

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

August 10, 2007

Council Chamber

RECONVENE: 1:35 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember G. Riki Hokama, Member (Arrive 2:25 p.m.)
Councilmember Jo Anne Johnson, Member (Arrive 2:46 p.m.)
Councilmember Danny A. Mateo, Member (Leave 4:03 p.m.)
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Bill Kauakea Medeiros, Member

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

Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Michael Miyamoto, Deputy Director, Department of Public Works
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
Michael J. Hopper, 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)
Wayne Yoshioka, Manager, PB Americas, Inc. (Applicant's traffic consultant)
Barry Toyota, Vice President and Director, Wilson Okamoto Corporation
(Applicant's civil engineering consultant)
Aki Sinoto, Aki Sinoto Consulting (Applicant's archaeologist)
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 25, 2007 is now back in session. It is Friday, August 10th, 1:35 p.m. For the record, we have in attendance Members Mateo, Anderson, Baisa, Victorino, and Molina, and Pontanilla. Excused are Members Medeiros, Johnson, and Hokama. And we have from Committee Staff, Ms. Carla Nakata, as well as the Committee Secretary, Tammy Frias. From the Corporation Counsel's office, we have Mr. Michael Hopper and from the Planning Department, Deputy Director, Colleen Suyama. Good afternoon, Members.

**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: We are here to continue the discussion of the proposed conditions as it relates to Land Use Item No. 38, the application that is known as Honua`ula/Wailea 670, and we left off on Condition 13. The Chair will spend a few minutes more to discuss it and then we'll move on to discuss some of the other proposed conditions.

And we had Mr. Sinoto, the applicant's archaeologist, as it related to the condition for the Cultural Plan developed with the approval of the Maui County Cultural Resources Commission as it relates to the cultural sites within the Kihei-Makena Project District 9. So, Members, any more, more questions for Mr. Sinoto? We'll start with Member Anderson. And Mr. Sinoto, are you here? Mr. Jencks, will you be representing Mr. Sinoto for the time being?

MR. JENCKS: Hardly.

CHAIR MOLINA: Okay, all right. . . . *laughter*. . .

MR. JENCKS: He's, he's in the elevator. He should be here momentarily.

CHAIR MOLINA: Okay. Well, we'll make do with what we have. Members, any other matters as it relates to Condition 13 as we await the arrival of Mr. Sinoto? Member Anderson, do you want to give us some opening comments on this condition?

COUNCILMEMBER ANDERSON: Um.

CHAIR MOLINA: No questions for the Planning Department or Corporation Counsel?

COUNCILMEMBER ANDERSON: You know, I was just wondering, Mr. Chair, before we get going on that, are we going to get any more response from Corporation Counsel on the review of the Water Agreement? And I noticed we have different Corp. Counsel here today. So, if maybe he could tell us if, if they have reviewed the Water Agreement. And also we had a request on the clear title issue and so I'm just wondering maybe if we can get that time . . .

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CHAIR MOLINA: Mr. Hopper, you care to respond? I know Mr. Giroux has been the Corporation Counsel that's been working actively on this matter. Are you prepared to give a response to Member Anderson's request?

MR. HOPPER: As far as those issues, no, not at this time, Mr. Chair. I think that Mr. Giroux is looking into those issues, but I don't know if there's any written request or formal request to look into those matters. So, at this time, no.

CHAIR MOLINA: Okay, thank you. Staff, did we make a formal request with regards to the opinion from Corporation Counsel on those matters? I believe it was stated at the last meeting. There was a request for it. Can you comment, Staff, at this time?

MS. NAKATA: No, no written request is outstanding currently.

CHAIR MOLINA: Okay, thank you. Okay, Member Anderson, you've heard the response from Corporation Counsel. Is this . . . if you would like to make a formal request in writing to Corporation Counsel then we can get the responses hopefully soon.

COUNCILMEMBER ANDERSON: Formal request in writing regarding the water condition, I mean, the Water Agreement?

CHAIR MOLINA: Right.

COUNCILMEMBER ANDERSON: I recall when we asked that a couple few days ago, Mr. Chair, you, you asked Corporation Counsel to do that.

CHAIR MOLINA: Yes, I recall the same thing, too. I, I don't believe we got to getting around putting it in writing but Corporation Counsel, Mr. Giroux, I believe, was aware of the Committee's interest in getting a response from them. But we'll give them a reminder.

COUNCILMEMBER ANDERSON: Okay. You know, Mr. Chair, my office is currently copying something to be handed out to everybody, but I will try my best to go forward without it.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: I did pass out a review chart, I guess, a flow chart that State Historic Preservation has on their website to explain the review process. And, Members, I'm sorry that I don't have the handout ready for you. It should be here any minute, but what I wanted to explain to Members before I do ask my questions to Mr. Sinoto, having been a planner environmental specialist for the Office of Environmental Quality Control, I'm familiar with this process. And I think it's important that we understand what the process is, Mr. Chairman, because otherwise all we have to go by is the developer's representative, and I don't think that that is adequate for us to have a fair representation.

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The . . . the Historic Pres..., Preservation review process in the State is described in Chapter, HRS, Hawaii Revised Statute Chapter 6E. They have implementing regulations that support the requirements of Chapter 6E. And, Members, do you have the flow chart? And I'll just explain it, and, and maybe hopefully my Staff will bring in the rest of the information, and, and basically it is sections of the Administrative Rules that support these various stages of review and prescribe exactly what needs to be done.

And the reason that this is important, Mr., Mr. Chairman and Members, is because our Change in Zoning requirement calls for a preservation mitigation plan in the application. And, and the reason that's important is because that is the end result of the review process and if we don't have that in front of us then we are being pre..., prevented actually from fulfilling our, our fiduciary responsibility in protecting historic sites.

And just so those who are not aware, I would like to read what the purpose of the Historic Preservation Program is. The Declaration of Intent and this comes from Chapter 6E. Members, I will be passing this out to you. I'm sorry it's not ready right now. I, I had to make some changes last night to cut it down a little. But the legislative intent of Historic Preservation Program is clearly delineated in the opening section of Chapter 6E. The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The Legislature declares that the historic and cultural heritage of the State is among its most important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The Legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all lev..., levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of the citizens.

And, you know, we don't seem to be doing that in Maui County. The way we treat our historic sites and the way that process has been implemented here in Maui County very often results in our historic sites becoming landscape features behind gated mansions and also features on golf courses. And this is not the proper way, according to the State Statute, that we're supposed to preserve our historic sites. It certainly doesn't allow for the education, inspiration, pleasure, and enrichment of our citizens unless of course you can afford to spend \$200 to play golf.

So, that's why this process is important. That's why I want Members to know why I'm asking these questions of Mr. Sinoto. You'll see that the flow chart shows the first step is an inventory survey. That inventory survey has to be reviewed and approved by State Historic Preservation and by the State Office of Hawaiian Affairs. That is spelled out clearly in the Administrative Rules.

Then when the inventory survey is complete and, and State Historic and OHA agree that its complete, thereby approving the inventory survey, then you make significance determinations and there's various criteria to determine how significant a site might be. And as I said the other day, it depends on the age. It depends on whether or not there's religious significance to it. It

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depends on whether or not it's part of a major cultural landscape that needs to be preserved. There's various criteria. That is then done and also approved by State Historic and OHA.

And by the way, each step of the way, there is a process for the public to weigh in and, and by the . . . when they submit their final inventory survey or their significance determinations, each step of the way, not only does State Historic and OHA have to approve it, but they have to put it on their website and provide 30-day comment period from the general public. Anybody has a right to weigh in.

And then after that determination is made for significance, and approved by OHA and State Historic, then they have to do a preservation mitigation plan. And that, Mr. Chairman and Members, is basically tells how we're going to mitigate those sites that are not going to be saved, a data recovery plan is produced, and also has to be approved by State Historic and OHA in order to determine if the data recovery plan is, is accurate, and, and adequate. And, and then the preservation plan is suppose to include right through from restoration, you know, actually, data recovery, restoration, interpretation, signage, public access. How we're going to do this preservation plan so that in the end result is that the sites that will be saved, and this is the ending of the review process, will in fact be used for the education, inspiration, pleasure, and enrichment of our citizens.

CHAIR MOLINA: Okay. Member Anderson, if I may interject. Mr. Sinoto is here so you can prepare your line of questioning for him.

COUNCILMEMBER ANDERSON: Okay. So, I just want Members to realize why I'm asking these questions, Mr. Chairman.

CHAIR MOLINA: So noted.

COUNCILMEMBER ANDERSON: And, and that at the, at the end of the preservation or the review process, you have a plan in front of you that's been approved by the State, approved by OHA, and then it's our purview in the Change in Zoning to make conditions to make sure that the preservation plan is implemented. We have total prerogative, Mr. Chairman, under the State Statute to make a conservation easement around the historic sites. And, and if we don't have the plan in front of us, we can't do that.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Mr. Sinoto, if you could come up to the front. Members, the floor is open for questions of Mr. Sinoto.

COUNCILMEMBER ANDERSON: So, if I could continue by questioning, Mr. Chairman, and, and in the spirit of expediency, I will be asking questions of Mr. Sinoto that really are, only require yes or no from him. So. . .

CHAIR MOLINA: Proceed, Member Anderson.

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COUNCILMEMBER ANDERSON: . . . I would appreciate if he could cooperate and that way I can get through my questions quickly and we can move on. Mr. Sinoto, thank you for being here. The last review for the, the 6E review process that you're doing for the Wailea 670 Project was dated January 17, 2002. Now, I recognize that that was quite some time ago and that you may have submitted to State Historic the request they have in this letter. So, that's what I'm trying to get to so all you need to do is tell me yes or no if you've done that.

You know, they, they did say in their . . . this is the second draft for the inventory survey for both the northern and southern portions of Wailea 670. They say that they're awaiting the map requested as further documentation in the background section. So, I believe, you said the other day that you had submitted that. Is that correct?

MR. SINOTO: Chair?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: First, let me apologize for being a little late. I had trouble finding parking downstairs. Councilmember Anderson, the answer is yes.

COUNCILMEMBER ANDERSON: And, and you submitted it to State Historic, not just to us?

MR. SINOTO: To State Historic.

COUNCILMEMBER ANDERSON: State Historic has the map?

MR. SINOTO: Yes.

COUNCILMEMBER ANDERSON: Um.

MR. SINOTO: In fact, I don't think I submitted that map to you. That, that map that they asked for in the background section is a map showing the locations of all previous researchers, other researchers.

COUNCILMEMBER ANDERSON: I see.

MR. SINOTO: Yeah.

COUNCILMEMBER ANDERSON: Okay.

MR. SINOTO: The map that you have, I think, is the GPS map of the locations of the sites.

COUNCILMEMBER ANDERSON: The, the inventory survey for the northern section was done as a reconnais..., reconnaissance survey not an inventory level survey. So, have you completed an inventory survey for the northern section . . . an inventory level survey?

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MR. SINOTO: Chair?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: That requires a little bit more than a yes or no answer.

CHAIR MOLINA: The Chair will permit you to elaborate on your yes or no response.

MR. SINOTO: Okay. That, that particular phrasing, I believe, comes from one of the review letters and it's actually a mistake. She was referring to the 1988 surveys, the earlier surveys, that were undertaken by cultural surveys and also Joseph Kennedy for the previous owners and those were indeed and they can be characterized as more, more like assessments, rather than even a reconnaissance.

The survey that we undertook in the northern portion of the project area following the initial review by SHPD on our inventory of the southern section was a formal inventory level survey of the northern two-thirds of the project area. However, as a result of that survey, no significant sites were discovered. We did report on one uninhabited natural cave shelter that may have been used as a, a shelter but excavations there revealed no evidence that it was used as such. So, we did complete a formal inventory level survey for the northern sector.

COUNCILMEMBER ANDERSON: Well, according to State Historic, you haven't. We still have questions about the field methods that need resolution before we conclude that the survey has accept..., acceptably . . . acceptably . . . that's a weird word . . . covered the project area. This was in the 2001 review letter. The northern portion of the project area has not been adequately surveyed. Past studies were only reconnaissance surveys.

MR. SINOTO: Excuse me.

COUNCILMEMBER ANDERSON: No, I'll, I'll ask you a question.

MR. SINOTO: Okay.

COUNCILMEMBER ANDERSON: You know, the thing is, Mr.Sinoto, is you can say whatever you want to say to us, but until it is documented as an accepted procedure by State Historic, it doesn't really mean anything because they are the ones that run this process and they're the ones that require you to follow the Administrative Rules. And so, you know, I'm going by what they're saying. They're the authority here, not you. And, and, and mind you, the reason I'm asking these questions is because I have talked to State Historic in the last two days. There is no documentation in this file since January 17, 2002. So, you say you've sent them a revised or a map that they don't seem to have it. So, they also say that . . .

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CHAIR MOLINA: Mem..., Member Anderson, before you go on, can you just clarify for the Committee whom you spoke with from SHPD over the last two days? I know there's been some resignations with regards to the Director, but just for the Committee's information.

