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M I N U T E S
LAND USE COMMITTEE
Council of the County of Maui
Council Chamber
August 1, 2007

APPROVED:



Committee Chair

1 **RECONVENE:** 4:09 p.m.

2

3 **PRESENT:** Councilmember Michael J. Molina, Chair
4 Councilmember Joseph Pontanilla, Vice-Chair
5 Councilmember Michelle Anderson, Member

6 (Arrive 4:42 p.m.)

7 Councilmember Gladys C. Baisa, Member

8 Councilmember G. Riki Hokama, Member

9 Councilmember Jo Anne Johnson, Member

10 Councilmember Danny A. Mateo, Member

11 (Arrive 4:42 p.m.)

12 Councilmember Bill Kauakea Medeiros, Member

13 Councilmember Michael P. Victorino, Member

14

15 **STAFF:** Tammy M. Frias, Committee Secretary

16 Carla M. Nakata, Legislative Attorney

17

18 Lei Kihm, Executive Assistant to

19 Councilmember Bill Kauakea Medeiros

20

21 **ADMIN.:** Clayton Yoshida, Planning Program

22 Administrator, Current Planning

23 Division, Department of Planning

24 Michael Miyamoto, Deputy Director,

25 Department of Public Works

1 Eric Yamashige, Deputy Director,
2 Department of Water Supply
3 Vanessa Medeiros, Director, Department
4 of Housing and Human Concerns
5 Patrick Matsui, Chief of Planning and
6 Development, Department of Parks
7 and Recreation
8 James A. Giroux, Deputy Corporation
9 Counsel, Department of the
10 Corporation Counsel
11
12 **OTHERS:** Charles Jencks, Owner's Representative,
13 WCPT/GW Land Associates, LLC
14 Gwen Ohashi Hiraga, Principal,
15 Munekiyo & Hiraga, Inc.
16 (Applicant's entitlement consultant)
17 Wayne Yoshioka, Manager, Parsons
18 Brinkerhoff Quade & Douglas, Inc.
19 (Applicant's traffic consultant)
20 Barry Toyota, Wilson Okamoto Corporation
21 (Applicant's civil engineering
22 consultant)
23 Tom Nance, Tom Nance Water Resource
24 Engineering (Applicant's water
25 consultant)

1 Aki Sinoto, Aki Sinoto Consulting
 2 (Applicant's archeologist)
 3 John Ford, Program Director, SWCA
 4 Environmental Consultants
 5 (Applicant's flora consultant)
 6 B. Martin Luna, Esq., Carlsmith Ball, LLC
 7 (Applicant's attorney)
 8 Kimoqueo Kapahulehua
 9 Additional attendees (50)

10
 11 **PRESS:** Claudine San Nicolas, *The Maui News*
 12 *Akaku--Maui County Community Television, Inc.*
 13

14 **ITEM NO. 38: CHANGE IN ZONING AND PROJECT DISTRICT**
 15 **PHASE 1 APPROVAL FOR "HONUA`ULA/WAILEA 670"**
 16 **RESIDENTIAL DEVELOPMENT (C.C. No. 01-334)**

17 CHAIR MOLINA: The reconvened meeting of Land Use
 18 Item No. 38 is now in session. This is a
 19 recessed meeting of July 25th, which was then
 20 recessed to July 27th. So right now it is ten
 21 minutes after the hour of 4:00, August 1st,
 22 2007.

23 Members, as you well now, we have -- we
 24 earlier were talking about our agenda item,
 25 LU-3, which is on our August 1st agenda, and

1 we are running into some lengthy discussion,
2 so at this point the Chair's intent for
3 those -- especially for those who were in
4 attendance of the recessed meeting for LU-38,
5 I am going to recess the LU-38 meeting until
6 4:35 today so we can continue our discussions
7 and make a decision as it relates to the LU-3
8 matter, which is on the August 1st agenda.

9 Any comments or objections?

10 COUNCIL MEMBERS: No.

11 CHAIR MOLINA: Okay, thank you. The LU-38 meeting
12 is in recess until 4:35, August 1st, 2007,
13 right here in the Council Chambers. (Gavel).

14 **RECESS: 4:10 p.m.**

15 **RECONVENE: 4:42 p.m.**

16 CHAIR MOLINA: The recessed Land Use Committee
17 meeting of July 25th, 2007 is now in session.
18 And for the record, we met on Land Use Item
19 No. 38 as well at a recessed meeting on
20 Friday, July 27th.

21 Members, we're at a point where now the
22 Committee will do its deliberation on Land Use
23 Item No. 38. And for, I guess, housekeeping
24 purposes, Members, we, again, will ask the
25 public that's in attendance, please turn off

1 all cell phones and pagers. Public testimony
2 on this item was closed on Friday, July 27th,
3 just for the public's information.

4 Members, the Chair's going to offer a
5 recommendation as to how to proceed today with
6 the discussion of the conditions. The Chair's
7 preference will be first to go through the
8 conditions in which we can find consensus. We
9 did leave off with a motion that was on the
10 floor back at our meeting in March of 2007,
11 and that was on the second bill, which would
12 allow the Committee to discuss the proposed
13 conditions submitted by both the Planning
14 Department as well as the applicant.

15 So with that being said, Members, I'd
16 like to call upon Staff -- or, excuse me,
17 Department, Planning Department.

18 COUNCILMEMBER ANDERSON: Mr. Chair?

19 CHAIR MOLINA: Yes, Member Anderson?

20 COUNCILMEMBER ANDERSON: At the close of the last
21 meeting, during the public testimony meeting,
22 and also the last time we met on this and were
23 discussing conditions, you said that we would
24 have the opportunity to ask questions of
25 resource people, including Mr. Jencks. You

1 know, when he came up and testified the other
2 night, you asked the Members not to ask
3 questions of him because you would give us
4 plenty of opportunity to ask those questions.

5 CHAIR MOLINA: Yes, Member Anderson.

6 COUNCILMEMBER ANDERSON: I'm not finished, Chair. I
7 don't know how we can formulate and vote on
8 conditions if we still have unanswered
9 questions, and the answers to those questions
10 will help us formulate informed conditions.
11 So I don't see the point in wasting the
12 Committee's time on conditions if there's
13 still questions that need answers.

14 CHAIR MOLINA: Well, that is your opinion, Member
15 Anderson, and I have my own opinion, but we
16 need to get to work and we will deal with the
17 Q-and-A session as we move along. But the
18 point is, the Chair wants to get things
19 moving, whether we move the conditions or not,
20 and as the facilitator and Chairman of this
21 Committee, we will proceed in the way I see
22 fit. Thank you.

23 Now, we'll give every Member an
24 opportunity, again, to ask questions, and the
25 Chair would like to remind Members, ask

1 questions and not get into any commentaries,
2 extended commentaries, because time is
3 valuable, Members, so I would appreciate you
4 respecting that.

5 Okay, Chair, would like to consult with
6 Staff.

7 COUNCILMEMBER JOHNSON: Mr. Chair?

8 CHAIR MOLINA: Member Johnson?

9 COUNCILMEMBER JOHNSON: Yes, I just have a question
10 with regard to the completeness of the
11 application. Who has made a determination
12 that the application that is before us has
13 been deemed complete and that all the
14 components are there so that we may
15 legitimately consider the matter?

16 CHAIR MOLINA: I believe that was mentioned at the
17 last meeting in March. I will allow the
18 Planning Department to make a brief statement
19 to that, and the Chair would like to move
20 forward with the discussion of the conditions
21 afterwards.

22 Mr. Yoshida.

23 MR. YOSHIDA: Good afternoon -- I mean good evening,
24 Mr. Chair, Members of the Committee. Yes, I
25 believe the Planning Department did state that

1 the application was complete when it
2 transmitted it to the Council.

3 COUNCILMEMBER JOHNSON: And Corporation Counsel also
4 concurrs with that, that the application is
5 complete and there is nothing that is missing?

6 MR. GIROUX: Chair?

7 CHAIR MOLINA: Mr. Giroux?

8 MR. GIROUX: As far as the review of completeness
9 that is done by the Department, if the body
10 feels that there's information that it needs,
11 you know, to -- for further deliberation or
12 updating, then that's for the body to -- so
13 it's within your purview to ask for that.

14 COUNCILMEMBER JOHNSON: Okay, so who gives the final
15 say? Is it the Planning Department or is it
16 the County Council that says whether this is a
17 complete application or not?

18 MR. GIROUX: Well, I believe there's two different
19 matters. I think for the Department, I think
20 there's several -- several times that they
21 have to look at the application and say that
22 it's sufficient to move on forward for
23 deliberation. Ultimately it's the County
24 Council to say that -- whether or not they
25 believe the information that was provided to

1 them is complete enough for you to make a
2 reasonable decision.

3 COUNCILMEMBER JOHNSON: Okay, Mr. Chair, having
4 heard that, I want to know when we as a
5 body -- because we're being told that we are
6 the body that makes the final determination as
7 to whether this is a complete application, I
8 would like to know when that vote was taken,
9 because I may have been absent?

10 CHAIR MOLINA: I don't recall. Mr. Giroux?

11 MR. GIROUX: Chair, there's not -- I mean, there's
12 not an official finding of completeness. What
13 I'm saying is that the Department, as your
14 professional staff, has told you that they
15 believe that this is complete. Now, in your
16 deliberations and within your purview you can
17 question whether or not materials that have
18 been supplied to you are sufficient and ask
19 for augmentation to that information.

20 COUNCILMEMBER JOHNSON: Okay, and...

21 CHAIR MOLINA: And, Member Johnson, if I may add,
22 and -- I mean, ultimately as a body if you or
23 anyone else is not satisfied with the
24 application, then you display it by taking a
25 vote on the application when and if that time

1 arrives.

2 COUNCILMEMBER JOHNSON: Okay, but, I -- you know,
3 with all due respect, Mr. Chair, I think that
4 the logic and reason of the way that we have
5 always conducted all of our business is to
6 make sure that everything is there so that, as
7 Ms. Anderson stated, we can then make an
8 informed decision, we can make sure that the
9 conditions that we craft are appropriate. If
10 we're putting conditions on something that is
11 not complete, I personally think that's a bit
12 of a challenge for me. Because why bother
13 going through the motions if something is not
14 complete.

15 So I would at least like to have a
16 little bit of discussion on that. Or if there
17 are other members that feel it's complete,
18 fine. I just feel that I did not have any
19 information on a couple of issues that were
20 raised during the public hearing, and I would
21 want that information. Thank you.

22 CHAIR MOLINA: You can at your own behest -- you
23 could have also requested that information a
24 lot sooner as well, but you're entitled to
25 your opinion. Although other Members may feel

1 differently, they may feel that they received
2 the information -- the sufficient information
3 needed to make an informed decision, Member
4 Johnson, so --

5 COUNCILMEMBER ANDERSON: Chair?

6 CHAIR MOLINA: -- with that being said, the Chair
7 would like to proceed.

8 Member Anderson?

9 COUNCILMEMBER ANDERSON: Yes. Thank you. It's
10 obvious that the application was not complete,
11 because we have five binders of additional
12 information that came in after the application
13 was submitted. And the traffic analysis,
14 we've had three copies of a traffic impact
15 analysis still not reviewed and approved by
16 DOT since the application was submitted.
17 We've had four different scenarios for water,
18 still not reviewed and analyzed for accuracy.
19 So there's no way in any stretch of the
20 imagination that any of us here can say that
21 application was complete.

22 Now, if you want to make a decision
23 based on information that does not comport
24 with the County Code, then I guess that's on
25 your conscious, Members, because we're sworn

1 to follow the County Code.

2 My question for Corporation Counsel and
3 the Planning Department -- since you're not
4 going to allow us any time to question the
5 resource people who are here, Mr. Chairman,
6 until we get into the conditions, which I
7 think is putting the cart way before the
8 horse. We don't have completed information on
9 water. We don't have completed information on
10 traffic. We don't have completed information
11 on drainage. All questions that we've been
12 asking. Promises made at meetings. I've got
13 minutes to support that. Still, we don't have
14 the information.

15 So I'd like to ask the Planning
16 Department how they could make a
17 recommendation to the Planning Commission to
18 approve -- to send this forward to us to
19 approve it based on the criteria that we have
20 to meet for approval, which says the
21 application, if granted, would not adversely
22 affect or interfere with public or private
23 schools, parks, playgrounds, water systems,
24 sewage and solid waste disposal, drainage,
25 roadway and transportation systems, or other

1 public requirements and improvements.

2 How did you make that --

3 CHAIR MOLINA: Mr. Yoshida?

4 COUNCILMEMBER ANDERSON: -- recommendation,

5 Mr. Yoshida, based on the inaccurate and

6 incomplete information in the application?

7 CHAIR MOLINA: Proceed.

8 MR. YOSHIDA: Mr. Chair, Members of the Committee,

9 we did make that recommendation to the

10 Commission. The Commission did concur with

11 that recommendation and they did recommend

12 approval of the various requests, including

13 the zoning change.

14 COUNCILMEMBER ANDERSON: Well, I know that, but the

15 question, Mr. Yoshida, is how did you come to

16 the conclusion that the application and the

17 information presented -- especially since you

18 had a traffic impact analysis that was

19 completely -- actually hadn't even received a

20 review from DOT until after you passed it

21 through the Planning Commission, and --

22 CHAIR MOLINA: Mr. Yoshida.

23 COUNCILMEMBER ANDERSON: -- and the DOT sent a

24 letter about a month later saying that this

25 traffic impact analysis is totally inadequate

1 and has false information in it. So how could
2 you in good conscience pass this on to us and
3 say it meets the criteria of approval?

4 CHAIR MOLINA: Mr. Yoshida?

5 MR. YOSHIDA: Again, the Planning Commission did not
6 take action at the first meeting. They did
7 request some additional meeting of -- some
8 additional information, and I think they took
9 an action several months later after the --

10 COUNCILMEMBER ANDERSON: A whole year later.

11 MR. YOSHIDA: -- information was provided.

12 CHAIR MOLINA: Excuse me, let the Director -- the
13 Planning personnel finish his comments, Member
14 Anderson.

15 Mr. Yoshida, continue.

16 MR. YOSHIDA: Yes, they did take an action after
17 that information was provided.

18 COUNCILMEMBER ANDERSON: They took an action,
19 actually, a whole year later. They had one
20 meeting and said there isn't enough
21 information here and you haven't interfaced
22 with the community. Go back and do that. So
23 they took a year to supposedly do that and
24 then came back to the Commission.

25 And as a matter of fact, at the

1 Commission's meeting in -- on October 23rd of
2 2001, of which they recommended approval to
3 the Council, the Planning Department did not
4 have any recommendation at that meeting, and
5 in fact, probably didn't intend to pass it out
6 at that meeting, but the Commission...

7 CHAIR MOLINA: Member Anderson, a question please,
8 because I am getting very impatient here. I
9 do want to get on with the discussion on the
10 conditions.

11 COUNCILMEMBER ANDERSON: All right, Mr. Chairman, my
12 question -- you know, it just boggles the mind
13 that you're so impatient that this applicant
14 has had six years to get us adequate
15 information and here we are being pressured to
16 put conditions on a Change in Zoning
17 application.

18 CHAIR MOLINA: Your question, please, Member
19 Anderson.

20 COUNCILMEMBER ANDERSON: I have the floor,
21 Mr. Chair.

22 CHAIR MOLINA: Yes, and I'm asking you to ask a
23 question, otherwise I will rule you out of
24 order. Member Anderson, a question for
25 Mr. Yoshida.

1 COUNCILMEMBER ANDERSON: All right, here's your
2 question. In the Change in Zoning, County
3 Code 19.510.040, it says, Upon -- and this has
4 to do with the application for Change in
5 Zoning before us.

6 Says, the appropriate Planning
7 Commission shall conduct a public hearing on
8 all Change in Zoning applications. Upon
9 closing the public hearing and upon reviewing
10 the report and recommendation of the Planning
11 Director and all other applicable information
12 on the application, the Commission shall
13 prepare a report which includes -- shall
14 prepare a report which includes, but which is
15 not limited to, the Commission's findings of
16 fact, conclusions of law, recommendations and
17 any recommended condition which the Commission
18 determines to be necessary pursuant to the
19 conditional zoning provisions of this chapter.

20 Now, in order for this body to act on
21 this and fulfill the Code's requirements for
22 approval, the Council may grant a Change in
23 Zoning if all the following criteria are met:
24 The application, if granted, would not
25 adversely affect or interfere with public or

1 private schools, parks, playgrounds, water
2 systems, sewage and solid waste, drainage,
3 roadway and transportation systems, or other
4 public requirements conveniences. The
5 application, if granted, will not adversely
6 impact the social, cultural, economic,
7 environmental, and ecological character and
8 quality of the surrounding area.

9 How can we make that determination,
10 Deputy Director --

11 CHAIR MOLINA: Mr. Yoshida.

12 COUNCILMEMBER ANDERSON: -- when you guys did not
13 provide --

14 CHAIR MOLINA: Let Mr. Yoshida respond.

15 COUNCILMEMBER ANDERSON: -- any findings -- I'm
16 asking the question.

17 CHAIR MOLINA: Let him finish.

18 COUNCILMEMBER ANDERSON: Just stop interrupting.

19 CHAIR MOLINA: Excuse me, I am the Chair of this
20 Committee and I'm not going to tolerate that
21 kind of conduct.

22 Mr. Yoshida, can you respond to Member
23 Anderson's --

24 COUNCILMEMBER ANDERSON: I haven't finished the
25 question, Mr. Molina.

1 COUNCILMEMBER MOLINA: Mr. Yoshida, are you prepared
2 to respond?

3 COUNCILMEMBER ANDERSON: The question is --

4 CHAIR MOLINA: Excuse me.

5 COUNCILMEMBER ANDERSON: Let me ask the question.

6 CHAIR MOLINA: Out of order. Meeting in recess.

7 (Gavel).

