

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

August 3, 2007

Council Chamber

RECONVENE: 1:34 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember G. Riki Hokama, Member (Arrive 1:43 p.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Bill Kauakea Medeiros, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Michael Miyamoto, Deputy Director, Department of Public Works
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
Jeffrey Eng, Director, Department of Water Supply
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Charles Jencks, Owner's Representative, WCPT/GW Land Associates, LLC
Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
Wayne Yoshioka, Manager, PB Americas, Inc. (Applicant's traffic consultant)
Barry Toyota, Vice President and Director, Wilson Okamoto Corporation
(Applicant's civil engineering consultant)
Aki Sinoto, Aki Sinoto Consulting (Applicant's archeologist)
John Ford, Program Director/Senior Biologist, SWCA Environmental Consultants
(Applicant's flora consultant)
B. Martin Luna, Esq., Carlsmith Ball, LLC (Applicant's attorney)
Melissa Prince
Additional attendees (20)

PRESS: Melissa Tanji, *The Maui News*
Akaku--Maui County Community Television, Inc.

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CHAIR MOLINA: . . .(*gavel*). . .The recessed Land Use Committee meeting of July 25th, 2007, is now in session. It is 1:34, and today's date is August 3rd, 2007. Members, we last left off, I believe it was August 1st, and we had Mr. Jencks at the lectern prepared to respond to questions from Mr. Victorino. And I believe that this was related to Condition No. 1.

And just some general information for the Members before I have Mr. Victorino ask his questions. Members, we are, we'll probably lose quorum at about four o'clock today. So needless to say I don't think we'll get to any decision, final decision making. We have quite a ways to go, so I just wanted to make the Members aware of that. And when we do get to the point of having a discussion of when our next meeting will be I would like to ask all Members to bring your proposed changes or additions to our next meeting. So please come prepared. So we will try to use our meeting time as efficiently as we can.

So I'd like to just kind of share that with you, because there was an interesting editorial in the *Maui News* today. The last paragraph, if I could share that with the Members - "There's a difference between being thorough and trying to talk something to death. There's a difference between wanting to move on and being tired of the hassle. The Council Members might take a cue from successful union negotiations. Start with what everyone can agree on, and then move on to those they cannot taking each issue one by one. It's hard to imagine needing any more information than has already been presented." So I find it ironic because that was the Chair's intent as to the way he had wanted to, to move with this matter back on August 1st. So, anyway, I just wanted to share that with you. Let's try and use our meeting time wisely, because --

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: --time is very limited, excuse me, let me finish, time is very limited. But anyway as Mr. Jencks begin make, come up to the front, and then, Member Anderson.

COUNCILMEMBER ANDERSON: Yeah, since you did mention the *Maui News* article I think it's only fair to inform the *Maui News* that there are criteria of approval for this body to follow in approving the Change in Zoning. And that means we have to have all the information in front of us. And it's very clear that we don't. We don't have water information. We, there, there's a lot of information we don't have which is why we're trying to get the facts so that we can make... you know, do our due diligence on behalf of the public, Mr. Chairman, and make an informed decision.

CHAIR MOLINA: Thank you. And the Chair thanks you for your comments on that as well. Mr. Jencks. Oh, Mr. Jencks, before you start, just for the record, we have for our recessed meeting the Members in attendance Molina, Mateo, Anderson, Baisa, Johnson, Pontanilla, and Victorino.

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**ITEM NO. 38: CHANGE IN ZONING AND PROJECT DISTRICT PHASE I APPROVAL FOR
“HONUA`ULA/WAILEA 670” RESIDENTIAL DEVELOPMENT**
(C.C. No. 01-334)

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: Mahalo, Mr. Chair. Mr. Jencks, thank you for being here. The question I had or the question I had for you was, first of all, being that water is a tremendous issue and you claim to have studies, and I know you presented us some, some, some information that I have not had a time to go over so I apologize, but my question to you is very simple. All these studies that are coming forth will you allow our Department, our Department of Water Supply and any other agencies that might necessitate it to review and verify all the information that you are presenting to us?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Of course.

COUNCILMEMBER VICTORINO: Okay. And, secondly, would you, well along the same, same, same line of questioning, would you participate, because remember the word, when it was made available, and I'm talking about reclaimed water, would you participate as a contributing member to us running and upgrading our Kihei Wastewater Treatment area so that we could bring water that way to you folks to, not only 670, but to Wailea, so that we can continue to use what I call reclaimed water, quit injecting it into the ground, and maybe lessen the burden on all the aquifers out there whether they're brackish or whatever, lessen the usage of the aquifers for irrigation purposes?

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

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Absolutely. In fact, there's a proposed condition that the, we proposed that says that we would participate not only in the reclaimed water but also the extension of the wastewater lines out to that area.

COUNCILMEMBER VICTORINO: Okay. Thank you. Thank you, Mr. Chair. Those are all the questions I have.

CHAIR MOLINA: All right. Thank you very much, Mr. Victorino. And before the Chair recognizes other questions for Mr. Jencks, you've been provided a large matrix of the conditions that were given to us by the Planning Commission. It also has the Applicant's conditions that correlate to the conditions that were given to us by the Planning Commission and also some additional comments in some of the other columns. So we made it large and some of these conditions are rather worthy, wordy, so I just wanted to make you aware of that as well. Member Anderson?

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COUNCILMEMBER ANDERSON: Mr. Chair, as we have Mr. Jencks here, and he has provided us finally with a copy of the Haleakala Ranch agreement at 1:10 today, none of us have had the opportunity to read it. And, you know, in the spirit of expediency since he's here could he please tell us what the salient points are in this agreement?

CHAIR MOLINA: Okay. Mr. Jencks?

COUNCILMEMBER ANDERSON: And maybe give us the page numbers so we can follow along.

MR. JENCKS: I'd be happy to. I, as I recall, Mr. Chair, there were two questions that came up. One was the question with regard to the maximum amount of water we could take. And the other question was, as I recall, had to do with excess water. If you look at Section 4.1 of that document...

COUNCILMEMBER ANDERSON: Could you give us the page, please?

MR. JENCKS: Well, I don't know the page number exactly, but it's all, it's in Sections 4.1 you can run through numerically.

VICE-CHAIR PONTANILLA: Page 9.

CHAIR MOLINA: Members, 4.1 page 9; starting on page 9.

MR. JENCKS: What that section, there's a series of sections there that talk about these two items, one being the maximum intake and the excess water. Briefly, and I'll use an example so you, so it's clear as I can make it. If I need a million and a half gallons of water from these wells, and it, and it could be three wells, it could be four wells, whatever the number is, on the Haleakala Ranch property. If I need a million and a half gallons net delivered to the project, and the quality of the water is such that I need to clean that water, I need to, I need to put it through reverse osmosis system to make it potable, the assumption is, let's say I need 25 percent more water to get to the 1.5 million gallons, I'm only capable of taking two million gallons out of that system. So I have the two million gallons, less the 25 percent gets me to a million and a half gallons.

So it's a function, Ms. Anderson, of the quality of water that comes out of the well. And what we've suggested to you in testimony, and I think also in writing, is that we're, we're fairly comfortable that those numbers will be in the 300 to 350 milligram per liter range which gets us around that 25 percent number. Two million gallons gross gets us down to a million and a half gallons a day.

COUNCILMEMBER ANDERSON: So then, Mr. Jencks, you, in your agreement with Haleakala you have the right to take all the water reasonably necessary to provide you with 1.5 million gallons per day including both potable and non-potable.

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MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: So that doesn't really comport with what you're saying. I mean how much more, you're, you're going to have 1.5 million gallons per day for both potable and non-potable when...

MR. JENCKS: That's correct. It's 1.5 million maximum out of that system per day deliverable to the project.

COUNCILMEMBER ANDERSON: Not gross, net?

MR. JENCKS: No, net. Net. Net. Net.

COUNCILMEMBER ANDERSON: And we don't know what the gross is going to be until you drill the wells and see the quality of the water?

MR. JENCKS: Right.

COUNCILMEMBER ANDERSON: And all the studies that I've seen regarding reverse, reverse osmosis, desalinization of brackish water, I've never seen that you would need only 25 percent more. I've seen studies that say you need from two to three times the raw water to produce the one million gallons of potable. So that's why, you know, the question Member Victorino asked if you would be willing to allow the Department to review what you're doing.

I mean your application requirement says that, "you need to provide a water source supply and distribution analysis which includes, but is not limited to, methods of irrigation existing on the parcel proposed for the application, location and use of ground water and non-potable water sources, and if applicable a Water Master Plan which includes, but which is not limited to, comments from the Department of Land and Natural Resources of the State and the Departments of Water Supply and Public Works of the County."

So that should have been done before this application come, came to us. You're asking us to trust you that everything is going to work out after the fact. Why haven't you not done this if this has been your plan for the last at least two years or three years since the..., your previous plan was to take water out of the Upcountry Community Plan Region and that's against the community plan. So as far as I can see you've had at least four years to work this out.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: If I may respond to the question with regard to residual or brine, when we were talking about the gross amount?

COUNCILMEMBER ANDERSON: No, please answer the question I just asked, because if you had done this there wouldn't be any questions. We'd have the data and the facts in front of us.

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MR. JENCKS: Okay.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I would like to address the issue of residual water.

CHAIR MOLINA: And then you can respond to the next, the follow-up question.

MR. JENCKS: I'll certainly respond to everything.

CHAIR MOLINA: All right. Okay.

MR. JENCKS: In the Brown and Caldwell report that, that you referenced the other day that has been provided by the County by Brown and Caldwell for desalinization for reverse osmosis treatment, it talks about the desalinization of sea water in that report. And even if you desalinate sea water through this process the recovery is 50 percent. Sea water has a chloride content of about 35,000 milligrams per liter. At that level the recovery is about 50 percent. What we're suggesting to you, and our information and in that report as well, and it talks about brackish water compared to sea water where the recovery rates are somewhere between 80, or about 60 to 80 percent, the worse case. So the 25 percent is in the realm of reason with the chlorides that we're talking about in the brackish lens in South Maui which, as a matter of fact, are being recovered today, and that they are in that ratio. And, and empirically it's happening today.

As a part of the original application for this project, and I'm, and I'm not sure that the Members of this Committee have looked at this document, but there is a very complete document that was provided to the Department of Planning which they reviewed as a part of the initial application. It's about, it's about this thick. And that document was the basis for the initial Planning Commission review, in 2000. The Planning Department developed a report based upon that technical report that was required for submission. That report also has within it a water circulation system. We also then updated for the Planning Commission a water supply system for the second Planning Commission hearing in 2001 which was accepted, and the Planning Commission passed on the project with a vote of seven to two, and referred it to this Council.

