plan approval to the Planning Director. That's in the mauka portion, the subject area.

Relative to the makai area, and I would tend to concur with what the Director was saying, is that taken in tandem with what you already have and plus what you're proposing, I think it provides a severe development restriction on the property, a restriction that the applicant would not have any objection to. One is that your existing condition already requires the preparation of a preservation plan for the entire area, including the makai section, so regardless of what happens on the makai section, be it under private control or public control, or to some nonprofit, you'll still have that preservation plan, and that preservation plan will dictate what kind of activity or level of land disturbance activity can occur on the property. With that Open designation, as the Director had indicated, you eliminate the possibility for any residents on the property, but it does allow for other types of uses that would be normally accessory to or an adjunct to a permitted use within

an Open zone, such as a park. So if you have a park, and let's assume you go five or six years down the road, and this land is accepted by the State or the County or some non-profit organization, and you have this condition in, and they may construct a visitor center or a restroom facility, so those would be the type of structures that could be constructed on the site but still would be subject to the limitation of the preservation plan.

MR. TYLER: Okay. This document that we have, this request memorandum from SHPD (State Historic Preservation Division), MaryAnne Maigret, (*please refer to Comm. 848.1*) asking for a deferral and requesting that there be a comprehensive AIS (Archaeological Inventory Survey) for the entire property, and really only, if I recall correctly, the only thing that has been done is there has been an AIS sometime ago for the Heinaloli 6. Dr. Rosendahl did that, and Dr. Rechtman did an updated AIS but only for the mauka portion. They're requesting, as they mentioned to me at the Burial Council meeting, was they wanted an AIS for the entire property, because there isn't one. Mr. Fuke, do you have a comment on that? It seems to me that we might be able to take care of this with a proposed amendment that has been circulated, which I will make very shortly.

MR. FUKU: Just one clarification. I think that there was already an Archaeological Inventory Survey done for that area in question, the makai portion. I think it's more a question of their wanting an updated report, and Dr. Rechtman did an updated report for the mauka portion, but it did not include the makai section. Given the discourse to date relative to the requirement for a preservation plan and what you're proposing right now, I think that the concern raised by SHPD, MaryAnne Maigret, would probably be well taken care of.

MR. TYLER: Okay. So Dr. Rechtman, can I ask you a quick question, if you'd just come forward and speak into the mike so we can record you.

DR. BOB
RECHTMAN:

At this time, Dr. Bob Rechtman, Archaeologist, came forward to address the Committee.

MR. TYLER: Mr. Chairman, this is Dr. Rechtman who is an archaeologist who did the work here. Good afternoon. Ms. Maigret says that a comprehensive inventory would pave the way for an appropriate assessment of significance of these sites. This is for the uninventoried, makai portion. You only did the mauka portion.

MR. RECHTMAN: Correct. The entire parcel, and as you indicated the adjoining parcel, was surveyed in the mid to late 70's.

MR. TYLER: By Dr. Rosendahl.

MR. RECHTMAN: And then again in the early 80's there were several projects by PHRI, and they recorded and documented sites on these properties but didn't follow through with any development actions, so reports were never filed. So the State didn't consider their studies to be inventory surveys.

MR. TYLER: And, therefore, they weren't approved as such.

MR. RECHTMAN: They weren't approved as inventory surveys or up to the current inventory standards, and that's why we did what we called an update, but it's actually an inventory survey of the upper portion of Parcel 54.

MR. TYLER: And a very good thing, I might add, Mr. Chairman, that it was done because there were some possible burials that have been determined not to be burials. So that was of great significance, because it set the record for that. But Dr. Rechtman, what I wanted to ask you was, in this letter Ms. Maigret says towards the end, "A comprehensive inventory would pave the way for appropriate assessment of significance of these sites...". This is the uninventoried area. "...and appropriate preservation planning through the required Preservation Plan and Burial Treatment Plan. These steps, if taken, will likely minimize future site management difficulties." Now, the only burial that went before the Hawai'i Island Burial Council was the site up in the southeast quadrant of the upper portion, and yet there appear to be significant numbers of burials in the makai as well as the Parcel 55 to the south, which is not the subject of this.

MR. RECHTMAN: Correct.

MR. TYLER: How will those burials, inasmuch as this is going to be proposed to be preserved in perpetuity and be downzoned to Open, how will SHPD be able to address that, what they're asking to do here? Do you know? When you do your preservation plan, you're only doing your preservation plan for the upper portion.

MR. RECHTMAN: As it stands now, the preservation plan, there is the Kuakini Wall.

MR. TYLER: Okay. I see Mr. Fuke is wanting to say something, so if we make this condition, will it include the makai portion?

MR. FUKU: In addition to whatever the Director and the Commission have already proposed, and that is under Condition J, the last sentence requires the preparation of a preservation plan for the area that's been the source of discussion over the last 15 minutes.

MR. TYLER: Okay. That's why Mr. Yuen is having this puzzled look on his face. What is Tyler talking about? We already took care of that. Isn't that right, Mr. Yuen?

MR. YUEN: Yes, and what you're bringing up is why we put this in. You have one parcel, but only a portion of it is being rezoned, so we would want to make sure that there's a preservation plan that covers the sites on the remainder of the parcel.

MR. TYLER: Very good. Okay. Thank you very much. I'm sorry for the digression. Mr. Chairman, at this time I'm going to make a motion to add a new condition. I've circulated it. It's entitled "Proposed Amendment, Bill 367, New Condition," and I'll read it for those who might not have seen it. *(Please refer to Comm. 848.4.)*

Mr. Tyler further moved to amend Bill 367 to add a new Condition as follows: "Prior to submittal of plans for a building permit or within six months of the effective date of this ordinance, whichever is sooner, the applicant or its successors and assigns shall submit a proposed covenant to be recorded with the State of Hawai'i Bureau of Conveyances to the Planning Director for review and approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances. Said restrictive covenant, which shall be made a part of the deed of that portion of TMK: 7-5-09: 54 that is zoned A-1a, shall acknowledge that the applicant or its successors or assigns has consented to a County-initiated rezoning of said area into the Open district and the prohibition of any development or improvement of that area in such a way as to interfere with or negatively affect the archaeological and historic features of such area, as determined by the State Historic Preservation Office. Furthermore, no land disturbance permit for the RM-2.5 shall be issued until the covenant has been duly recorded and appropriate buffers between the Open and the RM-2.5 area are in place." Seconded by Dr. Holschuh.

MR. YUEN: I think you don't want to say the insertion of no land disturbance permit for the RM-2.5 zoned area, because then you're not covering the AG-1 zoned area.

MR. TYLER: Well, the intention was -- may I continue, sir?

CHR. ELARIONOFF: Yes.

MR. TYLER: The intention here was that there would be no grubbing or grading permits issued, and really no disturbance at all, in the RM-2.5 until such time as this was recorded, and that there would be no disturbance in the makai area. There can't be, so maybe I didn't state it properly. Mr. Fuke, would you help me with this? Instead of saying -- it's circulated -- "Furthermore, no land disturbance permit for the affected area shall be issued until the covenant has been duly recorded." The affected area now is the entire parcel, and I changed the language to say that there would be no land disturbance permit for the RM-2.5 area until the covenant has been recorded and appropriate buffers between the Open and the RM-2.5 are in place. Do you understand, Mr. Fuke, what my intention is here?

MR. FUKU: No. Could you restate that, I mean restate your intention?

MR. TYLER: My intention is that, as you and I discussed earlier before the meeting, that one, there would be no land alteration activities until this covenant was recorded and approved, etc.; and two, that there would be no land alteration in the Open area. Dr. Rechtman, thank you, unless you had some further comments. Thank you, Mr. Chairman, for the leeway on this.

CHR. ELARIONOFF: Dr. Rechtman, if you don't mind if I interrupt, could I ask him to explain what qualifies him to say what he says and do what he does, while the discussion is going on.

MR. TYLER: Well, I could just say, since he might not want to toot his own horn, he has a doctorate in archaeology. He's a professional archaeologist, and he has a firm and does this work for a living. I don't know if that suffices, but we call him Dr. Rechtman because he has a Ph.D. after his name, and he can elaborate if you further wish. Thank you.

CHR. ELARIONOFF: Okay. Thank you.

MR. YUEN: Can I jump in and make a couple of suggestions here?

