

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

**MINUTES**

**October 23, 2007**

**Council Chamber**

**RECONVENE:** 9:12 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Joseph Pontanilla, Vice-Chair  
Councilmember Michelle Anderson, Member  
Councilmember Jo Anne Johnson, Member (Arrive 9:19 a.m.)  
Councilmember Danny A. Mateo, Member (Leave 12:03 p.m.)  
Councilmember Bill Kauakea Medeiros, Member (Arrive 9:22 a.m.)  
Councilmember Michael P. Victorino, Member

**EXCUSED:** Councilmember Gladys C. Baisa, Member  
Councilmember G. Riki Hokama, Member

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

**ADMIN.:** Colleen Suyama, Deputy Director, Department of Planning  
Vanessa Medeiros, Director, Department of Housing and Human Concerns  
Jeffrey Eng, Director, Department of Water Supply  
Bradney Hickle, Officer, Department of Police  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Charles Jencks, Owner's Representative, Honua'ula Partners, LLC  
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)  
B. Martin Luna, Esq., Carlsmith Ball, LLC (Applicant's attorney)  
Blaine Kobayashi, Esq., Carlsmith Ball, LLC (Applicant's attorney)  
  
Joyclynn Costa  
Kimoqueo Kapahulehua  
Additional attendees (10)

**PRESS:** Chris Hamilton, *The Maui News*  
*Akaku--Maui County Community Television, Inc.*

---

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. It is 9:12, Tuesday, October 23<sup>rd</sup>. We're off to a bit of a late start today. It's quite a challenge to get quorum for Committee meetings during off-weeks and also to try and

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

**October 23, 2007**

---

coordinate in getting our Department resource personnel here. Of course, they have other duties as well so I want to thank Staff and thank the Members who are here to establish quorums. Getting Council Members here on an off week is a lot like herding cats, Members. For the record, we have in attendance, we have Members Mateo, Anderson, Pontanilla, and Victorino, and Molina. Excused are Members Baisa, Johnson, Medeiros, and Hokama. And Committee Staff, we have Carla Nakata, Legislative Analyst; and Committee Secretary, Tammy Frias. And from Corporation Counsel's office, we have Mr. Michael Hopper; and Deputy Director from the Planning Department, Colleen Suyama; and from the Housing Department, Director Vanessa Medeiros.

**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, I'd like to start off with Condition No. 5. We left off yesterday with the...initially a proposed motion from Member Mateo to set aside 250 of the proposed 700 affordable units to be placed in an off-site area, and the motion was withdrawn pending comments from the Department of Housing as well as the Water Director. So we have Director Medeiros here with us today and I'll ask Director Medeiros to comment on the proposed, I guess, off-site 250 units from the Applicant. And, of course, we have Mr. Jencks here as well to give his comments, additional comments on this matter. Director?

MS. MEDEIROS: Thank you, Committee Chair. I just wanna make sure that I...I understand. I read some things in the paper and I just wanna make sure that I got this thing cleared because we haven't been able to monitor. And I think this was discussed the last time I was here. So my understanding is that, first of all, the...one...one of the conditions was to...that this project should be subject to Chapter 2.96. That was, I think, one of the...one of the discussions. In addition to that, I understand that...that a proposal has been made to provide some of the affordable units in an off-site location within the community plan area. And I believe, from my understanding, is that...that the application of the affordable housing to this off-site area is an additional condition? I just want to make sure I understand.

CHAIR MOLINA: The Applicant—could you restate that again? I'm sorry.

MS. MEDEIROS: *(Laughter)* I know, it's only confusing. *(Laughter)*

CHAIR MOLINA: *(Laughter)* Yeah, well--

COUNCILMEMBER MEDEIROS: Well, let me...let me try make this clear 'cause I didn't have a chance to read this. The developer's proposing to provide some of the affordable units in an off-site location within the same community plan area. And it is my understanding that—and I just wanna make sure 'cause I didn't catch this part—that...that...at that affordable units would also be subject to the requirements of Chapter 2.96?

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

CHAIR MOLINA: I believe that would be part...well, I know 700 affordable units would be required based on the 1,400 that the Applicant wants to do.

MS. MEDEIROS: Correct.

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: So Condition 5 relates to the Housing Policy. I think that—

MS. MEDEIROS: I think . . .

CHAIR MOLINA: --he's obligated to--

MS. MEDEIROS: Yeah.

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: --the Housing Policy. Hang on. Member Anderson?

COUNCILMEMBER ANDERSON: Does she have a copy of the condition we're looking at?

CHAIR MOLINA: Do you have a copy?

MS. MEDEIROS: You know, I'm not sure because apparently these conditions have changed and we haven't been given updated copies of it.

COUNCILMEMBER ANDERSON: If she can have a copy of the condition we're discussing, it would make it much easier (*chuckle*) for her, I think.

CHAIR MOLINA: I don't think the condition changed. Staff, did we...no? It's still the same, right, from the last time the Director was here? Yeah, I know we have an updated matrix. If you'll note, Members, we're on page 4, by the way, of the matrix--Condition 5. We're looking at the Department of Planning's version of it which is, would be the—one, two, three—I guess, the fourth column. Then also the Planning Department also made comments as well so...

MS. MEDEIROS: Okay. I remember this. This is actually the same thing that was sort of discussed the last time I was here. Our...our comment to this, as we did the last time, is if...if the Council chooses as a condition to subject the project to Chapter 2.96, then Chapter 2.96 does allow, as it is currently written, the developer to...to build the affordable units in an off-site location within the community planned area and not to, therefore, be subjected *again* to affordable housing requirements.

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

**October 23, 2007**

---

CHAIR MOLINA: So there's flexibility in...in the policy where the developer could place a portion of the affordable units as long as it's in the community plan district.

MS. MEDEIROS: That's the way it's currently written. So...so my only...my only comment would be is, if...if the Committee--as a condition--states that this project should be subject to Chapter 2.96, then it has to meet those requirements. It can't be ala carte. You can't be subject to Chapter 2.96 but we want to make these other changes because that presents a precedent that could affect other developments coming down the line. So I think, maybe, the...the question at hand is, whether or not it is subject to Chapter 2.96 and therefore, you just follow the law according to what it says. Or you say, no, it's not subject to Chapter 2.96, but we now list the specific conditions that we want it to follow.

CHAIR MOLINA: Okay.

MS. MEDEIROS: And in that way, I think, we can make sure that we *preserve* what you want as a condition and not create a problem with Chapter 2.96, itself, because we may, again, have problems with...with that application with other developments.

CHAIR MOLINA: Okay. Thank you, Director. Members, questions for the Director? Member Mateo, followed by Member Anderson.

COUNCILMEMBER MATEO: Chairman, thank you very much. Unfortunately, Mrs...Mrs. Baisa, or Member Baisa was the individual that I do know had specific questions for the Director. But in her absence, I...I would just like to comment on the Director's...the Director's comment because I believe, Mr. Chair, we had a similar conversation just a little while ago in referencing the fact that 2.96 is very specific in terms of its affordable requirements. So the Director is correct in the reference to the off-site proposal of the 250 units. The policy also gives the Director the flexibility as she works with the developer in the creation of the agreement. So Ms. Director, there was a reference or a proposal earlier that in the 250 proposed off-site units that...the developer consider 125 for direct ownership and 125 for rentals. Could you comment on that proposal?

CHAIR MOLINA: Madam Director?

MS. MEDEIROS: Certainly, again, you know, our Department supports affordable housing. That's...that's a given. Any opportunity to allow our families to have ownership certainly would be something that...that we would support.

COUNCILMEMBER MATEO: Yeah. And...and for...for me also, I think that flexibility that the policy affords the Director is something that I think is a nice opportunity of taking a look at meeting the various income levels that we need to...to look at. And Madam Director, if we can also get your comments on the on-site project itself where the 450 additional affordable units are being projected? Those units apparently start at the 120 and above. I would...my own

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

**October 23, 2007**

---

preference is to see that 120 be lowered to a little, say, the 100 percent median income levels. Can you comment on that as well?

CHAIR MOLINA: Director?

MS. MEDEIROS: It...it's always difficult because, again, remember that 2.96 provides that flexibility. And...and again, unless...unless you mandate that they provide certain percentages within the project area and...and/or other areas, you allow the developers to...to make that decision. And...and it's difficult. You know, some of the challenges may be, you know, some families—and...and there's two ways of thinking about—some families who are in the...in the lower income strata may, or may not, want to live in a neighborhood in which there's a lot of expensive homes. And it goes vice versa. It works...it works both ways. We would certainly like...like to see a good mix of affordables in any project and any development that...that is brought to the fore.

COUNCILMEMBER MATEO: Okay. Chairman, I'll yield to the other Members. Thank you.

CHAIR MOLINA: Thank you, Mr. Mateo. Member Anderson? And before she asks her question, the Chair would like to recognize the presence of Members Johnson and Medeiros. Good morning.

MEMBER MEDEIROS: Good morning.

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. So, as I understand, Ms. Medeiros, that if the Council wanted to put a specific condition that would require half of the 250 proposed units be for sale, then in your development of an agreement with the Applicant, that you would honor that condition? Because it does allow for that in...in the 2.96.