In Committee, in this discussion for the last year and a half we've been talking about using reverse osmosis, a well drilling program. I provided the, the, the documents from the, the, the well drilling permits for both the onsite wells and the new wells on the property of Haleakala Ranch. We also responded to the request for an, an understanding of the essential terms and conditions of the agreement. I also provided a map that showed you where the well field was going to go and how we were going to get the water from the well field to the project.

So in, in my mind, Councilmember, there's an, there's an abundance of information that's provided on circulation, how the project will be served. I provided every document I've been asked to provide.

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COUNCILMEMBER ANDERSON: Well, Mr. Jencks, I, I've read all of this stuff, and I still don't know how you're going to do this. The, the water supply plan that you provided is not valid anymore. You were going to use water from wells that are already drilled, and, and the source is already known. This is an unknown and, you know, with all due respect, Mr. Jencks, you are not a hydrologist or a geologist, and neither am I, but I can read. And I'm not referencing just the Brown and Caldwell report which, you know, focused on both brackish water desalinization as well as sea water desalinization.

MR. JENCKS: Correct.

COUNCILMEMBER ANDERSON: And it also was a report for producing five million gallons a day. So, you know, you're looking at something, you know, at least half as small as that. And the, the problem of how you're going to dispose of the waste has not been addressed. The problem of how much raw water you're going to have to take in order to get that two million gallons a day has not been addressed. What the downgrading effect of the, of the existing brackish wells that irrigate property in Wailea and Makena, that has not been addressed. And so if, if that had all been addressed in an analysis we would have those answers.

And I might add that you now have investors backing up this project who have a combined total of somewhere beyond 400 billion dollars in assets. And I would think that they could afford to expend the money to go out and do the exploratory wells and get us, pump them long enough so that you have a stable draw, and that we have an actual idea of the possibility or the, the, the, the feasibility of what you're proposing. I mean you're asking us to just go on a, you know, prayer here that it's all going to work out. And we have to make a decision based on the County Code requirement for criteria of approval which says, "when we approve this we're telling the residents of this County that by our vote we have found that this project will not have any adverse affect on water systems." And we don't have the data to make that determination.

So, you know, you've had all this time and this agreement with Haleakala Ranch was entered into June '04. That's like, you know, three years ago. So, you know, the logical conclusion is that, you know, you don't want us to know what the facts are, because you want us to just believe your good faith efforts will pan out and that's not the way the Change in Zoning process works. The burden of proof is on the Applicant.

Look at what we've done here. We've gone through five binders trying to figure out if there's enough info, enough facts here. These are all, you know, requests for information that were not in the original application.

CHAIR MOLINA: Member Anderson, if I could interrupt for just a second. I'd like to recognize Member Hokama. Do you have another question for Mr. Jencks at this time, or can I open the floor to other Members?

COUNCILMEMBER ANDERSON: Please pass it on. I'll come back, Chair.

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CHAIR MOLINA: Okay. Thank you very much, Member Anderson.

COUNCILMEMBER ANDERSON: I'd like to scan this applica..., he didn't really go through this whole thing, but I'll, I'll try.

CHAIR MOLINA: Okay. Yeah, it is, it is a rather lengthy document I agree with you. Member Hokama, do you have a question at this time? I know you just walked in the room, and you did have some questions the other day.

COUNCILMEMBER HOKAMA: Chairman, thank you very much, and I believe the previous evening I had asked Mr. Jencks concerning the decision order of the Public Utilities Commission regarding competitive bidding. Because for one in the information that we currently have, it is the intention of the Applicant to put forward a private utility and part of how I would assume the, the Commission would finally make decisions on whether or not the proposed rates that would be considered for the potential users would have to be verified through some type of bidding process to verify that the numbers used to calculate the rates, proposed rates make sense and can be justified.

And therefore, Mr. Chairman, I would think that maybe at the appropriate time we might want to allow Water Director Jeff Eng to see if he has some comments he could share with the Committee that might help us have a better understanding as well as the County's role in assuring that we are not overextending whatever current physical restraints and capacities we have for the region.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama, and I think that's a good segue. If there's no objections, Members, we do have Mr. Eng in the gallery if he would like to come up, and Members if you have questions for him. And we also have Mr. Miyamoto from Public Works and Mr. Matsui from the Parks Department as additional resource personnel. And I neglected to mention the Deputy Planning Director Ms. Colleen Suyama has joined us today. Member Johnson, before we...

COUNCILMEMBER JOHNSON: Yes, are, are we going to have an opportunity to ask questions of Mr. Jencks later?

CHAIR MOLINA: Oh, yes. Sure. Sure.

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: By all means, yes.

COUNCILMEMBER JOHNSON: Okay. Thank you.

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CHAIR MOLINA: I just thought that, at this time, since it does tie into Condition 1, which relates to water I thought maybe Mr. Eng could respond to some questions from some of the Members.

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: I just want to make it clear I'm not finished with water questions for Mr. Jencks.

CHAIR MOLINA: Okay. I will bring Mr. Jencks back when he's done. Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you for your consideration, and I thank the Committee Members for their indulgence so that hopefully Mr. Eng can give us some comments that will assist us in reaching conclusions. Mr. Eng, I hope you were able to, or have been made aware of some of the questions we had posed to the Applicant the previous evening regarding one of their proposals of how to ensure they have sufficient water for the proposed project requirements. And one of the considerations is, that the Members of this Committee has brought up was the option of working with Haleakala Ranch through a water development agreement if that, I can use that term at, at this time, and that they're looking at the exploration verification and eventually use of brackish wells, and a system called reverse osmosis to bring the chloride levels low enough so that it comes within potable parameters.

One I would say, and again you are better aware than I am with the Island's aquifer situations, but my question to you, sir, this afternoon regarding the, the option of the brackish wells is that, one, does that make sense to explore, and dig, and use brackish wells for reverse osmosis versus going to a higher elevation, and I know it's a longer transmission, but to actually drill and get a degree or amount of potable water so that you don't jeopardize the brackish lense whereby eventually I would think there would be some geothermal, potential geothermal activity like we have on Lanai in our, in our basin where already when we do our water testing, and we take temperature tests, you can see a noticeable rise in the temperature because of this geothermal activity that's happening between the transition levels. Do you have any comments you could share with the Committee this afternoon regarding whether or not it's a reasonable concern on this Committee's part?

CHAIR MOLINA: Mr. Director?

MR. ENG: Thank you. Mr. Chair, Committee Members, good afternoon. In regard to the location that the Applicant is planning to develop their water sources, and that is I believe called the Kamaole Aquifer, I think it's pretty much common knowledge that that particular aquifer is not what we would call a, one with a high sustainable yield in regards to good quality potable water; meaning water below 250 parts per million chlorides. In fact, probably at the elevations that the Applicant is planning to develop the wells, and I believe it's more in the several hundred foot elevation height, most likely the fresh water lense is fairly thin. It's no, it's no surprise to any of the

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hydrologists, even back in John Mink's days when he was doing the initial estimates of sustainable yield, I think that aquifer was determined to have 11 million gallons per day, but in reality that might not have all been potable water.

The notion of going to a higher elevation to develop water would make more sense in that aquifer in the sense at a higher elevation you're further inland, and we all know that the further inland you go the deeper the basal lens is. However, the cost to pump water at such high elevations would be probably highly problematic as far as eventual rate payers of that water system. So in regard to if it's appropriate to develop brackish water wells there and utilize them for RO the answer is probably yes. The question would be, again, adequacy of source. From an operational standpoint you would want to have adequate backup and as you folks had pointed out the other day is it is able, being able to properly dispose of the, the concentrate.

COUNCILMEMBER HOKAMA: Thank you. So can this Committee take your, your comments this afternoon that there, that there could be a very serious concern particularly if one of the two brackish wells that are being proposed or both turn even sour, if I can use that term, whereby the chlorides now are increasing and that would then..., would that jeopardize the amount of water that would be treated for use by the development should the chloride levels keep continuing to, to rise because, well, more than likely they would be over pumping, so you would be changing the dynamics of the original model? Is, is that a reasonable concern for the Committee or, or is it just for me more of a conceptual theoretical thing?

MR. ENG: No, it is a reasonable concern. Again, because of the nature of that aquifer as it currently stands there'd have to be proper testing and evaluation to determine what kind of pumping it can sustain without doing further damage in that it already has significantly high chlorides, any amount of pumping will increase those chlorides. So, you know, most likely..., and the harder you pump it the higher the chlorides are going to be. That's just the fact of life. So it's something that the Applicant will have to look at in determining the, the design of their pumps and, if need be, you know, they maybe have to look at an additional backup well to distribute that pumping.

COUNCILMEMBER HOKAMA: Okay. Thank you. Chairman, if the Members would allow, you would allow and with the Members indulgence, just two quick questions that I had posed to Mr. Jencks that I would ask Mr. Eng if he would care to comment, please?

CHAIR MOLINA: All right. Proceed, Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you, and, and very quickly, Members. Thank you for this indulgence. The other night I had brought up a question regarding a DNO of the commission, of the Utility Commission which is a decision order regarding competitive bidding, and you've heard some of my comments on why, it is my understanding why Chairman Caliboso had ordered a competitive bidding requirement so that you can justify why certain rate proposals is reasonable or not. Is it your Department or your understanding that what I had shared the

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evening before is being practiced by the Commission, or as far as your, your understanding or your Department's understanding?

MR. ENG: Yes, by both the, the PUC, the Public Utilities Commission as well as the consumer advocate, whenever a regulated utility is applying for rates basically your, your reason for applying for rates is you probably have added infrastructure or rate base to your utility, or you're trying to recover additional operational expenses. But in the case of, let's say, developing the infrastructure for this water system, obviously, the utility owner would want to recover all those costs and, in fact, earn a fair rate of return on his investment. So it's in the best interest of the utility owner to be able to provide the PUC or the consumer advocate with good basis for the evaluation of those assets. And sometimes the utility owner will proceed with the development of infrastructure without getting competitive biddings. In that case, the consumer advocate would closely, closely scrutinize those costs and if they can't verify, they don't feel comfortable, then you're actually allowing the consumer advocate determine the value of your investment, and generally you wouldn't want that to happen. So it's in the best interest of the utility owner to have competitive bidding.