CHR. ELARIONOFF: Please.

MR. YUEN: Looking at the proposed amendment, the first two sentences are fine. The third sentence I think we should change, and the reason is that it says, "Said restrictive covenant, which shall be made a part of the deed of that portion of TMK: 7-5-09: 54 that is zoned A-1a...". The problem is that that creates a delay in being able to make this covenant, in that you'd have to subdivide the lot into two lots before you could record the covenant. The covenant can be recorded against the entire property, but it only affects the portion that will remain in the A-1a zone. That's the first change. This is because of timing issues for the applicant. We're creating something that is going to stop them from having a land disturbance permit until this covenant is recorded. If you say that it's to be

recorded as part of the deed to the makai part of the property, there's one parcel right now, and they would then have to process a subdivision through our office, create that separate parcel, and then record the covenant. They could record the covenant tomorrow against the whole property, but it only affects the portion that would be zoned A-1a.

MR. TYLER: May I just comment on that before you go on? Mr. Chairman, I want to make it clear that I'm happy with the way this is developing, because it's far less density, it's going to be much better for the traffic situation, I believe, but I'm not interested in holding up this project in terms of what they are able to do. I just want to be sure that the makai portion is preserved in perpetuity and that we don't have accidentally some bulldozer or excavator run through there, as I've seen happen too many times. If we just make it automatic that the upper part is RM-2.5, and the lower part as part of this rezoning is Open, can we just do that here?

MR. YUEN: No, we can't rezone it here unfortunately. You can't rezone the A-1a to Open without having an application to do that. You can't just amend the bill to do that. That is a separate rezoning action.

MR. TYLER: Okay, but it has a new purpose here which is not in its title, right?

MR. YUEN: It's a new zoning designation, and there are actually some uses that are allowed in Open that are not necessarily allowed in A-1a.

MR. TYLER: Okay, so you had something else. I interrupted you. You were going to say something else.

MR. YUEN: My suggestion of that third sentence would read, "Said restrictive covenant, which shall be recorded against TMK: 7-5-09: 54, shall acknowledge that the applicant or its successors or assigns has consented to a County-initiated rezoning of the A-1a zoned area into the Open district." Then the remainder of the sentence remains the same. And then the final sentence says, "No land disturbance permit for...", and then we would say "...TMK: 7-5-09: 54 shall be issued until the covenant is duly recorded." They could record the covenant right after they get the rezoning. So that's not a problem on timing.

MR. TYLER: What about the appropriate -- and I indicated that for the affected area -- I mean, for the RM-2.5 -- shall be issued until the covenant has been recorded and appropriate buffers between these areas. I mean, how do we say this?

MR. YUEN: Let me raise another timing issue, and this is again, so that we don't penalize the applicant for trying to do the right thing here.

MR. TYLER: Right. I don't want to do that.

MR. YUEN: We're having this timing question that has come up with SHPD over interim buffers. Over the years past, the practice has been that you could go ahead and do some development work, like some of your grading and grubbing and your basic layout work using interim buffers. You would say, "We know there's a site here, and we're going to take yellow tape, 50 feet, 100 feet out from the edge of it, and we're going to mark that off, but we will let some development work go ahead pending -- and this would be before you had a final preservation plan -- because there's often a number of elements to get to a final preservation plan, and it can be a lengthy process to get there. So we and SHPD have been working along this line of thinking. Very recently SHPD has gotten very sticky about establishing these interim buffers, and they've said, in at least one case that I'm aware of, they don't want to have interim buffers until they have a final preservation plan, so this can set the developer back a long way. We try to come up with a practical solution. We want the sites to be protected. We feel that as long as you have a decent idea of what the buffers are going to be that you don't need to have the final preservation plan before any kind of site work begins, so I don't know if I want to lock in that question into the ordinance that says you have to have SHPD approve the final buffers before there's any kind of work done on the property.

MR. TYLER: The reason I think they're bringing it up, and the reason they're getting strict is because there's been so much desecration and destruction of sites, at least in West Hawai'i. I'm not familiar with East Hawai'i. Now Mr. Chairman -- I'm sorry. Mr. Fuke.

MR. FUKU: I'd like to just expand a little bit on what the Director had indicated and maybe just to provide additional information and maybe make a suggestion. One is what he's proposing on your proposed amendment I think are fine. It clarifies it, and I think it's really helpful from the applicant's standpoint to be able to proceed without necessarily having the makai area affect the development schedule for the mauka portion, and just for your added information, there already is on file with the Planning Department a request to consolidate and resubdivide the subject area so that the so-called A-1 area will be a separate lot of record. Nevertheless, not knowing the timing on that, what the Director is suggesting I think is very good.

MR. TYLER: Okay. Well, Mr. Chairman and members of the Committee and gentlemen, it was my intention -- I didn't want to hold this up -- I didn't want to hold up the proceedings today. We have a number of other items. It is my intention, if you think it's prudent, to make a motion to table this, so we don't have to just try to legislate from the hip here, but just table it until we finish our other business, and then bring it back. Mr. Chairman, did you have any objection to my making that motion?

CHR. ELARIONOFF: No. That would be good.

MR. TYLER: Then we can just go on to the rest of this, and Mr. Yuen and the others can discuss it, and also Dr. Rechtman can be included, and maybe you can call Ms. Maigret if there's a question.

Mr. Tyler moved to table Comm. 848 (Bill 367). Seconded by Dr. Holschuh and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Reynolds, Tulang, Tyler, and Chairman Elarionoff.
Opposed: None.
Absent & Excused: Committee Members Chung and Safarik.

CHR. ELARIONOFF: Let's go on.

UNFINISHED
BUSINESS:

The Chair directed the Committee to proceed to the next item on the Agenda, Unfinished Business.

Comm. 858:
(Bill 372)

AN ORDINANCE AMENDING CHAPTER 16, HAWAI'I COUNTY CODE, 1983 (1995 EDITION) RELATING TO GENERAL PLAN AMENDMENT PROCEDURES (outlines procedures for interim and comprehensive review amendments to the General Plan).

From Planning Committee Chairman Leningrad Elarionoff, dated November 10, 2004, transmitting the above bill. Summarizes key points of the bill and states intention to request deferral of this item pending the convening of the new Council.

CHR. ELARIONOFF: Can I have a motion to defer?

Mr. Arakaki moved to defer Comm. 858 (Bill 372) until the convening of the new Council. Seconded by Dr. Holschuh and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Reynolds, Tulang, Tyler, and Chairman Elarionoff.
Opposed: None.
Absent & Excused: Committee Members Chung and Safarik.

CHR. ELARIONOFF: Let's go on to the next one under Unfinished Business.

Comm. 493:
(Bill 163)
(2002)

**AN ORDINANCE ADOPTING THE COUNTY OF HAWAI'I
GENERAL PLAN AND REPEALING ORDINANCE NO. 89 142, AS
AMENDED**

From Mayor Harry Kim, dated January 16, 2002, transmitting a letter and the above bill from Planning Commission Chair Geraldine M. Giffin. Also attached with the submittal from Ms. Giffin are documents related to the proposed revision.

Comm. 493.8:
(2002)

From Planning Committee Chair Bobby Jean Leithead-Todd, dated February 7, 2002, submitting for duplication purposes, transmittal by the Revised General Plan identified as Appendix A, which was part of Communication 493.

As required by the Hawai'i County Charter, the County Council in 1971 adopted by ordinance a General Plan which set forth the Council's policy for long range comprehensive physical development for the County. The General Plan also required five and ten year comprehensive reviews and updates to maintain the Plan's dynamism and flexibility to accommodate major changes and trends within the County.

This bill proposes numerous amendments to the General Plan as part of the current comprehensive review, including revisions to the following elements and components: Economic, Energy, Environmental Quality, Flooding and Other Natural Hazards, Historic Sites, Natural Beauty, Natural Resources and Shoreline, Housing, Public Facilities, Public Utilities, Recreation, Transportation, Land Use, the Plan's Introduction, Plan Implementation and Amendment Procedures.

This bill also proposes amendments to (1) the Facilities Maps and (2) the Land Use Pattern Allocation Guide Maps, which are the graphic expressions of the General Plan policies, particularly those relating to land uses.

In order to make amendments to the General Plan, this bill repeals Ordinance No. 89-142 (1989 General Plan) and replaces it in its entirety.

