

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

August 8, 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 Jo Anne Johnson, Member (Arrive 1:10 p.m.; Leave 3:00 p.m.)
Councilmember Danny A. Mateo, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Member
Councilmember Bill Kauakea Medeiros, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Michael Miyamoto, Deputy Director, Department of Public Works
Vanessa Medeiros, Director, Department of Housing and Human Concerns
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
Eric Yamashige, Deputy Director, Department of Water Supply
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Charles Jencks, Owner's Representative, Honua'ula Partners, LLC
Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Inc. (Applicant's entitlement 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 (15)

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 is now back in session. Here we are today, Members, it's five minutes after the hour of 1 o'clock. It is Wednesday August 8th.

**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: And, Members, we last left off discussing conditions for the item, the Honua`ula/Wailea 670 application otherwise known as Land Use Item 38. For the record, we have in attendance today, we have the Vice-Chair of the Committee Member Pontanilla; Members Victorino, Baisa, Anderson, Mateo, and Molina.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR MOLINA: Good afternoon, Mr. Victorino. Members, today you've been presented with a response from the Corporation Counsel's Office with regards to a question having to do with the application itself. But before we recognize Corporation Counsel, the Chair would like to recognize Staff in attendance as well. We have the Committee Secretary Tammy Frias as well as Legislative Analyst Carla Nakata in attendance. And we have some of our County resource personnel joining us. We have Deputy Director Colleen Suyama as well as Deputy Water Director Mr. Eric Yamashige. And thank you for being here.

So, with that said I would like to ask Mr. Giroux to just give us his comments on the response that's been given to the Committee with regards to the application. Mr. Giroux.

MR. GIROUX: Thank you, Chair. We were asked to do a written opinion as far as whether we were looking at how this zoning application was transferred to the, to the Council. And basically, we reviewed as many documents as we could in order to look at the, the totality of the circumstances as far as to give some guidance to this body. It's our conclusion that as far as looking at the, the transmittal and the actions of the Planning Commission that it would be up to this body to decide whether or not they see that transmittal as being a, a complete enough transmittal to do their job as far as analyzing whether or not this application meets the requirements to be given the approval that they're asking for.

CHAIR MOLINA: Thank you, Mr. Giroux. Committee Members, any questions for Mister, Mr. Giroux as it relates to the opinion that's been provided for us? Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. So, basically, the Planning Department and Corporation Counsel are punting to us to decide whether or not no findings and fact or conclusions of law are required even though it is a, mandated by the County Code.

CHAIR MOLINA: Mr. Giroux?

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COUNCILMEMBER ANDERSON: And, and, Mr. Chair, if I could finish?

CHAIR MOLINA: Go ahead.

COUNCILMEMBER ANDERSON: The reason that's important, Members, is because the findings and fact and conclusions of law make the, make the findings that there is enough information to analyze the project in order to make a conclusion that it meets the legal requirements of our criteria for approval, Mr. Chairman. And none of that was done. Many of the application requirements were left unfulfilled. And so, I don't know how we can possibly meet the criteria of approval because we don't have the adequate assessment in order to determine that there will be no adverse impact.

And I, myself, and I think all these Members looking at these-what are we now up to six binders-a little fed up with all this information that comes in after the application has already been processed. And I might add, Mr. Chairman, when this went through the Planning Commission both times a year apart, the Planning Commissioners when they asked about impacts they were told not only by the applicant but by the planner from the Maui Planning Department that the impacts would be assessed in Phase II. That no need to worry about the traffic or about the cultural resources or about the water because all of that will be addressed, all those impacts will be addressed in Phase II.

You know that neglects the fact that they were reviewing for recommendation a Change of Zoning. And the Change of Zoning requirement calls for all that to be assessed, adequately assessed. So, you know, we're the decision makers and we can only make decisions as good as the information that's given to us. And when we don't have that information, we, we're left with guesswork. We're left with, you know, diving through all of this after-the-fact information that's trying to substantiate the application is complete. And there's no way, if you want to follow the letter of the law that it's complete.

And I, myself, as a decision maker greatly resent that we're getting applications that are incomplete and that we have to do all the digging to get the information. We're wasting our time; we're wasting taxpayer time; we're wasting the public's time in all these meetings just trying to get adequate information. Not even assessed for impact. So, you know, if, if that's what Corporation Counsel is telling us that it's up to us to make the decision, I think we all better seriously consider whether or not we're making an informed decision on this project.

CHAIR MOLINA: Thank you, Member Anderson.

COUNCILMEMBER ANDERSON: So that's just my comments, Mr. Chair, and I really don't care for any further comments from Corp. Counsel --

CHAIR MOLINA: Okay.

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COUNCILMEMBER ANDERSON: --on the issue.

CHAIR MOLINA: I would like to give either Corp. Counsel or the Planning Department to give a response.

MS. SUYAMA: Well, our, our response is that throughout all the zoning applications that we reviewed and transmitted to the Council, the way we transmit has been done consistently since the enactment of 19.510. We've always transmitted the Department's report, the Department's recommendation, the Commission's conditions, and all the, the record in terms of the transcripts and testimony that had been received, as well as copies of the application as, as the findings of the Commission.

And when we had this discussion about 19.510, Ms. Anderson, we met with you and we explained to you that that was the normal process of how the Department transmits this application. And when we had that discussion, you did not object to that process at that time.

COUNCILMEMBER ANDERSON: What, what discussion are you referring to, Ms. Suyama?

MS. SUYAMA: When there was a . . .proposed amendment to Title, Chapter 19.510 --

COUNCILMEMBER ANDERSON: About transmitting --

MS. SUYAMA: --dealing with. . .

COUNCILMEMBER ANDERSON: --a complete application?

MS. SUYAMA: Right. Completing, a complete application. We did have this discussion that this is the normal practice of the Department that when we transmit this is the information that's on the transmittal letter and the reasons why we did that. Because if you require a formal decision and order that lengthens the amount of time that the staff needs to get together to prepare that document as well as to get Corporation Counsel to review that document and then transmit the, a formal findings of fact, conclusions of law. And we would have to do that for every single application that came before the, the Planning Department.

COUNCILMEMBER ANDERSON: Well, Ms. Suyama, the discussion we had about the amendment to Title 19 or Chapter 19.510 there was no discussion about findings of fact or conclusions of law. And, you know, it may be onerous for you to present findings of fact and conclusions of law but it is a requirement of the Code so that we're not left trying to figure out if this application meets the requirements of the law. You're asking us to make findings of fact and conclusions of law.

MS. SUYAMA: We're saying. . .

COUNCILMEMBER ANDERSON: And, I'm not finished, please, and I will beg to differ with you. I've been in this County building ten years plus and I am a trained planner and I've reviewed

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dozens if not hundreds of applications. And I have seen findings of fact and conclusions of law in the report transmitted to the Council. So, you know, I don't agree with what Corp. Coun..., Counsel is saying and, but, you know, for the sake of moving ahead, Mr. Chairman, I'm going to let it go. But I'll tell you one thing we're opening our, opening ourselves up to legal liability because we're not following the County Code. And it clearly says the report to the Council shall contain findings of fact and conclusions of law.

Three reports we got from this Department on this, on this project, Mr. Chairman. There isn't one mention in any report that findings of facts had been found and decided on or that conclusions of law were rendered.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. Members, seeing no other questions, oh, Member Johnson? Okay.

COUNCILMEMBER JOHNSON: Yes. And, and --

CHAIR MOLINA: Go ahead.

COUNCILMEMBER JOHNSON: --I'm sorry I missed the first part but I just read the memorandum. And my question I guess would be because the determination, and, and this is on the second page where there's a little footnote it says, State Land Use Commission is, you know, and then it goes on to say it's sort of a quasi-judicial procedure under Hawaii Revised Statute 15-15-34(a). By contrast, review of proposed zoning bills by Maui Planning Commission are not quasi-judicial proceedings but more quasi-legislative in nature.

Now, to Corporation Counsel, isn't it true that in certain situations or in some capacity the Planning Commission does really act in a quasi-judicial capacity? Are you always saying or, or is this opinion saying that there's no point in time in which a zoning application would become quasi-judicial? Because I've seen contested case, I've seen other situations, and it just, I would like a clarification.

CHAIR MOLINA: Mr. Giroux?

MR. GIROUX: Thank you, Chair. Member Johnson, you know, in, in my opinion I, I had very limited time to, to write this and we wanted to give you guys guidance so you could continue to do your job. But I will comment that this issue is obfuscated by the fact that some people don't understand what it means to be in a contested case and to be in a public hearing. We are also dealing with a legislative function.

The Planning Commission is by Charter and, and by ordinance given various duties. In any given day on any given agenda they could be wearing several different hats. One agenda item might be where they hold final authority such as the SMA, Special Management Area. By Charter they are mandated to be the final authority for that, therefore, under Title 90..., Chapter 91 they are mandated to by State Law to produce a findings of fact and conclusions of law. The

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Supreme Court has found that in that type of situation where the Commission is the final authority, that that authority must follow the procedures of Chapter 91. And that means that they need to produce a findings of fact and conclusions of law because it is appealable. The Supreme Court looks at that case as a contested case. When that applicant walks through the door he has the burden of proof to prove to that body that he can meet the criteria of the SMA law 205(a).

Okay. There's other situations like Special Use Permits that the Commission may have final authority and again they have to follow the law and make a findings of fact, conclusions of law because it's a contested case and because the applicant has a right at that point if his application is denied to go to court. And the judge will look at that findings of facts and conclusions of law and see if the Commission did its job. Now, when the Commission does not have final authority it is looked at as a board of review meaning that it takes the initial hearing. It does the notice. It does a public hearing. The public comes and they testify. They give their position on the matter. The Board then takes those ideas and sees if it can make comments in order to give the final authority some guidance.

The Commission at times is asked to give guidance to the Land Use Commission. Other times it's asked to give guidance to this Body, the Council. Under those situations where it's just reviewing, it's reviewing and giving comment. It's not the final arbiter. Usually, the transcript, any reports it relied on, any public testimony given at that meeting, and any discussion or anything adopted by the body is transferred as part of the body's action. A final vote is taken and then that report is then transmitted to the body that does have final authority.

You know, you, you can have a situation in zoning where a planning commission may say, you know what we just don't want to comment. We don't want to comment. We have no comment. We can't agree on anything. So, is this Body not going to take action on the zoning application because the Planning Commission at that stage does not want to take action? No. The legislative body has the ability through the Charter to review these types of applications because you're the final arbiter. You have the final authority under Chapter 46 given to you by the State.

In fact, according to your own Code there are certain criteria that you have to find, this Body has to find. But even then you're not required to produce the find..., findings of fact, conclusions of law. The court, the courts are not going to review a document from you that has a findings of fact and conclusions of law because you are the final arbiter. You are the policymakers. You hold legislative power and the courts give you a lot of deference in order to do that job.

COUNCILMEMBER JOHNSON: Thank you very much for that explanation. The, the question I guess then that arises at least in my view out of what you stated is that no zoning denial is appealable.

MR. GIROUX: That's not correct. The, the appeal goes to, through a lawsuit but if it gets to the court, the court does give this Body great deference. There has to be a extreme case. We know that there's situations where you have spot zoning where, you know, you, you put a factory right in the middle of a residential area. Okay. Big problem, right? Well, the court will look at that and say what, what were you people thinking. . . .(chuckle). . . But if it's a reasonable use putting a

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doctor's office in a residential area and somebody doesn't like it and they take you to court and the judge says, well, what's the harm, right? We're talking about use and we're talking about making decisions based the facts of that use.

So, what, what I'm saying is, is not that somebody doesn't have a right to appeal. What they're, what the judge is, is going to look at is a different standard. They're going to look at a legislative body's act and look at the totality but while they're doing that they're look..., giving you great deference because you've been elected by the people to make that decision.

COUNCILMEMBER JOHNSON: I, I understand completely what you're saying but to me the comments that you made in the context of this memorandum basically states that the reason that there is no findings of fact, conclusions of law, you know, statement as such is that it's not really required and we're the final arbiters and basically we are going to make a decision. And we also, if I heard you correctly, we don't also have to put in findings of fact, conclusions of law. And yet, within the context of the letter it says, review of proposed zoning bills by Maui Planning Commission are not quasi-judicial proceedings but more quasi-legislative in nature. Therefore, my question is there seems to be a contradiction because where we're not required to put in findings of fact, conclusions of law, which you state in this memorandum, are the reason that there is an appeal mechanism or it's appealable because it's a quasi-judicial?

Then I guess my question is what role are we serving in? Because if it is appealable and it's quasi-judicial in nature then shouldn't we put in findings of fact, conclusions of law?

MR. GIROUX: Well, I, I think you're, the, the way I'm going to put it is, is that if, if a decision comes down regarding zoning from the Planning Commission and somebody appeals that to the Circuit Court, the Circuit Court will tell that person it's not right. The, the final body hasn't even made a decision why are you here, and will send that person out of court and say you know what until the Legislature makes a decision on this --

COUNCILMEMBER JOHNSON: Uh-huh.

MR. GIROUX: --we're not going to hear it. Do you understand that?

COUNCILMEMBER JOHNSON: I do.

MR. GIROUX: Okay. So, when you make your decision and somebody takes it into court, they're not going to be waving an FOFOLDNO (Findings of Fact, Conclusions of Law, and Decision and Order). They're going to be waving the bill . . . (*chuckle*) . . . the legislative bill and saying this bill is defective on its face because the Legislature is wrong. They're wrong. They're clearly wrong. A judge, and the judge is not going to want to step into your role and take your role over. He will look at the process you used and he will defer to you first unless you are extremely wrong.

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So that's, that's what I'm saying. And, and, you know, I'm, I could probably say it more, in a more articulate fashion, you know, but I, I think that the way I've put it may help you to distinguish the apples from the oranges -- a review body's job from a legislative body's job. Because they, the job of, of the Planning Commission when they're reviewing it is not quasi-judicial. They're, they're, it's not quasi-judicial. It's not a contested case. You can't intervene. You, you can't appeal from it. It's a review. It's a review given to that body by the Charter. And the Charter says just, you need to review. That body has the right to review this ordinance before it comes to you and they have the responsibility of advising you.

COUNCILMEMBER JOHNSON: And, and my final question is because we are reviewing and we're not required to produce findings of fact, conclusions of law, which would ordinarily be contained within a quasi-judicial proceeding. And because according to you the whole decision is appealable if we for some reason get an applicant that gets denied, by rights I think we do have to make certain findings. And that to me would be that we have, we have in our, you know, majority mind seen fit that the applicant has not met the burden that exists under the law.

So, to me I think what's confusing me about this whole memorandum and the whole thing, Mr. Chair, is that it's quasi-judicial and quasi-legislative in my view because what we do is appealable, and we're making a judgment based on what the law is. So, to me I mean if it's quasi-judicial for the Planning Commission under certain situations, now, I realize, Mr. Giroux, this is not a contested case but when I look at the terminology that you're using and then the role that you're asking us to play that's where my confusion is coming in. It's not very clear for me.

CHAIR MOLINA: Okay.

MR. GIROUX: What, what I also want to add is that, you know, the, the courts look at your decision as a totality of the circumstances. Totality meaning, you know, your public hearings, your transcripts, also, you know, you're going to do a committee report. All of these things are your record. It's your record of, of that you've done your job, that you've had full discussion, that the public has had input. That, that's the record.

So, when, when you look at the Land Use Commission, they are the final arbiter of the land use designation and they do produce an order and it has separate findings of facts and conclusions of law. There are, what I'm saying is there are situations where administrative bodies do take on that role and, and because they're the final arbiter and they're not legislative bodies. They're, they're administrative bodies then they have to, you know, strictly adhere to that because the right of the public is that they're going to appeal from that document. That document is one of the, would be the basis of their case. They can point to that document and say fact number one is wrong, fact number two is wrong, fact number three is wrong. Conclusions of law number one is wrong. That, that's how the complaint would go into, into the Circuit Court.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Committee Members, any other questions for Corp. Counsel before I recognize Member Anderson? Okay. After Member Anderson is done, the Chair would like to move on. I think the Corporation Counsel has explained himself and I

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think we've heard some excellent comments from our Members as well. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Chairman. So, Mr. Giroux, what you're saying is that the State Land Use Commission has to follow the law but our Planning Commission and this body doesn't necessarily have to. And, you know, it clearly states for the record Chapter 19.510.040 in Change in Zoning that, for the Planning Comm..., the appropriate Planning Commission shall conduct a public hearing on all Change of Zoning applications. Upon closing the public hearing and upon reviewing the report and recommendation of the Planning Director and all other applicable information on the application, the Commission shall prepare a report which includes but is not limited to the Commission's findings of fact, conclusions of law recommendations and any recommended condition which the Commission determines to be necessary pursuant to the conditional zoning provisions of this Chapter.

So that's the law, Mr. Giroux, in our County Code. And, you know, I don't buy that, you know, the Commission is just giving us a recommendation and they're just reviewing it. This has been adopted in the law for a purpose. And what's that purpose? So that we can rely on those findings of fact and conclusions of law to make our determination that we have met the criteria of approval. And the criteria of approval for a Change in Zoning is very specific. And in fact it is a finding, it's a finding of fact because it reads, the County Council may grant a Change of Zoning if **all** the criteria are met, if all the following criteria are met. And there's a long list of criteria that we have to meet.

We have to make a determination, Members, that the request meets the intent of the General Plan and the objectives and policies of the Community Plan. I have a whole list of objectives and policies of the Kihei-Makena Community Plan that were never even addressed by the Planning Department in their report. So, how can we make that determination that we have met the policies and objectives, the intent of the policies and objectives in the community plan?

CHAIR MOLINA: Mr. Giroux?

COUNCILMEMBER ANDERSON: Wait a minute I'm not finished.

CHAIR MOLINA: Okay. Just ask your question.

COUNCILMEMBER ANDERSON: It also says that the, the application, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and, and improvements. Most of all of that wasn't even discussed by the Planning Commission because they were told they could wait until Phase II to address those impacts. So, they didn't give us any findings of fact or conclusions of law regarding these criteria that we need to meet. It says not adversely affect or interfere.

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We're making a finding that that none of this is going to adversely affect or interfere with any of these public facilities or services when we grant them a Change in Zoning. So, I don't know how you can possibly say that we don't need to have these findings of facts, you know, it's easy just to pass it off and say, well, you're the legislative body, you're the decision makers and whatever decision you make you're making a policy statement. And if you don't care about the findings of fact or the conclusions of law, if you don't care that you're meeting the criteria of approval then that's your policy judgment. That doesn't help us out a whole lot, Mr. Giroux. I'm through, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Okay. Members, we're going to move on. I'm sure we'll come back to this issue at some point in time. Members, the Chair would like to have a discussion on Condition No. 3.

COUNCILMEMBER ANDERSON: Mr. Chair --

CHAIR MOLINA: The applicant --

COUNCILMEMBER ANDERSON: --may I ask a question about these conditions before we get into 'em?

CHAIR MOLINA: Proceed, Member Anderson.

COUNCILMEMBER ANDERSON: We're still working on this matrix I assume, right?

CHAIR MOLINA: Yes.

COUNCILMEMBER ANDERSON: And on the first segment of this matrix it says Maui Planning Commission Exhibit B. So, these, this is the language that came from the Planning Commission or is any of this language revised in any way?

CHAIR MOLINA: Okay. Let me get a response from the Planning Department. Deputy Director Suyama, if you could provide clarification to the Committee.

MS. SUYAMA: Exhibit B is what was attached to the proposed ordinance when it was transmitted up to the Council. So there are no, it, it is what was transmitted up. It is the Commission's conditions, proposed conditions.

COUNCILMEMBER ANDERSON: And so, Ms. Suyama, it's the direct language and then you had given us previous to the last meeting some recommendations for revisions. And I'm assuming, Mr. Chair or Ms. Nagata, those would be the comments in the last column. Is that correct? . . .(end of tape, start 1B). . .

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CHAIR MOLINA: Members, if you'll note that document that was provided for us, the draft on July 27th and in the matrix I believe that is, Deputy Director, is that your, you've provided more specifics with regards to the Condition 3?

MS. SUYAMA: Right. Before, before July 27th we were requested by Council Services to look at the conditions that were proposed originally from the discussion before and incorporate some of our comments into new conditions or new drafting of the conditions. And that's what we did on July 27th. But our official comments were on the last column where we had pointed out just, you know, what, what we thought were some of the problems with the proposed conditions from, that was proposed by the applicant originally.