COUNCILMEMBER ANDERSON: I spoke to the office on Oahu where they keep all these records. And I also spoke with . . . yeah, you know, we're in a bad shape here with State Historic and that's why it falls on us, Members, to make sure that, that we're, we're getting the full complement of the law as far as State Historic goes because they are in turmoil right now.

CHAIR MOLINA: Yeah, so, do you know . . . can you clarify for the Committee who, who spoke with over the last two days?

COUNCILMEMBER ANDERSON: Well, I don't have a name right in front of me, Mr. Chairman.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: But I . . .

CHAIR MOLINA: Well, the Committee will make an inquiry as well just so we can get the name for the record.

COUNCILMEMBER ANDERSON: Yeah, I can bring that in next time. I . . .

CHAIR MOLINA: Okay, thank you.

COUNCILMEMBER ANDERSON: If I could have Staff come forward, Mr. Chairman, and pass out to the Members some information.

CHAIR MOLINA: Okay, Continue your questioning of Mr. Sinoto. Before we do that, Committee Members, do you have any questions for Mr. Sinoto before I allow Member Anderson to proceed? Okay, seeing none. Member Anderson, continue.

COUNCILMEMBER ANDERSON: So, that's why I'm asking these questions, Mr. Sinoto, is, you know, from, from the review letter they are asking you to do many more things. I mean, we still believe that some testing would be useful because you describe the structures as well-constructed. This is talking about sites 511 . . . 5111, 5112, which are, I believe, the, the walls.

But at any rate, let me just ask you if you have done any of the, the things that they're still asking. The revised draft incorporating, they're talking about your transect inter..., intervals where you, when you in..., survey a site you do it in, in transects and intervals, and they're saying that the original draft indicated a transect interval of 20 to 50 meters, which is unacceptable. The revised draft incorporating additional fieldwork did not explicitly indicate the interval width but stated that the transects were oriented opposite from those made during the inventory survey. The revised report must address this issue. So, have you done that yet?

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MR. SINOTO: All, all of the points raised by these review letters has since been addressed.

COUNCILMEMBER ANDERSON: And so, have you done any carbon testing?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: We, we haven't done any carbon testing because from our test excavations during the inventory survey, we did not recover any carbon that was testable. And, and that's why we . . . that's one of the objectives for data recovery that will be forthcoming.

COUNCILMEMBER ANDERSON: Well, that's not what I see from what I've read that there are fire pits that would provide the carbon necessary to do the carbon testing. And the reason . . .

MR. SINOTO: Yeah, we did, we did submit it, but it, it couldn't be dated. I guess, it was contaminated because it was an exposed fire pit. So, what I'm saying is, we did recover that but it wasn't datable so we don't have any dates from the survey area.

COUNCILMEMBER ANDERSON: And did you submit that to State Historic?

MR. SINOTO: They know about it, yes.

COUNCILMEMBER ANDERSON: They do? So, you're saying that all of the . . . they're asking that, they're saying that, you know, besides all of the, the . . . I'm not going to go through every, every single thing they're asking you to do because you're telling me that you've done it all already. But if you have done it all, why haven't you sent it in to State Historic? They're . . . as of '02, they're saying that they're awaiting the revisions to draft two. And draft two, Members, is the inventory survey, the first thing that needs to be done.

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: Actually, there were three drafts. The State letter is a little confusing because the initial survey, which took place upon the southern 190 acres, went through two drafts. The addendum, which covered additional work that they wanted us to do for the northern section as well as additional transects in the southern section, was actually the third draft. And I believe this January 2002 letter is in response to the third draft.

And the letter is a little confusing because it talks about both the second and the third drafts together. So unless, unless you're the one that submitted the report it's a little difficult to see which comments pertain to which section of the project area. But essentially, you're correct that this, this is the last review letter that we did receive from SHPD. This wasn't the last time that we discussed this . . . these issues with SHPD, including submission of the maps and also submission of the GPS location map in 2003.

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CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Well, you know, I, I don't find it confusing, Mr. Sinoto. I've, I've read the letters and the, the inventory survey, yes, you did have to do a survey for the 190 acres that wasn't done previously that's now known as the southern portion. But the northern portion also needed to be redone and I don't see anything from State Historic saying that you've done that.

MR. SINOTO: Okay, um . . .

COUNCILMEMBER ANDERSON: So, if, if you have . . . all right, if you're telling me that you have complied with everything in their January '02 letter, then why don't we have a letter from State Historic saying that you have completed the inventory survey process, and that they have approved it, and that OHA has approved it?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: Ms. Anderson, that was about three questions. May I answer them all? The reason the . . . well, let me get to this August 31, 2006 letter from DLNR.

COUNCILMEMBER ANDERSON: What August 2006?

MR. SINOTO: This is a letter from Department of Land and Natural Resources to the Department of Public Works. Now, this is regarding a water tank or water reservoir project.

COUNCILMEMBER ANDERSON: For the grading and grubbing permits for the water?

MR. SINOTO: For Wailea Resort but that's because . . .

COUNCILMEMBER ANDERSON: Well, that has nothing to do with what we're talking about.

MR. SINOTO: Yes, it does because this --

CHAIR MOLINA: Hang on. Hang on. Hang on. Mr. Sinoto, go ahead and finish.

MR. SINOTO: --the location of this tank is within the 670 northern property.

COUNCILMEMBER ANDERSON: I know but, but we're talking about the review for Wailea 670.

MR. SINOTO: Yeah, but I'm getting to that. It, it says that: 1) We have previously provided revised comments on a grading and grubbing permit for the proposed upper level water system for permit number such and such. It says, our revised comments indicated that no historic properties would be affected by the proposed project.

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Then it says, we believe that no historic properties will be affected by this undertaking because and there's six alternatives that they can check off. The last three have been checked off: d) an acceptable archaeological assessment or inventory found no historic properties; e) this project has gone through the historic review process, and mitigation has been completed; f) other: The subject property was included in the larger archaeological inventory survey conducted by Aki Sino..., Sinoto Consulting in 2002. Based on a June 7, 2005 telephone conversation with Mr. Sinoto, we now understand no historic properties were identified in the proposed project area.

COUNCILMEMBER ANDERSON: But the propo...

MR. SINOTO: So, so there . . . at least for the northern two-thirds, this letter shows that there's no effect.

COUNCILMEMBER ANDERSON: Well, you're talking about the gra..., the historic review for the grading and grubbing permit for the upper level water tank. Is that correct?

MR. SINOTO: Correct.

COUNCILMEMBER ANDERSON: Well, that only covers that, that portion of land that the tank is sitting on. It doesn't cover the whole 670 acre review that's going on for Wailea 670.

MR. SINOTO: It doesn't cover the 670 acres, but it does cover the 670 acres minus 190 acres because . . .

COUNCILMEMBER ANDERSON: Well, you know something I'm looking at this right now and it is unsigned . . . actually.

MR. SINOTO: It's signed by Melanie Chinen, Administrator.

COUNCILMEMBER ANDERSON: Well, I'm looking at the back of it and where there's a place for a signature, Kathleen Gregor, it's not signed and there's no date.

MR. SINOTO: . . . *(Inaudible)* . . .

CHAIR MOLINA: Mr. Sinoto and Member Anderson, just for clarification you're referring to a letter dated August . . .

MR. SINOTO: Thirty-first.

CHAIR MOLINA: Thirty-first 2006?

COUNCILMEMBER ANDERSON: Well.

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CHAIR MOLINA: Staff, Staff, do you know offhand which binder that letter is located in . . .(inaudible). . . ?

COUNCILMEMBER ANDERSON: Let me help you out, Mr. Chairman.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: I had asked back in. . .

CHAIR MOLINA: So the Members can follow along.

COUNCILMEMBER ANDERSON: Yeah, well, they're not going to follow along with this 'cause it's, it's attached to a letter that we received back, last year I asked about all this and we . . . I, I asked for a correspondence from State Historic and the archaeologist for Wailea 670, so I could see what . . . (end of tape, start 1B) . . . where they were at. And so on August 16, 2006, we got a packet of letters from Mr. Jencks outlining the various letters and they're all attached. And I'm sorry, Members, if I didn't have time to make copies of all this either, but if Members would like to take a break and find it in their binders. It's, all the letters are attached in one packet here so.

CHAIR MOLINA: Okay. Members, let's take a short recess subject to the call of the Chair.

COUNCILMEMBER ANDERSON: August 16, '06.

CHAIR MOLINA: August 16, 2006. Meeting in recess. . . .(gavel). . .

RECESS: 2:06 p.m.

RECONVENE: 2:12 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of July 25, 2007 is now back in session. It is 12 minutes after the hour of two o'clock, Friday, August 10th. Members, we last left off on a discussion on Condition No. 13 and Member Anderson had some documents passed out to you as well as we did receive a document from the archaeologist to clarify or I, I presume to make clarifications on the proposed condition. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I'd just like to briefly go over what I handed out to the Members. I did provide you with a synopsis, Members, of the legal authority and justification for the Council to impose conditions on a Change in Zoning for the protection of historic properties. In our application for a Change in Zoning, it states that all applications shall provide a preservation mitigation plan, which has been reviewed and approved by the Department of Land and Natural Resources and the Office of Hawaiian Aff. . . , Affairs. We know that there are significant historic properties present; and so, therefore, a preservation mitigation plan is required.

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Chapter 6E, Historic Preservation, requires review and comment prior to land use change. Also, an acceptable preservation mitigation plan prior to land use entitlement would allow future development plans to be formulated to avoid preserved areas.

Chapter 6E-42 HRS says, review of proposed projects before any agency or officer of the State or its political subdivisions, which is us, approves any project involving land use change, subdivision, or other entitlement or use, which may affect historic property, the agency or office-I'm, I'm skipping words people. You can follow me but I'm only reading the salient ones for us. Land use change or other entitlement for use, which may affect historic property, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment.

Additionally, the implementing regulations for this review legally define how the statutory requirement must be met through a systematic public review process. For historic sites that have been found to be significant, this would include a preservation mitigation plan.

So, under HRS 24 . . . 284-1 and that is the first section, Members, that I handed out to you of the Administrative Rules. I've only copied, you know, various, various portions because the Administrative Rules are like, you know, two inches thick. But following along in the synopsis, it does tell you what the purpose of, of the, of the historic preservation process is. And it's to promote and use. It's to promote and use. The purpose of the chap..., of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of Hawaii by articulating a historic preservation review, review process for projects requiring the approval of a State or County agency for a permit, license, land use change, subdivision, other entitlement.

I'd like you to know that under Section 13-242-2 of the Administrative Rules, for the purpose of this Administrative Rule, Rule, "agency" is defined as any State or County governmental entity, which in the case of a Change in Zoning, is the County Council.

But the Legislative intent of the Historic Preservation Program is clearly delineated in the opening section of Chapter 6E HRS. The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The Legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The Legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens.

So, you know, if we want to follow the letter of the law and really fulfill its purpose and intent as the decision-makers, prior to decision-making, in order to give us the option to impose any conditions that we deem necessary to fulfill this public policy, we need to have a finalized and

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approved preservation mitigation plan as it is called out for in our Change in Zoning application, Mr. Chairman.

I'd also like to draw to your attention, Members, that Chapter 6E also provides the County Council with the legislative authority to impose special conditions or restrictions on a Change in Zoning request to protect, preserve, and enhance historic properties.

Under 6E-15, regulations, special condi..., conditions or restriction, restrictions, it states in addition to any power or authority of a political subdivision to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any political subdivision may provide by regulations, special conditions, or restrictions for the prot..., protection, enhancement, preservation, and use of historic properties or burial sites. These regulations, special conditions, and restrictions may include appropriate and reasonable control for the use or appearance of adjacent or associated private property within the public view, or both, historic easements, preventing deterioration by willful neglect, permitting the modification of local health and building code provisions, and transferring development rights.

So, I, I wanted the Members to see this because and then I, I go on to, to add, Members, to support our legislative authority that in our Community Plan and mind you we're also suppose to be . . . we're, we're, we're required by law actually to find that this Change in app..., Zoning application is consistent with the policies and objectives in our Comm..., Community Plan.

So, what, what I'm bringing forward under the State Statute and its Administrative Rules is also supported by the policy objectives in our Community Plan. It, it states that prior to any development approvals in this area, comments of the State Historic Preservation Division and the County Cultural Resource Commission shall be sought. The policies and objectives state that we need to identify, preserve and protect, and restore significant historical and cultural sites. That's as far as I'm going to go, Mr. Chairman. Members can read the rest of it, but the reason I did this is 'cause I think it's very important for us to understand the mandate that the State gives us because we in the past have never implemented the mandate--

CHAIR MOLINA: All right.

COUNCILMEMBER ANDERSON: --underneath, underneath our authority.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Because what happens is what's happening today.

CHAIR MOLINA: Okay. Member Anderson, do you have any more questions for Mr. Sinoto before we move on?

COUNCILMEMBER ANDERSON: Yes, I do have questions.

