

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

August 20, 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 Jo Anne Johnson, Member (Leave 4:38 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member

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

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Michael Miyamoto, Deputy Director, Department of Public Works and Environmental Management
Gregg Kresge, Deputy Director, Department of Environmental Management
David Taylor, Wastewater Reclamation Division Chief, Department of Environmental Management
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Charles Jencks, Owner's Representative, Honua`ula Partners, LLC
Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
Wayne Yoshioka, Manager, PB Americas, Inc. (Applicant's traffic consultant)
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 (10)

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

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CHAIR MOLINA: . . .(*gavel*). . . Recessed Land Use Committee meeting of July 25, 2007 is now back in session. Today is Monday, August 20th, 1:35. Today we begin the process of taking the vote on some of the proposed conditions that have still not been voted on, yet. So this is the first and we shall start, and we will be jumping around a little bit. For the record, we have in attendance, we have all Members except Members Mateo and Hokama who are excused from our proceedings today.

**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: Members, the Chair would like to, uh, like you to turn to your matrix on Page 6 of 12. The proposed Condition Number 10 from the Planning Commission which relates to irrigation and dust control. Chair would like to look for consensus on this, but before we do that I would like further clarification from the Planning Department, because the Chair sees some similarity with that condition with Condition Number 14, if I stand to be correct. There might have been a duplication of conditions here. So...as it relates to the irrigation and dust control, the Chair is just looking for clarification and any recommendation as how we can, I guess, streamline or consolidate these two conditions possibly into one. And the Chair will also consider any additional language the Committee would like to put into this proposed condition. So if I could get a comment from Deputy Director Suyama?

MS. SUYAMA: Condition Number 10 was the original condition that the Maui Planning Commission in support of the Department's recommendation about irrigation, the use of effluent or non-potable water for irrigation purposes. The Planning Commission conditions end at Number 13. Fourteen and 15 which relate to the irrigation of the golf course as well as dust control, that were conditions that are part of the original Change in Zoning ordinance that was adopted in '92, dealing with just the golf course itself. And, it may be prudent that because they're basically talking about the same thing which is irrigation, water, and dust control, that you may wanna combine the condition into one general condition.

CHAIR MOLINA: Okay. So that will be Conditions 10, 14, and 15 to possibly combine it as one condition with any additional language to be considered, am I correct?

MS. SUYAMA: That's correct.

CHAIR MOLINA: Okay, Members, you heard the suggestion from the Deputy Planning Director. Any comments? If Chair could get some guidance as to which language we're looking at so we would look at the recommended language from the Planning Department. Members, if you'd look at the third column with the underscored language into that conditions. Staff, could you again read that for the body? Condition Number 10.

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MS. NAKATA: Of the July 27, '07 version from the Planning Department reads as follows: "Non-potable sources of water including, but not limited to, the use of treated effluent from the Kihei Wastewater Reclamation Plant shall be utilized for irrigation purposes and construction activities including, but not limited to, dust control and equipment wash downs. Kihei-Makena Project District 9 shall include a dual irrigation system as each individual development occurs to ensure that a system will be in place to utilize non-potable sources of water."

CHAIR MOLINA: Okay, thank you, Staff. And we've also notified the Environmental Management Director, Ms. Okuma, if she could come down, or the Deputy Director to come down and give additional comments on this as well. So, getting back to the Planning...Deputy Planning Director Suyama...so, as it relates to Conditions 14 and 15, would you recommend that language related to the golf course be included in Condition 10, as well?

MS. SUYAMA: I believe by referencing that it's utilized for irrigation purposes would also include the golf course as well as we do talk about construction related activities which include dust control. So we'd take care of Condition Number 14 and 15 of the existing zoning ordinance.

CHAIR MOLINA: Okay. So, again, the language as is in Number 10 would cover 14 and 15 as well?

MS. SUYAMA: I believe it does.

CHAIR MOLINA: Okay. Members, any comments? Member Baisa?

COUNCILMEMBER BAISA: Chair, I notice that one of the differences in the 14 and 15 and the current condition are the words, "when available". I'm assuming that that's not an issue that water is available?

CHAIR MOLINA: Would you seek comment from the...Deputy Director, can you respond to Member Baisa's question?

MS. SUYAMA: I believe that the water...the recycled water is available for construction purposes and that currently, developers are using the water from the wastewater treatment center.

COUNCILMEMBER BAISA: So there should be no problem, then, in using the water; it's available.

MS. SUYAMA: I don't...

COUNCILMEMBER BAISA: Is it the matter of getting it there that's the issue?

MS. SUYAMA: For construction purposes, what they do is they send their tanker trucks to the facility, they load up with water in the tanker trucks, and they deliver it to the construction site. And I would believe that this would be the similar situation at Wailea 670 for construction purposes.

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COUNCILMEMBER BAISA: All right then, I see that it's a reasonable condition, then. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, my...since the water is available, my wish would be that we just end that sentence then, and just say, "shall be utilized for irrigation purposes and dust control of construction activities," period.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Hang on, hang on. Member Johnson, you have the floor. Member Johnson, again, could you specify where you are recommending?

COUNCILMEMBER JOHNSON: I'm on Page 6 of 12.

CHAIR MOLINA: Third column?

COUNCILMEMBER JOHNSON: And it's...well, I'm reading from the first column, but...

CHAIR MOLINA: Oh, okay.

COUNCILMEMBER JOHNSON: You know, but anyway, it just...it's that, "use of effluent from Kihei Wastewater Reclamation Facility shall be utilized for irrigation purposes and dust control of construction activities" period.

CHAIR MOLINA: Okay. So, basically knock out the last few words which is, "when such sources become available to the subject..."

COUNCILMEMBER JOHNSON: Right. I think, you know, well I guess, actually, that language is struck in Column Number 3. Because the bracketed...Staff, the bracketed portion is what's to be struck?

MS. NAKATA: Yes, that's correct. It's deleted from the July 27th version.

COUNCILMEMBER JOHNSON: Okay, and that's...all right, well...and that was from the Department of Planning recommendation, that we strike that language?

MS. NAKATA: Yes, that's correct.

COUNCILMEMBER JOHNSON: Okay. My other question would be in regard to, in the very last comment...column, when they talk about -- and this would be to Deputy Director Suyama --

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Colleen, once, you know, I'm gathering from your comments that you believe the dual line system should be put into place, I guess, concurrent with the development of each particular phase. Is that correct?

MS. SUYAMA: That's correct.

COUNCILMEMBER JOHNSON: Okay. And the reason being that if they had to re-site or relocate, that once these lines are in, it's gonna be a nightmare to move them. Is that also correct?

MS. SUYAMA: The reason that we recommended that the dual line be constructed as each development is constructed is that, if you have to go back later on and put the irrigation lines in, then that's gonna be on the...the burden on the homeowners, because these properties are gonna be sold. At some later date, they as an association will have to pay for the improvements. If the Developer puts it up front, when the County gets the ability to draw the line from the sewage treatment plant all the way to the Wailea area, it would be in a matter of connecting the system from Wailea 670 rather than each individual project within Wailea 670. And this is similar things that Public Works does with their sewer systems. Lot of times, even if sewers are not available in the area, the Developer would put in the dry system for future hook-up, so once the County comes in and, you know, develops the main transmission lines, it's a matter of each individual project hooking up to the County system.

COUNCILMEMBER JOHNSON: Okay, and, I guess, you're further confusing me, because it seems that your statement contradicts what you've written here. My sense is that the system should be put in place first. Is that correct?

MS. SUYAMA: With the development, yes.

COUNCILMEMBER JOHNSON: Okay, but you're not saying that, you know, subsequent phase, because obviously, if this project goes forward it's gonna be phased in. It still would compel them to utilize the dual line system and put it in as a developer-borne expense, rather than an individual homeowner expense. That's correct?

MS. SUYAMA: That's correct. That's correct.

COUNCILMEMBER JOHNSON: Okay, because what you've got written here, it was a little unclear to me. And so, I understand what you're saying now. So, thank you, Colleen.

CHAIR MOLINA: Okay, thank you Member Johnson. Mr. Victorino?

COUNCILMEMBER VICTORINO: I wanted to find out the exchanges that Members are bringing up that we had decided upon that, to delete those...that aspect about "shall" and "when available". That was deleted on our last go around with this. So, that's all I wanted to bring up, that my

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records show that we deleted it and it was in the brackets already. So, I think that's not an issue at this point in time. Thank you.

CHAIR MOLINA: Thank you, Mr. Victorino.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: I was wondering if I can ask a question from...of the Developer regarding these lines?

CHAIR MOLINA: Okay. Members, we'll have Mr. Jencks come up to the front to respond to a question from Member Pontanilla. Good afternoon, Mr. Jencks.

MR. JENCKS: Good afternoon, Mr. Chairman, Members of the Committee.

VICE-CHAIR PONTANILLA: Good afternoon. Simple question, if this development should go forward, in regards to the roadways and the, you know, installation of the sewer lines, the water line including the gray line, am I to believe that when you do the project you're gonna do the total road work, or it's gonna be by phases?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: The basic backbone/spine, if you will, infrastructure system will include the roads, the primary and secondary roads that serve the project. And those will have to go in as a part of the initial phase to serve that phase area, and we would install sewer in that backbone/spine road system. The non-potable water system that comes out of the wells, also a non-potable water system line that would use R-1 treated water from the Wastewater Treatment Plant, as well as potable water. So there'd be three lines, three major distribution lines in the roadway system. Yes.

VICE-CHAIR PONTANILLA: Thank you. And none of this gray line is gonna be any laterals to individual lots, is that right?

MR. JENCKS: We would...in the initial phase, we will apply for a subdivision map that will subdivide out builder parcels, if you will. Or let's see, five or ten acre pieces of land that would be used for residential development. And then...so, we're required to provide utility service to those large lots so, yes, we will have laterals of adequate size going to those large lots to serve them with sewer, non-potable R-1, and domestic water.

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

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CHAIR MOLINA: Thank you, Mr. Pontanilla.

MR. JENCKS: Mr. Chair?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I'm a little confused on the exact wording of this condition. I heard a couple of different things, I'm a little concerned as to what is actually being put in the condition, at this point.

CHAIR MOLINA: Okay. What we're looking at...it seemed that Conditions 10, 14, and 15, there seem to be some redundancy as related to irrigation and dust control, and even the Chair himself wanted some clarity from the Planning Department.

MR. JENCKS: I agree.

CHAIR MOLINA: So, we're considering just incorporating the language, possibly from 14 and 15 into just one whole condition.

MR. JENCKS: I think that's a smart plan.

CHAIR MOLINA: For the sake of, you know, saving print, I guess, if you will.

MR. JENCKS: Thank you.

CHAIR MOLINA: Okay. Thank you. Any other questions for Mr. Jencks?

VICE-CHAIR PONTANILLA: One more question.

CHAIR MOLINA: Mr. Medeiros, followed by Mr. Pontanilla.

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Mr. Jencks, thank you for being here. Just for further clarification on the same line of questioning. So if the Developer installs laterals to individual lots for the irrigation water, and...is that coming from the County plant, or is that coming from your non-potable sources?

MR. JENCKS: The...as I described earlier, there will be three water lines, a non-potable line, excuse me, a potable line that would serve the domestic uses of all the residential units in the project. There would also be a non-potable line that would be non-potable irrigation, or well water, if you will, okay. Now, it is our desire to use on private property, that water for irrigation purposes. The R-1 water from the treatment plant will not go to single family or those types of properties. It's not allowed to be used on those types of properties. It can be used, however, in common area in, for example, like apartment buildings, you can use it for common area, you can use it for

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median strips, parkways, those kinds of things. So, we could use that water for those use areas and throughout the golf course.

COUNCILMEMBER MEDEIROS: Okay. And so, would the transmission lines from the County source at the plant be installed by the developer?

MR. JENCKS: Yeah, I didn't address that, I'm sorry. It is our anticipation that in the near future, along with sewer lines coming, most probably adjacent to the Piilani Highway, to pick up source in the Wailea-Maui Meadows area, the County would also extend a reclaimed water line down to that area so the water could be used on the Wailea golf courses as well as this project. So, yes, and eventually, we would design the system so we could hookup at...in the future...but in the future, the County would extend the lines down so we could use the water in that area.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Jencks. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Mr. Pontanilla, questions for Mr. Jencks?

VICE-CHAIR PONTANILLA: No. Thank you, Charlie for...

CHAIR MOLINA: Okay. Hang on. Member Anderson, question for Mr. Jencks?

COUNCILMEMBER ANDERSON: Sure. I have other questions but...

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Mr. Jencks, in your agreement, Wailea 670 has a grant of roadway easement agreement with Wailea Resort Company. And it talks about the sewage treatment plant being a temporary plant, and that "sewerage system constructed by WCPT shall be connected to a County of Maui public sewer system located within the Streets and shall not unreasonably interfere with the Grantor's use of Grantor's utilities and/or improvements within the Streets existing as of the time of any such construction, installation or connection." So, you've made an agreement with them that the sewage system constructed by you folks is only temporary and will be connected to the County's sewer system. So, can you give us some idea on how temporary that is and what your intentions are?

MR. JENCKS: Certainly. Mister... if I may?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: We have said from the beginning that we would build a private wastewater treatment facility within the project to serve the uses within the project. And we would use the reclaimed water from that facility for irrigation purposes. The easement agreement that you were looking at, Council Member, covers both Kalai Waa and Kaukahi Street in Wailea Resort. Both of those

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roads at the present time, at the time the agreement was written, and today are private roads. That agreement does talk about the installation of utility lines in both of those roads. And I...as I believe, the agreement reads, if we are to install sewer lines in either one of those roads, it would be for the purposes of connecting to the County system. And that, I think, was worded deliberately so that it wasn't intended to be serving any private system that we would own. It would be in the event that County service is available, we could use both Kalai Waa and Kaukahi Streets to hook up to that system if necessary.

COUNCILMEMBER ANDERSON: You know, we asked for a copy of this last time we met. Have you brought a copy of this roadway agreement?

MR. JENCKS: Yes, I did. I provided it to the Committee Chair today, a copy of both the agreement with, between WCPT and Ulupalakua Ranch for the exclusion area and the access through the property for vehicular and pedestrian use, as well as the agreement that you just referenced for Kalai Waa and Kaukahi Street with Wailea...A & B Wailea.

CHAIR MOLINA: Members, for your information, it's dated August 20th, today, it looks like this, a rather thick document.

COUNCILMEMBER ANDERSON: And did you also include in that, Mr. Jencks, a description of what the water plan is between you and Ulupalakua? Because that's all been deleted from the agreement, and that's the whole crux of the agreement. What is the water plan?

MR. JENCKS: I don't have any water agreement with Ulupalakua. There was, initially . . .

CHAIR MOLINA: Excuse me, Mr. Jencks, can I inter...Members, we're talking about Condition 10 for irrigation and dust control. If we can come back to the water agreement at a later time, so the Chair would like to first discuss Condition Number 10, related to irrigation and dust control.

COUNCILMEMBER ANDERSON: Okay, thank you, Chair. So, on the sewage system, you have no plans for this sewage treatment plant to be temporary. 'Cause I've seen that mentioned on numerous occasions, that it's temporary and that eventually, you'll hook up to the County system.

MR. JENCKS: Our plans are to build a wastewater treatment plant that will be torn down and taken away when there's capacity available from the...service available from the Central Kihei plant.

COUNCILMEMBER ANDERSON: And so, would you be amenable, I mean, how much is that gonna cost you, to build it and tear it down? Wouldn't it just be more cost effective to put that money towards the expansion of the Kihei plant right now?

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MR. JENCKS: No, it would be less expensive to build a temporary plant, given the cost to increase the available capacity from South Maui to the Kihei plant. We've also agreed to participate in future costs as well, as a condition to do that.

COUNCILMEMBER ANDERSON: And so what's the cost for the sewage treatment plant?

MR. JENCKS: Well, I'm estimating a half-million gallon a day plant, and you should probably assume at least \$10 per gallon, that's a \$5 million plant.

COUNCILMEMBER ANDERSON: And so what is that?

MR. JENCKS: That's \$5 million for a private plant.

COUNCILMEMBER ANDERSON: And it's only for half-million gallon a day plant?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And so then, that means, if your build out is for 2.5 million...or, let's say, 2 million potable water use, then it looks to me like you intend for the sewage treatment plant to only be viable for the first eighth build out of the project? I mean, if you're only doing half a million gallons a day? Can you give us some idea?

MR. JENCKS: It's an important point. The plant is designed for approximately half-million gallons a day, an R-1 quality level plant. The wastewater flow per dwelling unit is estimated to be somewhere between 350 and 400 gallons per day. That's a domestic flow out of each individual residential unit. So 1,400 x 350, whatever that number is, I'm rounding it up to a half-million gallons a day.

COUNCILMEMBER ANDERSON: Okay, thank you.

MR. JENCKS: You're welcome.

CHAIR MOLINA: Thank you, Member Anderson. Okay. Seeing no other questions for Mr. Jencks at this time, I'll excuse you for now, Mr. Jencks. And Mr. Pontanilla, you can continue with your line of questioning for present resource people.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: And I'd just like to make the Members aware that we do have from the Environmental Management's office, Deputy Director Gregg Kresge, as well as Mr. Dave Taylor from the Wastewater Division. Mr. Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you, Chair. Question for Wastewater...in regards to the Kihei Treatment Plant, what is the maximum, at present, recycled water that you can produce? Can you sustain that over the next 10 years?

MR. TAYLOR: Member Pontanilla, questions on capacity are difficult to give in one number. These depends on a lot of...a lot of other things. The entire...all the flow from the Kihei Wastewater Treatment Plant is all treated to R-1 capability. So, we do have...I don't have the numbers exactly in front of me, but basically, we have probably at least another million gallons a day that we could safely give away at the current time. And as development comes up, we have more water since all of it is treated R-1, we will have more water. The issues there are more about transmission of the water and storage of the water, and not about the capability to make the water. So, I think for this discussion that you're having here, I think there is enough water. It's a matter of getting it to where it needs to be.

VICE-CHAIR PONTANILLA: So the question, we probably won't run out of effluent or recycled water?

MR. TAYLOR: It's unlikely we're going to run out of water at the plant, again, because the more development there is, the more R-1 water there is.