COUNCILMEMBER HOKAMA: Thank you for that comment on, on my, my question, Mr. Eng. My last question that I found interesting in the Applicant's response to one of my questions, would the Department of Water Supply or, or you as our Director, Mr. Eng, consider the use of potable water to blend, to reduce chlorides so that landscaping, if possible golf course irrigation, could be utilized of the residuals from the reverse osmosis process be considered a circumvention of our County policy which does not allow potable water for golf course irrigation?

MR. ENG: Well, that's a question that, you know, our Department is, is in fact exploring, because desalination may be a treatment that we will be exploring in the near future. And one of the big issues will be properly disposing or utilizing the concentrate or brine. And most likely we wouldn't want to use potable water to blend or dilute it down. We would want to find other non-potable waters to dilute down the brine. So in that case my personal opinion is that I wouldn't use potable water for those purposes. And that's going to be a big challenge for the Applicant, because, you know, you are producing this concentrate, and you got to bring it down to a chloride level that is suitable for your turf and other landscaping plants. And it's doable but most likely they would have to find some kind of non-potable source to, to dilute with.

COUNCILMEMBER HOKAMA: Mr. Eng, I appreciate your comments to my questions this afternoon. Chairman, thank you very much.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Member Baisa, you had a question for Mr. Eng?

COUNCILMEMBER BAISA: Thank you, Chair. Good afternoon, Mr. Director. The man of the hour; it's all about water. You have been ever since you arrived. . .(end of tape, start 1B). . .a serious matter that we're looking at. And, of course, water is, is the issue. Everybody is concerned about the effect of development on our already precarious water situation. And I've been spending a lot of time trying to listen, and read, and understand the issues here, and I'm trying to

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find, always trying to find a win-win. I am aware, and I know, that maybe you can share with us that the Department knows that it has to look for sources of new water, new sources of water, because inevitably we need more water. We need more now, and we're going to continue to need more in the future with or without Wailea 670. Those sources obviously are going to cost us millions and millions of dollars, and I know that's a big concern for you because, you know, how do we get it, and where do we get it from, and how much can we charge?

This may be a totally crazy idea, but because we have heard about the wells being possibly brackish and not, you know, providing enough water, or the quality of the water, the aquifer in the area having a thin lense, us having a lot of R-1 water that's not used or cannot be used because of cost of transmission, would it benefit everyone if we were to try to look at a possibility of having these developers help with the cost of developing new sources of water not necessarily in the project area, but for the whole system so that more would become available for everyone, and then they could get some of it? But they would help with this staggering cost of finding, identifying, and having more water for everyone.

Like saying, okay, give us a bunch of millions of dollars and help us develop our system, our general system, and then we can provide you. And what that would mean then is that they're not developing water exclusively for their folks, but for all of us. Is that, is that a possibility?

CHAIR MOLINA: Mr. Director?

MR. ENG: It is a possibility. It's feasible to do that, because the way, the extent of our water system we could develop new sources in one location which would help relieve demand in that particular location which would free up water in another location to serve, such as, this new development. However, I believe it's currently in the hands of this body regarding further partnerships with developers to develop water sources. It has been recently a practice of the Department and the County to do so. I personally feel we still have to continue to do so for the time being. I know ideally down the road we would like to be in that position to develop our own sources, but we all know that funding is the biggest issue and challenge right now. And, and the question is how much are our rate payers willing to pay for that, and that's something that we're all toiling with. But, yes, it is feasible...your notion.

COUNCILMEMBER BAISA: Mr. Chair, at some point, I would like to address that same question to Mr. Jencks and to see if he's amenable to it. I think that, you know, if we all concentrate on making a system for all of us so that nobody suffers, because I'm really worried when we talk about doing desal..., or whatever it is, and we look at the cost of what that would be to the users. I worry about it being feasible particularly to any folks with affordable homes that might be in the area. So I'd like to bring that up with Mr. Jencks at some time. Thank you, Director.

CHAIR MOLINA: So noted, Member Baisa. Member Anderson?

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COUNCILMEMBER ANDERSON: Thank you, Chair. Director Eng, thank you for being here. We appreciate it. So has this current group of owners for Wailea 670 come to you folks to discuss water?

MR. ENG: No, they haven't.

COUNCILMEMBER ANDERSON: Because, you know, in 1984 Wailea 670 got their first project district designation in the community plan. And when that was done the Director's report to the Commission stated that, and I'm just going to stick to water although I'm sure tempted to say a few other things here, back then they were being required 60 percent affordable housing. But in the Director's report it says, "according to the Department of Water Supply the Applicant will be required to participate in water source development. The Applicant is also willing to fund its fair share of necessary water improvements." Now that was in a 19..., in 1984 when they got their first community plan designation. And back then for project District 9, and back then it was called Seibu Mauka. And then sub..., subsequently, oh, I'm sorry, this was in 1992, when they amended the original Project District 9, which was called Seibu Mauka making it Wailea 670 for 670 acres. So what I just told you was a commitment made in 1992.

Then they, they also made an agreement when they got their first Change in Zoning for 402 acres of Wailea 670. At that time, they were told conditions. And these conditions, Members, currently run with this land. They still are deeded against the land for the 402 acres. It says, "the Applicant shall execute appropriate agreements with the State of Hawaii and County of Maui agencies regarding participation in improvements of infrastructure and public facilities where such improvements are reasonably related to the Applicant's project."

Then they came and got a District Boundary Amendment for their State Land Use classification in 1994, and when they did that they had conditions attached, and these conditions currently run with the land deeded against the property. "Petitioner shall fund and construct its pro-rata share of adequate water source, storage, and transmission facilities, and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies."

So it appears to me that they're already required by law to participate in water source development, and I'm, I'm shocked that they haven't come to the Department in trying to find a way to develop potable water that they can use on their project. So just to follow-up with your answer to Ms. Baisa, would this source development, because we know, we just saw studies from USGS, that the chloride levels are rising, the transition zone is narrowing, all indicators are that there's no further water to be pumped from the Iao or Waihee or Waiehu Aquifer which is all one in the same. So where would we get water if we had..., say, you know, the, the Santa Claus or the good fairy came and waived a wand and said, you know, there's no, there's no restrictions here on, on, on funding. Where would you drill a water [sic], I mean drill a well that would give us water for the Central and South Maui area?

CHAIR MOLINA: Mr. Director?

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MR. ENG: Member Anderson, as you know, we're still currently working closely with USGS, and we have identified for them some potential sites; in the Waikapu Aquifer and going south and also going north of Waihee. And we believe also with some of the plans and projects we have planned for the Iao Aquifer and within the Waihee Aquifer to spread out pumping and, hopefully, once we get those two new wells in, and those are the Iao tank, Iao tank site well and the Waikapu tank site well, that we will have some favorable data that will allow us maybe to increase some of the pumping from the Iao, Iao Aquifers. But right now we're, we're looking more north, going northerly and exploring going south. But it is quite a challenge and that's why even as I mentioned earlier that desalinization may be closer in the horizon than, than we once thought. But it is a big, big challenge particularly if we're looking at the cost of developing these new sources. The further we go out the more costly it is to connect your existing system and also to, to bring power to those sites. So it is a big challenge, but again working with the USGS we feel pretty confident that they will give us the guidelines to, to select the appropriate sites.

COUNCILMEMBER ANDERSON: And, and when you say going north I mean, you know, we've already got problems north. The Mokuhaul Well salted up, and we had to close that. And, and so, you know, how far are we from USGS saying here is a viable location where you can get, you know, where it's worth the pumping or the drilling to get the, the water?

MR. ENG: Yeah, I, I think we're pretty close. They, we, we met with them two or three months ago to offer these additional potential sites to, to look at. But in regard to the Mokuhaul Wells, you know, they're right in the heart of the Iao Aquifer, and...

COUNCILMEMBER ANDERSON: Oh, I guess it was the Waiehu Wells that didn't pan out.

UNIDENTIFIED SPEAKER: Yeah.

MR. ENG: And there is one Waiehu Well that the chlorides --

COUNCILMEMBER ANDERSON: It rose.

MR. ENG: --rose; that we are downsizing the pump. And, in fact, we will be reinstalling it very shortly and hopefully we'll get some favorable results. And, and that could have been a combination of not just over pumping or the transition zone rising it, it could have been even how they developed that particular well. You know, it might have been indeed been, been drilled too deep that, that, you know, so...but, hopefully, with this smaller size pump that we'll be putting in that will get favorable chlorides and continue drawing from it.

COUNCILMEMBER ANDERSON: So, I mean not to get into to the detail of, this is a huge issue, and we're dealing with it in our Water Resource Committee but, you know, there's a lot of unanswered questions on how far we can extend the available source out of the Iao and Waikapu Aquifers. There's still a lot of unanswered questions, and we still have the Shaft 33 problem

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that, you know, God forbid it should collapse on us. And I understand they're not even letting anybody go down there anymore because it's so dangerous.

So, you know, I know that you, you came from a private water system, Director Eng, so I'm, I'm asking this question in the hopes that you are more familiar with the PUC than I am. But I was told that the PUC will only permit certain size systems as private. In other words, you reach, you have, you reach too many people in this system, and they won't consider it, consider it for licensing or permitting. They consider that a public system. Are you familiar with that?

MR. ENG: Member Anderson, I, I have not heard of any limitations on the size of a utility. For example, Maui Electric is quite big, and it's, it's, it's regulated by the PUC, and it's parent company Hawaiian Electric is regulated. So I don't think there's any size limitation.

COUNCILMEMBER ANDERSON: You don't as far as having a private, privately owned water system?

MR. ENG: No.

COUNCILMEMBER ANDERSON: Okay. Have you done any research on the electrical cost for desal, 'cause you, you say you're going, you're looking into it? And I know we have that report but, you know, they said four, to do brackish water it would be \$4 to \$5 per thousand gallons, and so that must be the electrical cost.

MR. ENG: Well, no, that was actually all the costs. The, the costs that our consultants developed last year for the Department for brackish reverse osmosis, based on the five million gallon per day plant, came out to \$4.10 per thousand gallons. And I was just looking at that the other day and, and questioning the consultant. And the \$4.10, in fact, included GAC. So they take a very conservative approach in...

COUNCILMEMBER ANDERSON: I'm sorry, included what?

MR. ENG: Included not just reverse osmosis, but on top of that to add a granular activated carbon treatment facility.

COUNCILMEMBER ANDERSON: To take out the cleaning chemicals?

MR. ENG: If, if they took a very conservative approach, and they felt that, and, and the site that they were looking at was in the Kahului Aquifer. So they felt, well, if there is indeed any ground water organic carbons, then they would take it out. So they factored that in. Without the GAC it came out to more like \$3.20 per thousand gallons.