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CHAIR MOLINA: Okay, 'cause we going to at 2:30, we're going to move on to discuss the other conditions so if you could continue with your line of questioning for Mr. Sinoto.

COUNCILMEMBER ANDERSON: Well, Mr. Sinoto, let's just cut to the chase then. Have you received an approved review of the inventory survey for the Wailea 670 project from State Historic or OHA?

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: I haven't to date received an approval in writing.

COUNCILMEMBER ANDERSON: Well then that means you don't have an approval.

MR. SINOTO: But I will very soon.

COUNCILMEMBER ANDERSON: You know, Mr. Sinoto, please excuse me if I have a hard time swallowing that because last year in July of '06, I asked you where you were in regards to a mitigation preservation plan. And you said, I quote, "actually the implementation of the work that'll be discussed in the plan should be done within four or five months." And I said, "you mean implementing the plan?" And you said, "yes." And I said, "but before you implement the plan you have to have it approved by State Historic." You said, "yes, right." And I said, "so when are you going to do that?" You said, "well, we plan to get that in fairly soon so they can give us the approval and then we'll proceed with the field work."

So, you know, that's been a year and you haven't even done the inventory survey and gotten that approved so you can even go to the next step, which is determining the significance of what sites have been found and which of those sites will be saved in situs in other words in place. And then from that point, you do the preservation mitigation plan, which we're supposed to have in our application for the Change in Zoning.

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: According to the rules that you just read, I think, the portion that you read are the general rules that discuss the philosophy behind the rules and the responsibility of government. However, if you specifically look at the inventory survey rules, it states that what's required at the close of the inventory level is a preservation mitigation commitment. It doesn't require the completion of a plan at that stage, which where we are . . . which is where we are at right now. And in terms of a commitment, I think we've shown that by submitting to you, exclusively to this body, a draft preservation plan . . . after you asked for it last year.

COUNCILMEMBER ANDERSON: But, you know, Mr. Sinoto, whatever you submit to us means nothing if it's submitted outside the review process.

MR. SINOTO: Exactly.

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COUNCILMEMBER ANDERSON: So, until you finish the inventory survey as requested by State Historic, you give them the revision that they asked for and, you know, everything they're asking you to do in their review letters, Mr. Sinoto, are things that are already spelled out in the Administrative Rules. You know, these are things that you should have done. So, they're asking you to follow the letter of the law.

MR. SINOTO: Yeah, and what, what I'm saying is we've done that. Now, we just have to work towards having it documented through historic sites, you know, in view of all the personnel changes recently. I, myself, had a meeting with them this morning at the Maui office because the Oahu office they don't have all the correspondence for Maui projects anymore since the, their Maui assistant left. They sent everything to the Maui office and that's probably the reason they couldn't find that document that you were looking for, for your . . .

COUNCILMEMBER ANDERSON: Well, I called the Maui office also, Mr. Sinoto, and I asked them to forward whatever documents they've received since the July '02 letter or the January '02 letter, and I received nothing. So, if you've got any review letters. I mean, you're here, let's see 'em.

MR. SINOTO: I haven't received any review letters. What I'm saying is, you know, the completion of this type of work is a work-in-progress. We discuss things back-and-forth and we were in the process of closing up that discussion and finishing everything to their satisfaction at which point their principal archaeologist for the Maui office left. And so, my agreement with the staffers that are there now, namely Mr. Hinano Rodrigues and Jenny Pickett, is I'll be taking them out on a site visit so they can be familiar with the sites, which they weren't because they weren't in charge of this project. Someone else was.

COUNCILMEMBER ANDERSON: Mr. Sinoto, the last review letter was January '02. Their final statement to you in that letter was we await the revisions to draft two. That has been five years, five-and-a-half years, and we have nothing since then. And the fact that Melissa Kirkendall resigned last month should have nothing to do with the fact that you have not finished the inventory survey in five years.

MR. SINOTO: We have. We did finish it. We addressed all of these things. The only thing we haven't done is to produce another bound report because what happens when we address these comments is we turn in either pagination changes or things that address their comments, and they'll take another look at it, and then they'll give us a go ahead to produce the final report. So, we've never produced the final report because we were almost at that stage but we never got there. So, what I'm saying is . . .

COUNCILMEMBER ANDERSON: When was the last time you submitted something to them?

MR. SINOTO: The last time I submitted was --

COUNCILMEMBER ANDERSON: Regarding the inventory.

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MR. SINOTO: --I'd say October '03 --

COUNCILMEMBER ANDERSON: Well then, we should have. . .

MR. SINOTO: --which was the GPS location maps.

COUNCILMEMBER ANDERSON: Well then if, if you completed the inventory survey and the request that they asked in January of '02, we would have an approval letter on file and there is no such approval letter. OHA has not seen anything 'cause I spoke with them myself yesterday. So--

MR. SINOTO: May I?

COUNCILMEMBER ANDERSON: --I mean, you gotta follow the process. You can't just tell us you've done things without substantiating it with documentation from State Historic. That is the legal process.

CHAIR MOLINA: Mr. Sinoto, you can conclude. The Chair is going to wrap it up this line of questioning between yourself and Member Anderson. The Chair is going to ask you one general question after you make your response.

MR. SINOTO: The, the regulation that you read regarding OHA review of a inventory survey, I believe, actually is included in the regulation for EA or EIS review by OHA. Generally, inventory survey reports are not directly reviewed by OHA.

COUNCILMEMBER ANDERSON: Well. . .

MR. SINOTO: State Historic Preservation Division will review it for content and substance and for proper form and then they give a pub..., the public a review period. And that's when the review period changed from 30 days to 45 days before . . . because it included the 30-day public review period.

CHAIR MOLINA: Okay.

MR. SINOTO: And within the public period --

CHAIR MOLINA: Mr. Sinoto?

MR. SINOTO: --OHA can review the report.

CHAIR MOLINA: Mr. Sinoto, thank you.

MR. SINOTO: Yes.

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CHAIR MOLINA: I think you've responded.

COUNCILMEMBER ANDERSON: One last question, Mr. Chair.

CHAIR MOLINA: No, no, the Chair has, will reserve the right for one last question. Mr. Sinoto, I'm just curious about your company. How long have you been doing this type of work? And I just want to know. So, because the applicant has hired you to do this kind of work I do and I think the public would like to know a little something about your background.

MR. SINOTO: Certainly. I started doing contract archaeology through the Bishop Museum and I've worked there . . . I worked at Bishop Museum for 21 years and in 1991, in September, I left and formed my own company. So, as a self-employed consultant, I've been doing this line of business now for 16 years.

CHAIR MOLINA: Okay. And Mr. Sinoto, the Chair will make a request . . . I think you already, when you mentioned you had spoken to officials at the Maui office. . .

MR. SINOTO: Yes.

CHAIR MOLINA: . . .you mentioned Hinano Rodrigues, Jenny Pickett.

MR. SINOTO: Yes.

CHAIR MOLINA: And, I believe, at the later point in time I'm going to ask, Member Anderson, to provide names of the individuals you spoke to at the Honolulu office. So, Members, we're going to move on and discuss the other conditions, but we're going to take a short recess.

COUNCILMEMBER ANDERSON: We're not, Chair . . .

CHAIR MOLINA: Meeting in recess until 2:40. . . .(*gavel*). . .

RECESS: 2:30 p.m.

RECONVENE: 2:45 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of July 25, 2007 is now back in session. It is 2:45, August 10th, Friday. And, Members, we are now moving on to discuss the other conditions, namely, Condition No. 11. But before we do that, the Chair recognizes the presence of Chairman Hokama to our proceedings today.

Staff, if you could go ahead and read out the Planning Commission's recommended condition and then we'll have you read out the, I guess, revised condition as suggested by the Planning Department after. So, we are now on No. 11. It has to do with the Little League Field or proposed Little League Field I should say. Staff.

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MS. NAKATA: Planning Commission Condition No. 11, in lieu of the dedication of a Little League field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit "B", Condition No. 8, the estimated cost of constructing the Little League field \$3,470,000-\$3,470,332 shall be paid to the County of Maui prior to completion of the first development within Kihei-Makena Project District 9 (Wailea 670) for the development of parks and park facilities in the Kihei Regional Park. Said amount shall be credited against future park assessments.

CHAIR MOLINA: Okay. Staff, can you read the, the revised condition from the Planning Department?

MS. NAKATA: "In lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit "B", Condition No. 8, and based on current construction cost estimates for the Little League Field, approximately \$5 million shall be paid to the County upon Phase II project district approval for the development of the South Maui Community Park."

CHAIR MOLINA: Okay, thank you, Staff. And for the Members' information, the . . . in the revised condition as proposed by the Department of Planning the word "field" was bracketed, I guess, and, and replaced with the word "Field" with a capital "F" and underscored. And then, what else? We had, the words 'the estimated cost of constructing the Little League field \$3,470,332' that was bracketed out and replaced with the underscored as read by Ms. Nakata. And the words "of Maui prior to completion of the first development within Kihei-Makena Projection District 9 (Wailea 670) for the development of parks and park facilities in the Kihei Regional Park. Said amount shall be credited against future park assessments." Those words were bracketed out and replaced with the underscored as read by Staff.

So, with that being said, the Chair would like to recognize Deputy Director Suyama to please give us her comments as it relates to proposed Condition No. 11. And we also have Mr. Matsui from the Parks Department who is available here to respond to any questions as it relates to the conditions. Deputy Director.

MS. SUYAMA: We recommended the changes to the proposed condition. One, we included the current construct..., construction cost estimates because as you can see from when the permit was first reviewed by the Planning Commission the estimated cost has increased to \$5 million. So, we're saying that with that language it will accommodate increases in construction cost, you know, depending on when the money is received by the County of Maui.

We also changed the . . . when the money was going to be received to upon Phase II project district approval. So, once they got Phase II project district approval, which means that they're going to go into, you know, the individual sites for construction of the development that they will pay the money to the County of Maui, so that we can start development or continue the development of the South Maui Community Park. In this way, hopefully, by the time the first

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residents are occupied substantially the South Maui Community Park would have been constructed to accommodate the increased population.

CHAIR MOLINA: Okay. Thank you, Madam Director. And before we, we open the floor up for questionings of the Director as well as Mr. Matsui from the Parks Department, the Chair would like to recognize Member Johnson to our proceedings this afternoon. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. For the Director . . . Deputy. When you say that the completion of the Kihei Community Park, is that Phase I or for all three phases?

MS. SUYAMA: What happens is that once the money is given to the County of Maui, it depends on how much of the, the park has been funded. How much is under construction. And it would be at the discretion of the Department of Parks and Recreation to use that \$5 million for the, for the Community Park.

VICE-CHAIR PONTANILLA: Thank you. Question for Mr. Matsui?

CHAIR MOLINA: Proceed, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: In regards to the phases and the cost for each phase.

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: Right now, we're in design of, of the parks. We're looking at Phase I to include mass grading of the 40-acre site and construction of one, soccer field and one, lighted ball field. That in itself, we're looking at \$13 million. In this year's budget, \$4.8 million was appropriated. With that amount, there's . . . it's not enough to do anything to show for. We, we, we can look at grading but then you would not have a useable field of any sort. If you add in this \$5 million then we can have, you know, we're still looking at the numbers, but we will have a playable field that we could do, we could cut back on some of the other elements so at least we would have one or maybe two fields that we could play with.

VICE-CHAIR PONTANILLA: So, the mass grading that we're looking at, is that for the entire . . . the \$13 million that you, you, you reference, which includes mass grading for 40 acres. The 40-acres goes from the north boundary to the dry streambed or?

MR. MATSUI: That's correct. To the gulch. It's not only mass grading. There's site utilities, water line, irrigation lines, the roadways, parking lots, drainage. We're doing onsite drainage, off-site sewer lines. You know, we're putting a gym there, so, and restrooms, so we need sewer there. So, you know, all of those.

You know, we've, we've . . . the 13 million was so that when . . . if we broke it up, the 13 million was so that when we put it in it would all be there one, at one time, and we could just logically continue on finishing the project. You know now with less money we have to break it up. We

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don't want to do something where, you know, we put one in . . . something in now and then later on have to dig it up because, you know, we're coming in with second phases. So, you know, for lack of the 13 million, you know, it's, it's hard to come . . . build something that's, that we can show for it. And, and the 4.8 is way too little. With the five million, that, that would bring us to 9.8, you know, we're confident we can build something that we can show for.

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

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

COUNCILMEMBER VICTORINO: Yes. Thank you, Mr. Chair. This one is for Ms. Suyama. First of all, when you say, upon Phase II project district approval. What time frame will you be talking in this whole equation? Because he . . . I'm listening to Parks and they're saying one thing and you're saying another. So, I'm trying to put the two and correlate them together.

MS. SUYAMA: Depending on when, if they get their zoning, normally, it means that they go back and they prepare for their Phase II approval, you know, in other words, they provide more documentation for the Maui Planning Commission. So, I would say that reasonably it, you're talking about maybe two years before any kind of approvals would be obtained by the Maui Planning Commission. And, you know, the Maui Planning Commission under Phase II also is subject to the public hearing process. So, it also is subject to a lot of pub..., the public people coming in and testifying and having hearings. So, you have to accommodate that. It may take longer than the one or two years depending on how the process is.