COUNCILMEMBER ANDERSON: Now, I'm more confused. So, the last section here, Mr. Chairman, Department of Planning 30, 7/3/07 comments regarding the applicant's revised draft. So these comments are comments on Wailea 670's proposed conditions not comments on the Planning Commission's proposed conditions. Is that correct?

MS. SUYAMA: That's correct.

COUNCILMEMBER ANDERSON: And so, then one more question, Mr. Chairman.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER ANDERSON: In the . . .*(pause)*. . . in the July 3, 2007 letter that we received from Planning, they've reviewed, it says we have reviewed the proposed conditions and have the following comments for your consideration. These, is this letter in response to the conditions proposed by the applicant or the conditions from the Planning Commission because it doesn't say?

CHAIR MOLINA: Okay. Deputy Director.

MS. SUYAMA: It's in response to conditions proposed by the applicant because we were asked to address the applicant's conditions.

COUNCILMEMBER ANDERSON: Okay. That clears it up for me. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. All right. I'd like to ask the applicant or his representative to I guess respond to questions as it relates to the condition. Staff, can you read the condition out? Condition No. 3 from the Planning Commission or if we can, maybe it's better we work off the comments made by the Planning Department or the, the specifications that was made in there. I'll tell you what. You know what to make it easier go ahead and read the Planning Commission's one and then, Members, if you can follow along if you want to look at what was recommended by the Deputy Planning Director.

COUNCILMEMBER ANDERSON: Are we going to have it on the wall?

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CHAIR MOLINA: Members, is there, would the Members like to have it on the wall?

COUNCILMEMBER ANDERSON: I mean it makes it easier for us to know which one you're talking about --

CHAIR MOLINA: Okay. Yeah.

COUNCILMEMBER ANDERSON: --because there's so many here.

CHAIR MOLINA: Okay. Members, we're, we're on Page 3 of 12 on the matrix, Condition No. 3, Maui Planning Commission Exhibit B to the consolidated zoning bill transmitted 9/29/06. And there we have it.

MS. NAKATA: Planning Commission's proposed Condition No. 3: "As represented by WCPT/GW Land Associates, LLC, a voluntary contribution for traffic improvements shall be paid to the County of Maui in an amount equal to \$5,000 per unit, which shall be credited against all future pro-rata share of traffic requirements for the project. An agreement shall be executed between WCPT/GW Land Associates, LLC, and the County of Maui stipulating the terms and conditions of the voluntary contribution prior to approval of any ministerial permits by the County of Maui."

CHAIR MOLINA: Okay. Members, and then if you would like to look at the comments made by the Deputy Planning Director as well to I guess there's some language that's been underscored and I guess recommended to be added to the condition. Am I correct, Deputy Director?

MS. SUYAMA: That's correct.

CHAIR MOLINA: Okay. All right. Members, the floor is open. Is the applicant available here to give comment? Mr. Jencks, if you'd like to come up to the front. And the applicant also submitted a condition, which relates to the Planning Commission's condition as well for the record, Members. Okay. Members, the floor is open for questions to Mr. Jencks with regards to this condition. Members? Mr. Jencks, would you like to give any opening comments? Now, you, you made a suggest..., I guess you've added a condition related to that. Can you comment on your proposal as it relates to Condition 3?

MR. JENCKS: I would, Mr. Chair, I would just say that the way the Planning Department has modified Condition 3 is fine with us.

CHAIR MOLINA: Okay. Members. Then do we have consensus? Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. So, to get it clear the, the applicant will provide that \$5,000 per unit, and if and when we approve our traffic impact fee for South Maui whichever is highest the developer will pay the difference.

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CHAIR MOLINA: Okay. Deputy Planning Director?

MS. SUYAMA: That was the original condition that because we were, at the time of the original condition with the Planning Commission we were still yet in discussions of, about a future traffic impact fee. So, what they were willing to do was a voluntary contribution but they wanted it to be credited. Once an impact fee was adopted that they got credit for whatever monies that they had given to the County. The only, the only change in the condition really is that it talks about that, besides Wailea 670, you know, the parent company being responsible, any successors or assigned will also be responsible if the project is sold for whatever reason.

And the other thing that it did was it set a time limit. That in the original condition there wasn't a time limit as to when the fees we're going to be paid. So what we did we linked it to the subdivision approval as well as the building permit approval. So, prior to getting those things approved, they would have to do their \$5,000 contribution as they went along.

VICE-CHAIR PONTANILLA: So, let me get it clear. So, if and when we come out with a traffic impact fee ordinance, if the ordinance says \$7,000 fee, the developer will pay the difference between the \$7,000 and the \$5,000, in other words, the \$2,000.

MS. SUYAMA: Right. That would be, that would be the intent is that if they needed to pay more money for traffic impact, they would have to still be subject to the traffic impact fee at that time.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Pontanilla. As a follow up to Member Pontanilla's question, Madam Director, so should we incorporate additional language if for example the ordinance is created and the developer is required to give more than the \$5,000? Should we add some language in there to reflect that?

MS. SUYAMA: If you don't want to give them a refund because they might have overpaid then I would say you would need to put language saying that once the contribution is given regardless of what the fee turns out to be, you know, they're not getting a refund. Yeah. You would have to put some kind of language.

CHAIR MOLINA: Okay. Thank you. Member Johnson.

COUNCILMEMBER JOHNSON: Yes. That, that was, you know, one of my concerns because this is not really, it's a voluntary contribution because we don't have an ordinance, therefore, I would like language inserted that says the, the section of, you know, our ordinance that we're working on, which really I guess under State Statute would be refundable. I don't want that to be treated in the same manner because to me we don't have the ordinance, therefore, I want to make sure that there's language that says this is a non-refundable voluntary contribution.

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CHAIR MOLINA: Thank you, Member Johnson. Any other comments? Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, I'm not happy with this condition at all, Mr. Chairman, because, first of all, it doesn't specify what the traffic requirements are, number one. And, you know, this is a 20-year build out. The traffic improvements should be tied to the build out of the project triggered by an approved traffic impact analysis that says when you reach this traffic count you're going to need to do this improvement. And, you know, currently there is a condition running with this land that says that they will pay for all . . .um. . . infrastructure improvements, public facilities, and services needed to serve their project.

And, you know, this, this is just an open ended-and, and, and what does this include? I mean does this include the widening of Piilani Highway? Does this include the extension of Piilani Highway? What specific traffic improvements does this condition speak to? It's just a grandiose, you know, statement that makes it look like, you know, everything is going to be taken care of but, people, look around we haven't gotten pro-rata share from anybody. And, and the State doesn't have a mechanism for collecting pro-rata share. And this County Public Works Department has not collected pro-rata share. We have this condition, virtually the same language in all of our Change in Zoning and Community plan amendments. And it wasn't that long ago, I think it was during budget where we asked, you know, where, where are you collecting these pro-rata share requirements? They haven't collected any, Mr. Chairman, and neither has DOT.

So, that's why our roads are at capacity. And Piilani is currently at capacity. South Kihei Road is at capacity. Any of you who want to be down in, in this region of South Maui during commuter time and I would venture to say that that's anywhere from 3:00, 3:30 to 5:30, this section of Piilani Highway is bumper to bumper. People cannot even get in and out of, of Maui Meadows unless someone stops for 'em. There's no signal at Mikioi. So we are at capacity right now. Our community plan has a infrastructure concurrency requirement that says infrastructure must be in place prior to development.

And it's not in place right now so what good is this condition in the, in the way it reads right now? I'd, I'd like to see us tie this to the actual required improvements and when they are required. And, you know, while I have the floor on this traffic issue, Mr. Chairman, we still do not have a final traffic analysis that gives us the build out scenario for the regional system. And, you know, they, they were asked by DOT to do this and they didn't do it. They said, well, this is the best we can do because Makena Resort is up for sale so we don't know what their build out is going to be. So, we're only going to include what their current zoning is.

Well, we all know what the build out is going to be it's been in the front of this Council for years and nobody has polled their request. So, you know, if you're going to have a, an accurate traffic analysis you have to have accurate data that reflects the surrounding areas build out. And, you know, I'm guessing that they didn't include it because it would trigger all these improvements upfront. So, this condition is, is, is meaningless. I mean you can, you can say they're going to do it prior to subdivision, prior to the issuance of a building permit. I think it's, you know, the extension of Piilani has to be done now before anything happens. And, and the widening of

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Piilani that has to be done now, too, and in fact our community plan requires it. Restriping a two-lane road to four lanes is not widening it and that's what the community plan calls for prior to any development mauka of Piilani Highway.

CHAIR MOLINA: Okay. Members, if I could ask Mr. Jencks to respond to your request with regards to I guess updated traffic analysis. Do you care to comment on that, Mr. Jencks?

MR. JENCKS: Yeah. Mr. Chair, we submitted a traffic report. The latest report we submitted was in June of 2005 in anticipation of hearings. This Committee reviewed that report with the traffic consultant here and as I recall accepted that report as a report for the project. The project also did do a consolidated traffic impact assessment report for the combined areas of Wailea, Makena, and Honua`ula and that report was submitted to DOT for review for the specific purpose of addressing the improvements to Piilani Highway from Kilohana to Wailea Ike Drive.

And, and, and in fact with regard to the zoning for Makena, we assumed the current plan for Makena in that traffic impact analysis report. So, we didn't take any reduction in density. We took the full application that's in front of the Council today for, for Makena Resort as a part of that traffic impact assessment report review. I would like to add that the, the, what we're talking about here is a traffic impact assessment fee that we proposed to the Planning Commission in 2001 in advance of any discussion by the Council or the Planning Commission of a traffic impact fee. This fee is probably in excess of what will be actually the result of the current discussions in, in the Planning Committee on this bill.

It is a fee that would be paid, and I presume that the, the statement with regard to when it's paid is consistent with the bill that's in process right now, I think it is at either building permit or subdivision processing time. It is intended to assist the County. And it's about \$7 million based upon a \$5,000 per unit fee at build out. It doesn't take the place of any other off-site improvements that we're required to do upfront. As you will note in the Planning Department's most recent recommendations on, on conditions, they also provide for input on the timing of improvements. This is separate from and distinct from those, those improvements. This is a separate fee that would be paid at issuance of building permit or subdivision approval for every unit in the project and it goes to the County of Maui for anything else the County chooses to do in South Maui.

CHAIR MOLINA: Okay. Thank you, Mr. Jencks. Before I open the floor for more questions of Mr. Jencks. Members, as a, for your information and to inform the public you are being filmed by an independent photographer. I guess we do have the Maui News here and as well as the independent photographer from the, our last meeting so just to state that for public record. And at a later point if you can inform our staff. So, anyway, Member Baisa followed by Member Anderson.

COUNCILMEMBER BAISA: Chair, thank you for the opportunity. As Planning Committee Chair, I thought it was important to state that the Planning Committee has held several meetings on the traffic impact fee issue, and that has been hanging around for a very long time. I understand it

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started in 1988. And so, for the past eight months we've had two meetings dedicated to it already. So, we're trying very hard to get a completed bill out of our Committee, however, there have been a few major things that we've had to deal with, information that has not been available to us so that we can take action and move the bill to the entire Council. But we are working on it and of course the intent was that if those fees are higher then we would want to developer to pay more.

CHAIR MOLINA: Thank you, Member Baisa. Member Anderson.

COUNCILMEMBER ANDERSON: Yeah, I would like to have Mr. Jencks clarify for me again. The last part of your statement, Charlie, was that this transportation fee is above and beyond the internal traffic improvements that will be made in the Wailea resort area.

MR. JENCKS: Yes, and let me give you an example. This is a County fee that goes to the County of Maui. Any work we do on Piilani Highway is a State project. There's no correlation between the two. So, yes, it's separate.

COUNCILMEMBER ANDERSON: No, but I'm talking, I'm not talking about the Piilani, and thank you for clarifying that also. But I'm talking about, you know, the, the various traffic lights that are going to be needed or the, you know, there's talk about a traffic light at . . .um. . . what is that? Kiliwa. . .waa [*sic*]?

MR. JENCKS: Kalai Waa.

COUNCILMEMBER ANDERSON: Kalai Waa. Those kind of internal roadway improvements. There's a whole list of them.

MR. JENCKS: It's an interesting question because this, this proposal says and, and I'll read to you it says, which shall be paid to the County of Maui, to the County and credited against any future traffic improvements for the, well, that was any future traffic impact fees. So, it's only against any future traffic impact fees not improvements. Okay?

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: Do you see the differentiation?

COUNCILMEMBER ANDERSON: Yeah. So what you're saying. . .

MR. JENCKS: It's not against improvements it's against any future traffic impact fees the way this is written.

CHAIR MOLINA: Mr. Jencks. . .(*inaudible*). . .

COUNCILMEMBER ANDERSON: So, this would be in addition to doing those. . .

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CHAIR MOLINA: Hang on, Member Anderson. I just wanted for the Member's clarification. Mr. Jencks, where are you reading off of the. . .

MR. JENCKS: I'm reading the Department of Planning recommendation.

CHAIR MOLINA: Okay. Okay. The Department of, okay, Members, just to clarify it.

MR. JENCKS: It says any future traffic impact fees that may be adopted by the County not improvements but traffic impact fees.

CHAIR MOLINA: Okay. Thank you, Mr. Jencks. Member Anderson, continue.

COUNCILMEMBER ANDERSON: Yeah. So, would those traffic impact fees 'cause a lot, in fact, you know, all these various internal improvements, roadway improvements, you know, none of them are going to happen until, the way their written currently, would not happen until your first Certificate of Occupancy is issued as I, as I recall that's the way it's written.

MR. JENCKS: The one for Piilani Highway I think says that. . .

COUNCILMEMBER ANDERSON: No, no, no. I'm not talking about Piilani right now. I'm talking about the internal roadway improvements, internal. . .

MR. JENCKS: In Wailea?

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: Yeah. There's some that have to be done prior to CO of the first unit.

COUNCILMEMBER ANDERSON: Right. So, you know, down the road after this, and if this gets passed out and I'm, I'm assuming you're going to have, you know, several years before you start building.

MR. JENCKS: Yeah.

COUNCILMEMBER ANDERSON: At that point in time there will be a traffic impact fee. So, will those traffic impact fees be assessed against these improvements that we're already recognizing that have to happen?

CHAIR MOLINA: Mr. Jencks.

MR. JENCKS: I'm trying to figure out how to respond. This fee is against, is against every unit to be built in the project.

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COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: And it is a one-time fee we pay. It is paid and it's not credited against any improvements that we do in or adjacent to the project be they County improvements or private improvements. So, I guess I mean that's how. . .

COUNCILMEMBER ANDERSON: So then what you're saying is that this fee will be collected based per, on per unit and it will not be credited against any other roadway improvements that have been identified, the internal roadway improvements that have been identified that are needed for this project?

MR. JENCKS: This, this, this condition says against, against future fees not improvements. So, the answer to your question is yes.

COUNCILMEMBER ANDERSON: Well, it does say against all future pro-rata share of traffic requirements for the project.

MS. NAKATA: Excuse me.

MR. JENCKS: That's been deleted.

CHAIR MOLINA: Staff.

MS. NAKATA: Mr. Chair, could staff just clarify that the language that's bracketed, the Planning Commissions recommendation in the fourth column of the Committee's matrix is ramseyered. So, language that's been bracketed is subject to deletion and the underscored language is added. So, the phrase "pro-rata share of traffic requirements for the project" has been deleted by Planning. And instead of that Planning has inserted "traffic impact fees that may be adopted by the County."

COUNCILMEMBER ANDERSON: Okay. That's clears that up. Thank you very much, Ms. Nakata. Thank you, Mr. Jencks.

MR. JENCKS: You're welcome.

COUNCILMEMBER ANDERSON: So, Mr. Chair, the, I think it would be so helpful if, if we had all these various traffic improvement conditions, you know, together.

CHAIR MOLINA: Yeah. I believe the related condition exists in Condition 2 and I, and I believe the Planning Department gave us a clarification of that as well, that's on Page 2 of 12, Members. So, I guess further clarifying the condition that was established by the Planning Commission, which relates to Condition 2. So, you know, I apologize, Members, I know it's quite cumbersome. There's a lot of things to consider so we're, we're doing our best to try and make things as clear for you as possible.

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COUNCILMEMBER ANDERSON: And, and we haven't . . .um. . . we haven't discussed that one either.

CHAIR MOLINA: I know we did have a brief discussion but, yeah, I do --

COUNCILMEMBER ANDERSON: Yeah

CHAIR MOLINA: --plan on returning there another time, Member Anderson. So, rest assured we will.

VICE-CHAIR PONTANILLA: So, Chair, we're, we're coming back to Page 2?

CHAIR MOLINA: Okay. Sorry. Member Pontanilla, Page 2?

VICE-CHAIR PONTANILLA: Yeah, we're going to be coming back to Page 2, right?

CHAIR MOLINA: Yes. Yes.

VICE-CHAIR PONTANILLA: Okay.

CHAIR MOLINA: By all means.

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Because I know that one will require a lengthy discussion. Okay. As a matter of fact even the comments from the Planning Department with regards to Condition 2 is quite lengthy. So, I, I expect a prolonged discussion on that matter. Members, the Chair would like to move on. We'll come back to Condition 3 at a later point and I would ask that if you have any recommended language changes, additions, or deletions to Condition 3 as presented by the Deputy Planning Director on that proposed condition please submit it to the Committee staff at some point in time hopefully in an expeditious manner as much as possible.

All right. Members, so let's go on for discussion on another condition. Let's go ahead and discuss the condition related to No. 4. Staff, if you go ahead and read Condition No. 4 on Page 4 of 12, which relates to infrastructural improvements and then we'll ask the Deputy Planning Director to clarify her . . .um. . . comments in her letter which relates to Condition 4. So, Staff, proceed.

MS. NAKATA: Planning Commission recommended Condition 4, "that WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall be responsible for all required infrastructural improvements for the project including water source and system improvements for both domestic use and fire protection, drainage improvements, traffic related improvements, wastewater system improvements, and utility upgrades as determined by the appropriate government agencies and public utility companies. Said improvements shall be constructed and implemented concurrently

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with each phase of the Wailea 670 development and shall be completed prior to issuance of any certificate of occupancy or final subdivision approval unless improvements are bonded by WCPT/GW Land Associates, LLC. WCPT/GW Land Associates, LLC, shall execute appropriate agreements with government agencies regarding participation in improvements of infrastructure and public facilities as determined by the agencies.”

CHAIR MOLINA: Thank you, staff. Now, Deputy Planning Director Suyama, if you could please clarify the condition.

MS. SUYAMA: This is a general condition talking about concurrency of infrastructure with the development. And the only really major change to the language other than, you know, some typographical . . .um. . . mistakes or corrections is that it's tying in that with the development of each phase of the Wailea . . . it's, you know, it's actually called the Kihei-Makena Project District 9 in the Code saying that regardless of what the name change is it is Kihei-Makena Project District 9 that any development that occurs shall have to have concurrency in infrastructure. As you know project districts are not done all at one time. It's done in phases where they choose sites that they wish to develop. So, when it comes in with this condition, when it comes in for Phase II approval, we will-and Phase III approval-we will ensure through this condition that they have the necessary infrastructure in order to construct the, the proposed project.

CHAIR MOLINA: Okay. Thank you, Deputy Director. Member Anderson?

COUNCILMEMBER ANDERSON: And so, who makes this determination that, that, of what the necessary infrastructure is? Has that been spelled out --

CHAIR MOLINA: Deputy Director?

COUNCILMEMBER ANDERSON: --in, in, in connection with the number of units being built?

MS. SUYAMA: What would happen is that when the applications come before our Department it is sent out to the agencies. And the various agencies shall determine what improvements need to be done for the project in order for them to have adequate public infrastructure whether it's park, park assessment fees that need to be paid, whether you need to improve the water system, the wastewater system, roadway systems within the subdivision or within the local area, which they call local improvements rather than regional improvements.

COUNCILMEMBER ANDERSON: You know this, you know, I understand that this is sort of like a template condition but I don't think that this project fits the template, Mr. Chairman. We need to make some policy decisions because it talks about infrastructure improvements including but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements, and utility upgrades. So, does it matter that the water source and system improvements are going to be a private system and also the wastewater system?