COUNCILMEMBER ANDERSON: And that, and that is, like, an amor..., amortized amount to pay off the investment of building the whole plant over however many years?

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MR. ENG: Yes, it was amortized out over 25 years of capital cost. So it included those costs plus the annual ONM costs. So you got either the 3.20 without GAC or 4.10 with GAC.

COUNCILMEMBER ANDERSON: And, you know, I mean how would we amortize that cost if we were to do that for us? I mean that would be, everybody would have to pay a portion of that; right?

MR. ENG: Well, it depended on how we fund that facility. You know, basically I would expect we would, since we have no means to accumulate cash for these large CIP projects, we would probably go out for GO bond funding. So in essence those capital costs would be spread out over a number of years and we would be paying down the interest and principal.

COUNCILMEMBER ANDERSON: And so, one last question, Mr. Chair, if I might?

CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: You know, we know the electricity costs are high, but we don't know what, exactly how high they would be, and I share Ms. Baisa's concern. I certainly don't want us to be, you know, burdening people who are just barely being able to afford an affordable, affordable house, and then tack it on in their electrical costs or their water costs. But have you, have you, you say you're looking into this, and I know when the study was first done there was so many negatives they just kind of put it on the shelf and didn't pursue it. So now that you're looking at it again what do you see as the constraints or the problems in, in disposing of the brine? Because, you know, it, it's going to be heavy, and I can't see us disposing of it in the ocean because it's going to affect the marine life and, and in a very detrimental way unless you want to, you know, take a pipe a mile and a half out to the ocean. So, and then I see a problem injecting it. So what's your take on that?

CHAIR MOLINA: Mr. Director?

MR. ENG: Well, the consultants I think pointed out that their option, we'll say favorite option would be utilizing injection wells. And, again, that's something we would have to continue to explore to see what kind of impacts that would cause. I think for the Applicant's particular project his advantage is that he has a means to apply it for irrigation purposes provided that he can dilute it down to a, you know, a chlorides level that, that won't harm the turf.

COUNCILMEMBER ANDERSON: And what would that be, Director?

MR. ENG: You know, you probably would have to ask a landscaper, you know, what would, what would work. I would think that..., like for instance, I have a familiarity with Kaanapali when the County brought in R-1 water to irrigate the golf courses and the resort common areas. And I believe the County at the time, and there was a concern by the golf course, because the chlorides were around 500 parts per million, and the golf course people were really concerned that that would kill off the turf. And we were able to get the project in, and they found it caused no

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problems whatsoever. In fact, some of the slight amount of nutrients in the water might have even benefited the turf.

So..., but as far as what is the upper limit on chlorides I, I don't know. I would think maybe it would be several hundred thousand..., I mean, yeah, several hundred thousand, several hundred parts per million. You know, I would think maybe if you got close to a thousand parts per million or more it could be problematic. Maybe not so much of killing off the plants and turf, but maybe just that solid accumulation in the soil. You know, you might be able to go with the higher chlorides dosage, but periodically you would have to flush that soil with, you know, clear water. But only a landscaper would probably know for sure.

COUNCILMEMBER ANDERSON: Yeah, because, well, I heard rumors that they're having problems in the golf courses down south, and they're mixing potable water with it. It's only rumors. No one's going to admit to it, because it's not something they're supposed to be doing, but when you look at the, at the chloride levels on some of these wells in that area, they're definitely, you know, 700, 700 parts per million, 1,050 parts per million. You know, some of them are way up there. So I think we need to know that, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, we'll have Mr. Eng around for the rest of our meeting, and as I stated at the early, when we started the meeting we are probably going to lose quorum at about four o'clock, and I know there was a request for Mr. Jencks to come back to respond to some questions. We do have some conditions that will require some major discussion, but the Chair, if there are no objections, would like to maybe move around to some of the other conditions for possible consensus just to keep things flowing.

I would like to inform the Members you are being filmed by someone else, and I don't know if this is an independent photographer. If you could for the public record, at a later point during the break if you could identify yourself to the Committee Staff just for the record, and as a courtesy to the rest of the Members, public that are sitting in the gallery. And we are, of course, always filmed by Akaku Television.

So, anyway, if, Members, if you don't have any other questions for Mr. Eng at this time I'll excuse him. And then...

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Oh, I'm sorry, Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. I, I do know you want to move on, but, you know, while I have the opportunity and before I forget.

CHAIR MOLINA: Sure.

COUNCILMEMBER MATEO: I'd like to ask Mr. Eng a question.

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CHAIR MOLINA: Proceed, Mr. Mateo.

COUNCILMEMBER MATEO: Thank you, Chairman. Mr. Eng, the Brown and Caldwell report in the '90s provided this County a lot of warnings, provided a lot of warnings on transmission stability, on storage facility conditions and, you know, I don't know how seriously the County took these warnings considering, you know, we paid for the report, and we didn't even adhere to a lot of what was told to us. Not only are, is the Department currently looking at the potential of desalinization, but in that process of looking for additional source, because wells are just hard to come by in terms of quality water, in the Department's future planning is the Department actually taking a look at capacity for these areas? Because aside from the knowledge of the condition of our sources, we also saw the explosion of growth in both West and South Maui, but we've never really had the opportunity of listening to the Department of Water tell us what capacity is. So in your plannings and your processes, is that part of what you're studying; to be able to tell us how much water we need to keep up with the existing and future growths of the various districts?

CHAIR MOLINA: Mr. Director?

MR. ENG: Yes, Member Mateo, our Planning Department Division does, indeed track current availability, future needs, and hopefully in the near future we'll be able to share this, again, with, with the Water Resources Committee. Again the needs are growing faster than we can meet them obviously, and it is something foremost on our mind, capacity in general not just new source. We're not too bad in, in the sense of transmission to our major urbanized areas. In the outlying rural areas we do have problems. Storage is, a lot of our storage issues are more just maintaining our storage, and doing the proper repairs and maintenance. But, yeah, that is foremost on the Department's mind, is how are we keeping up? Do we have capacity? And at this time it's, it's a really difficult, difficult challenge for us.

COUNCILMEMBER MATEO: Okay. I hear, I hear a feeling of uncomfortableness in actually telling me that we don't know capacity actually at this point, and the water we need to address that capacity virtually is questionable. So are, you know, at one point or another whether it's going to be you as the Director or somebody else in the near future, you know, is there a potential of coming to this body and saying there is no more water?

MR. ENG: You know, the question this Department has been faced with over the years, and going back many years, is, is capacity issues, particularly in available water. And you can view it many, many ways. You know, the various counties within this State evaluate capacity and adequate availability different ways too. You know, we have always had over the years a very conservative way of evaluating availability. Unfortunately, we can no longer meet those conservative way of viewing it. We've modified our various standards a number of ways too.

Depending on what standards you want to use, and that's where we're currently evaluating with our Water Use and Development Plan how much comfort and risk are we as a community willing

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to take. Like, like for instance, the, the current issue I'm kind of facing is what's, what's adequate for Upcountry? You know, how much money do you want to spend up there? Are we willing to annually accept drought cutbacks, or do you want to develop a system that will never have a drought situation? It's a tough one for us to, to deal with. If we had unlimited amounts of money and unlimited well sites to choose from, yes, we could address it. But there's so many factors that make it real complicated in our decision making.

But if you ask me right now, yes, we're in a problem situation. We're probably not at the standards of availability that I would be real comfortable with such as, Member Anderson, when you mentioned Shaft 33. You know, just knowing that that's lurking out there is a whole problem in itself --

COUNCILMEMBER ANDERSON: And it's scary.

MR. ENG: --for this Department. So, yes, it's difficult.

COUNCILMEMBER MATEO: Thank you, Mr. Eng. Chairman, thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, Mr. Eng, and I'm assuming you have not yet read the copy of the agreement that we've been handed with the redacted sections?

MR. ENG: No, I haven't.

COUNCILMEMBER JOHNSON: Okay. Are, it's, it's basically a request that was made by Member Anderson and this body. It's a Haleakala Ranch WCPT and GW Land Associates, LLC, Water Agreement. So are you going to be able, or do you have a copy of that, or would you like us to provide you with a copy, because I certainly would like to have you review this?

MR. ENG: Okay. If you could provide me with a copy I'll certainly review it.

COUNCILMEMBER JOHNSON: Okay. Mr. Chair, would it be possible? I, I just really would like to see his comments, because there's portions of this that I'm not a person who's used to looking at water agreements --

CHAIR MOLINA: Sure.

COUNCILMEMBER JOHNSON: --and I would think Mr. Eng would be.

CHAIR MOLINA: The Committee will provide Mr., Mr. Eng with a copy.

COUNCILMEMBER JOHNSON: I really appreciate it. Thank you, Mr. Chair.

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CHAIR MOLINA: Thank you, Member Johnson.

VICE-CHAIR PONTANILLA: Chair.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. In regards to West Maui Mountains, and I think I asked this question once before. In regards to the high level aquifer is there a feasibility of utilizing the high level aquifer? And what would it take, you know, how much would it be to utilize that water?

MR. ENG: You know, the high level dike water that you're referencing is probably a fabulous source of water in terms of quality. Probably it's free of chlorides. It's probably, in terms of quantity, plentiful. I think the challenge would be twofold. One is accessing the sites to, to develop tunnels to gather that water, and then to transmit it to our existing system. It could be just a lot of physical challenges there. And the other thing would be how these high level systems impact our surface water systems. And that's something that's before the State Water Commission at this time in regard to instream flow studies and what's the proper amount of flow. And so in that regard it's probably nothing that we can take up at this time until all of that is addressed and resolved.

VICE-CHAIR PONTANILLA: Thank you. And, and you mentioned that the Kaanapali Golf Course utilized R-1 water that's presently available at the Lahaina Treatment Plant. In regards to the South Maui to take care of that brine, I know it's a long ways off, is that a solution that can be looked at in regards to blending the brine with, hopefully, R-1 water from Kihei Treatment Plant?

MR. ENG: You know, actually I think that is probably a solution for their disposal problem and that, and that we wouldn't want to use potable water to dilute the concentrate or brine. But I believe, and you might want to check with the Wastewater people, that the chlorides level of the Kihei R-1 water isn't at the levels that the Lahaina Plant experiences. So let's say, like, the chlorides level or at a more reasonable concentration such as, and there's no reason why it shouldn't be less than 100 parts per million out there. You see in Lahaina they had a problem with a lot of infiltration of water into their wastewater lines, so the salt water was coming in. So they're treating already high chlorides water. So obviously the effluent would be of high chlorides.