8 **RECESS: 4:57 p.m.**

9 **RECONVENE: 4:58 p.m.**

10 CHAIR MOLINA: (Gavel). The recessed Land Use
11 Committee meeting of July 25th, 2007 is now
12 back in session. It is just about 5:00 p.m.
13 It is August 1st.

14 Mr. Yoshida, can you respond to the
15 first portion of Member Anderson's question?

16 MR. YOSHIDA: Could you briefly restate the
17 question?

18 CHAIR MOLINA: Okay, that makes it -- Member
19 Anderson, you have the floor.

20 COUNCILMEMBER ANDERSON: Thank you, Mr. Yoshida.
21 The question is how can you come to the -- to
22 recommend to this Council that this
23 application meets the criteria of approval
24 when you did not or the Commission did not
25 provide any findings of fact or conclusions of

1 law as required by the County Code?

2 MR. YOSHIDA: I believe that the Department did make
3 a recommendation. The Department did provide
4 a Staff report, an addendum report, which the
5 Commission adopted as its findings of fact and
6 conclusions of law.

7 COUNCILMEMBER ANDERSON: Well, you may believe that
8 to be true, Mr. Yoshida. You weren't the
9 planner on this that sat through the two
10 commission hearings. That was Ms. Colleen
11 Suyama. I've been through the minutes of both
12 of the Planning Commission meetings. I've
13 looked at all three reports that we've
14 received from your Department. There is no
15 findings of fact or conclusions of law
16 anywhere to be found.

17 My question is to Corporation Counsel,
18 Mr. Corporation Counsel, if you could pull up
19 in front of you Chapter 19.510.040 so that you
20 can follow along.

21 CHAIR MOLINA: This will be the last question I'll
22 permit, and we will continue the discussion on
23 the proposed conditions, Members.

24 MR. GIROUX: It's 19.510.040?

25 COUNCILMEMBER ANDERSON: Change of Zoning,

1 19.510.040.

2 MR. GIROUX: Okay, I'm looking at it.

3 COUNCILMEMBER ANDERSON: All right. Under Item A2,
4 where it says, The Commission shall prepare a
5 report which includes the Commission's
6 findings of fact conclusions of law.

7 Mr. Giroux, there are no findings of
8 fact or conclusions of law attached to this
9 application, attached to any of the reports
10 brought to this body by the Planning
11 Department or the Planning Commission. How
12 can you say that this application and that we
13 meet the criteria of the law laid out to us
14 that we're sworn to uphold when there's no
15 finding of fact, conclusion of law?

16 MR. GIROUX: Chair?

17 CHAIR MOLINA: Mr. Giroux?

18 MR. GIROUX: As Clayton looks for the report, I'd
19 just like to -- I do advise the Planning
20 Commission when applications do go before it
21 for the purposes of review for zoning and
22 community plan, and there is a requirement
23 that the -- that they do produce the findings
24 of facts and conclusions of law. Typically
25 what happens is that when the Planning

1 Department writes a report, that report is
2 presented to the Commission. And at that
3 time, when they deliberate and are to then
4 vote on their recommendations to Council, the
5 Planning Department or the planner will
6 typically, within their recommendations,
7 suggest to the Commission that they adopt the
8 Planning Department's report as its findings
9 of facts and conclusions of law and to allow
10 the Director to transmit those to the Council.

11 So the -- what you see in your packet
12 when you see a report from the Planning
13 Department, in most instances, is the finding
14 of facts and conclusions of law which were
15 adopted by the Planning Commission. So the
16 fact that you see a report from the Planning
17 Department when they transmit that, I believe
18 that the Department, if they wanted to verify
19 and look into their records, they could find
20 that an action was taken adopting that report
21 as the Commission's findings of fact and
22 conclusions of law. And that's why you don't
23 see a separate document, because it's
24 basically adopted by the Commission and that
25 document appears to be in your -- when it's

1 transmitted, it appears to be just a report
2 from the Department, which in fact it's been
3 adopted by the Commission.

4 COUNCILMEMBER ANDERSON: Well, in this case,
5 Mr. Giroux, that's not what happened. The
6 Commission did not adopt a report. The
7 Commission adopted recommendations that were
8 made by the Planning Commission, and if you're
9 having trouble finding the reports in the
10 Planning Commission minutes, I could provide
11 those for you. I would request a written
12 opinion because it says in the County Code
13 that the Commission shall prepare a report
14 which includes the Commission's findings of
15 fact, conclusions of law and forward that to
16 this body.

17 There are no such findings of fact or
18 conclusions of law, and as I said, when the
19 Commission passed this out on October 23rd,
20 2001, they had no recommendations prepared.
21 They had to call a recess and quickly put
22 together recommendations. So there is no
23 finding of fact or conclusion of law on this
24 application.

25 And I would request, Mr. Giroux, that

1 you provide in writing to this body some legal
2 opinion as to whether or not the Commission
3 fulfilled their duty in forwarding findings of
4 fact and conclusions of law for this body, so
5 that when we make our decision, we know that
6 we're fulfilling our criteria for approval.

7 CHAIR MOLINA: Okay, Mr. Giroux, you got all that
8 information from Councilmember Anderson?

9 MR. GIROUX: Yes, Chair, I believe I will get a
10 transmittal.

11 CHAIR MOLINA: Okay, thank you. We'll have you work
12 with Staff.

13 Okay, Members...

14 COUNCILMEMBER ANDERSON: So, Mr. Giroux, the
15 question is you feel that we have a legal --
16 we have a legal right to approve this and that
17 we can -- we can actually in all good
18 conscience find that there's not going to be
19 any adverse effect?

20 CHAIR MOLINA: Mr. Giroux, you can submit your
21 response in writing to the Committee.

22 Okay. We'll move on. Okay, Members,
23 again, we will discuss the conditions. If
24 decisions are to be made, that will be the
25 body's decision, okay, but let us discuss the

1 conditions.

2 You've been given a copy from Deputy
3 Planning Director Suyama with some proposed
4 conditions, I believe the conditions made from
5 the Planning Commission, and also you should
6 have copies of conditions proposed by the
7 applicant as well. I believe you were just
8 handed out responses to questions made by
9 various Council Members from Mr. Jencks --
10 excuse me, that was I guess -- yes, it's dated
11 August 1st, 2007.

12 Staff, are we prepared to put the
13 conditions up on the wall at this time? Okay,
14 proceed. Do we need to take a short recess?

15 Okay, Members, as stated earlier, we
16 left off discussing the conditions back at our
17 March meeting. A motion was on the floor at
18 the time. So, Members, the Chair's
19 preference, again, if we can just get some
20 consensus as to what conditions we would like
21 to I guess focus our attention on, versus the
22 conditions that we may have, I guess,
23 consensus, just so we can move things along
24 here.

25 Staff, these conditions, is this the

1 mesh of the Planning Commission as well as the
2 applicants? Can you state for the record
3 these conditions that we're looking at on the
4 wall right now?

5 MS. NAKATA: Mr. Chair, the March meeting we left
6 off with a motion pending to pass the
7 consolidated bill, that's Item No. 2 on the
8 Committee's meeting agenda. It was
9 transmitted by correspondence dated September
10 29, 2006 from the Department of the
11 Corporation Counsel, and this is Exhibit B to
12 that correspondence -- excuse me, to that
13 bill.

14 CHAIR MOLINA: Okay, this is -- we're working off
15 Exhibit B, which is a source from the
16 Corporation Counsel's Office on a consolidated
17 bill, am I correct?

18 MS. NAKATA: Yes, that's correct, Mr. Chair. Staff
19 would note that also distributed today was a
20 copy of draft conditions transmitted from
21 Colleen Suyama, the Deputy Planning Director,
22 in which she tried to -- going off of this set
23 of Planning Commission recommended conditions
24 to address some of the earlier concerns, for
25 instance, in Condition Number 2, we left off

1 with the discussion about specifying the
2 traffic improvements that would be required of
3 the owner.

4 CHAIR MOLINA: Okay. All right, Members, when we
5 left off I believe it was Condition 1, and
6 there was discussion. What I'd like to do if
7 there's no consensus, we'll move on and look
8 at each condition, and if there is consensus,
9 please inform me.

10 I anticipate we'll get a lot of
11 discussion on that first proposed condition.
12 Members, Condition 2, the Chair anticipates a
13 lot of discussion on that as well. Condition
14 3, Staff, can you read that for the public's
15 information. I don't know, it's difficult for
16 us.

17 MS. NAKATA: The Planning Commission's recommended
18 Condition Number 3 is as follows: "As
19 represented by WCPT/GW Land Associates, LLC, a
20 voluntary contribution for traffic
21 improvements shall be paid to the County of
22 Maui in an amount equal to \$5,000 per unit,
23 which shall be credited against all future pro
24 rata share of traffic requirements for the
25 project. An agreement shall be executed

1 between WCPT/GW Land Associates, LLC and the
2 County of Maui stipulating the terms and
3 conditions of the voluntary contribution prior
4 to approval of any ministerial permits by the
5 County of Maui?

6 CHAIR MOLINA: Okay, Members, consensus, or do we
7 need more additional discussion on this?

8 Member Johnson.

9 COUNCILMEMBER JOHNSON: Yes. This question came up,
10 I believe of -- I did not ask it of
11 Mr. Jencks, but he disclosed -- because we're
12 talking about WCPT/GW Land Associates, LLC, he
13 stipulated who all the various entities were
14 that comprised that. I think before I feel
15 comfortable stipulating whoever this entity or
16 whatever this entity is composed of, I would
17 like to find out what the various percentages
18 are of that land LLC and if there's any
19 documentation, you know, as to percentage
20 ownership. Because I think if we're asking
21 somebody to perform and we're holding them to
22 a standard, I want to make sure who we're
23 dealing with.

24 CHAIR MOLINA: Sure, okay. Chair will honor that
25 request. So we'll come back to this and get

1 the applicant up here to respond to your
2 questions.

3 Members, next condition, Number 4.

4 Staff, please read the condition, please.

5 MS. NAKATA: The Planning Commission's recommended
6 Condition Number 4 states: "That WCPT/GW Land
7 Associates, LLC, its successors and permitted
8 assigns, shall be responsible for all required
9 infrastructural improvements for the project,
10 including water source and system improvements
11 for both domestic use and fire protection,
12 drainage improvements, traffic-related
13 improvements, wastewater system improvements,
14 and utility upgrades, as determined by the
15 appropriate government agencies and public
16 utility companies. Said improvements shall be
17 constructed and implemented concurrently with
18 each phase of the Wailea 670 development and
19 shall be completed prior to issuance of any
20 certificate of occupancy or final subdivision
21 approval unless improvements are bonded by
22 WCPT/GW Land Associates, LLC. WCPT/GW Land
23 Associates, LLC shall execute appropriate
24 agreements with government agencies regarding
25 participation in improvements of

1 infrastructure and public facilities as
2 determined by the agencies."

3 CHAIR MOLINA: Okay, Members, being that this is
4 such a long-worded condition, I think that may
5 merit more discussion at a later point.

6 Okay. All right, let's go on to the
7 next condition, Staff.

8 MS. NAKATA: Condition Number 5, "That WCPT/GW Land
9 Associates, LLC, its successors and permitted
10 assigns shall provide housing within the
11 project district for a range of consumer
12 groups, including those in the affordable and
13 moderate housing groups, as determined by the
14 Department of Housing and Human Concerns.
15 WCPT/GW Land Associates, LLC shall also comply
16 with the affordable housing requirements
17 adopted by the County of Maui. An agreement
18 shall be executed between WCPT/GW Land
19 Associates, LLC and the County of Maui
20 stipulating the terms and conditions for the
21 provision of housing prior to approval of any
22 ministerial permits by the County of Maui."

23 CHAIR MOLINA: Okay, I think without saying, that
24 will merit some further discussion.

25 Moving on, next condition, 6.

1 MS. NAKATA: Condition Number 6, "That a master
2 drainage report and phasing plan shall be
3 submitted for review and approval during Phase
4 II project district processing. Said plan
5 shall include the recommended drainage
6 improvements as" requested -- excuse me, "as
7 represented in the Preliminary Drainage
8 Report."

9 CHAIR MOLINA: Okay, Members, do we have consensus?
10 Do we need further discussion on that? Member
11 Anderson?

12 COUNCILMEMBER ANDERSON: Yeah, I've been waiting
13 since last March to ask questions about this,
14 and in fact I asked a question at the March
15 meeting of Mr. Miyamoto regarding drainage,
16 whether or not they had reviewed the report,
17 and at that time he said that the -- a revised
18 preliminary report had come in and that they
19 had not yet reviewed it and that I'll have to
20 get back and check with Staff to see what
21 level of review they're in and let you know.

22 CHAIR MOLINA: Okay, Member Anderson, we'll come
23 back to this.

24 COUNCILMEMBER ANDERSON: I'd like to have him tell
25 us what their review is on this, because,

1 Mr. Chairman, as you all know, we have a
2 serious problem with drainage on our near
3 shore waters in our reefs, and I want to know
4 how much of the topography is going to be
5 altered in this project.

6 CHAIR MOLINA: Okay, thank you, Member Anderson.

7 The Chair will honor that. We'll come back to
8 that condition.

9 Okay, Staff, Condition 7.

10 MS. NAKATA: Condition Number 7: "That WCPT/GW Land
11 Associates, LLC, its successors and permitted
12 assigns, shall implement an animal management
13 plan approved by the Department of Land and
14 Natural Resources for the management of animal
15 intrusions into the development, which may
16 include the construction of boundary or
17 perimeter fencing or wildlife control
18 permits."

19 CHAIR MOLINA: Members, consensus, or do we need to
20 come back for discussion on this? Okay,
21 seeing none, we will leave this one out for
22 further discussion for the time being.

23 Condition Number 8, Staff?

24 MS. NAKATA: Condition Number 8: "That all future
25 owners, successors, and permitted assigns

1 shall be informed that the area is subject to
2 the intrusion of mammals, such as axis deer
3 and pigs, of the impacts associated with such
4 intrusions, and of the management plan for
5 such intrusions.

6 CHAIR MOLINA: Members, consensus or further
7 discussion? All right, we'll put that down as
8 consensus.

9 Number 9, Staff?

10 MS. NAKATA: Condition Number 9: "That an
11 assessment of the Pueo (or Hawaiian
12 Short-eared Owl) and the Hawaiian Hoary Bat
13 shall be undertaken by WCPT/GW Land
14 Associates, LLC, in coordination with the
15 Department of Land and Natural Resources, and,
16 if appropriate, mitigative measures shall be
17 incorporated into the development."

18 CHAIR MOLINA: Committee Members, consensus? Member
19 Johnson.

20 COUNCILMEMBER JOHNSON: You know, I understand about
21 the assessment of the Pueo and the Hawaiian
22 Hoary Bat, but basically it's the habitat.
23 It's not the assessment of the actual animals
24 or the, you know, birds or the bat in this
25 case. Because in order for there to be any I

1 guess nexus between the -- I guess the
2 existence of these or the continuation of the
3 existence and the numbers, you need to look at
4 the habitat.

5 So something should be placed in there
6 about not only the assessment of the numbers
7 of the actual creatures, but something should
8 be placed in there that actually talks about
9 habitat and the assessment of the habitat.
10 Because if you destroy the habitat, doesn't
11 matter what report they come up with, there's
12 no place for them to live.

13 CHAIR MOLINA: Okay, so do you want us to return for
14 additional discussion on this?

15 COUNCILMEMBER JOHNSON: Yes, and I would look some
16 input I think from either the Planning
17 Department or a naturalist if we have anyone
18 available to address that issue, because I'm
19 not an expert in that area, but I do know
20 enough about habitat to know that without the
21 habitat, you won't have the animals.

22 CHAIR MOLINA: Okay. Thank you, Member Johnson.

23 COUNCILMEMBER MATEO: Chairman?

24 CHAIR MOLINA: Mr. Mateo?

25 COUNCILMEMBER MATEO: Thank you. Then to address

1 Member Johnson's concern, could we just not
2 add the terminology in this Condition 9 that
3 would reference that it includes the habitat
4 of, so we can just put the verbiage in now and
5 just move on with this condition?

6 CHAIR MOLINA: Committee Members? Member Johnson,
7 would that suffice?

8 COUNCILMEMBER JOHNSON: Well, you know, what I'd
9 like to see, because basically in the
10 discussion that Mr. Altenberg had, it's -- I
11 kind of see this -- it's both the animals that
12 are within the habitat, but it's also the
13 plants that exist, which it's part of a whole
14 ecosystem. So I'd really like to see that
15 condition address not just a piece of the
16 whole ecosystem, but address the plants, the
17 animals, and look at the preservation of the
18 habitat as outlined by several of the
19 testifiers as well as Mr. Altenberg.

20 CHAIR MOLINA: All right, thank you, Member Johnson.
21 So I guess we'll return for a discussion on
22 this.

23 Member Anderson?

24 COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. I
25 also am concerned about this. I have a

1 proposed condition that would provide for a
2 conservation easement for the critical habitat
3 at the a`a flow, and it would be to not only
4 preserve the native Hawaiian biological
5 habitat, but also the fauna that visit that
6 habitat, as well as the historic sites present
7 in that area.

8 CHAIR MOLINA: Okay, we'll make note of that, Member
9 Anderson.

10 Okay, moving on to Condition 10.

11 MS. NAKATA: Condition Number 10, "That nonpotable
12 sources of water including the use of effluent
13 from the Kihei Wastewater Reclamation Facility
14 shall be utilized for irrigation purposes and
15 dust control of construction activities when
16 such sources become available to the subject
17 project."

18 COUNCILMEMBER MOLINA: Members, do we have consensus
19 on proposed Condition 10? Member Anderson?

20 COUNCILMEMBER ANDERSON: Mr. Chairman, I have a
21 problem with their individual wastewater
22 system, as well as many other things. But in
23 all of their earlier entitlements it was
24 all -- always intended that they would hook up
25 to the Kihei wastewater system and that they

1 would provide the funding necessary to upgrade
2 that system for their project.