MS. MEDEIROS: But, well, whatever condition you folks come up with, we have to follow. We have no choice. So...the only thing I just wanted to make sure is...is just to make sure, to clarify that if, number one, if you do state that they have to follow Chapter 2.96, just be careful about not doing ala carte so that we don't create a bad precedent.

COUNCILMEMBER ANDERSON: What...could you define what you mean by "ala carte"?

MS. MEDEIROS Well, if you say you must follow Chapter 2.96--and it's very defined in the ordinance what needs to be done and how it needs to be done--but if you start to take pieces out of that, and you say, oh, but we don't want this piece, we want you to do this instead, you now get into a sort of "ala carte" situation which could be very...detrimental to us in the long run with other developments.

COUNCILMEMBER ANDERSON: I understand that but it's also very flexible. It's not just well defined. It's very flexible. And I think that the...the reason that we made it flexible is

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

**October 23, 2007**

---

because not all projects are the same. And we're looking at a very high-end market priced housing project here. So if there's any project before us in the near future that would have the financial wherewithal in order to make the 100 percent and below affordables available for purchase, it would be this project. And so that's why we're looking at putting a condition in place that would mandate that within the parameters of the affordable Workforce Housing ordinance. So I don't think it sets any precedent because everything is case by case. You know, I don't think that we would mandate that for just any project. But because this is such a high-end project, we're looking at million dollar lots, up. Not to mention a private golf course with membership of \$30,000 per person, up. So, you know, if there's any hope that we're gonna get developers to provide housing for purchase to our workforce residents, this would be it.

Then I had a question as to whether or not the Applicant has talked to you at all about this off-site 250 unit multi-family development?

CHAIR MOLINA: Director?

MS. MEDEIROS: No, I'm sorry we have not had any opportunities to meet with the developer regarding any of this. Again, I believe that what we are waiting for is whatever decision the Council makes and the Committee makes in terms of conditions. And we would then follow those conditions in terms of crafting any affordable housing agreement.

COUNCILMEMBER ANDERSON: Okay. Thank you, Ms. Medeiros. My concern, Mr. Chair, is that...that this *offer* that is being presented to us is really viable. I don't believe it's viable in regards to water. And when we get a moment on that, Mr. Chair, I'd like to share with the Committee some further discussion that we had with Director Eng. Member Victorino and I met with him yesterday regarding the water availability bill and he had since meeting with us in the morning had had the opportunity to run some calculations. So I'd like to share that. But my other concern—and I don't think we have anybody here from Subdivision—is, you know, what is the viability of actually putting 250 units in this highly congested area already? You know, it's one thing to put in light industrial. That doesn't, you know, generate the traffic impacts that a 250 unit multi-family project would. I mean, that's really high density in one area. And so, you know, we need to know if it's actually viable that...that there has been some kind of preliminary traffic assessment done by subdivision because they...they do have a large lot for a large lot subdivision. That's only the first step. And there's not a whole lot of traffic analysis or any kind of analysis done for a large lot subdivision. In fact, virtually nothing because you're just subdividing a large...larger parcel into four large lots. And that then takes further subdivision to get down to the 13 acre lot that he wants to build on. So without having any kind of, you know, analysis from Subdivision, and...and Mr. Jencks has not provided us anything that shows that that's been done. We're just guessing that it's even viable to place 250 units here. As I said, any of you that have gone near Ohukai—and I see Brad is here. Officer Hickle might have some comments to make about traffic in that area.

CHAIR MOLINA: Okay.

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: So thank you for the time, Chair.

CHAIR MOLINA: Thank you, Member Anderson. And we do have, as Member Anderson mentioned, we do have Officer Hickle to comment on this proposed off-site development for the 250 units once we're complete with Director Medeiros. Mr. Pontanilla, questions for the Director?

VICE-CHAIR PONTANILLA: Not a question but more comments in regards to the 250 units that's being proposed off-site. And I kinda compare this thing with the Kahului Town Terrace which is located within an industrial area. And...and the reason for that is that it's close to all the amenities for, you know, those people that don't have cars. You have the supermarket, the banking, medical clinics and so forth. My question...or not question, but earlier...Member Mateo mentioned about, you know, the 450 units within the project area. And, you know, it's kind of in favor of the 100 percent and above to be located in the project area rather than having it 120 and above. Kinda share the same thoughts with him because the last few months, you know, we've had testifiers, the testifiers that come forward looking for an affordable home. And, in fact, last week, you know, the Carpenters' Union, the Plumbers' Union were over here testifying that most of their members, especially the apprentice, you know, they do make a little over 100 percent medium income. And, you know, for people that make...101 and above medium income, you know, I would kinda hope that the developer take a look at this because it not only affects the construction industry, it affects the hotel industry as far as having employees looking for affordable workforce housing. So, I share the same comments like Member Mateo in regards to the 450 units within the project that we should take a look at, you know, those other industries that, you know, provide a little higher than the 100 percent and below. Thank you.

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

COUNCILMEMBER VICTORINO: Yes, thank you. I'd like to ask the Director because I think yesterday we had some...before we did away with the amendment, there was some discussion if I'm--and correct me if I'm wrong, Chair—that this project wouldn't be exactly like the Kahului Town Center. It would be more. About 125 would be affordable rentals and 125 would be affordable purchases...homes. And am I correct in going in that direction? No?

CHAIR MOLINA: I believe that was the, what was proposed.

COUNCILMEMBER VICTORINO: I thought that was kinda the gist of the conversation...or, the discussion?

CHAIR MOLINA: Part of it, yeah.

COUNCILMEMBER VICTORINO: Part of it, yeah.

CHAIR MOLINA: Yeah. Member Anderson?

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: If you mean *homes*, as a single family home? No. He's looking at three-story multi-family units.

COUNCILMEMBER VICTORINO: Yeah, purchase. I'm...I'm trying to...yeah, yes...

COUNCILMEMBER ANDERSON: And we're asking...

COUNCILMEMBER VICTORINO: Not would be all...

COUNCILMEMBER ANDERSON: We're asking for half.

COUNCILMEMBER VICTORINO: Half would be rentals and half would be purchase, right?

COUNCILMEMBER ANDERSON: Right.

COUNCILMEMBER VICTORINO: Okay. That's what I was trying to get. Not...not single-family. I think we kinda come to the conclusion of multi...multi-story and multi-family living facilities. But I wanted to know from our Director, our Housing Director, if we move in that direction where we'd have half of 'em affordable rentals and half of 'em affordable purchase for our working people, how would that be, in your mind, accommodating or...or...or workable within our system? Because now workforce development says 50 percent affordable, rental, purchase or...or otherwise. In your mind, how would you kind of fit that in as far as density and as far as people buying into that?

CHAIR MOLINA: Director?

MS. MEDEIROS: Okay. I'm not quite sure of the question. I...I...again, building...building town homes, building apartments...the density is gonna be there. I don't think there's...there's...there's any...any...any change or any lack of it. Again, we look in terms of housing and, again, we support any opportunity to achieve affordable housing for our families.

COUNCILMEMBER VICTORINO: Okay.

MS. MEDEIROS: The question of density is...is a question that will become a difficult one. We would all, most of us, may be...have been brought up in single family homes where we had a yard and where we can play in the yard. But as land becomes scarce, we may have to become more dense to...and work our way up in order to be able to accommodate people's abilities to own homes. The question of density and those impacts, unfortunately, does not reside with our Department. It resides mostly probably with Planning. But...but that may be the way we have to go in order to be able to achieve affordable housing to...to meet our needs.

COUNCILMEMBER VICTORINO: So something of this kinds of magnitude when you got 250 units—and...and they're not homes, but they're units, right?—for which many can be, you now, 50 percent can be bought. Do you think there's a marketplace out there from your estimation?

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

Do you think people want this? Or do you think people really want a single family, little yard, home out there?

CHAIR MOLINA: Director?

MS. MEDEIROS: Well, it's...it's been my experience—and...and...and there's statistics to...to back this up—there are some people who don't want to take care of a yard. That's just their lifestyle. And in that respect, the concept of town homes or apartment-type really fits into their lifestyle. I think the difference will always be—regardless of how dense your project may be—is what is the layout? And I think that's...that's the biggest thing. Is...are there enough open space around? So the families can go out and they can play in a...a, you know, in a grassy area. Or they can, you know, hang out and have a picnic. I think that's the element. That's...that's how we retain, to a great extent, our lifestyle. If we just have concrete buildings and...and sidewalks and...and pavements, that's a different mindset. And we may or may not be quite ready for that at this point. But if it's...if it's open, if it's laid out...example, you know, could be like Iao Parkside. It's sort of laid out...laid out, there's some grassy areas, and parks that people can go to. Those may fit into some people's lifestyles. Other people certainly would prefer to have the yard.

COUNCILMEMBER VICTORINO: Okay. And the last question I bring forth was, really Council Chair Hokama's question, we build this and how do we insure that our working people, the people on Maui County—not someone just moving in—but people for that live here that so desperately need a place to rent or own. What can we do? What condition could we put, from your estimation, to make sure that *that* would be accommodated? That would be our first priority.

MS. MEDEIROS: Well, again, under Chapter 2.96, the definition of a "County resident" is...is not stringent. And...and you may not be able to because then you may be touching very close into fair housing laws.

