

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

February 19, 2014

Council Chamber

**CONVENE:** 1:36 p.m.

**PRESENT:** Councilmember Don S. Guzman, Vice-Chair  
Councilmember Stacy Crivello  
Councilmember Gladys C. Baisa  
Councilmember Donald G. Couch, Jr.  
Councilmember G. Riki Hokama  
Councilmember Mike White  
Councilmember Michael P. Victorino

**EXCUSED:** Councilmember Robert Carroll, Chair  
Councilmember Elle Cochran

**STAFF:** Scott Jensen, Legislative Analyst  
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** Jeffrey Dack, Planner, Department of Planning  
Robert Halvorson, Chief of Planning and Development, Department of Parks and Recreation  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

*Seated in the gallery:*

Danny Mateo, County Clerk, Office of the County Clerk

**OTHERS:** Colin Hanlon, Chief Professional Officer, Boys & Girls Clubs of Maui, Inc.

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

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**ITEM NO. 11: CONDITIONAL PERMIT FOR THE CONTINUED OPERATION OF A YOUTH CENTER AT 280 SHAW STREET (LAHAINA) (CC 13-113)**

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VICE-CHAIR GUZMAN: . . .(*gavel*). . . Good afternoon. This is the Land Use Committee meeting of February 19, 2014 will come to order. I am Councilmember Don Guzman, the Vice-Chair of the Council's Land Use Committee. Before we start, may I please ask everybody in the gallery as well as in the Chambers to please disable your cell phones. I'm going to go ahead and introduce our Members in the Chambers. Starting from my left is Chair Gladys Baisa. Good afternoon.

COUNCILMEMBER BAISA: Good afternoon, Chair.

VICE-CHAIR GUZMAN: Good afternoon, Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good afternoon, Chair.

VICE-CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

VICE-CHAIR GUZMAN: Riki Hokama, Mike White --

COUNCILMEMBER WHITE: Aloha, Chair.

VICE-CHAIR GUZMAN: --and Mike Victorino

COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

VICE-CHAIR GUZMAN: Good afternoon. And we have two excused, that would be Robert Carroll, Committee Chair, as well as Elle Cochran. For the Executive branch, we have Jeff Dack, Planning Department, as well as Robert Halvorson from the Parks and Recreation Department. And from Corporation Counsel we have Mr. Hopper. As a resource person, we have Colin Hanlon, he's the Chief Professional Officer of the Boys & Girls Clubs of Maui, and we have currently on Staff, we have Scott Jensen, the Legislative Analyst, as well as Clarita Balala, Committee Secretary. Today, Members, we have one item on the agenda, LU-11, the Conditional Permit for the Continued Operation of a Youth Center at 280 Shaw Street in Lahaina. I'm going to go ahead at this time and take a moment to check in with our District Offices. In Hana District Office, Ms. Lono, are you there?

MS. LONO: Yes, good afternoon, Chair. This is Dawn Lono at the Hana Office.

VICE-CHAIR GUZMAN: And in Lanai District Office, Ms. Fernandez.

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

VICE-CHAIR GUZMAN: And on Molokai District Office, Ms. Alcon.

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MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

VICE-CHAIR GUZMAN: Thank you. Brief announcement for public testimony. For individuals wishing to testify, please sign up at the lobby area. You will have a limited, a brief time to testify. Under the Council rules, you'll have three minutes to testify and one minute to conclude. You will be limited to today's item on today's agenda. When you're testifying, please state your name and any organization in which you represent. Mr. Jensen, can you please call the first testifier?

MR. JENSEN: There's currently no one in the Chambers signed up to testify.

VICE-CHAIR GUZMAN: Thank you very much. We're going to go ahead and turn over to and check in with the District Offices. Ms. Lono from Hana District Office, is there anyone wishing to provide testimony?

MS. LONO: There's no one at the Hana Office waiting to testify, Chair.

VICE-CHAIR GUZMAN: Thank you. And Ms. Fernandez in Lanai District Office, is there anyone wishing to provide testimony?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

VICE-CHAIR GUZMAN: And, Ms. Alcon, is there anyone wishing to testify in the Molokai District Office?

MS. ALCON: There's no one here on Molokai waiting to testify.

VICE-CHAIR GUZMAN: Thank you. Thank you very much, ladies. And since...I'm going to call out to the gallery. Is there anyone wishing to testify? Seeing none, at this time, Members, I will be, without any objection, I will now close public testimony.