3 So this condition I don't think really
4 fairly addresses -- it's just kind of a
5 promise that they may hook up some day to use
6 the effluent, so, you know, I'd like to
7 propose a condition different from that, so if
8 we can come back.

9 CHAIR MOLINA: Okay, we'll come back to that.

10 Okay, Condition Number 11, Staff?

11 MS. NAKATA: Condition Number 11, "In lieu of the
12 dedication of the Little League field and
13 related amenities as originally specified in
14 Ordinance No. 2171 (1992), Exhibit "B",
15 Condition Number 8, the estimated cost of
16 constructing the Little League field,
17 (\$3,470,332) shall be paid to the County of
18 Maui prior to the completion of the first
19 development within Kihei-Makena Project
20 District 9 (Wailea 670) for the development of
21 parks and park facilities in the Kihei
22 Regional Park. Said amount shall be credited
23 against future park assessments."

24 CHAIR MOLINA: Members, do you want to return for a
25 discussion on that?

1 COUNCILMEMBER PONTANILLA: Please.

2 CHAIR MOLINA: Okay. Member Anderson?

3 COUNCILMEMBER ANDERSON: Yeah, Mr. Chair, first of
4 all, the Little League park is a current
5 condition on the zoning that they received,
6 and, you know, I got a problem with the Parks
7 Department overriding a previous Council's
8 condition. I don't think that's their
9 purview, and it certainly isn't the purview of
10 the State Land Use Commission to remove a
11 condition that a previous Council put on their
12 zoning that's currently in the County Code.
13 And the fact remains that, you know, that
14 figure is inaccurate. The figure is a \$5,000
15 figure, and it's not supposed to be credited
16 for future park assessments, because it's a
17 condition currently running with the land. It
18 has nothing to do with park assessment.

19 CHAIR MOLINA: Okay, thank you, Member Anderson. We
20 shall return to that one as well.

21 COUNCILMEMBER ANDERSON: Mr. Chair, if I may.

22 CHAIR MOLINA: Yes, Member Anderson.

23 COUNCILMEMBER ANDERSON: If Staff could provide us
24 with hard copies of these conditions. It's
25 difficult for some of us, and I think unless

1 Mr. Victorino is Superman, he's probably
2 having a hard time seeing these conditions.
3 So if we could have a hard copy, it would be
4 most helpful.

5 CHAIR MOLINA: Yeah, I think Staff did provide, if
6 you want to look...

7 COUNCILMEMBER ANDERSON: How many -- how many months
8 ago?

9 MS. NAKATA: Actually, we just --

10 COUNCILMEMBER ANDERSON: Oh, just now?

11 CHAIR MOLINA: Yeah, just now.

12 MS. NAKATA: -- got today a set of the conditions.

13 CHAIR MOLINA: And that's one reason why I'm asking
14 Staff to read the conditions out for not only
15 yourself but everyone else, because it is --
16 even from my vantage point, it is quite a
17 challenge to read, so...

18 COUNCILMEMBER ANDERSON: All right. Good. Thank
19 you very much, Chair.

20 CHAIR MOLINA: Okay, Staff, next condition, 13.

21 COUNCILMEMBER MEDEIROS: Mr. Chair?

22 CHAIR MOLINA: Mr. Medeiros?

23 COUNCILMEMBER MEDEIROS: Yeah, I just wanted to know
24 how -- how are the conditions that we received
25 from the Deputy Planning Director related to

1 the conditions you're reading? Because that
2 last condition, the figure on the one from the
3 Planning Department is 5 million.

4 CHAIR MOLINA: Yeah, well, what we'll do,
5 Mr. Medeiros, we're picking up where we left
6 off in March, and then we'll later on refer to
7 Ms. Deputy Director Suyama's revised
8 conditions as well.

9 COUNCILMEMBER MEDEIROS: Okay, thank you, Chair.

10 CHAIR MOLINA: So procedurally, let's finish up and
11 then we can go back and, you know, have a
12 discussion and make whatever necessary
13 adjustments that need to be done.

14 Staff, continue.

15 MS. NAKATA: Condition Number 12, "That WCPT/GW Land
16 Associates, LLC shall execute a unilateral
17 agreement with the Department of Parks and
18 Recreation to set the terms and conditions for
19 non-profit play and for use of the golf course
20 by the Junior Golf Program, as represented by
21 WCPT/GW Land Associates, LLC."

22 CHAIR MOLINA: I think that will merit further
23 discussion down the road. Okay. Next,
24 Condition 13.

25 MS. NAKATA: Condition Number 13, "That a permanent

1 cultural plan developed with the approval of
2 the Maui County Cultural Resources Commission
3 shall be developed relating to access to
4 cultural sites within Kihei-Makena Project
5 District 9 (Wailea 670)."

6 CHAIR MOLINA: Members, do we have consensus or a
7 need for a discussion? Member Anderson.

8 COUNCILMEMBER ANDERSON: We need to discuss it.

9 CHAIR MOLINA: Okay. Staff, next condition.

10 MS. NAKATA: Condition Number 14, "That WCPT/GW Land
11 Associates, LLC, its successors and permitted
12 assigns, shall use effluent to irrigate the
13 golf course when it becomes available;
14 however, in the interim, WCPT/GW Land
15 Associates, LLC, its successors and permitted
16 assigns, may utilize nonpotable groundwater."

17 CHAIR MOLINA: Members, discussion? Member
18 Anderson.

19 COUNCILMEMBER ANDERSON: Yes, Mr. Chairman, who --
20 who wrote this condition? Is this a condition
21 from the Planning Commission or Planning
22 Department or...

23 CHAIR MOLINA: I believe if you look on the front it
24 was from the Corporation Counsel, which was
25 part of a consolidated bill.

1 Mr. Giroux, would you like to elaborate
2 on that, or Staff?

3 MS. NAKATA: Staff would just indicate that when the
4 bill was consolidated, the two separate sets
5 of conditions were combined, so there is some
6 measure of redundancy.

7 COUNCILMEMBER ANDERSON: And so are -- when you say
8 the two sets of conditions, where were those
9 conditions from?

10 MS. NAKATA: From the old zoning ordinance as well
11 as the proposed Change in Zoning. Let me back
12 up. There were exhibits attached to both
13 individual Change in Zoning bills. Those two
14 bills were consolidated into one bill, and at
15 that time the two sets of conditions were
16 combined.

17 COUNCILMEMBER ANDERSON: So we don't really know
18 which one of these conditions are currently
19 law?

20 CHAIR MOLINA: Staff, or Mr. Giroux?

21 COUNCILMEMBER ANDERSON: I mean, I think that would
22 be helpful, Mr. Chairman, if we would know
23 among all these conditions which ones have
24 already been adopted by a previous Council.
25 Because I also see there's -- there's

1 conditions missing that were adopted.

2 CHAIR MOLINA: Staff, are you able to provide us
3 with information at this time, or can you do
4 it at a later point?

5 MS. NAKATA: Let me try to clarify. In point 1 on
6 the Committee's meeting agenda there is a
7 draft bill under 1A as well as a draft bill
8 under 1B. Those two draft Change in Zoning
9 bills were combined to form this bill that's
10 listed on your agenda as Item No. 2. So the
11 two proposed sets of conditions of zoning were
12 combined in order to create this bill that's
13 listed on your agenda as Item No. 2.

14 COUNCILMEMBER ANDERSON: And so you're not showing
15 us any of the conditions that we would be
16 repealing in this action?

17 MS. NAKATA: That's correct.

18 COUNCILMEMBER ANDERSON: Well, you know, I find that
19 as -- I think that's a flaw, because if we're
20 going to be repealing conditions that already
21 exist, we should know what they are at least.
22 So if we could be provided that, Mr. Chairman,
23 I think Members deserve to be making an
24 informed decision on behalf of the public,
25 and, as I said, these conditions were put on

1 this property running with the land currently
2 today by a previous Council. And if we're
3 going to just repeal them, we should certainly
4 know what we're repealing and replacing it
5 with.

6 MS. NAKATA: Staff's recollection is that there were
7 two conditions that were proposed for repeal,
8 and those were itemized in the Chair's request
9 to Corporation Counsel for the consolidated
10 bill. So Staff will try to locate that.

11 COUNCILMEMBER ANDERSON: So you're saying only two
12 of the existing conditions will be repealed?

13 MS. NAKATA: That's my recollection relating to the
14 Little League field and I believe the golf
15 play, but I'll check on that.

16 CHAIR MOLINA: We'll make a note of that, Member
17 Anderson, and follow through.

18 COUNCILMEMBER ANDERSON: Thank you, Mr. Chair.

19 CHAIR MOLINA: Okay, Staff, Condition Number 14.

20 MS. NAKATA: Condition Number 14, "That WCPT/GW Land
21 Associates, LLC, its successors, and permitted
22 assigns, shall use effluent to irrigate the
23 golf course when it becomes available;
24 however, in the interim, WCPT/GW Land
25 Associates, LLC, its successors and permitted

1 assigns, may utilize nonpotable groundwater."

2 CHAIR MOLINA: No required further discussion.

3 Okay. So noted.

4 COUNCILMEMBER ANDERSON: Mr. Chair?

5 CHAIR MOLINA: Member Anderson?

6 COUNCILMEMBER ANDERSON: Yeah, this is where we

7 stopped and --

8 CHAIR MOLINA: Sorry.

9 COUNCILMEMBER ANDERSON: -- and, you know, it

10 doesn't say what effluent, whose effluent, and

11 I think this was a condition that was written

12 some years ago when it was anticipated that

13 they would be participating in the expansion

14 of the Kihei Wastewater Plant, and putting in,

15 you know, a reclaimed waterline. So I think

16 we need to revisit that also.

17 CHAIR MOLINA: Okay, Chair will make note of that.

18 COUNCILMEMBER ANDERSON: And it's already law in the

19 County Code that you can't use potable water

20 on a golf course, so just for

21 people's understanding.

22 CHAIR MOLINA: Thank you, Member Anderson.

23 Moving on, Staff.

24 MS. NAKATA: Condition Number 15, "That during

25 construction all dust control shall utilize

1 nonpotable water or effluent, which may be
2 obtained from the Kihei Wastewater Reclamation
3 Facility when available."

4 CHAIR MOLINA: Members, comments? Further
5 discussion? Member Anderson?

6 COUNCILMEMBER ANDERSON: I -- you know, if you're
7 open to any changes, I wouldn't have any
8 objection to this, but I think it needs to be
9 stronger. It needs to say, "During
10 construction all dust control shall utilize
11 nonpotable water or effluent which shall be
12 obtained from the Kihei Wastewater Reclamation
13 Facility, period."

14 Because we had a presentation the other
15 day in the Water Resources Committee, they've
16 got 70 percent of that effluent just going
17 down injection wells, and they told us that
18 they're getting more use from construction
19 people of this effluent. So I don't see any
20 reason why we should not make it just a firm
21 requirement, not a "may," but a "shall."

22 CHAIR MOLINA: Okay.

23 COUNCILMEMBER ANDERSON: And take off the "when
24 available".

25 CHAIR MOLINA: Members, do we have consensus if we

1 make the language change?

2 COUNCILMEMBER MATEO: Chairman?

3 CHAIR MOLINA: Okay, Mr. Mateo?

4 COUNCILMEMBER MATEO: Chairman, I don't have a

5 problem with changing the "may" to "shall".

6 My concern would be at that same presentation

7 we're just not sure at this point the

8 capability of the County to actually produce,

9 because that was their initial problem. So I

10 don't have the problem with "shall," but I

11 don't know if we should remove "when

12 available," because it would be indicative of

13 the County's ability to actually produce that

14 increase of water.

15 CHAIR MOLINA: Okay. Members, what we'll do is

16 we'll come back, unless you would like to make

17 the adjustments now, Members?

18 COUNCILMEMBER ANDERSON: Wait a minute, Chair, for

19 clarification.

20 CHAIR MOLINA: Member Anderson?

21 COUNCILMEMBER ANDERSON: With all due respect to

22 Member Mateo, they are producing the R-1

23 water. They're injecting R-1 water.

24 COUNCILMEMBER MATEO: It -- Chairman?

25 CHAIR MOLINA: Member Mateo?

1 COUNCILMEMBER MATEO: It wasn't the fact that
2 they -- that they were not producing. It
3 was -- the issue was they don't have the
4 capability to increase the amount of reused
5 water. There was a limitation on it.

6 COUNCILMEMBER ANDERSON: It's because they don't
7 have the lines.

8 COUNCILMEMBER MOLINA: All right, Members, I think
9 we have a slight disagreement. Why don't we
10 just come back to that. Okay.

11 Okay, Staff, next condition, please?

12 MS. NAKATA: Mr. Chair, Staff does have that
13 correspondence that indicates the changes that
14 were made when the bills were consolidated if
15 you'd like Staff to respond to that. It was
16 dated December 27, 2006 from then Chair of the
17 Land Use Committee to Corporation Counsel, and
18 there is a fairly lengthy explanation in the
19 memo of the reason for the consolidation and
20 the effects.

21 CHAIR MOLINA: Okay. So I take it that's in our
22 binders some place, in one of the many --
23 okay. I think at a later point we can go and
24 discuss that. The Chair would like to proceed
25 with the discussion of the next condition.

1 MS. NAKATA: Condition Number 16, "That WCPT/GW Land
2 Associates, LLC, its successors and permitted
3 assigns, shall participate in their fair share
4 of development and funding of the wastewater
5 and the effluent transmission system between
6 the project site and the Kihei Wastewater
7 Reclamation Facility."

8 CHAIR MOLINA: Further discussion, Members? No? Do
9 we have consensus on this? Okay, Members, we
10 have consensus.

11 COUNCILMEMBER ANDERSON: Well, Chair?

12 CHAIR MOLINA: Member Anderson?

13 COUNCILMEMBER ANDERSON: I don't think there's
14 consensus, because it kind of -- you know, I
15 mean, we're going back to 14, so to me, we
16 need to consolidate 14 and 17 and make a
17 decision, a policy decision, if we're going to
18 allow a private wastewater system, which, you
19 know, all of their previous entitlements say
20 that they will hook up to the Kihei Wastewater
21 System and they will provide the upgrades
22 necessary to do that. So --

23 CHAIR MOLINA: All right, we'll come back and do
24 more discussion on that particular condition.

25 Staff, continue.

1 MS. NAKATA: Condition Number 17, "That WCPT/GW Land
2 Associates, LLC, its successors and permitted
3 assigns, shall connect to the public
4 wastewater reclamation facility for treatment
5 of wastewater when it becomes feasible."

6 CHAIR MOLINA: Discussion, Members?

7 COUNCILMEMBER ANDERSON: I think that falls in line,
8 Chairman.

9 CHAIR MOLINA: Okay. All right, Mr. Hokama.

10 COUNCILMEMBER HOKAMA: I would ask either Planning
11 or Corporation Counsel what was their
12 understanding of language "becomes feasible"?

13 CHAIR MOLINA: Okay, Planning Department or
14 Corporation Counsel, Mr. Giroux or
15 Mr. Yoshida, can you respond to Member
16 Hokama's request, or question?

17 MR. GIROUX: I think the word "feasible" basically
18 leaves it to the availability of that
19 resource. I'm not a wastewater expert, so I
20 wouldn't be able to comment on, you know, when
21 something is feasible. I think that would
22 take an engineering background and maybe some
23 understanding of the infrastructure at the
24 time.

25 COUNCILMEMBER HOKAMA: Chairman, if I may, please.

1 CHAIR MOLINA: Proceed, Mr. Hokama.

2 COUNCILMEMBER HOKAMA: Thank you, Mr. Chairman. I
3 would share with my Committee Members this
4 evening that I don't think we need the word
5 "when it becomes feasible." I support the
6 requirement they connect to the public County
7 system. We build and appropriate large
8 amounts of monies to increase capacity of the
9 public system, and upon additional hook-ups,
10 Mr. Chairman, we're then able to further
11 spread out a total cost of the requirement to
12 run and operate our system as provided by
13 federal public law to reduce hopefully the per
14 unit amount that we charge our residents or --
15 for their dwelling units.

16 I think we should just require them to
17 either make the improvements, if there's not
18 enough capacity, or until such time -- until
19 such time that then they can create the
20 dwelling unit to connect to the system. So if
21 the system is not ready, then don't give them
22 building permits to build houses. Let them do
23 the infrastructure expansion requirements
24 first and then consider allowing them to have
25 the building permits, but this is something

1 that we have done for decades, Mr. Chairman.
2 Put in the upfront increased CIP improvements
3 for the additional capacity, and then as those
4 who come and join the system we've been able
5 to reduce the per unit cost as much as
6 possible.

7 To change this now puts the burden on
8 the existing users to pay for all that
9 increased capacity we've built in to accept
10 for the approved new developments, and I would
11 just share that with the Members this
12 afternoon, Mr. Chairman.

13 CHAIR MOLINA: Thank you, Member Hokama. We'll come
14 back for a further discussion on this one,
15 then.

16 Okay, Staff, next condition?

17 MS. NAKATA: Mr. Chair, Condition No. 18 relates to
18 the Department of Health's 12 conditions
19 applicable to all new golf course development.
20 Did you want each of the subparts read?

21 CHAIR MOLINA: Yeah, that's a pretty lengthy one.
22 Members, you want Staff to go ahead and read
23 this out? There's like 12 I guess subgroups
24 or -- it's quite lengthy, Members. Do you
25 need Staff to read it out aloud? I believe we

1 will have a discussion. Let's just make it
2 simple.