COUNCILMEMBER VICTORINO: Thank you. So, going to you, Mr. Matsui, with that in mind and the phasing that you're talking about, this year's budget we gave you 4.8. This five mil, at, at best case scenario, would be a year or two out wouldn't have any, in, in, in my mind, and you correct me if I'm wrong, wouldn't have any affect in what you're trying to do at this time. And hopefully by next year or the year after, we would've allocated more money to continue this project. Am I correct in saying that?

MR. MATSUI: Sort of. You know, we're looking at if we knew that, that \$5 million was coming two years down the road, we could start on issuing a contract for the 4.8, okay, and going out to bid and constructing it. You know, that would take us two years down the road. You know, by the time we bid it out, advertise, award, you know, we'd be into two years when the five million comes, we'll just continue with another contract to pick off where . . . pick up where the first contract left off. So, you'd have a continual build, built out.

COUNCILMEMBER VICTORINO: Okay. So, if this was to all work on best case scenario on both sides, the timing would be fairly synonymous or, or would be . . . running concurrent with what you're, what you're planning?

MR. MATSUI: Yes, it could.

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COUNCILMEMBER VICTORINO: Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Before the Chair recognizes Member Johnson to be followed by Mr. Hokama, please keep the festivities down. I know some of you are having some conversations, but out of courtesy for those asking the questions, please keep it down. Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, this would probably be for Colleen. Because we have no assurance, you know, it's up to the developer when they choose to go through for Phase II approval. That's correct?

MS. SUYAMA: That's correct.

COUNCILMEMBER JOHNSON: Okay. So, have you ever seen other projects where they've gotten the zoning entitlement but for whatever reason, you know, economics, it . . . they just have not sought Phase II approval? They've sat on it for a while.

MS. SUYAMA: There, there's been a number of projects that haven't come in immediately after getting Phase I approval. The original Wailea 670 had gotten Project District Phase I approval several years ago and it was never, it was never . . . they, they went, they went through only a portion of the Project District Phase II approval and then it stopped. It never went further than that.

And in case, in certain cases like Maui Lani they had the Phase I approval, but because of conditions that required them not to develop over a certain amount of years, they never came in for Phase II until later in, in the process. So, there's no guarantee that any applicant is going to come out immediately after getting their . . . (*end of tape, start 2A*) . . . back to the Planning Commission and initiate the Phase II process. That's an open end. It's, it's at the discretion of the developer.

COUNCILMEMBER JOHNSON: So, so, if I understand you correctly, it's basically, you know, under their control and there's nothing that the County can do about it. If we're ready to proceed with the park as Mr. Matsui has outlined and the timeline, if the developer, and I know that market conditions are changing, finance is changing. On the mainland a lot of the banking really, I guess, dramatically affecting what is and what is not moving forward for construction. That could just never be received?

MS. SUYAMA: It could not, it, yeah, based upon the way the condition is written it would not be received by the County until they obtain the Phase II approval. Another option that you can consider, you know, with, with the concurrence of the developer is whether upon Phase I approval, which is the Change in Zoning, if they would be willing at that time to dedicate the, the monies for the Community Park, and that's something you may want to pose to the developer.

COUNCILMEMBER JOHNSON: Yeah, thank you very much because that was going to be my next question. I, Mr. Chair, I think that it's something that I would really like to find out because right

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now we're looking at the dollars that are today's dollars. As we know, the park assessment formula changes, the construction costs are sometimes dramatically over what we anticipate. So, I would really like to know if that's something that we could do because at least that way we would be assured that the money hopefully would be there if Mr. Matsui would need that capital. Thank you.

CHAIR MOLINA: Okay. The Chair will make note of that, Member Johnson. Thank you. Member Hokama?

COUNCILMEMBER HOKAMA: Chairman, that was one of the things I was just going to say maybe 30 days upon zoning, if, if it does make it to that stage, within 30 days they would pay the money upfront as, as one, one condition for this Committee to consider. I know in reading the proposal it says, "approximately". So, why are we using this word "approximately"?

CHAIR MOLINA: Director or Mr. Matsui?

MS. SUYAMA: My understanding is that was the approximate cost, you know, that they had estimated. I guess, it's, you know because . . .

COUNCILMEMBER HOKAMA: It could be more.

MS. SUYAMA: It could be more.

COUNCILMEMBER HOKAMA: Okay. That's what I want to know. And the draft language your Department is proposing is to have this condition nullified, Condition 8 in the existing Ordinance 2171. That, that's correct?

MS. SUYAMA: Right. It's to Condition No. 8 in the original Ordinance is that they were required to construct a Little League Field, which has never been constructed. And, and that's because the golf course was never constructed.

COUNCILMEMBER HOKAMA: Well, that's still a questionable permitted use, yeah? So from '92 to 2007, we believe that the inflation impact went from 3.47 million to approximately \$5 million. Is that how it's arrived at?

MS. SUYAMA: No. When the three, the \$3,470,000 was the estimated cost when this came before the Maui Planning Commission--this project. At that time, that was the estimated cost if they had to go out on that, in 2001 to build the Little League Field that would have been the cost of the Little League Field. So, you can see within the years the val..., the, the projected cost has increased.

COUNCILMEMBER HOKAMA: So, the . . . okay, so just as, so our, for this Committee's accurate understanding, the '92 condition had no number?

MS. SUYAMA: That's correct.

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COUNCILMEMBER HOKAMA: The 2001 Planning Commission plugged in the 3.47 million.

MS. SUYAMA: Right.

COUNCILMEMBER HOKAMA: And then you have updated it whereby in 2007 purchasing or construction ability it's about \$5 million?

MS. SUYAMA: Right. Through the discussions at the Council level, it was estimated that the . . . to construct the Little League Park would cost approximately \$5 million.

COUNCILMEMBER HOKAMA: Okay. You used the two-year timetable as I guess a reasonable time for Phase II to come in for rev..., app..., application and review?

MS. SUYAMA: I, I would estimate that it's normally about a year that they would come in for, submit the application to the Department. And it's reasonable to say that it would be at least another year before any kind of action would be taken by the Maui Planning Commission.

COUNCILMEMBER HOKAMA: Okay. So, you considered two years a reasonable timeframe, Deputy Director?

MS. SUYAMA: Right, for a project of this scale. Yes.

COUNCILMEMBER HOKAMA: So, in regard to the comments we're given for this condition, should we consider, Chairman, if, if you would allow me this follow up, please?

CHAIR MOLINA: Proceed, Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you for your consideration. You know, we, in part of the existing Code, we have this use it or lose it in five years regarding zoning. So, maybe we should consider a two-year, use it or lose it. You don't come in for . . . within two years for Phase II you lose zoning. Just . . . I'm being, I'm . . . we're being informed that within one year it's a reasonable timeframe and another year for approval. If they don't come in two years the zoning reverts back to original status. Is that reasonable, unreasonable?

CHAIR MOLINA: Department?

MS. SUYAMA: That's for the Council to decide. The Land Use Commission when they give District Boundary Amen..., Amendments, they have a provision in their rules that if you don't develop your project within the five years, the Land Use Commission can go back and through a process, revert the re-districting back to its original use. I'm not sure how that would affect in terms of a County zoning that's approved by legislation whether you can do an automatic rescission of the, the zoning designation. That's something that I think the Corporation Counsel would have to address.

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COUNCILMEMBER HOKAMA: And, and, Corporation Counsel, you are aware that in the current Code, we have a five-year trigger to revert zoning back?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Yes, I am. In fact, I believe there is a provision about reversion back to the original zoning. If I could look that up here it's in the Conditional Zoning Section. It does say in Subsection (F) of 19.510.050 that failure to fulfill any conditions on a zone change within the specified time limitations may be grounds for the enactment of ordinances to restore the zoning to the previous zoning district or initiate a claim on the bond. So, I think, much in the, in the . . . similar to what Deputy Director Suyama stated for the Land Use Committee's or Land Use Commission's procedure that it would be a legislative act. But, yes, that's based on the, the failure to fulfill the conditions within either the five-year period or the specified time period.

COUNCILMEMBER HOKAMA: Mr. Hopper, thank you for those verbal comments regarding that section of the Code. So, for, Mr. Matsui, this is something the Department has calculated that would satisfy the park assessment portion or this is totally independent of what the park assessment would be from the project?

MR. MATSUI: Yeah, it does not include the park assessment. The park assessment is a totally different. . .

COUNCILMEMBER HOKAMA: Would be in addition to?

MR. MATSUI: In addition to, yes.

COUNCILMEMBER HOKAMA: So, this is like in a sense a good will gesture or a, I guess, we could consider it a philanthropic donation for the improvement of recreational facilities in South Maui?

MR. MATSUI: No. The former developer . . . that was a condition of their zoning that they provide a Little League Field within the development. And now they're coming in, they're proposing to give a cash equivalent for the land and the field, and we build it somewhere else. And, and we agree on that.

COUNCILMEMBER HOKAMA: Okay. So, this is to fulfill a current condition on the existing zoning?

MR. MATSUI: Right.

COUNCILMEMBER HOKAMA: Then we should be paid now then. It's an existing condition. How many years? Has five years gone by since that original zoning?

MS. SUYAMA: The original zoning was in 1992, so more than five years has gone by.

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COUNCILMEMBER HOKAMA: And we still are waiting for fulfillment of conditions of zoning?

MR. MATSUI: Well, the original condition was to actually build it. So, when they would come in and start their development that's when they would build it. You know, they're not building it now. They're proposing a different scenario and, and we agree with their concept of moving the field from the 670 development to a more centralized location in Kihei.

COUNCILMEMBER HOKAMA: Well, then, I think this Committee should consider prior to second and final reading, Mr. Chairman, this is something already owed the County. Thank you for my opportunity, Chairman.

CHAIR MOLINA: Thank you, Member Hokama. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I happen to have a copy of the Unilateral Agreement that was filed on the 1992 zoning. And, just so Members are aware, and, Mr. Hokama, you might be interested in knowing that your father voted yes on this.

COUNCILMEMBER HOKAMA: I know that.

COUNCILMEMBER ANDERSON: The condition reads that on or before the completion of the golf course, and this zoning, Members, was for two golf courses and a six-acre park, including a golf clubhouse. One course for public play, well, actually, both courses were for public play but one was for kamaaina rates and residential use. And it says that on or before the completion of the golf courses the applicant shall complete the construction of a Little League Field, including the installation of fences, a backstop, and bleachers, regulation scoreboard, scorers booth, grassed and irrigated field, and restroom facilities to be located on that certain 6.184 acre parcel known as Project District Zoning, Lot 3, being a portion of, being a portion of Royal Patent Grant 548 to J.Y. Kanehoa situated at Paeahu, Palauea, Keauhou, Maui, Hawaii. The said Little League Field shall be open for play upon completion of the golf courses and the said 6.1 acre par..., parcel shall be donated to the County of Maui.

So, that condition was also forwarded with the State Land Use Commission's DBA. They made it as a condition. All of these conditions actually that were imposed in the first Change in Zoning in 1992 were also incorporated into the Land Use Commission's District Boundary or Decision and Order for the Petition of a District Boundary Amendment. And the applicant has since gone back to the Land Use Commission and asked them to take out the condition to develop the two golf courses, one with kamaaina rates, and to take out the condition for the Little League Field.

So, my question, Mr. Chairman, to Mr. Matsui, and I brought this up before, you know, you know, the County went to the State Land Use Commission and supported this change. And I know as things change and Administration's change there's different ideas on how to do things. But I think that the Administration is obligated to support what the County Council enacts. This is a law. And I have a little bit of a problem with this because we don't have enough Little League Fields right now. South Maui is the only district where the Little League . . . Little

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League teams have to, and the kids have to do this before and after play, they have to go out and move the fences, portable fences to make their field, and, and that's because there is not enough playing fields in South Maui.

So, my concern, and I guess, I'll start just by asking Mr. Matsui this \$5 million how much of that goes towards the value of the land and is it six acres or is it . . . how much land is involved in, in that \$5 million valuation?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: The \$5 million was proposed by the developer. Those are not my numbers, but from what I know about construction cost, you know, you're talking about depends on the site and the terrain, you know, all of that other stuff. You're talking \$2-to-3 million for construction.

COUNCILMEMBER ANDERSON: Of, of the field?

MR. MATSUI: Of the field. Yes. And. . .

COUNCILMEMBER ANDERSON: Well . . .

MR. MATSUI: . . .the rest would be the value of the land and, and that depends on how you value the land.

COUNCILMEMBER ANDERSON: So, you must know then how much, I mean, this was suppose to be constructed on a six-acre lot. I'm sure the field isn't all six acres, so how much standard would you have to dedicate for a field?

CHAIR MOLINA: Mr. Matsui?

COUNCILMEMBER ANDERSON: Land wise.