COUNCIL MEMBERS: No objections.

VICE-CHAIR GUZMAN: Thank you. Members, starting with Item LU-11, the Committee is in receipt of County Communication 13-113, from the Planning Director, transmitting a request from the Department of Parks and Recreation for a Conditional Permit amendment and time extension to continue the operation of the West Maui Boys & Girls Club on approximately 2.0 acres of land owned by the County in the County Agricultural Zoning District at 280 Shaw Street, Lahaina, Maui, Hawaii, along with the proposed bill to grant the request. The Committee is also in receipt of a revised proposed bill from the Department of Corporation Counsel, incorporating various nonsubstantive revisions. At this time, I'd like to give a little bit of a background timeline in regards to the subject matter. In 2007, Ordinance 3492 was passed granting the Department of Parks and Recreation a Conditional Permit for approximately two acres within the County Agriculture District. In 2011, there became an existing lease granted to the Boys & Girls Clubs

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of Maui as authorized by Resolution 11-22 for approximately 16,315 square feet or roughly 20 percent of the area covered by the Conditional Permit. In 2014, herein, you have a proposed bill to extend and amend Ordinance 3492. Section 1 of the bill grants the Conditional Permit for the continued operation of the youth center. Condition 4 of the Conditional Permit requires all permitted users to acquire liability insurance, and Condition 6 of the Conditional Permit requires the Department to ensure that the operator of the youth center obtain the appropriate license or lease agreement. The existence, the current lease will expire in 2045, as well as the Conditional Permit if passed through will expire in 2047. Members, at this time, I'm going to have the Parks and Recreation Department, or I guess we have Planning here, Mr. Dack, if you could go ahead and open with any remarks in regards to the item on today's agenda.

MR. DACK: Thank you, Chair. Yeah, just a little bit to add. The site is designated Community Plan Park and it lies within the State Agricultural District and the problem here is that it's currently zoned County Agriculture but it clearly is within the Maui Island Plan's Urban Growth Boundary. In August 2012, the Department of Parks and Recreation, as the applicant, filed a timely request for an amendment and time extension of the Conditional Permit granted in 2007 in order to continue operation of the club, the youth club, the youth center on that site, I'm sorry, the West Maui Boys & Girls Club. The original request filed in June of 2006 was precipitated by a desire to expand the earlier, much smaller facilities, which had originally been established by the West Maui Boys & Girls Club when the use of those facilities was actually a permitted use under the site's then applicable zoning. There was a public hearing held on the amendment and time extension by the Planning Commission, December 11, 2012. The Commission recommended approval of the Conditional Permit with ten conditions. At the same time, the Commission approved an extension of the State Land Use Commission Special Use Permit to allow the use of the State Agricultural zoned property with eight conditions. No letters were received in support of or in opposition to the project during the Commission's public hearing. There was one testifier in support of the project. No other letters of testimony have been received since the Department sent the request on up to the Council. None were received by the Department. This concludes the report.

VICE-CHAIR GUZMAN: Thank you. And can we request the Department of Parks and Recreation to come down to the floor, Mr. Halvorson, and please present opening comments? Good afternoon, Mr. Halvorson, can you please state your name for the record and your position?

MR. HALVORSON: Good afternoon, Chair and Committee Members. My name is Robert Halvorson. I'm the Chief of Planning and Development at the Park's Department. Actually, Mr. Dack covered our presentation, why we're here, for extending the permits.

VICE-CHAIR GUZMAN: Okay. That being said, I'm going to open up the floor to our Members. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I just wanted to make a disclosure at this point. Prior, when all this happened, I was a board member of the Boys & Girls Club working for the administration. Subsequently, for a couple of years, I resigned from the board and just this last

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month I became a member of the board again. So I am a member of the board of the Boys & Girls Club. Plus I have a history on what's going on here too.

VICE-CHAIR GUZMAN: Thank you, Mr. Couch. At this time, I will find that you have somewhat of a conflict of interest and request that you recuse yourself on the vote.

COUNCILMEMBER COUCH: Uh-huh.

VICE-CHAIR GUZMAN: Thank you. Anything further, Members, questions? Mr. Hokama?

COUNCILMEMBER HOKAMA: I have a few, Chairman, so thank you. We know this is a request for a continuing and existing permit, so I guess for Planning, these conditions that the Commission approved and supported, were they part of the original conditions of the original approval?