Comm. 45.30:
(Bill 163)
(Draft 2)

**AN ORDINANCE ADOPTING THE COUNTY OF HAWAI'I GENERAL
PLAN AND REPEALING ORDINANCE NO. 89-142, AS AMENDED.**

From Planning Committee Chair Leningrad Elarionoff, dated June 4, 2004, submitting the above bill. Also included is a memo from Legislative Auditor Constance R. Kiriu and Legislative Assistant Charmaine Doran, dated June 3, 2004, together with "Report on the County of Hawai'i General Plan-Bill 163, Draft 2."

Bill No. 163, Draft 2, proposes numerous amendments to Bill No. 163 relating to the Hawai'i County General Plan, as part of the current comprehensive review. Revisions include changes to the following elements and components: Economic, Energy, Environmental Quality, Flooding and Other Natural Hazards, Historic Sites, Natural Beauty, Natural Resources and Shoreline, Housing, Public Facilities, Public Utilities, Recreation, Transportation, Land Use, the Plan's Introduction, Plan Implementation and Amendment Procedures.

This bill also proposes amendments to (1) the Facilities Maps and (2) the Land Use Pattern Allocation Guide Maps.

- Comm. 45.48 From Planning Committee Chairman Leningrad Elarionoff, dated November 9, 2004, regarding Bill 163, Draft 2, Revision of the Hawai'i County General Plan. Requests that it be referred to the Planning Committee for its November 23, 2004 Agenda, and stating that he will at that time request that the Draft 2 be deferred for consideration by the incoming Council. Includes a summary of the history of Bill 163 since its introduction.
- Comm. 45.49
(Bill 163)
(Draft 3) AN ORDINANCE ADOPTING THE COUNTY OF HAWAI'I GENERAL PLAN AND REPEALING ORDINANCE NO. 89-142, AS AMENDED
From Planning Committee Chair Leningrad Elarionoff, dated November 10, 2004, submitting the above bill. Also included is a memo from Legislative Auditor Constance R. Kiriu and Legislative Assistant Charmaine Doran, dated November 9, 2004.
- Bill No. 163, Draft 3, proposes numerous amendments to Bill No. 163, Draft 2, relating to the Hawai'i County General Plan, as part of the current comprehensive review. Major revisions between Draft 2 to Draft 3 include the following changes to plan elements and components: General Plan Requirements, General Plan Program Implementation, District Vision Statements, Land Use, and Natural Beauty, Resources, and Environmental Quality.**
- In addition, Draft 3 has been reformatted and included Draft 1, District Courses of Action.**
- (Note: Communications 493.1 through 493.7 and 493.9 through 493.131 were filed at the October 8, 2002, Planning Committee meeting. Communications 493.132 through 493.142 were filed at the October 22, 2002, Planning Committee meeting.)*
- Comm. 493.143:
(2002) From Josephine L. Keliipio, dated October 22, 2002, recommending that a policy be placed in the Economic Chapter of the General Plan that would promote and encourage a recycling industry. Further, states that the Energy Chapter should do more to encourage energy alternatives and should include a

- chart or spreadsheet showing all the energy alternatives, percentage used, cost, etc. Makes suggestions regarding solar energy and attaches two newspaper articles on recycling and solar bond.
- Comm. 493.144:
(2002) From Josephine L. Keliipio, dated November 19, 2002, regarding questions on the Energy and Economic chapters of the General Plan.
- Comm. 493.145:
(2002) From Taira Yoshimura, dated November 19, 2002, offering suggestions for amending the Energy and Economic chapters of the General Plan to "also contain statements on the anticipated social, cultural and environmental consequences of each proposed action along with recommendations for mitigation."
- Comm. 45: From Steven S.C. Lim, Carlsmith Ball LLP, dated December 12, 2002, on behalf of their client, Continental Pacific, LLC, objecting to a change in designation of lands they own in Pepe'ekeo, TMK (3)2-5-007:053 from "Intensive Agricultural" and "Extensive Agricultural" to "Industrial" on the LUPAG Map.
- Comm. 45.1: From Planning Director Christopher J. Yuen, dated December 10, 2002, submits explanation to assist in the review of the General Plan LUPAG Map designation, in regards to the September 4, 2002 letter from Mr. James Bell (Comm. 493.130) regarding certain lands in the North Kona district, generally located makai of the Belt Highway, and south of Keauhou, that are designated as Important Agricultural Lands on the proposed General Plan LUPAG Map, classified as at least 'fair' for two or more crops, on an irrigated basis, by the USDA Natural Resource Conservation Service's study of suitability for various crops.
- Comm. 45.2: Copy of letter to Planning Director Christopher Yuen, from James R. Bell, Belt Collins Hawai'i Ltd., dated January 2, 2003, in response to Comm. 45.1, stating certain lands owned by his six clients in North Kona designated "Important," because the USDA classification based on an irrigation basis. States the subject lands are not irrigated, and there are no plans by anyone to bring irrigation to them. Requests redesignation of the lands to "Extensive Agricultural Lands."
- Comm. 45.3: From David Owens, dated January 7, 2003, commenting on the proposed park at Reed's Bay.
- Comm. 45.4: From Ed Johnston opposing a General Plan proposal to add an Industrial designation to the area adjacent to the Hilo Coast Power Plant, for reasons as stated.

- Comm. 45.5: From Roy K. Skogstrom, dated February 5, 2003, opposing a General Plan revision increasing the size of the area for heavy industry at Pepe'ekeo Point.
- Comm. 45.6: From David Drury, dated February 4, 2003, opposing a proposed change in the General Plan to add heavy industry at the HCPC site on Pepe'ekeo Point.
- Comm. 45.7: From Claudia Woodward-Rice, dated February 6, 2003, opposing change to the General Plan, which would increase industrial at the Pepe'ekeo Mill site.
- Comm. 45.8: From Claudia Woodward-Rice, dated February 6, 2003, regarding proposed General Plan changes for future land use of 130+ acres bordering Akaka Falls road to Honomū.
- Comm. 45.9: From Robert E. Cooper, President, W. H. Shipman, Limited, dated February 5, 2003, requesting that the portion of land in A-4, which they own of the proposed revision to the Land Use Pattern Allocation Guide Map for Puna-1 remain Urban Expansion and not be changed to Important Ag Land.
- Comm. 45.10: From JP Michaud, University of Hawai'i at Hilo, Natural Sciences Division, dated February 10, 2003, opposing industrial activity in the rural and agricultural area near Pepe'ekeo, for reasons stated.
- Comm. 45.11: From Stephen Worchel, PhD, opposing changes in the General Plan that would increase the heavy industry activities allowed at the HCPC site on Pepe'ekeo Point.
- Comm. 45.12: From Lorraine Mendoza, President, Rural South Hilo Community Association; Vice President, Pepe'ekeo Community Association; Director, Hilo-Hāmākua Community Development Corp., dated February 10, 2003, opposing Heavy Industry at the HCPC Pepe'ekeo site as a proposed change to the Hawai'i County General Plan, for reasons stated; and transmits "A Plan for the Hilo Hāmākua Coast, July 2000" by the Hilo Hāmākua Community Development Corporation.
- Comm. 45.13: From Francis Benevides, submitting "Information Re Master Plan."
- Comm. 45.14: From Dr. Dawna Coutant, Psychology Dept., University of Hawai'i at Hilo, dated February 10, 2003, opposing proposed expansion of the industrial acreage in Pepe'ekeo.
- Comm. 45.15: From Jude Mattos, President, Honomū Village Association, dated February 9, 2003, supporting Medium Density Urban Expansion in Honomū.
- Comm. 45.16: From Leighton J. Yuen, Goodsill Anderson Quinn & Stifel, LLP, Attorneys for Waikoloa Land Company, Inc., and its various affiliates and subsidiaries, dated April 17, 2003, relating to the criteria for designation of Important Agricultural

Land, on the General Plan, specifically in relation to four parcels owned by their clients.