COUNCILMEMBER MEDEIROS: Okay.

MS. MEDEIROS: So it...it...it may be difficult to...to do that, to be able to say, you know, in order to meet the definition of a Maui County resident, you have to have lived here for a year. You...you...we may be...we may be, you know, having a call from the Fair Housing Officer or getting into a lawsuit. So that part is very difficult. In terms of workforce, again, if you have conditions in which a developer or that builds housing for their workforce, obviously they are living on Maui. I...I don't know how else to prove it. I mean, many of us, we have born and raised here, feel that we should have an opportunity. But it doesn't always happen that way. And it depends. You may have to look at whether or not you need to amend the ordinance or amend the law to fit the definition that you're trying to achieve in a way that also does not infringe on fair housing rights.

COUNCILMEMBER VICTORINO: Thank you. Thank you, Mr. Chair. I appreciate that moment. Thank you.

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

**October 23, 2007**

---

CHAIR MOLINA: Thank you, Mr. Victorino. Before Chair recognizes Member Pontanilla and Member Johnson, the Chair would like to mention we have Director Eng here as well joining us. So once we're done with Director Medeiros, and my understanding is Director Eng has to leave at 10:30—Staff—to attend a meeting? So...anyway. Okay, Member Johnson. I'm sorry, was it... did I say Member Pontanilla first? I apologize.

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Mr. Pontanilla followed by Member Johnson.

VICE-CHAIR PONTANILLA: Fast question for either the Director or Corporation Counsel in regards to Member Victorino's question on how to make sure that, you know, our workforce over here has first crack at the homes knowing that when you look at Chapter 2.96, it kinda prohibit us from doing that. My question to either of 'em, how can we get away from 2.96 to make sure that the people that we want to help, the workforce here in Maui County be eligible as the first priority in getting an affordable rental or an affordable unit?

CHAIR MOLINA: Director?

MS. MEDEIROS: Again, the...the real key to this is how far can we go without infringing on fair housing laws or rights? And that is a question that would have to be directed towards Corp. Counsel in...in having them review that. The, you know, the only other thing that you could possibly look at is—and a lot of it has to go with the marketing. And then, and that may be part of the area in question—when developers market the homes, how is it being marketed? Is it being marketed in a manner that gets the word out to the local residents so that they actually know it's available? There's a lot of the...the developments that have gone on that personally *I* have not ever seen the marketing. So we...we have no...that's a... that's an unknown area right now. So that may be a way to look at how do we put this marketing in...in the open public forum so that the local families who are...you're trying to serve says, I know this is available. I can go and apply. It may also be in the application process itself.

The question is—and I don't know if this is something you should mandate—but when a new development is occurring, at what point are applications officially being received? Because I do know that the very wise people who watch Akaku and hear you talking about these developments are on the phone the next day calling the developer and saying, I want to apply. I want to be on that list today. And this development is two or three years down the line. So that may be another area in...in looking at, you know, when the point comes to...to determine a waitlist or to determine the marketing, what process needs to be done so that it is...the information is available to all at the same time.

VICE-CHAIR PONTANILLA: Thank you. Comments from Corporation Counsel?

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

**October 23, 2007**

---

MR. HOPPER: I would say at the outset I'm not a off-the-top-of-my-head expert on fair housing laws; so in order to look into doing something along those lines, I think the Director is correct that we would need to make sure that we wouldn't run afoul of any of those laws. I think she's very astute to point out the definition of "resident", which is the key under your current ordinance which defines "resident" in a variety of ways. But the basic idea is that it has to be connected to someone who's currently employed in the County or retired from employment in the County, has basically worked in the County based on the definition as I read it right now. And then this was, you know, reviewed as to form and legality and approved by our office prior to its enactment so we presume that it's...it's...it's legal right now. And so the definition of resident currently would deal with those employed in the County.

Of course, you could someone who just moved to the County and gains employment and would qualify if they were in the...in the income ranges as the ordinance has currently defined. If...if, you know, you wanted to change the definition of "resident" in this ordinance in order to better target, you know, the groups that you want to target, I believe we could look at that. However, I think that it...the Director does raise some...some important concerns that we would have to look at before doing so. But right now I think we'd look at the definition of resident that we have currently in our...in our law in order to determine what the target group of this ordinance is.

VICE-CHAIR PONTANILLA: Thank you. Director Medeiros, thank you for that comment in regards to, you know, people looking at Akaku, especially the young families and they call developers to make sure that they get on their lists. I certainly do the same whenever I meet young people looking for housing.

The other question that I have for either of you is in regards to a project that we approved, I think last year or the year before that, on the West side where the company, the union and the community were...as a group, would...would...as a group and a committee that would do the selection process, you know, targeting I think at that time was the...the residents that were working in Lahaina and then, and so forth. If you could take a look at that particular condition...(end of tape, Change to 1B)...for that particular project, I...I don't know if 2.96 trumped that, but we had and they had set up some committee so that the people that living on this island would be the ones that get the homes first. So if you could take a look at that particular condition, I would appreciate that.

MS. MEDEIROS: Thank you. If I can could—

CHAIR MOLINA: Director?

MS. MEDEIROS: --just make a comment. Certainly the easiest way to...to mitigate that concern were if...if owners—and just as an example, like A&B or...or Maui Land and Pine when they build their workforce housing—that they build it for their workforce. And...and that's the easiest way. You say "as a condition, you have to work for the company". But we have a lot of situations where in...in developments, that that's...that's...doesn't take place. So, again, we may have to look at, are there other mechanisms that allow us. I still, and strongly, believe that the real key to

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

**October 23, 2007**

---

this is being able to get the word out, you know, publicly, often, to all the families so that they are aware of what's coming up, what's going on, what's the start date that you can officially apply and when the marketing starts to take place, when is it taking place. Because I think those are all information that, you know, a simple article in the Maui News doesn't do very much.

VICE-CHAIR PONTANILLA: Thank you. And thank you for those comments. And hopefully those young people that are out there looking for affordable housing that, you know, one of the key factor, I think, in trying to qualify for housing is their finances. And hopefully that they, you know, view this Q & A as a means of getting educated and hopefully, you know, they get their finances in line and whenever a project is, you know, comes aboard that they really are ready to apply. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Member Johnson, followed by Member Medeiros.

COUNCILMEMBER JOHNSON: Yes. I guess, because we're looking primarily at 2.96 and the applicability, we also have something on the table with regard to the affordable being contained outside or not being contained within the project district, but outside. One of the things that I know people have looked at and even your predecessor, I think, in the Department has always said the land was really important. The availability of land or access to acreage on which either the County or a nonprofit or other, you know, entity could actually go in and construct housing. And that's one of the things that has not really surfaced in this discussion is if you look at land within the project district, I know that the developer is intending to phase, you know, this over a period of time, what would your thought be if there are all these other uncertainties about water availability and other things that really complicate the matter with having these units outside the project district? If we were to take land or have an acreage amount within the project district that would be assigned specifically, or donated, or...I guess not donated but it would be an exaction, a condition that a portion of land be set aside for either government, or private/public, or a nonprofit entity to construct housing, perhaps a combination of both affordable, maybe some gap, because I think the other day the union people were complaining that they didn't...their...their earnings were too high to qualify for that. Would you think that would be another option? And if you do believe that, would you, you know, say any particular amount of acreage would be important to establish?

CHAIR MOLINA: Director?

MS. MEDEIROS: Well, again, currently under Chapter 2.96, those are one of the options that a developer has, to...to provide improved land, to provide the units, to provide in-lieu funds. And...and depending on the development and the conditions, one or more of those could work. We certainly would love the opportunity to be able to have the developer, and I would say, have the developer work with nonprofits, such as, you know, Habitat for Humanity or Lokahi Pacific, and also working with the Land Trust. And that's one of the ways that we can assure that the land stays affordable in perpetuity. So there...there are all these options...options out there and the developer certainly could choose to look at those options as part of their mix.

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

**October 23, 2007**

---

I think one of the things just to...to be aware of is that, again, under Chapter 2.96, if a developer were to choose to do in-lieu fees or to donate land, that then that fees or that land would now be subject to the terms of the affordable housing fund. And we are required to provide one report a year in terms of our recommendations for use. So the good and the bad of that could be timing. But...but certainly that's...that's an option. And it's something that if the opportunity became available, we do know that...that those agencies are...are willing to work with developers.

COUNCILMEMBER JOHNSON: Yeah. And because this is a re-zoning and we basically, you know, I guess are in the negotiation stage at this point trying to craft conditions that meet the needs of the community, more and more we've heard that people...they either want the rentals as you mentioned or some kind of more dense housing so they don't have to take care of the yard. But then there are those individuals that have families that want the yard. So I'm looking at perhaps a combination thereof where, you know, our goal and objective is to provide housing. That's why I think some of the Members feel that it's very attractive to have a more immediate solution, to have that housing *sooner* rather than later. And again, because I...I asked Member Anderson about the timing and apparently that's still an issue as well. How much is sooner? You know, what period of time are we really talking about? So I really appreciate your comments and I'm just looking for direction also from you because *you* get the comments, you get the calls, *you* know basically what the needs are and we're trying to match up the needs of the community with a product or products that most closely fit with that. And so that's why I'm trying to seek some kind of guidance because you're dealing with this more frequently than we are.