MR. DACK: I'd have to look back and compare. I can't answer that immediately off the top of my head.

COUNCILMEMBER HOKAMA: Okay. And then for, you know, Mr. Halvorson, I believe one of the conditions is that the Department would develop the property to what was presented to Council, and yet there's no plans of what you guys gonna do with the property so, you know, it's hard for me to give blank approval to 2047 not knowing what we're going to do with our property, and if you're going to ask for a permit to 2047, why wouldn't we ask for zoning? You know, this is kind of ridiculous, one 30-plus year permit, you know, that's not the purpose of permits.

VICE-CHAIR GUZMAN: Department, any comment or response, either one of you? Department of Planning or Department of Parks and Recreation.

MR. DACK: Yeah. The, I guess there could have been a request in addition. When the suggestion or request was put in a condition earlier to have the applicant make a request for plan amendments, I guess that could have also or would have needed to have also included a request for amendment to the text of the Zoning Ordinance to allow youth centers as actually part of the Agricultural District. I wasn't with the project in 2006 or 2007. Can't tell you why that wasn't the particular approach that was done but it was discovered some time in the intervening time that just pursuing the land use map amendments would not solve the problem without a rezoning also being, or excuse me, without an amendment to the text being initiated also.

COUNCILMEMBER HOKAMA: So, Mr. Dack, is the conditions proposed the original conditions or is this brand new ones for the extension? Have you made a determination?

MR. DACK: Yes. Yes, thank you for letting me look at that. Yeah, the text prior to the Ramseyer, Ramseyering [*sic*] if I'm mispronouncing that, but anyway the original text prior to this, the changes proposed is the original text of the original Conditional Permit.

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COUNCILMEMBER HOKAMA: Okay, so if we're looking at, and I'm looking at the document that's dated February 27, 2013, Mr. Dack. This is a transmittal from Mr. Spencer, Director, and this was for transmittal to Chair Baisa, so I'm, you know, I'm looking at that, the ordinance, proposed ordinance. It has the list of conditions and that was one of my questions like, you know, for number eight, you have improving the south side of Shaw Street. Have you folks, is that a completed condition already?

MR. DACK: Yes, it is.

COUNCILMEMBER HOKAMA: So this is to be deleted, sir?

MR. DACK: I believe it was the request of your Chair that the Department of Corporation Counsel draft a bill which would delete that condition requiring the improvement to Shaw Street.

COUNCILMEMBER HOKAMA: Okay. Thanks, Don, I appreciate that. Okay. Okay, so --

VICE-CHAIR GUZMAN: Go ahead.

COUNCILMEMBER HOKAMA: --that will be deleted. For number five, gentlemen, my concern is number five, especially if this is going to go to 2047. You folks haven't told us anything about what's to be done with the property. And yet, we're saying that we're agreeing to have you develop in substantial compliance. But I don't know what we're asking for compliance.

MR. DACK: I'm sorry, could you repeat the request again, please. I was conferring with counsel. I apologize.

COUNCILMEMBER HOKAMA: We want to know what condition number five means.

MR. DACK: What condition number five *means*?

COUNCILMEMBER HOKAMA: Yes.

MR. DACK: Okay. It's a condition you've probably seen quite a number of times before, a general catchall condition that requires development in compliance, substantial compliance, with representations made. There has, as I'm sure you know, there, most of the times that entitlements are granted there are specific conditions that focus on particular items that have been identified that it was felt to need conditions associated with them. But this is kind of, as I've said, a fairly standard catchall condition that says they will comply with all the representations made.

COUNCILMEMBER HOKAMA: But that also implies that we know what we're agreeing to and yet I can tell you I don't know what I'm agreeing to because I have yet to be told what is being planned for the property besides the current use. So if that's the only thing then why don't we

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say we're going to allow current use? But obviously there's some plans for that property if you want to put language like this in. And we're just asking what is it?

MR. DACK: Well, this is, as mentioned in response to a previous question, this is original wording from the original permit approval and I can't even tell you the date of that, it was a good long time ago. And so this would have been a holdover and basically saying that the development could have been needed to be carried out in compliance with representations made way back originally, and when the...I can say...yeah, made, I guess, in 2006 timeframe as well as since it's still a current condition I expect it would apply to any representations being made to you now.

COUNCILMEMBER HOKAMA: This is what the Department is to be required to perform or what the operator is required to perform, in your understanding, Mr. Dack?