The Kihei, the Kihei area, because probably those wastewater lines are not as old, most likely you would expect less infiltration. And so it should be pretty low chlorides that if you blend it with a, with a brine or concentrate would be a good way to, to dilute down those chlorides for landscaping purposes.

VICE-CHAIR PONTANILLA: Thank you. Because we had a presentation by USGS last week and what is so glaring is that most of the recycled water is pumped back into, into the ground. . . *(end tape, start 2A)*. . . and provide this water to other users. You know, it makes much more

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sense, yeah, because the pump, the injection wells are, are causing part of the coral degradation. So thank you for your comments. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Members, at this point the Chair, I know we spent a little over an hour just on this first condition. The Chair will honor the request of Members Johnson and Anderson, we'll have Mr. Jencks back, and I would ask that if we could maybe spend ten more minutes with Mr. Jencks, and then we'll hold off on that condition and move on to other conditions. But, you know, at a later point in time we will go ahead and continue the discussions on Condition 1. Just so we can get a little variety here today on the amount of conditions that we have. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, I just had one final question of Mr. Eng, just very briefly, and I, if I may, Mr. Chair?

CHAIR MOLINA: Go ahead, Member Johnson.

COUNCILMEMBER JOHNSON: I, I really am getting increasingly concerned about when I drive through the whole area that's, you know, the subject of this area of development, and all the water features, and the massive swimming pools, and things that are, I mean the lush landscaping and all of this. Are you or your Department going to be supportive of conditions that we might have, even as standard conditions for development, in very arid areas or areas where water is a big problem that would limit perhaps things like water, water features or swimming pools, or lush landscaping that is very water intensive?

CHAIR MOLINA: Mr. Director?

MR. ENG: Well actually, I don't know if I'm or the Department is in the position to make those type of restrictions, but we certainly are supportive and want to promote conservation. You know, if there's any kind of conservation-related measures that you can add, you know, those are the type of measures we want to have applied to all developments throughout the community not, not just this one. And the reason for that is we, we know that the challenge of developing new sources and the time it takes to develop new sources are very lengthy, but I kind of feel that personally that we can achieve so much and make more water available just through good conservation measures. I mean just cutting back even, like, ten percent, like the Upcountry people have done successfully except for Ms. Baisa's roses, you know, there's not been too much damage up there.

COUNCILMEMBER BAISA: They're really bad now.

MR. ENG: But, but, you know, if you just look at the, if everyone could achieve a ten percent cutback which I think is achievable, you know, that we could come up with another four and a half million gallons of potable water and make that available. So that's where we're kind of leaning to right now. So we support your conditions but more related to conservation.

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COUNCILMEMBER JOHNSON: And I, I thank you, because, you know, the best conservation of all is to not put in things from the beginning that are really water intensive, like, if you use xeriscaping, if you use other plants, even just cut down on some of the water features that we do have, because I see a lot of water just being evaporated. So thank you very much, Mr. Eng.

MR. ENG: You're welcome.

CHAIR MOLINA: Thank you, Member Johnson, and I, I think you sparked something with Member Baisa. I think she has a question for Mr. Eng.

COUNCILMEMBER BAISA: I promise I'll keep it very, very short --

CHAIR MOLINA: Thank you.

COUNCILMEMBER BAISA: --and so this can be answered very straight forwardly. Director, what is the average household use in this area, number of gallons?

MR. ENG: In the area of the project?

COUNCILMEMBER BAISA: Yes, or near around it, Wailea.

MR. ENG: Well, a lot of it will depend on the, the average size of the lot. You know, but again that particular area, the Wailea area, a similar area is Kaanapali, the average single family customer tends to be well over the average countywide customer. So, you know, again it's really also landscaping lot size dependent. So do you know what an average lot size might be?

COUNCILMEMBER BAISA: No, but I remember sitting in Water Resources Committee and it's kind of ringing a bell in my mind of 2,000 gallons per day.

MR. ENG: Well, just to give you an example, we use as a standard throughout the County 600 gallons per day for a single family residence. My experience in Kaanapali, again these are mostly luxury home sites, lot size probably average from 10 to 15,000 square feet, fairly large homes, swimming pools, extensive landscape. They average 1,500 gallons per day.

COUNCILMEMBER BAISA: Thank you very much, because I recently checked my water bill, and we were like around 300, and I live in, my home is in Makawao. My Kula home is even less.

CHAIR MOLINA: Okay. Thank you, Member Baisa. And that is a good..., thank you.

COUNCILMEMBER ANDERSON: Chair.

CHAIR MOLINA: Hang on, Members. Just a quick follow-up to Member Baisa's question. Mr. Director, so are you saying that in this region, this area which includes I guess the hotels, the big hotels as well as subdivisions like Maui Meadows, so are you telling the Committee that

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statistically this area has the highest rate of water usage per, I guess, residence? Can you make a clarification on that?

MR. ENG: You know, I, I'd have to assume that is correct, you know, just based on the arid conditions of that area. You know, most of our leeward areas are arid.

CHAIR MOLINA: And these areas have a lot of swimming pools. Now does that include residences as well?

MR. ENG: Again I'm not certain, you know, what the number of swimming pools are in that area, but generally it, it's really landscape irrigation related. And so that's where you see the, the majority of the water consumption in that area.

CHAIR MOLINA: Watering their yards, watering...

MR. ENG: So, you know, just looking at the landscaping treatment would be, you know, an important. .

CHAIR MOLINA: And, and forgive me for my interest in this, because I'm like Councilmember Baisa. We live in Upcountry and somehow we have to live with using a lot less water. So when, naturally our ears perk up when we hear of other areas on Maui having such high water usage. So it definitely is a concern, and I think everybody should follow Upcountry's lead in conserving water. So thank you, Member Baisa, for bringing that up.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR MOLINA: Okay. Last question for Mr. Eng, and then we're going to go to Mr. Jencks. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chairman. You know, you can't build in the desert, and then let people put lawns and landscaping in, and expect them not to water it. So we made the commitment, and, and the, you know, it is an average 1,500 gallons from just the people that I've collected water bills in Maui Meadows. They range from 1,200 to 2,500 a day, gallons per day. And in the Water Use and Development Plan it specifically says that the Wailea-Makena area uses, on the average, you know, for, for projection purposes 2,000 gallons per day.

So I just wanted to ask, because you brought up the wastewater effluent and currently, again, conditions running with the land that say, "the Applicant shall participate in its fair share of development and funding of the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility." So they're already required to do that and have been since they got their Change in Zoning back in 1992.

So if we were to require them to put in a gray line, and, and I'm not, I'm not suggesting that they take their wastewater and send it to our Wastewater Treatment Plant to process for them. I'm

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suggesting that they take effluent that we're now injecting from the plant to their plant and use it in that manner. Would that work to dilute their wastewater?

CHAIR MOLINA: Mr. Director?

MR. ENG: Yes. Yes, that, that most certainly would work. That, that's what Member Pontanilla was discussing earlier; yes.

COUNCILMEMBER ANDERSON: If they could use it to dilute it, and then find a way to use it.

MR. ENG: And then use it for landscape irrigation purposes, yeah.

COUNCILMEMBER ANDERSON: Okay. But you would be amenable to working with them in coming up with some funding to develop a source, a potable source?

MR. ENG: That is, as you mentioned earlier, if we had offsite resource?

COUNCILMEMBER ANDERSON: Right.

MR. ENG: Yes, of course.

COUNCILMEMBER ANDERSON: Okay. Great. Thank you. Thank you, Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Okay. Mr. Director, I'll go ahead and excuse you for right now. I'm sure you'll be called back. Okay. Members, we're getting ready to take a break, so I'll give you, maybe we'll have Mr. Jencks just for about ten minutes, you know, Members Anderson and Johnson. So if you could keep..., a question or two, and then we'll move on afterwards. Take a short break, and then we'll move on with other conditions. Okay. I believe, Member Johnson, you, you go first.

COUNCILMEMBER JOHNSON: Yes. Charlie, I, I, you know, obviously I haven't read every part of this, but if, when I'm reading through it there's parts that just sort of cut-off, because you can't really tell exactly where it was that you redacted. Some of it I'm not sure which parts. Is there any way that you could just go and, you know, maybe with one copy or whatever, let Staff know what the parts are, where they occur that the redaction is?

MR. JENCKS: I could go through and list the sections that were redacted for you, sure, 'cause they're all numerical in order. That'd be fine.

COUNCILMEMBER JOHNSON: Yeah, 'cause I, I just, you know, it's not reading well for me in some sections. So if, you know, at some point I would just appreciate that. Thank you.

MR. JENCKS: I could list them by subject for you in numerical order.

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COUNCILMEMBER JOHNSON: That's fine or just give us a list of it. You know, however you want to do it.

MR. JENCKS: Sure.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Anderson?

COUNCILMEMBER ANDERSON: You know, I might be at a bit of an advantage, 'cause I came in a little early, and I got this before the rest of the Members came in. So I had a copy to give to my Staff, and my Staff attorney has gone through this real quickly. So I do have a couple of questions.

You have redacted quite a bit through here, Mr. Jencks, and just one thing that I would be interested in knowing why you redacted, and this is on the front page, Members, under Item E. In consideration for the development of such water sources and system, system referred to in Recital D above, WCPT has agreed to, and then that's all been redacted. So why is it that you can't tell us what you've agreed to do?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: If I may, Mr. Chair. I was asked to provide a report, and I was told that I could redact any sensitive sections, proprietary sections, and focus on those that related to: (a) the maximum draw, and (b) any, any excess water. And, and what I did was I did exactly that and provided, actually there's, there's quite a bit more data in this agreement that I provided than the minimum that I would provide. So the sections that are, that are redacted are those that are proprietary to our relationship with Haleakala Ranch.

COUNCILMEMBER ANDERSON: So back to my question, is in consideration for the development of the water source from Haleakala Ranch you've agreed to, and why is it you can't tell us what you've agreed to? I mean you could just say, you know, we've agreed to pay them X amount of money, and we don't want to reveal that, or we've agreed to, I mean, Mr. Jencks, you are in an agreement here to use a public resource, and we have the fiduciary responsibility over that public trust resource as the elected officials of this County. So please don't be offended that we're trying to find out what kind of arrangement that you have that we may be giving sanction to if we approve this application.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I was asked to provide the agreement redacted, and I did. That information is between the Ranch and the property. I'll be happy to go back and see what I can do for you.