- Comm. 45.17: Copy of letter to Dixie Kaetsu, Managing Director, from Board of Land and Natural Resources Commission on Water Resources Management's Chairman Peter T. Young, dated June 16, 2003, reiterating their request for certain revisions to the General Plan and also providing an update on DLNR's plans for certain State-owned lands in Kealahou.
- Comm. 45.18: From Planning Director Christopher J. Yuen, dated June 17, 2003, requesting favorable action on suggested changes to the proposed LUPAG map amendments for the area G-9 and G-10 on the North Kona-2 map, as proposed by the Kohala landowner to incorporate many features that the County and public users of the area want. Attaches a North Kona-2 map, which they are requesting the Council substitute with the one contained in the December 21, 2001 draft.
- Comm. 45.19: From Planning Director Christopher J. Yuen, dated July 22, 2003, proposing revisions to the Transportation - Roadway Maps and Public Utilities Maps in the present draft General Plan, and transmits copies of the revised roadway maps. States that after they reviewed the roadway maps in the present draft General Plan, they found that they needed to propose some revisions.
- Comm. 45.20: From Planning Committee Chair Bobby Jean Leithhead-Todd, dated July 31, 2003, summing up her observations and recommendations to the General Plan, specifically on amendments (1) To reclassify subdivisions of less than 3 acre parcels to Rural from Agriculture; (2) Kohala, Keopuka, O'ahu and other coastal conservation proposals; (3) Additional Urban Expansion/Industrial/Commercial areas for Puna and Ka'u; (4) Designation of an industrial area in Volcano; (5) Resort nodes; (6) Slimming down the General Plan; and (7) Important Ag Lands.
- Comm. 45.21: From Planning Committee Chairman Leningrad Elarionoff, dated November 3, 2003, informing that a General Plan workshop will be held on December 18, 2003, with Planning Director Chris Yuen making the presentations which will be divided into three sections with question/answer periods at the end of each. Suggests contacting constituents during the Holiday season for comments to be included with Councilmembers' comments in the first weeks of 2004. Further, suggests an effort be made to simplify and consolidate the General Plan by separating from the ordinance. The supporting material will remain available in a separate document but not codified.
- Comm. 45.22: From David L. Callies, dated December 16, 2003, entitled "Hawai'i County Proposed General Plan Testimony Concerning Selected Parts."

- Comm. 45.23: From Planning Director Christopher J. Yuen, dated December 18, 2003, responding to the testimony of David Callies, Esq., on behalf of the Leeward Planning Council.
- Comm. 45.24: From John B. Ray, President, Hawai'i Leeward Planning Conference, dated December 10, 2003, offering several comments and suggestions to the General Plan.
- Comm. 45.25: From Planning Director Christopher J. Yuen, dated December 15, 2003, as a preparatory letter to the General Plan Workshop scheduled for December 18, 2003.
- Comm. 45.26: From John M. Derby, Sr., Executive Secretary, Hawai'i Conference Foundation, dated January 29, 2004, asking for favorable consideration of Proposal #B-15 in the proposed update of the General Plan.
- Comm. 45.27: From Jean Thompson, dated March 3, 2004, expressing concern about the development in Kona, and requesting support of controls over "spot" development and massive urban growth.
- Comm. 45.28: From Michael W. Gibson, Manager, Captain Cook Ranch LLC, dated April 19, 2004, requesting that their property, TMK (3)8-2-2-2, 55, 56 & 57 be classified as Rural during the present Comprehensive Review of the General Plan so as to remain consistent with both the existing State Land Use Designation and existing Residential Agricultural, Two Acre Zoning.
- Comm. 45.29: From Christopher Norrie, Manager, Skycliff Ranch LLC, dated May 13, 2004, regarding the proposed LUPAG Designation Change H-1; Comprehensive Review of the General Plan, and asking the County Council to support the Planning Commission's recommendation to the Planning Director in their letter of October 19, 2001: to delete Amendment "H-1" to LUPAG Map for South Kona.
- Comm. 45.31: From Steven Lim of Carlsmith Ball LLP, dated June 4, 2004, stating that his firm represents Andrew D. Shaw who is under contract to purchase property in Ka'u (TMK (3)9-5-11:01), from Ka'u Agribusiness Co., Inc., and requesting that the Council retain the existing General Plan "Urban Expansion" designation for the Property.
- Comm. 45.32: From James M. Leonard, AICP, Principal, Hilo Office of PBR Hawai'i, dated June 4, 2004, enclosing an exhibit showing the proposed revision to the County General Plan LUPAG Map to allow for the future mixed use development within the Waikoloa Heights property at Waikoloa Village. On behalf of Lynch Investments, requests that a Medium Density Urban designation be included in the LUPAG Map with the property area, as shown on the Figure 3 exhibit.

- Comm. 45.33: From Planning Director Christopher J. Yuen, dated June 14, 2004, presenting initial comments on Bill 163, Draft 2. Recommends that if the Council wishes to adopt a much-condensed version of the General Plan similar to Draft 2, it should include some of the major policies and map changes that were in the proposed new General Plan that was sent to the Council in Draft 1, but have been deleted in Draft 2.
- Comm. 45.34: From Susan Dursin, dated June 16, 2004, expressing concerns about Bills 163 and 270 (Charter Amendment relating to Public Access, Open Space, Natural Resources Preservation Fund).
- Comm. 45.35: From Delan Perry, President, Big Island Farm Bureau, dated June 25, 2004, stating that during the development of the General Plan, there was intense participation by the Big Island Farm Bureau and other agricultural organizations, and the language with the "Agricultural" chapter of Draft 1 is a product of that participation, and should be retained. During its June 15, 2004 meeting, the Board of Directors voted to respectively request the Planning Committee reject Bill 163, Draft 2, which proposes to delete the references and policy statements related to the identification and protection of Important Agricultural Land in the County, as well as the "Important Agricultural Lands" LUPAG designations currently contained in Draft 1.
- Comm. 45.36: E-mail from Christopher Norrie, dated June 12, 2004, supporting the current draft of the General Plan, and stating that one thing should be clarified: that the three "Overall Amendments to the LUPAG Map" should be embodied as a change in the Bill itself in a note on page one of the LUPAG Map.
- Comm. 45.37: From James M. Leonard, AICP, Principal, Hilo Office, PBR Hawai'i, dated June 3, 2004, enclosing copy of letter and exhibits that had been sent to and discussed with prior Planning Committee Chairperson, Bobby Jean Leithead-Todd, to ensure that it is still part of the record and to be considered during deliberations on the General Plan update.
- Comm. 45.38: From Roberta Kvenild, dated July 2, 2004, strongly opposing the possibility of a change of zoning in Honomu to "medium density."
- Comm. 45.39: From Gene Van Dyke, dated July 2, 2004, opposing the possibility of a change of zoning in Honomu, where 35 units are built on one acre.
- Comm. 45.40: From Robert Kvenild and Sally Kvenild, dated July 2, 2004, opposing the possibility of a change of zoning in Honomu to "medium density."
- Comm. 45.41: From John B. Ray, President, Hawai'i Leeward Planning Conference, dated July 1, 2004, offering comments regarding Bill 163, Draft 2, including support of Draft 2 changes to retain intensive and extensive Ag land classifications; support

of Rural-Agricultural Land Designation; support of language adequately addressing the nature and implementation of Community Development Plans; support inclusion of Floating Zone; and supports deletion of the category of "Areas to be Kept in a Largely Natural State, With Minimal Facilities Consistent with Open Space Uses."

- Comm. 45.42: From Michael J. Matsukawa, Attorney at Law, dated June 15, 2004, offering follow up comments to his testimony at the General Plan Workshop on June 14, 2004, regarding Bill 163, Draft 2.
- Comm. 45.43: From Michael J. Matsukawa, Attorney at Law, offering testimony in opposition to Bill 163, Draft 2, stating it is based on the erroneous assumption that the General Plan can and should be hortatory and without the force of law.
- Comm. 45.44: From Dr. Serena Hashimoto, Assistant Professor of Communication, Hawai'i Pacific University College of Communication, dated July 6, 2004, expressing concern over the proposed zoning change above Honomu.
- Comm. 45.45: From Duane D. Erway, President, Plan to Protect Kona, dated June 29, 2004, commenting on the process used to develop Draft 2 of the General Plan at the June 15, 2004 General Plan Workshop in Kona. States if the Council does not vote to shelve Draft 2, that more meetings be held to gather public response to Draft 1 and Draft 2 before the Council votes on either.
- Comm. 45.46: From John M. Derby, Executive Secretary, Hawai'i Conference Foundation, dated August 6, 2004, regarding proposed reclassification of lands in the Hilo Heights area from Urban Expansion to Low Density Urban under Proposal #B-15, and asking for favorable consideration of the proposal in Bill 163, Draft 2.
- Comm. 45.47: From Claudia Rohr, dated August 5, 2004, requesting removal of Item B-2 from the South Hilo 1 Map of the Proposed LUPAG Map Revision, Draft 2, consisting of a land use designation change for the area around the Hilo Coast Power Company from Intensive and Extensive Agriculture to Industrial.