MR. DACK: The way it reads is the Department of Parks and Recreation shall develop the property, so they would be the responsible party in my reading.

COUNCILMEMBER HOKAMA: Okay. So as far as the operator, and in this case it's the Maui Boys & Girls Club, they're not the ones that are being held to any performance compliance except for the licenses and a few other, I would say regulatory requirements?

MR. DACK: The primarily responsibility would be the Department of Parks and Recreation. I would expect and, you know, Mr. Halvorson may correct me but any further responsibilities of the West Maui Boys & Girls Club would, I would expect, would ensue from the lease agreement between the Department of Parks and Recreation and the club.

COUNCILMEMBER HOKAMA: Thank you, gentlemen. I appreciate your responses. Thank you, Chairman.

VICE-CHAIR GUZMAN: Thank you, Mr. Hokama. Just a follow-up on Mr. Hokama's question. In regards to condition number eight, wherein Mr. Hokama mentioned, asked the question whether the developments or the improvements of Shaw Street has been completed and the Department's response was yes. My question is why is this condition still within the current ordinance?

COUNCILMEMBER COUCH: It's not. It's not.

VICE-CHAIR GUZMAN: Should it not be deleted?

COUNCILMEMBER COUCH: It is. It is.

VICE-CHAIR GUZMAN: Condition number eight is deleted?

COUNCILMEMBER COUCH: Yeah. Six through eleven. Six through ten are being deleted.

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VICE-CHAIR GUZMAN: Ah, that's correct. I stand to be corrected. Six, Conditions 6 through 11 are deleted. Thank you, Mr. Couch. Any further questions from the Members? Mr. Hokama?

COUNCILMEMBER HOKAMA: That NPDES Permit, that was obtained and that is currently still maintained, Mr. Halvorson, within the Park's Department? That would be, that was the old condition number nine.

MR. HALVORSON: No, the NPDES has been completed and closed.

COUNCILMEMBER HOKAMA: Okay. And that permit doesn't, is that an ongoing permit, active permit or?

MR. HALVORSON: It's just during construction.

COUNCILMEMBER HOKAMA: Just during the construction portion it was a requirement?

MR. HALVORSON: Yeah.

COUNCILMEMBER HOKAMA: Okay. Thanks for that clarification. Thank you.

VICE-CHAIR GUZMAN: Any further questions from the Members?

COUNCILMEMBER HOKAMA: Just one, please?

VICE-CHAIR GUZMAN: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: Let me ask the most, what is the magic with 2047, that year?

MR. HALVORSON: I don't recall. It was to be at least beyond the lease, the term of the lease. I believe the lease is 2045.

COUNCILMEMBER VICTORINO: Yeah, so it goes beyond that.

COUNCILMEMBER HOKAMA: Okay. Okay. And then, Mr. Dack, if we do move zoning forward and let's say it's Council initiated, that would, that wouldn't be that much an issue since that's our land anyway, right?

MR. DACK: I would expect there wouldn't be issues for that. You never know, of course.

COUNCILMEMBER HOKAMA: I mean to keep it, to maintain existing use, it's a park, we're going to zone it Park.

MR. DACK: Yes. That would certainly bring the zoning into consistency with the community plan and the use, which would seem to make a lot of sense.



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COUNCILMEMBER HOKAMA: Yeah. I mean, if we're going to let this permit run that long we might as well zone it instead of spot zoning through a permit --

MR. DACK: And then if you wish to...

COUNCILMEMBER HOKAMA: --would be my preference.

MR. DACK: I apologize. If you, if the Council wishes to initiate that, you might also in that same time indicate a desire to add, you know, the youth facilities or what the exact wording was youth centers, to --

COUNCILMEMBER HOKAMA: Permitted uses.

MR. DACK: --list permitted uses in the Park District and then you clean it up for the future.

COUNCILMEMBER HOKAMA: Yeah. I understand Mr. Couch has, it's in the hopper, work already being worked on, so thank you for that comment, Mr. Dack.

MR. DACK: Thank you.

COUNCILMEMBER HOKAMA: Thank you, Chairman.

VICE-CHAIR GUZMAN: Thank you, Mr. Hokama. Any further questions?

COUNCILMEMBER VICTORINO: Recommendation?

VICE-CHAIR GUZMAN: I actually have a couple more questions. Yeah, I'm just asking the Members first before I present my questions.

COUNCILMEMBER VICTORINO: Okay.