MR. MATSUI: Again, it depends on the terrain and if you're building retaining walls. Six acres is a pretty large area. If, if you just talk about just the field itself --

COUNCILMEMBER ANDERSON: Yeah.

MR. MATSUI: --you're talking like one-and-a-half acres.

COUNCILMEMBER ANDERSON: Okay. So, one-and-a-half acres for a field and then because, Mr. Chair, what my concern is, is that, you know, we're taking a current condition and because they don't want to put a Little League Field down there; they don't even want to do a six-acre park down there, which I think is a mistake. But they're the ones that are proposing not to do this. And so, I just want to make sure that, you know, the decision-makers before us recognized that we needed to support Little League in South Maui and that's why the field was put as a

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condition. Also at the time, the idea was that this is going to be a community for the residents of Maui. And so, most appropriately, we would need a six-acre park and a Little League Field.

Now that has all changed. But I'd like to see some of this money dedicated, if we could get a breakdown of the cost, and I, I want to make sure that some of this money is going to go towards amenities for the Little League Fields because they're, they're underserved now. They were underserved in '92 and they're still underserved. And so, that was the intent of the condition and I think we need to stick with it. I mean, the landowners agreed to it back then and, you know, I'm not going to fight the issue about putting it, you know, in their project now. But I would like to make sure that amenities such as fences, backstops, bleachers, regulation scoreboard, a scorer's booth, you know, and restroom facilities are provided.

And we still don't have any guarantee that we're going to even have, when and if we're going to have a Little League Field at the Regional Park because I've heard various scenarios, and I think the last one I heard was softball field. And does that mean that then the Little Leagues when they want to use it they have to go and truck the fences out and truck 'em back.

So, if we could get a breakdown from the applicant, Mr. Chair, as to what that \$5 million really does represent in, in relationship to the current condition because what they're trying to do is give us money instead of doing this. And so, it should be very clear that the \$5 million pays for this, that, and such.

And then, I'm, I'm wondering, Mr. Matsui, I thought that the first step that you folks intended to take at the Regional Park was to build the gymnasium. Is that still the plan?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: The first phase was included the gymnasium. Okay, but you include the gymnasium, you're adding another \$10 million - \$11 million. So, that we're talking 24 million for first phase. So, you know, we started making Phase 1A, 1B, starting to break up the first phase. And, and, you know, with the money we're, we're getting and the priority is for fields, you know, we're looking at just building the fields first and, and Phase 1B would be the gym.

COUNCILMEMBER ANDERSON: And so when do you intend to start Phase 1? Do . . . are you, are you going to be asking in this next budget for any more money for . . . to start Phase 1?

MR. MATSUI: Well, what . . .

COUNCILMEMBER ANDERSON: Because you didn't ask for any money this last budget. It was the Council that put the money in.

MR. MATSUI: Well, the Department did ask for, you know, and, and we've been upfront all along that, you know, we're talking \$24 million if you want the gym and 13 million for phase, you know,

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for the fields. So, you know, and, and we've made it, you know, it is our Department's priority but the money has not been forthcoming.

COUNCILMEMBER ANDERSON: But you haven't asked for it. That's what I'm asking you. Does the Department or the Administration have any plans to ask for money to get Phase 1 up and going?

MR. MATSUI: I can speak for the Department. Okay, I can't speak for the Administration. But the Department, it is our number one priority.

COUNCILMEMBER ANDERSON: And so, you're going to ask for the money necessary to do that?

MR. MATSUI: Yes.

COUNCILMEMBER ANDERSON: In the next budget?

MR. MATSUI: Well, we've been asking for it, you know, in the last three years. We haven't been getting any.

COUNCILMEMBER ANDERSON: How much money do you need, Mr. Matsui, to do Phase 1?

MR. MATSUI: With the gym, 24 million.

COUNCILMEMBER ANDERSON: Without the gym. The gym you said is. . .

MR. MATSUI: Thirteen million.

COUNCILMEMBER ANDERSON: Thirteen million for Phase 1. And Phase 1 would give us what?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: Mass grading, two ball fields, one soccer field, one softball field that's lighted, a lighted soccer field.

COUNCILMEMBER ANDERSON: Thirteen million to grade and give us two ball fields?

MR. MATSUI: The grading is for 40 acres, mass grading. Okay. It would include the grading for the gym, includes sewer lines for the gym, utility lines, electrical, drainage.

COUNCILMEMBER ANDERSON: Why would you do mass grading if, if, you know, you don't know when you're going to be building? Why, why can't you just grade where you're going to put the two fields?

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MR. MATSUI: We know what we're building. Okay. You're talking about a sloped area, cutting and filling. Okay. It makes economical sense to mass grade the entire site. Okay. If we start just building one field here, one field there, as we start moving along, you know, you might be short on fill. You're going to have to import fill. You might have too much fill. You going to take it out.

COUNCILMEMBER ANDERSON: I see.

MR. MATSUI: If you do it all one time, you'll, you'll just balance it out. Make sense.

COUNCILMEMBER ANDERSON: Okay. So, are you going to be asking for . . . well you've already got four. So, you're going to need like \$8- or \$9 million in this next budget to start Phase 1. And, you know, I hope you're not waiting for park assessment money to build the Regional Park in South Maui. We are the only district without a Regional Park. We are currently deficit 200 acres in park space in South Maui according to the current assessment that was done for the General Plan update. So, we are already way behind and, you know, many of the other parks, the Regional Parks, were done with bond money. So, you know, I think you could probably get bond money from the Council if the Department was behind doing this, and made a commitment to do it, and asked for it. So, is that something that you're going to be requesting?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: In the budgetary process, each Department submits their request. The Administration looks through it and submits a budget. They'll cut some projects and leave some. It depends on their overall fiscal situation and that's what happens. So, we don't . . . the Parks Department does not have the final say.

COUNCILMEMBER ANDERSON: Oh, I understand that. I'm just asking if you're . . .

MR. MATSUI: Okay. So, we are supportive, you know, we do want the field.

COUNCILMEMBER ANDERSON: I'm just asking if you're going to be requesting it.

MR. MATSUI: The Parks Department will be requesting.

COUNCILMEMBER ANDERSON: Okay. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: Members, any other questions related to Condition No. 11. Member Baisa --

COUNCILMEMBER MATEO: Chairman.

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CHAIR MOLINA: --followed by Member Mateo.

COUNCILMEMBER BAISA: Thank you, Mem..., Mr. Chair. I just wanted to mention something because I think it's really important that people that send us testimony are assured that we read it, then we pay attention to it.

In regards to the Regional Park, I got a very poignant email from a mother who was totally in support of the Regional Park, but she wanted us to keep in mind that as we build the affordable housing that she wanted some kind of recre..., recreational areas closer to those homes because she said, you know, not all of us will have access to the park. It won't be close enough. That means we'll have to drive to it. And we'd really like a place where our kids can have maybe a basketball hoop or a place to, you know, kind of run around outside. So, she says when you get to the housing part would you please remember that we'd like some little pocket park kind of stuff built into and that we don't only want to depend on this big park because we need a place for our kids to play. I just thought I'd mention it for the record.

CHAIR MOLINA: Okay. Thank you for your comments, Member Baisa. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Matsui, just to follow up on the original question that Mr. Pontanilla had asked regarding the cost. Phase 1A and 1B combined, you're referencing in the area of \$24 million for both phases?

MR. MATSUI: That's correct.

COUNCILMEMBER MATEO: Yeah. And both phases will, you know, because we're, we're looking at a total 40 acres, this \$24 million will take care of the initial fields, which is Phase 1A, the ball fields, and Phase B is the gymnasium. So, we're looking at about, of the 40 acres, we're looking at about half that acreage being consumed with Phase 1 and, 1A and 1B?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: We're doing the mass grading for the entire 40 acre site.

COUNCILMEMBER MATEO: Forty acres. Okay.

MR. MATSUI: The ultimate build out is three soccer fields, three ball fields, and a gym.

COUNCILMEMBER MATEO: And that \$24 million price tag that is based on today's cost, yesterday's cost, or how are you going to project it because the longer we sit on this, the more costly it becomes? So, what is indicative of 24 million?

MR. MATSUI: That was based on the cost, I think, the last estimate was, I think, January, February of this year.

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COUNCILMEMBER MATEO: This year.

MR. MATSUI: Yeah, so, it's like six months ago.

COUNCILMEMBER MATEO: So, when we actually, you, you know, should the, you know, should the project move forward, and we're ready to initiate the plans, we're already looking at another year or so down the road. So, how are, how are we going to account for this? Because, you know, I don't know how to say it without being really rude but the Parks Department does . . . has been kinda, has had difficulty in major projects because you guys never really had a major project in a long period of time. So, something as extensive as this in terms of being sure that monies are available to complete the project requirements. I'm just . . . yeah, I don't know if it would be fair to say the Department should initiate it because County initiated projects obviously get stuck with a lot of cost overruns because everybody know we the deep pocket versus having the developer do it because they going be charged with that responsibility and want to complete and get this project out of its way. So, could you comment on that rationale?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: You know, our projects are put out for public bid. So, it is competitively bid and it is bid by the general contractors around the County. So, you know, our prices are competitive. As far as cost escalations, you know, every year when we come up for budget we do look at our updated cost and, you know, we get engineers estimates and a lot of it has to do with quantifying past bids that, you know, for water lines, for, you know. So, and, and again, it's an estimate.

COUNCILMEMBER MATEO: Okay. So, the Department is confident that in a bid process you will get the contractors in today's tight market to initiate this, this project—the Regional Park?

MR. MATSUI: Well, if you're saying next year if we bid it out, it'll come out to 13 million, I would say, I'm going to have to look at. You know, it's hard to look in the crystal ball and say, you know, your, your escalate price is 5 percent or whatever percent. You know, it's, you know, it's, you, you kinda got to look at what's happened in the past and, and try and project what's going to happen in the future. How we know it's, you know, it's been going up, and up, and up.

COUNCILMEMBER MATEO: Yeah.

MR. MATSUI: And, and for a lot of our projects, you know, we have been, being under-funded because we've been caught in this cost esca..., escalation kind of situation. You know, hopefully, if construction slows down, you know, the general construction industry we'll get better bids and more competitive bids.

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

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Member Johnson followed by Member Victorino.

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COUNCILMEMBER JOHNSON: And I guess this would be for Corporation Counsel. When we have acquired properties we always get, when we have our appraisals, we have usually different ways of looking at the valuation. One is with the entitlements, without the entitlements, and certain assumptions are made. Because the land and the actual requirement was for the developer to construct the park on a six-acre site, if we look at that value of the six-acre site, how are we going to view it with the entitlements and the zoning approval? Because in order for them to construct, they would have to have zoning approval. Or, how would we come up with an, an appraisal out of the \$5 million for what worth of that land is? . . . *(end of tape, start 2B)* . . .

MR. HOPPER: Compare that to the six-acre park value here?

COUNCILMEMBER JOHNSON: Well, because what had happened originally was they were required, they had a six-acre park, so, if you take the value of the six-acre park, if we had to buy that same six acres somewhere else or you look at what the value of that land was as you know being built on that site, and then you do the cost analysis for what it would actually have cost the developer to construct it on that site. My thought is the \$5 million is both the component of the cost or whatever the worth of the land was, where it was to be built, as well as the construction that was to take place. So, that's why I would like to know if you're looking at \$5 million, what portion of that would be attributable to that value of the land 'cause obviously we're going to have to, you know, and Mr. Matsui says well, I guess it would be in the South Maui Regional Park or where that site is. But I just want to know that if we were given that same six-acres, what would that be worth? And how would we arrive at that?

MR. HOPPER: Well, as I understand your question, you're looking for a way to adequately find the cash equivalent of a six-acre parcel, the one that was originally apparently promised pursuant to the original conditions in zoning. The method of valuation and, and what you're going to base that valuation on whether it's on the construction, the value of the construction of the field itself, or the land and the field as, as well is up to you. And certainly, you can look at asking questions of, you know, Administration as far as the equivalent of what a six-acre park *[sic]* would be, a six-acre parcel would be worth based on the park assessment fees in that area.

But I would say that if you're trying to craft a condition that is equivalent to the original six-acre parcel that you would have discretion in that as far as requiring whether it's \$5 million, if you believe that \$5 million is adequate for a six-acre parcel, or if you wanted to base that on the valuation of the current park assessment rates for, with the park assessment in lieu fee would be for a six-acre parcel. That's, you know, up to your discretion. I could perhaps . . . we could perhaps question the Finance Department about that or, or, or just simply look at the real property tax assessments, which are currently used to value the land for park dedication purposes in that area. But it all depends on what the Council wants out of this condition and how you choose to consider what is an appropriate valuation of that land for the purpose of what it appears that you're trying to do is to draft an equivalent cash contribution that would meet the condition in the original Change in Zoning.