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

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

COUNCILMEMBER VICTORINO: So, continuing in that same line of questioning...what is the storage capacity, since it seems to fall back on to transmission and storage capacity? We can create all the R-1 water we need. I don't think that's the problem. But again, you're going back to this storage capacity and I heard that in West Maui, it's a similar situation. We got more water than we can store, that's the problem we're injecting into the ground. So, answer that question, maybe in that respect, how much storage and how much more storage would we need to suffice all the needs that we're talking about? And another trick question, right?

MR. TAYLOR: ...*(Laughs)*...Member Victorino, that's a...that's kind of an open question, it doesn't have any one answer. But currently, we have a 1 million-gallon storage tank located up on the hill above the treatment plant that provides pressure for users. We would certainly need another tank to have significantly more usage, plus a distribution system to any location. So it's a matter of looking at the kind of critical mass of what's coming, what's gonna happen over the next 10 years, how many people are gonna want reclaimed water, how much are they going to want? And then it's a matter of building storage that's capable of handling that. So it's sort of a chicken and egg kind of question.

COUNCILMEMBER VICTORINO: So let me continue on along the same line...how much R-1 water do we produce on an average day in South Maui?

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MR. TAYLOR: Roughly, probably around 5 million gallons.

COUNCILMEMBER VICTORINO: Five million. So we can store one mil, how much of that one mil do we normally use in a course of a day? How much are we...how much is being drawn out by the various users throughout South Maui?

MR. TAYLOR: Yeah, I don't have the exact numbers with me, but between the golf course and the others, less than two million, probably.

COUNCILMEMBER VICTORINO: In an average day?

MR. TAYLOR: Yeah, so probably less than half, I mean, just really roughly for the discussion you're having today. I'm sure we're using, we're using less than half of the water for reuse on an average day.

COUNCILMEMBER VICTORINO: And the next question, Mr. Chair, along that same lines...if we were to build, let's say, another million gallon storage tank and the distribution from this area to Wailea 670 and all that, approximately -- and I not gonna hold your feet to the fire -- approximately, what kind of cost factors would we be looking for? If the County (a) did it by their self, *[sic]* then we can figure out if we were to cost share with everybody around us. But let's say if we were to do it as a single entity, give me a rough idea how much would it cost us? Roughly, I don't know...

MR. TAYLOR: You're not gonna hold me to these numbers, are you? ...*(Laughs)*...I would say the Kihei Treatment Plant is probably roughly, what, maybe three miles from the project site, I'll look toward Charlie, is that about right? So you figure, we're putting in lines that's probably all rock, which means it's gonna be very expensive, we probably gonna have to blast it and shoot it, call it maybe \$2 to \$3 million a mile to put pipe line in, so maybe \$10 million for pipe, a tank...we used to build tanks for about \$1.2 million, probably it's up to \$2 million, so you figure \$12 million for a tank and a pipe line, there would have to be storage at their end so call it another \$2 million, so \$15...maybe some pumping improvements for...somewhere between, you know, \$15 and \$20 million, I would think, would be pretty...you know, in that neighborhood. And Mr. Jencks is shaking his head, so I think he agrees on roughly those numbers.

COUNCILMEMBER VICTORINO: So, if we were to take and we use just what you just said, in the gallons part -- the millions per gallon that we'd be able to store and now be able to utilize in other areas -- of the five million we're producing right now, would you say we'd use now maybe more like three or four million gallons a day, instead of...I mean, you know, again, this is all approximate, this is the best guess scenario that you can give me right now.

MR. TAYLOR: All of this really comes down to the users.

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COUNCILMEMBER VICTORINO: Yeah.

MR. TAYLOR: It matters who are the users that we line up. An 18-hole golf course can use maybe half a million to a million gallons a day, depending on the time of year. So, you look at how many holes of golf there are in West...or in South Maui, and if the line went far enough to use it for the golf courses, there is an enormous amount of reclaimed water that could be used. If the line stops short of those, well, who are the users gonna be? So it really comes down to either a huge park or a golf course, something where there is a really big user. It means you can get a maximum volume benefit for that distribution system. And if there is small users, who are only using 10,000 gallons or 20,000 gallons, well, in the volume per dollar if that's how you want to look at it, is obviously gonna be a lot less. So the question really comes down to how far does the line go all the way to the Wailea golf courses, and do we put them on reclaimed water? That's gonna be your...a big user, and short of that, you probably just not gonna have a lot of critical mass.

COUNCILMEMBER VICTORINO: Well, I think you've answered the question, the way I would like to see it answered is, getting the Wailea golf courses as well as 670 and all the rest of these groups to use the water, because if we could take four...or four and a half million of the five million or whatever else we produce down there and not have to inject two, three million a day into the ground, I think, you know, that's one part of this whole equation I think all of us are looking at. You know, we don't degrade our reefs and our ocean system by having this water being pumped in, so it comes out someplace else. We're using it where it seeps in the ground and adds to the aquifer. Also, if I'm correct, Mr. Chair, we'd also use less of our artesian wells and as well as our brackish wells...brackish water wells which then is another maybe positive point. So, it's you pay Peter, you're going pay Paul, but somewhere somebody's gotta pay for this, or we're gonna have a major problem when it comes to one of these problems and our environment is, right now, being taxed real bad because of the injection of these effluent. Even though you guys have worked real hard to do a great job, it still having an effect. And, we not blaming you, we just gotta figure our ways...the ways we can do a better job, Mr. Chair. Thank you. Thank you, gentlemen, for your answers.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. And, Members, again we're on Condition 10. There was some very good questions asked, but they're related more the Conditions 16 and 17, with regards to wastewater. But I'm gonna ask Mr. Taylor and Mr. Kresge to remain here for a while, you will be involved for the rest of this...a good portion of this day. Member Medeiros, followed by Member Anderson.

COUNCILMEMBER MEDEIROS: Yeah, we're on Condition 10?

CHAIR MOLINA: Yes...which relates to irrigation and dust control.

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COUNCILMEMBER MEDEIROS: Right. Yeah, I wanna ask the Wastewater Department...you gave some approximate numbers as far as how much of the R-1 water is used per day. Does that include construction trucks, tankers?

CHAIR MOLINA: Mr. Taylor?

MR. TAYLOR: I think the number I gave was rough enough that it's, it roughly includes that. Those aren't, those aren't nearly as big a user volume wise as something like a hard pipe golf course, so I think the plus and minus of it, those aren't gonna make a huge difference.

COUNCILMEMBER MEDEROS: Okay, with the amount of construction going on on South Maui, that doesn't have a significant impact in the use of R-1?

MR. TAYLOR: You figure a truck...even the big trucks only hold 5,000 gallons.

COUNCILMEMBER MEDEIROS: Right.

MR. TAYLOR: So even if you ran 20 trucks a day, that's just so small compared to a million gallons on a golf course that it's, it's not really even within the margin of error of winter versus summer as far as how much, you know, the large users use. So, reclaimed water use always varies, but I don't think that 5,000-gallon trucks coming and going are really big enough to make a huge difference in the, you know, in the total volume usage.

COUNCILMEMBER MEDEIROS: And what do we charge for R-1 water?

MR. TAYLOR: R-1 water is currently 97 cents per thousand gallons.

COUNCILMEMBER MEDEIROS: So, how much revenues do we get, and can these revenues support CIP projects for wastewater and infrastructure?

MR. TAYLOR: Unfortunately, our actual cost to manage the whole reclaimed water system...the cost per thousand gallons, and I apologize for not having these numbers with me, is more than we charge. And because of our biggest users, our...the agricultural users who only get charged 20 cents per thousand...the reclaimed water program as a whole is financed about 80 percent from sewer users, not from reclaimed water fees. So, we don't...*(end of tape, start 1B)*...reclaimed water fees to grow the program. We take a loss on the whole program, basically.

COUNCILMEMBER MEDEIROS: Okay, thank you. Thank you, Chair.

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

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COUNCILMEMBER ANDERSON: Thank you, Chairman. Mr. Taylor, what is the current system capacity at the wastewater treatment facility?

MR. TAYLOR: Are you talking about the treatment plant itself?

COUNCILMEMBER ANDERSON: Yes.

MR. TAYLOR: The design...I believe the design capacity of that treatment plant is eight million gallons a day.

COUNCILMEMBER ANDERSON: Okay, and what is the current use of that capacity?

MR. TAYLOR: It varies between four and six million gallons a day.

COUNCILMEMBER ANDERSON: That's a big variable. What do you attribute that to?

MR. TAYLOR: It's really hard to say, you know, we treat the water that comes in and we don't have a lot of control to what people are doing and what they're putting down the, you know, their drains and things.

COUNCILMEMBER ANDERSON: I recall it wasn't that long ago that we actually had an allocation plan attached to that system that, you know, uses in certain categories were allocated a certain capacity of that system. And, can you just refresh my memory on what happened? There was an expansion of the plant and that allocation plan terminated because of that? Is that correct?

MR. TAYLOR: My recollection...I wasn't personally involved, I wasn't division head at the time. But if I recall, there were two different things you're talking about. One was, there was an expansion of the plant, and basically, the County fronted the money for the expansion and set up an ordinance that the Council approved to have impact fees that each developer paid their fair share of upgrading the plant for that money that was fronted by the County. There was a separate ordinance that allocated the remaining capacity, a certain...

COUNCILMEMBER ANDERSON: After the upgrade?

MR. TAYLOR: It was after the upgrade, that said, if there's, you know, two million gallons of capacity, then a certain percentage is for hotel, a certain percentage for residential, certain percentage for commercial, for affordable, et cetera. That was in different...that was a separate Council ordinance that was revoked by the Council of...some point, a number of years ago...after it had been changed a couple of times. Essentially, if I recall, what happened is, there was an enormous amount for affordable housing that no one really ever came in to use and we ran out of hotel, we ran out of commercial, we ran out of everything, and there was still this large amount of allocation left in the affordable housing category. And so we had to come back to Council, get those numbers readjusted, and after that I...I don't, again, I wasn't involved but I think that the

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Council kind of said, “well what’s”...I think that...maybe a little bit of my opinion, but I think the Council stopped that, trying to use that to allocate what got built wasn’t working, and basically got rid of the ordinance, ‘cause it doesn’t exist anymore. Exactly why, I don’t know, maybe some of the Members who’ve been here longer can remember, but that doesn’t exist any longer.

COUNCILMEMBER ANDERSON: Okay, so that...thank you for that, that refreshed my memory. So basically, if you have eight million gallons capacity and you’re using from four to six, then that means you have from two to four...I mean, you must as a, you know, planner, what would you say is the unused capacity that you have to give out for this...the use of this plant?

MR. TAYLOR: What you’re getting into is it gets really complicated in our field of utility management is, these numbers vary throughout the year so we have certain mathematical, statistical ways of trying to look at it...to look at the highest week in a month, the highest month in a year, all kinds of different numbers, and we try to look at how the plant operates when it has a lot of safety, when it’s really running on edge, and basically we try to, you know, come out with some averages that we use to judge how much more can we handle. And right now, the rate of growth isn’t to the point where we really need to fine tune these numbers. We really still have enough capacity, really, for all the projects that are sort of on everyone’s short term radar, say, the next five, ten years. So, we’re really not trying to nail down the exact number yet, because we’re just not close enough. We are planning to ask in this next year’s budget, to do a field and mathematical calibration of the plant to really push it to its limits and to try to find out how far can we really push the plant. So, that’s how we in the field really determine what’s left. We don’t take an engineering study that was done ten years ago and treat it like a bath tub and say, you know, how much volume is left. As the flows increase and increase and increase, and the plant gets stressed more, eventually as we get to certain critical points, we field test the individual process elements and actually field calibrate how much more can we push this plant. And so we adjust those numbers as we go. So, that eight million gallons a day was from the original design intention of what the original engineers thought it could do. Now, it may be a little more, it may be a little less, but we’ll know as we get closer to it and we field test to find its limits.

COUNCILMEMBER ANDERSON: So, you know, you’ve got to be test...I mean, you’ve got to be planning for peak times, and if you’re telling us now that the amount that you have left...you have eight million gallons a day and they’re using...four to six million gallons a day is being used, that’s a big variable. But, you know, given that, that would say that during peak time, they’re using six million gallons a day of capacity. So, you know, logically, and I’m not asking you to give us any kind of, you know, for sure numbers or anything, but, you know, just given that, that means that there’s two million gallons of capacity left in that plant...for the purposes of our discussion. And it could be more, could be less. But given the round numbers that you’re using, you know, with the two million gallon a day variable, that means we have two million gallons of capacity left in the system. Is that correct?

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MR. TAYLOR: I would agree that we would have at least 2 million gallons. It could be more, but I don't think it's less.

COUNCILMEMBER ANDERSON: And so you're not turning away any users?

MR. TAYLOR: No, we're not.

COUNCILMEMBER ANDERSON: And so...

MR. TAYLOR: Not for the treatment plant capacity. And listening to the discussion that the Council was having with Mr. Jencks earlier, I just want to be clear that treatment plant capacity, what we can do when the water is in the plant, is completely different than the availability to get the wastewater from a development to the plant.

COUNCILMEMBER ANDERSON: I understand.

MR. TAYLOR: So, so...

COUNCILMEMBER ANDERSON: But, I mean, but it is tied in because, you know, what goes in comes out as R-1 water, hopefully. And if we had enough storage, you could use it all. But, today you're only utilizing two millions gallons a day of it. You know, in the original...in the zoning that's currently running with the land, there is a condition that says, "The applicant shall participate in its fair share of development and funding of the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility." This was done back in 1992. So, I don't know why we aren't requiring that now. You know, I think Chair Hokama made a good point last week that when we build these treatment plants, we build them for the long term use with the idea that as more people come on, they're going to be sharing in the cost of the development of this plant. And now, that's totally off the table and they want to do a private system. That means that they're not sharing for the development cost of this system even though it's a condition that's currently deeded on the land. So, did they ever come to you in the last six years since this project first came forward...seven years, actually, in this latest reconstitution of it, and ask what their fair share would be and what it would cost to hook up to our treatment plant?

CHAIR MOLINA: Mr. Taylor, before you respond, again, I think that question relates along the lines of Condition 16 or 17 on Page 8 of the matrix. After this question the Chair is going to offer a recommendation for Condition Number 10, Members, which is irrigation and dust control. Proceed, Mr. Taylor.

MR. TAYLOR: Most developers, including developers building their own package plants, at some point come to us to ask what would be the feasibility of tying in, what would it take, how much would it cost, do you guys have capacity? And so, yes, we have spoken with this developer a number of

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times in the past several years about what our situation is and what it would take and so, yes, we have discussed that with him.

COUNCILMEMBER ANDERSON: And the discussion was...?

MR. TAYLOR: Basically that the current collection system runs along South Kihei Road. That's where all the wastewater from everywhere below Piilani Highway drains, by gravity, down to South Kihei Road, runs along a series of gravity lines and pumping stations to Kalama Park. There's a large pumping station in Kalama Park that pumps everything up to the treatment plant. That system in South Kihei Road would not be...would not have the capacity to handle this whole project. And if it did, it would basically fill up the capacity, so there would really be no infill available for development between the highway and South Kihei Road. It would take all of the capacity, or possibly not even have enough. So, what...going back a very long time, to the early 90s when this project was first thought of, the rough idea was there'd be a *mauka* collection system, another collection system running along Piilani Highway, or maybe along the North/South Collector Road corridor that would be another collection system that if this system...if this development tied in, it would tie in to that upper system. That system doesn't exist, there are no plans for the County to build it right now. So, we would have a difficult time servicing and getting a collection system for this development's raw wastewater to get that flow to our plant, unless the Developer built the whole thing, because we just don't have capacity for transmission. I hope that clarifies that.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Well...yeah, and it kind of makes...

CHAIR MOLINA: Excuse me, Member Anderson, hang on. Hang on Member Anderson, okay. Again, I want the questions and responses tied in to Condition 10. When we get to 16 and 17, we will discuss it, okay. So...

COUNCILMEMBER ANDERSON: I am discussing 10, Mr. Chairman.

CHAIR MOLINA: Okay, well, how does this tie in to irrigation and dust control? Make it clear to the Committee. Members do want to, I guess, want to move on. And we will have a discussion on 16 and 17 'cause I see some of these responses tying in to that. Member Anderson?

COUNCILMEMBER ANDERSON: Well, Condition Number 10 says that they will use the effluent from the Kihei Wastewater Reclamation Facility for irrigation and dust control purposes. So that means they're gonna have to put in a transmission line for the R-1 water, the effluent, from the Wastewater Treatment Plant to their project. And, I'm thinking, if they're going to be doing that, why can't they put a collection...a transmission line for collection of sewage from the project to the reclamation facility? It doesn't...I don't know, it doesn't make a lot of sense to only put in an R-1 line, they're going to be tearing that in and doing that, and besides that, I think that they

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should be participating in the public system and not be building a private system, especially since a previous Council put that as a condition -- that they will participate in their share of development and funding of the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility. That's how it ties in, Mr. Chairman. It ties in on a condition that's on the land right now. And we seem to be ignoring that.

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

VICE-CHAIR PONTANILLA: Question...you can rule me out of line, if you want to. In regards to a cost to provide a transmission line between the Kihei Treatment Plant and the development site...well, you know, the talk is that, their fair share. Who pays the other share? The County? And how much that would cost the County just to do that?

CHAIR MOLINA: Mr. Taylor?

MR. TAYLOR: Member Pontanilla, I'm not sure what that condition means. Maybe that's a...maybe a question for someone else. If we had built a system that was good for, you know, X number of gallons and a particular development was using half that, it would be very clear their share would be half. But since there is no core system, there is no other developers, there is no project, I don't really know how a fair share would be defined. And I don't know...I don't know that this could exist outside of having the County front a project. I, I, just reading this language and thinking about what the County's done before, the County previously updated the whole wastewater collection system in South Maui. Afterwards, had Council pass an ordinance that divided up the cost by gallonage, and there is now an ordinance with an impact fee that everybody...every time someone comes in for a building permit, they, by ordinance, write a check for what their fair share is. So, fair share is usually defined, when the County fronts all the money, builds a project, then sets up an impact fee per, you know, percentage of use to get that money back. So, I'm very clear what fair share means with that. I don't know what fair share means when there really isn't enough...I don't whether it means that, you know, we have to build a new inland South or a new Central Maui treatment plant and have this developer pay for the whole \$500 million. I don't know if that's fair share, I don't really know what this condition means, and so I'm really not the best person to answer that.