3 COUNCILMEMBER JOHNSON: I have a question.

4 CHAIR MOLINA: Yes, Member Johnson?

5 COUNCILMEMBER JOHNSON: Yeah, my question is a lot
6 of these conditions, because we received
7 public testimony from a number of people about
8 whether or not another golf course is even
9 appropriate, so I think before we put in a
10 condition about a golf course, we first have
11 to make the determination, are we okay? Is
12 there sufficient water? Given the Upcountry
13 residents' concerns and, you know, even the
14 transmission of water to these areas, I don't
15 even know if we have the capability to be able
16 to allow another golf course if we don't have
17 the water and know where the water is coming
18 from, and just is this something that the
19 Committee is -- you know, should decide before
20 we go drafting a condition with the assumption
21 that the golf course is perfectly okay.

22 So that would be my request. Let's
23 figure out whether we're even going to go
24 there.

25 CHAIR MOLINA: Okay, thank you, Member Johnson. We

1 will return to this for further discussion.

2 Staff, next condition?

3 MS. NAKATA: Condition Number 19, which is the last
4 condition, "That WCPT/GW Land Associates, LLC,
5 its successors and permitted assigns, shall
6 execute appropriate agreements with the State
7 of Hawaii and County of Maui agencies
8 regarding participation in improvements of
9 infrastructure and public facilities where
10 such improvements are reasonably related to
11 WCPT/GW Land Associates, LLC's project."

12 CHAIR MOLINA: Members, further discussion needed?
13 Member Anderson?

14 COUNCILMEMBER ANDERSON: You know, I mean, this
15 isn't worth the paper its written on,
16 Mr. Chairman. And we all know that, because
17 just look around. You know, unless we know
18 exactly what improvements of infrastructure
19 are needed and we can tie it to the build out
20 through conditions, this is -- means nothing.
21 And I would remind Members that the Kihei
22 Community Plan has policy requirement all the
23 way through it that infrastructure shall be
24 concurrent with development, that no
25 development will go forward unless there is

1 adequate infrastructure in place. And as I
2 said, we don't, you know -- we haven't been
3 allowed the discussion to find out exactly how
4 much infrastructure is deficit. When I have
5 the opportunity, I will let you know.

6 CHAIR MOLINA: Okay, thank you, Member Anderson.

7 Okay, Members, we'll come back to that.

8 Staff, any other conditions to consider
9 for the -- at this point?

10 MS. NAKATA: Well --

11 CHAIR MOLINA: I'm sorry, go ahead.

12 MS. NAKATA: The Members were also distributed the
13 draft set of revised conditions from the
14 planner on this, Colleen Suyama, applicant's
15 March 13, 2007 set of draft conditions, of
16 which there are 33, Planning's comments on
17 this set of proposed conditions dated July
18 3rd, 2007.

19 CHAIR MOLINA: Okay, Members, Chair would call for a
20 short recess to confer with Staff. Meeting in
21 recess. (Gavel).

22 **RECESS: 5:42 p.m.**

23 **RECONVENE: 5:57 p.m.**

24 CHAIR MOLINA: (Gavel). The recessed Land Use
25 Committee meeting of July 25th, 2007 is now

1 back in session. Thank you very much for that
2 break, Members. We will continue now with the
3 saga or the conditions. It's like an epic
4 story here.

5 Members, we were given a document by
6 Deputy Planning Director Colleen Suyama with
7 some potential revisions to some of the
8 conditions that you had just dealt with, and
9 that is what is up on the wall currently. And
10 I would ask you to also work off the Wailea
11 670 draft conditions. On the bottom it has
12 source 3/13/07 memo from the Committee Chair.
13 Basically the conditions that have been
14 submitted by the Deputy Planning Director make
15 reference to the condition that the applicant
16 had submitted.

17 So, for example, you'll see the Deputy
18 Planning Director's Condition Number 2, that
19 is equated to Condition Number 6 on the Wailea
20 670 draft conditions.

21 Staff, am I correct?

22 MS. NAKATA: That's correct, Mr. Chair.

23 CHAIR MOLINA: Okay, Members, do you have an
24 understanding of this? Member Anderson?

25 COUNCILMEMBER ANDERSON: So basically these

1 conditions from our Deputy Planning Director
2 are actually conditions from the applicant?

3 CHAIR MOLINA: I believe so. That is correct.

4 MS. NAKATA: No. Mr. Chair.

5 CHAIR MOLINA: From the Planning Commission, am I
6 correct? Staff?

7 MS. NAKATA: My understanding is that the Planning
8 Director attempted to revise the conditions
9 that were proposed by the Planning Commission,
10 but what the Chair is referencing is that the
11 same subject matter is covered under the
12 applicant's proposed or draft Condition No. 6.
13 So, for instance, the traffic or
14 transportation improvement Condition Number 2
15 would correlate with the applicant's draft
16 Condition Number 6.

17 CHAIR MOLINA: And with some revisions as proposed
18 by the Deputy Planning Director, so just for
19 informational purposes, if you would like to
20 follow along with the applicant's proposals
21 versus the proposals submitted by the Deputy
22 Planning Director, so...

23 COUNCILMEMBER ANDERSON: And do we know -- excuse
24 me, Mr. Chairman.

25 CHAIR MOLINA: Go ahead, Member Anderson.

1 COUNCILMEMBER ANDERSON: Do we know if any of these
2 conditions proposed by the applicant and the
3 Deputy Planning Director, if any of these
4 conditions are conditions that were
5 recommended by the Planning Commission, which
6 are really the conditions we're supposed to be
7 working from?

8 CHAIR MOLINA: I guess I would ask Mr. Yoshida for a
9 response.

10 MR. YOSHIDA: Thank you, Mr. Chair, Members of the
11 Committee. I believe the Deputy Planning
12 Director was working off the applicant's
13 proposed conditions and trying to refine them
14 or modify them, such as in their -- in the
15 Deputy Director's proposed Condition Number 3,
16 where the -- we got into voluntary
17 contribution for traffic improvements to be
18 paid to the County of Maui in the amount equal
19 to 5,000 per unit, I guess this shall be
20 credited against future traffic impact fees
21 adopted by the County. The contribution shall
22 be paid to the County prior to preliminary
23 subdivision approval or issuance of a building
24 permit. So the Deputy tried to have a trigger
25 or a critical point in time when this

1 condition need to be -- needs to be fulfilled.
2 So I think for the most part she either tried
3 to clarify or tried to provide a trigger as to
4 when the condition needs to be fulfilled.

5 COUNCILMEMBER ANDERSON: And does she have any
6 supporting documentation as far as a traffic
7 impact analysis that supports the trigger?

8 CHAIR MOLINA: Mr. Yoshida?

9 MR. YOSHIDA: I think she's just addressing the
10 proposal that the applicant make a voluntary
11 contribution for traffic improvements to the
12 County in the amount of -- equal to \$5,000 per
13 unit, and there wasn't clarity as to when it
14 needed to be fulfilled.

15 CHAIR MOLINA: Members, we'll go ahead and come back
16 to this at a later point, needless to say.
17 And it's difficult without Ms. Suyama here.

18 COUNCILMEMBER ANDERSON: You know, Mr. Chair, we're
19 supposed to be working off the conditions that
20 come to us, the recommended conditions that
21 come to us from the Planning Commission, and
22 then we have the purview to fine tune them,
23 and, you know, if we had the chance to ask
24 questions of Department of Public Works, State
25 DOT, and the applicant regarding these traffic

1 reports, then we would be informed as to when
2 the triggers are and we could condition this
3 to the build out.

4 Basically the Deputy Director is asking
5 us to take her word for it based on the
6 applicant's word with no substantiating
7 evidence and accepted and approved traffic
8 impact analysis report.

9 CHAIR MOLINA: Okay. All right. Thank you, Member
10 Anderson, for those comments. The Chair will
11 recognize that.

12 Member Pontanilla?

13 COUNCILMEMBER PONTANILLA: I just was going to add
14 that when I read the Deputy's statement here,
15 towards the end of the sentence it says that
16 which shall be paid to the County and created
17 against any future traffic impact fees that
18 may be adopted by the County. Right now we're
19 in the process of doing that, so it's the
20 difference.

21 CHAIR MOLINA: Okay. Members, what I'd like to do,
22 let's go ahead for the record look at the --
23 hear out the conditions that the Deputy
24 Planning Director gave to us and then from
25 there -- I'm just trying to make sure the

1 documents you've been handed out tonight and
2 just for clarification purposes, and then if
3 you have questions about them, then we can go
4 ahead with that.

5 So, Staff, could you go ahead and start
6 again on number 2, I guess, off the Deputy
7 Planning Director's.

8 MS. NAKATA: Condition Number 2, "WCPT/GW Land
9 Associates, LLC, its successors and permitted
10 assigns, shall implement the following traffic
11 improvements: A. Piilani Highway, from
12 Kilohana Drive to Wailea Ike Drive, shall be
13 upgraded to four lanes of traffic. The
14 improvements shall be constructed prior to
15 occupancy of the first unit. B. Extension of
16 Piilani Highway for two lanes of traffic from
17 Wailea Ike Drive to Kaukahi Street. The
18 improvement shall be constructed at or prior
19 to the completion of 50 percent of the
20 project. C. Signalization of the Piilani
21 Highway/Okolani Drive/Mikioi Place
22 intersection and provision of an exclusive
23 left-turn lane on Okolani Drive before
24 occupancy of the first unit. D. Modification
25 of the Piilani Highway /Wailea Ike Drive

1 intersection into a signalized "T"
2 intersection and provision of a free
3 right-turn lane from Piilani Highway to Wailea
4 Ike Drive and a second right turn lane from
5 Wailea Ike Drive to northbound Piilani Highway
6 before occupancy of the first unit. E. Modify
7 the Wailea Alanui/Wailea Ike Drive
8 intersection to add a signalized double
9 right-turn movement from northbound to
10 eastbound turning traffic and providing two
11 left-turn lanes for southbound traffic from
12 Wailea Ike Drive prior to occupancy of the
13 first unit. F. Modify the Piilani Highway/
14 Kilohana Drive/Mapu Place intersection to
15 provide an exclusive left-turn lane and the
16 southbound Piilani Highway approach shall have
17 an exclusive right-turn lane into Mapu Place
18 prior to occupancy of the first unit. G.
19 Signalization of the Wailea Ike Drive/Kalai
20 Waa Street intersection in coordination with
21 Wailea Resort and Makena Resort when
22 warranted. H. Signalization of the Wailea
23 Alanui /Kaukahi Drive/Kaukahi Street
24 intersection in coordination with Wailea
25 Resort and Makena Resort when warranted.

1 CHAIR MOLINA: Okay, Members, during the break the
2 Chair was made aware that the Public Works
3 Director -- Deputy Director Mr. Miyamoto had
4 wanted to make some clarifications on this, so
5 if you'll allow the Chair to have Mr. Miyamoto
6 come up to make some clarifications on this.

7 COUNCIL MEMBERS: No objections.

8 CHAIR MOLINA: Thank you, Members.

9 MR. MIYAMOTO: Thank you, Mr. Chair. In looking at
10 the recommendations by the Deputy Planning
11 Director, I noticed that under 2B and 2D there
12 seems to be a slight conflict. It appears
13 that 2B says to extend Piilani Highway beyond
14 Wailea Ike to Kaukahi, and then 2D says to
15 create the "T" intersection at Wailea Ike and
16 Piilani Highway.

17 And in looking at the -- in
18 understanding what the State DOT had said
19 previously, that they had no plans to extend
20 Piilani Highway beyond Wailea Ike, and to look
21 at the right-of-way map, that right-of-way
22 would be within the State's right-of-way. So
23 it's sort of unclear what was intended by 2B,
24 whether or not 2B was one of the internal
25 roadways that the preliminary site plan shows

1 as tying back into Kaukahi. So just trying to
2 see if there's some clarity in those two
3 statements.

4 CHAIR MOLINA: Okay. Members? Member Anderson.

5 COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman.

6 You know, from the time this project first got
7 community plan designation, all the way
8 through their first State Land Use District
9 Boundary Amendment, their first County Change
10 in Zoning ordinance, and their first County
11 Community Plan Amendment, it was always the
12 intention that Piilani Highway would
13 eventually be extended and that the developer
14 would be responsible for that extension, and
15 DOT states that back in 1990. And in their
16 current review letter that they did for this
17 project in 2001, they reiterated that the
18 developer would be responsible for the
19 extension of Piilani.

20 Now, just because they say they have --
21 the State says they have no intention of
22 extending the highway, does that let the
23 developer off the hook? I mean, the whole
24 point of this project came about around that
25 extension, and that extension gives the people

1 in that very southern portion of Kihei an
2 escape route. And, you know, I mean, if we
3 all just want to be chumps and say because the
4 State doesn't want to do it and let the
5 developer off the hook, then I think we're
6 being irresponsible, because the whole point
7 of this project being allowed to be designated
8 was because the intention was for that
9 extension to happen. So...

10 CHAIR MOLINA: Mr. Director, you have a response to
11 Member Anderson's comments?

12 MR. MIYAMOTO: Given that statement, then I would
13 see that 2B would need to be modified to
14 reflect that it's no longer a "T"
15 intersection. That was the only thing I was
16 trying to point out, that the two seem to
17 conflict. One says to leave it as a "T"
18 intersection and the other says to extend it.
19 So just for consistency, that the two
20 statements be...

21 CHAIR MOLINA: Okay. Any other questions for the
22 Public Works Director? Member Johnson?

23 COUNCILMEMBER JOHNSON: Yes, with regard to the
24 language of certificate of occupancy, we've
25 had this arise a number of times, and not all

1 units are issued a CO. So with that language
2 in there, I mean, do you guys actually issue
3 certificates of occupancy, does anybody, on a
4 regular dwelling unit?

5 MR. MIYAMOTO: Mr. Chair, if I may respond?

6 CHAIR MOLINA: Mr. Director?

7 MR. MIYAMOTO: If you remember what happened with
8 the Spencer project down here and we went into
9 that same situation where we would not allow
10 them to occupy unless the conditions were met,
11 so typically you're correct, we don't issue
12 the certificate of occupancy for the
13 residents, but because there were some
14 outstanding conditions in his application, you
15 know, we made it a condition that before he
16 can occupy, he needed to meet those
17 requirements.

18 COUNCILMEMBER JOHNSON: And I know you were
19 particularly, and Water were really, I guess,
20 being chastised for holding up this whole
21 thing with regard to the Spencer project. So
22 in order to avoid that same type of scenario,
23 wouldn't you think that it would be better to
24 be assured that those components are in place
25 prior to even the issuance of any permits?

1 Because what ends up happening is the poor
2 people are so upset, here they can't get into
3 their units so there's this tremendous
4 pressure coming down on you, whether it's up
5 to standards or not up to standards, to get
6 them in there. So the damage is already done,
7 so do you still support this kind of method?

8 CHAIR MOLINA: Mr. Director, are you able to respond
9 at this time to that?

10 MR. MIYAMOTO: Typically this is the process we go
11 through, and one of the draw backs of having a
12 lot of the improvements prior to the actual
13 construction is that a lot of the construction
14 traffic now is impacting your brand new
15 improvement that you're doing. That's why
16 before -- you know, the construction traffic
17 obviously is the heavier type vehicle than
18 your normal daily traffic, and, you know,
19 building some of those improvements prior to
20 issuing any construction permits can be very
21 impactive. You know, a lot of that
22 improvements may be overly taxed by the
23 additional -- the heavy construction traffic
24 that may go through it. And, you know, it's
25 certainly something we could consider, like

1 you're saying, to have them in place, I know,
2 before the building permits are issued, but I
3 guess the drawback that I see is that, you
4 know, that improvements would probably have to
5 be rebuilt after the development has started,
6 and whether it's the -- probably they're going
7 to be looking to the developer to build it
8 twice.

9 COUNCILMEMBER JOHNSON: Well, I mean, your
10 underground improvements are not going to be
11 that impacted. I mean, wouldn't you even
12 require a certain level of infrastructure to
13 be in place anyway?

14 MR. MIYAMOTO: Yes, a project of this size would
15 naturally be phased, and we would see as the
16 project would move into the next phase, Phase
17 II, when they start developing these types of
18 construction plans, like a drainage plan. As
19 they start developing it more, we would go
20 through that review process of a more detailed
21 drainage plan and we would see -- they would
22 have to demonstrate to us how they would phase
23 this project, how they would meet our
24 requirements of controlling all of their run
25 off, how we would meet their access

1 requirements, and so all of that would be
2 something that they would have to develop in
3 their phase plan.

4 COUNCILMEMBER JOHNSON: Yeah, and I guess the other
5 question I have for you would be that we saw
6 what happened down in -- it was not
7 necessarily Mr. Spencer's project that
8 contributed to all the damage done to the
9 newly resurfaced and newly redone highway. It
10 was other developments, and some of the
11 construction traffic that right after the
12 State went and completed a lot of the work
13 that was needed on the resurfacing of
14 Honoapiilani Highway, right away that's a
15 public project, and it completely had to be
16 redone.

17 So, I mean, I see that, but then I also
18 see that the development actually contributed
19 to the degrading of infrastructure completed
20 with public funds, and yet where's the equity
21 for the taxpayer? I mean, it's one thing to
22 say, yeah, the developer, you know, might not
23 appreciate that, but we don't appreciate it
24 either. So I look at it, you know, what's
25 good for the goose is good for the gander. So

1 if we're going to get into that situation,
2 then, fine, you know, but I just have a
3 problem with the way this is constructed, and
4 I wanted to know your thoughts.

5 MR. MIYAMOTO: Yeah.

6 CHAIR MOLINA: Member Johnson and Mr. Director, let
7 you respond to that, and we're going to come
8 back to this eventually. I just wanted to get
9 clarification on Deputy Planning Director
10 Suyama's I guess conditions that was submitted
11 to us. So I'd like to move on and then
12 afterwards we will come back at a later point.