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COUNCILMEMBER JOHNSON: Yes, that, that's true. And Mr. Chair, you know, might I ask because we've had this issue come up before, I know with Montana Beach and Mala, it always seems that they totally ignore real property. You know, whatever the valuation is that we put on it and then they have an appraisal done of what a particular site would be worth. I would just like to know either from . . . I'd like to know from Real Property, and then has an appraisal been done on the original six-acre site or the worth of that. Because for me it is important if that land was worth \$5 million alone then we should be getting that \$5 million plus whatever the cost to construct those amenities on that site would have been. So, that's my reason for asking.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: Thank you, Member Johnson, and that is a good question to ask. Mr. Victorino?

COUNCILMEMBER VICTORINO: Well, I, that was part of my, my question, my line of questioning. The other part of my question would have been, you stated earlier, and I'll, I'll go back to Mr. Matsui, that this five million was separate from the park assessment. This is in addition to the park assessments as we have developed that plan, right?

MR. MATSUI: That's correct.

COUNCILMEMBER VICTORINO: Okay. So, going back to the Regional Park, you said 24 million, just so that I get this correct, to put 1A and 1B together?

MR. MATSUI: Right.

COUNCILMEMBER VICTORINO: Okay. And that would be a gym, one ball field, and one soccer field?

MR. MATSUI: Yes.

COUNCILMEMBER VICTORINO: Okay. The last part for no lack of another term 1C, I guess, would be the last part of the two ball fields and the two soccer fields. Would that be 1C --

MR. MATSUI: Right.

COUNCILMEMBER VICTORINO: --or you 1C, D or whatever? How do you have it planned?

MR. MATSUI: That will be Phase II.

COUNCILMEMBER VICTORINO: Phase II. Okay. We use Phase II just for everybody be on the same page. Phase II, what would be your estimated cost because, I think, the high cost, and I want the public to understand, the tremendous increase or the tremendous cost is because you're

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laying all the infrastructure up front? When you get to the other fields for the ball fields other than lighting, if you put lighting, and the soccer field, would be basically planting grass, getting the field as a playing surface ready and whatever other amenities that need to be for that playing surface. Am I correct in saying that?

MR. MATSUI: Generally, yes. We would build out the rest of the parking.

COUNCILMEMBER VICTORINO: Okay. I cor..., so then. . .

MR. MATSUI: And then another access road. Right now, you know, there's, there's two access points proposed. Phase I would just have one access and then with Phase II you would have one complete loop. So, there's more parking, lighting, irrigation system, restrooms. We're going to add, I think, three more restrooms. There's also some playground equipment, tot lots, then we have one pa..., pavilion with an amphitheater and a restroom.

COUNCILMEMBER VICTORINO: So, that would be all in the second phase of this --

MR. MATSUI: Phase II, right.

COUNCILMEMBER VICTORINO: --Phase II. However, all of the infrastructure would have been in, so you're not incurring that kind of cost --

MR. MATSUI: Right.

COUNCILMEMBER VICTORINO: --you're just doing the amenities at that point?

MR. MATSUI: Right. That's correct.

COUNCILMEMBER VICTORINO: Okay. So, what would your, and just for the public again --

MR. MATSUI: Yeah.

COUNCILMEMBER VICTORINO: --I'll move on, is what is your estimated cost for Phase II?

MR. MATSUI: We're looking at six million.

COUNCILMEMBER VICTORINO: Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino.

VICE-CHAIR PONTANILLA: Chair.

CHAIR MOLINA: Mr. Pontanilla followed by Member Anderson.

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VICE-CHAIR PONTANILLA: Fast question. The site that we're talking about is, is that a District Park or is that the Regional Park? I'm, I'm on the understanding that's a District Park and the other 150 acres above the highway is a Regional Park.

MR. MATSUI: Yeah, that's correct. It's, it's more of a Community Park, District Park. Yes.

VICE-CHAIR PONTANILLA: Thank you.

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

COUNCILMEMBER ANDERSON: Excuse me. So, are you saying that you have not abandoned the 150 acre parcel mauka Piilani for a Regional Park?

CHAIR MOLINA: Mr. Matsui?

COUNCILMEMBER ANDERSON: I keep hearing different stories.

MR. MATSUI: Okay, the Regional Park is 150 acres. The County owns it.

COUNCILMEMBER ANDERSON: Yeah.

MR. MATSUI: We never got funding to develop it. So, you know, it's, it's on our radar screen but, you know, it's not an immediate kind of thing we're looking at funding. Right now, we're focusing on the South Maui Community Park—the 40 acres. And, and there's been talk about using it for different uses.

COUNCILMEMBER ANDERSON: Like a swimming pool?

MR. MATSUI: And there's been talk about moving it. And, and, you know, I'm, I'm not really happy with that site 'cause it's rocky. It's got . . . it's hilly. It's difficult to develop and, and there's no readily available utilities. Just to bring in sewers and water, you know, it's, it's going to cost a lot of money.

COUNCILMEMBER ANDERSON: Well, you know, we were told when the 40-acre site was purchased that the reason, or I don't know if we purchased it or if it was an exchange, but at any rate. We were told that the 150-acre Regional Park site was not feasible because of the terrain just as you said. It would be too expensive to develop. So, I was led to believe that the 40-acre site was going to be the Regional Park and now you're saying it's going to be a Community Park. So, it's kinda confusing.

And the other thing that's confusing is that I'm hearing you say now that there's only going to be two ball fields at this 40-acre park site. Is that correct?

CHAIR MOLINA: Mr. Matsui?

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MR. MATSUI: Phase I would be one ball field and one soccer field. And the ultimate build out is three ball fields, three soccer fields.

COUNCILMEMBER ANDERSON: Okay. That's what I wanted to hear. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And, Mr. Matsui, just a follow up. So, the . . . I guess, the composition of the land that we're talking about or the 40 acres, I guess, the 150 acres, you have a lot of blue rock and, I guess, a lot of hills so the terrain is . . . the topography is very rugged as compared to the, the other property? So, if I could get just clarification on that. So, this property we're talking about now it's a much better area to grade and provide for the --

MR. MATSUI: That's correct. Yeah.

CHAIR MOLINA: --for the Little League Fields?

MR. MATSUI: Plus the off-site, I mean, you know, utilities are there.

CHAIR MOLINA: Uh-huh. And less costly in other words . . .*(inaudible)*. . . ?

MR. MATSUI: Yes.

CHAIR MOLINA: Okay. Thank you. Okay, Members, if there are no other questions for Condition No. 11, we'll come back to that. The Chair would like to call for a short break and we're going to discuss Condition No. 12. Meeting in recess until 3:50. . . .*(gavel)*. . .

RECESS: 3:39 p.m.

RECONVENE: 3:50 p.m.

CHAIR MOLINA: . . .*(gavel)*. . . The recessed Land Use Committee meeting of July 25, 2007 is now back in session. Members, it is 3:50, August 10th, Friday. We have one more condition to discuss. It's been brought to the Chair's attention that two Members will have to leave by four o'clock today, which will leave us a bare quorum. So, please, Members, I beg your indulgence to hang in there and go as far as we can with Condition 12. Before we do that, Members, the Chair is considering a recess date before we lose two of our Members. A recess date of Wednesday, August 15th, at 4:30. Do, Members, do you need a couple of minutes to check your calendars? Okay, we will call for a short recess. Meeting in recess. . . .*(gavel)*. . .

RECESS: 3:51 p.m.

RECONVENE: 3:55 p.m.

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of July 25, 2007 is now back in session. Five minutes to the hour of four o'clock, Friday, August 10th.

Members, we last left off on a brief request or consideration from the Chair regarding a recess date of Wednesday, August 15th, 4:30 p.m. The floor is open for comments from the Members with regards to their availability. We'll start first with Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. Wednesday, this would be following your Land Use Committee meeting.

CHAIR MOLINA: That is correct, Mr. Mateo.

COUNCILMEMBER MATEO: So, I, I will be, I will be available until the cows come home.

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

COUNCILMEMBER ANDERSON: Chair, did you say 4:00 or 4:30?

CHAIR MOLINA: Four-thirty.

COUNCILMEMBER HOKAMA: Four-thirty.

COUNCILMEMBER ANDERSON: Four-thirty. I'm available.

CHAIR MOLINA: Thank you. Member Baisa?

COUNCILMEMBER BAISA: I'm available, Chair.

CHAIR MOLINA: Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: No, not available.

CHAIR MOLINA: Okay, thank you. Mr. Hokama?

COUNCILMEMBER HOKAMA: I'll make myself available to you, Chairman.

CHAIR MOLINA: Thank you, Mr. Hokama. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: I'm available.

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

COUNCILMEMBER VICTORINO: I will rearrange my schedule, so I'll be available for you.

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CHAIR MOLINA: Thank you. And then, we were also informed by Member Medeiros' office that he will be available for that meeting as well. The Chair thanks you very much for that consideration.

Members, before we go on to Condition No. 12, I would like to ask you to take a look at Page 10 of the matrix. Condition No. 19 as proposed by the Planning Commission. Staff, can you read out the condition for the body?

MS. NAKATA: "That WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall execute appropriate agreements with the State of Hawaii and County of Maui agencies regarding participation in improvements of infrastructure and public facilities where such improvements are reasonably related to WCPT/GW Land Associates, LLC's project."

CHAIR MOLINA: Okay. Deputy Director Suyama, do you have any comments as it relates to that condition? It seems somewhat straightforward, but I'd like to ask for your comments, and then the Committee's comments if there is consensus on this proposed condition. Director?

MS. SUYAMA: Because a lot of the conditions deal with participation in either, you know, some kind of improvement sharing, we're saying that these should be executed in agreements with those appropriate agencies. So, it's spelled out what needs to be done by the, by the applicant.

CHAIR MOLINA: Okay. Thank you. Committee Members, comments? Is this, does this have somewhat general consensus or is there a need to add additional language at a later time? Member Anderson?

COUNCILMEMBER ANDERSON: So, I think that, you know, because it is kind of a general statement, you know, we don't know what improvements those are. We don't know what agencies feel there should be improvements to infrastructure and what public facilities. I mean, you know, we have a concurrency requirement in the Community Plan and I, I think we need to know what those, I mean, that's what this is all about, the Change in . . . in Zoning application is suppose to assess what public facilities and infrastructure needs we have that this project's going to generate. And I, I don't like it being so general because then we don't know what that is.

You know, I mean, does that mean they participate in the new Kihei Police Station? Will they be required to help fund . . . currently, we have a condition on this land that says they're suppose to help fund and construct improvements to the Kihei Wastewater Facility. Are they going to do that? The, the State Land Use Comm..., Commission is under the impression that their sewage treatment plant is going to be temporary until they fund and construct the expansion of the Kihei Wastewater Facility. So, I think, that we need to have that spelled out a little clearer as to what exactly --

CHAIR MOLINA: Okay, so . . .

COUNCILMEMBER ANDERSON: --that's going to entail.

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CHAIR MOLINA: All right. So, can we even say we'll leave it in for now and then we'll expect additional language to strengthen it? Is that something the Committee would consider? Mr. Hokama followed by Mr. Pontanilla.

COUNCILMEMBER ANDERSON: Mr. Chair, I wasn't finished. I just could . . . like to finish.

CHAIR MOLINA: All right, finish.

COUNCILMEMBER ANDERSON: If, you know, I think this is something the Planning Department should be doing for us. They should be re-writing this according to what infrastructure concurrency is required for this project. So . . .

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: I mean . . .

CHAIR MOLINA: The Chair will take that under consideration and . . . (*inaudible*) . . .

COUNCILMEMBER ANDERSON: Are we supposed to figure it out?

CHAIR MOLINA: So noted, Member Anderson. Mr. Hokama followed by Mr. Pontanilla.

COUNCILMEMBER HOKAMA: Chairman, if my memory recalls correctly when we did the, some of the proposed conditions for Makena, I think, we were very specific regarding certain phases of completion for Mokulele, and other considerations that were very specific in the conditions. I would say it may be to our benefit to be specific enough so that there's no need to interpret what we really meant we wanted to have done because then it will be trying . . . people trying to read our minds of what we had intended and there's going to be an interpretation battle between attorneys and people that may have no institutional background to make those determinations.

So, I would ask if the Deputy Director from Planning Department, Ms. Suyama, might, might be able to work with your Staff to come up with some specifics 'cause I don't have a problem placing those specific conditions so there's no need to interpret what we expect out of those improvements or participation regarding infrastructure. You know, if we require the full completed build out of Mokulele Highway's improvements prior to building permits and that's what is expected, it will be very clear that's what we would condition the lang . . . , language of the condition to be, Chairman, until full completion of all Mokulele Highway improvements as proposed by the State Department of Transportation in the current multi-phase construction. If that is something we want to support as well as other things regarding some of the recommendations from Mr. Eng, the current written correspondence regarding the location and separation or, or spreading out of potential well sites. I think we might want to be specific so that it has no, negative impact on existing uses, Chairman. I have no problem with being very specific. Thank you, Chairman.