MS. MEDEIROS: I...if I could—

CHAIR MOLINA: Director?

MS. MEDEIROS: --just make one...one last comment. It's certainly going to take a lot of creative ideas to...to bring forth affordable housing that I think we all agree that we need affordable housing. Certainly one of the concerns for all developers, again, is the time element. The time element in...in either zoning or...or permitting, or review process. And those are issues that I...I know the Administration is currently...currently looking at and working on. I'm currently sitting on the Regulatory Barriers Taskforce for the State. I'm...I'm hoping that we can...can devise a process at some point and...and hope that we can get some developer to work with us on an experimental basis to test out a process...test out a process in terms of timing, in terms of streamlining, in terms of, you know, because I don't think it's been done. It's been talked about a lot but it's never been done. But I think we need to, hopefully, put our heads together to...to an extent and see number one, what could we do to possibly streamline the process? And number two, go through that process. And number three, determine what the cost savings really is as a result of going through that process and determining how much of a difference that makes in the final cost to the families.

COUNCILMEMBER JOHNSON: Yeah, and I...I appreciate that, Ms. Medeiros, because I think that that's one of the challenges we have also is trying to get the policy implemented or help you to

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

**October 23, 2007**

---

facilitate the implementation of it so that we can actually see is it workable or not. One of the things that I think, Mr. Chair, we could actually look at, too, is if land discussion does come up, what could we do as a Council toward making a community plan amendment, district boundary amendment, whatever, to expedite the process so that a nonprofit or other public/private partnership could move forward perhaps with the 201H process because that privilege, I guess, you know, is granted to us that we can initiate community plan amendments. So that, Administrator Medeiros, that may actually help us. And it may help you if we know what it is that we can do to facilitate it. So thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Before recognizing Member Medeiros, the...the Chair is gonna excuse Director...Housing Director Medeiros temporarily to bring up Mr. Eng because Mr. Eng's on a tight schedule this morning. And he's hard to get a hold of so we wanna make sure that he can respond to the water issue as it relates to the off-site project. So Member Medeiros, go ahead and ask your question to the Director and then we'll bring up Mr. Eng.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And good morning, Director Medeiros. In looking at your affordable sales price guidelines developed by your Department as of April 9, 2007, you have six categories under percent of median income. You have very low, which is 50...50 percent and below; low income, 51 percent to 80 percent; below moderate, 81 percent to 100 percent; moderate, 100 percent to 120 percent; above moderate, 121 percent to 140 percent; and the gap income, 141 percent to 160 percent. My question is, anytime we have affordable housing, I know that there are certain mandates in our workforce housing (Residential Housing Policy) that pretty much set the formula of the different percent of median income units that that particular project will have. Is there some flexibility for County housing to come to an agreement with the developer on that? Or is that pretty much set according to the policy?

CHAIR MOLINA: Director?

MS. MEDEIROS: Just clarify agreement on which part?

COUNCILMEMBER MEDEIROS: Well, as far as how you decide how many units will be very low. How many units will be under low income. How many units will be below moderate and so forth.

MS. MEDEIROS: Okay. Well, again, Chapter 2.96 currently identifies what the percentages are. Now the developer can choose to provide more units at the lower levels. And...and...and we certainly accept that. So if...if the developer, for example, needed to provide 100 affordable units and according to the breakdown, I believe, it's 30 percent, 30 percent, 20 percent. But they decided, hey, we want to provide 50 percent of those units to those families 80 percent and below of median. They can certainly do that.

COUNCILMEMBER MEDEIROS: And...and it's at the call of the developer? It's not between the County and the developer to come to an agreement on that?

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

**October 23, 2007**

---

MS. MEDEIROS: Well, we come to agree. We certainly look at what...what they're proposing. And we do talk to them. You know, again, it provides a guideline that...that they could...they could put down and we would, you know, discuss with them the opportunities for providing, you know, more units at a lower level if possible.

COUNCILMEMBER MEDEIROS: I see. Because under 2.96.070, which has to do with rental units, it is said that one-third of the rental units would be at very low and low income residents. One-third will be below moderate income and one-third will be for moderate income. So, in other words, people above those percent of median income categories cannot apply for those units which would mean above moderate and the gap income groups.

MS. MEDEIROS: Correct.

COUNCILMEMBER MEDEIROS: So there's no flexibility in that that we could provide some of their units for those categories?

MS. MEDEIROS: The way it's written is the way we would have to follow. We can go lower but we couldn't go above unless you made a change in the ordinance.

COUNCILMEMBER MEDEIROS: I see. Okay. So the flexibility is going lower, and not higher.

MS. MEDEIROS: Yes. But I think everybody wants them to go lower.

COUNCILMEMBER MEDEIROS: Okay. Some of the questions been asked about how can we assure, in whatever way possible, to have the working families, the local families, qualify for these units. And you stated that there are fair housing laws that we have to comply with. So is there a difference when, say, housing is a private development with private money as opposed to public sponsored, public tax money housing? Do different laws apply? And I know that this may be for Corp. Counsel, too.

MS. MEDEIROS: Yeah. I...I don't believe that there's a difference regardless of the source of monies. The fair housing laws is...is across the board. It's a Federal law.

COUNCILMEMBER MEDEIROS: Okay. The fair housing law applies to housing sponsored by government?

MS. MEDEIROS: No.

COUNCILMEMBER MEDEIROS: Or any kind of housing?

MS. MEDEIROS: Any kind of housing.

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

**October 23, 2007**

---

COUNCILMEMBER MEDEIROS: Okay. So when housing is built by an employer for their employees which says that you have to be an employee to qualify, why would that be different?

MS. MEDEIROS: I, again, I would have to take a look at the requirements. The concept of fair housing is that...that you have to make the information open and...and...and available. And you could, again, under fair housing, you could say, okay we're...we're gonna open up applications and we're gonna give a preference to our workforce first. But you cannot maintain that preference over a long period of time. You could only make that preference for a very short period of time and then you would have to open it up.

COUNCILMEMBER MEDEIROS: I see.

MS. MEDEIROS: And these are some of the things we're...we're actually kinda looking at. We understand that this has been used in some other areas outside of Hawaii. We're looking at these. Again, it's not to prevent people from achieving housing. What we're looking at is, what opportunities do we have? And...and it's...if I can use an example, there's...there's an affordable housing project. It's...it's one of the affordable requirements in Makawao that a developer is doing. And they...they purchased a bunch of homes, small cottages. And they had to—there were families renting in it and these homes were pretty dilapidated. They were termite-eaten and all. And they had to relocate the families. And now they're...they're building this as part of their affordable housing requirement. And the question they asked us was, you know, we'd like to be able to give those families, because we had to sort of relocate them, an opportunity to be able to buy those first. And the question was, could we do that? And we...we tried to look at the balance. The people had to be displaced. Now, if they could qualify for those homes, we would certainly love for them to have that opportunity. But we also had to be careful that...that offer could only be made for a very short period of time and then it had to be open to everybody.

COUNCILMEMBER MEDEIROS: I see. And...but we can't stipulate income criterias, such as we have at Hale Makana O Waiale, as such as we have in Luana Gardens? That...that gives a special group of income the right to have that housing.

MS. MEDEIROS: Well, and that's...that's what's covered in the Worker's Housing Policy. And that's...that's the income guidelines that you're looking at. So if they say, again, you know, 30 percent of the housing has to be for families 80 percent and below, then they would identify the particular units and say, okay, only families who meet this income criteria could fill those units.

COUNCILMEMBER MEDEIROS: I see. So, yeah, certainly I, you know, we want to be able to get people in the low income criterias into housing but at the same time, we don't want to forget about the above moderate and gap income groups, too, that deserve housing just as much as everybody. But thank you for that information, Director Medeiros. Mahalo, Chair.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay. Thank you very much, Mr. Medeiros. Members, at this time, I'm gonna excuse Director Medeiros. And I would ask her if she could still be within the vicinity in the event we have some questions from the Members. And if you could inform us of, you know, your schedule too. I know you have some additional responsibilities as well.

COUNCILMEMBER ANDERSON: Chair.

CHAIR MOLINA: So, I'd like to call upon the Water Director Eng, now, to respond to questions related to the proposed off-site 250 units within the community plan district.

COUNCILMEMBER ANDERSON: Chairman.

CHAIR MOLINA: Thank you. And I know Member Anderson, you and Mr. Victorino had some discussions with Mr. Eng yesterday and if that could be shared with the Committee as well.

COUNCILMEMBER ANDERSON: Well, I think Director Eng can speak for himself. But I just wanted to mention that I did have a critical question I wanted to ask Director Medeiros so if—

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --she could stick around maybe.

CHAIR MOLINA: Yeah. I . . .

COUNCILMEMBER ANDERSON: He's only got a half hour here.

CHAIR MOLINA: Okay. I've asked the Director to be around. So we'll bring her back to—

COUNCILMEMBER ANDERSON: Yeah. Okay. Thanks.

CHAIR MOLINA: --respond to your question. Okay. So at this time, I will turn the floor over to Mr. Eng. If you could make your comments known to the Committee as to what you had your discussions in regards to yesterday with a couple of our Committee Members. And then I'll open the floor for questions.