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CHAIR MOLINA: Director?

MS. SUYAMA: It, it does matter in the sense that they have to show that whatever the, the water system or the wastewater system is adequate and meets the standards of the County in, in order to provide those services when they come in for development. So they need to provide that information and that information is sent to the agencies for review and comment as to whether, you know, their assessment is correct or incorrect. And we, we rely on those agencies to then tell us if wastewater facilities are not adequate what needs to be done.

COUNCILMEMBER ANDERSON: Whether it's a private or public?

MS. SUYAMA: We, well, we, the only, you know, I mean you could take the avenue that, well, private or public then it's for the developer or the developing company that has to maintain the systems and provide the services regardless of what the cost may be. But then we usually ask our agencies to look at the information and advise us is the system adequate, you know, for the project that's being proposed.

COUNCILMEMBER ANDERSON: And so, Mr. Chairman, is there or maybe Ms. Suyama can tell us this, is there a condition included that says, you know, I know it's not . . .um. . . it's not included in the, in the conditions that we have here from the Planning Commission but it's in a previous condition already attached to this project. And I'm wondering, and, and it's also in the State Land Use Commission's conditions that they will hook up, they will provide the necessary . . .(end tape, start 2A). . . let's see if I can get the language right in my mind. They have to fund and construct, that's what the language says, fund and construct the necessary improvements to the wastewater facility for their project needs. And so, now all of sudden they've changed that, the applicant has changed that to developing a private wastewater system that would be temporary and that they would still then have to provide the funds and assist in constructing the upgrades to the wastewater system so that when that happens, you know, maybe their, their share, Makena Resort share, I would think Wailea Resort community should have some share in that too. That's all a big unknown because there's all of those projects down there that are being developed on land that was zoned over 20 years ago. So, they should be also, I'm assuming, they're using, or maybe I, I shouldn't assume anything, are they using our wastewater system? Are they using a private wastewater system? And are they going to be required to eventually hook up to the Kihei wastewater facility?

MS. SUYAMA: My understanding with Makena is that they currently have their own wastewater system for the resort. And I do not believe, I'm not sure about this but I do not believe that they were going to connect to the County system. They opted to go on their own. Wailea 670, you know, originally, was going to hook into the County system but since that time they've opted to build their own wastewater treatment facility. And because of that, if their prior conditions like with the Land Use Commission that need to do some improvements as to pro-rata improvements to the existing Kihei water, wastewater system, they will need to go back to the Land Use Commission to make amendments to those, to those conditions. The, the other thing too is for the . . .

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COUNCILMEMBER ANDERSON: Wait. Wait. Wait. Talk about Wailea Resort and all those projects, we probably got a mini Wailea 670 coming online as we speak and all the various projects that are being built down in Wailea right now. So. . .

MS. SUYAMA: The Wailea Resort, itself, is, is hooked into the County system. The whole resort is hooked into the County system. The only. . .

COUNCILMEMBER ANDERSON: So, all those projects, Ms. Suyama, that are coming online right now --

MS. SUYAMA: In Wailea Resort.

COUNCILMEMBER ANDERSON: --in Wailea are being hooked to the Kihei wastewater system?

MS. SUYAMA: That's correct.

COUNCILMEMBER ANDERSON: And, and do you know for a fact that there is ample capacity for that to happen?

MS. SUYAMA: My understanding is the, the, the responses that we have been getting from the Public Works Department is that there currently is capacity but they do not guarantee capacity at the time of building permits or occupancy. For further details as to what the capacity is you need, you need to talk to the Public Works Department for that or not Public Works now it's Department of Environment Management.

COUNCILMEMBER ANDERSON: Well, I mean they should have been weighing in. I mean I don't see any analysis from, from our Department of Wastewater Management or from the State Department of Health on their proposal for a private wastewater system. And as I said before . . .(clears throat). . . currently a condition in the Change in Zoning that was previously passed for this project it states that "the applicant shall execute appropriate agreements with State of Hawaii and the County of Maui regarding participation in improvements of infrastructure and public facilities where such improvements are reasonably related to the applicant's project." And so, you know, they also have a requirement . . .um. . . that the petitioner . . .um. . . shall, this is currently on their District Boundary Amendment that runs with the land.

And, you know, Members, it's not our purview to just redo things because an applicant decides to opt out. I mean, you know, previous decision makers [*sic*], decision makers sitting in our seats imposed these conditions on the applicant and, and with the expectation that they would be fulfilled; same thing with the Land Use Commissioners. And their, you know, they look at the conditions that are already running on the land that the County has imposed on them and that influences the decisions that they make and the conditions that they impose. One of which in September of '94 says that the petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment transmission and disposal facilities as determined by the State

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and County. When feasible petitioners shall contribute its pro-rata share and be required to connect to the County wastewater system, and the petitioners temporary sewage treatment plant shall be abandoned and dismantled.

So, it was represented to the Land Use Commission, Mr. Chairman, that they would be building a temporary sewage treatment plant because in 1994 there was not capacity at the Kihei Wastewater Plant. So, the, the Commission allowed them to do a temporary treatment plant that they would then have to dismantle when capacity was available at the Kihei Wastewater Plant of which they needed to participate in the funding and construction of. And, you know, we're just like ignoring that that exists when it's a legal requirement deeded against the land that they're asking us to entitle.

So, you know, I just can't see just ignoring what's currently existing and making a whole new plan because now we don't have another, enough wastewater, we don't have enough water. We don't have really enough of anything including police, including beaches to support this project. So, they're going to opt to do it themselves and, you know, forget about the government's role in providing public facilities and services. And, you know, I would like to see if we're going to allow them to do a private wastewater treatment plant. Where's the review and analysis of this proposed plant, from not only our Department but from Department of Health to see that it's actually feasible. And what their disposal, you know, we're already injecting too much wastewater right now. We're damaging our reefs. It's going to take generations for them to regenerate from injection wells and runoff. And we're just going to add to it, you know, without any impact analysis being done?

CHAIR MOLINA: Okay. Member Anderson, okay, I think we've discussed this condition. We'll come back to this as well. And, and, Members, it's 2:15, again, like the other conditions if you have additional language you'd like to have inserted or removed from the proposed conditions please get it to the Committee as soon as possible. Member Johnson. . .

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: . . .before we go to break?

COUNCILMEMBER JOHNSON: I have a question and this would probably be to Corporation Counsel on No. 4 as proposed where it says the very last part says, "shall execute appropriate agreements with governmental agencies regarding participation in improvements of infrastructure and public facilities as determined by the agencies." Now, because we're not an, now are these administrative agencies or are these and I guess you could look at the County Council, the County Council would not be deemed an agency.

CHAIR MOLINA: Mr. Giroux?

MR. GIROUX: I'm, I'm not sure. I mean it, all the agencies under the County that would have to do with, with infrastructure. You've got Public Works, you've got Parks, well, you've got, you

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know, you've got different agencies that are responsible for different areas of infrastructure. And so they would be going into I guess discussing various types of agreements and contracts to be entered into.

COUNCILMEMBER JOHNSON: Okay. And the reason I asked this, Mr. Chair, is because in the past where we give our responsibility to the various entities there have been times when I have looked at I guess impact fees or agreements that have been entered into. I'll give you an example. Condition No. 7 that was attached to North Beach stated that prior to any further development at North Beach either the Lahaina bypass had to be constructed or other mitigative measures, and it was a determination made by an agency. And in this case it wasn't even the agency it was the Planning Director's recommendation that the, I guess, contribution by Intrawest for a few million dollars towards Keawe Street satisfy that condition. And I don't want to see a repeat because when you look at the Lahaina bypass it didn't just say an eighth of the bypass or a sixteenth of the bypass, it said the whole darn bypass. And then you come up with this weaselly little contribution, to me I'm not going to give away that responsibility because I don't trust I guess some of the agreements that are being entered into.

So, at some point if we're requiring this I would like to see some kind of, you know, "subject to the approval of the County Council" or, you know, at least giving us some kind of input because it just really seems like we're creating problems. And the same thing happened with water on North Beach also. All the water capacity they came to the County instead of going with what was represented or at least the option that everybody thought they were going to take which was going with a private water company at that time. So, I just, you know, I'm concerned about this, the wording of it and making sure that we're protecting the people that are living in these areas so that some future determination is not going to be, you know, so miniscule in comparison to the impact. And I think that Member Anderson is very right that this is huge. This is lumping a whole bunch of stuff into it and it's kind of sweeping condition. And I don't know who's going to enforce. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Members, it's 2:20; the Chair would like to call for a recess. Let's return at 2:35. . . .(gavel). . .

RECESS: 2:20 p.m.

RECONVENE: 2:38 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of July 25, 2007 is now back in session. It is 2:38. Members, we last left off on Condition No. 4. The Chair would like to proceed towards a discussion on Condition 5. But before we do that the Chair would like to recognize Member Anderson with regards to a question on the Change in Zoning bill. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I didn't think I was going to get the floor quite this quick but I'll find it. You know we are dealing with a combination. Previously

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we had two separate bills for two separate parcels of land, one, the 267 acres; and one the 400-some odd acres making up the 670 acres. Two separate bills. Now, we have a consolidated bill that we're working from. And my question is . . .um. . . the . . . and attached to the bill is a description of the land of which we are entitling, entitling. And my question to Corporation Counsel, Mr. Giroux, you have a copy of the bill?

CHAIR MOLINA: Mr. Giroux?

MR. GIROUX: Yes, Chair.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: Why is it . . .um. . . well, first of all, we have 12, actually, 15 different zoning lots attached to the bill and, you know, I'm confused, Mr. Chairman, because when you look at the, the opening statement on the bill it gives you a breakdown of what project, Project District 9 constitutes. Certain parcels of land located blah, blah, blah. Identified for real property tax purposes as tax map keys number. And there are two tax map keys indicating there are two parcels comprising the 670 acres but yet the, the description of the land in the way it's being entitled attached to the bill breaks it down into 15 separate zoning lots. And I'm confused why that is. Why would we be entitling 15 different separate zoning lots when the land has not been subdivided and what we're really entitling are two parcels of land?

CHAIR MOLINA: Okay. Mr. Giroux or Deputy Director Suyama, can you provide clarification?

MS. SUYAMA: My understanding is when the bill was consolidated they took the description, the legal description from the original ordinance, which is the first phase that was approved by the Council and they added the other . . .um. . . position, other description of the properties to make sure that everything was included.

COUNCILMEMBER ANDERSON: Well, that's not answering my question at all, Ms. Suyama.

MS. SUYAMA: Well, I can't, at this point I can't answer it. I need to go through the legal descriptions and provide you with an answer.

CHAIR MOLINA: Member Anderson, what staff can provide for you, we can seek a written response. That would give the Planning Department more time to respond to your question and get that to you.

COUNCILMEMBER ANDERSON: I think that's an important question, Mr. Chairman, because many of these zoning lots are full of royal patent grants. And one of the zoning lots has, actually, two of the zoning lots have exclusions to them, exclusions for grants of land to various Hawaiian people. And so, it just seems odd to me that we would be describing the land as various zoning lots, zoning lot A, zoning lot B, zoning lot C all the way through. There's actually 15 different zoning lots that comprise the 670 acres. When in fact the legal description

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of the land under the TMK . . .um. . . under T..., under the TMK process it's just two different parcels.

CHAIR MOLINA: Okay. Staff will make note of that and we'll send out the question to Corporation Counsel for --

COUNCILMEMBER ANDERSON: Thank you, Chairman.

CHAIR MOLINA: --comment. Okay. Thank you, Member Anderson. Okay. Members, moving on Condition No. 5. If we could have Staff read the Planning Commission's recommendation and to, to follow that up I'd like to have the condition as I guess clarified by the Deputy Director of Planning. As, Members, you will take note it's been, seems to be quite considerable some changes that were made. So, Staff, if you can start first with the condition from the Planning Commission. No. 5.

MS. NAKATA: "That WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide housing within the project district for a range of consumer groups including those in the affordable and moderate housing groups as determined by the Department of Housing and Human Concerns. WCPT/GW Land Associates, LLC, shall also comply with the affordable housing requirements adopted by the County of Maui. An agreement shall be executed between WCPT/GW Land Associates, LLC, and the County of Maui stipulating the terms and conditions for the provision of housing prior to approval of any ministerial permits by the County of Maui."

CHAIR MOLINA: Okay. Thank you, Ms. Nakata. And, Members, I'd like to ask Ms. Nakata now to read the Deputy Director's comments with regards to the proposed condition.

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

CHAIR MOLINA: Okay. Staff, would make note that there was considerable language bracketed out of the Planning Commission's condition on No. 5. So, Staff will make note a bracket was placed before the word "housing" and a bracket was placed after the word "Maui". And then the underscored language was inserted to replace that. So just so everyone is clear on that. Deputy Planning Director Suyama, would you like to make comments? And after that I believe Mr. Victorino has a question.

MS. SUYAMA: When the original condition came up to the Council there was no workforce housing bill at that time. And through the discussion it became clear that the Council Committee, Committee wanted it to be subject to the workforce housing requirement. One of the things that the workforce housing states that is that the housing just needs to be within the comm..., community plan region. So, in other words, the developer is saying that while we were, you

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know, there were two things, we'll, we'll, we'll do it on-site if that's what Council wants but then they also wanted consideration of an off-site provision for part of the housing.

So, one of the things is that, you know, to ensure that there's going to be workforce housing in the project, the Department recommended that if they're going to take the option of off-site then it should be based upon the total units and not just the units that comes from the project district. In other words, if you're going to put 250 units off-site then you add that to the 1,400 units proposed and the 50 percent of that 1,400 units is what you would use as your commitment. So, to giving you the option of going off-site means that for that benefit of doing it off-site and not in, within the project you're actually providing more housing as, as a developer.

But that's one of the things that we ask for your consideration on. The other thing that was missed as part of our comments that wasn't included in the condition is that we wanted a time limit as to when the workforce housing agreement should be executed. And we were recommending at that time in our letter of July 3, 2007 that it be done prior to the filing of the Project District Phase II approval request, so that, in other words, you will have an agreement in place with the County as how you are going to provide the workforce housing.

CHAIR MOLINA: Okay. Thank you, Director. Mr. Victorino?

COUNCILMEMBER VICTORINO: Okay. So, am I clear in understanding that the way this would work then if we have a 1,400-unit development and they decide to build 250, the sum total of all that would be 1,650?

MS. SUYAMA: Right. If they decide to --

COUNCILMEMBER VICTORINO: Yeah.

MS. SUYAMA: --to do 250 off-site?

COUNCILMEMBER VICTORINO: Yeah. So, of that. . .1,650 now their obligation is 825.

MS. SUYAMA: That's correct.

COUNCILMEMBER VICTORINO: Okay. So that's how you did 'em. And, and again am I correct in saying it would stay all in the Kihei-Makena Project District 9? It cannot be built anywhere else?

MS. SUYAMA: Well, the way the workforce housing ordinance reads is that as long it's within the community plan region, which means the Kihei region, Kihei community plan area, you can put your housing anywhere. But one of the commitments in, or some of the early discussions was that it be within the project district. But if you just, you know, apply the, the workforce housing . . .um. . . language is unless there's a specific condition saying that it has to be within the project district they have the option of putting it outside of the project district.

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COUNCILMEMBER VICTORINO: So, this language that you're putting in here would mandate they stay within the project district?

MS. SUYAMA: That a portion of it will always be within the project district.

COUNCILMEMBER VICTORINO: Yeah. I'm not too clear. Yeah. Okay. I understand what you're saying a portion of but that portion has, has to be determined by us? Or who determines the portion? Because again if you get 850, again, I go back to 825, I want to make sure that 825 really should be built in the Kihei area for their, for that, for the people of Kihei. Building it somewhere else may be not real, real, really, in my mind. . .

MS. SUYAMA: The Code requires. . .

COUNCILMEMBER VICTORINO: Yeah.

MS. SUYAMA: The Code requires you to build it within Kihei.

COUNCILMEMBER VICTORINO: Okay. So it will stay in Kihei.

MS. SUYAMA: It will stay in Kihei.

COUNCILMEMBER VICTORINO: But anywhere in the Kihei-Makena area?

MS. SUYAMA: Anywhere within the Kihei-Makena area.

COUNCILMEMBER VICTORINO: Okay. And the, the, the other thing about the timeframe, the timeframe before the, you mentioned before the second phase started.

MS. SUYAMA: The project district there's three phases of approval.

COUNCILMEMBER VICTORINO: Right.

MS. SUYAMA: First phase, which is what the Council is now looking at is the enactment of the ordinance as well as changing the property to project district.

COUNCILMEMBER VICTORINO: Okay.

MS. SUYAMA: The second phase is where the land, the Planning Commission reviews the application and they look at the land use allocations for the project and they give Phase II approval. Under the Phase III Project District approval it's an administrative approval process in which the Department looks at the final project plans to make sure that it's in concert with the ordinance itself as well as the Project District Phase II approval. And based upon that then we approve the construction drawings or the subdivision drawings to go for the ministerial permits which is,

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through normally with the Public Works Department. Like if you need to get your subdivision approval or building permits filed that is, prior to doing that that's the Project District Phase III process.

COUNCILMEMBER VICTORINO: So, let me ask you this if we put a condition in on the timeframe now that these homes would be built before the others will be completed if you decide to move out of that area. In other words, they don't build it all in that 1,400 unit they build like you said 250 somewhere else, right, we could require that or any portion of that to be done before they're completed with their market, market . . .um. . . portion of their housing? We could require that? Could we add that in?

MS. SUYAMA: You could add that as a condition of, of the zoning.

COUNCILMEMBER VICTORINO: Okay.

MS. SUYAMA: Normally, what I understand how the, the, in the past, I'm not sure about currently.

COUNCILMEMBER VICTORINO: Uh-huh.

MS. SUYAMA: In the past what they, what they did is that if you were owed one affordable, you know, current, through the past administration, if you want to provide a market unit you have to provide the affordable. It's a one on one. That's how the agreements were written. But usually those details are written with the Department of Housing and Human Concerns where they come into a formal housing agreement with the developer that stipulates under what conditions and how you're going to provide the housing and what's the, the income brackets of the housing. So, there's an agreement that's executed at that level with the County of Maui. And what we're saying is that prior to coming in to Phase II approval you get that agreement worked out with the County so that when we come to the, to the Planning Commission we know exactly how you're going to provide that housing

COUNCILMEMBER VICTORINO: I just want to make sure that, you know, like in the past we have been, pardon, pardon the expression, burnt by other developers and not having their commitments fulfilled. So, whatever we decide and put in I want to make sure that for the overall project itself that affordable housing even though it's long whatever we decide that that is guaranteed to be built or the entitlement to that land for the County of Maui would be, be insured somehow. And I'll talk with the Chair about it but just because I want to make sure that, you know, I want to be fair to the developer but more importantly I don't want to see the backend of this where we get the short end of the stick.

MS. SUYAMA: You, you could do it as a Conditional Zoning. I believe in Kapalua Mauka they had to, they had to make the commitment before they can develop the Kapalua Mauka that a number of units had to be provided.

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COUNCILMEMBER VICTORINO: Okay. That's what I wanted. Thank you, Mr. Chair, I appreciate you. . .

CHAIR MOLINA: Okay. Thank you, Member Victorino. Mr. Mateo, as the creator of the Workforce Housing Policy. . .

COUNCILMEMBER MATEO: Oh, no, no, no.

CHAIR MOLINA: . . .I'd like to give you the floor and for any comments or questions for the Planning Department as well as the applicant. Mr. Mateo, you have the floor.

COUNCILMEMBER MATEO: Chairman, thank you very much. And I just wanted to start off by a comment regarding Deputy Suyama's . . .um. . . I guess interpretation of the off-site component. Because according to the policy itself it references the item or, or the units and I'm going to read this part it's 2.96.040 Residential Workforce Housing requirements B under 1 and 2, both for sale and for, for rent. And under these two categories it lists real specifically that these units can be built within the community plan area. It says nothing about building 250 on the off-site and having to again build the 250 on-site. That's called double dipping and this is not what this policy does.

In terms of guaranteeing, there is a timetable. Ms. Suyama, in policy it is called concurrency, one for one. That is the time restriction on the housing. So, I had a little difficulty in trying to understand the rationale coming from the Department in requiring the double dipped numbers. And, Chairman, when appropriate I would like to ask the developer to come forward and provide us information. I did make available to all of the Members the communication I got from Mr. Jencks when I asked him to clarify the affordables in terms of the . . .um. . . 250 units that was going to be initiated first. So, when appropriate I would like to ask the developer to come down and provide clarification for us.