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CHAIR MOLINA: Okay. So noted, Mr. Hokama. The Staff will take . . . the Chair and his Staff will take that under consideration and work with the Department on this proposal, which, you know, at least on the surface seems somewhat broad. But, you know, we have to make sure we cover ourselves to include the appropriate language. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chair. I agree. The only comment that I'd like to make is that, I think, there are some proposals that was given by the developer in regards to cost sharing, and I think that should be items that we need to also take a look at because he made statements in regards to cost sharing for a certain infrastructure. Thank you.

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

COUNCILMEMBER JOHNSON: With regard to the last part of the language too, you know, I know we always try to find a rational nexus if it's reasonably related but there are certain things contained within the Community Plan that if they're not there whether these . . . whether they're related to this development or not related to the development there's certain thresholds that have to be achieved prior to any further development in South Maui.

So, if we could have the assistance of the Planning Department or our Council Services to just look at what the actual requirements are within the Community Plan. I know I put a general statement in as one of my requirements. But, I think, that it really is important that we know what point at which certain components of infrastructure are to be completed prior to any further development in the area. So, I think that's what's going to be helpful because it may not necessarily be related to their development. So, I'm a little bit concerned about that phrase. I understand the reason for it, but there's some stuff that, yeah, maybe they're not the people that are going to be causing all of the impact, but if it's in the Community Plan it doesn't matter whose development is going on. It's got to be done prior to anything moving forward.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Okay, Members, so, we'll take that under consideration and we'll move on to Condition 12. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah. Thank you, Chairman. I, I guess, I'll be passing out at the next meeting for Members or I could do it at this meeting, I have taken out of the Kihei-Makena Community Plan all those policy objectives that I think apply to this project that aren't necessarily being met that have not even really been addressed in the application.

And one of them very clearly states that, sorry, I just had that page, regarding infrastructure that . . . this is under Physical and Social Infrastructure: "Allow no development for which infrastructure may not be available concurrent with the development's impacts." And then it does say that require adequate inter..., inter-regional highway capacity, including the widening of Piilani and Mokulele Highways to four-lanes prior to the construction of major projects, south of Kilohana or mauka of Piilani. And this project certainly qualifies for that.

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We also have a letter from State DOT saying that Piilani will need to be widened. Now, it's re-stripped to four-lanes, but it's not widened to four-lanes. It is a substandard road as we speak and DOT is requiring and I'll just read what they're saying in their August '05 letter. "The recent Piilani widening between Mokulele and Kilohana is only an interim improvement. Honua`ula will need to participate in its fair share of the cost to complete this section of Piilani Highway." I think we need, you know, that's another specific that we need to spell out clearly. And as I said again, concurrent with the develop..., developer's impacts prior to the construction of major projects. That's what the Community Plan says. And, I think, you know, the least we can do is follow our Community Plan.

CHAIR MOLINA: Okay. Thank you, Member Anderson. All right, Members, we shall go back to Condition 12 for a brief discussion and as long as Members can stay. I realize it is . . . you do have some other commitments. So, we'll get right into it.

It relates to Parks and Non-Profit Play. Condition 12, Staff, please read the condition from the Planning Commission and then do a follow up on the, I guess, the adjusted condition as expressed by the Deputy Planning Director.

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

CHAIR MOLINA: Okay, and now, the condition from the Deputy Planning Director.

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

CHAIR MOLINA: Okay. All right. Thank you very much, Staff. And the word "that" was bracketed out from the original Planning Commission condition as well as the words "as represented by WCPT/GW Land Associates, LLC." Deputy Director Suyama, your comments?

MS. SUYAMA: This was in relationship to the rec..., you know, their request to delete Condition No. 6 of the 1992 Ordinance, in which because they were planning two golf courses at that time, one of the courses was suppose to be limited . . . was open to public play. And because they've changed their development plans to now just include one golf course, they had come back and asked that they set the terms that it would be open to non-profit play and they were looking at primarily at the Junior Golf Program. And at the time that, when we reviewed this, that was acceptable to the Department of Parks and Recreation at that time so we supported that decision.

The only other thing that I would, you know, comment on is that there should be a time limit when the agreement is executed. And the agreement should be executed prior to either a

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certificate of occupancy or prior to the opening of the golf course. In other words, the agreement is in place before the golf course, you know, is open for, for public play or for members only play.

CHAIR MOLINA: Okay. Thank you, Deputy Director. Mr. Matsui, do you have any additional comments before the Chair opens the floor for questioning?

MR. MATSUI: We have a draft of the agreement from the developer that the Parks Department has reviewed. We've consulted with Junior Golf and they've agreed on that too. So, if you would like, I could give you the terms of it.

CHAIR MOLINA: Okay. Thank you, Mr. Matsui. Members, the floor is open for questions. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I would say that this, when it was proposed for a mult..., two golf course project that this condition had some merit. I don't see it having merit now that it's only going to be one golf course.

I would say that I would be open within the following parameters: 1) that only tees, greens, and landing zones may be considered for irrigation; 2) I don't have a problem it be a private course, but it must be for public play, open to public play, or they could build it and consider turning it over to the County for it to be a County public course.

But, and I'm tired of restricting our people where they cannot go. If you want to do business in this County, we are changing our direction and we're going to start building. As Mr. Mateo said, who are we building homes for or who are we going to build our amenities for. It's got to be for the res..., island resident first or it doesn't need to be, Chair. And I think it is something that we need to start making adjustments. If we're going to believe in sustainability, Mr. Chairman, if we're going to reduce the dependency of luxury housing development and visitor industry, then we're going to need to start making these small adjustments from now on. And I think this is a small step in the right direction of how we're going to change our economy toward more of how we're going to keep our uniqueness as best we can as to provide the needs of the island resident on the island. So, if we're going to keep building for those that are, are not here, even recreational facilities, then I would say this is something that shouldn't go forward. Thank you, Chairman.

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. I'm in complete agreement. I just want Members to know that the current condition says that the applicant make available to Hawaii residents 50 percent of the tee times on one of the two golf courses and charge such Hawaii residents green fees, including golf cart rental fees in an amount not to exceed 50 percent of the green fee rates, including golf cart rental fees charged to non-Hawaii residents. In other words, non-Hawaii residents pay the market rate and kamaaina pays 50 percent of that.

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And I know that they, they, you know, went about trying to get this non-profit play in Junior Golf situation as a way to appease us to allow them to have a private course and not have it for public play. But, you know, if they want to include that as part of the 50 percent tee times for Hawaii residents that's good too. But I think we need to stay with the language that's currently here that calls for 50 percent of the tee times for our residents. And, and I'm totally in agreement with Mr. Hokama. I mean, who are we developing Maui for? For second and third homebuyers that want a private course so they can have their tee times whenever they want and not have to mix with the local population. . . . *(end of tape, start 3A)* . . . That's no way to develop a community, Mr. Chairman. That is segregation and I think we have enough separation in our community right now. And so, I cannot support this condition. I cannot support a private golf course for this project.

CHAIR MOLINA: Thank you, Member Anderson. Members, any objections to the Chair calling the applicant up to express comments at this point?

COUNCIL MEMBERS: No objections.

COUNCILMEMBER BAISA: No, I was just going to ask. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Mr. Jencks. The Chair is somewhat on the fence with golf courses. You know, I guess, today, it's, it's a nice amenity to have, but again, we have to look at what is our priorities here in the community and whether, if, if, it is, this body decides to even allow a golf course then who is the golf course going to be built for.

Mr. Jencks, could I get your comments? You've heard some of the comments from the Members as it relates to the proposed golf course?

MR. JENCKS: Certainly. Sure, I'd be happy to comment. I, I think it's important to go back and think about where this plan came from. It started out years ago. I was the . . . I was, I think, the Deputy Director of Public Works when the ownership at the time came in and did zoning for two golf courses, which is the base application we're dealing with today that we're changing 402 acres of golf course. There were two golf courses and a clubhouse facility and also the Little League facility we talked about earlier was part of that zoning approval.

We've taken this plan and, and, and, and as a part of a Community Plan Amendment, there was also the, the idea that they would, they would overlay on top of two golf courses, 2,600 dwelling units, resorts, lodges, et cetera, et cetera, et cetera, the minimus amount of Open Space, commercial areas. What we've done is we've taken that plan over time and brought that plan down to what we think is responsive to what the community wants—1,400 dwelling units. We have a 50 percent affordable housing requirement overlaying on top of that project today, and that's, and that's, I would say to you, doable because of the, the technical term below land residual. This land was purchased at a very good value and allows us to do a lot of things that you wouldn't ordinarily be able to do if you paid full retail for land in Maui today. Frankly,

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paying retail for land today in Maui, it's very difficult to do any affordable housing because of the high value of the land.

Getting back to the golf course concept, we did take this down from 2,600 units to 1,400. We did take it from two golf courses to one. We do have a 50 percent affordable housing requirement, but overlaying on top of all that, Mr. Chair and Members of the Committee, I think there's, there's an overriding thing you have to remember here, this project is not one that is adjacent to H'piilani Highway. It's not one that is already served by any roads. It has to be served. And to serve it, it cost, it's a direct cost to the project.

The current estimate for roadways, water systems, sewer systems, and the ability to develop buildable parcels for whether it's affordable or, or market rate housing is approximately \$150 million. Now, that doesn't include the golf course and the clubhouse and those amenities. That's just the improvements to the land over time to be able to build housing, to build 700 affordable housing units and 700 market rate units.

Now, if you allocate that cost on a per unit basis, that's over \$100,000 per unit that you have to assign somewhere in the project. You, you can either, you, you can't assign it to the affordable 'cause we all know that the affordable is going to have to be subsidized by somebody. If you're building 100 percent affordable housing to a degree it's subsidized by the 120 percent and those guys are sub..., subsidized by the 140 on up the line till you get to the market, which carries the bulk of the subsidy.

The cost for infrastructure, whether it's on the mauka side of Piilani Highway, whether it's in this project area, whether it's even in Maui Lani as you expand out where there's no service, those cost have to be covered by something. They have to be written off against on a per unit value against the development of the project.

Getting back to the golf course, and the reason why we proposed the golf course we did was as a basis of value, it allows us to assign all of these costs that we can't write off against the affordable product to the market rate product and cover the cost that has to be covered in some way. Okay. So, I can write off against market rate housing \$200,000 per unit and make that money back. Now, I can, I can do that because I have an amenity, I have an amenity that the market rate buyer chooses to purchase as a part of his home purchase. He gets the golf course. That's the amenity he's paying for. So, I can write off that cost, my development cost, against that amenity and the value that I create through creating that amenity on the property.

I am sensitive to the issue of public play. No one here on this team has ever said that we were trying to segregate anybody or create an amenity that doesn't allow anybody else to play. We've never said that. I might add, Mr. Chair, that there are numerous golf courses in this State that have similar requirements to what was placed on this property by the State Land Use Commission for public play and this County for public play that are not enforced. And if you go back and look at the requirements in the State Land Use Commission, the Decision and Orders on these golf courses, they're just kind of hidden away and no one's really dealing with them.

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We chose instead to take their requirement and leave it on, in paper and, and, and make, not really understand what it means to say public play.

We went back to the State Land Use Commission and, and when we went back to them, we said look here is our idea for public play. Now, this . . . we're throwing this out because we have heard from the public that we think this is a good idea. Junior Golf play, instruction, equipment, and play. We also talked about intramural play and quarterly non-profit play as a way to at least define what . . . what it is we mean by public play on the golf course. And the State Land Use Commission thought it was a good idea. At least, we were defining what it meant to say public play. Now, that doesn't mean to say that we can't go beyond that and we're certainly willing to do that.

But I, but I, but I guess my response is to this discussion. It is a golf course. We had two golf courses. We have one now. I think Mr. Hokama's point about, and I think it's called, I don't, don't know the name of it.

COUNCILMEMBER ANDERSON: Target.

MR. JENCKS: Target course is a great idea. I, I think that's something if you get a chance to walk out on this site and look at the buffalo grass and the keawe trees, and in the southern section where you have the large wiliwili trees that are still alive, it lends itself exactly to that kind of a course. And that's, I think, something we, we would do.

Simply another reason is because of the water limitations. And, I think, that's where Mr. Hokama was going, going to with that, with that, with that comment. It is a basis of value. It helps us create the value so that we can take those costs that . . . they have to be written against something and recoup those costs in a reasonable way. And the, and the golf course, a homeowner's golf course that allows public play, allows non-profit play, allows intramural play, and this Maui Junior Golf play, is a win-win situation for everybody. And we're not, we're not intending to exclude anyone in this process.

CHAIR MOLINA: Okay. Mr. Jencks, if I could just follow up. So, you mentioned the demand for Junior Golf. Who else offers Junior Golf currently on Maui? So, I guess, is that, I, I presume there's an increasing number of young people that are playing golf.

MR. JENCKS: It's, it's, it's a really active program. I understood at the time that Kapalua had a pretty good program. I don't know if they still do or not. We, what we did was we, we magnified that program by expanding not only the play and the instruction but the equipment as well. So, we had, we . . . tried to cover all the basis for the kids in the program.

CHAIR MOLINA: Okay.

MR. JENCKS: And I . . . there's a couple other similar programs, but I don't think anything as complete as what we're offering.