MR. ENG: Good morning, Mr. Chair and Committee Members. I did want to get back to this body regarding one concern that you folks had brought up and that was the adequacy of the two-inch meter that the Applicant currently has for the project. And I...first of all, I want to verify that the Applicant was correct that the maximum capacity and total flow for a 24-hour period is 230,000 gallons per day.

Basically, the maximum flow rate is 160 gallons per minute. And I guess my concern is...is that even though the total gallons per day is adequate in volume, it's inadequate to meet the various peak demands during the day. And the best illustration I probably can provide you is, if there are

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

**October 23, 2007**

---

250 multi-family units in total—and let's say there's just one shower per unit—and let's assume it's pau hana. The people come home from work and they want to bocha and they all want to do it about the same time. This water meter can, at the best, accommodate only 64 of the 250 showers. So it couldn't clearly meet any peak demand uses for that particular property. I can't say for sure how many meters would be required. Again, that would be the Applicant's consultant's determination but I could...I could see maybe two 4-inch meters serving that project.

CHAIR MOLINA: Thank you, Mr. Director. Committee Members, questions? Member Anderson?

COUNCILMEMBER ANDERSON: And is the Department in any position, Director Eng, to issue two 4-inch meters?

MR. ENG: Not at this time. If they came in, again we would...we could not currently accommodate them. Obviously, there will be delay until they can get the new and larger meters until such time that we can develop new sources.

COUNCILMEMBER ANDERSON: And the storage tank that Mr. Jencks is proposing to build—a million gallon storage tank—that would not have any effect on the flow rate. Is that correct?

MR. ENG: You know, storage is primarily—when you do get some backup source obviously in storage but a lot of it is designed for...to come in fire protection. In particularly in let's say, a commercial zoned area, I believe you need a thousand gallons per minute for two hours. So there is always some backup, you know, supply there in case a source goes down but much of it is for fire protection purposes.

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

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, any other questions for the Water Director? Mr. Victorino, any comments?

COUNCILMEMBER VICTORINO: Yeah. Mr. Eng, you understand that also this project is, at best, maybe two years to three years from completion. I mean, you know, even if we did everything right and the way we're moving on this, I...I foresee it even longer. If something of that nature was to occur and our whole thrust, as far as show me the water bill, is basically affordable housing would rise to the top of *anything* we do in the future, do you think something of this nature in two or three years could fly should we develop sources as you've just indicated? This would be one of the projects that would rise to the top and be one of the first things we'd look at as far as water availability?

MR. ENG: Well, there's a couple of points I'd like to bring out. One is that in a two or three year time frame, I certainly hope that we have adequate new sources on line. And I expect that—

COUNCILMEMBER VICTORINO: Okay.

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

**October 23, 2007**

---

MR. ENG: --given the direction that we're going right now. And that's really the critical time is getting us through maybe the next two or three period, where we know that we won't have anything on line. Also, again, the direction I think and the sentiment I feel from all of us here is that we do want to come up with some legislation to address, let's say, water meter allocations. So as we bring on new...new...new sources that we have a system on which we can distribute water meters and accommodate projects such as this.

And also I sense your sentiments are that affordable housing will be a top priority types of projects. So, therefore, I can see that, yes, we will—as we get new sources—we'll be accommodating this type of project.

COUNCILMEMBER VICTORINO: And again, it's...it's all speculative right now whether this project goes through or not, whether all the things occur. But, you know, just so the public understands that no matter what we do in the near future, many of these projects, you know, a year, 18 months before the drawing or before we move dirt and then another year or so, so there's...there's time gaps involved in all of this. It's not like tomorrow we move people into their dwellings or their apartments or their homes, or whatever we build.

So just very important so people understand what we're trying to accomplish here. I just don't want to say that there is no water when we hopefully—like you say, your priority and I think everybody in this room's priority will be—to get water to where it's needed from where it is. And to make sure we do a better...better case scenario as far as allocating water, infrastructure and all the other things that have been sorely neglected through the years. And to no fault of anybody, I'm not pointing fingers. But we need to work in a more diligent and have a much better plan of action. And the show me the water bill that...that Member—

COUNCILMEMBER ANDERSON: Anderson.

COUNCILMEMBER VICTORINO: --Anderson. I'm sorry. I'm sorry. I'm having a senior moment. And which former Member Kane really brought forth last year. It's something that we're wanting to really put forth so that developers and ourselves—hey, just like somebody says, you got a checkbook? How much money you got in? We got a checkbook of water. How much water do we have to give out. Thank you, Mr. Eng.

MR. ENG: Thank you.

CHAIR MOLINA: Thank you, Mr. Victorino. Okay. Got a whole bunch of hands going up here. So I guess we'll start off first with...work our way down the line. Mr. Pontanilla, followed by Mr. Medeiros and then Member Johnson.

VICE-CHAIR PONTANILLA: Yeah, fast question and this has been bothering me for, I don't know, maybe four years now. Monsanto, do they utilize potable water to irrigate their corn fields? Or do they use well water, brackish water?

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

**October 23, 2007**

---

MR. ENG: I believe, and this is something I recently understood, is that they do use potable water. And that's why my Department has given it some strong consideration of how we can get R-1 water down there 'cause it's probably be a very suitable type of water to be used for a product such as corn, in which contact with R-1 water isn't a health significance. And if so, as we've been speaking recently, if we can somehow extend that R-1 water to North Kihei, it'd be ideal. Yes.

VICE-CHAIR PONTANILLA: Would you know how many gallons they use a day?

MR. ENG: No, I don't. I can look into that, though.

VICE-CHAIR PONTANILLA: Okay, fine. The other question that I had—I understand that Monsanto has some farm activities—I think at the Maalaea...Maui Electric's Maalaea power plant—would you know in the future---you probably don't, but I'll just ask the question—if they're gonna relocate their farming activities to that particular area?

MR. ENG: No, I don't. Again, I could look into that for you if you like me to.

VICE-CHAIR PONTANILLA: Okay. That would be good. At least give us an idea, you know, if they're gonna move, when they're gonna move. So that, you know, if they're gonna free some water—potable water—for availability to Central Maui at least, you know, we can expect that in the future years. So that's the reason why I asked if you...these particular questions. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Mr. Medeiros, questions related to the proposed off-site 250 units?

COUNCILMEMBER MEDEIROS: Yeah. Mahalo, Mr. Chairman. Good morning, Director Eng.

MR. ENG: Good morning.

COUNCILMEMBER MEDEIROS: Seems like you're here as much as we are. My question is, help me understand that during the permit process of any project, but say particularly this one, when the permit comes through your Department for your review, is the water meter that your engineers feel can service that project then approved for that project?

MR. ENG: When this particular project—and we're talking about the North Kihei off-site affordable project?

COUNCILMEMBER MEDEIROS: Yes.

MR. ENG: Apparently the Applicant has indicated they already have subdivision approval. It's been subdivided. And they have a meter currently. I'm not quite certain if it's been assigned to any particular parcel there. So therefore, they have water up to a two-inch meter's capacity. From

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

**October 23, 2007**

---

what I can gather, you know, they will need to come in for additional meters. In that case, again, if they were to put in this request, then we would first look to make sure that the water lines are sufficient size for fire flow and various things. And they probably are since this is a new light industrial area. But this time since we're not even taking reservations or anything for Central Maui, they would just be again at this time denied a new water meter or anything. So this particular case, there's nothing at this time that we can do to provide them with new meters.

COUNCILMEMBER MEDEIROS: Okay. Yeah. My question is, during the review process from your Department, if a project comes in and they say have 250 units, your engineers look at it and then you figure out what amount of water they would need in order to supply to a project like that. Who determines when...I mean, how many meters they get and the size of the meters?

MR. ENG: Okay. With any project that comes in which we analyze, you know, we do require some information from the Applicant. Usually their mechanical engineering consultants would provide, like, fixture unit counts for us. You know, their landscape architect would provide irrigation demands. Hopefully they won't have any water features but if they do, their mechanical engineers would provide that information. Also, swimming pools, another interesting topic. But there is...that there's all this water demand for this project. But we will closely evaluate all of that to come up...(end of tape, Change to 2A)...and many times we are working with their engineering consultants to determine the appropriate number of meters 'cause much of it depends on the lay out of the project too, how many individual buildings, how they want to serve those buildings. So the arrangement of the meters and the size of meters can, you know, be discussed.

Many times when we don't have a lot of information on a project, such as this, then we're just utilizing our...our water system standards. So in this case, for multi-family, it's 560 gallons per day per unit as a rough estimate of water demand. Also, this...in this case, the Applicant indicated they may use some brackish water sources for irrigation. So we could make an adjustment probably to that 560 and reduce that potable demand. But again, we need a lot of details. And as the project unfolds and we meet with them, you know, we can get that information to determine meter sizes, demands that we need to meet and finalize all that.

COUNCILMEMER MEDEIROS: So...so when you review the application and to determine, you know, your decision on that application, is all this information required during that process so that your Department can determine the size meter, how many meters are required in order for that Applicant to have sufficient water for that particular project?