CHAIR MOLINA: Okay. Members, any objections to having the applicant come up to respond to . . .(*inaudible*). . .

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Mr. Jencks?

MR. JENCKS: Thank you, Mr. Chair.

CHAIR MOLINA: Mr. Jencks?

COUNCILMEMBER MATEO: Wow, he get lei on.

COUNCILMEMBER ANDERSON: They all got ti leaves. The Chair has ti leaves. Where's our ti leaves?

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COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: All right. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Jencks, thank you very much for coming down.

MR. JENCKS: Thank you.

COUNCILMEMBER MATEO: I'm just going to ask you initially to provide us additional clarification of your letter to me dated July 30 regarding the affordable housing for your project because this particular communication cites the 250 affordable rental units as the start of the project commitment to affordables. Can you expand on it?

MR. JENCKS: Certainly. Thank you. Mr. Chair, if I may? First of all, I just want to say that this project to be in compliance with the community plan has to offer as, as, as the Deputy Director described a variety of housing products for different economic brackets. And that's, I mean we have to do that to be in compliance with the community plan. So, we, we, we always assumed that we would have an affordable component in the project. With regard to the 250 units, we, the partnership talked about the idea of getting affordable units built early on before we could even start any work in the project as a way to help with the affordable housing issues in Maui County.

So, we, as, as we discussed earlier in Committee, we do have land in North Kihei that we were thinking about doing 250-some odd affordable rentals in the brackets described in the Workforce Housing Bill that would, that could be under construction earlier then we could be underway within the project district area as a way to start . . . *(end tape, start 2B)*. . . idea that we would build those units and then credit for them against our affordable component in the project. Now, listening to the conversation if that's not, as I read the ordinance, that is allowable and something that we could accomplish to help the affordable housing inventory issue. If that's something that is not acceptable then we will just build all the affordable product in the project. Because it makes no sense to build something outside if you're not going to get credit for it.

COUNCILMEMBER MATEO: Yeah. Thank you, Mr. Jencks. And in your, your letter in referencing the 250 affordable units, you're, you're indicating that these units will go down to the 60 percent median income level? Did you check the workforce housing policy's requirement?

MR. JENCKS: That's an error on my part. We need to be in compliance with this ordinance and it goes down to . . .

COUNCILMEMBER MATEO: Fifty percent.

MR. JENCKS: Fifty percent. Yes. And it ratchets us up to 80 percent I think.

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COUNCILMEMBER MATEO: Yes. Thank you.

MR. JENCKS: So there's three different brackets as I recall so we would build 'em maybe four brackets that we would have to be in compliance. In order to get credit we'd have to do it per the ordinance.

COUNCILMEMBER MATEO: So, Mr. Jencks, then initially this is prior to your project starting?

MR. JENCKS: That's right.

COUNCILMEMBER MATEO: Prior to your project starting your affordable commitment is the construction of these 250 units?

MR. JENCKS: Correct.

COUNCILMEMBER MATEO: When the project actually starts then this is your on-site project. Because the policy refers to concurrency, I know you're building the 250 off-site, did you take a look or did you consider instead of starting your project with 250 market units right off the bat is it still going to be concurrent?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I'm thinking of the answer, Mr. Chair. I'm trying to. . .okay, we start these affordable units early on before we start any work in the project. Two years later I start work on the project, I'm building product, I would want to build certainly 250 market rate units to help pay for the affordable units I've already built or that are underway nearing completion. But logically, Mr. Mateo, Phase I, Phase II application for the project will include not only a market segment but also an affordable segment because we have to plan in advance. Now, we may not start those affordable units in the project at the same time but they would be a part of that Phase II application. Does that answer your question?

COUNCILMEMBER MATEO: Okay. Let me ask, let me ask that question this way. And just, just a yes or no might, might make it real easy for me.

MR. JENCKS: I'll try.

COUNCILMEMBER MATEO: Okay. Thank you. The 250 units, this is being done not because the policy tells you you need to build 250 units upfront. This is a means of satisfying one of the County's needs in, in getting the affordable units. And you're going to be building it because you choose to build these 250 units off-site. When you actually start construction of your on-site project and the question is you're going to start by building your market homes because you have already built 250 affordable units. Yeah. So, when you go back to your project site, is it still going to be one for one or you're going to go ahead and build 250 market units because you have, in fact, already built the affordables?

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MR. JENCKS: I can't give you yes or no.

COUNCILMEMBER MATEO: Yeah. You can say yes I'm going to do it or no I'm not going to do it.

MR. JENCKS: As, as I see the 250 would be a one to one but in that sense no.

COUNCILMEMBER MATEO: Okay. Okay. So, we're going to get the 250 off-site and when you start your project actually you're going to start with the 250 --

MR. JENCKS: Market rent.

COUNCILMEMBER MATEO: --market, market homes. And your 250 market homes will take you how long I mean what is the phase that 250 will come about?

MR. JENCKS: How long would it take?

COUNCILMEMBER MATEO: Yeah. Is this all in, that's Phase I of your, your project?

MR. JENCKS: I would say Phase I is going to be probably over 400 units. So, a segment will be market and a segment will be affordable on-site.

COUNCILMEMBER MATEO: So, after you complete the 250 markets then it will become, you'll meet the concurrency of the policy requirement?

MR. JENCKS: Within the project area, absolutely.

COUNCILMEMBER MATEO: One for one. Okay. Chairman, I'll yield to the other Members at this point.

CHAIR MOLINA: Okay. Thank you, Member Mateo. Member Pontanilla followed by Member Anderson.

VICE-CHAIR PONTANILLA: Thank you. In regards to the 250 units off-site and what you just mentioned you're going to satisfy the medium [*sic*] income between 80 percent and 50 percent. One of the problems we've had in Kahului, Kahului Town Terrace was the problem in regards to some of the tenants in that particular project, although, they are, you know, when they first applied it was affordable units for that particular family. In time, some of the families or some of the renters got married, they got promoted, they got increase in wages, and they no longer fall between 80 percent and 50 percent medium [*sic*] income. The question that I have for you, I think Mr. Mateo touched on it in regards to the first units you're going to be building, what I'm hoping is that, I, I don't know what management company is going to manage this particular project but there is a check and balance in regards to if the criteria is being met. And, and in

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most cases, I know that some of these people that's going to be renting going to be all of sudden out of the 80 percent and 50 percent medium [*sic*] income bracket.

So, rather than displacing these people, I don't know how long it's going to take to create affordable units within the project area so that if and when these people are faced with that problem that they have someplace that they can go apply for affordable housing rather than now I got to go look for a rental outside of the community plan area. Can you comment on that and, and comment on the project as you build your market homes in the project itself?

MR. JENCKS: I think you, Council member, you bring up a really good, good point. And I, and I don't know how to answer, answer the, it wasn't a question but the statement with regard to how you manage the increasing income of the folks who rent at 50 percent then, then they're earning actually at 80 percent. I'm, I'm not even sure that's addressed in this, in this document. It might be addressed in the new, in the new rules that are coming out to enforce the Residential Workforce Housing Bill. But to go directly to your question with regard to where do people move up and out to? It's in our interest I think as a community and also as a builder to provide product for people to move up and into which is what is driven by this ordinance.

The, this ordinance requires that the, that the, the workforce housing agreement that we need to submit has to be approved for the phase or let's say it's for the Phase II area, it would have to be reviewed and approved prior to any building permits or subdivision approvals. And the Director of Housing and Human Concerns will tell us as, as defined in this ordinance what it is we're going to build. So, if, if the Department is, got heads up with regard to the need and demand at a price point or a demand sector whether it's 80 percent or 100 percent or 90, whatever it happens to be, they're going to drive. Because this bill says they're going drive what you're going to build and what you're going to sell it for. So that, and that's the best way to answer it. This bill provides the direction to do exactly what it is you just described in my opinion.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. First of all, Mr. Jencks, you did not always intend to have affordable housing in this project. I'd like to correct that statement. As a matter of fact, both times when it went before the Planning Commission, Commissioners were told that this was a high-end housing project not suitable for affordables. And the only reason affordables came into the picture is because it was a condition that the Planning Commission imposed on you. The original intention as it came to the Planning Commission in 2000 and 2001 was for second and third offshore homebuyers with the lots selling from \$2 million up. So, please don't, now that you have to do the affordable housing don't pretend that you always intended to do it.

For the 250 off-site houses that you're, or units that you're proposing it's my understanding that it's for special needs housing. Special needs means, you know, handicapped, maybe homeless

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resource center, maybe people with drug problems. Anyway, it's not intended for necessarily workforce people. So, you know, and, and of course who's going to argue that we need that housing but we have State funding, we have Federal funding, we have all kinds of non-profits, not only that, County funding for special needs housing. My concern is getting housing for the workforce. To get people off the road from having to commute from Upcountry, Central Maui, Haiku, wherever to go work in the hotels down in this region.

And so, I would much prefer to see all of the affordable housing built on-site and meant truly for the workforce. Let's get some of those people off the highway so they don't have to commute. We already know that Stan Franco and his group have been advocating to us, Mr. Chairman, to have all of the housing on-site. And I, myself, are 100 percent in support of that. And, and then the other thing, Mister, Mr. Jencks, is because those are the kind of, that's, you know, any project that we have had before us, Mr. Chairman, this is the project who can afford to subsidize housing for people who make, excuse me, under 100 percent of the median income. And I would venture to guess the housing that they are proposing 120 to 160 percent on-site, we're looking at 250 to 500 and-what is it-70,000, 60,000, something like that for affordable housing. That housing is not going to be sold to people who live here unless they already own a home and they want to go retire down in, in Wailea.

So, if we're really going to use this project and they're using affordable housing as a selling point they need to be building housing that's truly going to provide much needed housing for the working people of this County who, I will remind you, 67 percent of whom make 100 percent and below the, the median income. These are not special needs people, Mr. Chairman. These are our working residents who are commuting to the hotels and working two jobs to keep a roof over their family.

So, that's my feeling on that. And, Mr. Jencks, you know, you do have a commitment. You've made this commitment to us on several occasions that you would be building this out at 100 units per year. Now, I'm not going to hold you to that to the 250-what do you find funny about that?

MR. JENCKS: I'm just, I'm just talking about 100, 100 units a year. Okay. Go. I'm, I'm just trying to think how I, the context. Go ahead.

COUNCILMEMBER ANDERSON: You made that statement on many occasions and if you'd let, like me to pull up the minutes for you I would. And besides that the timing of all your traffic improvements are based on that. So, you know, you can't now say, you know, you're going to build 250 units in a year. Off-site I don't have a problem with that if that gets approved and accepted by this Body because North Kihei isn't even considered in your traffic impact analysis. I think, Mr. Chairman, that takes another analysis because Ohukai to Kaonoulu, they got just as much traffic up there if not more. In fact they do have more. They are way beyond carrying capacity in that region of South Maui. So, you know, if that's a proposal let's see the traffic impact analysis for that.

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CHAIR MOLINA: Okay. Member Anderson, can I have Mr. Jencks respond and give some comments to. . .

COUNCILMEMBER ANDERSON: Well, I'm going to ask him a question first.

CHAIR MOLINA: Okay. Okay. Proceed.

COUNCILMEMBER ANDERSON: I'm, I'm just laying the groundwork so he could understand why I'm asking the question. You already committed to 100 units per year. Your zoning, your Project District ordinance allows for ohana units. So, if you have let's say if you build 50 market priced houses and 50 affordable units and then the people who buy the market price housing all of 'em put in ohana units, how will that impact the number of affordables and how will that impact your total build out of 1,400 units?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Is that the question?

CHAIR MOLINA: Yes. Okay. I believe it is.

COUNCILMEMBER ANDERSON: Sounds like it to me.

MR. JENCKS: Okay. The project district has a maximum unit count of 1,400 units. That includes the affordable component and the market rate component. If you buy a lot in the project and you elect, you build your home on the lot and then you elect to build an ohana then that takes up one of the 1,400 units. So, the ownership has to approve you building an ohana and I cannot regulate that ohana whether it's affordable or not.

COUNCILMEMBER ANDERSON: So wait a minute, you mean the, the ownership has to approve you building that ohana?

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: What are you talking about?

MR. JENCKS: You're taking the. . .if I, if I, if I own the project and I have, I have zoning for 1,400 units and you build a house that's 1,399. If you want to build an ohana that's 1,398 on your property, I should be able to say whether you can build that ohana or not because you're taking a unit away from my maximum unit count. That counts against the maximum unit count.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: So, I'm not going to be predisposed to allowing ohana units.

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COUNCILMEMBER ANDERSON: Well, then why is it in the Project District ordinance allowing it?

MR. JENCKS: It. . .I don't think it's specifically addressed. We have a maximum yield of 1,400 units --

COUNCILMEMBER ANDERSON: But, you know . . .*(sigh)*. . .

MR. JENCKS: --but. . .

COUNCILMEMBER ANDERSON: This was brought up at one of our previous meetings and I believe the, the answer at the time was, in fact, Mr. Yoshida so I can't remember if it was at the Planning Commission, excuse me, or at one of our previous meetings in this Land Use Committee. But you, the answer, yeah, it was the Planning Commission; somebody asked well how are you going to keep track. You know if the total build out 1,400 how are you going to keep track? And Mr. Yoshida said, well, we would have to keep track of it internally.

CHAIR MOLINA: Member Anderson, before you continue, Deputy Director Suyama would like to give a clarification with regards to the matter you and Mr. Jencks are discussing.

COUNCILMEMBER ANDERSON: Oh, that would be helpful. Thank you.

CHAIR MOLINA: Thank you. Deputy Director.

MS. SUYAMA: When we reviewed this we were, the Department was concerned about ohana units and that's why the enabling ordinance chapter, you know, the change in the, in Title 19 does not list ohana units as a permitted use. You know, because it would have to have been listed as a accessory use to the permitted residential, and we didn't put it in. The only way ohana units are built today is because there is a separate chapter that talks about accessory dwellings and it identifies the specific zoning districts that ohana or accessory dwellings are permitted. And project districts are not one of those districts. So, unless you change that accessory dwelling ordinance in the, in Title 19, ohana units would not be permitted on these properties.

COUNCILMEMBER ANDERSON: Do you know for a fact that it's not in the Project District ordinance? Because it was originally and I unfortunately was not at the meeting when this was passed or at least voted on six of the other members.

MS. SUYAMA: All right.

COUNCILMEMBER ANDERSON: It says accessory uses and structures. Accessory uses and structures located on the same lot under permitted uses, and incidental and customarily found in connection with the principal uses. So. . .

MS. SUYAMA: Right. But then in 19.08 there is no mention of, of accessory dwelling units. It's part of another chapter in the Code that allows ohana units.

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COUNCILMEMBER ANDERSON: What's 19.08, Ms. Suyama?

MS. SUYAMA: 19.08 is the residential district ordinance. So, that's your R-1, R-2, R-3 districts.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: Mr. Chair.

CHAIR MOLINA: Hang on, Mr. Jencks. Member Anderson, are you --

COUNCILMEMBER ANDERSON: Well --

CHAIR MOLINA: --through with your questioning?

COUNCILMEMBER ANDERSON: --you know, the thing is about a project district is, you know, you write your own standards for the most part and often it will say, you know, it will quote like whatever is allowable under 19.08 and then adds all of this additional things that are not a permitted use in 19.08. So, it says the number of dwelling units that may be constructed in the Kihei-Makena Project District inclusive of accessory dwellings shall not exceed 1,400.

CHAIR MOLINA: Okay. Excuse me. Mr. Jencks, you wanted to add, is that the point you wanted to make?

MR. JENCKS: That's exactly what I was going to mention. It's in Section 19.90A.020B. That's exactly what it says.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Yeah, but then the question is are you going to prohibit people by CC&R's from building accessory dwellings so that you can get your full market build out?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: We certainly could. The other way of looking at it, at that is making sure we build all the affordable units we're supposed to build as well. Because an affordable unit if someone wins, builds an ohana on their property it's going to count against the potential affordable unit. I mean that's how I look at it.

COUNCILMEMBER ANDERSON: What do you mean count against it?

MR. JENCKS: Well, if, if --

COUNCILMEMBER ANDERSON: If they. . .

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MR. JENCKS: --I have a maximum, I have a maximum and it counts against that maximum.

COUNCILMEMBER ANDERSON: Yeah. Yeah. Well. . .

MR. JENCKS: And it, if I may, it doesn't help me . . .um. . . build, building an ohana on this property which is an additional dwelling unit by definition, doesn't help me reduce my overall cost either because it's, it's a freebie basically. It doesn't work to my bottomline at all in covering my cost and building infrastructure.

COUNCILMEMBER ANDERSON: Right. In other words, it's a freebie to the landowner that bought the lot --

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: --and doesn't put any money in your pocket --

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: --to add to your, your expenses for infrastructures.

MR. JENCKS: Right.

COUNCILMEMBER ANDERSON: So then I, I would suggest that we just take it out and not, not even allow for accessory dwellings so that we know for a fact. Because, you know, some of you Members aren't here long enough but I'll guarantee you there's no way there's ever going to be a count taken and anybody keeping track. You know and if it's, if, if somebody comes in five years down the road and wants to put in an ohana unit who's going to stop 'em if the project district allows it and especially if there's aren't 1,400 homes built there yet. I mean we can't even get departments to correctly count out parking spaces. I mean, you know, it's got to be tight upfront, Mr. Chairman. We can't rely, you know, that's somebody is going to implement this as intended five years down the road and when it's out of our hands totally.

CHAIR MOLINA: Okay. So noted, Member Anderson.

COUNCILMEMBER ANDERSON: So, would you have an objection to that, Mr. Jencks?

MR. JENCKS: No. I, I, you know, we, the discussion of ohanas is, is something we've tossed around quite a bit and within the context of the project and my feelings on it go way back. You can't plan for infrastructure; water, sewer, parks, traffic, if you have ohanas in your. . .you just cannot do it. There's great impotence of that in Maui County. We have, and some people will say, gee, they're good for the affordable component. Well, hey, you still can't. . .

COUNCILMEMBER ANDERSON: And they are.

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MR. JENCKS: They are but you can't plan for it. We have an affordable component in the project let's build that.

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: Then we know exactly what we're getting and how we plan for it.

COUNCILMEMBER ANDERSON: So, then you're not. . .

MR. JENCKS: I have no, look. . .

COUNCILMEMBER ANDERSON: No problem with taking that out?

MR. JENCKS: If you want to take that out that's fine with me.

COUNCILMEMBER ANDERSON: Okay. Because I, let's, you know, let's make it tight and so that there's no question down the road. You do have a permitted use for an accessory dwelling. I don't know how you're going to call it an accessory dwelling but since we're on the subject, Mr. Chairman, I'm just going to, if I can find it here, mention that-oh, here we go-for the accessory dwelling approved permitted uses there will be an accessory dwelling . . . God . . . for the golf course. A 1,500 square foot accessory dwelling for a caretakers unit.

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And I don't have any objection to that. I don't, I don't know if accessory dwelling is the appropriate term. But so you don't have any objection to taking out that other section that permits accessory dwellings?

MR. JENCKS: Not at all. And frankly, a dwelling is a dwelling. 1,400 dwellings is 1,400 dwellings whether it's a caretakers unit or not.

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: Okay. Member Anderson and Mr. Jencks, just so the Chair can get his bearings straight here. We went from talking about the workforce housing policy and we jumped around to the off-site. So. . .

COUNCILMEMBER ANDERSON: Well, the reason I brought that up, Mr. Chairman --

CHAIR MOLINA: No, no. It's good.

COUNCILMEMBER ANDERSON: --is I think it's very pertinent to affordable housing.

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CHAIR MOLINA: Yeah. And, and I was going to ask, ask you if you would like to propose that as a separate condition then to take out the option of having any ohanas in the unit. The Chair is very open to that if that's something you would like to propose right now or at a later time.