(Note: See also the following communications, which were presented at the meeting: Comm. 45.50 from John B. Ray, representing Hawai'i Leeward Planning Conference; and Comm. 45.51 from Joel Cohen and Phyllis Tarail.)

CHR. ELARIONOFF: Mr. Arakaki.

Mr. Arakaki moved to defer all Unfinished Business and all related matters to the next Council, including all communications that have come in that are unnumbered. Seconded by Mr. Tyler.

CHR. ELARIONOFF: Moved and seconded. Dr. Holschuh.

DR. HOLSCHUH: I just wanted to make one comment. On the deferral, I think it's a good idea, and it's interesting. I was looking over this stack of communications a couple of days ago, and in October 2002, Josephine Keliipio said, "What happens to our filed communications when we send these in?" And it's pretty obvious they track with the bill, and she asked that that be mentioned back then, and it may well have been, but I think it's pretty obvious from what you just read that all these communications do, in fact, track with these bills, so we do have all this information available to us. Thank you. I just wanted to say that for the record, for the sake of people who send stuff in and wonder where it is.

CHR. ELARIONOFF: That comes out to about six inches of communications at least. Mr. Tyler.

MR. TYLER: Thank you, Mr. Chairman. Speaking in support of the motion to defer this to the next Council. There's been a lot written about this. A lot of people talked about it, but I wanted to -- and one of the things I said during my first election cycle was the importance of amending the General Plan, and this was one of the important tasks. This was before I was ever elected, and I had hoped that we would have been able to complete this, but I think it's very clear now that the right thing to do is to hand all the work that has been done over to the new Council term, including current members who will be continuing, and the new ones. It would be a disservice to them to go through and make decisions today in terms of any of these unfinished items, and then just lateral it out to them. I think there's no question that hundreds if not thousands of members of the public have contributed to where we are now. I think there's no question that each of the Councilmembers, especially including yourself, Mr. Chairman, your predecessor, and others, along with your staff, have spent untold countless hours of time addressing this very important issue. Just to let it be deferred and go on really wouldn't do justice to the service that has been performed in the public interest to date. There's no question that Mr. Yuen and his staff should never be discounted or left out in this whole process. They began it. The Planning Commission, of course, sent recommendations to us, and so I want to thank each and every individual and organization that's been involved in contributing to this. I look forward to being on the other side of the table as a member of the citizen's group to come back and further comment, but I thank everyone that's done this, and gentlemen, I think there's no question that the right thing to do is to defer this to the next Council term.

CHR. ELARIONOFF: Thank you. No other lights. I've got to tell you folks that I do this with kind of a mixed feeling. I never understood the General Plan until I started working on it. That's when I got to understand it, and I realize that for the next Council to understand it there's going to be a lot of work involved, a lot of reading, and my wish is that they read the thing and understand what it implies, what the consequences are, and how we can dress it up. I thank you folks for

your patience, and Mr. Yuen, I appreciate all the time we have worked together, for the staff who has helped me with this, I really appreciate their efforts and the nights they stayed awake working on it. That was really good, and I'm glad we've come down to this point here. We have worked to an extent. It's not completed, but at least we have something that's been worked on. As Mr. Tyler said, there's been thousands of hours put in on this thing. It's been good. It's been a good experience -- I shouldn't say all good. It's been a pain also, a real pain, but it's been fun doing it. Dr. Holschuh.

DR. HOLSCHUH: Thank you, Mr. Chairman. I was going to make a little speech at the end, but this seems like the appropriate time because it's sort of part of the deferral. I want to thank everybody as well, from Mr. Yuen and Planning, all the staff, all the public that's sat through all these meetings, Bobby Jean Leithead-Todd, and finally yourself for taking this on. I was pretty impressed with the way you grabbed hold of this, and it's a monumental task. It would have been relatively easy just to try to ramrod one of these things through, but I think you very clearly have put a lot of thought and agony into it and realized that we needed to do this right. It's been obvious to me out in the community, and I know Susan O'Neill and Ken who's in the audience have been at some of these meetings, these Ag meetings in Hamakua where they're trying to talk about regional and community development plans, that we need to do more work on this at the community level. So I really very much appreciate all of your hard work in Chairing this Committee and working on this General Plan.

CHR. ELARIONOFF: Thank you, Doctor. Mr. Jacobson.

MR. JACOBSON: And I guess I have to give a little tiny speech here, but mostly I want to thank our Chair, here, for the work that he has put into it. I can speak at least insofar as this, for the new incoming Council. We do recognize there's been a lot of work done so far, and the people I've been discussing this with are really determined to pass this, because I can see how hard you've worked and how much time has been spent on this, because I've been working on this a bit of time myself, and it must be frustrating that this hasn't been passed. But we're going to try and carry it, with all the work that you've been able to do and make some good use of it, and pass it as soon as we possibly can. Mostly, thank you for all your patience and hard work on this.

CHR. ELARIONOFF: Thank you. Mr. Arakaki.

MR. ARAKAKI: You know, I would be remiss in not saying thank you, too, Mr. Chairman, for the time you put into this, and you actually got me to understand the General Plan much better than before. When I first saw the first draft and went to the meetings, I really didn't know too much about it, what was in the first draft, and after reading the blue book, the black book, and the first draft, and your work and Charmaine, especially, who really understands these

things, I think, much better than anybody on the legislative side. I want to thank both of you and also Connie for putting all the time in. At least it got to a point where I could understand what was in the General Plan. Hopefully, like you said, the new people coming in will also research all the documents, and when we take it out again to public hearings and hear what the people have to say and weigh which would be the best plan to put forward for this County. I'm sure, working with Mr. Yuen, I think the next Council will be passing a General Plan, and hopefully it will be in a form that any citizen can pick up and read. So again I thank you, Mr. Chairman, and staff.

CHR. ELARIONOFF: Thank you very much. Mr. Tulang.

MR. TULANG: Thank you, Mr. Chair. I guess I'll join the rest of them to tell you thank you for your friendship during the process. I know we didn't agree with some of the portions in the General Plan, but I was duly impressed, and I respect your perseverance, and certainly to the staff. Congratulations. Thank you.

CHR. ELARIONOFF: Thank you. I also would like to tell you folks that an exciting thing we have coming up is the Regional Plans. That's something that needs a lot of work, and I really appreciate you folks' contribution as far as the vision statement on our island. I really thank you guys for your contribution, and we have to work on it, but I think it's really good. The last thing, Mr. Arakaki, in your motion to defer, did you wish to defer the communications or file the communications?

MR. ARAKAKI: Defer. Defer everything so that they can read the communications also.

CHR. ELARIONOFF: Okay. Very good. The motion on the floor is to defer Bill 163, Drafts 1, 2 and 3, and all communications. All those in favor, say "Aye."

The motion to defer Bill 163, Drafts 1, 2, and 3, all related matters and communications was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and
Safarik.

CHR. ELARIONOFF: Mr. Tyler.

Mr. Tyler made a motion to remove Comm. 848 and Bill 367 from the table. Seconded by Dr. Holschuh and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and
Safarik.

CHR. ELARIONOFF: Mr. Tyler.

MR. TYLER: Thank you, Mr. Chairman. I appreciate the opportunity, gentlemen, to have Mr. Fuke, Mr. Saunders, Dr. Rechtman, and Mr. Yuen work on this language, so we could hopefully get it straight on the second go round, and I thank each one of you gentlemen for your helpful comments. Mr. Fuke, we have an amendment on the floor, and there was some suggested, what I would regard as friendly amendments from Director Yuen, and I'm wondering if you've had a chance to talk to your client and Mr. Yuen to make sure we get this straight. Have you done that, sir?

MR. FUKU: Yes, we have.

MR. TYLER: Okay. Are you able to restate the language for us?