MR. ENG: Yes. Our engineering staff will request this information. And many times that's what causes some of the delays in our review. Is...is trying to get all...*all* the information at one time so we can be more efficient in our review. But, yes, so it's always an ongoing process in a project such as this. But, yes, we will gather and request all the information that we need to determine the meter needs of a project.

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

**October 23, 2007**

---

COUNCILMEMBER MEDEIROS: Okay. So with the information you had during the application process and through your review, this particular parcel or project required just one two-inch meter?

MR. ENG: No, we haven't reviewed this project yet.

COUNCILMEMBER MEDEIROS: Okay.

MR. ENG: So therefore, what I assume is, again, they had the large lot subdivision approved and I think the Applicant indicated that it's still yet to receive final subdivision approval. It sounds to me that there was an existing two-inch meter at some point and so, therefore, they have a two-inch meter, an existing two-inch meter, that most likely they can assign to the parcel of their choice.

COUNCILMEMBER MEDEIROS: I see. Thank you, Director. So it was an existing meter that was there in...

MR. ENG: It sounds like that. That's what I'm assuming.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Director Eng. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Member Johnson.

COUNCILMEMBER JOHNSON: Yes. I...I feel sorry for you, Jeffrey 'cause you got a lot to do. And, you know, you're always behind the eight ball. One of the things that you stated and you stated it repeatedly, not only in this meeting, is that because you're trying to work on conservation measures and you never can gauge how much usage is gonna occur even with people that have existing meters. One of the things that I'm concerned about is people that have existing meters from a while ago but haven't actually constructed the full build-out of their projects but they have sufficient metering to meet the needs of the full project. Would you have any idea of the scope of that in...and, I guess both South and Central Maui would be applicable because we'll look...we're looking at the water usage out of the one source. So do you have any idea?

MR. ENG: Member Johnson, no, I don't have an exact number. I don't think my Planning Division would have that either. As we know—and I've seen the pattern of even let's say, like for residential subdivisions and even if all the water system improvements are in place, at which time they can come in and get their meter and we would issue it. Then sometimes for some of these homes, it's...it's a two-year process to build a home. So the first two years in which the meter has been issued, there's just some construction water use. And so you don't maybe see the full impact for two or three years down the road. And that we don't have a good indication of. But there is a certain amount of demand that will be coming in once they fully utilize that meter. So it's something we have to be concerned about, yes.

COUNCILMEMBER JOHNSON: Yeah. And...and that has always troubled me because it's that unknown where it might be smaller projects even. Let's say somebody adds on a small addition

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

**October 23, 2007**

---

to their home and the meter is actually and the fire flow is sufficient for even the addition, it's going to increase the usage, though, out of that meter and on that property. And so you have no way of gauging what that is going to be?

MR. ENG: Right. No, we don't.

COUNCILMEMBER JOHNSON: Yeah. And one of the things I think that we have to look at right now is with that unknown, are we gonna be able to actually look at something—even if we looked at projects that are 100 percent affordable housing—can we actually, given all of these unknowns, can we actually do them if we don't have the current availability of water or additional source? So that...that's really of great concern.

MR. ENG: Yeah. That is a big concern. And as...as Member Victorino pointed out earlier, you know, again...maybe fortunately for a project such as this, you know, it's down the road two or three years and will give us the opportunity to achieve a couple of things. One is to bring new sources on line. And that's real key. But also to get some significant conservation and also the expansion of reclaimed water that Member Pontanilla always stresses. I think with all of these things going on, you know, we should be fine in the future. Again, all of them are going to take time and they're all going to take a lot of money. And that's why, you know, we're all working together to try to resolve this issue. But, you know, I'm pretty hopeful that we can address everything in the two or three year time frame that it will take. So it's not like it's totally hopeless down there. And even a project such as this, you know, it isn't gonna come on line immediately that I think we can give it some strong consideration because of the timing of such a project.

COUNCILMEMBER JOHNSON: Yeah. And has your Department taken a position or taken a look at when the projects come forward and they anticipate what their needs are going to be but, let's say, they pay—'cause I know some of the West Maui properties have actually paid for meters, you know. And they've got them installed but their project is not yet built out. Have you taken a position as to...they've got the meter but if they keep it for a long extended period of time, that you may not have the water supply at that point in time in which they actually proceed with their full build-out of the project to actually meet the needs of, you know, the entire build-out. Have you looked at...at that and maybe putting some kind of constraint that if you don't use it within a certain period of time, you know, all bets are off?

MR. ENG: No. Our policy is, is that if we feel at the time that we review the project, you know, that we have available water to serve them, then we will issue the meter. Even if they're not using the water, you know, at the current time period and even a few day...few years down the road. You know, we've made that commitment to serve them. You know, they proceeded to develop their project so we have that commitment. So, and that's been our practice in the past. Now, again, the issue we're facing now is that, as you know, when we review more subdivision type projects or larger projects come in for our comments and we make the statement as we have been utilizing in the past four years that there's no assurances of water when you come in for your meter. The frightening thing is that that hasn't stopped anyone from going forward.

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

**October 23, 2007**

---

Now just recently I've asked my Planning Department to kind of tighten up that language to make sure and let them make it clear to them, to developers, that there could be a delay in getting your meter because until we decide where we want to go during this next two or three year crunch period with meter issuance. You know, we just want to make it clear that probably expect a delay in getting a meter. And I don't know if that's going to give them any cause to, you know, think twice about proceeding. I hope it will. You know, again this show me the water bill is important, too, because that gives them the message early on in the process. Yeah, that's...that's the issue with water availability. And you gotta do something to address it. Or just rethink your project for the time being. So I think we're going in the right direction in resolving a lot of these concerns that you've illustrated. It's something we're facing everyday in the Department. And I know we're...we're heading in the right direction to a resolution. A lot of it will be through...through the legislative process, I believe.

COUNCILMEMBER JOHNSON: Yeah, I...I really appreciate that and I...I know that unless we have some kind of a crystal ball that we could magically get these answers, most of this is just speculation, even the projected gallons that will be utilized. Even once they're given their meter, until they actually construct the project and begin utilizing the water, other than just the construction, you have no way of knowing whether the people who will be frequenting—many times it's hotels or commercial projects or whatever—you have no idea what the actually...the use is really gonna be.

MR. ENG: You're right. And that's why when we meet with the developers to go over their prospective demands, you know, there's always quite a bit of discussion 'cause obviously, you know, we're...you know, we're going to evaluate it based on, one, we really feel are, you know, true average-day demands. And again, our standards might be criticized that they're too conservative for the developer's taste 'cause obviously a developer wants to come in and say, no, we don't have that much of a demand. But we do a real serious evaluation and have some real serious discussions with the developer. So we feel that when we make our estimates, they are conservative, that gives us some protection. You know, that if indeed the...the project when it's built out, you know...again, I think we have...we assure ourselves that we have a good projection of their demands, true demands. So...

COUNCILMEMBER JOHNSON: Yeah, and...and I think you've always erred on the side of being more liberal in terms of your number of gallons allotted where you're looking at perhaps a greater usage so that you at least are looking at a worse case scenario. And I think that's...that's really good because then if we can conserve, it makes it better for everyone.

MR. ENG: Right.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Members, at this time, I'm gonna be excusing Director Eng to go to his meeting, and I apologize. Members, if you do have additional

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

**October 23, 2007**

---

questions for the Director, please contact him as it relates to this project site proposal. My apologies, Mr. Pontanilla.

Before we go to break, I would like to ask Officer Hickle to come up. I know he's been waiting patiently and he has some other obvious very, very important responsibilities. So officer...

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Yes, Mr. Mateo?

COUNCILMEMBER MATEO: Could...I know Mr. Eng is in a hurry but could I just get a clarification from him on one of the items that he had just mentioned real quickly?

CHAIR MOLINA: Okay, Mr. Mateo.

COUNCILMEMBER MATEO: Thank...thank you. Thank you, Mr. Chair. Mr. Eng, your...your reference to the 560 gallons a day per unit that...that you projected. Five hundred and sixty, isn't that close to what standard single family house uses? So I thought apartment use or would be less than the average because of its logistics.

MR. ENG: Well, the multi-family standard of 560—again, you're right. It approaches the single family standard of 600 gallons per day. Again, it does incorporate all the various needs of water for that project including landscape irrigation. You know, again, the multi-family currently would include like a...an apartment, even more for local residents as well as a condominium that could be for...for tourist reasons. So, and the mix that you see too.

COUNCILMEMBER MATEO: So the...the actual apartment type use then, wouldn't it be closer to 350 to 400 gallons a day usage versus your 560?

MR. ENG: Well, again, sometimes we will meet the developer, you know, 'cause we...we try to really...you know, again, we do our best to analyze their demands. If their domestic within the rooms, outside demands, if they have laundry facilities. Some of them have restaurant facilities, \_\_\_\_\_, .what have you. But if we can't determine based on reading analysis of the project, we always will resort back to the 560 gallons per day. Again, it gives the County protection, you know.

COUNCILMEMBER MATEO: So is there...is there a need for...to show a higher gallon usage based on where the units are built? In other words, does Kihei have a greater demand versus, say, Paia or...is that how the Department looks at determining the gallons used?