COUNCILMEMBER ANDERSON: Yeah, I'd like to propose it now but I think we're going to have to go back and revisit the Project District ordinance 'cause that's where it --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --lies. But I did want to mention that in the, in the Project District 9 language or description, Members, for the Kihei Community Plan it does say that the project should provide a mix of single-family and multi-family housing types for a range of consumer groups with an emphasis on community development consisting of single-family, zero lot line, multifamily units. It goes on about the commercial, village, mixed use, integrated with two golf courses and other recreational amenities. Public amenities should include community oriented parks integrated with bicycle blah, blah. Buffer zones between residential areas and the proposed Piilani Highway extension, a site for future public use should be provided in anticipation of need.

So, when this was conceived, Mr. Jencks, it was conceived that there would be a range of consumer groups within the project district. So, would you have any objection to having all 700 affordable housing or dwelling units within the project district?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: No.

COUNCILMEMBER ANDERSON: You would not . . .including the rentals, the 100 percent and below?

MR. JENCKS: Let me put it this way. If we just roll back to complying with the Residential Workforce Housing Bill and you tell me that I have to build the units in the project then I will submit a workforce housing agreement and the Director of Housing and Human Concerns will tell me basically what I got to build.

COUNCILMEMBER ANDERSON: Well, I'm bringing up the language of your project district that's in the community plan and this, this is overriding everything even the workforce housing bill because your Change in Zoning request must comport with the policies already in the community plan.

MR. JENCKS: I agree.

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COUNCILMEMBER ANDERSON: And so, if you have no problem with that then I have no problem either, either because as I said who can better afford to build housing at 100 percent and below than this project. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. Mr. Jencks, just to follow up with, with the apartment or the, the single-family, the 250 units that you're going to be building. Have you, have you thought of how the maintenance fees would be adjusted? Because if we're talking about 100 percent and below, one of the more difficult areas that our people with lesser incomes have to address is not only their rent but to keep up with the maintenance fees as well that could be prohibitive, you know, to a large extent. So, have you thought about how you would address that with this specific group?

MR. JENCKS: If we're talking rental housing, Mr. Mateo, it's included in that rental fee that's established by HUD.

COUNCILMEMBER MATEO: Okay. And for clarification purposes this is to follow up with Ms. Anderson's question. These rental units are, these, it is open rentals and not for any specific category of people like the elderly or special housing needs for handicapped. Or how, what is the target group?

MR. JENCKS: It's open rental housing for the market.

COUNCILMEMBER MATEO: Okay. So, it's not specific to one category.

MR. JENCKS: No. No.

COUNCILMEMBER MATEO: Okay. Thank you.

MR. JENCKS: In compliance with the, whatever this ordinance requires is what we'll do. Absolutely.

COUNCILMEMBER MATEO: Thank you. Thank you, Mr. Jencks. Mister, Mr. Chairman.

CHAIR MOLINA: Yes, Mr. Mateo?

COUNCILMEMBER MATEO: When the developer meets with the Department and they iron out all of the specifics in this unilateral agreement relative to housing, when does it come back to us for review?

CHAIR MOLINA: Staff, can you comment?

COUNCILMEMBER MATEO: Or does it come back to us?

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CHAIR MOLINA: You know it's segues into my request that I've made of Staff to call Director Medeiros to join us. I think she could add more clarity. I believe, Staff, is Director Medeiros on the way?

MS. NAGATA: Yes, she's on her way.

CHAIR MOLINA: Mr. Mateo, if you would like to await Director Medeiros. Otherwise we'll try our best to provide an answer for you with regards to your question. Hang on. Mr. Mateo, anything else?

COUNCILMEMBER MATEO: Thank you. I'm done. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I just wanted to verify because, you know, July 30th wasn't that many days ago. And in your July 30th letter you talked about special needs housing, 240 affordable ren..., rentals at 60 percent of the median. In the area previously discussed, which . . .(end of tape, start 3A). . . for special needs housing in North Kihei. So, now you've just told Mr. Mateo that it would be for anybody not specifically special needs people.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: If I may just look at the letter, Mr. Chair, give me one second.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: You know, I, I am getting very conc..., confused and frustrated because I think we have a whole gamut of discussion on areas that I'm not sure. We talked about 700 units being built and all affordable homes in the same area then on the same token I hear something now about North Kihei. We've changed from time to time. I'm not sure where we're at. Could we have some consistency so that I understand and the public understands? We keep changing areas. Are we staying at the project area? Are we going to North Kihei as part of the project area? I am not certain of what we're doing. Can you please have somebody clarify it?

CHAIR MOLINA: Sure. Well, Mr. Victorino, all of this I believe in the Chair's opinion relates to Condition No. 5, which relates to the housing policy. And I believe some of the questions that have been asked are related to the condition.

COUNCILMEMBER VICTORINO: I'm not questioning the questions. I'm questioning are we putting all 700 together which I've heard Mr. Mateo indicate as what we wanted and Ms. Anderson indicates that. Then now I hear the question about the 240- or -50 units being in North Kihei that's not part of the, this, this project that we're referring to. So, I'm trying to ask for some

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consistency. Also, I heard from the Department, and I have no clarification about the double dipping, who made that determination about this 250? I have so many questions that just keep, just being --

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: --thrown to some other side. So, I think the public and I want to know, eh, where are we talking about? Are we going to stay all in this project? Is that what we're talking about? All of these are affordable rentals special needs all in this project or is part of it is going to be in North Kihei? And is that part of the, the, the affordable component? Are we double dipping as was brought up Member Mateo or it's going to be determined by the Department? I'm very confused at this time. And I apologize.

CHAIR MOLINA: No, no. No apologies necessary. When, when Member Anderson is completed her line of questioning you'll, you'll, the Chair will give you that option to ask Mr. Jencks that question and you can also submit questions to the Committee that we can seek answers out with regards to your concerns just to help clarify matters. So, rest assured, Mr. Victorino, we will do our best to I guess try to help you understand as to what's going on and to provide more clarity for you. So, after Member Anderson is done, I will yield the floor to you where you can pose those questions to Mr. Jencks. And if you like pose those questions to your fellow colleagues as well. Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Victorino, you're not the only one confused. So, no shame. Did you find the letter, Mr. Jencks?

MR. JENCKS: Yes, I did, Ms. Anderson. And if I may, let me quote from the letter. This is in the third paragraph, "the project team has discussed the idea of starting early on the affordable housing requirements for the project by building 250 affordable rentals (60 percent of the median) in the area previously discussed for special needs housing in the North of Kihei." Previously discussed for special needs housing in North Kihei. Okay.

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: So, we're going to use the same area, actually, the special needs housing proposal was a five-acre parcel. This is a 13-acre parcel that we're going to use. It covers the same area. Special needs is out. This rental, affordable housing is in.

COUNCILMEMBER ANDERSON: Special needs is out.

MR. JENCKS: Yes.

COUNCILMEMBER ANDERSON: And, and they're out because you've already discussed this with the Housing Department or what's the reason? And, you know, and no offense to anybody that, that needs housing. So, you're going to put regular affordable housing in a light industrial area.

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MR. JENCKS: It's a permitted use.

COUNCILMEMBER ANDERSON: I understand it's a permitted use but I don't know that it's an optible [*sic*] optimal use especially if you're raising a family. Now, is there going to be a park there for those 250 houses? Is there going to be, you know, the, the sort of amenities that you would want in a residential community? And, and you've just committed earlier to having no problem putting all this, all these units in the project district. Correct?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: Okay. I'll yield. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And we do have Director Medeiros here with us. Mr. Victorino, the floor is open for your line of questioning.

COUNCILMEMBER VICTORINO: Okay. Well, maybe I'll, before I ask my questions maybe I should hear from the Department so that we have a better clarification, and then I can give my line of questioning at that point. So, maybe I'll allow Ms. Medeiros if that's okay, Mr. Chair?

CHAIR MOLINA: Okay. Thank you. Director Medeiros, you have the floor for comments on what's been discussed thus far and I believe Mr. Victorino may have some questions for you as well.

MS. MEDEIROS: Okay. I was monitoring as best as I could and I think, and I want to make sure that I'm understanding exactly what you're asking regarding the affordable housing for the project? Okay. And which part? 'Cause you had several different discussions going on so I want to make sure that I know what I'm talking about.

CHAIR MOLINA: Mr. Victorino. . .

COUNCILMEMBER VICTORINO: Thank you. You're not the only one. Well, because first of all we have a letter from Mister, Mr. Jencks to Mr. Mateo on July 30, 2007, stating that he'll build 250 affordable rentals at 60 percent of the medium [*sic*] income basically in the North Kihei area, which is not part of the project itself. Am I correct? That's what this letter said. Now, the other part of the conversation as you were, if you were following is first of all Ms. Suyama stated that this 250 if it's built off of the project site would be in addition to. In other words, now 14 plus 250 now we're talking 825. My colleague from Molokai came in and said no, no that's double dipping. You can't allow, you're not allowed to do that. And it should be, and I've heard this said a couple times, all 700 affordable rentals and the sales should be built in the district itself, in that project in 670.

So, what I'm trying to ascertain from you 'cause you're the one that's kind of going to come up with the final decision making as far as what happens once we approve this as far as the affordable component is concerned. Is all 700 going to be built down there or are we going to

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accept this 250? And not, no offense to Mr. Jencks or anybody. We have 250 built in North Kihei and now we're going to build 1,400 down in I guess the other part of Kihei down Makena side. I guess that's what I'm trying ascertain right now. The conversation went on and the questions were multiple. So, let's, let's start on your, your, your answer as far as the affordable component as far as this project is concerned.

CHAIR MOLINA: Okay. Director Medeiros, are you ready to respond with the. . .

MS. MEDEIROS: I, I think so.

CHAIR MOLINA: Good question.

MS. MEDEIROS: First of all, with respect to the project itself, the main, I would have to say the main project, you know, the Department obviously supports the provision of affordable housing and that's down pat. We certainly support the, that, that Chapter 2.96 should apply should this main project-I have to say main project so, so I know what we're talking about-be approved. The matter on which, where does the units get built certainly is, is a perplexing question because this question just came up with some other projects that we are looking at. And the Council is the experts, I have to say, in terms of developing the workforce housing. And this may be another area where either more clarification is needed or we need to go back to the intent.

My understanding is that the intent of the workforce housing would be that the affordable housing units would be built at the same site of the original development. I could be wrong but that seems to be my reading on it.

COUNCILMEMBER MATEO: Point of information, Chairman.

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: That's wrong.

MS. MEDEIROS: Okay.

COUNCILMEMBER MATEO: The intent of the body was to have it built within the project, within the project area or the community planned area not within the project site.

MS. MEDEIROS: Okay. So, not on the, okay, so not on the main project site?

COUNCILMEMBER MATEO: Correct.

MS. MEDEIROS: Okay. But in the community plan area?

COUNCILMEMBER MATEO: The community plan area. Correct.

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MS. MEDEIROS: Okay. And it's, and I just want clarification in this situation that you're talking about the developer is proposing to provide affordable housing in the community plan area?

COUNCILMEMBER VICTORINO: Yes.

MS. MEDEIROS: And this is where you have a problem with?

CHAIR MOLINA: Well, Mr. Victorino wanted more clarification on that. Hang on, Member Baisa, just for-Mr. Victorino, can you provide clarity to Director Medeiros --

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: --of why you're not clear and I'll go to Member Baisa.

COUNCILMEMBER VICTORINO: Again, I guess the question came up where I have heard that they had 700 units planned in the district, in that project, the main project, right? And now this 250 would be a secondary area, same project community plan, but it would be off-site of the main project. So, what I'm hearing from Mr. Mateo and he's saying (a) it should be, so long as it's built in the project community planned area then it would be okay that this 250-am I correct, Mr. Mateo-would be classified as part of the 700 that this would be required to put in if we, we were to approve this project?

COUNCILMEMBER MATEO: Yes.

COUNCILMEMBER VICTORINO: Okay. So, and does it make a difference, and that's why I was getting confused because I had heard you mention or I heard Ms. Anderson mention that the 700, and we've also been asked by others who've come before us to build all 700 in the same area, to keep it in that area and make all the affordable housing in that area. So, again, I was just trying to clarify what we're trying to get. So, the bottom line in this, if I'm correct, is 700 units if we approve this 1,400 unit project would be in the affordable so long as it's in the project community district?

UNIDENTIFIED SPEAKER: Community planned area.

MS. MEDEIROS: The community plan area.

COUNCILMEMBER VICTORINO: Community planned area. That's it. Okay.

MS. MEDEIROS: Right.

COUNCILMEMBER VICTORINO: So, if that's what the clarification is then I'm fine. I still haven't had the answer is where do we get the additional 250? How did the Department, and I guess that was Planning, come up with the additional 250 outside? Where did that come from? 'Cause you said that, Ms. Suyama, and I'm still curious how you came --

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CHAIR MOLINA: Planning Department.

COUNCILMEMBER VICTORINO: --to that determination.

MS. SUYAMA: Because in discussions with the applicant, they had mentioned of the North, North Kihei site in which they were going, and my understanding was that's where the 250 units were going to be. And because they were choosing that provision also and it was very unclear that's why we proposed that in the affordable condition that if they are going to place it off-site that it should be on, based upon the total count of units. Forget having the ability to do that rather than doing it all within the project district area.

COUNCILMEMBER VICTORINO: So, the explanation Mr. Mateo has come forth with now is that clearer to you that the 700 units as long as it's in the planned district area would be counted towards?

MS. SUYAMA: That's my understanding from Mr. Mateo. However, the Council when they made conditions also can go beyond that.

COUNCILMEMBER VICTORINO: That's fine. Yeah. But I just want to make sure we are all on the same page and I understand how this works. Thank you. Thank you, Mr. Mateo.

CHAIR MOLINA: Thank you, Mr. Victorino. Mr. Mateo?

COUNCILMEMBER MATEO: Thank you, Mr. Victorino. For, for the Director I, I asked a question earlier because I just wasn't sure. When the developer sits with the Department and works out the, the affordable housing agreement does that come back to this Body for approval or is that just approved with the, with the Department?

MS. MEDEIROS: I believe that according to Chapter 2.96 it does not come back to the Council.

COUNCILMEMBER MATEO: Okay. So, prior to that point then we will just have the opportunity to be as rigid as we can in the affordable component before getting to the Department?

MS. MEDEIROS: We would certainly rely on, you know, all documented testimonies. And this is an area that we're starting to sort of discover with some of the developers that we're working with if they've had to go through a planning process or they've had to go through an SMA process they make statements that may not necessarily be brought forward when it comes time to do affordable housing agreements. So, we're taking the, the extra effort to make sure that we try to go back through, you know, all testimonies, all documentation. Primarily, to make sure that we understand correctly what the intent was, what the agreements were at, at least at these levels to make sure that we're doing things properly.

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COUNCILMEMBER MATEO: No, I, I do know that the, the policy itself does provide flexibility for the Director in terms of doing, doing the unilaterals with the developer. I was just concerned because this really is the policy's first test. And this is a test of major magnitude because of just the, the sheer size of 1,400 total units in, in one specific area. So, my, my question was just, you know, how much leeway is the Director going to allow in terms of communications with this Body so we're, we're assured that what has been represented is, in fact, what we will see on the final document.

MS. MEDEIROS: Uh-huh. Yeah. I, I can tell you that, you know, we do have other developers that are already working with us on their affordable housing agreements and it, it has not, it has not been a cakewalk for any of them. Again, we're, we're scrutinizing it not to be mean, facetious, or anything like that but we just want to make sure that we all clearly understand what it is that's being represented and what it is that's being provided. You know again we can certainly provide the information to you to make sure that we all have clarity. You know you tell us what you want. I mean you folks are the ones who did the ordinance. We're simply trying to implement it to the best of our ability.

COUNCILMEMBER MATEO: Thank you very much. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. I guess as a follow up to Mr. Mateo's questions, a question for Corporation Counsel now. You know Director Medeiros mentioned that they're, according to the Code they're not required to, and help me clarify my question, that they're not required to I guess send back to the Council a report, if you will, or the agreement under the Code. Could the Council or the Committee condition that it be done that the Administration do that?

MR. GIROUX: Uh, uh. . .

CHAIR MOLINA: I speak of the agreement. Am, am I correct, Director?

MS. MEDEIROS: I believe that was the question. . .

CHAIR MOLINA: Right.

MS. MEDEIROS: . . .as, as to whether or not the affordable housing agreement would need to come back to Council for approval.

CHAIR MOLINA: And according to the Code it doesn't. But could the Council or the Land Use Committee request or condition in this case?

MR. GIROUX: I guess within its abilities to create conditions of zoning that could be a possible --

CHAIR MOLINA: It could be considered as a condition?

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MR. GIROUX: --condition.

CHAIR MOLINA: Okay. Thank you, Mr. Giroux.

COUNCILMEMBER VICTORINO: Mr. Chair. Follow up. . .(*inaudible*). . .

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: I, I have another, and I know this might sound kind of ambiguous question but the question now has been brought up about the 1,400 units and 700 being affordable, and now 250 being built off-site, right? But the original plan for this area was 1,400 lots, right, 1,400 units built there. So, if we build 1,400 there and we get 700 total with the 250 unless my math is incorrect isn't that a total of. . .1,650 units being built in the project district? Now, I'm not saying built in the project but in the project district.

COUNCILMEMBER ANDERSON: Community plan district.

COUNCILMEMBER VICTORINO: Community plan district, okay. Community plan district, okay. So, now we're building 1,650 units. That's an interesting dilemma because we started with 1,400 and now we're up to 1,650 of which 700 were affordable, 60 percent, 50 percent under the 100 percent of the medium [*sic*] income. But my question now is, and again because this is a test case and I'm not disagreeing with Mr. Mateo we shouldn't double dip but also I'm saying maybe I don't agree because all of a sudden we have 1,650 units being built in the community plan district. Why now are we still only using 700? My math says that should be 825 if my math is correct.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Go ahead, Ms. Baisa. I challenge. Go ahead.

CHAIR MOLINA: Well, before --

COUNCILMEMBER VICTORINO (*speaking off the mike*): . . .(*Inaudible*). . .

CHAIR MOLINA: --before I ask someone else. To the Chair's knowledge we're working with 1,400.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: At this point this issue of 1,650 that's not, you know, part of the conversation at least to, to my knowledge. But again that's the decision this Committee will have to make do we want to increase density in the community? You know that's something we'll have to wrestle with but my initial understanding of the affordable requirements was the 250 would be part of the 700 affordables.

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COUNCILMEMBER BAISA: Right.

CHAIR MOLINA: That's my understanding. Member Baisa, do you care to comment?

COUNCILMEMBER BAISA: Thank you for clarifying that for me. It was my impression that you're correct but Mr. Jencks in his eagerness to try and answer a question had written this letter on July 30th and very clearly said that this was an idea that his team was talking about that perhaps they could start, jump start the affordable housing, and show their good faith and their desire to provide it by doing 250 before doing anything else. But I don't see that as replacing or adding to the 700 but I, I see it as part of. And I just want to be sure that I'm correct because we seem to not be very clear. Maybe we should ask Mr. Jencks exactly what he's going to do.

CHAIR MOLINA: Mr. Jencks, do you care to respond? And again, Mr. Victorino, my, my understanding is we are work, the working number is 1,400 with 700 affordable. I was not aware of any increase in density for the project and the 250 would be part of the 700 that's required. Mr. Jencks?

MR. JENCKS: We don't need any increase in density. I know that's probably a shock. The, the 250 is part of the 700. It's a total of 1,400. And it's an idea to bring the units forward more, well, earlier than we would within the project district to help with the issue and the situation. But, Mr. Chair, if this condition simply reads comply with the workforce housing bill I think everybody is happy because the rule, the ordinance is very complete. It provides good direction. This is an idea we had. We have the land. We're in the process of subdividing and getting the civil drawings done. We could do this as a part of that workforce housing agreement working with the Director of Housing and Human Concerns.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Jencks. I just wanted to make sure that was clear in everybody's mind because again as the conversation had moved back and forth we had heard different aspects. And so, I wanted the public as well as myself to be clear on that matter. So, we're talking 1,400 units whether in site A, site B, wherever that's it no more no less. Thank you very much. I appreciate that.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. Just to clarify. Mr. Jencks, don't run away. So, should this Committee agree to the 250 off-site units that would reduce the density by 250 units at the project district site? Correct?

MR. JENCKS: Correct.

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COUNCILMEMBER ANDERSON: Making that now 1,150 units.

MR. JENCKS: If, if I may?

COUNCILMEMBER ANDERSON: Sure.