MR. FUKU: I can't read my writing, but I think Mr. Yuen would be in a better position to articulate the changes, and in substance what he is proposing was reviewed by Mr. Saunders, and he found that to be acceptable. So I would like to defer to him to read the suggested language change of that.

MR. TYLER: Are you able, Mr. Yuen?

FRIENDLY
AMENDMENT:

MR. YUEN: Yes, sure. The first two sentences would remain the same. The third sentence, "Said restricted covenant, which shall be recorded against TMK: 7-5-09: 54 shall acknowledge that the applicant or its successors or assigns has consented to a County initiated rezoning of the A-1a zoned area into the Open district and the prohibition of any development or improvement of that area in such a way as to interfere or negatively affect the archaeological or historic features of such area, as determined by the State Historic Preservation Office." Then last sentence, "Furthermore, no land disturbance permit for the parcel shall be issued until the covenant has been duly recorded."

MR. TYLER: Okay. I regard those as friendly amendments.

CHR. ELARIONOFF: To your amendment.

MR. TYLER: Yes, to the one I made. I had some other language in there, but that language I regard as a friendly amendment, so we don't go round and round here. So Mr. Yuen, I just want to be sure that with respect to the last sentence, that it's your understanding and it's the intent of this that there be no land alteration activities within that lower parcel, right?

MR. YUEN: You mean ever?

MR. TYLER: No, no, not ever, but in other words we're not going to have an excavator come in from Kuakini and drive over this area and go into the top section?

MR. YUEN: I think that we need to slightly reword it, because what we said that no land disturbance permit for the parcel shall be issued until the covenant ---

MR. TYLER: No land disturbance or such a permit maybe?

MR. YUEN: Well ---

MR. TYLER: What would you recommend? You know, I'm not trying to get overly detailed.

MR. YUEN: Just say "No land disturbance shall occur on the parcel until the covenant has been duly recorded." There are things that you can do, for example, to grub up to an acre that does not need a permit.

MR. TYLER: But we don't want any grubbing in this area. Mr. Fuke?

MR. FUKU: I was going to suggest that if that's the intent to say "Furthermore, no mechanical land disturbance...", then that would allow for hand clearing.

MR. TYLER: Alright, but it says "...until the covenant has been recorded." Well, after it's been recorded then what?

MR. FUKU: Then I have another language for the other suggestion.

MR. TYLER: Condition.

MR. FUKU: Correct. But if you want to take both in tandem ---

MR. TYLER: You want to propose another amendment as well?

MR. FUKU: Yes, but it's kind of related to your existing Condition J, because I think that in substance what the applicant wants to achieve, what we all want to achieve, is that first, we want to preserve the makai section in Open, and so you

have a proposal to rezone that to Open. Secondly, you don't want to have any land disturbance activity on either the mauka section or the makai section until you have an approved preservation plan.

MR. TYLER: That's correct.

MR. FUKU: Third, we know that we are in the process of having a consolidation and resubdivision that would create a separate lot of record for this area that hopefully would be set aside for perpetual open space, right? And so, in that regard, what I was going to suggest was that under Condition J, in addition to the suggested language and as amended by the Planning Director, I was going to suggest that on Condition J, that the last sentence be deleted, and we substitute it with this language. Basically, there's a requirement for a preservation plan on the mauka section if you read the beginning portion of Condition J.

Now, I wanted to just discuss the preservation plan relative to the makai section, and so what I was going to suggest was that if you delete that, and you insert something like, "A separate preservation plan for that portion of TMK: 7-5-9:54 that is zoned A-1 shall be submitted to SHPD prior to any mechanical disturbance or issuance of any land disturbance permit of that area." So that means that before anything can happen in that area short of hand clearing, there must be an approved preservation plan, and we know that that's going to be a separate parcel record, and we also know that on the mauka section, where the area of the proposed development is scheduled for, will have its own preservation plan that's not necessarily going to be tied in with the timing and all related obligations with the makai section, so we'll still fulfill the requirement. We just want to make that separation.

MR. TYLER: Okay, well I'd have to defer to SHPD, State Historic Preservation Division, to find out what their protocol is, but the intention here again is that you can move forward with your project in the upper portion but that we put some conditions in here, and I'm hoping that the new amendment that has been proposed to be added would ensure, Number one, that there be no disturbance there, that you have consented to downzoning the area to keep it in Open space in perpetuity. What would be your timing on that, Mr. Saunders, if you're able? I mean, you've already started the consolidation resubdivision, so -- I should have asked you, Mr. Fuku. You are the Planning Consultant.

MR. FUKU: I would imagine that once the consolidation resubdivision application gets through, and as proposed right now within six months they have to submit a proposed covenant to the Planning Department. I would assume that the latest that the consent to have the Planning Director initiate a downzoning of the property could occur would be within the six-month period.

MR. TYLER: Well, that's excellent, because as I've said to Mr. Saunders before and again today when we tabled this matter, was I think there's an opportunity for an example to be set here, to be an example for the future, and this landowner is willing to do this. I want to be sure that we do it the right way the first time, so we can say, "This is how it should be done," so we avoid the kinds of problems and confrontations and delays that have gone on in the past for projects, when well-intentioned people on all sides wanted to do the right thing. So, Mr. Chairman, I'm grateful for the work that these gentlemen have provided today, and I'll make another amendment to Condition J, assuming this one passes. Thank you.

CHR. ELARIONOFF: Okay. So we're on the new Condition right now?

MR. TYLER: Yes, the proposed new Condition, as further amended. Friendly amendment, yes.

CHR. ELARIONOFF: Okay. Dr. Holschuh.

DR. HOLSCHUH: Thanks, Mr. Chairman. I was just concerned that this was getting to be a little more than a friendly amendment in terms of all these different sentences that were added here. I'm not trying to impede anything, but what do you think?

MR. TYLER: May I respond?

CHR. ELARIONOFF: Yes, you may.

MR. TYLER: Well, since I made the amendment, I can regard them as friendly, and I do regard them as friendly, because the opportunity we gave for tabling this, I think ---

DR. HOLSCHUH: There was just a lot of different mechanical alteration and this and that, and if you're okay with that, I guess we can look at that the next go round. I just want to be sure the protections you seek are in there.

MR. TYLER: Mr. Chairman, may I also respond one last time to Dr. Holschuh?

CHR. ELARIONOFF: Yes, you may.

MR. TYLER: Dr. Holschuh, thank you for your concern and your attention to this. You will have an opportunity to have at least two more votes, you and some of our colleagues here, two more votes on this. It is my intention after the second motion is made, amendments to Condition J, to ask Mr. Fuke on behalf of his applicant to forward these amendments, assuming they pass, to

MaryAnne Maigret, in light of her letter, and I will take it upon myself to talk to her about this and be in touch with Mr. Saunders and Mr. Fuke, so that if there's further comment or additional language that needs to be included, I can so advise you from my side on the other side of the table.

DR. HOLSCHUH: Thank you for that, and I'd be comfortable with that then. because then when we see it in the future, that would be good. Thank you.

CHR. ELARIONOFF: Okay. We're now ready to vote on the new Condition, as amended. All those in favor, say "Aye."

The motion to amend Bill 367 with a new Condition, as amended, to state, "Prior to submittal of plans for a building permit or within six months of the effective date of this ordinance, whichever is sooner, the applicant or its successors and assigns, shall submit a proposed covenant to be recorded with the State of Hawaii Bureau of Conveyances to the Planning Director for review and approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances. Said restrictive covenant, recorded against TMK: 7-5-09: 54 that is zoned A-1a, shall acknowledge that the applicant or its successors or assigns has consented to a County-initiated rezoning of the A-1a zoned area into the Open district and the prohibition of any development or improvement of that area in such a way as to interfere with or negatively affect the archaeological and historic features of such area, as determined by the State Historic Preservation Office. Furthermore, no mechanical disturbance or land disturbance permit for the parcel shall occur or be issued until the covenant has been duly recorded" was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and Safarik.

CHR. ELARIONOFF: Motion carried.

Mr. Tyler further moved to amend Bill 367, by deleting the last sentence in Condition J and replacing it with, "A separate preservation plan for that portion of TMK: 7-5-09: 54 that is zoned A-1 shall be submitted to SHPD prior to any mechanical disturbance or issuance of any land disturbance permit of that area." Seconded by Mr. Arakaki.