COUNCILMEMBER ANDERSON: Well, yeah, because, you know, it's not the Ranch that's been redacted it's you; what you have agreed to. And I think that we need to know that because, you know, I mean this is all part in parcel of the end result and impact that will, the consequences of

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our decision. And we need to know what those consequences are. How is it going to affect the people who are living in this subdivision and not just the second and third home buyers, but our residents who are going to be living there. And all the surrounding people whose, whose use of our water source might be impacted by this agreement.

So, you know, I, I, I don't want you to use the word proprietary loosely, because I don't recall us saying, you know, that these are the only things we wanted. We wanted the agreement, and you kept withholding it because of whatever reason. So we said if there's anything that is proprietary.

CHAIR MOLINA: Excuse me, Member Anderson, do you have another question before we break for Mr. Jencks?

COUNCILMEMBER ANDERSON: Oh, okay. Yeah, a really quick question, Chair. In regards to where the location of this plant's going to be, you told us the other day that it's going to be at the top of your project, and in the single-family area right in the middle. So I looked right in the middle at the top you have a VMX with multi-family, then above that you have a golf link, and then above that you have a single-family home section. So you're saying it's going to be in that single-family home section?

MR. JENCKS: Actually, let me expand on what I told you. I talked about, I thought there was a utility district. There actually is. There is an open space and utility district in the Project District zoning application and in the ordinance that was reviewed by this Committee. And it provides for major and minor utility uses. Whether this is a major or minor, I'm not sure that's relevant. It does provide for utility uses in the open space and utility district.

So we would define a piece of land that would be allowed in that, that's provided for in the project district zoning for that use on the property, and it would be located at the mauka boundary so that we could use gravity to get water through the project.

COUNCILMEMBER ANDERSON: Well, I think we need to have it identified, because, Mr. Chairman, I think we need to have a site map attached to the ordinance for the Project District much like we do with Maui Lani. So that..., this is a long term project, 15 to 20 years, and when the project really starts showing its impacts and really decides which direction it might want to go none of us are going to be here, and having the site map to show what was actually approved is invaluable. And so, Mr. Jencks, I would like for you to show us, give us a map or some kind of overlay where that is going to be, because I don't see any open space utility area designated anywhere on this map.

And, you know, I have to beg to differ with you, because you have changed the, in the Change in Zoning ordinance that was done previous to this, we now have, in January, Mr. Chairman, you passed through this Committee or at least got five Members to agree to repeal the existing zoning ordinance and replace it with the new one. And, or was it the Project District? It was the Project District Ordinance? And in that Project District Ordinance you have allowed for a use of a utility

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that isn't, in other words, currently in the Code in the Residential District you can have a minor substation, a utility substation that does not have, and it spells it out, that does not have any kind of environmental or health impacts to the surrounding areas such as a small electrical substation. And you've taken that language out and put in language that would allow you to do a major utility.

And I've got a problem with that because, first of all, we don't know now where it's going to be. These desal plants are extremely noisy. The, the filtering and pump systems are very loud and noisy. So where is that going to be? It doesn't seem that it's an appropriate place to put in a, in a residential area. And that's why I think we need this desal study to prove one way or the other. He says he's got new, new technology, but my question to you then, Mr. Jencks, is, you know, if, if you think that you can just put it anywhere, because you have an open space utility permitted use I think we need to know where it is, and I think we need to relook at that, because I don't think we should just let them, you know, put it anywhere, Mr. Chairman.

CHAIR MOLINA: Okay. Member Anderson, you know what, I'm going to ask the Applicant to provide that site map at whenever our next meeting is, and then...*(inaudible)*...

COUNCILMEMBER ANDERSON: And then my one other question on that is, is, Mr. Jencks, are you in discussions with Makena Resort to, to maybe build a larger desal plant and share the use with them, because they don't have any water either?

MR. JENCKS: The direct answer is, no, I'm not.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: And, Member Anderson, for the recess. Thank you for your response, Mr. Jencks. Members, we're going to take a recess till 3:10. This meeting is in recess. ...*(gavel)*...

RECESS: 2:54 p.m.

RECONVENE: 3:15 p.m.

CHAIR MOLINA: ...*(gavel)*... Committee Meeting of July 25th, 2007, is now back in session. Folks, could I get your attention please? We are now back in session. It is 3:15. Today is Friday, August 3rd. And we will more than likely be recessing at four o'clock today. So today is a rather short meeting for Land Use anyway. Members do have some other commitments. If those of you who have been monitoring the Council meeting this morning, there's a lot of things going on this weekend, and our constituents expect us to be there, and also some personal things that are going on as well. Mr. Victorino?

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COUNCILMEMBER VICTORINO: Yeah, Mr. Chair, you know, I don't want to ask this question now, but I think I will, because I'd like everybody here to, to see, we thought, we need to decide on another date, and I think before we end the meeting and everybody's rushing out, could we make that a discussion matter now, so that we can get consensus on another meeting date to continue this, because we're not even close? I mean, and I want to make sure that whatever meetings, that we get most, if not, all these Members here, because we need to work together on this. It's not my decision, it's our decision. So I know you were thinking about bringing it up at the end, but at the end some of us may have to run off for our commitments. Is it possible to do it real quickly and kind of get consensus?

CHAIR MOLINA: Members, any objections to establishing a meeting date for our next meeting?

COUNCIL MEMBERS: No objection.

COUNCILMEMBER ANDERSON: If we could, if we could have a second to grab our calendars?

CHAIR MOLINA: Sure. I'll tell you what, Members, why don't we take a short two-minute recess; okay? Meeting in recess -- two minutes. . . .(gavel). . .

RECESS: 3:15 p.m.

RECONVENE: 3:17 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee Meeting of July 25th, 2007, is now back in session. Members, we just took a break so everybody could get their calendars. At the topic of discussion for the moment is the availability of Members for another recessed meeting with regards to Land Use Item No. 38. So, Mr. Victorino, since you brought up the issue we'll go ahead and start with you. The Chair, well, the Chair is suggesting either Tuesday, August 7th, or Wednesday, August 8th, preferably with a nine a.m. start. Mr. Victorino.

COUNCILMEMBER VICTORINO: I would be content with either date at that time, sir.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: I'm open at that. I don't know about the rest of the Members, but I'm open.

CHAIR MOLINA: Okay. We'll pick the date in which we can get the most Members available. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Monday is okay with me. Tuesday, yeah, Monday or Tuesday is good.

CHAIR MOLINA: Okay. So I'll mark you down for Tuesday. All right. Tuesday or Monday.

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VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: August 6th. You're looking at August 6th or August 7th.

VICE-CHAIR PONTANILLA: Just one thing though. For Tuesday, I need to be excused, because of..., up to 10:30 that morning.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: And then...

CHAIR MOLINA: So on the rest of...

VICE-CHAIR PONTANILLA: Yeah, the rest of the day is okay.

CHAIR MOLINA: Okay, and the, and the 7th, you're pretty much available the whole day? Oh, no, I'm sorry. That is Tuesday.

VICE-CHAIR PONTANILLA: That's for the 7th, yeah.

CHAIR MOLINA: Monday. Okay. Thank you.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Mr. Hokama, any comments on your availability for next week?

COUNCILMEMBER HOKAMA: Chairman, I am happy to provide the Committee my time for Monday up till about two p.m., and then from that evening until..., Tuesday I'm on Oahu for NACO HSAC business as well as Wednesday I am on Lanai for Island requirements with our community. So..., and then I'm, I'll be happy to consider Thursday or Friday of next week.

CHAIR MOLINA: Okay. Thank you very much, Mr. Hokama. Member Johnson?

COUNCILMEMBER JOHNSON: I'm not available on Monday, but at about 1:30 on Tuesday I would be available.

CHAIR MOLINA: Okay. So we'll mark it as Tuesday as your only available day. Okay. Thank you. Member Baisa?

COUNCILMEMBER BAISA: Best days for me would be either Wednesday or Thursday.

CHAIR MOLINA: Okay. So the 8th or the 9th. Staff, in terms of recess, the max..., I mean from today we have five days, so would we be able, we would not be able to meet on the 9th then in terms of a recess?

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MS. NAKATA: Mr. Chair, Thursday would be outside the five day window.

CHAIR MOLINA: It would be outside the five day window. Okay.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR MOLINA: All right. Mr. Hokama?

COUNCILMEMBER HOKAMA: At a later date I, I would say I have, it is my position that the five day window shouldn't be applicable.

CHAIR MOLINA: Uh-huh. And this is based on an OIP interpretation?

COUNCILMEMBER HOKAMA: My understand..., and again, Chairman, if we go pass six days the key requirement is posting. But nothing prohibits the Committee to post a notice to reconvene a recessed meeting to continue to conduct, because the language in OIP's written document to us on Sunshine Law and recessed meetings is that we are needing to consider a reasonable time. And if the issue is posting, there's nothing that forbids us or prohibits the posting of a recessed meeting. We are giving full public disclosure and we're saying we'll continue the recessed meeting for continued discussion and deliberations and at an appropriate time to reach decision making. So this five day limitation that we trying to impose on ourselves, I don't believe should be considered, Chairman, if that is the will of your Committee. Thank you.

CHAIR MOLINA: Okay. Thank you very much for your comments, Member Hokama. The Chair will take your comments into consideration. Did we get to Member, okay, Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Chair, I'm going to be off-Island Monday, Tuesday, and not back, well, back on Wednesday, but not available till probably one o'clock.

CHAIR MOLINA: Okay. So Wednesday...

COUNCILMEMBER ANDERSON: And the rest of the week I would be available.

CHAIR MOLINA: Okay. Thank you. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. I'm not available on Monday; I'm on Molokai on Tuesday; and Wednesday as long as, as long as it's after nine a.m., I'm available.

CHAIR MOLINA: Okay. Wednesday. All right. The Chair was available at all times obviously. We don't have Mr. Medeiros with us, so we'll probably consult with his office.

COUNCILMEMBER VICTORINO: Mr. Chair?

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CHAIR MOLINA: Yes, Mr. Victorino?

COUNCILMEMBER VICTORINO: If I recall correctly, he did send an email to all of us that he will be gone all of next week. He has a personal matter, and he will not be available all of next week. So if I'm correct, in remembering seeing that email.

CHAIR MOLINA: Okay. We'll, we'll confirm that with his office and take that into consideration. So, Members, I'd like to ask you for a couple minute recess to consult with Staff, and we'll try and formulate a day that is best available for all the Members. Meeting is in recess. . . .(gavel). . .

RECESS: 3:23 p.m.