VICE-CHAIR GUZMAN: So basically, either the Department or Corporation Counsel can answer these questions. The Conditional Permit is for approximately 2 acres and the lease agreement is for 16,315 square feet. So if you imagine in your mind a doughnut, the doughnut hole would be the facility and the excess of that would be approximately 70,800 square feet and that's not under the lease agreement. So what is the plan or, I guess, what did you use the excess area for currently?

MR. HALVORSON: Chair, the two acres dates back quite a while when it was the Lahaina Youth Center before it became the West Maui Boys & Girls Club, and I'm not sure how that, why that carried through on the Conditional Use Permit. But currently the Boys & Girls Club only has the lease over the 16,000 square feet and that's what they use, and if they're going to use any of the rest of the park on a condition it will require permit from Parks then that's what they would apply for.

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VICE-CHAIR GUZMAN: Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. My recollection during the discussion at the lease renewal was that the two acres around the building is used by everybody and the Boys & Girls Club wanted to make sure that they had the absolute control over the facilities but they didn't want to exclude anyone else from using the basketball court and some of the other facilities in the immediate surroundings. And maybe you can call on Mr. Hanlon to clarify that.

VICE-CHAIR GUZMAN: Mr. Hanlon, can you come down to the floor and serve as a resource person? Were you able to listen to part of the discussion?

MR. HANLON: Yes, absolutely.

VICE-CHAIR GUZMAN: Okay. Do you have any comments?

MR. HANLON: Yeah, I could give a, just a...oh. My name is Colin Hanlon. I'm the Chief Professional...thank you, Mike, Chief Professional Officer with the Boys & Girls Clubs of Maui. Yeah, I'd love to just, Mike, Councilmember White was absolutely correct. When we first started down this road to, we first merged with the West Maui Youth Center in 2000, late '99, and when we went out there, the building had some of the challenges. Bathrooms going to the outside, large garage doors that rolled up and allowed some of the homeless and some of the people to come in and made it a very unsafe environment for our kids. We partnered with the Parks Department to renovate the building and when we came to Council, that is when the condition got put on the organization and the Council at that time said we'll grant you the money to work on the facility but we want you to get a long-term lease to manage it in order to help get in other resources as well. At that point, we took a look at the areas we would like to be able to what at the time was called 86 people from the park. If we were having people come in that were doing stuff that was very dangerous for our program, we had a document that sort of showed the lease line that we wanted to be able to control those behaviors...basketball court, parking lot, a little bit of the field, in order to sort of have an area that is drug, alcohol, tobacco, and violence free for our kids. And in doing so we just sort of were able to bring a police officer in and say here's our area that we control and it would allow us to get the police to tell that person they're no longer allowed in there for one day less than a year. So that was sort of the way it was going. At one point during this fluid process, the Parks Department was able to get some Federal matching dollars to build that skate park and if we had control of too much of the Park property in there it didn't allow a certain ratio for the Federal government that needed a certain amount of land to be allocated in that area to give them. So at the time, Director Horcajo came back to us and we voiced our concerns about that. And what they said is we're starting a new program with Park's Rangers so rather than go that route we'll have Park Rangers at your beckon call if you have any issues with that, they can come help mitigate that. So I know at one point we had been talking about a certain line. Again the partnership with Parks, who owns the property, who controls different stuff isn't really, you know, our end goal of any kind. Our partnership with Parks to help provide more for the kids in the community is all that counts, so

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when they said we're just going to draw a line real close around your building and that'll be in the lease. As long as the relationship was good we had ways to deal with those other issues around behaviors, we were good with it. So I think that is why the two different areas happened in the thing. So at one point acres versus 16,000 or whatever it was. So I'm pretty sure that...what we wound up getting at the very end was just around a ten foot barrier around the outside of the building, the bus turnaround and that courtyard area where we have the shade tree for our kids. Other than that, we just try to walk out and ask people kindly if they can't, you know, can move, you know, and not smoke or not bring the alcohol into our area and stuff, and if it becomes an issue where people are adamant, then we call the Park Rangers.

VICE-CHAIR GUZMAN: Thank you, Mr. Hanlon. So I'm going to ask a couple more questions since you've, you're here anyway. On the, you're required, under the conditions, to have liability insurance as well as having a lease agreement. So under the lease it only covers the 16,315 square feet. Does your insurance company, is your insurance cover more than that? Does it cover the 70,800 excess acreage? Like I said, picture it like a doughnut, you guys are the doughnut hole. But the Conditional Permit is for the whole doughnut. So does your insurance cover the excess property?