CHR. ELARIONOFF: Moved and seconded. Mr. Yuen, you have something to say?

FRIENDLY
AMENDMENT:

MR. YUEN: Yes. I would like another sentence added to that, and let me explain why. What they're proposing doing is two separate preservation plans. It is okay to me as a practical way of dealing with the fact that they may be further along on the mauka side, and that really the preservation plan for the makai side can be deferred. But what I'd like to say is, this is just to be sure that we establish a suitable buffer for any construction activity on the mauka side while we're awaiting the preservation plan on the makai side. That's the purpose behind the sentence that would be added to what Mr. Fuke said, and that is that "Appropriate interim preservation buffers acceptable to the Planning Director shall be established between the RM-2.5 zoned area and historic sites in the A-1a zoned area before any land disturbance on the property."

MR. TYLER: I would regard that as a friendly amendment, but I want to ask you a question. What about "acceptable to SHPD?"

MR. YUEN: In recent discussions, they do not want to establish interim protection before they have the final preservation plan. What I have in mind is that you would be marking -- the simplest way to do this is simply mark off "x" number of feet between the two lots with your yellow tape and your orange fencing, and you instruct the contractors on this. That's what I have in mind. This is done on the RM side of the property, and then you have this interim buffer, so we're sure that we have the lower side protected while we're waiting for the Preservation Plan on the lower side.

MR. TYLER: Well, I'm certainly in agreement with that, Mr. Chairman, because I think Dr. Rechtman has pointed out in his updated AIS and Burial Treatment Plan, as he pointed out to the Hawai'i Island Burial Council last Thursday, that they already have an approved, updated, and Ms. Maigret's letter indicates it -- she doesn't say "updated," but she says "AIS" -- for that portion. I believe it's approved, isn't it Dr. Rechtman?

DR. RECHTMAN: Yes.

MR. TYLER: Let the record note that he says "Yes." What I will do, Mr. Chairman, since we're still in discussion on this amendment to Condition J, as further amended by the Director, is, as I indicated, I would talk with Ms. Maigret; and Mr. Fuke, assuming this passes, if you could send that, and just send me a copy, and we'll continue to work together. Is that alright, Mr. Saunders?

MR. SAUNDERS: I think so. We have the reality of what we propose to build right now, so if I just might show that, and make sure we don't see any conflicts

with the language that you suggested. (Referring to map on easel.) If this is the boundary of the makai property right here, the makai is out here, we've already -- we saw this one significant feature. We've moved back 50 feet and set our property line, so if we're talking about coming back something like 10-12 feet from there and all the way around, I think that would work.

MR. YUEN: If adequately marked, a 50-foot buffer is acceptable to me, yes.

MR. SAUNDERS: Well, the 50-foot buffer is from the feature which is in the makai parcel.

MR. YUEN: Right. Understood.

MR. TYLER: You know, we're breaking new ground here in terms of getting this on the record, so that we hopefully will preclude any negative impacts to cultural resources, and I'm sorry to belabor this, Mr. Chairman. I will take it upon myself as a regular citizen after I'm done here, after the 6th, to work with Mr. Saunders, Mr. Fuke and the SHPD, and of course, Dr. Rechtman or Director Yuen, if that's necessary. This is an important enough site, gentlemen, an area, to warrant this kind of scrutiny, and I appreciate that Mr. Saunders, on behalf of his applicant, is willing to take the time to do this right. Thank you.

CHR. ELARIONOFF: Thank you. Dr. Holschuh.

DR. HOLSCHUH: Thank you, Mr. Chairman. I guess what Mr. Tyler asked Mr. Yuen is really the key, Mr. Saunders, that you want to be sure from a practical standpoint that while all this is going on, somebody doesn't drive a P-9 over that site. So what Mr. Yuen was suggesting was that as soon as possible those things be deleted clearly by boundary fence or markers or police tape or the yellow tape or whatever it is. That's really the practical part of this, that while all the rest of the planning is going on, that some mistake isn't made inadvertently. Thank you. Thank you, Mr. Chairman.

CHR. ELARIONOFF: Thank you. There are no other lights. On the floor we have an amendment to Condition J. All those in favor, say "Aye."

The motion to amend Bill 367, as further amended, by deleting the last sentence in Condition J and inserting in its place, "A separate preservation plan for that portion of TMK: 7-5-09: 54 that is zoned A-1 shall be submitted to SHPD prior to any mechanical disturbance or issuance of any land disturbance permit of that area. Appropriate interim preservation buffers acceptable to the Planning Director shall be established between the RM-2.5 zoned area and historic sites in the A-1a zoned area before any land disturbance on the property," was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and
Safarik.

CHR. ELARIONOFF: Motion passes. Mr. Tyler.

MR. TYLER: Yes, sir. Hopefully this will be the last amendment. Page
Number 7, Condition M.

Mr. Tyler moved to further amend Bill 367, Condition M, by
substituting the language, "The applicant shall comply with all
applicable County, State and Federal laws, rules, regulations and
requirements." Seconded by Dr. Holschuh and carried by the
following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and
Safarik.

CHR. ELARIONOFF: Mr. Jacobson.

MR. JACOBSON: Well, there's been considerable discussion about the
archaeological features and the benefits, and I think it's a better bill with these
amendments, but I actually had a couple of other questions. By changing this
around, is this going to be costing more or less for buyers, these ultimate
projects? Are these units going to cost more for each buyer, or are they going to
cost less for each buyer?

MR. SAUNDERS: As a result of ---

MR. JACOBSON: All the work that theoretically you'd like us to do, changing
from your original 80 or 92 condo project. I'm not talking about any of the
things we've just discussed.

MR. SAUNDERS: I think it should be less. The product, the four stories on top
of a subterranean garage, is very expensive to build, and demands a much higher
sales price. One of the reasons we went to this more conventional approach, if
you will, is that we think it will cost less to build and, therefore, should be less
expensive.

MR. JACOBSON: And by expanding the footprint, that made it a lot more practical in terms of doing this lower.

MR. SAUNDERS: Exactly. That's the only way we could get the numbers to work.

MR. JACOBSON: So next, is there going to be any low-income housing in here at all?

MR. FUKU: My understanding is that issue is not settled yet. There is a requirement for compliance with the housing requirements. I know that the current policy is no in lieu fees, so it's either got to be on site or off site, within a manner that's approved by the County Housing Agency.

MR. JACOBSON: I'm not talking about the affordable housing definition. I'm talking about people who don't earn a lot of money. Are they going to be able to live here?

MR. SAUNDERS: How would you define that price range?

MR. JACOBSON: Certainly not 300 percent of the median income but the poverty level. Is there going to be any poor living here?

MR. SAUNDERS: No.

MR. JACOBSON: And so there's nothing for them in this. So the archaeology is being taken care of but not the poor people.

MR. SAUNDERS: This is market housing.

MR. JACOBSON: I guess that's about it. Thank you.

CHR. ELARIONOFF: Thank you. Mr. Tyler.

MR. TYLER: Well, I fibbed. I said that was all, but staff has correctly reminded me, as I noted on my notes and forgot to look at them, that Condition N needs a slight tweaking in the last paragraph, which is a little over halfway down on Page 8. This is the fair share, the "in-lieu" language. I believe that we have a standard provision, which says something along the lines of, towards the last, it says "...subject to the approval of the director." I think it says, "...subject to the recommendations of the Director and approval of the Council," something like that. So I would just move that we incorporate the standard language that we've been using in the "in-lieu" section of the fair share. Mr. Fuke, I don't think it comes as any surprise to you.

Mr. Tyler moved further amend Bill 367, by incorporating the standard language in Condition N, in the "in-lieu" portion of the fair share. Seconded by Dr. Holschuh and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and Safarik.

CHR. ELARIONOFF: Motion carries. Back to the main motion, Mr. Tyler.

MR. TYLER: Final comment, unless I've lost my mind. This is an infinitely superior project to what was originally proposed on the much smaller parcel in Hienaloli 6. It provides, as I understand it, Mr. Fuke, access only on Hualalai Road, isn't it? And that there's also the second emergency access at the mauka portion of the project. Is that right?

MR. FUKU: That hasn't been determined yet, but there's definitely only one access, and there would also be a provision for a second emergency access.