RECONVENE: 3:24 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee Meeting of July 25th, 2007, is now back in session. Members, we, I have consulted with Staff, and I guess the one day out of next week in which we have quorum available would be Wednesday, August 7th, and it would have to be in the afternoon, because we would not have a quorum during the morning hours. So the Chair's proposing a one p.m. recess day of Wednesday, August 7th, to deal with LU-38.

MS. NAKATA: Excuse me, Mr. Chair, Wednesday is the 8th I believe.

COUNCILMEMBER VICTORINO: Yeah, Wednesday...

CHAIR MOLINA: Oh, excuse me. Excuse me, sorry, Wednesday, August 8th. There we go. Thank you. Member Johnson.

COUNCILMEMBER JOHNSON: That's the afternoon of the MCC forum so I will have to leave at three o'clock.

CHAIR MOLINA: Understood. Member Anderson, you had a couple...okay.

COUNCILMEMBER ANDERSON: Well, Mr. Chairman, if, if I could? Since we're getting this time I'm hoping that Corporation Counsel can have addressed the issue of no findings and facts and conclusions of law, the request that I made the other day so that we would have that in front of us.

CHAIR MOLINA: Okay. Corporation Counsel?

COUNCILMEMBER ANDERSON: And also, Mr. Chair, if, if we could have our legal counsel look at this agreement between Haleakala Ranch and, and WCPT, and tell us what it says? Because he, he's the legal counsel and this, this is a very extensive document, and clearly written by an attorney to confuse.

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CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: It's 40 pages.

CHAIR MOLINA: All right. So noted, Member Anderson. I guess...(*inaudible*)...legalese.

COUNCILMEMBER ANDERSON: So he can undo it for us.

CHAIR MOLINA: Yeah. Okay. I'm sure Mr. Giroux will try his best to accommodate our request for that. All right. Members, so the date is Wednesday, August 8th, one p.m. Okay. Let us proceed now with..., the Chair would like to ask for your consideration for the last, I guess, half-hour or so. Just so we can go home with some sort of feeling of accomplishment. If the Members would like to look at their matrix on page nine? Excuse me, I'm sorry, not page nine. It's, it relates to the Applicant, Applicant's proposal. They've proposed some additional conditions which are, seem, at least on the surface, to be somewhat minor and standard. I'm trying to find this. I just had it here earlier. It relates to the Outdoor Lighting Ordinance proposals that they will comply with. Page 11, Members. I'm sorry, page 11 of your matrix. If you look at the top, first one says uses permitted within the VMX district will incorporate acoustical measures to address potential noise impacts the adjacent uses. The second one is all exterior lighting shall be shielded from adjacent residential properties. Lighting requirements enforced at the time of building permit application shall be applied. And the third is all merchandise equipment and supplies in the VMX district shall be stored within enclosed buildings or enclosed areas that are appropriately screened with fencing and landscape planting.

And if you'll go over to the next column where it says the Department of Planning's comments, you'll see comments for the first proposed additional condition from the Applicant. So, Members, any comments? Are these, can we get some consensus on this, or is there a need for discussion? Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I am happy to support your consideration of Point No. 2.

CHAIR MOLINA: Okay.

COUNCILMEMBER HOKAMA: I think, I believe it's consistent with the standards that we have currently incorporated in our County Code. My only comment regarding VMX is that we have not yet decided what we are going to permit --

CHAIR MOLINA: Okay.

COUNCILMEMBER HOKAMA: --in the budget, Chairman.

CHAIR MOLINA: Okay. The Chair will leave out Nos. 1 and 3. And do we have consensus for No. 2? Member Anderson?

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COUNCILMEMBER ANDERSON: As long as we go back and address the mitigation requirement for, because the Planning Department's comments or Condition 1 concerns potential noise, lighting and visual nuisances. And what we're looking at with these all have to do with, basically have to do with lighting and, I guess, some visual. I don't see anything in here having to do with except one.

CHAIR MOLINA: Okay. So noted, Member Anderson. And, of course, you're free to add in some additional language into that if, along the way.

COUNCILMEMBER ANDERSON: Could we have a comment from the Planning. . .*(end tape, start 2B)*. . . if she feels that these three conditions would address that number, that one condition?

CHAIR MOLINA: Ms. Suyama. On page 11 of the matrix; if you have one there.

MS. SUYAMA: Sorry.

CHAIR MOLINA: No problem.

COUNCILMEMBER HOKAMA: Mr. Chairman, before...

MS. SUYAMA: Yeah, I, I believe this would...

CHAIR MOLINA: I'm sorry, hang on, Ms. Suyama.

COUNCILMEMBER HOKAMA: Oh, I'm sorry Ms. Suyama.

CHAIR MOLINA: Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, prior to Deputy Director, Planning Director response I would just say that regarding No. 2, I believe that is pretty much what we as a Council have recently --

CHAIR MOLINA: Passed.

COUNCILMEMBER HOKAMA: --approved and updated the Code regarding our Outdoor Lighting Ordinance. And --

CHAIR MOLINA: So you're saying it may not be necessary?

COUNCILMEMBER HOKAMA: --if it is not, then I would hope that either the Deputy Director or Corporation Counsel can point out where we are varying from, what we have currently adopted in the Code. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Madam Director, if you'd like to continue.

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MS. SUYAMA: I believe this would, the three conditions would address your issues dealing with noise and lighting. Unfortunately, I'm not familiar with the change in the Lighting Code which is actually the responsibility of the Public Works Department, the enforcement of it. Normally, the Department has been putting conditions when it's involving residential areas that lighting be shielded and directed away from the residential areas.

CHAIR MOLINA: Okay.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: My only concern with this language is, you know, you have to be very careful how you word things, because down the road it can be misinterpreted. But it just says shielded from adjacent residential properties. And I think the, the new Lighting Code had to do with the light transfer going --

CHAIR MOLINA: Stray lighting.

COUNCILMEMBER ANDERSON: --straight up, and we don't want that to happen either. So maybe there needs to be additional language in...

CHAIR MOLINA: Strengthen it, you're saying?

COUNCILMEMBER ANDERSON: Yeah to address that.

CHAIR MOLINA: Mr. Giroux, can you comment on Member Anderson's concern?

MR. GIROUX: Thank you, Chair. You know, I, I would have to look at the Code again, but my understanding is because we do deal with it at the Planning Commission level sometimes is that the, the shielding in, in the Code I believe focuses on the down lighting. And so I believe the new Code does require a fully shielded down lighting. So what this would do is it would, it would basically make sure that side shielding would also be present. So it would go over and above that and the Code would take care of the down lighting.

COUNCILMEMBER ANDERSON: Okay. That's good. Then maybe what we could do is just add in the..., Mr. Giroux, do you know what the section of the Code is? That's okay if you don't off the top of your head.

MR. GIROUX: I, I try not to keep those things...

COUNCILMEMBER ANDERSON: We'll make a note, and we can maybe add that in, Mr. Chair.

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CHAIR MOLINA: Okay. So noted, Member Anderson. Thank you. Okay. Members, next...

COUNCILMEMBER JOHNSON: Mr. Chair?

CHAIR MOLINA: Oh, I'm sorry, Member Johnson.

COUNCILMEMBER JOHNSON: My only comment is just where we're looking at adjacent residential properties, but I know that often times depending on the elevation we always want to make sure that if there's any potential for lighting being directed, like particularly in the near shore waters out into the ocean at night, we are really trying to discourage that because of a lot of the presence of, you know, your --

UNIDENTIFIED SPEAKER: Turtles.

COUNCILMEMBER JOHNSON: --your turtles and, you know, other, even some of your fish in the evening. So I don't know if you want to, I, I can't remember off-hand what it says in our Code either about fugitive lighting going into the area of encroachment of our near shore waters. So if that's not in the Code I would like something to be added in, because this is really a very sensitive environmental area and even I think sometimes certain times of the year the, the birds that come, you know, and when they go onto the ground because they're attracted from the lights. I know this is one of those areas where they have a tendency to sometimes land, so.

CHAIR MOLINA: Okay. Thank you, Member Anderson, Member Johnson. So at a later point if you'd like to add something. I think, well, I think many of us are very sensitive to the stray lighting issue. So, for the time being, with the language it's sufficient, but please feel free if there's something additional you want to add to it to strengthen it.

COUNCILMEMBER ANDERSON: Yeah, and the only thing I would just add is exterior lighting shall be shielded from adjacent residential properties and from near shore waters.

CHAIR MOLINA: Okay.

COUNCILMEMBER PONTANILLA: Chair?

CHAIR MOLINA: Thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Can Staff review the Outdoor Lighting Ordinance that was passed last year?

CHAIR MOLINA: Okay. . . .(inaudible). . .

COUNCILMEMBER PONTANILLA: I think there's certain criteria in there that already mention.

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CHAIR MOLINA: Okay. So I think, I believe when the Applicant submitted this condition I, I don't believe the ordinance was not passed yet. So I'm sure there, there will be opportunities to strengthen the language as well, so. Okay. Members, so I'll just for the time being mark it a consensus and with, I'm sure, some potential additions. Okay. Members, can we go and look at Planning Commission Condition No..., I'm trying to recall, I think Condition No. 7, which has to do with the Animal Management Plan.

COUNCILMEMBER VICTORINO: Page?

CHAIR MOLINA: Page 5 of 12.

COUNCILMEMBER VICTORINO: Thank you, Chair.

CHAIR MOLINA: Under Maui Planning Commission. Any additions to the language or reductions from the language, to take out, or is this, do the Members have consensus on it?

COUNCILMEMBER ANDERSON: Is that No. 7?

CHAIR MOLINA: It seems, it seems standard. Yeah, No. 7. I know we had consensus on No. 8. Staff, can you read out, just for the record, the condition?

MS. NAKATA: Condition No. 7, "That WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall implement an Animal Management Plan approved by the Department of Land and Natural Resources for the management of animal intrusions into the development which may include the construction of boundary, or perimeter fencing, or wildlife control permits."

CHAIR MOLINA: Thank you, Staff. And that was the Planning Commission from, I guess when was it, 2001 possibly? And I know that Deputy Planning Director Suyama I guess added some additional language, and I'd like to ask the Director for her comments. And, Members, if you'll refer to the Department of Planning column, dated July 27/07 draft, which is updating that condition. Can you go ahead and give comments on why the additional wording was inserted?

MS. SUYAMA: We inserted additional language to put a time limit as to when the Animal Management Plan would be submitted, and we felt that it should be submitted during the Phase II Project District review process. And the actual plan should be approved before we do Phase III approvals, Project District approvals, which is when they're ready to do their construction drawings that there is an approved plan in place by that time.