MR. HANLON: Again, I think the Conditional Permit, if...again, I might be wrong, is not the Boys & Girls Club Conditional Permit. I think that's the Parks' Conditional Permit.

VICE-CHAIR GUZMAN: Yes.

MR. HANLON: What we have is a lease agreement for that smaller area.

VICE-CHAIR GUZMAN: Okay.

MR. HANLON: And we have General Liability at all six of our facilities and we provide it to the Parks Department, Housing and Human Concerns, Boys & Girls Clubs of America, and most people, and like the County has a standard and it's really \$1 million but we carry \$3 million, and we're very conservative and we're well insured and we make sure that we review that every year.

VICE-CHAIR GUZMAN: Okay, thank you. I would like to turn the question over to the applicant, the Department of Parks and Recreation. So why are we not just limiting the Conditional Permit to the 16,315 square feet that is basically within the lease agreement? Why are we going further with an additional 70,800 square feet? What's with the excess area in regards to the Conditional Permit?

MR. HALVORSON: I don't think I can answer that, Chair, 'cause that came up when we were, before the Planning Commission and I believe that it was the Planning Department that thought it best to leave it at, leave the existing condition or the description in place as opposed to changing it at that point to the 16,000 square feet. Maybe Mr. Dack could respond to that?

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VICE-CHAIR GUZMAN: So I guess that would be a follow up to Mr. Hokama's question is, is there an intention for the Department to eventually use that area for future projects or buildings? I just don't understand why there would be an excess from the original lease to what is being requested in the Conditional Permit.

MR. HALVORSON: At this point, the Department doesn't have any plans to do any further development in that area. I think the development that was spoken of in the condition was the development of the West Maui Boys & Girls Club new building.

VICE-CHAIR GUZMAN: Mr. Hopper, I'm going to ask you whether you have an opinion as to any liability issues. Did you hear Mr. Hanlon's explanation of how they use that excess area? It's almost like a partnership area. Is there any type of liability issues that we need to be aware of?

MR. HOPPER: Well, Mr. Chair, I believe the Parks Department earlier said that use of the other spaces would require permitting from the Department, and in fact one of the conditions of the Conditional Permit is essentially that, paraphrasing here, but that anybody who uses the area for the uses allowed in the permit that is required to obtain insurance to protect the Parks Department for various claims. That's Condition 4, that would require anybody using the area, whether it be the Boys & Girls Club or someone else to use that area, they would need to obtain insurance to protect the County and need to go through whatever permitting that, I mean, the lease is an example of the type of permitting that would be required. The lease only covers a certain area but if there's going to be expanded use of the other area, it would be permitted from a land use standpoint, it's just it would have to go through any of the conditions of the Conditional Permit as well as any further permitting conditions the Department of Parks and Recreation would normally require someone using a park in that situation. So the land use would be permitted specifically for the continued operation of a youth center within the Agricultural District but anything outside of the lease area would need to be something that the Parks Department would have to approve of. Again, if it's the type of activity that would need a permit or the type of activity that would need to be covered by insurance under Condition 4 of the permit.

VICE-CHAIR GUZMAN: Thank you, Mr. Hopper. Has the Department been able to at least find an answer in terms of why there is an excess of 70,000 acres, I mean square feet? That's quite big. Seventy thousand square feet that's being requested in the Conditional Permit. I just need some type of justification as to why the extra excess area?

MR. DACK: I'm looking for that but I believe it would have been part of the original request in 2006, but hoping to find that. I'm finding the original department report from 2006. The request was at that time for two acres. And...

MR. HANLON: Don?

VICE-CHAIR GUZMAN: Oh yeah, Mr. Hanlon?

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MR. HANLON: I think the original request was for that amount because we were looking at those areas, like I said, we were trying to make sure we were able to control behaviors in the parking lot all the way to the basketball court and the road and back around. That's all that was for, and I think later on when the other project came up and they shrunk that down and sort of said this is going to be the new lease for this 35 years or whatever it was going to be, and that's why you have the two different numbers. I don't think an adjustment was made to the Special Use Permit to go backwards and say, okay, we really only need it for the 16,000 or whatever you're saying so I think that's why you have the two separate numbers.