VICE-CHAIR PONTANILLA: Thank you. Maybe Corporation Counsel can answer that?

CHAIR MOLINA: Mr. Giroux?

VICE-CHAIR PONTANILLA: Is there something like an aid to construction type language?

MR. GIROUX: Usually, when you see fair share, you're either depending on an ordinance existing that does divvy up, you know, you're looking at certain types of impact fees in order to rely on the fairness of that, that fair, the reason it says fair share, is because there's gotta be some kind of look into how it's, it is divided. A lot of times, the County will use this language in hopes that

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the Council in the future, will come up with a program and then that way when the program is started, then you can look back at the condition and say, oh, you know, so you don't have to do any kind of retroactive type of...which is not looked on very kindly, but within the ordinance and within the conditions, if you can connect them up and say, you know, and we've been doing this with traffic impact fees, we've been, uh, at the commission level, saying, you know, if and when the County has a policy, that you will contribute to your fair share of improvements. And the hope is, is that the County in the future, will have that program set. So basically, what it is, is that it's leaving it up to the Council to decide what the ordinance is going to be in order to create a fair share basis.

VICE-CHAIR PONTANILLA: So, to your knowledge, we don't have an ordinance covering that?

MR. GIROUX: Not right now, I'm not sure. I think the...we would have to look at the, you know, Title 18 and...not off the top of my head, I'm not sure.

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

CHAIR MOLINA: Okay, thank you, Member Pontanilla. Members, at this time the Chair is gonna offer a recommendation for Condition Number 10.

COUNCILMEMBER ANDERSON: Chair, I have a question.

CHAIR MOLINA: Okay. After the Chair makes his recommendation, consider the language. Members, if you look at Page 6, the third column. Staff, can you once again, read out the proposed condition as recommended by the Planning Department?

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

CHAIR MOLINA: Okay, Members, that is the Chair's recommendation, and the floor will be opened for any proposed language changes as it relates to Condition Number 10 and any additional questions for Staff. So that is your Chair's recommendation for that condition. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. So, Mr. Taylor, are you saying that none of the new Wailea projects that are coming on line...I mean, there's a massive amount of units that are being built and ready to come on line, not to mention a hotel, condominium project across from Kealani, any number of condominium and housing projects going on in Wailea...are they hooking up to the sewage treatment plant?

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MR. TAYLOR: Yes, they are.

COUNCILMEMBER ANDERSON: And so, are they paying their fair share?

MR. TAYLOR: Yes, they are. They are paying the share for the treatment plant upgrade and for the collection plant upgrade that are defined by two separate County ordinances that define those impact fees.

COUNCILMEMBER ANDERSON: And so, why can't we follow the condition that already...is on this project, and have them pay their fair share to upgrade the system to meet their needs? It says, "shall participate in its fair share of development and funding of the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility." So, why can't they participate like the rest of these people?

MR. TAYLOR: When the improvements were done back in the early 1990s, there were certain...there was...based on a map of where projects might be built, there was an assumption that the South Kihei Road collection system would serve Wailea and would serve infill lower than Honoapiilani, or lower the Piilani Highway, from there down to South Kihei Road. That's how the system was upsized. And so, the cost for that and the capacities for that were based on that basis. So, Wailea 670, or whatever the new name of it is, was always determined that if it was built and tied in to the County system, it would not tie in to the existing collection system. There would have to be a whole new collection system built for *mauka* development. And so, the ordinance, the impact fees weren't...didn't take into account this project tying in with its flow. It was built for the Wailea flows and for the rest of the South Kihei development flows.

COUNCILMEMBER ANDERSON: Well, I mean, we got developments right across the highway that are tying in to this, so I don't know what the big deal is. I mean, obviously, the Council intended for them to hook up to the system or they wouldn't have written this condition.

MR. TAYLOR: I know that condition was written, as you said, back in 1992. There'd been a number of upgrades to the system since then. And we have an idea of how much flow the system can handle. So...I don't know the exact numbers about how much flow this project...we have left in the system. I know that as projects come in, our planning group looks at projected flows, looks at our remaining capacity in the collection system, and make sure that we have enough capacity. If, for example, this project was able to tie in to the South Kihei Road system, the flow would be so much that it would probably just fill it up. And at that point, we'd have to build a whole new system if anybody wanted a building permit in South Maui. All the little infill projects that haven't been developed, we wouldn't be able to hook them in, unless we built a whole another system, a whole another collection system, transmission system to the Kihei plant. So, this is one of our most difficult aspects of planning these systems is that the money for and the construction of this core infrastructure happens...has to happen up front and in a big chunk. It can't happen piecemeal. So right now, we have a system in South Kihei Road that I think we're

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trying to be careful to not fill it up with a large project so that there isn't enough capacity for other developers.

COUNCILMEMBER ANDERSON: So, you don't know how much additional capacity is going to be used by all these new projects coming on line?

MR. TAYLOR: I don't have that number in front of me, but our planning group, when they get proposals, SMA permits, or subdivision reviews, they track all of that and they look at projects, how much they're gonna generate, and they basically make sure that we have enough capacity or we'd deal with them in that stage. So because of this project intended from the time we started hearing about it, to build their own treatment plant, we didn't take into account those numbers, and we said we have enough capacity to service these other folks because this developer plans on building his own treatment plant.

COUNCILMEMBER ANDERSON: Well, that's what he plans. It may not be what the Council thinks is appropriate, given the fact that there's already a condition on 480 acres of this land that says they shall hook up to the existing Kihei Wastewater Treatment Facility. You know, I just don't see...he just told us a half a million gallons a day would be their total use, you know, their total build-out. You just told us that there's at least two million gallons a day capacity left.

MR. TAYLOR: In the treatment plan, that's correct.

COUNCILMEMBER ANDERSON: Yeah...

MR. TAYLOR: But there's less than that in the transmission system of the pipes and pumping stations to get that flow to...

COUNCILMEMBER ANDERSON: Well, then they need to pay for whatever development and funding is necessary for the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility.

MR. TAYLOR: Again, without any...even though I don't have any detailed plans or anything in front of me, I would say that if the Council's intention is to have them tie in to the Kihei Treatment Plant, they will have to build a brand new collection system, either *mauka* of Piilani Highway, in Piilani Highway or along the North/South Collector Road corridor, a brand new system of transmission lines and pumping stations in order to get it to that plant. So if that is the Council's intention, I just want to be clear that we don't have enough capacity for this project in the current South Kihei Road transmission system. There would have to be a brand new system built. So as long as there's clarity.

COUNCILMEMBER ANDERSON: You're saying there would have to be lines along Piilani Highway when you say, a system...you mean a transmission line?

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MR. TAYLOR: Par..., either in Piilani Highway, or parallel to it either above, or below.

COUNCILMEMBER ANDERSON: Right.

MR. TAYLOR: Agreed.

COUNCILMEMBER ANDERSON: And, you know, they gotta do the roadway anyway, they're gonna be tearing it up. So, I don't see what the big deal is, you know. If that was the original intention for this project, I think we need to stick with the conditions that are already running with the land. You know, unless...unless we make conditions, Mr. Chairman, that supplant and support conditions that already are on this project that previous Members who sat here before us passed into law, then I think we need to follow what is currently on the books. You know, any changes we make should support that, not undermine it, not lower the standards that were previously set. Because that's what we're doing, we're lowering the standards. And this is not the time to be lowering standards. If anything, it's the time we tighten up our standards. Thank you, Chairman.

CHAIR MOLINA: So noted, Member Anderson. Okay, Members, Chair will call for the vote on Condition Number 10, and we will get into additional discussion on the, I guess, the Wastewater agreement and any other issues that were brought up in the conversation when we reach Condition 16 and 17.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla, followed by Member Johnson.

VICE-CHAIR PONTANILLA: Your vote is gonna be by consensus, or...

CHAIR MOLINA: Well, do...the Chair is open to either taking a formal vote, or we'll just have a consensus at least, for Condition 10 as worded. And again, the Chair has made it...repeatedly stated, if you want to put additional language in there, now is the time to do so. So far, I have not heard anything of that nature yet, so this is the Chair's recommendation as worded in Condition 10 on Page 6, third column of your matrix and as was read by Staff. And again, we can get into a more detailed discussion with regards to wastewater capacity, agreements, and how much monies the developer's gonna be expected to provide for the wastewater reclamation facility itself. I mean, that again, Members, I want to repeat, we can get into a further discussion on that for 16 and 17. As you look at Condition 10, it says irrigation and dust control, and the language as recommended by the Planning Department seem to reflect just that, and not anything related to agreements with the developer and wastewater capacity. So, I would like to address what's being recommended here for Condition 10, and then we can move on. So, I would just simply ask the Committee for consensus on Condition 10, and we will move on to the other conditions.

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COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: Okay, hang on. Member Johnson, followed by Member Anderson.

COUNCILMEMBER JOHNSON: Yes, and I understand what you're asking and, I guess, my problem with this is, it's a little ambiguous because we haven't resolved the underlying question. If you're trucking in water, if you're doing what other developers do and they bring in water from the wastewater plant, that's one thing. And if we're specific about that, I'm more supportive of this that during, you know, the construction phase, this is the way that you're gonna do it, because it would take a long while to put in all the lines to actually take the water out of the line. That, I understand. But my concern is really...have been expressed by Member Anderson. If we have an intent to have people hook in to an existing system so that we have some modicum of control over what development occurs, where it occurs, how we service, then that issue is a completely separate issue for me, so if we're real clear about the fact that this is just during the construction phase, and it's more appropriate when you're talking about trucking water or where they're bringing in water on a temporary basis. But I am not saying that I agree to this as the long-term, you know, solution for this area because I really think that it really is important. And...

CHAIR MOLINA: All right, can you offer us some language to just maybe strengthen this, or...or make it more clear?

COUNCILMEMBER JOHNSON: Well, you know, I guess it's...because we've combined a lot of things that, number one, are not during the construction portion, we've combined the long-term use for irrigation purposes which is assuming it's after construction, so we've co-mingled two different time frames in my mind. So that's what makes it really difficult and ambiguous for me to support this. And, I don't know, that's my problem, Mr. Chair 'cause, you know, we've thrown a lot of things into the mix. I understand why, to try to consolidate and put related conditions in one lump. But as a result of that, we've got construction or pre-construction, construction, and post-development, all in one little ball. And that is where it's a little bit unclear because I think, fundamentally, for me, we have to answer the other question is, what route are we gonna go. Are we gonna go the route of, well, let them put in their own plant and escape the condition, or follow what runs with the land currently.

CHAIR MOLINA: Okay, let me get an input from the Deputy Director of Planning. Director Suyama, do you recommend then to, I guess, alleviate some of the ambiguity that we maybe create a separate condition and, I guess, dilute Condition 10?

MS. SUYAMA: Well, to me...

CHAIR MOLINA: To address some of the concerns?

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MS. SUYAMA: To me, the Condition Number 10 dealt with two issues. One was irrigation water. And as stated by Mr. Jencks, they are three poss..., two possible source of irrigation water. They are looking at a non-potable well site as well as in the future, the R-1 water for reuse if a dual system was ever built to the Wailea 670 project. The other one deals with construction activities, which they currently can do now, which is to use the R-1 water for construction purposes. What he had said is that as part of the whole system, they will build three different lines, one of which would be potable for domestic purposes. And that will come from the wells that they are proposing as north of the Maui Meadows project. So I thought this condition is very clear that it was for irrigation purposes and construction activities, both of which would not use potable water as its source. ...*(end of tape, start 2A)*...

COUNCILMEMBER JOHNSON: And I understand that, Colleen, but I think that because we're looking at pre-construction, construction, and then irrigation water which ostensibly would be post-construction which would be used by the individual developments. That is...if you're saying that they're not gonna take any of that from the Kihei Wastewater Reclamation Facility, is that what you're saying?

MS. SUYAMA: I'm saying is that they have the possibility of taking it from the Kihei Wastewater Treatment Plant if the R-1 water...in other words, for irrigation purposes, unless the dual line is built from the sewage treatment plant to the Wailea region, there is no way that they can, you know, economically use the R-1 water. The only purpose they can use the R-1 water now is for construction activities. But this condition is looking in the future. At some point in time, the County is gonna have to make a decision. If you want to use the R-1 water, you know, reuse it and not inject it into the injection wells. You're gonna have to put capital improvement funds to either build that R-1 system, or come up with a proposal in which other developers will participate in a dual irrigation system. Other than doing that, I mean, it'll never become a reality, you know, for South Maui or for any area in this County.

COUNCILMEMBER JOHNSON: So, basically, the capacity that we have currently for the irrigation water which would be available through the lines that we're...they're required to put in according to this condition for the dual lines, that water would be available without any additional payment or any additional compensation to the County for the amount that they would need for their irrigation, is that correct?

MS. SUYAMA: It would depend on once, you know, once the dual line is built, how the Council or the County enacts, I mean, it could be similar where the County puts in the line and then as each developer comes in at some future date, similar to how they have to pay the assessments fees for the upgrade of the sewage treatment plant and the collection system. They would at that point, any new development would be subject to those fees. And that would be an enabling legislation from this Council. But you have to realize, until such enabling legislation is enacted, as long as people come in for building permits and subdivisions, as long as it's not in place at that time, basically, they get off, I mean, they don't have to come back retroactively and pay the fee. And I think that's the decision the Council has to make. Do you want them to either build a sewage

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treatment plant on their own in which they maintain and they take responsibility and they use that water from their system in order to provide irrigation water, or do you make a condition that basically tells the developer that you shall hook in to the County system and you will be responsible for whatever upgrades are necessary on the County's perspective. And already, Mr. Taylor has said that for them to hook in to the County's system, they need to build a second transmission system which includes not only their lines but the pump stations that are necessary. And that is a multi-million dollar project. And I'm not sure whether this developer has the resources to put such a system in. Even the County would have a very difficult time in putting such a system in.

COUNCILMEMBER JOHNSON: Yeah, which leads to other questions which I won't get into because they're not on the subject that we're dealing with right now. Well, Mr. Chair, I don't have any more questions on this. I just think that it really does beg other questions as a result of how this condition is structured.

CHAIR MOLINA: Okay, thank you, Member Johnson. Member Anderson followed by Member Pontanilla.

COUNCILMEMBER ANDERSON: I don't recall I had a question, but...

CHAIR MOLINA: Oh, I'm sorry, I thought I saw you...

COUNCILMEMBER ANDERSON: But, you know, Mr. Chair, I think that we...if you want to get final decisions on these conditions so that we can get in to conditions that other Members might want to propose, I have several of my own, I think that we need because we have a motion on the floor, I think we need to vote on these conditions as amendments to the main motion.

CHAIR MOLINA: Yes, at this point, it's just consensus, no formal motion has been made at this point.

VICE-CHAIR PONTANILLA: Just a recommendation.

CHAIR MOLINA: Yeah, it's this...at this point, I'm just looking for consensus and then. . .

COUNCILMEMBER ANDERSON: It's my understanding that there was a motion to approve on the floor in order to discuss the conditions.

CHAIR MOLINA: Yeah, but the motion to...at least vote on the consolidated bills, that has yet to be done, but at this point, the Chair's preferred way of proceeding is just to get consensus from the Members, like we've been doing with all the other conditions.

COUNCILMEMBER ANDERSON: All right, that's fine, thank you.

CHAIR MOLINA: Okay. Mr. Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you, Chair. I think the language put up by the Planning Department is sufficient. It covers both irrigation as well as the dust control, the dust control in regards to the construction phase and the irrigation, you know, having to do with putting in those facilities when this development is developed. So, I would...I can go along with the Planning Department's proposal at this time.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Members, at this point what I'll do to sort of simplify things a little bit, I'm just gonna down the line and ask you if you have consensus on it. And I don't believe this would preclude you from at any point in time prior to, you know, the Committee making a final decision to incorporate additional language or proposing to amend. But at this point, with the way the amendment or the condition is structured, I'm just looking for general consensus as to how it is worded.

Mr. Victorino, do I have consensus from you, or any concerns?

COUNCILMEMBER VICTORINO: No, you have consensus, thank you.

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

COUNCILMEMBER MEDEIROS: Consensus, Chair.

CHAIR MOLINA: Okay. Member Johnson, I know that you did have some concerns, so I'll take that as no consensus.

COUNCILMEMBER JOHNSON: Yeah, I'm, I'm not...

CHAIR MOLINA: Okay. Member Baisa, consensus...and Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, I have a problem. It does say, "including, but not limited to," so that means they have to use the effluent.

CHAIR MOLINA: Okay, thank you. Well, the Chair will mark it tentative consensus, if you will, but again, it will be open for any proposed amendments as well, or additional language into this condition. All right, Members, let's go ahead and take a short break. We spent a good deal of time on this one condition. When we come back, the Chair would like to discuss Condition Number 12, so this meeting will be in recess until 2:55. . . .(gavel). . .

RECESS: 2:43 p.m.

RECONVENE: 3:00 p.m.

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee Meeting of July 25, 2007 is now back in session. Today is Monday, August 20th, 3:00 p.m. Members, if you will turn to Page 7 of your matrix, Condition Number 12, which relates to the Parks/Non-Profit Play. We have Mr. Matsui from the Parks Department and I would like to get comment from him and then afterwards, get consensus from the Members as to the language presented by the Deputy Director of Planning. And the Chair will consider any additional language to be incorporated or deleted from the proposed condition. So, at this point, Members, I'll have the Staff go ahead and read the condition based on the July 27, '07 draft which is updating the Maui Planning Commission Condition Number 12. Staff?

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

CHAIR MOLINA: Okay, thank you very much, Staff. Okay, Members, Planning Department or Mr. Matsui, do you have any additional comments before the Chair opens the floor to questions?

MS. SUYAMA: No, no additions.

CHAIR MOLINA: Okay. Mr. Matsui?

MR. MATSUI: Yes, I do. The developer has already submitted the...an agreement, a proposed agreement that we've spoken to the Junior Golf people and the Department is comfortable with. I could read you the terms of it...

CHAIR MOLINA: Mr. Matsui...Members, any objections to Mr. Matsui giving us a brief synopsis?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: I think that we should have a copy of that --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --provided, because if this goes forward, I think it needs to be in the Unilateral Agreement as a condition, not something agreed to after the fact.