13 So, Mr. Miyamoto, do you want to finish
14 up a response to Member Johnson.

15 MR. MIYAMOTO: Just to provide some insight on what
16 happened with Honoapiilani Highway. The --
17 when the state was resurfacing it, the
18 intersection of Waiko Road and Honoapiilani
19 Highway, the State did coordinate well with
20 the developers at that point, and that a lot
21 of the subsurface infrastructure was put -- if
22 you recall, there was moment where just that
23 intersection wasn't resurfaced. That was
24 because they were trying to schedule in those
25 underground improvements, those cables that

1 they put under, the conduits for the cables
2 that they put under, those concrete pole boxes
3 so that they could tie the cables into it.
4 Those were being coordinated with the actual
5 developer, and that's why the delay in that
6 resurfacing, but all of that was done,
7 coordinated, and it's sort of an example of
8 good and bad planning.

9 So at the intersection of Waiko they did
10 a great job, they planned it, they put all the
11 subsurface in, resurfaced it once, but as
12 you've seen by the current actions at the next
13 adjacent intersection, the coordination wasn't
14 as good. They resurfaced and they're actually
15 going back and doing some cuts at that point.

16 CHAIR MOLINA: Okay, thank you. And thank you
17 for...

18 COUNCILMEMBER ANDERSON: Chair, I have a question?

19 CHAIR MOLINA: One question, please.

20 COUNCILMEMBER ANDERSON: Mr. Miyamoto, first of all,
21 I'd like to thank you for taking your job
22 seriously. You did an excellent analysis of
23 the first traffic impact report that was
24 done -- well, actually it was I think the
25 second traffic report, the May '05 revised

1 update traffic study, and you had 29 -- 31
2 comments of criticism of that report, and
3 the -- you informed us on March 9th, '06 that
4 the applicant responded favorably and
5 corrected their report on the first four
6 items.

7 And so my question is -- and I don't
8 know how moot this point is, because I'm going
9 to -- since I only get one question, I'll ask
10 you two things. The other 28 some comments
11 that you made, were they ever resolved? And
12 if they were, were they resolved in the
13 subsequent traffic report of September '06,
14 and have you reviewed that report?

15 CHAIR MOLINA: Mr. Director?

16 MR. MIYAMOTO: Yes, the -- all our comments that's
17 in that letter, all 30 plus comments were
18 addressed in the -- I think it's the June
19 version of the study. So we actually went
20 through and marked on every page -- you know,
21 for every comment, we wrote down what page of
22 the new report addressed our comments and if
23 they addressed it properly, adequately for our
24 review, and they did respond very favorably to
25 all of our comments.

1 COUNCILMEMBER ANDERSON: And that was in what
2 report? You said June.

3 MR. MIYAMOTO: The subsequent report -- I guess the
4 first one was in May and they did a subsequent
5 report that was an updated report in I think
6 it was June, the following month. They took
7 all our comments --

8 COUNCILMEMBER ANDERSON: June '05

9 MR. MIYAMOTO: Yeah.

10 COUNCILMEMBER ANDERSON: Well, I'm asking you about
11 the report, the final report that we got,
12 which is dated September '06; did you ever
13 review that?

14 MR. MIYAMOTO: If I remember right, the September
15 '06 report was not one that was intended
16 for -- the purpose of that report was at the
17 request of State DOT to determine the timing
18 of when Piilani Highway needed to be widened.
19 That's why it was a joint effort between the
20 applicant, Makena, and the Wailea Resort, and
21 because those three large entities have a lot
22 of undeveloped land, it was that study's
23 intent to try and determine at what point
24 would that roadway need to be widened, and,
25 therefore, the applicant would be responsible

1 coordinating when that work would be done and
2 so that there wouldn't be traffic congestion
3 in that area.

4 CHAIR MOLINA: Okay. Thank you, Mr. Miyamoto. You
5 responded. I was little flexible on --

6 COUNCILMEMBER ANDERSON: Will we have time,
7 Mr. Chair, to ask him further about Kahi
8 Street?

9 CHAIR MOLINA: Yes, we will come back. Again, I'm
10 just trying to clarify some of the -- I guess
11 Director -- Deputy Planning Director Suyama's
12 letter that was dropped off to the Committee,
13 so just so the Members don't -- you know, want
14 some understanding as to why the Deputy
15 Planning Director is clarifying these
16 conditions, so if you could -- I beg your
17 indulgence, Committee Members.

18 Staff, continue on with Number 3,
19 because I'm just trying to find out where --
20 what adjustments were made to the applicant's
21 proposals as well, because that has come from
22 the Planning Department.

23 Staff, continue.

24 MS. NAKATA: "As represented, WCPT/GW Land
25 Associates, LLC, its successors and permitted

1 assigns, shall make a voluntary contribution
2 for traffic improvements in an amount equal to
3 \$5,000 per unit, which shall be paid to the
4 County and credited against any future traffic
5 impact fees that may be adopted by the County.
6 The contribution shall be paid to the County
7 prior to preliminary subdivision approval, or
8 issuance of a building permit. An agreement
9 shall be executed between WCPT/GW Land
10 Associates, LLC and the County stipulating the
11 terms and conditions of the voluntary
12 contribution prior to issuance of any
13 ministerial approvals or permits by the
14 County."

15 CHAIR MOLINA: Okay, Members, this condition
16 correlates with the applicant's submittal,
17 Number 7 on the applicant's condition,
18 recommendation, just for clarification. Okay.

19 COUNCILMEMBER ANDERSON: Chair?

20 CHAIR MOLINA: Member Anderson?

21 COUNCILMEMBER ANDERSON: Yeah, for clarification.

22 So are you -- you're not asking us if we have
23 any problems with this? You're just going
24 through and reading it?

25 CHAIR MOLINA: Yeah.

1 COUNCILMEMBER ANDERSON: I mean, I'm kind of
2 confused as to what the exercise is.

3 CHAIR MOLINA: Yeah, we'll get back to this. I just
4 want to give the Members an understanding of
5 what was submitted to us. Because we really
6 didn't have enough time to make the
7 clarification from the Deputy Planning
8 Director, so it's sort of like -- felt like it
9 was almost like a bomb just dropped on us. So
10 I just want to make sure we all have a deep
11 understanding as to what the Deputy Planning
12 Director is dropping off to us and what it
13 correlates to.

14 COUNCILMEMBER ANDERSON: I appreciate that. It
15 would be helpful if she was here, because then
16 we could ask her.

17 CHAIR MOLINA: And the Chair agrees with you. Okay.

18 COUNCILMEMBER ANDERSON: And, Mr. Chair, so you
19 don't want us to ask any questions about
20 these?

21 CHAIR MOLINA: For the time being, and then --
22 because we will be coming back to this.

23 Ms. Nakata, the proposed Condition
24 Number 4.

25 MS. NAKATA: "WCPT/GW Land Associates, LLC, its

1 successors and permitted assigns shall be
2 responsible for all required infrastructural
3 improvements for the project, including water
4 source and system improvements for potable use
5 and fire protection, drainage improvements,
6 traffic-related improvements, wastewater
7 system improvements, and utility upgrades, as
8 determined by the appropriate governmental
9 agencies and public utility companies. Said
10 improvements shall be constructed and
11 implemented concurrently with the development
12 of each phase of Kihei-Makena Project District
13 9 and shall be completed prior to issuance of
14 any certificate of occupancy or final
15 subdivision approval, unless improvements are
16 bonded by WCPT/GW Land Associates, LLC, its
17 successors and permitted assigns. WCPT/GW
18 Land Associates LLC shall execute appropriate
19 agreements with governmental agencies
20 regarding participation in improvements of
21 infrastructure and public facilities as
22 determined by the agencies."

23 CHAIR MOLINA: Okay, Members, and that correlates
24 with Condition Number 26 from the applicant.

25 Okay, Member Anderson?

1 COUNCILMEMBER ANDERSON: I mean, every -- you know,
2 unless they're bonded, well, they're always
3 bonded, so this really means nothing.

4 CHAIR MOLINA: Okay, thank you for your comments on
5 that.

6 Staff, moving on, Condition 5.

7 MS. NAKATA: "WCPT/GW Land Associates, LLC, its
8 successors and permitted assigns, shall be
9 provide workforce housing in accordance with
10 Chapter 2.96, Maui County Code (the
11 Residential Workforce Housing Policy). Should
12 any of the workforce housing be located off
13 site, the required 50 percent workforce
14 housing shall be based on the total number of
15 combined units for the off-site project and
16 Kihei-Makena Project District 9."

17 CHAIR MOLINA: Okay, Members, and that correlates
18 with number 16 from the applicant. Okay.
19 Staff, move on, Condition 6.

20 MS. NAKATA: "A drainage master plan and phasing
21 plan of improvements shall be submitted for
22 review and approval during the Phase II
23 Project District processing. Said plan shall
24 included the recommended drainage improvements
25 as represented in the Preliminary Drainage

1 Report. The County of Maui may require
2 periodic updates of the Drainage Master Plan
3 and Phasing Plan."

4 CHAIR MOLINA: Okay, and this correlates to
5 Condition Number 25 from the applicant.

6 Okay, Staff, continue, Number 7.

7 MS. NAKATA: "WCPT/GW Land Associates, LLC, its
8 successors and permitted assigns, shall
9 prepare an animal management plan that shall
10 be submitted during Phase II project district
11 processing and approved by the Department of
12 Land and Natural Resources prior to submittal
13 of Phase III project district processing.
14 Said plan shall include procedures for the
15 management of animal intrusions, including but
16 not limited to, construction of boundary or
17 perimeter fencing, wildlife control permits,
18 and rodent and feral cats control. WCPT/GW
19 Land Associates, LLC, its successors and
20 permitted assigns, shall implement the
21 approved animal management plan. The
22 Department of Land and Natural Resources may
23 require periodic updates of the plan."

24 CHAIR MOLINA: Okay, that correlates with Condition
25 Number 21 as proposed by the applicant. Okay.

1 Next, Staff.

2 MS. NAKATA: Number 8, "WCPT/GW Land Associates,
3 LLC, its successors and permitted assigns,
4 shall inform owners within Kihei-Makena
5 Project District 9 that the area is subject to
6 the intrusion of mammals, such as axis deer,
7 pigs, and rodents, and the impacts and
8 management plan associated with such
9 intrusions."

10 CHAIR MOLINA: Okay, and that correlates with --
11 Staff, you know, I'm having a hard time
12 reading that number. What does that correlate
13 to on the applicant's?

14 COUNCILMEMBER PONTANILLA: 22.

15 CHAIR MOLINA: Is that 23? 22? I think 22, that's
16 correct.

17 COUNCILMEMBER ANDERSON: Chair?

18 CHAIR MOLINA: Member Anderson?

19 COUNCILMEMBER ANDERSON: Since we're correlating, or
20 whatever, shouldn't we also be correlating
21 these conditions with the conditions we've
22 already got? Because --

23 CHAIR MOLINA: We'll eventually get to that, Member
24 Anderson.

25 COUNCILMEMBER ANDERSON: Oh, we will?

1 CHAIR MOLINA: Yeah. I know. We will.

2 COUNCILMEMBER ANDERSON: It would be nice to have a
3 matrix here.

4 CHAIR MOLINA: I know, and I apologize for that,
5 because, again, these conditions were just --
6 or clarifications of these conditions were
7 just given to us, so it's -- you know, I'm
8 trying to help everyone get a full
9 understanding on this. We are working with a
10 lot, so my apologies.

11 Okay, continue, Staff, Condition 9,
12 clarification from the Deputy Planning
13 Director.

14 MS. NAKATA: "WCPT/GW Land Associates, LLC, its
15 successors and permitted assigns, shall
16 prepare an assessment of the owl (Pueo or
17 Hawaiian Short-eared Owl) and the Hawaiian
18 Hoary Bat in coordination with the Department
19 of Land and Natural Resources, and, if
20 appropriate, mitigative measures shall be
21 incorporated into Kihei-Makena Project
22 District 9. Said assessment shall be prepared
23 prior to submittal of Phase II project
24 district processing."

25 CHAIR MOLINA: Okay, and that correlates to number

1 23 from the applicant.

2 Staff, continue.

3 MS. NAKATA: 10, "Nonpotable sources of water
4 including, but not limited to, the use of
5 treated effluent from the Kihei Wastewater
6 Reclamation Plant, shall be utilized for
7 irrigation purposes and construction
8 activities, including but not limited to, dust
9 control and equipment wash downs. Kihei
10 Makena Project District 9 shall include a dual
11 irrigation system as each individual
12 development occurs to ensure that a system
13 will be in place to utilize nonpotable sources
14 of water."

15 CHAIR MOLINA: And that correlates to Condition 18
16 from the applicant.

17 Staff?

18 MS. NAKATA: Number 11, "In lieu of the dedication
19 of a Little League field and related amenities
20 as originally specified in Ordinance No. 2171
21 (1992), Exhibit "B", Condition No. 8, and
22 based on current construction cost estimates
23 for the Little League field, approximately
24 \$5,000,000 shall be paid to the County upon
25 Phase II project district approval for the

1 development of the South Maui Community Park."

2 CHAIR MOLINA: And that correlates with Condition
3 Number 19 from the applicant.

4 And the last one, Staff.

5 MS. NAKATA: 12, "As represented, WCPT/GW Land
6 Associates, LLC, its successors and permitted
7 assigns, shall execute a unilateral agreement
8 with the Department of Parks and Recreation to
9 set the terms and conditions for non-profit
10 play and for use of the golf course by the
11 Junior Golf Program."

12 CHAIR MOLINA: And that correlates with Number 20.

13 Okay, Members, the Chair is going to ask
14 for a brief recess to consult with Staff.

15 Meeting in recess. (Gavel).

16 **RECESS: 6:30 p.m.**

17 **RECONVENE: 6:40 p.m.**

18 CHAIR MOLINA: (Gavel). Land Use Committee meeting
19 of July 25th, 2007 is now back in session. It
20 is 6:40 on August 1st, 2007, right here in the
21 Council Chambers. Thank you very much for
22 that break, Members, to give the Chair an
23 opportunity to consult with Staff as to how we
24 will proceed now for the rest of the night.

25 Members, obviously we do have a lot of

1 conditions that will require some discussion,
2 and at a later point this evening we will see
3 and decide when our next meeting will be to
4 continue the discussion on this. But first
5 things first, Members, I did have several
6 requests, and I apologize, you've been handed
7 a lot of paperwork as it relates to the
8 conditions. I have asked Staff to consolidate
9 these conditions into a more manageable
10 document, a matrix, if you will, Members, and
11 that will come at some point, if not tonight,
12 some other time.

13 So we will start first, we'll go back to
14 Exhibit B, Members, and discuss that first
15 condition. Again, this is the condition that
16 relates to the consolidated bill, and this was
17 the condition from the Planning Commission.
18 So now is the time, Members, we can discuss
19 this if you need to ask questions of the
20 applicant, any resource personnel, let's go
21 ahead and do it.

22 The first condition is related to the
23 water issue, and I believe Member Hokama, at
24 our last meeting, had made a request from the
25 applicant if -- if I'm correct, Member Hokama,

1 please correct me if I'm wrong, a request to
2 have them sell the -- give the County the
3 opportunity to buy the water rights on this?
4 Mr. Chairman, if that is correct?

5 COUNCILMEMBER HOKAMA: Chairman, your memory is a
6 lot sharper than mine at this point of the
7 day, but I would say that that is something
8 that this Committee should consider including.
9 If water is available, you know, I'm thinking,
10 Chairman, the way the -- excuse me, not the
11 zoning, the condition of zoning on number 1 is
12 stated at this time, it's assuming we're going
13 to give an approval and then find out if
14 supply is available, which is an interesting
15 issue, since most people are concerned that we
16 should ensure water before giving approval.
17 And so, Chairman, I don't know if this might
18 be the right type of language for this
19 condition at this time. I would say that the
20 water is made available through a private
21 exploration and certification of water supply,
22 shall then be offered to the County for
23 purchase, because I think it's part of the
24 public domain and trust that we have
25 established to the State Constitution that has

1 been amended in 1978 and ratified by the
2 residents of this State, and I would say that
3 is something that the County should continue
4 to move forward, is acquiring all potable
5 water rights within the County. Thank you,
6 Chairman.

7 CHAIR MOLINA: Thank you, Member Hokama.

8 Member Anderson.

9 COUNCILMEMBER ANDERSON: Sorry, Mr. Chair, but are
10 we going on these conditions up here and which
11 ones are they?

12 CHAIR MOLINA: Yeah.

13 COUNCILMEMBER ANDERSON: The Exhibit B conditions?

14 CHAIR MOLINA: This is Exhibit B conditions, yes,
15 Member Anderson. Sorry.

16 COUNCILMEMBER ANDERSON: Okay.

17 CHAIR MOLINA: And thank you for bearing with the
18 Chair. When we have our next meeting, we'll
19 provide the Committee a matrix that might
20 provide a little bit more clarity.

21 COUNCILMEMBER ANDERSON: So, Mr. Chairman, since
22 we're on this and you're now entertaining
23 questions, could we have the Water Department
24 come forward?

25 CHAIR MOLINA: Okay, we have Mr. Eng or

1 Mr. Yamashige. Mr. Yamashige, please come on
2 up. Proceed, Mr. Yamashige.

3 MR. YAMASHIGE: Good evening.

4 CHAIR MOLINA: Okay. Member Anderson, do you have
5 questions?

6 COUNCILMEMBER ANDERSON: Yes. Thank you,
7 Mr. Chairman.

8 Mr. Yamashige, thank you for being here.
9 I think that you probably are aware, maybe
10 not, that the applicant is proposing to use
11 the brackish water of the Kamaole Aquifer and
12 to put it through a de-sal plant. Would that
13 be something that the Administration or the
14 Water Department would be interested in taking
15 over and maintaining?