VICE-CHAIR GUZMAN: And that wherein lies the issues. It's like you have a lease agreement for a certain 16,000 square feet. You have a liability insurance that covers the 16,000 square feet. But the Conditional Permit is asking for 2 acres, which leaves an excess of 70,000 square feet, which is, doesn't make sense that we would have, you know, a Conditional Permit that's covering more than what you're actually using and what you're being covered for in liability insurance.

MR. HANLON: Yeah, I might just be a little bit, like I might be missing something where I don't understand it but I think once you get to that line where the Boys & Girls Clubs' lease ends, I, whether, yeah I think it turns into Parks for me, which is self insured through the County of Maui. I don't think it's... 'cause the Special Use Permit is with the County Parks Department, if I'm not mistaken. So it would just fall back into that realm.

VICE-CHAIR GUZMAN: Yes, I agree with that. That's why I go back to Mr. Hokama's question back to the Parks and Recreation Department. What is the intention that you're going to do with the excess all the way up to 2045?

MR. HALVORSON: Chair...

VICE-CHAIR GUZMAN: The future intention that you need the excess of the 70,000 square feet?

MR. HALVORSON: No, there is not. The Department wouldn't have any objection to the Special Use Permit being the exact same size as the lease, but as I said earlier, it was my understanding from the Planning Department that that wasn't a wise thing to do when asking for the extension on the Special Use Permit.

VICE-CHAIR GUZMAN: Okay. So it's --

MR. HALVORSON: For the Planning Commission.

VICE-CHAIR GUZMAN: --not a wise thing to do. So can I have the Planning Department explain why it's not a wise thing to do?

MR. DACK: Yeah, that was answered in the response to Member, actually Chair Carroll's letter that the Director sent in November 25, 2003 [sic]. The response at that time was that there was, their question was since the club is limited to \_\_\_\_\_ the lease agreement should the Conditional

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Permit be granted for the premises rather than two acres in the proposed bill and the response was no. The property currently under lease is 16,315 square feet and that is the limits of the area within which the current physical development of the club has occurred; however, there is some day-to-day use of the grounds outside the area by children visiting in the club. It's also possible sometime before 2045 the club or other future operator of the use on the site might wish to expand their facilities in some way. It should be adequate for the County to control this through the lease agreement and normal development permits without the need to process further amendments to this Conditional Permit Ordinance, and the request made by the Department of Parks and Recreation was for a time extension for the Conditional Permit covering the two acres and not to actually...and to delete Condition number 10 but not to actually reduce the acreage. So the request wasn't to actually to reduce the acreage. That was an idea, I guess, that was brought up by the Council Chair. I think probably the most significant advantage of leaving the area larger in the Conditional Permit is that should there, should at some point the Parks Department or any future lessee wish to expand their facilities beyond the 16,315, then they wouldn't need to loop all the way back through Planning Commission and Council again and get a further amendment to a Conditional Permit in order to add one square foot, for example. Say they need to add something very, very small. If you restrict them to their exact size, then they'd have to come back through the whole process so, you know, providing two acres, I can't really speak to the liability concerns and I appreciate there are those but having a larger area does provide the Department and future operators more flexibility for expansion more easily.

VICE-CHAIR GUZMAN: Thank you for that justification. Any follow-up questions from our Members?

COUNCILMEMBER CRIVELLO: Do you still want him there?

VICE-CHAIR GUZMAN: Oh yeah, you can stay right there. Thank you, Mr. Halvorson. I'm going to make you stand there. That's okay, he needs the exercise. But I have another question. On the, the lease agreement expires in 2045 and the Conditional Permit, if granted, will expire 2047. Is there a reason why there is a lag between the two? Why wouldn't they be consistent, just for record purposes? I believe it would be cleaner because they would come back with a new lease at the same time, a new, I guess, renewal of, I guess, passage of a new ordinance, a new Conditional Permit.

MR. DACK: Well, that was also addressed in the same November 25, 2013 letter from the Director to Chair Carroll. The question was asked does the Department still support the Conditional Permit that exceeds the club's lease term, please explain. Our response was yes, Department of Parks and Recreation, the applicant requested a 35 year time extension beyond the first 5 years, which commenced on October 2007, effective date of Ordinance 3492. So according the request that was made by the Department of Parks and Recreation, that would add 40 years to 2007s, which would leave it being, you know, 40 years after the original effective date of the ordinance. That was the request. That was what was addressed by the Planning Commission and recommended on to the Council. The Department of Parks and Recreation could have but didn't request the time extension expire at the same time as the club's lease, and if the Council continues to issue

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the Conditional Permit to the Department of Parks and Recreation, that would allow them more flexibility to have another party besides the club carrying out the use if it were, if that were ever to be more appropriate for the County. Say, for example, if the lease expires, the lease does expire 2045 for whatever reason the club moved out, then that would provide a couple more years of life of Conditional Permit for someone new to come in. Again, it's, they don't need to run precisely ...*(inaudible)*... They certainly can but it's kind of like a similar comment to the previous question. Having a little bit longer time frame, again in addition to that being the actual request that was before the Commission, not a shorter date, but having that extra time frame provides, again, the Department of Parks and Recreation a little more flexibility.