CHAIR MOLINA: Okay, thank you, Member Anderson. That would be taken into consideration. Staff, do you need some time to get those documents printed for all the Members? Okay, what do you need to...about five minutes? Members, we'll take a five-minute recess so Staff can make

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copies of that agreement between the applicant and the Parks Department. Meeting in recess until 3:10. . . .(*gavel*). . .

RECESS: 3:03 p.m.

RECONVENE: 3:15 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee Meeting of July 25, 2007 is now back in session. It is 3:15, Monday, August 20th. Members, we are looking at Condition Number 12, which relates to Parks and Non-Profit Play, and when we last left off we had copies made of the agreement between Parks Supervisor, Mr. Matsui and the applicant, Mr. Jencks. And at this point, the copies have been made. Chair is going to recognize first, Member Pontanilla, if I recall, there was an issue which related to having open public play for at least a day...which, with regards to this golf course. So Member Pontanilla, you have the floor.

VICE-CHAIR PONTANILLA: Thank you. If we can have the developer representative up.

CHAIR MOLINA: Okay, all right, thank you. Mr. Jencks, and we have a little background music for you to take the stage.

ALL: . . .(*Laughter*)...

MR. JENCKS: It's the golf jig.

CHAIR MOLINA: All right, nothing like a dramatic entrance there, Mr. Jencks. Okay, Mr. Pontanilla, you have the floor.

VICE-CHAIR PONTANILLA: Thank you. Mr. Jencks, I know the last time we talked about the golf course and the programs that is being provided to nonprofit as well as the Junior Golfers, and there were a lot of discussion in regards to local play. And I kinda mentioned that there's one golf course here which is a private club, the Maui Country Club that offers one day a week to local residents to golf at the golf course, local residents and of course, visitors. Is the...is that something that, you know, you're willing to be open in regards to local Maui residents taking advantage of the new golf course, to play on the golf course?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Yes, Mr. Chair, Council Member, yeah, we did...I did talk to the partnership about that, and that's something that we would fall in along the lines of the Maui Country Club which is a pretty good program keeping in mind, Maui Country Club is only a 9-hole course. This is an 18-hole course. But yeah, we could provide something along that line for public play.

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VICE-CHAIR PONTANILLA: Thank you. I just learned today, you know, I had somebody talking story with me this afternoon, and I don't know if you guys heard of the First Tee Program? It's a program that is recognized by the PGA and basically, you know, what they do is they provide underprivileged kids the ability or the...an opportunity to take advantage. It's similar to the Junior Program...Maui...the Junior Golf Program. But it's more geared to, you know, those kids that can't afford to learn how to golf. Is something like that be accepted at the golf course? In other words, trying to help out these underprivileged kids to learn how to golf?

MR. JENCKS: Well, you know, we...you have the agreement, the draft agreement that we prepared and our...my attorney, Mr. Martin Luna is here to answer any questions you might have in detail with regard to the agreement. But I don't...I'd have to know more about the program, but it sounds like it's along the same line of...we're providing equipment, we're providing instruction, we're providing play time for the Maui Junior Golfers. And we're certainly happy to look at the First Tee Program if you could get me some information on it, see what it is, see what, how many kids could be involved?

VICE-CHAIR PONTANILLA: Yeah, it's Mr. Eric Miyajima who is the, I think, the person that is in charge of the Maui Junior Golf...

MR. JENCKS: That's right.

VICE-CHAIR PONTANILLA: He talked about the First Tee Program that is now being offered throughout the United States and it's something that, you know, the PGA looks at as trying to provide opportunities to those underprivileged. So, yeah, Mr. Miyajima could provide you more information in regards to the First Tee Program.

MR. JENCKS: I'll give Eric a call. We worked with Eric quite closely on this agreement that you have in front of you, by the way.

VICE-CHAIR PONTANILLA: Oh, thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Chair would like just to follow up on your question, Mr. Pontanilla. You mentioned the Maui Country Club...what day of the week do they have, I guess, set aside as a day for public play?

VICE-CHAIR PONTANILLA: They set aside Mondays.

CHAIR MOLINA: Mondays. Okay. Mr. Jencks, is that something, uh, Monday, you can do?

MR. JENCKS: Yeah.

CHAIR MOLINA: All right, thank you. Questions for Mr. Jencks? Member Anderson?

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COUNCILMEMBER ANDERSON: I have questions about this agreement, I don't know if he can answer it. And, you know, I don't think Monday is such a great day. If it's gonna be a day that people can actually take advantage of it, it should be a weekend. How many people have Monday off?

I'd like to know, Mr. Chair, the Exhibit "2", Members, is really where all the declarations are made, what the condition really says. Everything else is ancillary to that, and so, on Item C, you talk about the developer permitting MIL and Hawaii High School Athletic Association to use the golf course once per year for an official MIL or HHSAA Golf Tournament, if requested by them. And then it says, "The MIL or HHSAA Golf Tournament shall service one of the golf tournaments permitted once per quarter of the year for nonprofit organizations referred to in Condition A above, except that the MIL and the HHSAA tournaments need not be a fundraising activity. That's when MIL or HHSAA sponsors a golf tournament on the golf course, the number of nonprofit fundraising activities provided in Condition A above shall be decreased accordingly for that calendar year." So, pardon me for not following that, but Condition A says, "The Developer shall permit one non-profit organization per quarter of the calendar year, other than Maui Junior Golf Association, the use of the golf course for a fundraising activity upon terms mutually agreed upon with said non-profit." So, what you're saying is that, if the MIL or HHSAA have a tournament, it's not necessarily for a fundraising...doesn't have to be for a fund raising activity, but if they do that, then that is deducted from the one nonprofit organization per quarter?

MR. JENCKS: I think that was the intent, yes.

COUNCILMEMBER ANDERSON: So, the intent, then, would be four times a year, you will allow a nonprofit organization to have a tournament for fundraising purposes.

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And if MIL or HH...or the Hawaii High School Athletic Association wants to use the golf course for a tournament that may not be a fundraising activity, then that would be deducted from...would be deducted.

MR. JENCKS: That's what I call [*sic*] reading, that's correct.

COUNCILMEMBER ANDERSON: Sorry?

MR. JENCKS: That's what I recall reading in the agreement, that's correct.

COUNCILMEMBER ANDERSON: And so...it says MIL or HHSA, does that mean one or the other gets to use it once a year? There would only be one use per year --

MR. JENCKS: One.

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COUNCILMEMBER ANDERSON: --between these two organizations?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: So at any given time, should one of these organizations have a fundraising or a tournament of any kind, then that reduces the nonprofit organization's fundraising tournaments down to three in any one year rather than four.

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: All right, thank you. I'll pass, Mr. Chair, I have questions but I'd rather ask the Parks.

CHAIR MOLINA: Okay, thank you. Member Johnson, questions for Mr. Jencks?

COUNCILMEMBER JOHNSON: Yes, Charlie, how many participants are there generally in these types of activities? Would you have any idea? You know, in a typical golf course, nonprofit, you know, I mean, how many people are we talking about?

MR. JENCKS: In terms of a tournament, or...

COUNCILMEMBER JOHNSON: Yeah, let's just say it's a fundraising tournament, I've never participated, I'm not a golfer, so, I mean, if you could even give me a maximum number of people that usually enter.

MR. JENCKS: One of the most popular is the Maui Chamber tournament they have at The Dunes, 250 players.

COUNCILMEMBER JOHNSON: Okay, so that would be 250 people maximum participants?

MR. JENCKS: No, you just...how many do I . . .

COUNCILMEMBER JOHNSON: Yeah.

MR. JENCKS: I'm thinking?

COUNCILMEMBER JOHNSON: Yes.

MR. JENCKS: It's around 200, I can't say maximum or minimum, I think it's about 250 players for a good tournament.

COUNCILMEMBER JOHNSON: For a good tournament.

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MR. JENCKS: It could be more, it could be 300, I'm not, I'm not really sure. ...*(adjusting microphone)*...

COUNCILMEMBER JOHNSON: Okay, so if...and if that occurs four times a year, that's roughly...and, I mean, could be the same 250 people participating. But let's say that would be 1,000 participants in these fundraising or non-fundraising activities that would be available to the public during the year. Is that correct? Approximately?

MR. JENCKS: Or more.

COUNCILMEMBER JOHNSON: Yeah. Okay, thank you.

CHAIR MOLINA: Thank you, Member Johnson. Any other questions for Mr. Jencks? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: In regards to Exhibit "2", you know, what Member Anderson asked you about in regards to MIL and the Hawaii State Association utilizing the golf course and removing one day of the quarter for nonprofits...it was kinda unfair, yeah? I would love to see nonprofit take advantage four times a year. In other words, you know, if you gonna have 250 golfers, you know...you know, I run golf tournaments, and in order to make money for a nonprofit, you know, 250 golfers will generate a lot of revenue. And to take away one golf tournament from a nonprofit for Maui, you know, probably hurts an organization. So what is the possibility of, you know, having that for, I guess, every quarter you have a nonprofit taking advantage of the golf course for fundraising. And because MIL and the Hawaii High School State Association, Athletic Association, you know, not every year the State tournament is held over here on this island. MIL, I know they have frequent...they had a golf tournament, golf courses also to make it as a, one of the condition is to have MIL play, you know, once a year or whatever it is, rather than taking away from a nonprofit organization utilizing the golf course.

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

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I don't have any problem with that.

VICE-CHAIR PONTANILLA: So we'll make an amendment to that?

MR. JENCKS: So that you'd, so then you'd have, if I may, you'd have four quarterly nonprofit tournaments and then if you have a separate intramural or Hawaii High School Athletic...that'd be fine.

VICE-CHAIR PONTANILLA: Okay, fine, thank you.

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CHAIR MOLINA: Member Pontanilla, is that something you'll consider incorporating into the condition as well?

VICE-CHAIR PONTANILLA: As part of Condition 12.

CHAIR MOLINA: Along with the additional day for public play?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Okay. A quick question for Mr. Jencks. Mr. Jencks, what...you know, there's been a concern with regards to the day of the week, Monday versus a Saturday or Sunday. Can I get your comments on that? I'm not a golf expert, I know maybe Mr. Pontanilla may be able to answer that, but what about, you know, since we're talking about Monday and a weekend, how about a Friday? Can I get your input on that?

MR. JENCKS: I was gonna suggest, maybe what we do is we rotate it. Instead of having a specific day, we rotate it every week.

CHAIR MOLINA: Okay. So, one week Monday, another day Tuesday...

MR. JENCKS: Through the five days of the week.

CHAIR MOLINA: Right. We just rotate the weekdays.

MR. JENCKS: Yeah.

CHAIR MOLINA: Okay, thank you. I saw Member Baisa and followed by Member Medeiros, and Member Anderson. Question for Mr. Jencks?

COUNCILMEMBER BAISA: Mr. Jencks, going back to this nonprofit thing, I just have a couple of remarks. First of all, I support Mr. Pontanilla's request. I think that the nonprofits of Maui could certainly use that revenue. And if we don't get it from a golf tournament, then we get it from other ways, as you know. And that means another dinner or another "please, Charlie, write a check," ...(*chuckles*)... or whoever else that the nonprofits can corner. So, I think the golf tournament is a good way to raise money. Everybody gets value, everybody enjoys it, and it certainly is a very good support for our community. So I would beg you to do that and not take away one, one event a quarter.

The other thing I'm concerned about is that there be some rotation of the nonprofits. As you know, there are many, many, many nonprofits on Maui, and everybody's trying to get in to the golf tournament game because everybody's learned that it's lucrative. But, you know, it seems that once people corner a course or a date or whatever, you know, you can't get in. So you might want to think about that, trying to benefit a larger community.

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And lastly, I think the idea of rotating the day that the public could come in and play might be a good alternative, because there are people who are on variable work schedules. Most of us don't have a 9 to 5, Monday to Friday anymore, particularly with, you know, all the service businesses we have here on Maui where people get days off during the week or on weekends or whenever they can get it.

MR. JENCKS: If I may, Mr. Chair, a question with regard to rotating for the nonprofits. I'm not quite sure how to do that other than list them all and just...maybe the Hawaii...the nonprofit directors could get together and talk about how they would do that.

COUNCILMEMBER BAISA: It might be a very good thing for you to bring to the Maui Non-Profit Directors Association and let them work with you on it. You know, they are the organization here on Maui, they represent...they organize nonprofits and I'm sure they could work with you and give you good advice.

MR. JENCKS: That'd be fine, be happy to do that.

COUNCILMEMBER BAISA: Thank you very much.

MR. JENCKS: You're welcome.

CHAIR MOLINA: Okay, thank you, Member Baisa. Before recognizing Member Medeiros, Chair would like to get comment from the Deputy Planning Director with regards to the fourth column on your matrix on Page 7 as relates to the agreement. I'm presuming that you would recommend that we add this language in to the proposed condition? Director Suyama? And the statement reads, "The agreement should be executed prior to the granting of a Certificate of Occupancy and prior to the opening of the golf course."

MS. SUYAMA: The reason we put this is that the agreement should be in place prior to the golf course in operation, so that way, from the day that it opens, then you know that the free play or the nonprofit play will begin from that day one and not later, in other words, you have to execute an agreement afterwards. Because the Certificate of Occupancy is usually the last step for compliance, you know, once you get your Certificate of Occupancy, if you haven't complied with a condition, it's very difficult at that point to do enforcement.

CHAIR MOLINA: Okay, thank you, Deputy Director. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Mr. Jencks, because I'm not a golfer, and I respect what has been asked of the developer to provide on their golf course, are these same requirements or relationships between the golf course and the public, does that exist for all golf courses on Maui, private golf courses?

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MR. JENCKS: No.

COUNCILMEMBER MEDEIROS: So...and that, you know for sure, that other golf courses are not required to do that? And I'm asking you that in case you don't know, I'm gonna ask the Parks Department that.

MR. JENCKS: There are golf courses on Maui that are private for-profit golf courses that prioritize member play and then public play. We have the Maui Country Club that has designated public play. I think that's the only course that has a designated public play that I'm aware of. But the other private for-profit courses I don't think do that, they have times for members or folks who live in the community, like for example, Wailea, they have preferred tee times. So we're a little bit different in that regard.

COUNCILMEMBER MEDEIROS: But those courses are open for public play, but of course, they pay to play there?

MR. JENCKS: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And, you know, I can see doing something for Junior Golf. I think that's an important program and for nonprofits and so forth. I just wanted to know if, you know, we're requiring that of all golf courses or not, because I don't play golf, so I wouldn't know that information.

MR. JENCKS: Neither do I.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Jencks. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Any other questions for Mr. Jencks at this time? Okay, I'll excuse him from the stand. And Member Anderson, you have questions for staff in the Parks Department?

COUNCILMEMBER ANDERSON: Wait, Chair.

CHAIR MOLINA: Oh, sorry. Oh, is this a question for Mr. Jencks?

COUNCILMEMBER ANDERSON: Uh...

COUNCILMEMBER ANDERSON: Oh, okay, Mr. Jencks, I'm sorry.

COUNCILMEMBER ANDERSON: And I just want to ask him this question while he's still here. And then I'd like to yield to Member Victorino before I go on because he had his hand up and he has...

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

COUNCILMEMBER ANDERSON: Item Number A, "Developer shall permit one nonprofit organization per quarter of the calendar year other than Maui Junior Golf Association, use of the golf course for a fundraising activity upon terms mutually agreed upon with said non-profit organization." And that means that you can set the terms. And would you have any, you know, in order for this to really be viable, I think we need to put in here for a weekend fundraising activity. Would you have any objections to us putting in the term, "weekend", so that we can be sure...I mean, you can agree to fundraising activity on a Wednesday, and who's free on Wednesday but a few retired people? And so, I want to make sure that they get the full measure of this condition and, you know, what its intent is, is to raise money and if you're really gonna raise money, you gotta do it on the weekend.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: If I may, look, I think the agreement speaks for itself, it's well intentioned. The nonprofits know when they can schedule the golf courses and know exactly when they can maximize their return. You know, I think it's better if we leave it flexible so that, for example, the Maui Chamber of Commerce, their tournament is on a Friday. I think it's better to leave it open, leave it flexible for the ownership, the management of the golf course, and the nonprofits to work together. I think that maximizes the return of the community.

COUNCILMEMBER ANDERSON: So you're not agreeable to having a weekend fundraising activity?

MR. JENCKS: I think you should leave...look, if the management of the golf course and the nonprofits agree to have it on a Saturday or a Sunday, so be it. Leave it open...

COUNCILMEMBER ANDERSON: But what if they don't agree and the, and the fundraising entity wants to have it on a weekend so they can maximize the turnout? Then, you guys have the call and so, what I'm hearing you say is you're not agreeable to having weekend play specified in this condition.

MR. JENCKS: No, I'm not agreeable to the wording that you propose.

COUNCILMEMBER ANDERSON: Well, the wording I'm proposing, Mr. Jencks, is that you allow this to happen on the weekend so they can get the full measure of the intent. You're telling us you're not agreeable to that.

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: All right, thanks.

CHAIR MOLINA: Okay, Member Bais..., I'm sorry, Member Victorino, followed by Member Baisa.

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COUNCILMEMBER VICTORINO: Charlie, thank you. And as far as this golf and fundraising and all that, I think you've been more...*(end of tape 2A, start 2B)*...I don't have a problem with weekends, I think you stated your willingness to listen to the nonprofit groups and work with them, you know, so I have no qualms with that. The one thing I do want to know is, when you say MIL, the MIL...let's start with the MIL because I know they've had a real difficult time even with our course here getting tee times for regular school season play. Okay. That's been one of the biggest problems they've had is during the regular season. The playoffs, and if you're talking the State tournament, that's a different issue. Would you guys be more open...and see, that can be held any time of the week because these tournaments can be held school versus school, like say, St. Anthony takes on Seabury, for example, a head-to-head match. Would you guys be willing to help them in that area because it says, league and as well as the Hawaii State Athletic Association which would be tournament only. So would you be as helpful in that sense and help them during the season, now, I'm not talking playoffs, and I'm not talking league championship, during the regular season, would you consider helping them in that area?

MR. JENCKS: I'd like to look at it within the context of the agreement now with Maui Junior Golf and look at how many days we're talking about and get back to you.