16 CHAIR MOLINA: Mr. Yamashige?

17 MR. YAMASHIGE: Thank you, Mr. Chair. We have not
18 seen any proposal on a de-sal plant, and we
19 don't know what size it is and what would be
20 the benefit to the County. If it is -- if the
21 demand is 1 million and it's a 1 million
22 plant, certainly the County will not benefit
23 from it and it would not be something we would
24 be interested in.

25 COUNCILMEMBER ANDERSON: Well, you know, it's

1 interesting because we haven't seen any plans
2 on the de-sal plant either, and nor have we
3 seen the agreement, so I guess maybe the next
4 person to ask questions of would be the
5 applicant, Mr. Chairman, because this is the
6 big issue, and we need to get better
7 information. And, you know, we've been
8 trying -- this is the fourth proposal on how
9 they're going to get water, and yet we don't
10 have -- according to the application
11 requirements, we don't have a water source
12 distribution analysis or a master plan on how
13 they're going to achieve the 2 million gallons
14 a day potable water that they're going to need
15 and how much water -- raw water they're going
16 to need, how they're going to dispose of the
17 brine and the chemicals in the brine from the
18 de-sal plant, what the impact will be on down
19 gradient wells. You know, Wailea -- the
20 Wailea golf courses depend on those brackish
21 wells to water their courses.

22 CHAIR MOLINA: Okay, we'll call up Mr. Jencks.

23 Mr. Jencks.

24 COUNCILMEMBER ANDERSON: And while he's coming up,
25 one other question to Mr. Yamashige, if I may,

1 Chair?

2 CHAIR MOLINA: Okay, proceed, Member Anderson.

3 COUNCILMEMBER ANDERSON: Mr. Yamashige, I'm sure
4 you're aware of the exploratory well that was
5 drilled by DLNR, because it's in the storage
6 tank that the County owns above -- adjacent to
7 the storage tank that the County owns above
8 Maui Meadows, and they only got something like
9 170,000 gallons per day on that exploratory
10 well, and they said that the County and the
11 State would not be interested in that well
12 unless it produced well over a million gallons
13 a day. So is that kind of the standard as far
14 as capacity?

15 CHAIR MOLINA: Mr. Director?

16 MR. YAMASHIGE: Thank you, Mr. Chair. That has been
17 the Department's threshold, 1 million gallons
18 production out of a well.

19 COUNCILMEMBER ANDERSON: And, you know, you were
20 kind enough to provide the desalination study
21 that the County did last year, and in that
22 study, you know, it was for a 5 million gallon
23 a day plant, granted, but it said that the
24 cost was like \$4.10 minimum per thousand
25 gallons, so is that one of the reasons the

1 County decided not to pursue desalination of
2 brackish wells? And of course seawater is
3 much greater.

4 CHAIR MOLINA: Mr. Director. Excuse me, please turn
5 off the cell phones.

6 MR. YAMASHIGE: Thank you, Mr. Chair. Yes, cost is
7 an issue, and at this point we did not feel
8 that we needed to pursue de-sal.

9 COUNCILMEMBER ANDERSON: You said process is an
10 issue? You're so soft spoken, Eric.

11 CHAIR MOLINA: Can you repeat yourself,
12 Mr. Yamashige?

13 MR. YAMASHIGE: I kind of forgot what I said.

14 COUNCILMEMBER ANDERSON: You said process is an
15 issue?

16 MR. YAMASHIGE: No cost, cost.

17 COUNCILMEMBER ANDERSON: Oh, cost is an issue.

18 CHAIR MOLINA: Thank you.

19 COUNCILMEMBER ANDERSON: And would process also be
20 an issue as far as disposal of the wastewater?

21 MR. YAMASHIGE: No. The report does clearly
22 identify how we're going to dispose of the
23 brine, so no, process, it's a proven
24 technology, but certainly the cost is
25 expensive. So at this point it is not

1 something that the Department is pursuing, but
2 it may be in our near future.

3 COUNCILMEMBER ANDERSON: And is that something that
4 Director Eng agrees with?

5 MR. YAMASHIGE: We have been discussing this, yes.

6 COUNCILMEMBER ANDERSON: Yeah, Mr. Chair, I want to
7 pass out to the Members salient pages of the
8 de-sal study that I received from the
9 Department.

10 CHAIR MOLINA: We'll have Staff assist you on that.

11 COUNCILMEMBER ANDERSON: Thank you.

12 CHAIR MOLINA: Do you have any more questions for
13 the Water Director? I have Mr. Jencks
14 awaiting your questions.

15 COUNCILMEMBER ANDERSON: No, I'm fine.

16 CHAIR MOLINA: You're done?

17 COUNCILMEMBER ANDERSON: Thank you.

18 CHAIR MOLINA: Thank you, Mr. Yamashige.

19 COUNCILMEMBER PONTANILLA: Chair.

20 CHAIR MOLINA: Oh, I'm sorry.

21 COUNCILMEMBER PONTANILLA: Question.

22 CHAIR MOLINA: Okay. Member Anderson, I'll ask you
23 for your patience --

24 COUNCILMEMBER ANDERSON: Not a problem.

25 CHAIR MOLINA: -- if Councilmember Pontanilla can

1 ask a question of the Water -- Deputy Water
2 Director.

3 Mr. Pontanilla?

4 COUNCILMEMBER PONTANILLA: Yeah, in regards to the
5 brine, if we went into de-sal, what method was
6 given to you folks in regards to how we're
7 going to handle the brine?

8 MR. YAMASHIGE: Mr. Chair?

9 CHAIR MOLINA: Mr. Director?

10 MR. YAMASHIGE: Thank you very much. The study did
11 propose re-injecting that brine into the
12 ground, so it's an injection well.

13 COUNCILMEMBER PONTANILLA: An injection well that is
14 required to be built or an existing injection
15 well at the wastewater treatment plant?

16 MR. YAMASHIGE: No. This is a totally separate
17 facility from the wastewater treatment plant,
18 and none of the locations that were studied
19 are at the current County facilities.

20 COUNCILMEMBER PONTANILLA: Fine. Thank you. Thank
21 you, Chair.

22 CHAIR MOLINA: Thank you, Mr. Pontanilla.

23 COUNCILMEMBER ANDERSON: Chair, could we ask Eric to
24 respond maybe with the mike closer. I didn't
25 hear his last answer.

1 CHAIR MOLINA: Okay, Mr. Yamashige, if you could
2 repeat your last response to Member Pontanilla
3 and to the Committee. No shame, just go right
4 up there to the mike.

5 COUNCILMEMBER ANDERSON: Don't be shy.

6 MR. YAMASHIGE: Yes, thank you very much, Mr. Chair.
7 None of the facilities or the locations that
8 are included in this study are at the current
9 wastewater treatment plant facilities. So the
10 question was, if we're using the same
11 injection wells for disposal of the brine as
12 the treatment plant is using for their
13 effluent, and certainly it's not the same.

14 COUNCILMEMBER ANDERSON: And so could I follow up
15 with that, Chair?

16 CHAIR MOLINA: Go ahead, Member Anderson.

17 COUNCILMEMBER ANDERSON: So, Mr. Yamashige, if the
18 brine which also contains toxic chemicals that
19 they have to use to treat the filters of the
20 reverse osmosis plant, and I understand it has
21 to be done on a very regular basis, if that
22 water was injected in, you know -- if you
23 don't know the answer, I'm just asking because
24 you read the whole report and I only got a few
25 pages out of it, but if that brine was

1 injected up gradient to all the brackish wells
2 that are currently being used in Wailea, is
3 it -- would it be fair to assume that those
4 brackish wells could become more saline from
5 the brine that's being injected, given the
6 recent study of wastewater plumes that show
7 how they spread?

8 CHAIR MOLINA: Mr. Director.

9 MR. YAMASHIGE: Deputy. It's very possible. I will
10 mention that the study that was provided or
11 prepared for the Department does not address
12 the Wailea 670 area.

13 COUNCILMEMBER ANDERSON: I understand.

14 MR. YAMASHIGE: So I didn't want to represent that
15 the injection of the brine will affect any of
16 the adjoining wells. The report does mention,
17 though, taking water out -- or the source
18 water may affect the salinity of adjoining
19 wells, and consequently the brine -- or the
20 return water may also affect the groundwater.

21 COUNCILMEMBER ANDERSON: Okay, thank you,
22 Mr. Yamashige.

23 Thank you, Chair.

24 CHAIR MOLINA: Thank you, Mr. Director.

25 Mr. Hokama?

1 COUNCILMEMBER HOKAMA: Chairman, is the Committee
2 aware of where a potential site would be for
3 this project?

4 CHAIR MOLINA: Mr. Director, are you able to -- or
5 maybe the applicant?

6 COUNCILMEMBER HOKAMA: If the applicant's
7 representative Mr. Jencks can provide a
8 response, that would be appreciated, Chairman.

9 COUNCILMEMBER ANDERSON: Which project are you
10 referring to, Chair?

11 COUNCILMEMBER HOKAMA: For this zoning request.

12 COUNCILMEMBER ANDERSON: Oh.

13 COUNCILMEMBER HOKAMA: Do you have a potential site
14 or sites, Mr. Jencks?

15 CHAIR MOLINA: Mr. Jencks? And Member Anderson, I
16 know you were next in line.

17 COUNCILMEMBER ANDERSON: That's okay.

18 COUNCILMEMBER HOKAMA: Oh, I'm sorry.

19 CHAIR MOLINA: Is it okay?

20 COUNCILMEMBER ANDERSON: No, go ahead.

21 CHAIR MOLINA: Thank you.

22 Mr. Jencks, can you respond to
23 Mr. Hokama's question?

24 MR. JENCKS: Specifically sites for what in
25 particular?

1 COUNCILMEMBER HOKAMA: The desalination option to
2 produce potable water.

3 MR. JENCKS: Certainly. The plan is to use water
4 that's within the project area and also water
5 that we gain from off site wells north of Maui
6 Meadows on Haleakala Ranch land, create the
7 source, bring it to the site, and have the
8 reverse osmosis facility as a utility within
9 the project area and provide the water from
10 that plant to the project.

11 COUNCILMEMBER HOKAMA: So we are very clear,
12 Mr. Jencks, is reverse osmosis another term
13 for desalination?

14 MR. JENCKS: That's correct.

15 COUNCILMEMBER HOKAMA: And this is basically for
16 brackish water conversion to potable?

17 MR. JENCKS: That's correct. The water that we are
18 expecting to treat is in the 300 to 350
19 milligram per liter chloride level, which is
20 very easily treatable by reverse osmosis.

21 COUNCILMEMBER HOKAMA: As well as I guess what the
22 County does is we blend water also.

23 MR. JENCKS: That's correct.

24 COUNCILMEMBER HOKAMA: As another way to lower
25 chlorides. So do you have data that says --

1 and are you planning to use injection wells to
2 deal with the post processing of those
3 brackish waters, Mr. Jencks?

4 MR. JENCKS: The residual?

5 COUNCILMEMBER HOKAMA: Yes.

6 MR. JENCKS: The report that was just being
7 discussed highlighted I think three different
8 ways to get rid of residual. One is to use
9 evaporation and large evaporation ponds,
10 another is to use injection wells, and another
11 is to use it on the land for, you know, broad
12 spray, irrigation spray.

13 In our project the idea is to create a
14 closed system. We would treat the water
15 through the plant, take the residual that's
16 remaining, put that into the irrigation ponds
17 and use it as irrigation water on the golf
18 course for common area. So only in the event
19 of let's say extended rainy periods would you
20 want to have or would you be required to have
21 some alternative way to get rid of that brine
22 or the residual product, but if we're treating
23 water at the expected levels, which I think is
24 going to pan out based upon practical
25 experience today in South Maui of 300

1 milligrams per liter, 350, the brine is not
2 going to be that significant, and the recovery
3 is about 75 percent. So out of ten gallons of
4 water put into the plant, we get 7 1/2 gallons
5 of good water, and the residual would be the
6 2.5 gallons.

7 COUNCILMEMBER HOKAMA: Okay, and would the Committee
8 be correct in having an understanding that
9 those residual waters will go into a lined
10 containment system?

11 MR. JENCKS: Yes.

12 COUNCILMEMBER HOKAMA: Okay. My other question to
13 you regarding this option, Mr. Jencks, is that
14 I'm assuming, then, that the residual would be
15 higher than 350 parts regarding chlorides.

16 MR. JENCKS: Yes.

17 COUNCILMEMBER HOKAMA: So what type of landscaping
18 do you feel would be tolerant enough to handle
19 those type of chloride levels?

20 MR. JENCKS: Well, right now I can tell you that in
21 South Maui a lot of the wells in Wailea
22 Resort, Makena Resort are also pumping
23 brackish water, and those chlorides, you know,
24 they go up and down, depending upon the
25 weather, depending upon the tides, because

1 it's got ocean influence in the brackish water
2 that they take out of the lens, but those
3 chlorides are somewhere 700, 800, 1,000
4 milligrams per liter, it depends upon the date
5 and the time they take the test, but that
6 water is being used successfully on the golf
7 courses and they blend that water, just like
8 we would be doing. We would be taking that
9 residual, Mr. Hokama, and blending it with
10 higher quality brackish water to bring the
11 chloride level down so we could easily make
12 that.

13 COUNCILMEMBER HOKAMA: So your actual irrigation
14 application of those waters would not be at
15 the levels you just shared with the Committee?
16 It would be reduced again?

17 MR. JENCKS: Probably reduced, yeah.

18 COUNCILMEMBER HOKAMA: So that's going to be
19 interesting, because you're going to use
20 potable water to reduce the higher salinity to
21 irrigate, and yet we don't allow potable water
22 in general for golf course application.

23 MR. JENCKS: That's correct.

24 COUNCILMEMBER HOKAMA: Okay, that's an interesting
25 twist.

1 MR. JENCKS: If I may, Mr. Hokama, the wells that
2 are on site right now within the project area,
3 the last reported chloride count was 220 and
4 270 respectively out of those wells and a
5 water test, and we -- as I've stated earlier
6 in the same Committee meeting, we do expect
7 that those two wells which are intended for
8 irrigation use to increase as we pump them
9 marginally, so -- and we will be beyond -- I
10 think the threshold for the County, the MCL
11 for potability is 250 milligrams per liter, so
12 we will be above the 250 for irrigation
13 purposes.

14 COUNCILMEMBER HOKAMA: Has your water consultant
15 been able to provide verifiable data that the
16 lens, the basil lens that is beneath your
17 project property been able to determine depth
18 prior from portable to brackish to saltwater
19 and what would be the impacts as it leaches
20 down through the soil?

21 MR. JENCKS: Well, Mr. Nance is here. There's a lot
22 of empirical work that's been done. He's here
23 to answer any questions you might have on
24 that.

25 COUNCILMEMBER HOKAMA: Is that provided to the

1 Committee in his written comments, Mr. Jencks?

2 MR. JENCKS: If the Committee would like a report on
3 that, we would be happy to provide it.

4 COUNCILMEMBER HOKAMA: So we currently don't have
5 that information?

6 MR. JENCKS: I've never been asked to respond to
7 that. Be happy to provide it.

8 COUNCILMEMBER HOKAMA: Okay, because, you know,
9 that's some of the same concerns we have on
10 Lanai.

11 MR. JENCKS: That's correct.

12 COUNCILMEMBER HOKAMA: Regarding our one and only
13 aquifer, and so we are always concerned of
14 what is impacting that basil lens that is very
15 thin for our island, and I would assume it
16 would be very thin close to the shoreline, on
17 how it would impact the three transition
18 layers.

19 And when appropriate, Mr. Chairman, I
20 would ask that the Committee be able to
21 receive that verifiable data so that --

22 CHAIR MOLINA: From Mr. Nance.

23 COUNCILMEMBER HOKAMA: -- including Department of
24 Water can maybe make a review and comment.
25 Would appreciate that.

1 CHAIR MOLINA: Okay, Chair will make note of that
2 and inform Staff. Thank you.

3 Okay, Member Anderson?

4 COUNCILMEMBER ANDERSON: Yeah, thank you,
5 Mr. Chairman.

6 So first of all, where on this concept
7 plan do you intend to put the desalination
8 plant, Mr. Jencks?

9 MR. JENCKS: It would be located -- I think it's in
10 the -- we have a utility district, I believe,
11 in the zoning that would allow for the
12 location of the plant, and I -- it would be
13 located towards the center of the property for
14 distribution purposes, mauka center of the
15 property.

16 COUNCILMEMBER ANDERSON: Mauka center?

17 MR. JENCKS: Uh-huh.

18 COUNCILMEMBER ANDERSON: Would that be in the VMX
19 district?

20 MR. JENCKS: I'm not sure exactly where the utility
21 zone is in the zoning proposal.

22 COUNCILMEMBER ANDERSON: Well, I mean, you should
23 know that. There's -- I don't see any -- when
24 you say utility, you mean zoning for utility
25 or --

1 MR. JENCKS: Yes.

2 COUNCILMEMBER ANDERSON: There's no zoning here for
3 utility.

4 MR. JENCKS: It allows for water tanks and utilities
5 and sub stations, things like that. It may be
6 in the Residential District. I don't recall
7 specifically.

8 COUNCILMEMBER ANDERSON: So you don't really know
9 where the plant's going to be?

10 MR. JENCKS: Yeah, I do know. It's going to be on
11 the mauka boundary center of the project.

12 COUNCILMEMBER ANDERSON: Mauka boundary, center of
13 the project.

14 MR. JENCKS: Top of the page.

15 COUNCILMEMBER ANDERSON: That means it's going to
16 be --

17 MR. JENCKS: Middle of the map.

18 COUNCILMEMBER ANDERSON: -- either in the
19 multi-family zoned land or on the golf course,
20 because that's what's mauka center.