MR. TYLER: Well, I want to be sure that Condition F, which talks about the emergency vehicular security gate, shall be located in a location approved by the Department of Public Works. My concern is that they don't know about this, and I don't want it to be anyplace other than on -- it can't come down through the parcel I don't believe, can it, Mr. Saunders?

MR. SAUNDERS: No, it's proposed to be right at this end of the property right here, and I believe, if I'm not mistaken, that was originally suggested by personnel of Public Works at the Planning Commission.

MR. TYLER: Okay. Down at the makai portion, right there, but the main was at the mauka portion, right below the Kuakini wall.

MR. SAUNDERS: Correct.

MR. TYLER: Okay. Then I'm okay with that. You know, Mr. Chairman, members of the Planning Committee, quite a few years ago -- 10 to 12 years ago, the northern part of this property, which is in Hienaloli 6, went before the Planning Commission for a special permit, I believe it was, in conjunction with the development of Mazda's land, and I appeared before the -- I was the Chairman, I think, at that time, of the Kailua Village Design Commission -- they went before the Planning Commission for a water park on this portion of the land,

and the Planning Commission granted them a use permit or special permit for a water park. Do you remember that, Mr. Fuke? And I spoke out vehemently against a water park in the middle of Kailua Village, not that we don't need a water park, not that open space isn't good, but that it was entirely inappropriate for this location. It should be located where the recreational facilities were, and so I'm assuming, Mr. Yuen, that since that permit granted by the Planning Commission hasn't been acted upon, it's no longer extant.

MR. YUEN: Well, it's the first one on me. I certainly don't remember that.

MR. TYLER: Well, you weren't the Director.

MR. YUEN: The time conditions are blown on that, I would assume.

MR. TYLER: Let's hope so, because I don't think Mr. Saunders is intending, especially since he doesn't have his five-story building any more, to have the water slide come down off of there. I just want to point out, gentlemen, that I'm not trying to make this meeting longer than it already is, but I just want to point out how this has evolved over the years, and that thinking people sometimes, if you give it more time you come up with a better combination, and I want to thank Lanihau Partners for working with Mr. Saunders and the applicant to, instead of having just a bunch of brush there, knowing full well that there's many cultural resources, very important ones, to say "Let's try to find a solution." I think it was through Mr. Saunders, Mr. Fuke's work together with their applicant, that they were able to come up with a solution that clearly has a few more units but on a far greater amount of land. And, at the same time, it affords the opportunity to perpetuate and preserve the significant cultural resources. To me, that's kind of a win-win situation. That's the kind of thing we should be looking for, and as Director Yuen has said on more than one occasion, we're looking for increasing the density in the urban core. This is clearly an urban core. It's clearly within the master plan for Kailua Village, and it affords retirees as well as others an opportunity to live and be able to walk right into town, and we're seeing more and more people on Hualalai Road, and I realize that I'll never be able to afford to live there, but I don't espouse to live there. Anyway, enough said. Gentlemen, thank you for your indulgence today. Thank you for yours, Mr. Chairman.

CHR. ELARIONOFF: Thank you. Dr. Holschuh.

DR. HOLSCHUH: Thank you, Mr. Chairman. I don't know anywhere the history or the amount of information about this as Mr. Tyler, but I also would like to thank you, Mr. Saunders. I think that this looks like a really terrific way to approach what could have been a potentially terrible problem. Thank you for doing that.

CHR. ELARIONOFF: Mr. Yuen, staff brought up the question, do we need a final plan approval effective date for this project?

MR. YUEN: Good question. Let me look and see what our time conditions are. We usually do. I'm not sure why we didn't put one in here. We do have the "complete construction within five years" condition, but it would not be a bad idea to have -- I'm not sure what we normally use. I think we use three years with an administrative time extension. Just let me make sure the administrative time extension is in there. Okay, it's in there. "...secure final plan approval within three years from the effective date of this ordinance," I think would be consistent with what we normally do.

MR. TYLER: I so move. That's an amendment to Condition C, then in the second line, right?

Mr. Tyler further moved to amend Bill 367, by inserting the words, "within three years from the effective date of this ordinance" in the second sentence of Condition C, after the words "for the proposed development" and before the words "from the Planning Director...". Seconded by Mr. Jacobson and carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and Safarik.

CHR. ELARIONOFF: Okay, there are no other lights, and there's nothing more to do, so we're back to the main motion, as amended. On the floor, we have a motion to file Comm. 848 and approve Bill 367, as amended. All those in favor, say "Aye."

The motion to close file on Comm. 848 and recommend passage of Bill 367, as amended (to Draft 2), on first reading was carried by the following vote:

In Favor: Committee Members Arakaki, Holschuh, Jacobson, Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and Safarik.

CHR. ELARIONOFF: Motion carries. That comes to the end of our calendar. By the way, there's a last thing I wanted to say. Mr. Yuen, thank you very much

again for your indulgence in coming to our meetings, the late hours you've put in, standing there and doing your performance one more time. Thank you very much for all this effort. I appreciate that. It's been really good and helpful to everybody on the Council Committee.

MR. YUEN: I wanted to thank you and express my appreciation for the good working relationship while you've been Chair of this Committee. I'll certainly miss your good humor, and I'll continue to make it happen, I think, to come to the Planning Committee meetings, because prior to your becoming Chair I really hadn't, and I realize that this was an important part of my duties that I'd been neglecting. I also want to express my appreciation and good luck in all your future endeavors to the other members of the Council who are not going to be with us in the next couple of years. I'm not sure I'll be making any of the meetings. I know you have a couple of meetings before that, but I'm not sure I'll be making any of them.

CHR. ELARIONOFF: Thank you very much. Mr. Tyler.

MR. TYLER: Thank you, Mr. Chairman. Final comments regarding this Committee, since this will be my final meeting. I want to acknowledge and thank you, Mr. Chairman, for your leadership in this Committee upon the change by Mrs. Leithead-Todd to the Office of the Corporation Counsel. I've been the Vice Chair of this Committee since 1996, I believe, and it's been wonderful. I appreciate the opportunity that you have provided to me, you and the members, to participate at some length and at times in discussions like today, to try to make the bills better bills. I appreciate Director Yuen's patience with me in changing some of the language. I think that we have produced a better product as a result of our collaborative efforts, and to me that's what this is all about. Mr. Chairman, you and I have had our differences at times, but I think our concurrence on so many more issues has been what I'm going to remember most of all about our association, the opportunities that you and your staff have provided to all of us. I thank you for that. I think your bringing up of the applicant as well as the Director initially to give us a brief presentation is very good. I hope that your successor will continue that policy. I think it's not only helpful for the members of the Committee, but it's certainly helpful for those in audience, as well as those at home, to understand more of what we're doing. There seems to be quite an interest in the great land use changes that are occurring on this island, and as Mr. Chung said this morning, it's always important to include and empower the public as much as possible. I want to wish you well. I'm sure I'll see you. It won't be on the riding trail, but I might see you up in Waimea, and I wish you much success, and thank you very much. I neglected to say to Dr. Holschuh this morning at the end of his meeting how much I appreciate the work that he has done, and I'm sure he'll go on to continue his good works as well. Thank you.

STATEMENTS
FROM THE
PUBLIC:

The Chair directed the Committee to proceed to the next item on the Agenda, Statements from the Public on items not on the Agenda.

(There were no Statements from the Public on items not on the agenda.)

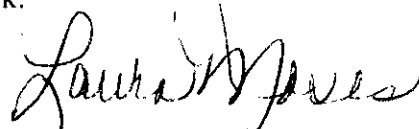
ADJOURN-
MENT:

There being no further business, 3:25 p.m. Mr. Tyler moved to adjourn the meeting. Seconded by Dr. Holschuh and carried by following vote:

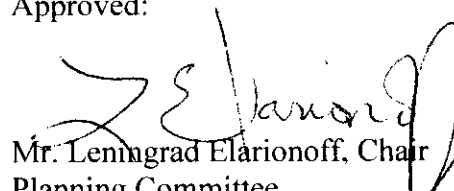
In Favor: Committee Members Arakaki, Holschuh, Jacobson,
Tulang, Tyler, and Chairman Elarionoff.

Opposed: None.

Absent & Excused: Committee Members Chung, Reynolds, and
Safarik.


Council Services Assistant II

Approved:


Mr. Lenngrad Elarionoff, Chair
Planning Committee