COUNCILMEMBER VICTORINO: Right, yeah, okay. So long as, you know, you can look into that, I think that's very important also because that's been one of the big components that has been missing on Maui, because the golf courses that they have been using including Waiehu, sometime cannot accommodate the number of schools and participants. So, you know, just FYI, if you can consider that, I'd appreciate that.

MR. JENCKS: I'll take a look at it.

COUNCILMEMBER VICTORINO: Okay, thank you, Charlie.

CHAIR MOLINA: Okay, thank you, Mr. Victorino

COUNCILMEMBER VICTORINO: Thank you, Chair.

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: Just wanted to add to the discussion about the dates for nonprofit tournaments. I'm a member of Kahului Rotary, and we have established a golf fundraiser on the second Monday in December, and it's been very successful. And one of the reasons why this works is many of the people who participate in charity golf tournaments are executives, and so they just move their golf day to whatever day the tournament is being held, and we have great support from our people here on Maui for that.

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CHAIR MOLINA: Thank you, Member Baisa. Members, any other questions for Mr. Jencks? Okay. Seeing none, you're excused for now, Mr. Jencks. ...*(laughter from Members)*... Okay, now, we shall open the floor for questions to Mr. Matsui or Deputy Director Suyama, starting with Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. I just want everyone to realize that this condition is to replace a current condition that, again, is in place on the 480 acres that were intended to be two golf courses, a six-acre park with a Little League field, and a club house. And the condition currently reads 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." So, basically, what they're doing now, instead of having two public golf courses, one of which 50 percent of the tee times would be made available to Hawaii residents at 50 percent of the market rate, they now want to build one private club golf course. And as a conciliatory condition for allowing the current condition to be done away with, they're offering up Junior Golf and four nonprofit tournament events per year. I don't think it's much of a trade-off because, you know, if it was as the intended condition states right now, Hawaii residents would be getting use of 50 percent of the golf time at 50 percent of the going rate. And I think that's, you know, more inclusive than what's being offered here and while, you know, I'm all for Junior Golf and I'm all for nonprofits. There are nonprofit tournaments going on all year long, all across the island. And I think the golf courses that offer this, they do it as a good neighbor. They don't do it because someone imposes a condition on 'em. So, I think we're getting the short end of the stick on this, and I'm not at all in favor of a private club. There's a difference between a private for-profit golf course and a membership only golf course. And that's what this is. Membership that we don't know what it's gonna cost, and we've got affordable housing down there that they won't be a part of the golf course, so let's segregate them even more.

Mr. Matsui, on this agreement, Condition Number 7, or Item Number 7 on Page 3 says, "The Developer agrees to develop said Parcel..." "Said parcel", I'm assuming is Wailea 670, or Project District 9 parcel?

CHAIR MOLINA: Mr. Matsui?

MR. MATSUI: I believe so, yes.

COUNCILMEMBER ANDERSON: Okay, "Developer agrees to develop said Parcel in conformance with conditions set forth in Exhibit 2."

MR. MATSUI: Okay.

COUNCILMEMBER ANDERSON: Kinda weird. I mean, Exhibit 2 are all the conditions for play that we were just discussing, and that, actually...strange...only references the 267 acres of the

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property in Kihei-Makena Project District 9. Can you verify, Mr. Matsui, that the golf course is entirely on the 267 acres?

CHAIR MOLINA: Mr. Matsui?

COUNCILMEMBER ANDERSON: Because 480 acres is what's currently conditioned for two golf courses or currently in title.

MR. MATSUI: So, what do you want me to clarify?

COUNCILMEMBER ANDERSON: ...*(laughs)*... Mr. Matsui, I'm not gonna put you on the spot. We're gonna ask Martin Luna come up and, if we could, Mr. Chair, and explain this agreement.

CHAIR MOLINA: Agreement.

COUNCILMEMBER ANDERSON: I have one other question that maybe Mr. Matsui could answer. Item 4 says that the Department of Parks -- it talks about this declaration and all the covenants and conditions -- "shall continue to be effective and run with the land until the Developer notifies the Department of Parks and Recreation that any of said covenants, conditions, and restrictions are satisfied by the Developer and the Department of Parks and Recreation verifies the satisfaction and provides a written release of the covenant, condition or restriction." It's my understanding that this agreement, Exhibit "2" is supposed to be in perpetuity. So, could you tell me what Number 4 is referencing?

CHAIR MOLINA: Mr. Matsui?

COUNCILMEMBER ANDERSON: "Any said condition or restriction are satisfied", to your satisfaction? Do you know that, Mr. Matsui?

MR. MATSUI: No, I don't.

COUNCILMEMBER ANDERSON: ...*(chuckled)*... Okay, and then Item Number 7, it says that "The Developer agrees to develop said Parcel in conformance with conditions set forth in Exhibit '2', which conditions may be amended or modified by the Developer after obtaining the approval of the Department of Parks and Recreation to such amendment or modification." So, basically, you guys...you, Mr. Matsui, have the right to amend this after the fact. Is that correct? According to this condition?

MR. MATSUI: That's correct.

COUNCILMEMBER ANDERSON: Okay. Well, I don't agree with that at all, Mr. Chairman. That's, you know, that's an easy bailout. In five years, you know, the homeowners association could say, "You know what, we don't like all these kids on our golf course and we don't want to give up our

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course for four weekends in a year for nonprofit play. So we want to change these conditions, Mr. Parks Director, and we have a right to do that.” And that’s all done without any Council oversight, Mr. Chair. I think we need to amend that entirely, that any changes in this agreement have to come back to the Council. So, if Mr. Luna could answer the question I had about the parcel?

CHAIR MOLINA: Okay, thank you, Member Anderson. Mr. Luna, if you could please take the stand or not the stand. Maybe in a courtroom.

ALL: ...*(laughter)*...

COUNCILMEMBER ANDERSON: And we’d like you to raise your right hand.

ALL: ...*(laughter)*...

CHAIR MOLINA: Mr. Luna, if you could formally identify yourself prior to responding to the question.

MR. LUNA: Good afternoon, Mr. Chair, Members. I’m Martin Luna, attorney for the Honua`ula Partners. First of all, this is an agreement that was done for the Parks Department and the developer. So, the developer cannot amend it without the Parks Department agreeing to an amendment. So, it’s not going to be a Unilateral Agreement that says, this is what we’re doing and then next year we can change it. It’s a bilateral agreement.

COUNCILMEMBER ANDERSON: Mr. Luna, it’s actually a Unilateral Agreement and Declaration Conditioned Upon Zoning. That’s the title of the agreement.

MR. LUNA: No, but . . .

COUNCILMEMBER ANDERSON: And I know what you say by bilateral. They can’t do it without obtaining the approval of the Department of Parks and Recreation to such amendment or modification. But that’s not my question for you, because I think we’ll take care of that by just taking that out and saying any amendment to any condition, this is going to end up being a --

MR. LUNA: What number are you looking at?

COUNCILMEMBER ANDERSON: --a condition that’s gonna run with the land and I think the Council has a purview to change any condition . . .

CHAIR MOLINA: Member Anderson, is that Page 3, Number 7?

COUNCILMEMBER ANDERSON: Yeah, 7.

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CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: But that's not really my question for Mr. Luna, Mr. Chair. My question for you, Martin, has to do with...well, I guess it is Number 7. The developer agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2". And then when you look at Exhibit "2", and in fact, this whole thing, I mean...Martin, maybe go backwards a little, it might help on Page 2, Now, therefore, the Developer makes the following Declaration...under 1, "That this Declaration is made pursuant to the recommendation by the Maui Planning Commission pertaining to the Declarant's application for a Change in Zoning for 267 acres of the Property to Wailea-Makena Project District 9." And it mentions the 267 acres of property all the way through.

MR. LUNA: Uh huh.

COUNCILMEMBER ANDERSON: And then when you get back to Exhibit "2", the opening Declaration says, "The Developer hereby makes the following declaration. Developer hereby records the following conditions which were generally imposed by the Maui Planning Commission." You know, I don't like that either, because the Maui Planning Commission does not have the authority to impose conditions. It's this Council who's imposing conditions, Chair. They only recommend to us. "Developer hereby records the following conditions which were generally imposed by the Maui Planning Commission of the County of Maui in recommending the Change in Zoning of 267 acres of the Property in Kihei." So, you know, it's referencing this being the parcel but we're doing 670 acres. Can you tell me whether or not, the reference to the 670 acres is the entirety of where the golf course is going to be?

CHAIR MOLINA: Mr. Luna?

MR. LUNA: Yeah, the 267 that's mentioned here was the...I think at that time, zoning had already been done for the golf courses for 400-plus acres. So what's happened is, since that recommendation, I think the Council has had Corp. Counsel to...because it'd be some confusion between the first Project District Zoning and then this second Project District Zoning. They've incorporated the whole 670 acres to put it under one unilateral condition, and so that 267 can be changed to the 670, it's not a problem to do that.

COUNCILMEMBER ANDERSON: I hope so, 'cause it looks like this was, you know, I kinda know how these codes go down on the bottom of the paper and it looks like this was written in 2001, but I don't know. Whatever, it was written after the Planning Commission.

MR. LUNA: Yeah, it's been a while since we did this one.

COUNCILMEMBER ANDERSON: Here's my concern...in referencing specifically 267 acres. Are you...is there an intention to narrow the use of this condition on 9 holes, you know, the golf course, goes above and below the Piilani Highway extension. And so, you know, the 267 acres, I

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don't even think that that comports...let's see, 200, 480, 267...you know, that doesn't even comport with the two different bills, Mr. Luna. So, I'd like to know what the 267 acres is referencing.

CHAIR MOLINA: Mr. Luna?

MR. LUNA: As I said, I think the first...the proposal that went in for your application was the 267, but that's been changed, so as I indicated a few moments ago, it's not a problem to change that to the 670. There's no intent to --

COUNCILMEMBER ANDERSON: Separate it out.

MR. LUNA: --mislead anybody, yeah.

COUNCILMEMBER ANDERSON: No, I wasn't...I wasn't trying to accuse you of that, Mr. Luna. I just wanted to be very clear that this agreement is applicable to the entire 670 acres.

MR. LUNA: Yes, it is. Right.

COUNCILMEMBER ANDERSON: So if we could have that changed, that would be helpful in making it very clear. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Member Anderson. Committee Members, any other questions for Mr. Luna before he's excused? Thank you, Mr. Luna. Members, questions for the Department before the Chair makes a recomme..., offers a recommendation as it relates to Condition 12? Okay, Members, at this point the Chair is gonna offer this suggestion for Condition 12 that we accept the language on the third column of the matrix, and in addition, incorporate the statements from the Planning Depart..., Director, Deputy Planning Director that the agreement should be executed prior to the granting of a Certificate of Occupancy and prior to the opening of the golf course. Chair will recognize Member Pontanilla as well as Member Anderson for any additional incorporations to the condition, or we can consider those as separate conditions if that is the will of the body. Maybe I could ask Corporation Counsel first. Would you recommend that the issue related to the day of play that was brought up by Mr. Pontanilla be put in as a separate condition rather than incorporated into Condition 12, and I guess, Member Anderson's issue with regards to review by the Council before any amendments are made, that should be done as a separate condition rather than being incorporated into Condition 12? Would that add more clarity to the situation?

MR. GIROUX: Chair, I think the intent was to add those conditions into the Unilateral Agreement. I believe that was the...(inaudible)...

CHAIR MOLINA: I believe, I might stand . . . be correct, Mr. Pontanilla, Member Anderson? Okay.

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COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, you know, I think what we need to do here is have this Unilateral Agreement updated. I think we want to reference this Unilateral Agreement which is, you know, it says here, "shall execute a unilateral agreement with the Department of Parks and Recreation." I think they're executing a Unilateral Agreement for this condition with this Council and that it, the terms and conditions of this agreement is what we will be agreeing to. And that it needs to be done as part of all the conditions that we're gonna be executing in a Unilateral Agreement. So, you know, I appreciate that they did this, but, you know, I got...I got problems with it being done after the fact and separate from all the other conditions. It needs to be included with the rest of the agreement...the rest of the conditions in the Unilateral Agreement. And we need to change some of the language, I mean, I don't know if you want to do this by consensus, but I would...I would respectfully request that we take out the ability to amend or modify with the approval of the Department of Parks and Recreation. If they're gonna amend or modify anything, they need to come back to the Council for that amendment. As I said, you know, this is in lieu of public play, Members, for everybody. And then, also Condition 4, Item 4 on Page 3, Mr. Chair, you know, I don't understand this because it says that the Department of Parks and Recreation can verify...in other words, these conditions contained herein shall run with the land in perpetuity or until the developer notifies Parks and Recreation that any of said covenants, or restrictions, or conditions are satisfied. I mean, how do you satisfy something if it's supposed to run in perpetuity? I mean, satisfied, and then, and then provide a written release. If it's in perpetuity, that means forever. So why put in language that would allow them, with the Department of Parks' approval, to disavow these covenants and conditions?

CHAIR MOLINA: Okay, maybe that's a question for Mr. Matsui. Mr. Matsui, can you comment on Number 4 on Page 3?

MR. MATSUI: Yeah, I don't understand that either. ...*(Members chuckled)*...

COUNCILMEMBER ANDERSON: Well, I think we should just take Number 4 out in its entirety. I don't see what purpose it serves and it's very confusing. And unless the developer's attorney can give us a good reason why it needs to be there, I think we should take it out in its entirety.

CHAIR MOLINA: All right, Members, is that clear? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, I agree, except that can we hear from the person who drafted this?

CHAIR MOLINA: Okay, Mr. Luna?

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COUNCILMEMBER MEDEIROS: And if he could give us an understanding of why this was put in and what it was meant to be, please?

CHAIR MOLINA: Okay, Members, any objections to having Mr. Luna come up to the lectern?

COUNCILMEMBER BAISA: No.

CHAIR MOLINA: Okay, thank you, Mr. Luna. So, Mr. Luna, the consideration is to remove Number 4 from the Unilateral Agreement. Your comments, from Mr. Medeiros?

MR. LUNA: Mr. Medeiros, we can take it out.

CHAIR MOLINA: Okay, simple.

COUNCILMEMBER MEDEIROS: That was short and sweet. That was good, thank you.

CHAIR MOLINA: Thank you. Member Anderson...Mr. Luna, you have a question from Member Anderson.

COUNCILMEMBER ANDERSON: You know, out of curiosity, what was the intent of this, Mr. Luna, or can you not remember...

MR. LUNA: Just a little flexibility for the developer.

COUNCILMEMBER ANDERSON: ...*(Chuckles)*... Yeah, I think they got plenty of flexibility. Thank you very much.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: And then, Mr. Chair, you know, Mr. Jencks said that he would look into this allowing MIL playoffs and I think we need to have that done. I think we need to have an answer on that. I think we need to have this whole agreement changed to reflect the 670 acres. And personally, I think...you know, if the big hook here is all this non...you know, four years of non...four...four times a year of nonprofit use for a fundraising activity that is mutually agreed upon between whatever nonprofit and the developer...you know, I think we need to allow for weekend play somewhere in here. Because this is, you know, this is giving them all the say on when this is gonna happen and, you know, I appreciate Ms. Baisa's mention of...what was it?

COUNCILMEMBER BAISA: Kahului Rotary Monday...

COUNCILMEMBER ANDERSON: The Rotary. But you know, those are business people that can call their own schedule. And I think a lot of nonprofits have supporters who work 9 to 5. And I think their weekends are their recreation time and I think we need to accommodate that. So, I'd like to

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see this agreement brought up-to-date so that we can just adopt the agreement, Mr. Chairman, as Condition 12.

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

COUNCILMEMBER VICTORINO: Mr. Chair, if we could call Mr. Jencks back up. I do have one...I wanted one, something cleared in my mind please, if he doesn't mind, please.

CHAIR MOLINA: Okay. Mr. Jencks. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes, okay. Mr. Jencks, or Charlie, basically, you're saying four times a year of fundraiser for nonprofit groups. That's to use the golf course? That not...would not be inclusive of, and there are many other fundraisers that occur that use club houses, that may use your dining room or something like that, that wouldn't prohibit a nonprofit group, let's say, everybody said okay, that we wanted to have a dinner or an auction at the club house, that wouldn't take away from this, would it?

MR. JENCKS: We're talking about golf tournament play --

COUNCILMEMBER VICTORINO: Golf play.

MR. JENCKS: --which includes the club house.

COUNCILMEMBER VICTORINO: Okay, which includes the club house.

MR. JENCKS: Right.

COUNCILMEMBER VICTORINO: So if I had an auction, no golf...didn't play golf, but had an auction. Would that take away...and I'm kind a putting you on the spot, but I just want to make sure that's clear in my mind.

MR. JENCKS: Yeah, I...once again, we're talking about golf tournament play that involves the club house. Generally, these activities involve --

COUNCILMEMBER VICTORINO: Right.

MR. JENCKS: --food service, auctions (live and silent), golf tournament play, music, those kinds of things. It includes the club house. Now, you're asking me specifically about, for example, the Boy Scouts saying, could we have your dinner, could we have our dinner at your club house?

COUNCILMEMBER VICTORINO: Exactly.

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MR. JENCKS: That would be something that they'd have to work out between the management. That's not what we're talking about here, today.

COUNCILMEMBER VICTORINO: Okay.

MR. JENCKS: Separate issue.

COUNCILMEMBER VICTORINO: Separate issue. And it would have no effect if the management said yes, it wouldn't subtract from this.

MR. JENCKS: No.

COUNCILMEMBER VICTORINO: Okay, and that's what I wanted to get clarified.

MR. JENCKS: Definitely. Golf tournament play with all the associated facilities.

COUNCILMEMBER VICTORINO: Strictly that, nothing else.

MR. JENCKS: That's correct.

COUNCILMEMBER VICTORINO: And I thank you, Charlie. I didn't mean to put you on the spot.

MR. JENCKS: No, that's fine.

COUNCILMEMBER VICTORINO: I just want to make sure that it's clear.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. Member Johnson, question for Mr. Jencks, followed by Member Anderson.

COUNCILMEMBER JOHNSON: Yes, Charlie, the question I forgot to ask earlier was, a lot of times there are at other courses different tournaments that have occurred. I know at Kaanapali...basically, things that ESPN covers. Would those types of tournaments be taking place on your proposed golf course?