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CHAIR MOLINA: Okay. And my last question to you. So, if the golf course is a critical component to this project. . .

MR. JENCKS: It is.

CHAIR MOLINA: . . .without it what effects do you see?

MR. JENCKS: Well, it's, it's a, it's a housing project. There is housing in the project. I mean that's the bulk of the project this housing. We have an overall density of about 2.8 units per acre on the 1,400 acres. The golf course is about 200 acres of that component. You have 100 . . . nearly 100 acres of Park and Open Space that balances residential. It's, so, it's a third of the land mass. It's a significant Open Space component and it is a, like I say, it's a, it's an element of the project that makes it feasible to build, not only the affordable component, but also the market rate component to cover the cost.

CHAIR MOLINA: All right. Thank you, Mr. Jencks. Member Anderson followed by Member Johnson.

COUNCILMEMBER ANDERSON: Thank you, Chair. Mr. Jencks, you know, when this project first came through the Planning Commission, as I said before, there was no affordables involved. So, to say that, you know, the golf course is going to allow for the affordables. And also you're saying you're taking it down from 2,600 units to 1,400 units. That's what you're doing but you have no entitlement for 2,600 units. The only entitlement you have for building from this County is two golf courses and a six-acre park. The Legislative body of the County has never agreed to any size of development. Those are your, your plans or previous developer's plans for this property, but they're just plans. So, I just want to make that clear for the record that you're not, you know, you're not doing us a favor by reducing it down because there's no way you'd ever get 2,600 units approved right now. You've got . . . you're having trouble with the 1,400.

You said you had no intention to segregate and I appreciate that, but the fact is it's a private club. And what is your membership fee?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I don't have that number for you.

COUNCILMEMBER ANDERSON: Well, you must have some kind of idea, Mr. Jencks, because you guys do, you know, you do your-what is the word I want?

CHAIR MOLINA: Cost analysis.

COUNCILMEMBER ANDERSON: Cost analysis. Thank you, Mike. You know, to figure out all your expenses and everything. And, and so you must have some idea, and I think we need to know

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that if you really want, expect this body to allow you to, to build a golf course as a private club. Because, because I did ask you, will the other residents, the affordable housing residents on this project, be able to play on the course, and you told me, if they buy a membership. So, we need to know what that is, at least a range.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: The cost estimating work that is done on a project like this up to this point in time on almost any project is based entirely on the cost of the land, and the cost to develop the land, to develop housing, and infrastructure, and also the cost to develop a golf course. And as I said, I didn't include the golf course cost in the \$150 million. That's in addition to it. So, it would be about 200 million total.

Fees, like golf membership fees, what other, other, other fees you have in the project, even fees for condominium maintenance, are not figured in at this point. We're talking about basic land development cost that can get us to a point where we understand whether we have a viable project or not. And so, the 200 million total is our current estimate for basic infrastructure, creation of value, and the ability to provide parcels that we can then subdivide out and provide for either market or affordable housing.

COUNCILMEMBER ANDERSON: Well, that's not an answer to my question and I have seen fees for private golf courses anywhere from 30,000 to 300,000. So, where are you in that range?

MR. JENCKS: Maybe I wasn't clear. The cost estimating we've done for the project at this point is for the basic cost of development. Land use and infrastructure, including I might add the off-site cost, which based upon my review of the conditions are going to be considerable perhaps in the range of \$25 million, not included in that number. Once again, these are the basic infrastructure land development cost.

We haven't done any cost estimating on golf course fees, tee fees, membership fees, not even condominium fees, at this point in time. But, we have provided estimates to you on, for example, the cost to build the Wastewater Treatment Plant and the cost per user, as well as the cost to build a Reverse Osmosis Treatment Plant and cost to user. Those are elements of infrastructure. That's as far as we've gone. That's as far as anyone would go at this point in time in the entitlement process.

COUNCILMEMBER ANDERSON: So, since you have no expectation for a certain amount of a membership fee then would you be adverse to us saying no membership fee at all? That it's open to whoever can get a tee time?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Thank you, Mr. Chair. I, I thought I was clear. Part of the basis of value for this project is the fact that it's a homeowner golf course. And there is a degree of exclusivity that comes with

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that, with that label—a homeowner’s golf course. There will be fees. I don’t know what those fees will be but to create the value anywhere you go, whether it’s in Hawaii or you go to the mainland, you look at these types of facilities, types of projects. By the way, I would just, just a little sideline. In my prior career, I worked for the Irvine Company in Southern California and we did golf courses. But none of the golf course projects that I was involved in or built had a significant affordable component because it was a different market place. We have an overlay here on Maui of a significant component that we have to provide for and we want to do that. We want to put it in the project. Once again, it gets back to the value that you create to allow you to create the affordable housing that you want to provide.

COUNCILMEMBER ANDERSON: Well, you know, that’s your way of looking at it. I can’t see, you, you know, you, yourself used term “exclusivity.” And I know that’s what you’re aiming at. I mean, I know people in Wailea who have friends that can’t wait to sign up and be members of this private course.

And, you know, when you first brought this forward through the Planning Commission, you know, it was very clear that your whole intention was to have a private golf club with exclusive lots surrounding it selling for \$2 million and up for second and third offshore home buyers, offshore home buyers. And, you know, I don’t know if that’s the direction we want to go, Mr. Jencks. That may be your plan but, you know, already we have over 50 percent of the sales of housing in . . . on Maui Island are going to offshore buyers. People who do not live here.

So, you’re asking us to dedicate what little resources we have left and take the consequential impacts from that build out that will impact the rest of the community right down to the amount of people, our people who can fit on the beaches that we have right now. You’re asking us to do that and, and allow you to create another exclusive enclave for people who don’t live here, who are not part of our community.

So, you know, I think you need to figure out what the membership fee is going to be and, you know, if this body allows a private course, rather a private golf club that you have to be a member of in order to play, then we better know what that is because we’re going to be having our residents living down there too and you’re going to be excluding them ‘cause I guarantee they aren’t going to be able to afford it.

CHAIR MOLINA: Okay. Mr. Jencks, I’m going to . . .

MR. JENCKS: If I may just one quick comment. I, I . . .

CHAIR MOLINA: Okay. One quick comment and I have two more --

MR. JENCKS: Sure.

CHAIR MOLINA: --Council Members that have questions and because we are going past the, the time the Chair committed to the Members who have some commitments to attend to. And I believe

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our Planning Director, Deputy Planning Director, has some family commitments. I just wanted to interject that. Real briefly, Mr. Jencks, and then I will recognize Member Johnson.

MR. JENCKS: We still would like to have a public play component and if that has to expand upon what we've already provided, we're more than happy to discuss that.

CHAIR MOLINA: Okay. And, Mr. Jencks, I will ask you to provide the Committee as best as you can some type of estimate with regards to the fees.

MR. JENCKS: Fees?

CHAIR MOLINA: If . . .

MR. JENCKS: I'll see what I can come up.

CHAIR MOLINA: Thank you. Thank you, Member Anderson. And thank . . . Member Johnson followed by Member Pontanilla and then we're going to wrap up our day.

COUNCILMEMBER JOHNSON: Yes. I'll try and make this really quick. The, the golf course, I think, you said it was approximately 200 acres.

MR. JENCKS: That's correct.

COUNCILMEMBER JOHNSON: Okay. If my memory serves me correctly a portion of this and you mentioned the . . . of wiliwili, you know, Mr. Altenberg's conservation area, is there any chance that you could reduce the size of the golf course and preserve the area that Mr. Altenberg is talking about?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: That's a great question. Working with John Ford who's here today from SWCA and PBR Hawaii and also the specialist that John brought in to look at where these issues are on the property. We're pretty confident that we can provide an adequate area to provide for the preservation and enhancement of what's there because it's, frankly, it's not a contiguous area. It's in pieces. We can do that and still have the golf course and, and it can all work together.

COUNCILMEMBER JOHNSON: Okay. And, the, the other question would be that because obviously the golf course cost so much to do and the amenities and, you know, what a struggle it is even over in West Maui with some of our courses to maintain. The State owns one now and it's a nightmare. What I see is that you're adding value but you're also increasing the cost so wouldn't it make sense to just consider removing the golf course and finding some use of this property that would also be an amenity? I think Ms. Baisa mentioned like a really beautiful park and a walking area and maybe, you know, maybe a mini putt-putt or something else that would, I

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guess, be an amenity that would give value but not be as water intensive and not create, I guess, this exclusivity.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: The, the ideas that Mr. Hokama brought forth about target course, I think, is the term . . . would really help and help structure the water issue and make it, I think, a very desirable course but also one that's really efficient. Keeping in mind, that we're also be using non-potable water on that course.

And with regard to the, the, the concern relative to park versus putt-putt course, whatever it happens to be, a playground, whatever, and, and that, that, that relationship to market rate units. Councilmember, I think, you'd find that there are, there are an abundance of people on Maui today, that live in Wailuku, that live all over this island, that would very much like to live by golf course in South Maui—a homeowner golf course. But you have to take that back.

The way that you recoup value out of land and you, I mean, you hit, you hit upon a very good point, the way you, you, you said create value, the golf course is a critical element. It's the cache. It's, it's the thing that I mean I'm not a golfer. I, I just don't have the time for golf and I couldn't be bothered. But there are people who are so intent.

COUNCILMEMBER ANDERSON: . . .*(chuckled)*. . .

MR. JENCKS: That's no offense to any golfers here . . . *(laughter)* . . . but there are people that are so intent on this as, as a, as a lifestyle, and as a place to live, and you can support the value by that demand. I mean you can get the value so you can do these other things you want to do whether it's . . . the park fees, today on Maui, in South Maui, are \$17,000 a unit . . . 17,000 a unit. Now, I have to pay that. That's not a direct construction cost. That's a cost that I pay on every unit whether it's affordable or not. That's got to be paid by somebody as well. I've got to assign that back to somebody else. So, the golf course once again, the 18-hole golf course, 200 acres, on this property helps me create the value that I can recoup those costs against the market rate units and people will, will, and do want to live on this course. They're here today in Maui.

COUNCILMEMBER JOHNSON: I, I understand it, but, you know. . .

MR. JENCKS: I know.

COUNCILMEMBER JOHNSON: I, I, I guess, I just have a different opinion. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Finally, Member Pontanilla? Thank you --

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: --for patiently waiting.

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VICE-CHAIR PONTANILLA: I, I, I think we over-killed the target golf course because I was going to say that, you know, in States like Arizona, New Mexico, Nevada, those dry States, they have numerous target golf course, which is . . . I don't think we have any on Maui. Probably would be a challenging golf course and, and probably would add amenities to, to Maui County.

The question that I have for Charlie is that, you mentioned that you were going to look at different alternatives. You know, I belong to Maui Country Club. And at the Maui Country Club, we do have public play on --

MR. JENCKS: Right.

VICE-CHAIR PONTANILLA: --a given day that would allow the public to come to the golf course and play. You know, I, I didn't pay the \$30,000 - \$40,000. You know, this was way back maybe 25 years ago that I joined the club, but there is public play. And if something like that could be looked at in providing the public to at least play some golf on that private golf course, you know, I can consider that. Thank you.

CHAIR MOLINA: Thank you, Member Pontanilla.

COUNCILMEMBER VICTORINO: Mr. Chair.

CHAIR MOLINA: Mister. . .

COUNCILMEMBER VICTORINO: I'm not going to ask a question because, you know, you said that was the last one. But I would like to be recognized first for Mr. Jencks 'cause I have a couple specific questions I'd like to ask, please.

CHAIR MOLINA: Okay, at our next --

COUNCILMEMBER VICTORINO: Make that note for the next meeting.

CHAIR MOLINA: --recessed meeting. And thank you, thank you for your, that consideration, Mr. Victorino. Well, Members, we've reached that point of the day where we're going to have to recess. So, again, as a reminder for all of you, next week Wednesday, August 15th, 4:30 p.m., right here in the Chambers.

And before we recess, the Chair would like to recognize a couple of very special people in my life. First of all, I would like just to send my mahalo to Aunty Ali Silva for coming by here. She fed me the other night and thank you for, for providing spiritual guidance for me, as well everyone else, and reminding us to ensure that the process is kept pono. And also to all of our other kupuna who have joined us. Mahalo plenty for all that you provide for us.

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And today is my anniversary. I'd like to recognize my wife. Thank you for tolerating your husband of, let's see, 16 years, I think. I better make sure I get that and I have to tell her that we're going to have to recess our anniversary dinner for tonight.

COUNCILMEMBER VICTORINO: Yeah, right. . . . *(laughter)* . . .

CHAIR MOLINA: Humor is an important ingredient during stressful times but anyway. Thank you so much for all the years you have given me, dear. So, Members, this meeting is in recess until Wednesday, August 15th, 4:30 p.m., here in the Council Chambers. Have a great weekend. . . .*(gavel)*. . .

RECESS: 4:40 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

lu:min:070810r

Transcribed by: Delfey Fernandez

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CERTIFICATE

I, Delfey Fernandez, 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


Delfey Fernandez