21 MR. JENCKS: There's also single family up there as
22 well.

23 COUNCILMEMBER ANDERSON: Way mauka.

24 MR. JENCKS: Yeah.

25 COUNCILMEMBER ANDERSON: Single family? So, you

1 know, if -- I don't even know where to begin
2 on this. First of all, you're asking us to
3 give you an entitlement that isn't going to be
4 any good without water, and you recognize, I'm
5 sure, Mr. Jencks, that water is a public trust
6 resource. And you're asking us to allow you
7 to develop a private system to use as public
8 trust resource, yet you have not provided us
9 any quantitative or qualitative information.
10 You're just saying this is what should happen,
11 but, you know, our County Code application
12 requirement is very specific in that you must
13 provide a water source supply and distribution
14 analysis proposed for the application that
15 includes the location and use of groundwater,
16 nonpotable water sources, master plan, which
17 includes but is not limited to comments from
18 DLNR, and Departments of Water Supply, and
19 Public Works.

20 We just had our representative from the
21 Department of Water Supply say they haven't
22 heard anything about this. So if you could
23 please provide us -- you obviously have done
24 some feasibility study in order to make an
25 assertion that this would work for you, so you

1 got to convince us. The burden of proof is on
2 you to convince us that this is going to work.

3 CHAIR MOLINA: Mr. Jencks, can you provide --
4 accommodate the Committee with that request.

5 MR. JENCKS: Yes, sir, if I may respond.

6 COUNCILMEMBER ANDERSON: I wasn't finished,
7 Mr. Chair.

8 CHAIR MOLINA: Okay, finish up.

9 COUNCILMEMBER ANDERSON: If I could please be
10 allowed to have my say.

11 CHAIR MOLINA: All right.

12 COUNCILMEMBER ANDERSON: So let's talk first about
13 the source of the water, Mr. Jencks. You have
14 an agreement, a source water development
15 agreement with Haleakala Ranch. We've asked
16 you for that agreement. You said you would
17 provide it. You have not provided it. So if
18 you could please let us know, because, number
19 one, how much gross water is provided for in
20 that agreement? And how much of the water is
21 going to be provided to Haleakala Ranch? How
22 much water do you need to draw, raw water do
23 you need to draw in order to produce the 2
24 million gallons a day? And I'm just going to
25 read these off, Mr. Chair, because I don't

1 expect Mr. Jencks to give me a verbal
2 response. I want to see it in a report that
3 we can have verified by, you know, at least
4 the Department, if not, you know, an
5 independent expert. Because this is a tricky
6 thing here they're asking us to allow.

7 I want to know how much brine and what
8 the expected -- if you know the chlorides are
9 350 parts per million, then you could
10 certainly have an expert tell you how much
11 concentrated brine there will be in the
12 wastewater, as well as the chemicals that will
13 be in that wastewater. And I've done a lot of
14 studying on de-sal, Mr. Jencks, and I have not
15 seen where anybody has taken the wastewater
16 and used it for irrigation -- or rather for,
17 yeah, landscaping purposes. You know, it's
18 treated as an industrial waste. So if you've
19 got a better plan, let's see it, if you could
20 include that.

21 And then, you know, I don't know why
22 there's so much secret around the agreement
23 with you and Haleakala Ranch. If you could
24 maybe speak to that.

25 CHAIR MOLINA: Mr. Jencks?

1 MR. JENCKS: Certainly, Mr. Chair. This Committee
2 asked me to provide the report -- or the
3 agreement, excuse me, and I responded to the
4 Committee with a letter that described the
5 essential terms and conditions of that
6 agreement and didn't hear one word after that
7 submittal of that letter.

8 Now, I did in a conversation with Ms.
9 Anderson get a request to provide the
10 agreement. This Committee hasn't asked me
11 since that letter to respond with regard to
12 the agreement. If this Committee wants that
13 agreement and makes the request, then I'll do
14 my damn level best to provide it, but it is a
15 two-party agreement. I am one party and
16 Haleakala Ranch is the other party. I just
17 cannot provide that without their permission.

18 Now, this Committee also made it clear
19 in discussions, I think it was during the
20 public testimony, that we could redact
21 sections of the agreements that are
22 proprietary, that's fine. If that's the wish
23 of this Committee, then I'll do my best to get
24 it, if it's a formal request from the
25 Committee.

1 CHAIR MOLINA: Okay, Chair will make note of that,
2 Member Anderson, and we'll make a formal
3 request.

4 COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I
5 mean, we're dealing with a public resource.
6 We have to be as transparent as possible,
7 because, you know, this is a big 20-year build
8 out project. We don't have any water
9 currently from our own resource to dedicate to
10 this project, and so they're asking us to put,
11 you know, the future of this project and the
12 future of the taxpayers of this County based
13 on paper promises, and I just -- you know, I
14 just don't see it.

15 So, Mr. Jencks, if you could please
16 provide that. You know, I think that our
17 fiduciary responsibility as elected officials
18 here is to protect the public trust, and
19 you're asking to use the public trust. And so
20 you and Haleakala Ranch need to be transparent
21 about what you're doing and what you've agreed
22 to.

23 So, you know, the other question is --
24 and maybe you'll have to do this in the report
25 that you're giving us regarding the de-sal

1 plant, but in the review of your application
2 by Maui Electric Company, they stated that the
3 Wailea 670 project will require a substantial
4 load that will impact the current load
5 capacity at the existing substation, and this
6 was before the de-sal plant was proposed.

7 Now, desalination uses a lot of
8 electricity, so could you please tell us how
9 much electricity additional you will need now
10 for this plant? Again, this was not provided
11 to the Planning Commission, not provided in
12 the application. This is all after-the-fact
13 stuff. So you need to be responsible in
14 getting us a full disclosure on the plans that
15 you have now to provide water for this
16 project.

17 CHAIR MOLINA: Mr. Jencks?

18 MR. JENCKS: That would be fine.

19 CHAIR MOLINA: Okay. All right, Mr. Jencks will
20 provide that.

21 COUNCILMEMBER ANDERSON: Do you have any idea on how
22 much additional electricity and have you been
23 in contact with MECO? And I would like to
24 know for everyone, Mr. Chairman, that, you
25 know, based on the comments we received, it

1 appears a whole new substation is going to be
2 necessary, and as a matter of fact, it's right
3 here on their -- is this a new substation,
4 Mr. Jencks, on your project or is it an
5 existing one?

6 MR. JENCKS: That is the existing substation that
7 will be modified for the project.

8 COUNCILMEMBER ANDERSON: And it will be expanded for
9 the project?

10 MR. JENCKS: I don't know what MECO's plans are, but
11 I'll provide whatever I can find.

12 COUNCILMEMBER ANDERSON: And could you find out,
13 because I wanted to know if our electricity
14 rates are going to go up to pay for this
15 expansion.

16 MR. JENCKS: Okay.

17 CHAIR MOLINA: Member Anderson, do you have more?

18 COUNCILMEMBER ANDERSON: If -- you know, if -- if
19 those questions can be answered, I think those
20 are the most critical. How much raw water
21 you're going to need, what the -- what the
22 quality -- how much raw water to get the
23 potable water? How much wastewater will be a
24 result of that? What the quality of that
25 wastewater is? How do you intend to dispose

1 of it? And, you know, I expect this to be
2 from an expert in the field, Mr. Chairman, not
3 just a letter from Mr. Jencks.

4 CHAIR MOLINA: Okay. I'm sure Mr. Jencks will do
5 his best to try and accommodate your request.

6 MR. JENCKS: Mr. Chair, if I may.

7 CHAIR MOLINA: Mr. Jencks.

8 MR. JENCKS: I addressed a letter to the Council
9 Member today that answers some of these
10 questions, but what I will do, Council
11 Members, I will have a direct response back
12 from the water company for you.

13 COUNCILMEMBER ANDERSON: You know, I would
14 appreciate that, Mr. Jencks, because I want to
15 show you something. You know, you got your
16 job and I got mine. And so, you know, with
17 all due respect, Mr. Jencks, you've told us a
18 lot of things that have not panned out, and so
19 we -- everything in here in this binder has to
20 do with water, and here we are in the 11th
21 hour and we still don't have these answers.
22 So we need to have something that is
23 verifiable and something that we can rely on,
24 something that the public can rely on, and I'd
25 also like to know, Mr. Jencks, if you have

1 agreements with Wailea Resort in regards to
2 the brackish wells that they're using? I've
3 had phone calls telling me that you and the
4 golf course people at Wailea Resort have
5 entered into agreements. Because should you
6 over pump the aquifer, should you inject
7 highly saline water into the aquifer, there's
8 a good chance that the brackish wells they're
9 currently using to irrigate the golf course
10 could be damaged to the point of not being
11 viable anymore, and then what will they do?
12 So can you tell me if you have any agreements
13 with them regarding their brackish wells?

14 MR. JENCKS: We have talked to Wailea Resort about a
15 mutual good neighbor agreement that would
16 provide for common monitoring of both systems,
17 our system and their system, to support any
18 change and what we would do about that change,
19 alter pumping, delay pumping, shift pumping,
20 whatever it happens to be. So the intent is
21 an agreement that would allow us to watch each
22 other's systems and monitor, make sure we're
23 doing the right thing to manage the resource.
24 So we are trying to get that agreement
25 settled.

1 COUNCILMEMBER ANDERSON: And if their wells go
2 saline to the point where they can't use them?
3 I mean, they're obviously taking saline water
4 and mixing it with other water in order to
5 make it usable on the golf course and not kill
6 the grass, then they've already got a saline
7 problem. So is there anything in your
8 agreement that says that should their brackish
9 wells become unusable, that you would provide
10 water for their golf course?

11 MR. JENCKS: The whole point of the agreement is to
12 monitor over time any change and to anticipate
13 that change and resolve it. I mean, that's
14 the intent of the agreement. No one in either
15 property wants to harm anyone's source of
16 water or harm the ability to irrigate a golf
17 course or --

18 COUNCILMEMBER ANDERSON: I'm sure not.

19 MR. JENCKS: So the concept that these wells would
20 suddenly go bad is not realistic. The idea of
21 the agreement is to provide a program for
22 monitoring both systems so that it doesn't
23 happen. That's the purpose of the agreement.

24 COUNCILMEMBER ANDERSON: Could you give us a copy of
25 that agreement too, Mr. Jencks?

1 MR. JENCKS: As soon as we have one, I'd be happy to
2 provide that.

3 COUNCILMEMBER ANDERSON: So you don't have an
4 agreement yet?

5 MR. JENCKS: We do not have a signed agreement at
6 this time.

7 COUNCILMEMBER ANDERSON: Well, could you give us
8 what you have that's unsigned?

9 MR. JENCKS: I'll give you a signed agreement when I
10 get it, because it's in negotiation. I think
11 that's reasonable.

12 COUNCILMEMBER ANDERSON: You know, you're trying to
13 get entitlements from us and we're trying to
14 get information to make an informed decision.
15 We're trying to follow the County Code
16 requirements so that, you know, as the
17 decision makers on behalf of the public here
18 we can go to sleep at night knowing that
19 you're going -- whatever you're going to do
20 when you go forward will not adversely impact
21 everybody else. And I don't care if you have
22 a private agreement with Wailea or not.
23 They're part of our community. The golf
24 course is used by many of our residents who
25 live in that area, and they have a right to

1 know what's going on, and so do we.

2 CHAIR MOLINA: Okay, Member Anderson, do you want to
3 continue your line of questioning? Or is
4 there any other Member -- if I may ask, Member
5 Anderson, any other Member that has a question
6 for Mr. Jencks? Okay, Member Johnson,
7 followed by Member Hokama and we'll return to
8 you, Member Anderson, if you have more
9 questions.

10 Member Johnson.

11 COUNCILMEMBER JOHNSON: Thank you. Charlie, with
12 regard to, you know, some of these
13 conditions -- because a lot of times we'll put
14 in conditions and you're giving your best
15 guess as to how this is going to work, and
16 some of it at this point in time, because you
17 haven't actually developed the system, is
18 guesswork. So when you make a representation
19 that this application or anything that you do,
20 whether it's condition or not, will not
21 adversely impact other people in the area,
22 like specifically we're talking about the
23 water system now. What happens if you can't
24 control the chloride levels? What happens if
25 damages occur? And I know you say you

1 monitor, but, I mean, we have developments
2 right now that had monitoring requirements in
3 place -- now, granted, they were for the ocean
4 environment, but the monitoring is only just a
5 report that shows us as Council Members how
6 rapidly the resource or the coral reef is
7 degrading. That's not what I want to see.

8 And so my question to you is when you're
9 making a representation and you allege that
10 your development or your water system will not
11 adversely impact anyone else, how will you --
12 in the event that that does occur, how are you
13 going to mitigate that?

14 CHAIR MOLINA: Mr. Jencks?

15 MR. JENCKS: Well, the purpose of a monitoring
16 agreement is to monitor the resource. The
17 intent is to monitor the wells that are in
18 place, and if new wells are dug, to monitor
19 those wells to look for any possible change.
20 The changes you're talking about take place
21 over a significant period of time. They're
22 not overnight changes. They're not changes
23 that will happen in a year. It takes quite a
24 while to see any change, which I think you're
25 talking about using wells and down stream

1 influence, what have you. It's impossible to
2 say what will happen, but the whole point of
3 the agreements -- of the monitoring agreement
4 is to set up a framework and a protocol to say
5 I'm watching the systems, I'm reporting on a
6 monthly basis what the levels are, the head
7 levels, what the chlorides are, what -- what
8 all the chemicals are in the wells in the
9 water on both sides, and then determine if
10 there's any shift over a period of time. Then
11 you can react and change the way you operate,
12 change how much water you pump, change when
13 you pump the water. And all those things are
14 then adjusted and then you watch, you monitor,
15 and you watch and you monitor to see what
16 happens. That's the whole point of the
17 monitoring agreement and the protocol.

18 COUNCILMEMBER JOHNSON: Okay, but in some
19 situations, even the County, you know, we
20 monitor, but the chloride levels still
21 continue to rise. And we're going to reach a
22 point at which the damage is irreversible, and
23 my question is that right now even some of the
24 coral monitoring that we're doing in front of
25 I'll just use Kaanapali Ocean Resort as an

1 example, well, I mean, to me all the
2 monitoring is doing is just saying, well,
3 we've lost so much coral coverage, and it's
4 just over time all I've seen is a degrading of
5 the natural resource, and yet there's no -- it
6 doesn't seem that there's any downside to the
7 development. The resort's already built. The
8 damage is already occurring, and this degrades
9 over time.

10 Granted, I mean, you're saying, yeah,
11 these things take a long time to occur, but
12 there will be and there could be a potential
13 tipping point, at which there is no returning.
14 So who pays? You know, once somebody's
15 resources is damaged or once the damage is
16 done, you can monitor all you want, but if
17 some things can't be reversed, do you just
18 stop all further development?

19 CHAIR MOLINA: Mr. Jencks?

20 COUNCILMEMBER JOHNSON: You know, what's the
21 protection?

22 CHAIR MOLINA: Would you like to respond?

23 MR. JENCKS: Sure, I'd be happy to respond. I'll
24 give you a good example. The State Land Use
25 Commission conditions and the decision and

1 order require ocean water quality monitoring
2 as a condition of approval. We started
3 monitoring a year ago. I now have two water
4 quality reports that were done by Marine
5 Engineering -- or I think it's Steve Dollar's
6 firm. We're doing it in concert with Wailea
7 and Makena to monitor the water quality off
8 the coast so we have a baseline today before
9 anything starts, before we do any work.

10 The only way I can say or anyone can say
11 there's been a change is if you know what
12 happened before you started any work. In the
13 case of Kaanapali, Ms. Johnson, if there's a
14 change in the reefs because of a clear
15 indication of something that's happening on
16 the land, which is maybe golf course runoff or
17 urban runoff, then why isn't Kaanapali
18 changing the way it operates to change the
19 impact of the reef? Unless they know what was
20 there before and they understand what was
21 there before, they have no way to monitor how
22 much damage has occurred. It's all empirical.

23 What I'm trying to establish is a
24 baseline for near shore issues, a baseline for
25 the wells so everybody knows exactly what's

1 going on so that you can -- so you can
2 understand what's going on and you can change
3 the way you operate and respond and improve
4 the situation.

5 COUNCILMEMBER JOHNSON: And I'm just reiterating to
6 you that those same baseline studies and the
7 same baselines were established. And I don't
8 know if it's the same engineering firm or --
9 you know, but annual reports are given, and
10 it's my understanding from -- and of course I
11 don't get copies of all the reports, but I
12 suppose if I sought them I could, but it's my
13 understanding that, yes, there's still a
14 continual degrading of the resource, but then
15 when you ask where is that particular damage
16 occurring, then the -- I guess the omnibus
17 response is that, well, we can't really
18 pinpoint who is doing the damage. It's the
19 cumulative impact of all of the uses.

20 So what ends up happening is, you know,
21 with all due respect, everybody just cops out
22 that, well, we can't pinpoint. We've had
23 runoff in other developments and, you know,
24 you've seen this over time. I mean, it's
25 happened at Maalaea. It happened in South

1 Maui. It's happened in West Maui. We can't
2 pinpoint the source because other developments
3 may be going on at the same time.

4 So I guess what I'm saying is that
5 you're making a representation that you won't
6 do anything, and yet when -- when push comes
7 to shove, what assurance or what guarantee and
8 what is the public's assurance, I guess their
9 protection, that you will be able to do what
10 other people have either been unwilling or
11 unable to do with regard to the protection of
12 the resource? How are you going to accept
13 that responsibility and what's the protection
14 for the public if that should occur?

15 CHAIR MOLINA: Mr. Jencks?

16 MR. JENCKS: Well, that's a big question. And I
17 guess the best response I have is the
18 conditions that are in front of you today that
19 came from the ownership, from the applicant,
20 that would be me, are my best shot at how I
21 would be responsible. Whether I'm in the
22 initial stages of the work on Piilani Highway
23 that you would like to have done or I am in
24 the first stage of building dwelling units in
25 the property, the project is responsible, the

1 ownership is responsible.