VICE-CHAIR GUZMAN: Okay. Thank you. Members, any further questions? Seeing none, at this time, the Chair will entertain a motion to recommend the passage on first reading of the revised proposed bill entitled a Bill for an Ordinance to Extend and Amend Ordinance No. 3494, 2007, a Conditional Permit to Allow the Continued Operation of a Youth Center Within the County Agricultural District, for the Property Situated at Tax Map Key No. (2) 4-6-012:005 (POR.), Lahaina, Maui, Hawaii, incorporating any nonsubstantive revisions.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

VICE-CHAIR GUZMAN: Moved by Mr. Victorino, seconded by Mr. White. All in favor, say "aye"?

COUNCIL MEMBERS: Aye.

COUNCILMEMBER COUCH: Did you include filing?

COUNCILMEMBER VICTORINO: Filing of the communication.

VICE-CHAIR GUZMAN: Also, including the filing of the communication.

COUNCILMEMBER WHITE: No objections.

COUNCILMEMBER VICTORINO: No objections, Mr. Chair.

VICE-CHAIR GUZMAN: Thank you. I'll restate the...call the question. All those in favor, say "aye".

COUNCIL MEMBERS: Aye.

VICE-CHAIR GUZMAN: All those opposed, say "no". We have six ayes, two excused. . .

COUNCILMEMBER VICTORINO: Mr. Chair, seven ayes.

VICE-CHAIR GUZMAN: Oh, sorry, seven ayes.

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COUNCILMEMBER COUCH: Six, six, six.

COUNCILMEMBER VICTORINO: Oh.

VICE-CHAIR GUZMAN: Six. Mr. Couch is non-voting.

COUNCILMEMBER VICTORINO: Abstained.

VICE-CHAIR GUZMAN: Yes, abstained. Thank you. And one abstained and two excused. Motion carries.

**VOTE: AYES: Vice-Chair Guzman, and Councilmembers Baisa, Crivello, Hokama, Victorino, and White.**

**NOES: None.**

**ABSTAIN: Councilmember Couch.**

**ABSENT: None.**

**EXC.: Chair Carroll and Councilmember Cochran.**

**MOTION CARRIED.**

**ACTION: Recommending FIRST READING of revised bill and FILING of communication.**

VICE-CHAIR GUZMAN: That being said, again, I'll say for the record we're...do I need to...hold on a second. . . .*(short pause)*. . . That being said, Members, that will end today's agenda and I thank all the Departments for appearing today and going through my hard questions. It does take me a while to try to get comfortable with some of the issues but thank you for accommodating and presenting the justifications. Mr. Hanlon, we are very appreciative of the Boys & Girls Club. You guys are a fabulous organization and we wish you good luck in continuing all the community service work that you do. That being said, today's agenda shall now...today's meeting shall now be adjourned. . . .*(gavel)*. . .



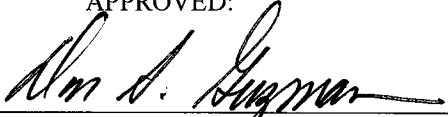
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**ADJOURN:** 2:20 p.m.

APPROVED:



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DON S. GUZMAN, VICE-CHAIR  
Land Use Committee

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Transcribed by: Kekai R. Robinson

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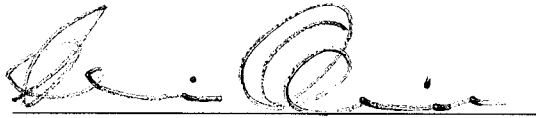
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**CERTIFICATE**

I, Kekai R. Robinson, hereby certify that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 12th day of March, 2014, Wailuku, Maui, Hawaii.

A handwritten signature in black ink, appearing to read 'Kekai R. Robinson', written over a horizontal line.

**Kekai R. Robinson**