MR. JENCKS: Once again this is an idea we had.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: We would, I'm here to tell you that this is something we could do. We own the land but once again it's a part of our proposal to the Department of Housing and Human Concerns. If they agree that this is a good idea, we will do it.

COUNCILMEMBER ANDERSON: Okay. So, and I think it depends on the Council too if they think it's a good idea. But, you know, originally this is back in December of '06 you gave us a site map for the location and is this the same location, Mr. Jencks, off Piilani? It looks to me like it will be built around the extension of Kaonoulu Street which will end up being the entry way or the terminus of the new Kihei-Upcountry road. Is that correct?

MR. JENCKS: Yes. The parcel you're looking at is a five-acre piece that was designated for special needs housing. We're going to be using a 13-acre piece, that entire quadrant of the property for the apartment project we're talking about today. But in the same location, same access, same quadrant of the property but a much larger piece of land.

COUNCILMEMBER ANDERSON: And so, have you done I guess the only, you're not going to need zoning because it's already light industrial I believe. Isn't it?

MR. JENCKS: It's community planned light industrial and zoned light industrial.

COUNCILMEMBER ANDERSON: And the zoning was to . . . was it Kaonoulu Ranch that got the zoning, the light industrial zoning there?

MR. JENCKS: Yes, in the mid-90s.

COUNCILMEMBER ANDERSON: And so, you bought the property for them, from them?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And so, has there been any, have you done any traffic impact on what 250 houses would, I mean, what kind of upgrade you're going to have to do for that?

MR. JENCKS: We will have to do a traffic impact assessment report for the State because both Piilani Highway and the road through the property is a State or State Highway. So, yes, that will be

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done. And the project is comprised of light industrial. These apartments if this is what we can, we can build would be great. So, yes, we will have to do that.

COUNCILMEMBER ANDERSON: Yeah. I, I, you know, I'm just going to state my preference, Mr. Chair, just 'cause they have this land and it's a convenient place to throw this 250 units. I would prefer to see it on the project site with all the amenities. It's hard for me to swallow putting people in the midst of light industrial to raise their families. No parks, no nothing. Have to cross a highway to get to anything. So, that's just my take on it.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, we will continue with Condition 5 I guess at a later point. Well, this is I guess the first pass through. And seeing some of your faces and eagerness I think it's time to take a break, Members. We shall be in recess until five minutes after the hour of 4 o'clock. Meeting in recess. . . .(*gavel*). . .

RECESS: 3:50 p.m.

RECONVENE: 4:16 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee of July 25, 2007 is now back in session. It is 4:15 August 8th. Okay. Members, before we discuss the next condition, which is the proposed Condition No. 6, the Chair would like to get some input on or from you with regards to, if you turn to Page 11 of your matrix there are some conditions being proposed, additional conditions being proposed by the applicant. Namely condition with regards to civil defense No. 9 and near shore water. . . monitoring No. 12. Now, these are something in addition to what was not proposed by the Planning Commission or anyone else for that matter. The Chair would like to seek your input on it. Is this something the Committee would like to incorporate as additional conditions? The Chair is open to your comments on that. Member Pontanilla followed by Member Anderson.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: You know what, Mr. Pontanilla, we'll have staff read the proposed condition just so the Members and the public have an understanding --

VICE-CHAIR PONTANILLA: Okay.

CHAIR MOLINA: --of what this is. Staff.

MS. NAKATA: The applicant's proposed Condition No. 9 "that WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall participate in a pro-rata funding and construction of adequate civil defense measures as determined by the State and County Civil Defense agencies."

CHAIR MOLINA: Okay. Thank you, Staff. Mr. Pontanilla.

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VICE-CHAIR PONTANILLA: Thank you, Chair. As far as that particular item No. 9, I have no problems with it. Just as long as they work with the Department of, the State Department as well as our County Civil Defense Agency --

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: --in providing this civil defense siren.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I was just going to say, Mr. Chair, it's an existing condition from the State Land Use Commission --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --shall fund and construct adequate civil defense measures.

CHAIR MOLINA: All right. Let me ask. . .

COUNCILMEMBER ANDERSON: It's a little different then what they're saying because it says that they shall participate in the pro-rata funding and construction of adequate. And this, the State Land Use Commission says petitioner shall fund and construct adequate civil defense measures as determined by State and County of Maui civil defense agencies. So, I think that we should stick with the condition that's already running with the land.

CHAIR MOLINA: Okay. So, is, is it your thought that this condition may not be something to consider? I mean at this point to. . .

COUNCILMEMBER ANDERSON: No, I think we should have it, Mr. Chair, but the language --

CHAIR MOLINA: Okay. An adjustment to the language?

COUNCILMEMBER ANDERSON: --should be, should match the petition --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --I mean the State Land Use Commission's condition.

CHAIR MOLINA: Okay. I'll, we'll consult with staff to I guess construct the proposed condition with the appropriate language that matches the State Land Use --

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: --Commission condition.

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COUNCILMEMBER ANDERSON: I think it's important, Chair, that we honor the conditions that currently run with the land as best as we can.

CHAIR MOLINA: Okay. Any objections to that, Members?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. We will, as ordered by the Committee we will do that. So, we have general consensus at this point for this proposed condition.

COUNCILMEMBER ANDERSON: And, and just so Staff will know, Mr. Chair, if I might? That is Condition No. 5 on the decision order and order of the 1994 State Land Use Commission DBA.

CHAIR MOLINA: Okay. Staff, can you make, can you make note of that Condition No. 5. Okay. Okay. I'd like to call upon the applicant just to respond to something from the Chair with, which relates to this proposed condition that you have made. Mr. Jencks, it's been brought to my attention that there is I guess a need to improve the radio infrastructure for our Police Department in the area in the South Maui region. Just something for you to consider would it be something that for you or for those that are part of this project to make some type of contribution towards upgrading the Police radio system in the area? And I know it's not a requirement but again I just would like to ask you to consider it. And if you could back to the Committee if you're not able to answer that today anything to-because my understanding is there is a need because the area is growing. And some of the infrastructure, our Police infrastructure is in need of some upgrades. And so, again, I would just throw that out to you for your consideration.

MR. JENCKS: If I may, Mr. Chair. I think that is within the, in the spirit and intent of this condition. So, absolutely.

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

COUNCILMEMBER ANDERSON: Excuse me, Chair, could you be a little bit more specific about upgrades? I mean like an antenna, a transfer, transfer station or?

CHAIR MOLINA: Yeah. My, well, my understanding, it has, some has to do with the transfer station possibly an antenna. I wasn't given any exact specifics in talking to some of the Police personnel but actually it was on my own initiative. I sort of wanted to look at other areas that could need, use some improvement in terms of emergency or civil defense. So, it was sort of thought of on the fly on the Chair's part. So, you know, the applicant is agreeable to it. And I thought I'd present it to him as something to consider.

COUNCILMEMBER ANDERSON: Yeah. And so, I totally agree and because there's already a condition that they will not cause a need for public services and facilities. They have to pay for 'em. And so, I would just like to be specific as to what the upgrades --

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CHAIR MOLINA: Sure.

COUNCILMEMBER ANDERSON: --would consist of.

CHAIR MOLINA: Sure. At a later point in time the Chair will present that proposal --

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: --to the Committee --

VICE-CHAIR PONTANILLA: Chair.

CHAIR MOLINA: --with something much more specific for the Members. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. Yeah, and I, I think part of the reason why is that when you go into Makena area that you probably get some dead spots where, you know, radio transmission is not available. And maybe an antenna site probably at the south end of this particular property would provide the facility for better coverage for the Police Department. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Okay. So, Members, can we move on from that condition to the next proposed condition from the applicant, which is No. 12 and I see the Planning Department made some comments with regards to the proposed . . .(end tape, start 3B). . . for the Committee.

MS. NAKATA: I'm sorry, Mr. Chair, what was the condition number?

CHAIR MOLINA: Condition 12, Page 11 of 12 related to near shore water monitoring.

MS. NAKATA: Condition No. 12 "that WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall fund a near shore water quality monitoring program in the waters fronting the Wailea Resort area. The monitoring program shall be approved by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources."

CHAIR MOLINA: Okay. Thank you, Staff. Deputy Director Suyama, can you expound on your comments with regards to this proposed condition?

MS. SUYAMA: We just wanted to inform the Council that Wailea Resort already is required to do a water monitoring program. And you may want to coordinate whatever you proposed for WCPT/GW Land Associates with the Wailea Resort so that it's not being done that at every resort or every area does their own monitoring program that it's coordinated together, and that this program should be done annually.

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CHAIR MOLINA: Okay. Thank you, Director. Members, any comments? Do we have general consensus for the implementation of this condition as is? Member Anderson?

COUNCILMEMBER ANDERSON: I got a real problem with the, you know, the . . .the intent here is great but if we're going to have near shore water quality monitoring programs they have to be, they have to be actually serve their purpose. And the gentlemen who has been doing the water quality reports in the Wailea-Makena area for Makena Resort, Wailea Resort also for this project does not meet the standard or the test. And, and, you know, it's difficult to say this, Mr. Chairman, but all of us know at least most of us here saw the study, the recent study on the degradation of our reefs. We have lost a large percentage of the coral cover in the near shore waters in this area of Kihei, in fact, all of South Maui. And Dr. Steven Dollar for the last, oh, 15 years probably has been doing the water quality monitoring. . .reports for Makena.

And the reports are not, actually, they don't, they don't stand the test of standards because first of all, you know, you can do any report and get any result you want if nobody is going to question it and review it. And Dr. Dollar's reports for Makena Resort consistently said that there was no adverse effect. And basically all he, really he was trying to substantiate that the golf course was not having an adverse effect on the near shore waters. But he didn't test any biota. And if you don't, if you don't do a test of the biota to see what the impacts are on that over time then there's no way to substantiate whether or not the water quality is causing the degradation of the biota including the coral reef.

And I've had many, many, I've had three different professors at UH look at these water quality monitoring reports and say they're not worth the paper they're written on. And so, if we're going to have any expectation of these monitoring reports being of value then we better make sure that they're done by somebody who can stand up to peer review. And, you know, I'll try not to belabor this because I know it's sensitive to be making this kind of statement but I have plenty of, I have plenty of documentation to backup what I'm saying and if anybody wants to carry it any further I would be happy to go there.

But I would just like the Members to know that Dr. Dollar's water quality reports actually said there was no problem with the near shore waters of Makena when in fact the, those very water quality reports I submitted to the Department of Health, they're supposed to be reviewing them every year, and when this came up during the Makena hearing I called DOH and asked for their reviews. They hadn't reviewed them in 10 years, Mr. Chairman. They had not reviewed them in 10 years. So, you know, like I said before if anybody is going to be the stewards of Maui it's us. We can't depend on other people. And that's why I bring this up because those very same water quality reports I submitted to DOH and they submitted them to EPA and now because of the turbidity, the . . .the, I want to say chloride levels, chlorophyll, the chlorophyll levels and the nutrient levels, other nutrient levels in the near shore waters of Makena and Wailea, they are now put on the impaired water body's list of the EPA.

So, you know, I think we need to have somebody else doing these reports because unless we can count on them being credible and somebody actually reviewing them with that in mind they're

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not worth the paper they're written on. And in closing, I'll just mention that Dr. Dollar's testimony in regards to the Waiohuli case, the Supreme Court judge threw it out as not being credible. So, you know, you can hire anybody to give you any result you want, Mr. Chairman, and we're down to it here. We don't have any wiggle room. We have no room for error. How much long, how much more are we going to allow our, our reefs to be degraded? I don't think we have any room at all left for that.

And, you know, you got people swimming in near shore waters that do not. . .meet State water quality standards. And if his work had produced the results that it was intended to do the degradation of our reefs, the degradation of our near. . .near shore water quality might have been abated. So, I think that we need to put some kind of caveat into this monitoring program that would allow for some non-partisan group to I guess qualify the person who does these reports. I just would like to add, Members, that, you know, if you don't, if you don't do a biological monitoring, if you don't monitor the biota then it's easy to say there's no adverse impact because you're not looking for it.

This is a water quality report done for Lanai when they did the Manele Bay golf course. And, you know, they did a water chemistry monitoring report as well as a biological monitoring report. I want to see something at, at this level done for South Maui. Dr. Dollar's reports are about this big. So that's what I have to say about that and I will try to quickly come up with some other language to add into this, Mr. Chairman.

CHAIR MOLINA: Okay. All right. Thank you, Member Anderson. So, in, in terms of general consensus then the Members would be supportive of this type of study being done and on an extensive basis. And then Member Anderson at a later point will be submitting some additional language to strengthen the condition if you will.

COUNCILMEMBER ANDERSON: Yeah. And, and, Mr. Chair, it's already a condition.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: It's a requirement. It's part of the-what are those-11 or 12 standards for golf courses.

CHAIR MOLINA: State, okay.

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: Department of Health. Okay. All right. Thank you, Members. So, we will go ahead and leave this in for now as is and then at a later point it could be amended. All right. Thank you very much, Members, that is all the Chair had for this portion of Page 11. Let's go back to Condition No. 6, which is on Page No. 5 of your matrix. Staff, if you could read the Planning Commission's version of it and then later on we'll have, to be followed by the Planning Department's version of it or shall I say clarification of it and their comments. Staff, proceed.

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MS. NAKATA: The Planning Commission's Condition No. 6 "that a master drainage report and phasing plan shall be submitted for review and approval during Phase II Project District processing. Said plan shall include the recommended drainage improvements as represented in the Preliminary Drainage Report."

CHAIR MOLINA: Okay. Now, please read the Planning Department's clarification of that condition.

MS. NAKATA: "A Drainage Master Plan and Phasing Plan of Improvements shall be submitted for review and approval during the Phase II Project District processing. Said plan shall include the recommended drainage improvements as represented in the Preliminary Drainage Report. The County of Maui may require periodic updates of the Drainage Master Plan and Phasing Plan."

CHAIR MOLINA: Okay. It should be noted that the words "that a master drainage report and phasing plan" has been bracketed out from the original Planning Commission recommendation. Director Suyama, can you give us a clarification to your response to this condition?

MS. SUYAMA: We have in the past in some project districts required a drainage master plan. One of the problems is that, that comes up is how do you phase the improvements? So that's why we, we ask that it also include a phasing plan of improvements. And because this is a long-term project we also wanted the ability to do periodic updates. In other words, to, you know, ask the applicant as they progressing through the project district through, through the years that they update all of these plans as they go along. So that's why we proposed this language.

CHAIR MOLINA: Okay. Thank you, Deputy Director. And we also have in the gallery, as, as a matter of fact I'll ask, Deputy Director Miyamoto, if you could please come up and have a seat next to Director Suyama. Deputy Director Miyamoto is of the Public Works Department. Members, the floor is open for questions for either Director Suyama or Director Miyamoto as it relates to the condition. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. I guess real simply put to Mr. Miyamoto. The Department, Public Works will implement this requirement how? Submitted reports, site visit, plan implementation reviews? How is the Department planning on addressing this item?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Thank you, Mr. Chair. Very similar like how we're addressing, we're addressing the Maui Lani project. You know that's a very large project and they had Phase Transportation Improvements, Phase Drainage Improvements. And as, as the project of the Wailea 670 of that size they obviously will probably be in phases. And as they come in for site plan approval and building permits they're going to have to come in, we're going to, given this condition we would have to...require them to provide a updated report to see if there's anything that's changed, any conditions that's changed. If something is done out of sequence, for example, like on the, the Maui Lani project some of the timing of some phases have changed. So they had to change the,

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the sequencing of how they're going to handle drainage and transportation. So they were required to submit a report before they were given any kind of approvals.

COUNCILMEMBER MATEO: Would there be any kind of, does, would the Department have any power in terms of occurrences within the, the project that had not been recognized or approved? What is the Department's power in terms of, you know, worse case scenario stopping the project from moving on or providing whatever limitations to the project?

MR. MIYAMOTO: Yeah. Mr. Chair, thank you.

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: It's very similar like, you know, again I keep, keep using the Maui Lani project, you know, we had some concerns there. That project got stopped. Unfortunately it was done through a legal sense. Some portions when we find something that doesn't comply with what the, the site conditions or something changes, we stop, we can stop them at the issuing of permits or depending on where they are at that process. It could be at permits, certificate of occupancy, or if they have some kind of an agreement for non-occupying prior to meeting certain conditions. So, depending on what the, the, how the phase is setup to be constructed.

COUNCILMEMBER MATEO: Would this be a complaint driven process or does the Department actually go to the site and actually provide any kind of monitoring?

MR. MIYAMOTO: We have, actually, there will probably be two sets of monitors. We're probably have our Development Services, our building inspectors will probably be there while, you know, they're constructing. If it's any kind of roadway improvement certainly our roadway inspectors may also stop by and see if, see what's, what they're constructing if it's actually as per planned.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

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

VICE-CHAIR PONTANILLA: Thank you. Deputy Director, you know, we've been provided only with sketches of the drainage plan as well as the drainage open space. I, I don't know if you had the, the ability, not ability but . . .um. . . a plan to review in regards to their drainage plan other than what we just overhead pictorials that they provided or presented to us.

MR. MIYAMOTO: Mr. Chair?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Typically, in Phase I they'll submit, you know, a very general because there's not enough details in the, the site plan at that point they generally submit a very general drainage

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plan, preliminary I should say, very preliminary plan that generally computes what's the existing runoff today.

VICE-CHAIR PONTANILLA: Uh-huh.

MR. MIYAMOTO: If they make so many acres of impervious area what will be the increase of runoff, they're going to have to handle that incremental amount and how are they going to handle it. Are they going to, whether they're going to use basins or things, sizing of a basin that might be something that might be, you know, that's typically in a preliminary plan.

VICE-CHAIR PONTANILLA: One of the things that I hear, in fact, I had a conversation yesterday was whenever we have heavy rains, you know, the ocean becomes muddy, does the Department have any plans in regards to, you know, any remedy in, in having a lot of runoff going directly into the ocean especially from dry stream beds? And one of the things that he mentioned to me was that, you know, what's the possibility of providing a basin of some kind to capture the silt and then go into the dry streambeds that flows directly to the ocean? Is that something that the Department looks at or?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Mr. Chair. Yes. In, in previous years the Council did approve our Engineering Division to do a Kihei, South Maui, actually, drainage master plans. And exactly those types of alternatives are being evaluated. Primarily, I guess it would have to be mauka of Piilani Highway because the lands between Piilani Highway and the shoreline are pretty well starting to develop. So, we're looking at options as to, it's going to be mauka of that highway we're going to have to look at those types of situations.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. So, Mr. Miyamoto, have you or your Department reviewed their preliminary drainage plan?

MR. MIYAMOTO: Yes, we have. I finally got to talk to Staff and they confirmed yes. And there is a letter in the file stating that we have reviewed it and. . .

COUNCILMEMBER ANDERSON: And do you find that the, you know, the State USDA Soil and Conservation Service said that they, that the drainage plan should include the, the runoff cal..., the CFC's from Piilani Highway extension. So, have you looked at the calculations? Have they included that since that time? This was their review letter when the Planning Commission first saw this back in 2000.

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MR. MIYAMOTO: The, from what I understand the, that extension at the time was included was, you know, part of the, the plan to go ahead and construct that facility.

COUNCILMEMBER ANDERSON: But then why did USDA ask them to include it? Because they reviewed the plan.

MR. MIYAMOTO: Yeah. I'm not sure exactly when, which, with the timing of the two letters. Our letter shows that we've reviewed it. Given the, the size of the, the property and that the potential for golf courses having water features, they can make the adjustment in Phase II if they, they need to have additional storage area for runoff, additional runoff, incremental runoff. It's something they would have to do but it's something that we can correct by Phase II because when they get more details as to how much impervious area we'll get into a little bit more detail as to the sizing, the depth, the slopes, and things of that nature of the, the drainage facilities.

COUNCILMEMBER ANDERSON: I appreciate that. But again, you know, the Maui Lani situation if you talked to the people over there on Palama Drive they're not happy. And as a matter of fact there were no stop work orders issued on that project. There was an injunction issued to stop the project by a judge. And that took people spending their money to protect their neighborhood to go to court. So, please bear with me for being very picky about this. You know the current project district ordinance on this project and, Members, for those of you who don't have the background on this that I do, they currently have a Project District zoning approval including Phase II approval, Phase III approval. They went right down to getting their grading permit although they didn't. I mean that was the next step.