2 I don't think you've seen -- and I may
3 be wrong here, because I sat in this Chamber
4 for ten years and looked at conditions on
5 projects, I don't think you're going to find
6 another project that has conditions like this
7 tied to it. And the reason I say that is
8 because I'm pretty familiar with what's gone
9 on before in this County, and what I've tried
10 to do in these conditions is put conditions in
11 that would address things that I saw during my
12 tenure here.

13 Now, ultimately I'm responsible. The
14 ownership is responsible. We'll do the best
15 we can. If there's something else,
16 Ms. Anderson, that you want to put in here --

17 COUNCILMEMBER JOHNSON: Johnson.

18 CHAIR MOLINA: Ms. Johnson.

19 MR. JENCKS: Ms. Johnson, I'm sorry. Forgive me.

20 Ms. Johnson, if there's something else you
21 want to put in here that relates to total
22 dissolve loading or whatever it happens to be,
23 I'm willing to entertain that, but the
24 conditions you have in front of you are based
25 upon, A, my experience, and, B, what I know

1 has gone on in this County, and it's a start.
2 It's a start at making somebody responsible
3 and someone you can rely on to get the job
4 done right. Like I say, if there's something
5 else you want to add to address your specific
6 concern, bring it up. Let's talk about it.

7 COUNCILMEMBER JOHNSON: Okay, and, you know, if the
8 ultimate outcome were that we could find
9 evidence that damage was occurring and that as
10 a result maybe Phase II or whatever is really
11 creating a problem, are you willing to say
12 that all further development at that phase
13 would just halt until such time that the
14 measure was able to be addressed?

15 MR. JENCKS: If it's my fault, absolutely. It's my
16 job to make sure that doesn't happen.

17 COUNCILMEMBER JOHNSON: Okay, thank you.

18 CHAIR MOLINA: Thank you, Member Johnson.

19 Members, with all due respect,
20 Mr. Hokama, the Chair would like to call for a
21 recess. I think some Members have some
22 personal needs that need to be taken care of.
23 So, Members, we're going to take ten minutes.
24 This meeting is in recess. (Gavel).

25 **RECESS: 7:30 p.m.**

1 **RECONVENE: 7:43 p.m.**

2 CHAIR MOLINA: (Gavel). The recessed Land Use
3 Committee meeting of July 27th, 2007 is now
4 back in session. It is just about 7:45 p.m.
5 on the 1st of August here in the Council
6 Chambers.

7 We last left off with the applicant,
8 Mr. Jencks, over at the podium and Mr. Hokama
9 was prepared to ask Mr. Jencks several
10 questions. And, Members, the Chair's intent
11 is after Mr. Hokama is done with his line of
12 questioning, the Chair will give the body a
13 recommendation as to how we will proceed. It
14 is getting rather late, Members, and I am
15 aware of your needs -- personal needs at home
16 and other issues, so, Mr. Hokama, if you will.

17 COUNCILMEMBER HOKAMA: Chairman, thank you very much
18 for your consideration this evening. And,
19 Mr. Jencks, thank you for your willingness to
20 respond to questions from the Committee.

21 I want to get back to the Condition 1
22 regarding the proposal that at your
23 development company's costs and expense you
24 plan to develop, maintain, operate a private
25 water system. So my first question,

1 Mr. Jencks, to this proposed condition is do
2 you already have water development agreements
3 in place? And I just need yes or no.

4 MR. JENCKS: Yes.

5 COUNCILMEMBER HOKAMA: So stating that, have you
6 notified and have notice with the Public
7 Utilities Commission of the State of Hawaii
8 your intentions to operate a potential water
9 utility?

10 MR. JENCKS: Not yet.

11 COUNCILMEMBER HOKAMA: Okay.

12 MR. JENCKS: But we will.

13 COUNCILMEMBER HOKAMA: Thank you for that. So,
14 Mr. Jencks, it's my understanding, and you may
15 be better versed than I, do you already have
16 contracts for the actual development or
17 exploration of the potential well sites for
18 the prospective water sources?

19 MR. JENCKS: Yes, sir.

20 COUNCILMEMBER HOKAMA: So my question, then, is as I
21 understand from Chairman Caliboso of the PUC
22 by decision and order, that now anything to
23 do, including -- because we're dealing with
24 this all night, with the potential electric
25 projects, alternative electric projects with

1 wind and solar, that it requires a competitive
2 bidding, through my understanding a PUC
3 review. So can you tell me how you would try
4 and comply with Chairman Caliboso's order?

5 MR. JENCKS: Is this for the system maintenance?

6 COUNCILMEMBER HOKAMA: My understanding is even
7 before you start, the way the Commission has
8 structured their order, all of this goes
9 through a competitive bidding, such as if Maui
10 Electric is proposing an upgrade, even they
11 need to bid on their own project. So it's not
12 guaranteed that they can do it, so for you to
13 enter into an agreement, my question is why
14 wouldn't it need to comply with the PUC's
15 order of competitive bidding?

16 MR. JENCKS: And by that you mean the well drilling
17 contract?

18 COUNCILMEMBER HOKAMA: That's correct.

19 MR. JENCKS: I'm not sure, Mr. Hokama, if it applies
20 that far back. I'll have to find out. I do
21 know that as you get farther into that system
22 development, for example, the treatment
23 facility and the maintenance of that, I think
24 there are provisions for a competitive
25 bidding, but I'm not sure how far that goes

1 back, if that goes back to the original
2 creation of the source, the well drilling, for
3 example, but I'll find out.

4 COUNCILMEMBER HOKAMA: And I just share that with
5 you, because it's my understanding from
6 various utilities that even with Lanai, even
7 the execution of a power purchase agreement
8 cannot be done without some type of review
9 from the Commission and assurance that it's
10 complied with its orders. And so I am
11 assuming that water is viewed the same way as
12 electricity, it's a public utility, even
13 though it may be privately owned and operated,
14 how you are intending to comply with the
15 Chairman's recent order, I would say, of maybe
16 a year or two in age.

17 MR. JENCKS: Sure. I'll find out. You know,
18 Mr. Hokama, there are some options for us.
19 There are mechanisms to develop private water
20 systems that are not PUC regulated, and
21 they're called new community water systems,
22 but in the case of this project, our intent
23 from the beginning was to create a public
24 utility operated and maintained and regulated
25 system, but I will indeed go back and find out

1 about that question.

2 COUNCILMEMBER HOKAMA: Okay. I would appreciate
3 that.

4 MR. JENCKS: Sure.

5 COUNCILMEMBER HOKAMA: And if you would report back
6 through our Chairman --

7 MR. JENCKS: Sure.

8 COUNCILMEMBER HOKAMA: -- the findings that in your
9 discussions with the Public Utilities
10 Commission.

11 Chairman, that's my line of questions
12 regarding this round, and specifically so that
13 if you have sufficient time, maybe another
14 Member may be allowed to ask questions.

15 CHAIR MOLINA: Thank you very much, Member Hokama.
16 As I mentioned earlier at the start of this
17 particular session, Chair would like to offer
18 a recommendation. It has been a long night.
19 Members, I am sensitive to your needs at home,
20 and I do want to accommodate you as much as I
21 can, and some of you have made commitments
22 beyond what you had committed earlier when we
23 polled you, so I'm respectful of that. Unless
24 there is an urgent, urgent need to ask a major
25 question -- if it's in regards to when -- how

1 we will proceed next, I'm open to that.

2 Mr. Victorino, is that what your --

3 COUNCILMEMBER VICTORINO: Yes.

4 CHAIR MOLINA: -- question is related to?

5 COUNCILMEMBER VICTORINO: Yes, that was my question,

6 because I had questions for Mr. Jencks that --

7 and I understand we're stopping here, but are

8 we allowed to go and would I be recognized

9 first, because I do have some specific

10 questions --

11 CHAIR MOLINA: Yes.

12 COUNCILMEMBER VICTORINO: -- on area number 1, and

13 I've been waiting very patiently, but

14 unfortunately my turn did not come up. That's

15 okay, anyway.

16 CHAIR MOLINA: The Chair apologizes.

17 COUNCILMEMBER VICTORINO: That's okay.

18 CHAIR MOLINA: When we do have our next meeting, the

19 Chair will recognize you first.

20 COUNCILMEMBER VICTORINO: Thank you.

21 CHAIR MOLINA: As it relates -- this I assume is

22 related to Condition Number 1?

23 COUNCILMEMBER VICTORINO: Condition Number 1, that

24 is correct.

25 CHAIR MOLINA: Thank you. Members, the Chair will

1 ask you -- Member Anderson, is it a procedural
2 question?

3 COUNCILMEMBER ANDERSON: You know, I'm anticipating
4 that you're going to be closing the meeting,
5 and I just want to have --

6 CHAIR MOLINA: Right, recess.

7 COUNCILMEMBER ANDERSON: -- a chance to make a
8 comment to Corporation Counsel before we close
9 the meeting in regards to a request for a
10 written opinion, if I may.

11 CHAIR MOLINA: Go ahead, Member Anderson.

12 COUNCILMEMBER ANDERSON: And I do -- I do have more
13 questions for Mr. Jencks, but I guess we'll
14 wait until the next round.

15 CHAIR MOLINA: You and several others.

16 COUNCILMEMBER ANDERSON: Thank you, Chair.

17 Mr. Giroux, you know, there is a
18 requirement that in the application of a
19 Change in Zoning request that the person who
20 makes that request must have a legal or
21 equitable interest in the land. All we have
22 received from Wailea 670 is a preliminary
23 title report. That preliminary title report,
24 it says, no liability hereunder. It's a
25 preliminary title report. It's not a deed.

1 So I'm asking if in your legal opinion if you
2 could tell us that this preliminary title
3 report is verifiable in certifying legal
4 ownership of the property? And if you could
5 also address the issue of what constitutes
6 clear title.

7 I think we have a lot of people who are
8 interested in that. I'm interested in it. I
9 think that, you know, we need to follow the
10 letter of the law, and I don't see how a
11 preliminary title report that does not
12 guarantee the declarations could be
13 constituted -- or considered a legal or
14 equitable -- proof of legal or equitable
15 interest in the land.

16 CHAIR MOLINA: Okay, thank you, Member Anderson.

17 Mr. Giroux, will you be able to comply
18 with the request in your comments back to the
19 committee as it relates to that?

20 MR. GIROUX: Is that by the next meeting?

21 CHAIR MOLINA: Well, we hope, as best as you can.
22 Thank you. That's a nice segue. First of
23 all, I want to thank everyone here for joining
24 us tonight, and I especially want to thank the
25 kupuna, Aunty Ali Silva gave me this ti leaf

1 and helped to provide calmness. I do realize
2 we were off to a rocky start, but I think it's
3 because we're all very passionate people and
4 we all do want to find some type of resolution
5 to this long standing project that's been in
6 our community for a while. So I want to thank
7 Aunty Ali and the rest of our kupuna who have
8 joined us tonight. Mahalo.

9 Members, the Chair's recommending a
10 recess of this meeting till Friday, 1:30 p.m.,
11 that will be Friday, August 3rd right here in
12 the Council Chambers.

13 Mr. Pontanilla.

14 COUNCILMEMBER PONTANILLA: On Friday, how long do
15 you intend to go? I did make some
16 commitments, prior commitments.

17 CHAIR MOLINA: We will -- okay, standard, I guess
18 minimum maybe three hours, and we will go as
19 long as we can. And I do realize all of you
20 have commitments. And no disrespect to the
21 Wailea 670 application, but there are other
22 important issues from our constituents out
23 there that they would like to see and talk to
24 our Members about as well, so we will see how
25 far we can go on Friday and go from there.

1 COUNCILMEMBER ANDERSON: Have you received --

2 CHAIR MOLINA: Member Anderson?

3 COUNCILMEMBER ANDERSON: Have you received a quorum
4 for that meeting, Mr. Chair?

5 CHAIR MOLINA: At this point, yes. Barely. A bare
6 quorum, so --

7 COUNCILMEMBER ANDERSON: And so --

8 CHAIR MOLINA: -- if we don't have a quorum, then we
9 don't have a meeting, so -- but I was verbally
10 told by one member that they will be able to
11 change -- make accommodations in their
12 schedule to be here.

13 COUNCILMEMBER ANDERSON: And so what are the five
14 Members who are making the quorum?

15 CHAIR MOLINA: Myself, I believe -- I have to --
16 Staff? I believe Member Baisa and also Member
17 Medeiros, were you -- no, I'm sorry, I think
18 it was Member Pontanilla, Member Victorino and
19 I think Member Mateo up to a certain point,
20 yeah, so those are the five, and we didn't
21 receive a response -- official response from
22 you yet for the 3rd, so --

23 COUNCILMEMBER ANDERSON: Well, I have plans, and,
24 you know, this is very unfortunate, because
25 this is in my community, and so now I'm going

1 to have to -- and these are plans that other
2 people have made with me, so that means I'm
3 going to have to disrupt the plans of like
4 four people in order to make this meeting,
5 because I certainly cannot not be here to
6 represent my community when this is where it's
7 going to be occurring.

8 And so I'd like to know when Mr. Mateo
9 has to leave? You know, it's difficult,
10 Mr. Chairman, when we don't have, you know,
11 advance notice that we have to upset our whole
12 life to come in for a three-hour meeting. So
13 I'd like to know when you are going to lose
14 quorum?

15 CHAIR MOLINA: It's hard to say. I think only -- I
16 think you may want to consult with Mr. Mateo
17 after we recess here, and then he can tell
18 you. So it's -- you know, it's hard to gauge.
19 Sometimes people's plans change. They may
20 have to leave sooner or they can stay later,
21 so I really can't tell you at this point, so
22 it might be wise if you want to consult with
23 any of the members who have committed to
24 coming to this Friday meeting.

25 COUNCILMEMBER ANDERSON: And so your intention is

1 for a three-hour meeting?

2 CHAIR MOLINA: Well, maybe possibly longer, but
3 we'll go as long as we've got quorum. I don't
4 at the same time want to over extend the
5 Members. I do realize it's very trying, and
6 we do have a lot of things to go through.

7 COUNCILMEMBER ANDERSON: And we've had two weeks of
8 meetings in a row.

9 CHAIR MOLINA: Well, that's how it goes with life on
10 the County Council, so, anyway, Member
11 Johnson?

12 COUNCILMEMBER JOHNSON: I just have a question, and
13 will the matrix --

14 CHAIR MOLINA: Yes, I will --

15 COUNCILMEMBER JOHNSON: -- be all prepared by
16 Friday?

17 CHAIR MOLINA: We will do our best to get a matrix
18 for you by Friday.

19 COUNCILMEMBER JOHNSON: I mean, we're short staffed
20 right now and --

21 CHAIR MOLINA: I know, Member Johnson, but you will
22 not be here Friday, right? You've
23 indicated --

24 COUNCILMEMBER JOHNSON: I know, but, again, you
25 know, out of respect, if I have to cancel

1 appointments and change plans that have been
2 made, I will do so, but I also think that it's
3 not fair to Staff, because we're so short
4 staffed and to try to make sense of all this,
5 it really is much easier, Chair Molina, to --
6 I guess to look at it in a big picture
7 context. Because then I at least have a sense
8 of where we're going and what the community
9 plan says, because right now, I'll be honest
10 with you, this is not being made any easier,
11 number one, by the length of the time, you
12 know, that this has taken. And then also just
13 keeping it all straight, because there's at
14 least two other Exhibit B's in our
15 documentation, and so I'm having a great deal
16 of difficulty putting it all together in
17 context so that I can see it in a logical
18 format, and I don't think it's fair to put
19 Staff in a position where they've got to come
20 up and -- I mean, they need some time too.
21 It's not just about us.

22 CHAIR MOLINA: Yeah, sure, and we acknowledge that,
23 but I'm very fortunate to have someone like
24 Ms. Nakata, who is just a virtual super lady,
25 and we will do our best to make the

1 accommodations for the Members.

2 Mr. Hokama?

3 COUNCILMEMBER JOHNSON: Mr. Chair, I just wanted to
4 say that I will make every effort to be here,
5 but I will not be beyond three hours, because
6 my husband is still ill and I have --

7 CHAIR MOLINA: I totally am sympathetic to your --

8 COUNCILMEMBER JOHNSON: Thank you.

9 CHAIR MOLINA: -- concerns.

10 Mr. Hokama?

11 COUNCILMEMBER HOKAMA: Chairman, I would just say
12 Staff will perform as required, period.

13 CHAIR MOLINA: Thank you, Mr. Hokama.

14 Mr. Medeiros.

15 COUNCILMEMBER MEDEIROS: Yeah, Chair, thank you, you
16 know, for your leadership here, but I can't be
17 here Friday because I have two meetings
18 scheduled in Hana, you know, longer than two
19 weeks ago, so it would be difficult for me to
20 change those meetings, so sorry I can't be
21 here. Thank you.

22 CHAIR MOLINA: No apologies necessary, Mr. Medeiros.
23 Okay, with that being said, Members, go home
24 get some rest and thank you for your
25 professionalism and dedication to the work of

1 the people.

2 It is just about 8:00 p.m. on Wednesday,
3 August 1st, 2007. This Land Use Committee
4 meeting is in recess until Friday, August 3rd,
5 1:30 p.m. here in the Council Chambers.

6 **RECESS: 7:59 p.m.**

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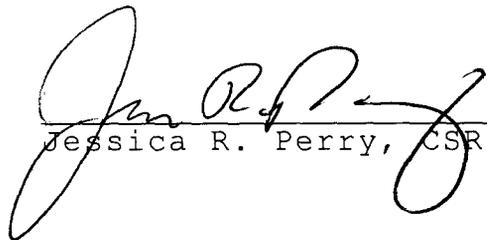
C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, Jessica R. Perry, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 28th day of August, 2007, in Honolulu, Hawaii.



Jessica R. Perry, CSR NO. 404