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Agenda Item: C.4 Subarea 4 | Wailea; C. Miscellaneous

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Johann Peter Lall 7/17/2023

Aloha, South Maui CPAC,

I have several suggestions for the 7/19 meeting and perhaps future meetings that address land use designations. I have also attached photos to illustrate some of the places that may be discussed.

- 1) Gulches should be protected as open space for the purposes of environmental protection, habitat preservation, and cultural preservation. While the trees found in South Maui gulches are mostly invasive kiawe, even these are habitat for native species such as hoary bats (as pointed out by Vernon Kalanikau) and 'iwa birds. Preservation would also reduce the risk of flooding downstream where people live.

Protecting gulches would require developers to work with the natural landscape, as most already do on The Mainland. The practice of leveling entire landscapes and putting in highly manicured flat grounds has been out of fashion for decades elsewhere. Buyers, especially the wealthy, favor open space. More protected areas would ultimately increase property values for the investors who will buy a large fraction of South Maui's near-future development.

I suggest language to define as OS Open Space all natural gulches and streams shown in the Gulches and Drainageways map, plus a 100ft buffer.

- 2) Maui Planning Commission chose to define the shoreline as the area makai of the State's "Erosion Hazard Line". They did not include a 40ft buffer as recommended by Planning Dept staff, Sea Grant scientists, and shoreline access advocates. Their decision-making process placed the interest of a few developers and hotels on equal footing with the entire community including the broader tourism industry and all individuals who depend on the shoreline for recreation, Native Hawaiian cultural practices, fishing, etc. When erosion and sea level rise reach that line, there will be no beach but instead a hardened developed shoreline.

I suggest that CPAC define as OS Open Space the shoreline makai of the Erosion Hazard Line plus a setback buffer. 40ft would be the bare minimum. Some municipalities have a 100ft shoreline setback.

- 3) I believe Cal Chipchase is right about designating the entire parcel adjacent to Kilohana Park as OS being a "taking". However, takings are more complex than that as not every loss in potential value is considered a taking. An important case is Penn Central v. NYC 1978. The Supreme Court ruled that loss of potential profit isn't a taking as long as the owner can derive some economic benefit:

<https://supreme.justia.com/cases/federal/us/438/104/>

The American Planning Association has a policy document on takings:

<https://www.planning.org/policy/guides/adopted/takings.htm>

Designating most of the parcel adjacent to Kilohana Park as **OS Open Space or PK Park** while allowing part of it to be developed as **RES or STC** could allow enough economic benefit to follow the 1978 precedent. Higher density could be allowed to reduce land usage. Land swaps are another solution.

- 4) Dean Frampton's proposed changes to language shouldn't be adopted. The Community Plan should represent the community's collective decisions regarding regulation of land use and community design. CPAC should keep in mind that it serves the whole **South Maui community**, rather than the interests of a few businesses. Please review Maui County Charter ethical prohibition 10-4.1.g

Mahalo,

Johann Peter Lall, Kama'ole, Kihei, HI