So, they've gone all the way through Phase III approval for the golf course. At the time it was two golf courses. And it currently says in that ordinance "minimal grading of the project site shall be encouraged in order to retain the existing rolling topography and natural drainage ways." It also says "existing natural drainage ways shall remain as permanent open spaces provided that landscaping and structures which do not detract from the natural environment and are necessary for the disposal of storm runoff such as retention basins, culvert crossings, mechanical equipment, minor retaining walls, et cetera, shall be permitted." So, you know, the original intention is very obvious that the natural topography, the existing topography and the natural drainage ways should remain in their natural state and that everything else be designed around it.

So, I think we need to have language, Mr. Chairman, that makes sure that that happens. And also, you know, it might be helpful to know how they're going to go about construction. You know are they going to do the golf course first? Are they going to do, you know, a little phase here and a little phase there, these little pockets that they've got, these little zoning lots or whatever? Because I mean I'd, I'd like to see us have some kind of, in fact, it says currently "the golf course shall be incorporated into the master drainage plan in order to utilize the fairways and rough areas for storm water retention." The applicant has changed that to say, "the drainage master plan shall incorporate the golf course and open spaces as areas for storm water retention." It kind of turns it around.

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So, I'd like to see us have some kind of prohibition on mass grading during the rainy season. And we've done that in the past on these large size projects. And is it feasible, Mr. Miyamoto, to do the grading for a golf course in phases so that all the land isn't exposed at the same time?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Our grading permit does limit them on to how much exposed area they can. So, I imagine, you know, I'm just trying to put on how a construction contractor would look at this, I would imagine they would, you know, they'll probably start from the club house and then work outward. If, if you're trying to, you know, open a portion of the, the golf course, they might work on the front, the first nine holes first and then try to work on the other. But I think given the condition that you read, you know, they're going to try and stick to the topography, so, the existing topography. So. . .

COUNCILMEMBER ANDERSON: No, I don't think they have any. . . I mean, I'm reading what was, what is currently existing but those two conditions I just read to you have already been deleted --

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER ANDERSON: --and replaced by the applicant.

MR. MIYAMOTO: Yeah.

COUNCILMEMBER ANDERSON: And this body in January voted to do that.

MR. MIYAMOTO: Uh-huh.

COUNCILMEMBER ANDERSON: I wasn't here. I had to leave before they got to this and they went ahead and voted on it. I'm hoping that we can do some reconsideration on this. But the point being, you know, you say that the grading ordinance doesn't allow for mass grading but it happens all the time. That's not true, Mr. Miyamoto. It discourages it but it is allowed. And your Department and your Director allows it all the time. And all you got to do is drive down to South Maui and look at the mass grading that's going on down there. So, Mr. Chair, if we could have the applicant tell us what his expected phasing of construction specifically the golf course might be that would be helpful.

CHAIR MOLINA: Okay. Mr. Jencks? Proceed, Mr. Jencks, can you respond to Member Anderson's question?

MR. JENCKS: Certainly. It would be expected that we would initiate construction of roadways to get into the parcels. And, and as a part of the Phase II application demarcate the initial phase of the project we have to serve that with roads and utility service from Piilani Highway. So, we'd have to construct roads. I would anticipate that the golf course would be a part of the initial phase along with residential building areas for affordable and market rate homes. So, you're looking at

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grading not only for roadways but for a wastewater treatment plant. You're looking at, at grading for the, for both the market and residential component. The, the affordable component would probably be a different grading program than the market rate. For example if, if in the initial phase we choose to do lots that would not require as much grading per se as creating a building pad for affordable product.

So, there's two different levels of grading activity. So, roadways, housing activity would require grading. The golf course would require grading and I would say that in the initial phase, the initial Phase II application or phase for the project you'd have the 18-hole golf course completed.

COUNCILMEMBER ANDERSON: In the initial phase. And so, Mr. Jencks, you know, you did make mention some time in the past of having a rock crushing operation on-site so that there wouldn't have to be the trans..., you know, transferring of, of gravel down the highway. How much . . .um. . . what, you know, part of the requirement of the application, Mr. Chairman, is that the applicant provide us with topographical information showing existing features, and conditions, and proposed grading. But we didn't get that. So, what, you know, what do you anticipate as far as having to blast areas of the topography and change that topography?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: We're trying to lay out the roadway network so that it responds to the topography. The more material we excavate the more expensive it gets. So, the idea here is to create a land, take the land form in its existing status, overlay the project on top of that land form, and, and minimize to the extent possible the grading for roadways and building areas is the best way to describe it. It's hard to say at this point trying to accomplish that how much blasting there would be but about half of the project area actually is fairly easily movable rubble. It's basalt, which is not the hard blue rock you find in some por..., portions of Kihei, for example. So, it's, it's going to be a combination of activities and it's hard to say at this point but the idea is, is to minimize that

COUNCILMEMBER ANDERSON: Yeah, that's the idea. But how can we condition it to make sure it happens? Well, let me just ask you this, how much land would you have to disturb by grubbing and grading at any one time before you can then stabilize the land and move on and do that with another section of it in order to effects, effect, effectuate your Phase I?

MR. JENCKS: The limitation, Mr. Miyamoto was talking about this, I think the limitation is 15 acres that has to be graded and stabilized with irrigation for erosion control before we can move on.

COUNCILMEMBER ANDERSON: And so, you would want to be able to go up to 15 acres at any one time?

MR. JENCKS: Certainly.

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COUNCILMEMBER ANDERSON: And would you have any problems with the, reinstating the language that says, existing topography and natural drainage. . . way shall to the extent or rather minimal grading of the-this is what you, this is what you put in-we had “minimal grading of the project site shall be encouraged in order to retain the existing rolling topography and natural drainage ways.” You deleted that and replaced it with “existing topography and natural drainage ways shall to the extent practical and feasible be retained during grading of the project site.” Would you have any problem going back to the original language that says, “Retain the existing rolling topography?”

MR. JENCKS: I'd prefer the, the most, most recent verbiage.

COUNCILMEMBER ANDERSON: And because?

MR. JENCKS: I think that gives us more flexibility to --

COUNCILMEMBER ANDERSON: Yeah, it does.

MR. JENCKS: --to give a better product.

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

CHAIR MOLINA: All right. Thank you, Member Anderson. Committee Members, any other questions for Mr. Jencks as it relates to Condition 6? . . .(end tape, start 4A). . . Okay. The Chair will presume there is general consensus. Member Anderson, you will be submitting, I guess, additional language to the condition at a future time?

COUNCILMEMBER ANDERSON: Yes. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. Members, moving on. The Chair would like to address Condition 9. I know Member Johnson who had to leave here today; I know had some I guess proposals or some issues to discuss. She is not here today, however, I would like to just entertain a short discussion of the matter either way. And the Chair was remiss in mentioning for attendance purposes Member Medeiros and Member Hokama are both excused for today's proceedings. Staff, can you go ahead and read the Condition No. 9 on Page 6 of 12 of the matrix from the Planning Commission.

MS. NAKATA: “That an assessment of the Pueo or Hawaiian Short-eared owl and the Hawaiian Hoary Bat shall be undertaken by WCPT/GW Land Associates, LLC, in coordination with the Department of Land and Natural Resources, and, if appropriate, mitigative measures shall be incorporated into the development.”

CHAIR MOLINA: Okay. Can you follow that up now with the Planning Director, Deputy Planning Director Suyama's clarification of that condition?

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MS. NAKATA: “WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall prepare an, an assessment of the owl Pueo or Hawaiian Short-eared Owl and the Hawaiian Hoary Bat in coordination with the Department of Land and Natural Resources, and, if appropriate, mitigative measures shall be incorporated into Kihei-Makena Project District 9. Said assessment shall be prepared prior to submittal of Phase II Project District processing.”

CHAIR MOLINA: Okay. Thank you, staff. Deputy Director Suyama, can you clarify your comments as it relates to the condition?

MS. SUYAMA: It’s basically putting a time limit as to when the, when the report, the assessment is done and it should be done before they come back for Phase II approval.

CHAIR MOLINA: Okay. Members, questions for the Deputy Director? Member Anderson?

COUNCILMEMBER ANDERSON: Again, this is something that should have been done in the application process. And since it wasn’t done DLNR requested that it be done. So, I’m not going to, as long as it’s there and it happens before Phase II.

CHAIR MOLINA: Okay. So noted. Members, do we have consensus for the Planning, we’ll, we’ll consider the condition that’s submitted by or I guess restructured by Deputy Director Suyama we’ll incorporate that as a condition and consensus. Okay. Thank you, Members. Moving on to Condition No. 10, Staff, related to irrigation and dust control, the Planning Commission’s recommendation.

MS. NAKATA: “That nonpotable sources of water including the use of effluent from the Kihei Wastewater Reclamation Facility shall be utilized for irrigation purposes and dust control of construction activities when such sources become available to the subject project.”

CHAIR MOLINA: Okay. Can you read the Deputy Director Suyama’s restructured condition?

MS. NAKATA: “Nonpotable sources of water including, but not limited to, the use of treated effluent from the Kihei Wastewater Reclamation Plant, shall be utilized for irrigation purposes and construction activities including, but not limited to, dust control and equipment wash downs. Kihei-Makena Project District 9 shall include a dual irrigation system as each individual development occurs to ensure that a system will be in place to utilize nonpotable sources of water.”

CHAIR MOLINA: Okay. Thank you, staff. And it should be noted that the word “that” was bracketed out from the original Planning Commission condition as well as “facility” and the words “of construction activities when such sources become available to the subject project”; those words were bracketed as well from the original condition proposed by the Planning Commission. Deputy Director Suyama, can you comment?

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MS. SUYAMA: It basically includes as part of, you know, construction activity doesn't only include dust control. It also, you know, you have equipment that you need to wash down, et cetera, so we added that. But we also added a provision that as each phase of development occurs they put in a dual irrigation system because you need that separate irrigation system if you're going to use, you know, treated effluent for irrigation purposes. And to, to us it was if you don't put it in initially if you're going to try to, once the development is built and trying to get all these homeowners to try to put in a system it would be almost impossible to get them all to agree.

CHAIR MOLINA: Okay. Committee Members, questions? Member Baisa followed by Member Anderson?

COUNCILMEMBER BAISA: I'd like to commend the Director for her addition. I think it's a very good idea to be using this reclaimed water. I think it's a good source of water. And I have heard over and over that the reason we can't use more of it is the lack of dual lines. So, I'm afraid that I think we just need to do this as we go. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Anderson followed by Member Pontanilla?

COUNCILMEMBER ANDERSON: You know, Chair, we had Wastewater give us a report the other day and, you know, I . . . I think that we should be using effluent as much as we possibly can. Seventy percent of our effluent is going in injection wells down in South Maui. But we were told by the division head that the State Department of Health will not allow effluent to be used on individual homes. They'll allow it to be used commercial properties. They allow it to be used on hotel grounds but they will not allow it to be used on individual homes because there is, you know, they, they have no control over management of whether or not the gray water and the clean water might, you know, the backflow or whatever. So, for safety reasons they won't allow it.

And so, I don't think this condition would stand up to DOH. And maybe there's another way to do this if . . . um. . . we'll have to think about it though. I'd, I'd like to see us be able to have, use this sort of condition and have them put in the dual lines for maybe any of the natural areas that need to be or the landscaped areas, the open space areas that need to be irrigated that would be under control of Wailea 670. In other words, they want, DOH wants somebody who's responsible for the management and it's somebody who is trained in this field so they know about backwash and backflow or whatever it is.

So, maybe we need to look in, into this a little further than what's here because I don't know that we want them to put in a system that they're not going to be able to use for individual homeowners.

CHAIR MOLINA: Okay. So noted, Member Anderson. And, Committee Members, we do have. . .

COUNCILMEMBER ANDERSON: And that also-I'm sorry, Chair.

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CHAIR MOLINA: Oh, go ahead.

COUNCILMEMBER ANDERSON: That also brings up the question of Mr. Jencks saying that in his private water system or rather his private sewage system that he's going to be using that effluent also for the individual homeowners. I don't think that will pass DOH. So, I, I would like us to look into that and get clarification on that.

CHAIR MOLINA: Okay. Staff, will make note of that, Member Anderson. Member Pontanilla? And we also have Director Miyamoto here as well. And staff is, will be contacting somebody from Environmental Management to provide additional comment or be subject to your questioning as well. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. I was going to mention the same thing as Michelle did earlier in regards to the presentation that was made to us by the Wastewater Division. And one of the things that he talked about was individual homeowners was an issue in regards to safety when it becomes, you know, utilizing the effluent in individual lots, homeowners. As far as the open space, yeah, that effluent could be used for open space and probably utilized at the golf course. But, yeah, you know, as far as utilizing it on individual lots because of the safety factor, you know, they don't recommend that.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Committee Members, any, excuse me, Deputy Director, you wanted to respond to Mr. Pontanilla's comments?

MS. SUYAMA: Well, I just wanted to clarify one thing. The way the condition is written it says nonpotable sources, you know, for the water. So it's not only limited to the effluent from the sewage treatment plant. It's also, you know, you're talking about the possibility of brackish well, wells being used for irrigation purposes. So, whichever method you use you still need to put in the dual irrigation system if you don't want to use potable sources by homeowners.

CHAIR MOLINA: Okay. Thank you, Deputy Director. Members, the Chair would like to call up Mr. Jencks to basically respond to the issues with regards to the State Department of Health as it relates to effluent water for home use.

MR. JENCKS: Yeah. Mr. Chair, just to clarify. I am familiar with the regulations. You cannot use R-1 water on Single-Family type of properties. You can use it in common area for commercial properties, median strips, parkways, parks. So, we would possibly end up with three water distribution lines here; one for domestic water, one for R-1 water, and then one for nonpotable brackish water. And I, I think the condition makes a lot of sense and it's, it's exactly what we would want to do.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: So, Mr. Jencks, the way this is written it says that "nonpotable sources of water including the use of treated effluent from the Kihei Wastewater Reclamation

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Plant shall be utilized for irrigation purposes, construction activities including dust control and equipment wash downs.” And of course that wouldn’t be a problem because you would send your water trucks out there and they’d fill it up. But it’s my understanding that you don’t have any plans to put a transmission line from the Kihei sewage treatment plant to your project. Is that correct?

MR. JENCKS: That’s correct.

COUNCILMEMBER ANDERSON: So. . .

MR. JENCKS: If I may? This. . .

COUNCILMEMBER ANDERSON: And you’re going to do your own sewage treatment plant first?

MR. JENCKS: And this would, and. . .

COUNCILMEMBER ANDERSON: But then you’re not going to get any effluent from that until it starts operating with houses.

MR. JENCKS: I, I think the condition here addresses two sources of that type of water. One is possibly some day from the treatment plant, from the Kihei plant. The other is definitely the, the use of that water from our own treatment plant, which will be R-1 water. So, we’re going to have to build upfront a system that will allow for that distribution. So, yeah, we, it, it, it’s for both sources. And we would have to build a system to accommodate both sources and they’ll be the same.

COUNCILMEMBER ANDERSON: So, Mr. Jencks, is it, is it practical or I don’t even know if it’s legal to, okay, you got your potable waterline.

MR. JENCKS: Uh-huh.

COUNCILMEMBER ANDERSON: That’s off the books. We don’t need to discuss that. Then you have your nonpotable waterline. And then do you need another line for effluent?

MR. JENCKS: Yes.

COUNCILMEMBER ANDERSON: You’re going to have three lines then?

MR. JENCKS: Yes.

COUNCILMEMBER ANDERSON: And that’s State DOH requirement?

MR. JENCKS: The, yes, the, the reclaimed waterline has to be a certain type of material, a certain color pipe, a certain depth separation. So, not throughout the project, Council Member, but in,

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certainly in certain areas where you have distribution lines, yes, you'll have that type of . . .
(inaudible) . . .

COUNCILMEMBER ANDERSON: And you can't mix in the nonpotable water into that line?

MR. JENCKS: No, you cannot.

COUNCILMEMBER ANDERSON: Okay. Thank you, Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Okay. Seeing no other questions for Mr. Jencks I'll excuse you for the time being.

MR. JENCKS: Thank you, Mr. Chair.

CHAIR MOLINA: So, Members, comments on the condition as written, is this something the Committee has consensus on or is this something we need to revisit? We did try and consult, contact the Environmental Management Director, however, she is tied up with a few things. Is there a pressing need to have her come down today or can we hear from her at a later point, Members?

UNIDENTIFIED SPEAKER: Later. Later.

CHAIR MOLINA: Later point. Okay. So, we will not have the Environmental Management Director come down here at this point for today's purposes. So, Members, Condition No. 10, comments? Move on? Shall we move on or shall we revisit this at a later point?

COUNCILMEMBER ANDERSON: I'd like to revisit it, Mr. Chair, to just tighten up the language.

CHAIR MOLINA: Okay. So noted. Okay. Committee Members, let's move on. We're getting close to that zero hour in which we may be losing quorum some time soon. So, let's look at condition, proposed condition number, it was here someplace. . .

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR MOLINA: I know there's going to be some long discussion on No. 11. The Parks person has left for the day, the representative, so I'm going to bypass 11 and 12 for today. Member Anderson?

COUNCILMEMBER ANDERSON: Excuse me. I know we're going through all these conditions first and then we will be going through conditions that Members will be proposing.

CHAIR MOLINA: Sure, at, at a later point. Once we make, this is just the initial pass through, Members.

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COUNCILMEMBER ANDERSON: Okay. Thank you, Chair.

CHAIR MOLINA: So, yeah, by all means you will have an opportunity to submit adjustments and additional conditions. Okay. Members, let us have a, begin a discussion on Condition No. 13, which relates to the cultural plan. Staff, can you read the proposed condition from the Planning Commission? That's on Page 8 of 12 of your matrix, Members.

MS. NAKATA: "That a permanent cultural plan developed with the approval of the Maui County Cultural Resources Commission shall be developed relating to access to cultural sites within Kihei-Makena Project District 9, Wailea 670."

CHAIR MOLINA: Okay. Planning Department's comments before the Chair opens the floor for questioning. Deputy Director Suyama?

MS. SUYAMA: We don't have anything to add.

CHAIR MOLINA: Okay. All right. Members, the floor is open for questions. And you'll note that the applicant has also submitted a condition related to that with additional I guess offers if you will. Member Anderson?

COUNCILMEMBER ANDERSON: I got major problems with this, Mr. Chairman. And if you want me to lay it on the table now I will. It's going to take up some time.

CHAIR MOLINA: Well, we'll see how far we can go with this. You can begin.

COUNCILMEMBER ANDERSON: Well, first of all, Members, if you'll look at our requirements in the application it says that a preservation mitigation plan shall be submitted to DLNR and the Office of Hawaiian Affairs of the State for review. Actually, what it says is a preservation mitigation plan, which has been reviewed and approved, and approved by the Department of Land and Natural Resources and the Office of Hawaiian Affairs of the State. Now, that's not been done. If I could have Staff pass something out for me, Mr. Chairman, in my explanation it would helpful --

CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: --for the Members to have something to follow along with. The Historic Preservation Review process as mandated by Hawaii Revised Statute Chapter 6E is a very prescribed process. And it entails, first of all, an inventory survey. Each step of the process, Mr. Chairman, has to be reviewed and approved by State Historic Preservation. And this project while it has had, you know, seven years since it first raised its head this most recent time. It's had seven years to get this process done. The very first step in the process is the inventory survey. They still don't have an approved inventory survey from, from State Historic. And, in fact, in. . . I think maybe to make it clearer to people for what I'm talking about I will just give a brief overview of the process.

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You do your inventory survey and then, well, first, you determine if one's even needed. Obviously, it is. And so, then you do your inventory survey. And after the survey has been approved by DLNR as being complete. And, Members, it's a very extremely prescribed process. The regulations for an inventory survey take up at least 14 pages. Very prescribed as what you have to do. Then after the inventory survey is done it gets posted on their website so people, the public can weigh in on it and say, well, you know, you missed something. And they missed quite a bit and that's why the inventory survey still isn't done.