MR. ENG: No, we don't. You know, these standards are basically just general standards of demand. And you're right. They should be adjusted for where it's located on the island. Clearly, as you know, Kihei is different than Haiku when it comes to rainfall. And so, there are...we know in the residential consumption, there's significant variations depending on, you know, the location. So,

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

**October 23, 2007**

---

you're right. You know, I guess in the case of Kihei location, 560 might be appropriate because there may be more landscape irrigation. But again, in this case for this particular project, that's going to be a separated with the non-potable irrigation. So, it'll take some analysis to get down to a fairly good, realistic demand number.

COUNCILMEMBER MATEO: Thank you, Mr. Eng. Chairman, thank you for the leeway.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. And the Chair apologizes again to the Committee. I believe everybody had one shot at the Water Director...one opportunity at the Water Director. So again, at...at your own if you can get a hold of Director Eng if you have additional questions relating to this proposal. And thank you, Director, for making time out of your schedule to be here on such short notice. Officer Hickle, we would like to give you the opportunity now.

And while we await Officer Hickle to come up here, the Chair would like to inform the Committee as to what the schedule is for today. Chair intends to take a short break after Officer Hickle is done and when we return, we'll go up to about 12:00 and then we'll come back around 1:30 and my understanding is, we will lose quorum at about 4:30 today. So that is the schedule for today, time wise. Okay. Good morning, Officer Hickle and thank you for being here. Can you first open up by giving your comments on the proposed area where the...where 250 units are being considered for construction and in terms of traffic wise where the Department stands and from your own personal observations what you can, I guess, envision at this point? And then I'll go ahead and open the floor up for questions.

MR. HICKLE: Good morning, Mr. Chair, Members--

CHAIR MOLINA: Morning.

MR. HICKLE: --of the Council. Well, the area apparently is the Ohukai area where the proposed 250 multi-family houses. . .*(inaudible)*. . .

CHAIR MOLINA: Excuse me, Officer Hickle, could you bring the mike closer to your? There we go. Yeah.

MR. HICKLE: I'm sorry.

CHAIR MOLINA: We want to make sure we hear your nice voice.

COUNCIL MEMBERS: *(chuckle)*

MR. HICKLE: The area in question, apparently, is the Ohukai community area. All I can say is that relating to this particular project, I'm not sure what impact 250 new homes is going to have on the traffic. I do know that there is going to be an impact and it's probably not going to be a positive impact on the community. I know some lights have been changed in that area to accommodate...for additional homes and traffic moving through the area.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay. Thank you, Officer. Committee Members, the floor is open for questions. We'll start with Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Officer Hickle, you know that this project probably, when you see the first houses...homes, it's gonna be two, three years down the road. I...I know you guys going through a heavy recruiting process in trying to get more officers on line for South Maui. Along with that, you know, the new fire...not fire, but police station. Looking down the road, two, three years from now, do you believe that the Department would be fully staffed for South Maui?

MR. HICKLE: No, sir. I don't believe it's gonna be fully staffed for probably many, many years. It's just very difficult to keep up with the volume of officers that we need to service any community in Maui compared to the growth of communities.

VICE-CHAIR PONTANILLA: Okay. And when you guys do your guys assessment, you guys take a look at all...well, what's coming on line, what's being in the future to figure out your manpower requirements?

MR. HICKLE: I'm sorry, sir.

VICE-CHAIR PONTANILLA: To figure out your manpower requirements for any given area—in this case here, South Maui—when you do your analysis, do you look at project by project, or do you project for the next five years, the next ten years based on what's coming on line? If it does come on line.

MR. HICKLE: Well, basically I...I make comments and recommendations on the different projects coming in our area based upon the manpower we currently have. Obviously, you know, any new developments is gonna require more manpower to, you know, service the community properly.

VICE-CHAIR PONTANILLA: Okay. And in regards to traffic, I know you folks have been attending community meetings in Kihei in regards to the traffic problems in Kihei. I understand that there is a proposal—and I don't know how long it's gonna take—off a road that's gonna be mauka of...Piilani Highway. When you do your traffic assessments, do you take that into consideration in regards to future growth?

MR. HICKLE: No, sir, I don't because I haven't seen any plans or anything on that proposed highway.

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

CHAIR MOLINA: Okay. Thank you, Mr...thank you, Mr. Pontanilla. Committee Members, any other questions for Officer Hickle? Member Johnson.

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

**October 23, 2007**

---

COUNCILMEMBER JOHNSON: Yes. This is in regards to the actual zoning and...that exists on the property where the housing would be built outside of the project district. Because of the other commercial developments that would be in close proximity to this if it's constructed and also because there's more than likely people with children who would be moving into the area, have you had any other experience with similar situations in terms of safety? 'Cause I know we get complaints and you get complaints about, you know, kids running out in the street or people want speed bumps or there's conflict. So do you have any thoughts about potential conflicts or safety issues that might arise in this area?

MR. HICKLE: Well, most certainly, you know, any time, you know, that families move in to a new neighborhood, you know, it takes the community a little bit of time to get used to them. And there's always potential for someone to be harmed by, you know, an excessive amount of traffic or new people in the area, you know.

COUNCILMEMBER JOHNSON: Well, and also because if you're in a light industrial area, there's gonna be delivery trucks, there's gonna be vans, you know, sometimes semi-trailers would be backing or going along a roadway that might be in that area. 'Cause I know Kihei has a lot of truck traffic anyway. So I think that's more my concern is that when you're...you're in close proximity to large vehicles, many times when they're backing or when they're even turning corners, if a small child runs out or there's a conflict, that's...that's more what I'm concerned about so...

MR. HICKLE: Yeah. I see what you're saying.

COUNCILMEMBER JOHNSON: Yeah, yeah. And...and I just wondered if you have any thoughts about, you know, in general combining industrial type activities with housing and human habitation where there's likely to be children.

MR. HICKLE: I'm sure that there's always potential for harm for small children.

COUNCILMEMBER JOHNSON: Okay. All right.

MR. HICKLE: Even, even in residential areas.

COUNCILMEMBER JOHNSON: Yeah, and I know sometimes residential, you know, areas they speed too. But that...that's one of my concerns, Mr. Chair, is that because of, you know, the zoning, what it does already permit. That's one of my concerns about having, you know, building in a conflict or building in potential for some kind of safety issue. And they have enough to do. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Any last questions for Officer Hickle before he is excused? Mr. Medeiros.

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

**October 23, 2007**

---

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Officer Hinckel [*sic*], thank you for being here. I just wanted to know when you review projects on behalf of the Department, do you have Department or industry guidelines, standards that guides your review of that project that...that would be a part of your comments that you put with that review?

MR. HICKLE: I think my comments are more based about concerning...or rather the concerns of the community from which I work in.

COUNCILMEMBER MEDEIROS: I see. So, from South Maui?

MR. HICKLE: Yes, sir.

COUNCILMEMBER MEDEIROS: I see. And...and when you do provide those comments, who do you submit those comments to?

MR. HICKLE: I submit my comments through channels, typically go to the Chief of Police.

COUNCILMEMBER MEDEIROS: Okay. So for us to receive those comments, it would come from the Police Chief's office?

MR. HICKLE: Yes, sir.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Officer Hinckel [*sic*]. Mahalo, Mr. Chairman.

CHAIR MOLINA: All right. Thank you, Mr. Medeiros and at this point if there are no other questions for Officer Hickle, I'm gonna excuse...

COUNCILMEMBER ANDERSON: Chair.

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: Not necessarily a question as much as a comment which could probably lead to a real quick question for Officer Hickle. The area in question is really the Kaonoulu industrial area. Isn't that what it's called?

MR. HICKLE: It's...(*inaudible*)...

COUNCILMEMBER ANDERSON: Yeah. And...and the access to that industrial area is gonna be by a brand new four-lane highway which is gonna be the entryway to the new Upcountry highway. And it may be a cul-de-sac for many years because we...we haven't had any indication when they're gonna go forward with the Upcountry highway. So...in, I guess, in your experience, Officer Hickle, of being down there, do you see any—and I'm assuming they're gonna have to have some kind of a *light* there at the highway—do you see any conflict or any kind of traffic

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

**October 23, 2007**

---

problem on Piilani backing up to...I mean, to the intersection of Ohukai or anything in that nature if you've got, say, 500 vehicles exiting in the morning at that area?

MR. HICKLE: I'm sure that there's gonna be some vehicles back up in that area, especially with 13 acres being developed and a housing project going in there. I can't say for certain how much there is. I mean, you can go down there in the afternoons and...and typically in the mornings, you know, when people are going to and getting off work and there's a high volume of traffic in that area now.

COUNCILMEMBER ANDERSON: Yeah.

MR. HICKLE: So, I'm...I'm sure it's gonna affect the traffic flowing through that area to put a light in there.

COUNCILMEMBER ANDERSON: Okay. Thank you, Chair. Thank you, Officer Hickle.

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Thank you, Member Anderson.

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Mr. Medeiros...ah, Mr. Medeiros. (*chuckle*) Mr. Mateo. Sorry.