MR. JENCKS: By example, the Masters Tournament?

COUNCILMEMBER JOHNSON: Uh huh.

MR. JENCKS: There's one they do every year in Wailea, I think the Skins Tournament?

COUNCILMEMBER JOHNSON: Yeah.

MR. JENCKS: I haven't, I, we haven't thought about that at all, frankly.

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COUNCILMEMBER JOHNSON: But as far as you know, it wouldn't be prohibited?

MR. JENCKS: No.

COUNCILMEMBER JOHNSON: Okay, thank you.

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

COUNCILMEMBER ANDERSON: Thank you, Chair. You know, having been around a while and looking at conditions that had been passed in the past, trying to get somebody or some entity to, you know, comport with a condition, I know how important it is that the language be very specific. Because, you know, when someone is interpreting this down the road, many of us won't be here, and if we are they won't ask us anyway. It says, "Developer shall permit one nonprofit organization per quarter of the calendar year other than Maui Junior Golf Association, the use of the golf course for a fundraising activity upon terms mutually agreed upon with said nonprofit organization." It says the use of the golf course, so if you're saying the golf course and all its amenities, then you would have no objection to our...to us adding that language in?

CHAIR MOLINA: Mr. Jencks?

COUNCILMEMBER ANDERSON: And all its amenities?

MR. JENCKS: I'm just thinking of the right term to use.

COUNCILMEMBER ANDERSON: Or we could just say, "including the club house".

MR. JENCKS: "And its facilities". I think that...I mean, it's basically the golf course, the parking lot, and the club house. I mean, that's it. So...

COUNCILMEMBER ANDERSON: So we could say, "the golf course and its club house".

MR. JENCKS: That's fine.

COUNCILMEMBER ANDERSON: Or, "and the club house".

MR. JENCKS: That's fine. But you might want to add the parking, because they're gonna have to park their cars as well.

COUNCILMEMBER ANDERSON: ...(chuckle)... Well, I don't think you're gonna turn us away from parking, but you might turn us away from the club house. So, if we could have that added in to the agreement, Mr. Chairman. I think that makes it very clear so that down the road, there's no question that, you know, we only said the golf course. Thank you.

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CHAIR MOLINA: Okay. Thank you, Mr. Jencks. Any other questions for Mr. Jencks before he's excused? Member Baisa?

COUNCILMEMBER BAISA: Not necessarily for Mr. Jencks, sir.

CHAIR MOLINA: Okay. Mr. Jencks...oh, I'm sorry, Mr. Medeiros would like...very popular man, Mr. Jencks. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mr. Jencks, thank you. I just wanted to know, when considering the design of the golf course, who'd be the architect and would it be designed for PGA play?

MR. JENCKS: The golf course architect is Mr. Tom Weiskopf. It's been laid out, it's a 7,000-yard course, so I guess that's a championship course. And we've laid out the tees and greens and turning points. We cleared so we could see the tees, greens, and turning points. And we are talking about the design of the course in terms of being a target course, restricting the fairways, those kinds of things.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Jencks. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. And I think Mr. Medeiros read my mind, that was gonna be my question. I thought we're gonna have, you know, what type of course are we looking at, championship level or something very basic like the County's Municipal Golf Course...

MR. JENCKS: No, no.

CHAIR MOLINA: So, this is first class, I guess.

MR. JENCKS: This will be first class.

CHAIR MOLINA: Okay, thank you. Any other questions for Mr. Jencks? Member Anderson?

COUNCILMEMBER ANDERSON: While we're on the subject, Chairman, and...have you discussed a target course with Mr. Weiskopf or the Partnership?

MR. JENCKS: We've talked about the idea...another term for that is...I just used it a minute ago, I can't remember the term...it was target or...

COUNCILMEMBER ANDERSON: Target is okay.

MR. JENCKS: It's something like...yeah, it's like a target course.

COUNCILMEMBER ANDERSON: I mean, have you discussed that with the membership --

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MR. JENCKS: Yeah...

COUNCILMEMBER ANDERSON: --the Partnership?

MR. JENCKS: Actually, the course that we've laid out is intended to be somewhat like a target course.

COUNCILMEMBER ANDERSON: So that...only the tees will be green and not all the holes?

MR. JENCKS: I can't tell you how much will be green at this point, but the idea is to create a course that's got...that's interesting, that conserves water, limits the turf irrigated area, the uses of the topography which is...(end of tape, start 3A)... so, yeah, we're gonna do the best we can to create an interesting course on those guidelines.

COUNCILMEMBER ANDERSON: So, if we made a condition that it be a target course and that only the -- help me out, Joe -- the tee, the...where you tee off...that...

MR. JENCKS: Tees and greens, you mean?

COUNCILMEMBER ANDERSON: Yeah...in other words, the fairways aren't green but the hole and the tee is green, and the rest of it...I mean, that's what a target course is, so you're not...you're using as much as the natural vegetation and topography, and that cuts down on the water use. I believe that's the intention of a target course.

MR. JENCKS: Okay.

COUNCILMEMBER ANDERSON: I'm asking.

MR. JENCKS: So, what's the, what's the question?

COUNCILMEMBER ANDERSON: The question is, have you got an approval if we make that a condition, does your partnership and Mr. Weiskopf feel that that's something...you know, I know, Mr. Jencks, that the whole point of this golf course, you know, and it was revealed many times during the two Planning Commission hearings, was the whole reason you were doing this as a private club was so that you could charge \$2 million for the house lots because people want exclusivity for that kind of price. And, you know, if they want exclusivity, I'm sure they want some green to look at from their house. So that's why I'm asking you the question.

MR. JENCKS: So, I'm not clear. Mr. Chair, what is the question?

COUNCILMEMBER ANDERSON: Again, have you discussed it with your partnership and with Mr. Weiskopf, the concept of a target course?

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MR. JENCKS: We have...I have discussed the idea of a target course, target type course with the partnership, yes.

COUNCILMEMBER ANDERSON: And they are agreeable if we made that as a condition?

MR. JENCKS: It would be my request that the Council not specifically say a "target course". That restricts us, I think, unreasonably in the design of the course. But that is our intent.

COUNCILMEMBER ANDERSON: I'm just gonna read this into the record, Mr. Chairman, so everybody knows what we're talking about: "In Arizona where water is also at a premium, many of the courses are designed as target golf courses." What this means...Staff, if you could pass this out to other Members. What this means is that instead of having continuous grass fairways between the teeing ground and the putting green like we do on Maui, the course designer creates much smaller green grass target areas the golfers must shoot for and leaves everything else in its original, natural non-irrigated state. That's what a target course is. And, that's what we've been talking about and now I hear you say that you're not so sure you want to do that.

MR. JENCKS: Mr. Chair?

COUNCILMEMBER ANDERSON: In fact, you told us last week you were perfectly willing to do it.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Mr. Chair, I did not say I was willing to do that. What I'm saying is, through legislation restricting the design of a golf course, I believe is unreasonable at this point. I have said that we are interested in a target course, I've also said that I've only got a million gallons a day of water I can use on this golf course. So it behooves me to: a) develop a course in a manner that is sensitive to that limitation on water, that is sensitive to the topography and the type of ...*(inaudible)*... that's on the ground today in the section of the course where it will be developed, and also develop a course that is gonna be desirable for people to live there and play and pay to live on that golf course. So with all those constraints, I've got to design and deliver a premium golf course. We are interested in target play and intend on incorporating that concept in the design of the course. But I don't believe it's responsible to put that kind of a condition on the project in the conditions of approval.

CHAIR MOLINA: Okay, thank you, Mr. Jencks. Member Anderson?

COUNCILMEMBER ANDERSON: Well...that's easy for you to say. You may not think it's responsible but is it responsible to put in another golf course that uses so much water whether it's brackish or not from a source that hasn't been proven, Mr. Jencks? Is that responsible? So, that's why this whole idea of a target course was brought up. You're building in a desert. Thank you, Chairman.

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CHAIR MOLINA: Thank you, Member Anderson. Any other questions for Mr. Jencks before I excuse him? Seeing none, thank you, Mr. Jencks. Okay, Members, just so the Committee can get, I guess, the recommendations...Committee Staff can get your recommendations, we're gonna ask the Applicant to remove Number 4 from Page 3 of the Unilateral Agreement which...am I clear on that, I believe...that was requested, I believe, by Member Anderson. Are we clear on that? And also, language in the Unilateral Agreement to incorporate the full 670 acres related to golf play. Then there's also a consideration for, well, I don't know if this is...I'm sorry, yeah, Number 7 to incorporate into the Unilateral Agreement that for any amendments to the condition that it must receive Council approval...that as well. Okay...

COUNCILMEMBER ANDERSON: Chair, maybe we could just say, after where it says, "which conditions may be amended or modified by the Developer after obtaining the approval of" the County Council.

CHAIR MOLINA: Okay. So, basically we would be striking out Parks...

COUNCILMEMBER ANDERSON: Department of Public Works *[sic]*.

CHAIR MOLINA: Okay, so we will replace that, "approval of the Maui County Council." Okay, everybody clear on that?

COUNCILMEMBER MEDEIROS: Chair, what number is that?

CHAIR MOLINA: That would be Number 7 on Page 3 of the Unilateral Agreement where it says...I'll just read it, the proposed amendment is "that the Developer agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto, which conditions may be amended or modified by the Developer after obtaining the approval of the Maui County Council." We would be striking out the words, "Department of Parks and Recreation" to such amendment or modification. Is that clear to all the Members? Okay. And I believe, then Member Pontanilla, your consideration for the one day, you would like that also included in the Unilateral?

VICE-CHAIR PONTANILLA: Actually, it can go under Exhibit "2", Declaration.

CHAIR MOLINA: Okay. Under Exhibit "2" as an additional condition, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Okay. And can you state for the record, what you would like the Committee to consider, or the applicant to put in to their proposed Unilateral Agreement...or amended Unilateral Agreement?

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VICE-CHAIR PONTANILLA: That one day per week? One day per week set aside for local residents...local Maui resident play at the golf course.

CHAIR MOLINA: Okay. Member Anderson, you have anything additional to add to the Exhibit "2" as it relates to days of the week or the nonprofit play?

COUNCILMEMBER ANDERSON: Yeah, I think, Mr. Chair, we wanted to take out...Members, if you'd look at Item C, the very last sentence. That...it says MIL and the High School Athletic Association, if they sponsor a golf tournament, then it decreases the nonprofit tournaments. And I thought we all wanted...

COUNCILMEMBER BAISA: We don't want that.

COUNCILMEMBER ANDERSON: We don't want that. So, I think what we would want to do is just take out the last --

VICE-CHAIR PONTANILLA: The last sentence.

COUNCILMEMBER ANDERSON: --two sentences, actually. "The MIL or HHSAA golf tournament shall serve as one of the golf tournaments permitted once per quarter for non-profits referred to in Condition A above, except that the MIL tournaments need not be fund-raising activity." That's one sentence. "Thus, when MIL and the High School Association sponsors a golf tournament on the golf course, the number of nonprofit fund-raising activities provided in Condition A, shall be decreased . . ." So those two, I think we should just strike them out entirely.

CHAIR MOLINA: Okay. Members, consensus on that, striking out that...okay, so...

COUNCILMEMBER ANDERSON: And that way...and then I would like to add in that...to address Mr. Victorino's request that developer shall permit MIL and Hawaii High School Athletic Association to each use the golf course once per year for an official MIL golf tournament or an official HHSAA golf tournament, or for season playoffs, if requested by the MIL or HHSAA so that they have the option to use this for season playoffs. As Member Victorino said, that's really the need.

COUNCILMEMBER VICTORINO: Well, I...

CHAIR MOLINA: Member Victorino, okay.

COUNCILMEMBER VICTORINO: Yeah, let's make a correction on that because the HHSAA would never have regular season play, it's always the Hawaii's High School tournament. It's the final, so you won't have that. So it'd be strictly MIL, just the Maui Interscholastic League. Whenever possible, regular season play would be allowed for the MIL. That's the way I'd like it read.

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COUNCILMEMBER ANDERSON: Okay.

COUNCILMEMBER VICTORINO: Not the Hawaii Athletic Association. Thank you.

CHAIR MOLINA: Okay. Thank you for that clarification, Mr. Victorino. So that, I believe, is the championship, State championship tournament that involves all the high schools.

COUNCILMEMBER VICTORINO: That is correct.

CHAIR MOLINA: Right, so post-season --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: --event, yeah.

COUNCILMEMBER ANDERSON: And when do they play that, Mr. Victorino? During...

COUNCILMEMBER VICTORINO: Generally, April and May, on um...March and April, that's generally the end of the season for the various leagues.

COUNCILMEMBER ANDERSON: So how long, you know, would one...

COUNCILMEMBER VICTORINO: Two days.

COUNCILMEMBER ANDERSON: Two days.

COUNCILMEMBER VICTORINO: Generally, it's two days. You have preliminaries and then you have the finals the following day. And that's generally held on a weekday usually --

COUNCILMEMBER ANDERSON: On a weekday.

COUNCILMEMBER VICTORINO: --you know, Thursday, Friday, you know --

COUNCILMEMBER ANDERSON: Right.

COUNCILMEMBER VICTORINO: --they don't, they don't usually do it on the weekends. Sometime they'll make it Friday, Saturday, but many of times it will be a Thursday, Friday kind a deal.

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

VICE-CHAIR PONTANILLA: Yeah, thank you, I'd just like to add a comment in regards to both the MIL as well as the HHSAA golf tournaments. You know, because we have so many golf courses on Maui, you know, they're not going to the same places all the time. So, one day they may go

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to Wailea, the other day they may go to this golf course or they may go to Maui Lani. So, basically, you know, it's gonna be on a rotational basis in regards to the availability of the golf course itself.

CHAIR MOLINA: And my understanding, the State tournaments, they rotate from different islands, yeah, so we could be seeing . . .

VICE-CHAIR PONTANILLA: They rotate different islands and then when they come to this island, you know, because of the cheap play at Waiehu, they go Waiehu rather than, you know, go pay Wailea prices or even probably this golf course. So, they try to look for golf courses that, you know, are available, number one, and they look at the cost . . . so that it doesn't hit the pocket book, yeah.

CHAIR MOLINA: Sure, it makes sense, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: The other thing I'd like to add is that, you know, we talk about tournaments during the weekday, we also have tournaments on the weekends. Again, you know, because of the number of golf courses we have on Maui, you know, it may be cheaper for some of the organizations to go elsewhere. So, it may not end up, you know, at this one golf course all the time, but it's made available on a per quarter for a nonprofit to take advantage. So, just a comment.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Staff, can you go ahead and repeat for the Committee all the considerations that we're looking at...or did you need clarification, Mr. Pontanilla?

MS. NAKATA: Well, actually, Staff needed clarification on, if the Committee's intention is to remove from the Unilateral Agreement, the Department of Parks and Recreation's ability to modify or amend the conditions, we may just want to state that in requesting a revised UA because there are at least two other places in the draft UA where that's mentioned, including Page 2, Paragraph Number 3, in the first phrase that states, "until written release by the Department of Parks and Recreation, County of Maui..." and also on Page 3 at the very bottom where it says, "provided that the Developer or its successors and assigns may at any time seek to amend or remove the conditions and terminate this Unilateral Agreement by obtaining the approval of the Department of Parks and Recreation to such amendment or removal." So, it may just be clearer to seek to remove all those references from the agreement.

CHAIR MOLINA: Okay. Again, that is on Page 2, Paragraph 3, as well as Page 3, the last paragraph. That is, I guess, to make it cleaner to delete those references to the Parks and Recreation, Staff?

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Members, any objections to the additional revisions as recommended by Staff?

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COUNCILMEMBER ANDERSON: No objections.

CHAIR MOLINA: Okay, thank you. All right, Members, so we'll...Member. Johnson?

COUNCILMEMBER JOHNSON: Yes, because Members are adding in public play, I notice that the reference...and it doesn't, 'cause obviously we don't, you know, they don't know what the rates are gonna be. But the Junior Golf just for the, I guess, the event play, fundraising events, it's 50 percent of the regular rate. But it doesn't make any mention about when they're not having a non-fundraising event, you know, if they're just out there practicing. And plus, the other Members are putting in additional play for members of the public. So, I think it's gonna be important that we include the language which was in the original condition which says, residents are also reserved 50 percent of the tee times, or well, I guess, at an amount not to exceed 50 percent of the green fee rates, including golf cart rental fees charged to non-Hawaii residents.

CHAIR MOLINA: Okay, you would recommend that be included in the revised Unilateral?

COUNCILMEMBER JOHNSON: Well, yeah, and it's already a condition of their existing entitlement, so...I mean, I'm suggesting that that be in there and we make it very specific that it's 50 percent because the other thing, too, is that if you make the rates high enough and exclusive enough, then you also can discourage public play in that way. So, to me, just because you're saying 50 percent of whatever the rate is, if it's a club membership and members only and then they have rates established for public play, I think you could just about price everybody off of this course. So, that's one of the reasons why I'm, you know, I'm really concerned about the overall golf course and its operation, because it's changed dramatically from the original one. But, you know, let's rearrange the deck chairs on the Titanic on this one, so...

CHAIR MOLINA: Okay. Thank you, Member Johnson. So, consideration for that...any consensus, Members, on the request from Member Johnson? Do I have consensus to have that incorporated?

VICE-CHAIR PONTANILLA: What was the change?

COUNCILMEMBER ANDERSON: Agree.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Just spell out...

CHAIR MOLINA: Yeah, Member Johnson, could you again...just clarify for the Members?

COUNCILMEMBER JOHNSON: Yeah, it's just to specify that the language that's in the original condition the Applicant make available to Hawaii residents.

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CHAIR MOLINA: Or maybe Maui residents?

COUNCILMEMBER JOHNSON: Maui residents, yeah. The, I guess, well, here it's 50 percent of the tee times and they're not saying that. So, I mean, I don't know, I mean, I personally would like that condition just as it reads in Number 6 on Page 2 of their original Unilateral Agreement and Declaration for Zoning. I'd really like that to be in, but failing that, my amendment would be to set the rates in an amount not to exceed 50 percent of the green fee rates including golf cart rental fees.

CHAIR MOLINA: Okay. Is that clear, Members?

COUNCILMEMBER MEDEIROS: Chair?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR MOLINA: Followed by Member Anderson.