In, in the review letters from State Historic, every time you, you, you get to a certain stage you send it in to Historic Preservation and they review it and comment on it and decide as to whether or not it's approved. In August of 2000, State Historic told them you need to survey the 190 acres that, the 190 acre survey needs revisions. The only inventory survey they did on this project, Members, was back in 1988 when they did their EIS. And it was for a portion of the property that did not include the a`a flow . . . the 190 acres that has the botanical and the cultural sites, most of 'em. So, in 2000, they were told they need to . . . revise the survey for the 190 acres. Then in, in February of 2001, mind you this went to the Planning Commission in October, September-October of 2000 then they said, the Planning Commission said you, you don't have enough information you need to go out to the community.

So, in February of 2001, they took what they had to the County's Cultural Resource Commission. The Cultural Resource Commission wrote a letter expressing concerns about things that were missing, things that needed to be extended on. I think that they probably, sites that did not have proper significance evaluations or recommended mitigations. Many of the sites at that time were proposed for data recovery and destruction. The Cultural Resource Commission recommended that at least four or five of the sites needed to be, were worthy of preservation and interpretation.

I'm sorry that I'm skipping around here, Members, but we are still at inventory survey. Then in August of 2001, State Historic read their, their survey at that time and requested that further survey work be done. That both the southern survey was not, was not acceptable and that the northern survey was still not adequate. That it was only a reconnaissance survey and that it was not a proper inventory survey. They also said that the sites, that many of the sites were not properly recorded. Then in January of 2002, they got another review. I guess they, they then, you know, made some revisions, sent it back to DLNR, State Historic. State Historic responded in January '02, and said that you need to submit a map. They didn't even submit a map with the inventory survey. That survey transects were not acceptable. They were too far apart. That the northern partion [*sic*] portion still was not survey . . . , surveyed for an inventory level review, and that they still were requesting testing.

You know, Members, when you find, there's all kinds of levels of significance. And one level of significance of course is pre-contact or the age of something, whether it has religious significance or some kind of religious contact such as a heiau or a Koa that gives it a higher level of significance for preservation. The, the inventory survey stopped at that time. They have not

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submitted at least they have not submitted to us and I asked, you know, for all the letters of review. They still have not been, nothing, nothing further has been done. And, and I would like to say that, you know, back in July of '06, I specifically asked their archeologist Mr. Sinoto, excuse me, "You say you're working on a mitigation preservation plan that should be done in how many months?" Mr. Sinoto, "Actually the implementation of the work that will be discussed in the plan should be done within four to five months." I say, "You mean implementing the plan?" He said, "yes." I said, "But before you implement the plan you have to have it approved by State Historic." He says, "right, yeah." "So, when are you going to do that?" "Well, we plan to get that in fairly soon so they can give us the approval and then we'll proceed with the fieldwork."

Well, Mr. Chairman, since 2002 nothing further has been done and if you guys look at this review process you cannot make a determination of significance until you've completed the inventory survey. And then after they make the determination of significance whether or not the sites are worthy of saving, how much of them to save; does this, does this present a cultural landscape worthy of interpretation and public education? **Yeah.** And then they have a mitigation and, and preservation plan after that. We're a long ways from that. And our, this should all have been done before it even came to the Planning Commission for review. It's part of our application requirement, Mr. Chairman.

How can we possibly treat our historic sites with the respect they deserve if we can't even follow the prescribed and mandated legal process? And, you know, I'm sick of it and that's why I'm making an issue of this because that's what these guys do all the time. They try to "smooze" their way through by saying we're going to do this and we're going to do that but nobody knows what the legal process is so they get away with it. I happen to know what the process is and until they get an inventory survey that has been approved by State Historic they're not even done with the first step. Not even close to getting a preservation plan. And why is that important, Members, because we have the legal mandate to protect these historic sites for future generations and to open them up for educational interpretation purposes.

You go look at what's going on on the Big Island and Kauai. Shame on Maui. There is not a single Hawaiian historic site that has been, that has received the full complement of the requirement of the law under State Historic Preservation. The only thing we've got in anything close to that is Hale Piilani out in Hana and the two heiau up here in Wailuku. And those things happen when the kupuna who knew about this were still alive and insisted that it happen. Well, I'm here to insist now because we have a legal process. And if we're not going to follow it then we're all going to burn in hell.

I want to show you this. This is a list of historic sites that qualified for State and National Historic Preservation on the register. They were published to be put on the register. Two columns are from Maui. This happened back in 19 . . .um. . . I don't know 1979 or something like that. Well, land, and, and that means you can't touch 'em. You got to save 'em. Landowners got a little upset and they appealed and somebody in government listened to their appeal and all of these sites were removed. They were all removed from the register because the

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landowners weren't properly notified. And at the time, the promise was that State Historic Preservation, DLNR, was going to go back and do it properly and get all these sites registered. They're not registered to this date 30-some years later.

Now, you know, are we just going to just let this continue until there's nothing we're saving at all? This area is a link to the ahupuaa settlement pattern of the native Hawaiian people. And if you read the letters from SHPD they clearly state that. And nothing in the inventory survey supports that by this developer's archeologist.

CHAIR MOLINA: Member Anderson, I would ask that we do have Mr. Sinoto here to respond to any questions you may have.

COUNCILMEMBER ANDERSON: Well, you bring 'em up at your risk and at his because I'm not finished, Mr. Chairman.

CHAIR MOLINA: Yeah. Okay. We'll ask Mr. Sinoto to provide some comment to the concerns that you've shared with the Committee. Good evening, Mr. Sinoto. And you would like to add any comments to the concerns expressed by Member Anderson?

MR. SINOTO: Thank you, Chair Molina, and Committee Members. You know I got really confused when Councilmember Anderson was talking about the process. I was going to handout the same. . .

COUNCILMEMBER ANDERSON: Do you have an extra copy that you could give Mr. Sinoto?

MR. SINOTO: I have one right here. I, I was going to submit this also. But I have another submission I would like to give.

CHAIR MOLINA: Okay. We'll have Staff hand that out for you, Mr. Sinoto.

MR. SINOTO: Councilmember Anderson . . .(end tape, start 4B). . . comments at the very end regarding National Historic Register sites. I'd like to correct some of the things that you just spoke about. Being listed as eligible to the National Historic Register of Historic Places doesn't mean that you're permanently preserved. Any. . .private line [sic] landowner has 90 days to notify the register that that site is getting destroyed or some, somehow altered. And then they have 90 days --

COUNCILMEMBER ANDERSON: Mr. Sinoto.

MR. SINOTO: --to do mitigation on that site --

CHAIR MOLINA: Hang on.

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MR. SINOTO: --according to what the advisory council advises. So, it's not true that just because the site is on the National Register that it's totally protected by law.

COUNCILMEMBER ANDERSON: It's true that all these sites were taken off the register.

MR. SINOTO: It was taken off the register. . .

COUNCILMEMBER ANDERSON: And, and 99 percent of 'em have not been put back on.

MR. SINOTO: I disagree. . .

COUNCILMEMBER ANDERSON: And that was my point, Mr. Sinoto.

MR. SINOTO: I disagree with that 99 percent number also.

COUNCILMEMBER ANDERSON: Let's stick with your. . .

CHAIR MOLINA: All right. Hang on, Member Anderson. Mr. Sinoto, please I know this is a very sensitive issue so let's try and be civil towards each other. Mr. Sinoto.

MR. SINOTO: Okay. The, the chart that I just passed out more accurately portrays the current mandate set forth by Administrative Rules of the Department of Land and Natural Resources State Historic Preservation Division. As you can see, at the top you have a development initiative and then there's an assessment phase. An assessment is just a simple assessment by a knowledgeable archeologist regarding whether there are remains on the property that requires further research. So, from that assessment period there's an internal review. And if remains are absent then it goes into the formal archaeological assessment reporting procedure. If there are no sites on the property, DLNR tells us to write the report as an archaeological assessment and submit it for SHPD review. If there are remains on the property, then we go into the archeological inventory survey mode, which again is reviewed by SHPD. From there if there are no sites like in, in the assessment report if there are no sites, the SHPD will conclude, conclude no effect. If based on the inventory study there are significant sites on the property then they'll conclude that there are significance to the remains on the property.

Without finding that the remains are significant further work can't be implemented. So that, that's a very important step. Now, within the mandate that the State Historic Preservation has for all development related projects, the point at which significant sites are identified by this archaeological inventory survey is the point or the level at which decisions regarding land use such as zoning and things like that are made. So, currently, for this project we are at that very stage where significance of the sites have been evaluated. Also, I'd like to correct the statement about no map was presented to SHPD; that's completely wrong. And I know before that some maps were distributed around to this very Committee about the difference between the details given in our maps versus another map from another archeologist. But I can show you that, that map that was. . .distributed was just simply a location map that shows the location of all of the

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sites that are found within the southern 190 acres. The locations are represented by these dots. What that person neglected to say that in the rest of the report we have narrative descriptions of each site, we have detailed plan view sketch maps of each site. So that those two maps that were handed out didn't really compare, they were just taken out of context.

And indeed the reports did have maps. The map that was missing was that the State archeologist reviewing the report had asked for a map showing the locations of all previous studies in the region. And since that time we have turned that into the State. In terms of some of the other comments we addressed those. . .

COUNCILMEMBER ANDERSON: Can you just stop there for a minute, Mr. Sinoto?

MR. SINOTO: Certainly.

COUNCILMEMBER ANDERSON: You said you have turned something into the State. The last review letter we received from the State and, and, Chair, every time something is submitted they review it and then they submit a letter. And the last review letter that we have received from, from you, from your, from the applicant is January 17, 2002. Do you have any other subsequent review letters that we have not seen?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: No, I don't. But my letter of September 12, 2001 addressed all those questions that was repeated I believe in that 2002 letter including the submission of the map. And since, since that time, when we completed the. . .

COUNCILMEMBER ANDERSON: What was the date of that letter?

MR. SINOTO: September 12, 2001.

COUNCILMEMBER ANDERSON: Well, you know, your, your September 12, 2001 letter is the letter that they are responding to in the January 17th review letter. And they indicate that the original draft reviewed by their office that the survey was unacceptable because of the transect measurements that you used and they also say that the northern portion of the project was inadequate, the survey was inadequate because the review work consisted of reconnaissance surveys not level, not, not inventory level surveys. You also say that certain marginal features consist of, of wall alignments that were disturbed. Their general trends and association with major wall systems have been recorded. SHPD says this does not completely. . .adequately address our concerns. Both drafts one and two indicated that selection of only those remains that clearly definable, with clearly definable. . .attributes were recorded.

What draft one indicates that "other marginal remains such as modified outcrops and crude, one stonewall alignments were noted but were not formally recorded or included in the site inventory." SHPD responds, "all features must receive adequate documentation, it needs to be

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clear that this has been accomplished. Please see our original, our original comments. We still believe that some testing would be useful because you describe this structure as well constructed. As we indicated in our review of draft two minimal testing is suggested to support or refute your hypothesis.” They go on to say, “prior to concurring that data recovery is necessary we still recommend testing.” Members, the reason they recommend testing is because testing they’re referencing carbon dating. And, and in order to get a more specific range of date how old this settlement is if it goes back to the 1100s, the 1400s that’s important to know. And that’s why carbon dating is important. They’ve still, you know, like I said we’re two years here in review and they’re asking for testing and that still hasn’t been done.

CHAIR MOLINA: Okay. Member Anderson, in the meantime can I, Mr. Sinoto. . .

COUNCILMEMBER ANDERSON: We await the revisions to draft two. . .

CHAIR MOLINA: Hang on. Member Anderson, I’ll let you continue after. Mr. Sinoto, if you have a response. Now, this, this is the comments that were made by SHPD. Am I correct, Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah, I’m reading from their review letters, Chair.

CHAIR MOLINA: Okay. All right. Thank you. Mr. Sinoto.

MR. SINOTO: Yes. Thank you, Chair. Ms. Anderson, the comments are based on the initial inventory survey which dealt only with the southern 190 acres. This report was revised in October of 2000 as well and additionally we have an addendum survey that was completed in June of 2001, which addressed the total northern portion of the project area. Again, to avoid confusion I need to back up a little bit historically. As Councilmember Anderson brought up this project has been going on since the 80s. Of course that was for a different owner and it was for, a whole string of different archeological firms did the previous work. And indeed the work that was done in 1988 and 1979 to me didn’t even constitute an adequate reconnaissance survey. Most of the work was done from a moving vehicle. And one of the surveys completely mistakenly thought that the large wall that separates the northern area from the southern area was the southern terminus of the project area so they completely missed the southern 190 acres within which all of the remaining sites exist.

So, we can disregard that earlier work. The first work in the area to have recovered sites was done in 1972 by a State archeologist, Beth Walton, in connection with the Piilani Highway extension. And within that extension area she, let’s see, encountered about seven sites within the project area. And we were successful in relocating six of the seven sites. One site was very small. We still have yet to try and relocate that particular site. Other than that from our original. . .2000, year 2000 inventory survey, we did a revision of that original 2000 report and we went on to do the northern portion in the 2001 report. So, basically, by the end of 2001 we had covered the total 670-acre project area. Again, we found only one site within the northern

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portion but the northern two-thirds of the project area had been heavily disturbed previously so we didn't expect to find too much.

And then within the a`a lands that were of the southern one-third of the project area because that area was avoided by the ranch, a lot of the ranching activities, much of the a`a areas and the small gulches remained pretty pristine therefore we found most of our sites within the southern 190 acre area.

CHAIR MOLINA: Okay. Mr. Sinoto. Member Anderson, at this point, I think this will, we will need to return definitely for much more discussion. It's getting close to that time. . .

COUNCILMEMBER ANDERSON: Yeah. I'd like to just close up on this, Mr. Chairman.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Because I'm, I'm only warmed up on this.

CHAIR MOLINA: Okay. Make it brief.

COUNCILMEMBER ANDERSON: And I don't know what Mr. Sinoto, this looks like something he did, he's trying to pass this off as more current and more accurate. What you're looking at, Members, this Historic Preservation Review process I printed off State Historic's website last night. This is the process. And until he has an acceptable inventory survey he hasn't even got step one done. And I will reiterate they, their last review letter was dated January 17, 2002. They say the northern portion is still not surveyed at inventory level. They're requesting testing and awaiting the third review, the third draft of their inventory survey.

So, Mr. Sinoto, that's been five years and you have done no further work on completing an inventory survey, survey, and getting it to State Historic for approval?

MR. SINOTO: There was no further work actually required because we did the testing during the first phase. Some, some of the. . .

COUNCILMEMBER ANDERSON: Well, then they're lying in their letter?

MR. SINOTO: No.

COUNCILMEMBER ANDERSON: Is that what you're saying?

MR. SINOTO: What I'm saying is some, some of the things that they're recommending is up for discussion. We, we don't really have to do further testing because one of, one of the areas that we were talking about the formally constructed sites, the reason we didn't test those was because the client decided to preserve those. And these were actually comments made to us during the CRC meeting and also with, with our meetings during the Burial Council visitations that for

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instance Dana thought if these could possibly be burial sites and they were going to be preserved they didn't want us to test them.

CHAIR MOLINA: Mr. Sinoto, you're referencing Dana whom?

MR. SINOTO: Oh, Dana Hall.

CHAIR MOLINA: Okay. Thank you.

MR. SINOTO: Member and Chair of the Burial Council at the time.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: You know, Mr. Chair.

CHAIR MOLINA: Hang on. Member Anderson. Mr. Sinoto. I'm going to put a hold on this for now. The Chair is going to call for a short recess and at a later point whenever we come up with our next meeting, we'll continue the discussion on Condition 13. Meeting short recess. . . .(gavel). . .

RECESS: 5:39 p.m.

RECONVENE: 5:42 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of July 25, 2008 [sic] is now back in session. It is August 8th 5:42 p.m. on a Wednesday. Members, at the point, the Chair will entertain one more question. We had a special request from Member Mateo and that will please be the only question left before the Chair puts out a recommendation for you for a date and time for our next meeting as it relates to LU-38. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much for this opportunity. And I just wanted to ask the Planning Department. Throughout, you know, looking at the matrix that has been provided to us, the Department has been pretty consistent and opinionated in providing additional comment. This particular item relative to cultural plan, which is a significant part as far as ko aina is concerned the Department had nothing to say on this. Are you of the opinion that the recommendation that was presented by the Maui Planning Commission was sufficient enough to take care of the culturally sensitive, sensitivity of this area, which is the rationale why there is no Department comment?

CHAIR MOLINA: Deputy Director Suyama.

MS. SUYAMA: There was, you know, to be honest about the, our responses is that I went through, tried to get through most of the comments that were made in terms of, you know, what was proposed by the applicant and drafting, you know, proposed responses to it or proposed conditions,

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changes to conditions. But I wasn't able to go through it real thoroughly. I did it real quickly. And at this point, you know, I didn't have any comments regarding the cultural resources condition that was, you know, presented.

COUNCILMEMBER MATEO: So, now, I take it I hear in your, in your voice now I hear or do I hear you citing that perhaps it wasn't submitted originally but now is there considerations that the Deputy is looking at as possible considerations?

MS. SUYAMA: You know I'm, I'm willing to look at it again before the next meeting. But at that point, at this point, you know, we felt that the cultural management plan is what was called for. Because when you do your reviews throughout the subsequent reviews there are additional inventory surveys or additional work that is done as each project comes through the system including on the Phase II project district processing. You know they usually go back and then reassess again and . . . submit information back to State Historic Preservation. And because these plans are usually not static over the years they change as standards within State Historic Preservation Division change. That, you know, there's new, new requirements placed on developers that they need to meet and there's new scrutiny that's, each time they come in for review there's new scrutiny by State Historic Preservation Division, you know, as well as by the Department. And the major part was to, you know, preserve the cultural resources that are there and that's why that condition about, you know, the cultural plan being reviewed and adopted and approved.

COUNCILMEMBER MATEO: Okay. Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Mateo. All right. Folks, we're going to, the Chair is going to recommend that we --

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR MOLINA: --recess this meeting. Member Anderson.

COUNCILMEMBER ANDERSON: Yeah. You know I brought this up and I'd like to have the closing comments on this because. . .

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: Just a short comment, Mr. Chair.

CHAIR MOLINA: Short and I do want to assure you that we will go right into this condition on, at our next recessed date.

COUNCILMEMBER ANDERSON: I appreciate that. You know the reason that this is important that the review process be finalized to the point of preparing a preservation and mitigation plan that's been approved by State Historic and the Office of Hawaiian Affairs as required by our change in

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zoning ordinance, Mr. Chairman, is so that these Members who are really the legal stewards of this, of this County can put in the proper condition. If we want to put a conservation easement around this and, and we think it's not appropriate to put all these cultural sites on a golf course for only a select few to visit, we have that right to do it. State law gives us that mandate. And by pushing this through without finishing the Historic Review Process they are abdicating our, our right. And as stewards, we need to take control of that right.

And, you know, as far as State Historic changing their requirements and whatnot, their requirements are the most prescribed regulations, you know, the State has. And, and I know because I followed it all the way through. It took us 20 years to get implementing regulations for HRS 6E and they were only recently passed in the last, oh, I don't know, five years. It's only been five years that these implementing regulations have been adopted, legally adopted.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: So --

CHAIR MOLINA: Thank you.

COUNCILMEMBER ANDERSON: --they're secure and we need to follow them.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And we shall segue this discussion for Condition No. 13. The Chair is recommending that we recess this meeting until Friday August 10 at 1:30 p.m. in the afternoon right here in the Council Chambers. Any objections to the recessed date?

COUNCIL MEMBERS: No objections.

COUNCILMEMBER ANDERSON: Chair, no objections as long as we don't go into the evening.

CHAIR MOLINA: Okay. I, I don't believe we will because I do. . .

COUNCILMEMBER ANDERSON: Because I have something I cannot cancel. I've cancelled too many things for this project already.

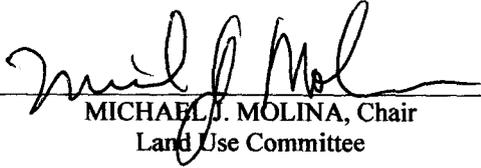
CHAIR MOLINA: Okay. So noted, Member Anderson. You know, Members, we'll try to stay as long as they can and if we don't have quorum we cannot continue. So, with that being said again the Chair will state again for the record the recessed meeting date is this Friday August 10th 1:30 p.m. right here in the Council Chambers for LU-38. This meeting is in recess. . . .(gavel). . .

RECESS: 5:48 p.m.

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APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

lu:min:070808r

Transcribed by: Cathy L. Simmons

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CERTIFICATE

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

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



Cathy Simmons