The other thing that we did was that we added besides animal intrusions in terms of wildlife control permits, we also talked about rodent and feral cats control, because especially in a lot of undeveloped areas, like in arid areas, there are continuing problems with rodents and feral cats. And therefore we, we added that as the, as another thing to be considered as part of the Animal Management Plan. Because originally when the comments came back from DLNR in terms of

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this request, they were talking about, more about deer intrusions into urban areas. But, you know, we recognize that there are more than just deer intrusions into residential areas.

CHAIR MOLINA: Okay. Thank you, Director Suyama. Members, comments? Satisfied with the language or do we need to step back on this one? Member Anderson followed by Member Johnson.

COUNCILMEMBER ANDERSON: Go ahead, Jo.

COUNCILMEMBER JOHNSON: My only question is with regard to, you know, because, I know what we're talking about is more domesticated or like you say they're feral cats or intrusions of what you would say pests into that area, and I know that most of them, I mean they're not on the endangered species list, but how would if some, you know, 'cause obviously there are birds in the area and, you know, with the wiliwili and some of the forest birds that are on the endangered species list, are those going to be addressed in this Animal Management Plan, or will there be some mention of the fact that, you know, if certain species of birds or other endangered animals are found in the area that there's a contact?

MS. SUYAMA: Well, one of the things that we, we, we are also recommending which I forgot to say is that we asked that this Animal Management Plan, the Department of Land and Natural Resources may require periodic updates to include any other changes that may occur, because this is a long-term project, and you're not, you know, things may occur where some other animal becomes a pest or a, you know, a problem within the area, and these plans can be updated. In other words, they're not stagnant. They, you know, you continually update things to accommodate the changing circumstances in an area.

COUNCILMEMBER JOHNSON: Yeah, but what I'm asking you is that, you know, we're viewing this particular section, or the way I'm reading it is it's looking at it like, oh, these are the problems and this is how we're going to mitigate it so that we don't have, you know, mouse population explosion or mice running into the neighboring properties, that kind of thing. But what I'm looking at is if you have an animal management plan doesn't, or would that address the endangered species that may wander into this area particularly birds, because they're forest birds, I mean the, I don't even know if there's any . . . (*inaudible*) . . . left, but...

MS. SUYAMA: I think presently written I don't think addresses those issues. And, you know, if that's a concern that maybe a separate condition dealing with just endangered species would be more appropriate.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Anderson?

COUNCILMEMBER ANDERSON: So now you're asking us to be, whether, whether or not we want to go for the Department's revised No. 7 or...

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CHAIR MOLINA: Revised. Yeah, I'm just seeking comments if that's satisfiable [*sic*] to the Committee or...

COUNCILMEMBER ANDERSON: Well, you know, one thing I would like to look at, and I would like the Department to look at, and basically the only reason this whole issue has come up is because Division of Forestry and Wildlife has recognized that there is an axis deer problem in the area and that we need the, the Applicant needs to make full disclosure to all purchasers. That's what they mention in their letter. I just, and I certainly, you know, feel that something should be done, but I think that we need to be very careful about just giving a blanket okay to fence in the whole area without looking at what the impacts might be, because we have a condition, design condition, and help me out, Ms. Suyama, I'm not sure if it's in the, I know it's in the community plan, but I'm not sure if it's somewhere else in the Code, that restricts fencing to four feet.

CHAIR MOLINA: Madam Director?

MS. SUYAMA: The restriction to fencing to four feet is in some of the, in some of the zoning Codes like the Rural District and the Ag District in terms of boundary fences. There are, some community plans, like for the Kihei-Makena one they talk about more about the fences, the walls, that are along --

COUNCILMEMBER ANDERSON: The shoreline.

MS. SUYAMA: --the shoreline properties. But other than that there are no restrictions. Like in, in shoreline properties when people come in for their coastal zone management or SMA permits, you know, as they're having boundary walls that affect views, we have been limiting the developer to provide not more than a wall to block views not more than four feet. But then we have allowed fences above that that allow visual views through it. So it depends on what you're talking about. Fences are usually, you can see through it versus a wall which is a solid, you know, obstruction.

COUNCILMEMBER ANDERSON: Like a chain link fence.

MS. SUYAMA: Right. The chain link fence we normally would allow, because it allows still visual views through the property.

COUNCILMEMBER ANDERSON: Right. Well, as long as we did something in that regard, Mr. Chairman, because I am concerned about view planes being disrupted from the people in Maui Meadows, especially people that are just adjacent to where this, this project's going to be.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. All right. So I will put that as a, as a tentative consensus then. How's that? Okay. All right. Members, one more for your consideration just at least for some, it may merit a little bit more discussion than anticipated. If you could turn to Condition No. 15, page 8 of 12, under the Maui Planning Commission's

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recommendation regarding dust control. There were comments from the Planning Department as well on the language. Staff, can you read out the Planning Condition, Planning Commission's Condition?

MS. NAKATA: Are you on No. 15, Mr. Chair?

CHAIR MOLINA: 15, yes, ma'am.

MS. NAKATA: "That during construction all dust control shall utilize non-potable water or effluent which may be obtained from the Kihei Wastewater Reclamation Facility when available."

CHAIR MOLINA: Okay, and the Applicant, I guess, made some slight language change or specification. Instead of Reclamation Facility the Applicant had underscored the word Plant to replace the word Facility. And, Planning Department, can we get a comment with regards to your comment to the condition?

MS. SUYAMA: Well, it's my understanding that within the Kihei Treatment, Kihei area they already require construction to use the effluent from the plants. I may be mistaken, and you may want to talk to Mike Miyamoto if that's correct.

CHAIR MOLINA: Okay. Mr. Miyamoto. Is he available?

COUNCILMEMBER ANDERSON: Chair.

CHAIR MOLINA: I thought he was here. Okay. Member Anderson?

COUNCILMEMBER ANDERSON: We just had the Wastewater Division give us a presentation in the Water Resource Committee last week, and they told us that all construction people are using their effluent now, and they have plenty of it to use. Now I don't know if it's a requirement. I, I don't know if that is in the Code, but they told us that when the Department of Water Supply is requesting, usually what they do or generally what they do is they get a permit from the Water Department to take water from a fire hydrant or some other place to fill up the truck, truck for dust control, and the Water Department is refusing that now because we're so tight on water, and they're telling them to go to the treatment plant and use effluent.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER ANDERSON: So.

CHAIR MOLINA: Members, any other comments as it relates to the response from the Planning Department as well as the proposed condition and its language? Member Johnson.

COUNCILMEMBER JOHNSON: The other day didn't Council Chair Hokama recommend that it shall, the word "shall?"

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CHAIR MOLINA: Okay. Shall, I know the word shall is in there. Is that during construction all dust control shall?

COUNCILMEMBER JOHNSON: I think it was during our discussion, and I can't remember if it was Chair Hokama or Member Anderson that, you know, said don't make it, well, "may", but make it "shall".

CHAIR MOLINA: Okay.

MS. NAKATA: Yes, Mr. Chair, that's correct. It should have reflected that on the matrix. It should have been with "shall be obtained."

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: Oh, instead of which may. So it shall be, it will be "shall be obtained." Staff, if you could make that change. So we'll have the language read "shall be obtained."

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: Okay. Does that suffice, Members? Mr. Victorino?

COUNCILMEMBER VICTORINO: I thought also that we were looking at "when available," because I no think when available was an issue. I thought we were going to take that out.

COUNCILMEMBER JOHNSON: That, yes, that was stricken.

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER VICTORINO: I thought that was stricken also. And I may be wrong, but...

COUNCILMEMBER JOHNSON: No, you're right.

CHAIR MOLINA: Okay. Mr. Victorino, I think you have a very good memory on that. We've been inundated with so many things. Okay. So, Staff, I'm sorry, Committee Members, we will strike out "when available." Do we have consensus on that?

CHAIR MOLINA: Okay. So noted. So do we have consensus on the condition that will read "that during construction all dust control shall utilize non-potable water or effluent which shall be obtained from the Kihei Wastewater Reclamation Facility."

COUNCILMEMBER JOHNSON: Yeah. That's it.

COUNCILMEMBER VICTORINO: Plant.

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CHAIR MOLINA: Oh, okay, Reclamation Plant.

COUNCILMEMBER VICTORINO: That's correct.

CHAIR MOLINA: One more change. Agreement?

COUNCIL MEMBERS: Yes.

CHAIR MOLINA: All right. Members, that is all I have for now. And being that we're looking at losing quorum in about 15 minutes or so, and I know one Member's already overextended his stay, I prefer you go home and get some, go do your duties as Council Members, and husbands, and wives, and so forth. So we will recess until Wednesday, August 8th, one o'clock, right here in the Council Chambers. And please if you have any proposed additions or changes to some of the other conditions please come fully armed, okay, so we can get moving with this. So we did make some progress today in our two and a half hours.

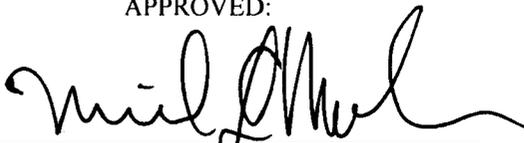
So, Members, I want to thank you. It's been a very, very tough week, busy week on all of us, but that's part of the job, and I'll thank you for your professionalism and dedication. Staff, is there anything else I should mention to the body?

UNIDENTIFIED SPEAKER: Recess date, time, and place.

CHAIR MOLINA: Yeah, I believe I stated the recessed day, time, and place again. So Wednesday, August 8th, one o'clock, Council Chambers. Any announcements, Members? Okay. Seeing none, this meeting is in recess until the said date. . . .(gavel). . .

RECESS: 3:48 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

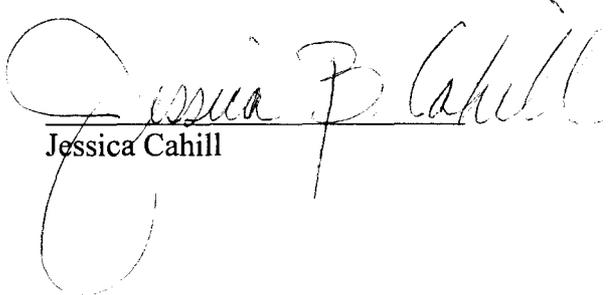
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CERTIFICATE

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

DATED 26th day of August, 2007, in Wailuku, Hawaii


Jessica Cahill