COUNCILMEMBER MEDEIROS: When Members are citing documents other than what we're looking at immediately, can they tell us what document it is so we can follow? I mean, original...you know, I don't know where that is.

CHAIR MOLINA: Staff, where is the original...what binder, I guess, can we find the original Unilateral Agreement?

COUNCILMEMBER ANDERSON: Mr. Chair, I will provide that for the Members. You're not gonna find it, Members, the binder...*(chuckle)*...unless you find the...I think in Binder 6 is Richelle Kawasaki's historic background that she did for Wayne Nishiki many years ago. And I submitted that, and in there is a copy of it, but I think maybe just to make things easier for everyone, if we could have Staff make a copy of the ordinance, and actually, it's the Unilateral Agreement attached to the ordinance for the 402 acres of land that currently is zoned for two golf courses, one ball...one six-acre park with a Little League field. And it has all the conditions attached to it, so they would know what we're talking about. That might be the quickest way to do it, rather than trying to find it in your binders, Members.

CHAIR MOLINA: Staff...the recommendation, do you...you can manage...I guess at a later point, you can produce copies of that...the original Unilateral Agreement.

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COUNCILMEMBER ANDERSON: Yeah, I'll offer this up now, so when we get a chance the Members...Staff can make a copy for Members.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: But while we're on this condition, Chair, if I could?

CHAIR MOLINA: Proceed.

COUNCILMEMBER ANDERSON: What Member Johnson was saying, I think, is really just an extension of the one day per week Maui resident play that Member Pontanilla mentioned. And I would like to add on to that, that aside from the 50 percent rate...50 percent of the, let's see...shall be made available at 50 percent of the regular rate...let's see...one day per week play for Maui residents shall be made available at a discounted rate of 50 percent of the regular rate. And then I think we need to put in, "no membership fee will be required." Because if they got a membership fee and we don't know what it's gonna be, could be \$30,000 and up. And, you know, they could easily say, "well you can play one day a week but you gotta pay a 50 percent discounted membership fee," which would be \$15,000. And I think the idea is to like, you know, get a little bit of...a little bit of equality going here.

CHAIR MOLINA: Okay, thank you, Member Anderson. Committee will take that into consideration as well as the Applicant consider that in their revised Unilateral Agreement that they shall resubmit. Any other discussion on this before the Chair offers...well, just basically, the Chair would like consensus first on Condition 12 with the...I guess, tentative consensus, if you will, to include the comments from the Planning Director...Deputy Planning Director to add in to the condition that was in the third column of Page 7 of the matrix. And then we'll incorporate at a later point in time, the suggestions made by the Committee as is relates to the --

VICE-CHAIR PONTANILLA: Unilateral.

CHAIR MOLINA: --Revised Unilateral Agreement that would be submitted. Is that...we're all on keel with that, Members?

VICE-CHAIR PONTANILLA: I can agree to your recommendation, Chair.

CHAIR MOLINA: Okay, and then we'll await the Unilateral Agreement with the proposed changes. Are we all clear as, maybe mud...(chuckles)...I don't know, I see Member Johnson. Member Johnson, your comments?

COUNCILMEMBER JOHNSON: Yeah, and I understand, you know, we're trying to draft conditions and, I guess, whether we support or don't support, you know, is irrelevant at this point. But, you know, I really have a problem, I guess, with the whole concept of trying to do something and then going back and looking at what original conditions were imposed that are already recorded

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with the land, and then now we're just, you know, giving little crumbs to the local people who would've had play, you know, in fact, I believe that they got 50 percent of the tee times on one of the two golf courses. And so, you're talking about thousands and thousands of people that come here to, you know, enjoy and their guests or, you know, all the local people who like to play. And already, the golf courses that we have are already encroached upon by the visitor industry. So now you've got another course, but once again, the local people are very restricted into...as to their accessibility to that course. So, I understand the exclusivity that is desired, but the whole concept of what the original intent was, it was to be a community golf course as one and a private golf course as to the other. And now, that's not happening. So, while it's admirable to give our youth an opportunity to go out, you may be talking, you know, about what, a thousand kids, if that and their family members and maybe a few outside people? So, the numbers are so different. So, I'm still looking at this as something that really is not going to benefit the local population, which was the original purpose and intent as well as the Little League field. So...not to mention the water issue, you got a drought going on Upcountry and it just seems like the people who will frequent this, it's sort of like fiddling while Rome burns, or what is the old adage, let them eat cake. You know, so you're looking at things where I think it just flies in the face of people who are on water conservation. So, I totally support what Chair Hokama had said the other day about the links style golf course where it is a target course. So, I would have no problem making that a specific condition if it's going to occur at all, but I'm all for letting local people have access to this course. But the way it's being structured right now, it's just --

CHAIR MOLINA: True.

COUNCILMEMBER JOHNSON: --you know, I guess, half a loaf is better than none. Thank you.

CHAIR MOLINA: Okay. Thank you for comments. The Chair will take these comments into consideration. The Chair would call Mr. Jencks before we take a break just for a clarification.

MR. JENCKS: Yes, Mr. Chair.

CHAIR MOLINA: Mr. Jencks, just for clarification, the original, I guess, condition as it related to two golf courses, was that based on having the 3,000 units as part of the original application, or was that the two golf courses were proposed along with the current 1,400 units?

MR. JENCKS: The two golf courses were approved in the early '90s...zoned for the property in the early '90s. Those post date the community plan approval that came into play for the 2,650 units. At the time they did that Community Plan Amendment, however, they anticipated two golf courses, 2,650 units, there were, I think resort hotel units in that mix as well, or maybe in addition to. So yeah, it was quite a different plan, nor did they have an affordable housing bill like we have today as a part of that.

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CHAIR MOLINA: All right, so just that once we get that clarification is, so we have a proposed 1,400 units and one less golf course and, I guess, a mesh of public play with private play on this one golf course.

MR. JENCKS: That's correct.

CHAIR MOLINA: All right, thank you. Member Anderson, question for Mr. Jencks?

COUNCILMEMBER ANDERSON: Well...you know, Mr. Chairman, I think Mr. Jencks, you know, he wants to tell the story the way he wants to tell it, and it doesn't necessarily comport with the actual documented history. There's never been any...way back, yeah, they had spelled out in the community plan certain densities and how much acreage would be for what. But the current community plan adopted in 1998, after this Change in Zoning was effected on the 408 acres for the two golf courses. And when they did that, the whole history is in the binder...in your binders, Members. And I believe it is in binder...I just saw it this morning. It's a memo from Richelle Kawasaki. She did this background history for Member Nishiki in December of 2000. And...there was never any commitment on the County's part to how many housing units there would be. This was, you know, a wish list by Palauea Bay Partners who owned it at the time. And at the time they gave them their zoning for the golf courses...for the two golf courses, it was with the idea, you do the golf courses, you do the parks, you get the Little League field in, you get your club house done, you get that up and going, and then you come back and you talk about housing, and we'll find, you know, if it's appropriate at that time. And, you know, if you look at the community plan right now, it says a range of consumer...a range of consumer incomes...that's not exactly what it says, but that's what it means, that, you know, the housing development was supposed to be for a range of consumers of economic...from low income to the higher income.

This whole animal has morphed into something entirely different. A private membership only, homeowner only golf course was never the intention. It was two golf courses. Yeah, they're privately owned. All of our golf courses are privately owned except the municipal golf course. One of them, 50 percent of the tee times had to be allotted to Hawaii residents with 50 percent rates. So, I just want it to be very clear that we're dealing with an entirely different animal, which is why the conditions that we're reading that currently run with the land sound so odd because nobody here knows that that was the history. And this history wasn't even put in the Planning Department's report in a way that people could understand that, you know, 400 acres has already been conditioned. Conditioned with things like your pro rata share. In fact, not just your pro rata share but, "the Applicant shall execute appropriate agreements with the State and the County of Maui regarding participation and improvements of infrastructure and public facilities where such improvements are reasonably related to the Applicant's project." Back then, Mr. Chair, they fully expected Wailea 670 to hook up to the Wastewater Treatment Facility, to pay their share to hook up, to use that facility and its effluent. The conditions currently run with the land that verify that.

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And so here we are, we're ignoring everything that a previous Council already put in place and we're dealing with entirely new conditions, mind you, that came from the Planning Department and the developer. I think we need to be starting with the current conditions and amending those conditions. And, you know, making a decision as to whether or not...we're making a public policy here, Mr. Chair, to not use public facilities, to allow someone to go forward when the infrastructure is not in place, against the community plan policy. We're making a policy decision that we're gonna allow membership only, homeowner only golf courses for, you know, the top one percent income earners of the nation to come over here a couple times a month in their second or third home and have exclusive use of a golf course. And we make sure that the nonprofits play when they're not on island. You know, it's segregation at its worst, and if...*(end of tape, start 3B)*...We're making a policy decision.

CHAIR MOLINA: Okay, thank you, Member Anderson. Members, the Chair will take a short recess. Let's come back at five minutes till five o'clock and from there we will continue the discussion on Condition Number 16. Meeting in recess until five minutes till five o'clock. . . .*(gavel)*. . .

RECESS: 4:38 p.m.

RECONVENE: 5:06 p.m.

CHAIR MOLINA: . . .*(gavel)*. . . The recessed Land Use Committee Meeting of July 25, 2007 is now back in session. It is Monday, August 20th, 5:00 p.m. Members, prior to discussing Condition Number 16 and the Chair offering a recommendation after Q&A has been presented, the Chair would ask you, maybe to take a very brief recess. I'm looking at a potential recess date later this week to continue the deliberations. So I'd like to give you an opportunity to go back, look at your calendars. The Chair is looking at a recess date of Thursday, August 24th...I'm sorry, August 23rd or Friday, August 24th so, maybe possibly both. But at this point, I'd like you to go back to your offices to take a look at your calendars and see what, you know, what date is available.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Yes.

MS. NAKATA: The Council Chamber is reserved from nine to two on Thursday the 23rd.

CHAIR MOLINA: Okay, so that is Thursday, nine to two it is reserved. Okay, so it looks like we might have to effectively strike out Thursday, then. Chair is gonna throw out Wednesday, August 22nd or Friday, August 24th. So Members, we're gonna take a short recess, go back to your offices, get your calendars, and notify us of your availability. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: What time?

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CHAIR MOLINA: Chair would like to look at maybe an afternoon session, or if the Members are up to it, even a morning session. The Chair will...is always available for both.

COUNCILMEMBER MEDEIROS: Afternoon being 1:30?

CHAIR MOLINA: One-thirty, and morning, 9 o'clock. Okay, Members, we are in...

COUNCILMEMBER ANDERSON: So that's Wednesday and Friday?

CHAIR MOLINA: Wednesday and Friday, or Wednesday or Friday, depending, but at least the one...one day, at least, I'd like to get in, if possible. Members, meeting in recess. . . .(gavel). . .

RECESS: 5:04 p.m.

RECONVENE: 5:07 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee Meeting of July 25, 2007 is now back in session, seven minutes after the hour of 5 o'clock. Thank you for that short recess, Members, to look at our schedules for a recess...additional recess meeting for this matter. We'll start first with Member Baisa. I believe the Chair offered choices of either Wednesday or Friday.

COUNCILMEMBER BAISA: Thank you, Chair. Wednesday is not a good day, but I certainly can do Friday morning without any problem.

CHAIR MOLINA: Okay. Thank you, Ms. Baisa. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Chair, I'm available Friday morning or afternoon.

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

VICE-CHAIR PONTANILLA: Thank you, Chair. Friday from 9:00 a.m. to 3:30.

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

COUNCILMEMBER VICTORINO: I will not be here, Mr. Chair.

CHAIR MOLINA: Okay. So noted, Mr. Victorino. We're awaiting Member Anderson and we will have Staff consult with the offices of Member Mateo and Member Hokama. The Chair is available for morning and Member Johnson as well. Thank you, Mr. Victorino. Chair is available for either morning or afternoon. Chair would have preference of starting Friday morning, 9:00 a.m., and this gives us the option of working into the afternoon as well. So, Chair's recommendation for a recess is Friday, August 24th.

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COUNCILMEMBER VICTORINO: Twenty-fourth.

COUNCILMEMBER BAISA: Twenty-fourth.

CHAIR MOLINA: Yes. Okay, Members.

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Yes?

COUNCILMEMBER BAISA: I could go into the early afternoon without any problem, like Member Pontanilla.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: Yeah.

CHAIR MOLINA: All right, thank you, Member Baisa. All right, Members, let us now continue with the discussions on the conditions for LU-38, Condition Number 16 which relates to wastewater. Any comments or questions for the Department or the Deputy Planning Director? And I believe there was no, well, let's see...we'll ask the Deputy Director again for their comments as relates to the condition. If I could ask Director Suyama to give us comment on this?

MS. SUYAMA: Condition 16 and 17 of the original conditions that were attached to the 1992 ordinance, the only comment we had regarding Condition Number 16 was that, if you're going to use effluent to the project site from the Kihei Wastewater Reclamation Facility, it may be prudent that the dual irrigation line within Wailea 670 be built as each individual development occurs to ensure that a system will be in place once the line is constructed. You know, it's the same as the other...when we discussed irrigation as a condition. The other thing is...one of the reasons why Condition 16 and 17 was placed originally on the golf course application that came before 1992 was because at that time, the golf course was gonna have the club house and the Little League field and they were looking at, at least...*(adjust microphone)*...there was gonna be sewers coming out of the club facility as well as any restroom facilities that might have been built by the...for the Little League field, and that's why, you know, sewers was a concern at that time. And that's why I believe this condition was placed.

CHAIR MOLINA: Okay. Thank you, Members. And any questions as we're...I guess we can...any objections to, I guess, discussing 16 and 17 since they seem to be somewhat related? Chair will allow that flexibility if you have questions for either/or for the, I guess, Mr. Taylor as well as Deputy Director...Mr., sorry, I forget...and make sure I get your name right, Mr. Kresge, that's right...thank you, I'm getting there, I'm getting there.

COUNCIL MEMBERS: No objections.

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CHAIR MOLINA: All right, no objections to discussing both 16 and 17 at the same time. Okay, we'll start with Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Ms. Suyama, you mentioned that there was a concern that the Little League field would require sewer treatment or sewer system. But didn't the applicant indicate that they were gonna have their own?

MS. SUYAMA: When...I wasn't the planner that handled the 1992 application. I believe at that time it may have been where they were looking at connecting to the County system to the Wailea Resort, 'cause that would have been the nearest connection...connecting point. At that time, they weren't talking about doing their own sewer treatment plant. And in 1992, the only thing that was being considered was the golf...the two golf courses and the Little League field. There were no discussions at that time about dwelling units being built because they decided to come in in 1992 only for the golf course purposes, which would have been permitted on the subject properties, because at that time the subject properties were still located within the State Agriculture District. And in 1992, the Agriculture District did allow golf courses as a permitted use.

COUNCILMEMBER MEDEIROS: And so, it would have allowed the Little League field also?

MS. SUYAMA: Right. Anything that was a park or open recreational would have been permitted as part of a permitted use in the State...the State land use districts.

COUNCILMEMBER MEDEIROS: But the condition placed by the Planning Department would have been, at that time, that they would have to connect to the closest County sewer system?

MS. SUYAMA: Right, because I believe in 1992 that was the intent at that time when they came forward with their plans was that they were gonna connect to the County system. And that's why I believe this condition was placed that whatever that connection to the County system entailed, the developer would have been responsible for that improvements.

COUNCILMEMBER MEDEIROS: And that was just because the golf courses and the Little League field were being considered in that part of the project?

MS. SUYAMA: That's correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you very much. Thank you, Chair.

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

COUNCILMEMBER ANDERSON: Yeah, you know, maybe in 1992 you could have built a golf course on Ag land. But the fact is, they got a Change in Zoning and it is Title, or Chapter 19.90 in the

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County Code. And it wasn't just for the golf course and a park. The golf course included a club house. So...you know, Members, I passed out the Unilateral Agreement for the Change in Zoning and it has the conditions. And if you want to get a more complete background of what happened in 1992, in Binder 5, right at the beginning of the binder, Members, there is a memo to Councilmember Nishiki from Richelle Kawasaki and it is dated December 2000. And I transmitted it to this Committee and it's actually dated October 25, 2000, it's right at the front part of your binder...Binder 5. And it gives you all the history on this parcel right down to the Change in Zoning, Project District Phase I, Phase II, and Phase III approval which they received...actually, they even got Urban Design Review Board approval to July 30, 1993.

So, that is I think a better explanation as to the history of this. It wasn't, you know, it got a Change in Zoning, a Project District 9 designation from this body in 1993 and they did go through and get their Project Phase II, Phase III approvals. And it does say in the ordinance that "any tract of land or project site for which development is sought in the Wailea 670 Project District shall be subject to the approval of and any conditions imposed by Maui County Departments of Planning, Public Works, Water Supply, Parks and Recreation, and to the State's Departments of Health, Transportation, Land and Natural Resources pursuant to any statute, ordinance, or regulation regarding availability of water resources, sewage disposal and treatment, recreational resources, road and/or highway construction, and preservation of historic and cultural resources to the following standards." And that's when it goes on to say, "the natural drainage way shall remain as permanent open spaces and that minimal grading of the project site shall be encouraged to retain the existing rolling topography."

So this is, you know, 19.90 Members, if you look in your County Code book or someone could...in your office, could print it out for you. Then you'll see exactly what the permitted uses are currently on the land. And the conditions don't necessarily appear in the ordinance, and that's what these are that I passed out. And the intention is clear that they were to use...they were to participate in its fair share of development and funding of the wastewater and effluent transmission system between the project site and the Kihei Wastewater Reclamation Facility, and that they shall connect to the public wastewater reclamation facility for treatment of wastewater when it becomes feasible. So the intention, you know, you can't have a club house without sewage or a Little League field...so that was always the intention, Mr. Chairman, for this project.

As far as 16...and you want 16 and 17 to be considered together?

CHAIR MOLINA: That's correct, Member Anderson...for discussion purposes, anyway. Chair is allowing some leeway flexibility as far as questions related to both conditions.

COUNCILMEMBER ANDERSON: Well, I think that we should...we should require them to hook up to the wastewater facility. I mean, that's why we have public facilities and, you know, if...if it costs them money to put in the transmission line, oh well, that's the price you pay to develop. You know, I mean, we don't have any control over what they do privately, but we do have some control over what happens with our wastewater system. And if we can find ways to stop the

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injection of 70 percent of the wastewater, then, you know, we've got the control and we can make that happen. And certainly, by hooking other people up to this system who have a use for the reclaimed water, then why wouldn't we do it? It was always the intention back in 1992, '93. And as I said, Members, now is not the time to lower our standards. We should be, you know, raising our standards so that we can protect the surrounding environment. Whatever we've been doing in the last ten years is not working. Our reefs are degraded, our shoreline is degraded, and it's continuing to degrade. So, we gotta put the stops on right now by the actions that we take in this Chamber. And by allowing more injection wells and private sewage treatment plants, we're not going in the right direction. So, as far as these conditions go, and they are both conditions that currently run with the land, I would like to see it stay as it is and, you know, instead of when it becomes feasible, just take that out and say they need to do it. It currently says under infrastructure and public services in Kihei-Makena Project District 9 in the County Code, Chapter 19.90, "The development shall not burden government agencies to provide substantial infrastructural improvements." That means it's on them, not us.

And I would like to remind, Members, and I will be passing this out when I get an opportunity, Mr. Chairman, all the way through the Kihei Community Plan, it says that...and you know, we have to find this and a Change in Zoning, we have to find that this project is consistent with the objectives and policies of the Community Plan. The Community Plan says, "Upon adoption of this plan, it shall be required that adequate facilities and infrastructure will be built concurrent with future development. The land use designations on the community plan map are not an assertion that infrastructure will be provided to these areas but merely that it would be appropriate to develop these areas as designated on the maps if the necessary infrastructure and services are available." South Maui region has taken the brunt of this spurt of economic growth, Mr. Chairman. And the whole County of Maui has. Every department in this County suffers from lack of adequate personnel to meet the needs that are being demanded by this community now because we've grown so fast. And the infrastructure concurrency requirements in our Community Plan are there to protect the residents of the community from further degradation of their quality of life because of this spurt of growth. So, it says, "Upon adoption of this plan, allow no further development unless infrastructure, public facilities, and services needed to service new development are available prior to or concurrent with the impacts of new development." So, you know, I may be passing this out and I'm highlighting everything in this Community Plan that this project is not consistent with. So I don't know how we're going to find it consistent with the policies and objectives of the Community Plan when most of these things have been ignored...completely ignored as if this plan doesn't even exist.

So, you know, if they want to build, then hook up to the Wastewater Treatment Plant. There's capacity, all they need to do is put in the infrastructure as required by our Community Plan and by the ordinance that's already in place and, you know, deeded on the land. Do we ignore that? If we do, Members, then whatever conditions we put in here today, we cannot be assured that they're gonna be followed because the next body sitting here can ignore it just like we're ignoring what's already deeded on the land today and has been for how many years, since 1993. I'm too tired to count, it sounds like 15 years to me.

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So, I hope that Members understand what I'm getting at. You know, it's not all about what the Developer wants, it's about what's best for our community, Mr. Chairman. We're the decision-makers, we're the stewards of the public trust, and if we're gonna follow the Community Plan as adopted by this Body and by law since 1998, then we gotta make sure that the developer does what the Community Plan says. We've got how many people right now, citizens giving up their valuable personal time to do our General Plan update which is gonna include urban growth boundaries, rural growth boundaries, any number of things, policies and objectives in the General Plan. What are we gonna tell them if we don't uphold the current community plan, that you know, thanks for your time and we'll take it under consideration. But you know, it's Russian roulette as to whether or not any of these polices and objectives are gonna be upheld.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, questions for the Department? Member Baisa?

COUNCILMEMBER BAISA: Chair, I have a rather simple question. I'm looking at this agreement that was signed in 1992, 15 years ago and it does refer pretty much to this kind of wording within the conditions we're looking at now. And it says that the applicant shall participate in its fair share.

CHAIR MOLINA: Member Baisa, can you give us a reference page?

COUNCILMEMBER BAISA: I'm looking in the former agreement that was signed in 1992, Page 1.

CHAIR MOLINA: Okay, this is the document provided by Member Anderson?

COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: Okay, thank you.

COUNCILMEMBER BAISA: Numbers 3 and 4.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: And it says, "The Applicant shall participate in its fair share of development and funding of the wastewater and the effluent transmission system between the project site and the Kihei Wastewater and shall connect to the public wastewater reclamation facility." I think what I'm struggling with is this fair share. Who determines what the fair share is?

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CHAIR MOLINA: Good question, maybe I'll ask our County attorney if we can make the determination or the Planning Department or Wastewater...anybody want to take a shot at, crack at that? We'll go with Deputy Director Suyama.

MS. SUYAMA: Normally, when they put their pro rata fair share in it, it's usually the agency in charge of the improvements that determines that...what is considered the fair share. It's similar with DOT when they were talking about pro rata share of transportation improvement. They wanted the traffic impact analysis report to determine what was the impact of all the three major resorts to determine what percentage of the improvements had to be participated by each member, each resort. And I would think something similar would have to occur with the Public Works...or the Department of Environmental Management now as to what are the improvements that need to be done, who is paying for...who are the participants in the fair share to determine what is the pro rata share of the developer.

CHAIR MOLINA: Okay. I think Mr. Taylor wants to do a follow-up. Mr. Taylor?

MR. TAYLOR: Yeah, thank you, Mr. Chair. And at current there are three Council ordinances that determine fair share for wastewater improvements: one for the Kahului Wastewater Treatment Plant capacity; one for the Kihei Wastewater Treatment Plant capacity; and one for Kihei...South Kihei Road collection system capacity. In all three of those cases, the County built the projects, determined what the final costs were, then the Council passed an ordinance which divided up that capacity into a pro rata share and by ordinance, defined fair share. So from a Wastewater standpoint, the three ordinances we have are Council ordinances that defined by legislative action fair share.

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: Are those percentages or are those numbers?

MR. TAYLOR: Those are numbers. Essentially, projects were built, total number of gallons per capacity per day were worked out. And because we know how much volume is generated per house or per business, those numbers are divided out, and so when someone comes in for a building permit, we just multiply their sewage flow demand by these numbers and, you know, hopefully when it comes to the end it'll all balance.

COUNCILMEMBER BAISA: And that would be in addition to the connection that is required which would be another investment on the part of the developer?

MR. TAYLOR: That's correct. What these fees are for is for County-owned infrastructure and anything that the developer has to do to tie in to those tie-in points is still their financial responsibility.

COUNCILMEMBER BAISA: Okay, thank you very much. That makes it a lot clearer, thank you.

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CHAIR MOLINA: Okay. Thank you, Member Baisa. Member Victorino, do you have a...I'm sorry, Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. So all those developments below Piilani Highway paid their fair share in regards to the Kihei Treatment Plant as well as the transmission line?

MR. TAYLOR: That's correct and I just want to note that as long as there is capacity within our system, that's all they have to pay. If a developer even below Piilani Highway wants to tie in to South Kihei Road and there's capacity in most of the system but he needs to put in, say, 300 feet of new line to get to its high-end point, he's still responsible for that 300 feet of line at his cost. And he pays his impact fees that cover the core system.

VICE-CHAIR PONTANILLA: So his cost would be the new line to connect to our existing system and he pays a cost to hook up to the existing transmission line?

MR. TAYLOR: That's essentially correct.

VICE-CHAIR PONTANILLA: Okay. What is the capacities...capacity of the transmission line right now?

MR. TAYLOR: It varies from one end to the other. That system runs all the way from basically, from Suda Store all the way to Wailea. And there's a number of pumping stations and different lines, each has its own capacity. As you get towards the center of Kihei the lines get bigger and bigger, so each section has its own, you know, numerical capacity. So we have to look at every project on a case-by-case basis, where they're tying in, how much flow they have. We have to look at it on the plate to see what else is tying in and basically make those on-going capacity adjustments.

VICE-CHAIR PONTANILLA: So the line is separated...how do I say this...I'm assuming that at Welakahao Street, you have one line that goes up to the treatment plant and basically another line, transmission line either going north and one going south of that location?

MR. TAYLOR: Essentially, the center of the system is at Kalama Park.

VICE-CHAIR PONTANILLA: Oh, Kalama Park.

MR. TAYLOR: In Kalama Park, there's a main pumping station that has...all the wastewater from all of South Maui goes to Kalama Park where the main pumping station is. And that pumps to the Kihei Treatment Plant. There are lines in South Kihei Road that come from both directions with a number of lines and pumping stations that transmit all the wastewater to that Kalama Park point. So there's about -- I don't know the exact number -- around ten pumping stations with a whole bunch of different lines that get bigger and bigger with more lines from coming down the hill feeding into them. So as you get to the center of Kihei, more and more houses tie in to each line. So each line has its own capacity, each line has its own flow, and in fact, even the

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ordinance is written that there's a number of different sectors, and depending on where you're tying in, your impact fee is even different, depending on how many pump stations and how many of these lines you go through. So all of those numbers were kinda put together when the project was built. So, it said that if you tie in near Suda Store, you're going through every pumping station and every line so you pay more. If you build right near Kalama Park, you are only paying for what you're using. So, there's a variable rate depending on where you're tying in and what your fair share is. And everybody pays for the treatment plant. So, that's basically how fair share is determined in the existing situation, and again, it's by ordinance and it was done after all the costs were known. So...I'm not saying that's the only way to do it, but that is how the existing wastewater fair shares have been calculated.

VICE-CHAIR PONTANILLA: Okay...trying to get a good feel as far as...you know, I know the line differs from, you know, from a central point Kalama Park going towards Wailea, I'm sure there is different sizes of transmission line. What I'm trying to get at is the average flow from Wailea towards, you know, coming back towards Kalama Park, and if that average flow could handle more growth?

MR. TAYLOR: Member Pontanilla, that is the question we constantly struggle with and during the recess, you know, I took the opportunity to talk to some of our staff who run these numbers on a more daily basis. And basically, to kinda go back and give a little history lesson, before the early 1970s, there was no centralized sewer system in South Maui. With federal money in the early 70s, they built the whole South Maui collection system. That has a certain capacity, the pipes are a certain size, they can only take a certain flow before they'll overflow, same with the pumping stations. The current zoning in South Maui between Piilani Highway and South Kihei Road, if that were fully built out where everybody built an ohana who was allowed, everybody built to their maximum density, everybody built to their maximum height, there is not enough capacity for all the infill development with the existing pipes.

So, we as a division are always concerned where...it's very difficult for us to look at any one project. Any one project is fine. The question is do all the projects happen? And because these projects are gonna happen over the next twenty years, we're trying to take a really long, big picture and say, do we have enough capacity in the existing South Kihei Road development area to handle all these infill developments. And if not, and we allow a project from outside the core area to tie in, how are we gonna service the people that have empty lots inside? We don't have enough capacity for both. In fact, we don't even have enough capacity in the existing lines. If everybody came in tomorrow between Piilani Highway and South Kihei Road and wanted a building permit and everybody tore down their existing two-story building and went eight-stories that were zoned, we would not have enough capacity for anybody. So, I don't have exact numbers because there's so many different numbers to look at, but there is not enough capacity for long-term infill growth for everybody. So we do have to be careful about what we tie in and what are we gonna do in the future when we run out of pipeline capacity.

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

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CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Quick follow-up to Member Pontanilla's question, and thank you for the clarification, Mr. Taylor. I don't know if this question was asked earlier for the developer, I guess, for his fair share, what kind of...(end of tape, start 4A)...based on the project's size?

MR. TAYLOR: At this point, I think it would depend on...if, for example, they tied in to the South Kihei Road wastewater system and they tied in down by Kilohana Drive, somewhere in that neighborhood, that's considered kind of an outlying area. They go through a number of pumping stations, they'd probably be in the neighborhood of...somewhere in the neighborhood of maybe \$10 per gallon so, \$3,500 a house.

CHAIR MOLINA: You times that by 1,400...

MR. TAYLOR: That's 1,400 homes...(calculating)...that is about \$4.9 million.

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. Members, I just passed out to you the community...sections of the Kihei-Makena Community Plan with a cover sheet that indicates, "Change in Zoning application requires that the policies and objectives and the provisions of the applicable community plan shall be included along with an analysis of the extent to which the application, if granted, conforms to these policies, objectives, and provisions." And then also under Change in Zoning, one of our criteria of approval is that "the proposed request meets the intent of the General Plan and the policies and objectives of the community plans of the County."

I put that on there for new Members so they could understand why this is important. If you'll look at Page 34, it discusses liquid and solid waste. And under the objectives and policies for our community plan, it says, coordinate improvements to sewer transmission lines in wastewater reclamation facilities to meet the needs of future population growth; require that the Wailea Resort Company and the Wailea-Makena alliance, who is Makena Resort and Wailea 670, work toward a solution that would enable the Wailea sewage system to be dedicated to the County. So, there's the policy and objective in our community plan. It's talking about taking private systems and dedicating them to the County, private systems that already exist. In here, we're talking about developing a new private system instead of requiring them to hook up to the wastewater facility that we currently have available, as required by the 1993 ordinance. And I'd like to point out, while I'm at it, that in the report that we got from the Planning Department, they are supposed to do the analysis of the extent to which the application, if granted, conforms to these policies, objectives, and provisions. And in the Planning Department report, talking about the policies and objectives in the Kihei Community Plan under liquid and solid waste, there's no mention of the policy that I just read to you, because they say the landowner will build a wastewater treatment facility to process the wastewater of the community. That's not an analysis

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of how this application comports with our community plan. It's in here for a reason, Members, because that's the intention. That was always the intention.

So, I just want to point that out, Mr. Chair, that if we're gonna follow the community plan, then let's follow it. Let's not just follow the policies and objectives that suit their development plan. Their development plan is supposed to suit our community plan. That's the way it works, and it only works if we insist on it. So, it's our job, Members, it's our requirement of approval to make sure that it's consistent with the policies and objectives in the plan. And the plan says to coordinate the improvements to meet the wastewater...or the sewer transmission lines and wastewater reclamation facilities to meet the needs of future population growth; require that Wailea Resort Company and the Makena-Wailea alliance work toward a solution that will enable the Wailea sewage system to be dedicated to the County.

Now, when we get to it, Mr. Chairman, this is the agreement that they have with Wailea Resort Company...a private agreement between Wailea 670 and Wailea Resort. And this includes a lot of things besides the roadway easement. So, you know, they're in it with Wailea 670, they've already...Wailea Resort has already got a 1.5 million gallon storage tank on Wailea 670's property. So, they're interrelated in this project in many, many ways that we haven't even gotten to. So why can't Wailea 670...Wailea Resort's sewage treatment plant take the sewage for Wailea 670, and then the two of them work towards getting the transmission lines and whatever is necessary so that they can dedicate that system to the County and it becomes a public facility and not a private facility, so we can control what happens with the effluent and how much water is injected, and we can stop the degradation of our shorelines. And it isn't just the injection. They say that that's only 40 percent of the pollutant loading that's causing the problems, the rest of it is runoff. And as I mentioned earlier, we have no master plan regarding runoff and drainage. And, you know, now is the time, Members, if we don't do it now, we have lost the opportunity. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Anderson. Committee Members, if there's no other questions for the resource personnel, Chair is gonna offer a recommendation for Conditions 16 and 17. The Chair would like you to consider the language as written for Condition 16 and for Condition 17. Member Anderson has suggested that we delete the words, "when it becomes feasible." That is the Chair's recommendation. Any additions or deletions? Floor's open. Okay. Do we have...we'll start with Mr. Victorino. Consensus, Mr. Victorino?

COUNCILMEMBER VICTORINO: Consensus.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yes.

CHAIR MOLINA: Mr. Medeiros?

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COUNCILMEMBER MEDEIROS: Consensus.

CHAIR MOLINA: Ms. Baisa?

COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: With the deletion of that language? Thank you, Mr. Chairman.

CHAIR MOLINA: Deleting, "when it becomes feasible". We will delete that. Okay, Members, that is it for today. Member Anderson, you weren't in the room, but when we were discussing the recess date, we were looking at Friday, August 24th, 9:00 a.m.

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: So we did have four Members commit and we will check with Members Hokama, Johnson, and Mateo on their availability for this Friday for a recess of this matter. And so with that being said, there are no other announcements, we shall recess this meeting until Friday, August 24th, 9:00 a.m., right here in the Council Chambers.

COUNCILMEMBER ANDERSON: Chair, Chair, Chair...

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: You know, we have asked for certain things that have not been forthcoming, and I just want to remind...Corp Counsel, we asked them to look at the bill for an ordinance that broke everything down into different zoning lots. And I'd like to have an explanation as to why that was done because we're dealing, basically, with two parcels of land, that it's not subdivided. So I'd like to know what the reasoning is behind that and I'd also like to have, you know, in the...we haven't had a chance to go back and discuss the agreement between Ulupalakua Ranch and Wailea 670 and all of the stuff that was redacted. And I'd just like to mention, Mr. Chairman, that the really salient points have been redacted. I mean, we've got to know...all through here they talk about the water plan. Well, what is the water plan? That's what we need to know. And I think they need to bring it to us. And, you know, I think they've even taken out...you'll look at the definition section in their recitals...excuse me...there's a whole bunch taken out between temporary excess water and Wailea 670 under the definitions. And I'm wondering if the water plan was defined in there and they took it out. I mean, what is gone that we don't know about? So, you know, at minimum, we have to know what the water plan is that they're talking about all the way through here, or you know, this means nothing.

CHAIR MOLINA: Okay, Member Anderson, we will take that under consideration at our next meeting and we'll see if we can get some answers.

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COUNCILMEMBER ANDERSON: Well, I'm just mentioning it now because, you know, they should bring that to us. We should have it before the next meeting, Mr. Chairman, so we can move on this.

CHAIR MOLINA: All right, we'll make that request to the applicant, if they're able to honor that request for us by Friday. All right, Members, seeing no other announcements, we shall recess this meeting until Friday, August 24th, 9:00 a.m., here in the Council Chambers. Meeting in recess. ...(*gavel*)...

RECESS: 5:46 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

lu:min:070820r

Transcribed by: Priscilla Echalas

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

August 20, 2007

CERTIFICATE

I, Priscilla Echalas, 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 13th day of September 2007, in Wailuku, Hawaii.



Priscilla Echalas