COUNCILMEMBER MATEO: Thank you very much, Chairman. And just an additional comment. Hopefully 250 units will be made available to current Kihei residents or to those individuals that work in Kihei that will perhaps take their vehicles off the road. And I...I appreciated Member Johnson's comments regarding the heavy vehicles. But there are other light industrial areas that does not have that kind of concern—case in point, Iao Parkside. It is in a light industrial area, surrounded by it. And it is...it is a nice looking community. And I believe that the officer who had shared his concerns regarding safety, I think these do not contribute to it. And hopefully with the taking the number of vehicles off the road will try to alleviate even more so the officer's concern about safety. So thank you, Officer Hinckel [*sic*]. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. Members, at this time, Chair is going to call for a break, a short recess and we'll excuse Officer Hickle. If you have additional questions for the Police Department with regards to this proposed site, please, by all means, consult with Officer Hickle or any member of the Police Department in the South Maui area. So Members, we shall take a recess and return at 10:50. Meeting in recess. . . .(*gavel*). . .

**RECESS: 10:40 a.m.**

**RECONVENE: 10:55 a.m.**

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

**October 23, 2007**

---

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee Meeting of October 18, 2007 is now back in session. It is 10:55 in the morning, Tuesday, October 23<sup>rd</sup>. Members, we had a request for a...one question from Director Medeiros and I've been told that Director Medeiros has to leave in the next five or ten minutes or so. And I believe it was Member Anderson that had a question. So we're trying to get a hold of Member Anderson. If Member Anderson is not here in the next five minutes, I'll have to excuse Director Medeiros and Member Anderson will have to get her question answered in another time and place, I guess.

But for the time being, Members, at this point the Chair is looking at moving on Condition 5, moving on with it and it's open to any considerations if there is still a motion or proposal to establish 250 of these proposed 700 affordable units at the current, I guess proposed off-site location. So again, is there any consideration for that at this point? Otherwise, we will move it on as is, or is there any additional language that a Member would like to propose to the condition? Members, again, we're looking on page 4 of your matrix. Staff, can you go ahead and read the condition from the...as recommended by the Department of Planning which would be in the, I guess, the fourth column, Members.

MS. NAKATA: Yes, Mr. Chair and Staff would note that the second sentence is still in the condition as drafted regarding the increase in units if they're built off-site. I believe the Committee has had some discussion on that. As written...the condition reads, "WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the Residential Workforce Housing Policy). Should any of the workforce housing be located off-site, the required 50 percent workforce housing shall be based on the total number of combined units for the off-site project in Kihei-Makena Project District 9".

CHAIR MOLINA: Okay. Members, that is what we're currently looking at and now I see Member Anderson has finally come into the room, so Member Anderson you have time to ask one question of the Director Medeiros. She does have to leave in the next three or four minutes so go right ahead.

COUNCILMEMBER ANDERSON: You sure you want me to go ahead for three or four minutes? That's...

CHAIR MOLINA: That'd be good. Condense it and do the best you can.

COUNCILMEMBER ANDERSON: Well, I...I will try the best I can. You know, my...my concern, Ms. Medeiros, is that we have some kind of firm understanding of what actually the...your Department will be putting forth as rental...(*end of tape, Change to 2B*)...guidelines, as opposed to mortgage payments. And the reason I am concerned about that is, unfortunately, the only thing I have for cross comparison right now is the 2006 figures. And in 2006 we had a...100 percent median income level of 65,700. And, Members, my apologies. When I was quoting that yesterday, I didn't have the 2000...2007 figure which is now 69,900. So in one year

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

**October 23, 2007**

---

it's gone up appreciably which means the cost of the housing is also gonna go up. But in looking at the 2006 figures we had the mortgage payment for a two-bedroom house at 100 percent median at \$1,396 thousand [*sic*]. That...that figure was for a five percent down and based on...on a sales price—this is all for two-bedrooms, Members, so it's all consistent—was for a sales price of \$245,118. Five percent of the mortgage...or the sales price would've been \$12,256 which is five percent down.

Now, in comparison for rental figures for 2006, again the mortgage payment would be \$1,396. HUD had for 100 percent two-bedroom rental, \$1,478 and they included—which means the rental is higher than the mortgage except the rental figure for HUD includes a utility allowance. And I'm assuming that would be close to \$200. So, you're looking at \$1,278 for a rental fee for a two-bedroom at 100 percent median as opposed to \$1,396 for a mortgage payment. And, you know, that's why I think it's really important that we have some of these units for sale because, you know, it all gets down to your monthly payment if you can, you know, sustain this cost. And given that we have the Homebuyers' Fund now that would allow \$15,000 for a person for their down payment, then it's fair to assume that a person who is a renter could move in to ownership using that Homebuyers' Fund. And if they stay in the unit for 15 years, that's forgiven. So it's really a wash. And who wouldn't rather own than rent because they could build up their equity.

And so my concern is that—and I'm sorry, Members, that I don't have a complete comparison and that's what I'm asking for Ms. Medeiros to provide us with—in the 2007 figures that you gave us as of April, the two-bedroom—and again, it's not really...I'd really like to see something that, you know, is apples to apples, not apples to oranges. But what we have in the guidelines that you gave us April 10, 2007, it shows that the income ...limit for rental...for rental units at 100 percent for four people—and I'm looking at a two-bedroom...I'm just saying that that would be equivalent of a two-bedroom house, two children in one bedroom and the parents in the other—their income would have to be \$69,900. And then you have for affordable rent guidelines \$1,573 for their two-bedroom unit. But that does not include utilities. If you took out the utility allowance that you folks have developed for the island of Maui, that would be for a two-bedroom unit that currently is at—and these are effective as of May '07—you're looking at \$179 for a two-bedroom unit. So if you deducted 179 using round figures from the 1,573, you're looking at a rental cost of \$1,400, excluding the utility figures. But you're saying that the 1,573 does not include the utilities. So that means you would have to add in the 179 to be comparable to what HUD uses. And then you're looking at almost, you know, \$1,700 in housing costs for a rental unit.

And then if you look at what it is for—and...and I'm sorry that I don't have the mortgage rate...or the mortgage payments. All we have in your guidelines are what the cost of the housing is for sales. We don't have anything that shows what the actual monthly mortgage payment would be. And that's what I'm looking for, Ms. Medeiros, is a comparable comparison between what people have to look at as a monthly payment for rental as opposed to a monthly payment for purchase. And, you know, we know that the mortgage payment doesn't include your utilities. So I would like to have the rental payment, you know...you...you show it without including the utilities. HUD shows rental including utilities. And that's the way they do Section 8 also. But,

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

**October 23, 2007**

---

you know, their guidelines are not based on Section 8. Their guidelines are based on what median incomes have been established by HUD.

And so I...I just would like us to get something that's really tight and comparable because if HUD includes utility in the rentals figure And...and we have heard that when you're looking at what somebody can afford for housing, you're looking at 33...30...that's the goal, 33 percent of their income. And housing costs is supposed to include the utilities, for rental. But that's not the way we're doing it right now in...in the County. And I just think we need to really make sure that we're offering people who are renting, you know, the best possible shot at being able to meet those...that 33 percent housing cost. And...and...and so, if you could do that in some way, make a comparison for the 2007 because, Members, I mean the cost of...the median income is rising quickly as well as the house...the cost of housing.

And, you know, I tried to look at demographics to make—and I still haven't found my...the guidelines I was using previously—it's in an affordable file I'll try to find. But, you know, a year ago, it showed 68.9 percent, or something to that effect, was making 100 percent and below the median income. And that's very confusing for people because you think median means right in the middle. That 50 percent of our residents are making above that and 50 percent are making below that. But on the ground, in reality, when you look at the demographics, it doesn't work out that way. And, you know, I think the figures I looked at were 2006 figures, or maybe 2005. So maybe it's...it's different now.

But I haven't been able to see, you know, what we're looking at today in 2007, it would be great if we could have the demographic figures of income breakdown for 2007, we could have the actual rental fee, with and without utilities—which is what I just kind of gave you—and then have the actual mortgage payment. You know, and...and use your basic standard as far as 100 percent for a family of four or a two-bedroom unit at, you know, a mortgage rate. And I'd say, you know, use something right in the middle, six percent at prevailing rate and see if we can't come up with some comparisons so that, you know, we look realistically at what it's gonna cost for someone to purchase and as opposed to someone renting. And the reason I think that's important is because now that we have this Homebuyer Fund, it makes those people who are renters all of a sudden have an opportunity to get a down payment and become an home...a homeowner. And if we're looking at these 250 multi-family units being half rental and half purchase, I think we need to know what the actual monthly mortgage payment and rental payment would be for both of those so we can compare. Is that something that you could provide us?

CHAIR MOLINA: Director?

MS. MEDEIROS: If...if you don't mind, I know...I know we went down this road before. If you don't mind which...if you would be able to provide that request in writing so we could make sure that we fully understand exactly the information you're looking for? I tried to jot down some of my notes as you were talking but I may have missed some of the items. You know, we would certainly take a look at that. I think one of things, just to...to understand in terms of, you know,

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

**October 23, 2007**

---

mortgage rates and we have prevailing rates and they may change, and we're looking at it in this space in time and as...and it makes it, every year it changes. So we could certainly do that if...if you don't mind helping us with that.

I think one of the questions that came up in a previous project review and...and...and specifically with regards to these rates and...and median income and what was correct and not. I just want to let you know that...that, you know, I did have the opportunity to...to ask HUD officials about the HUD median income limits and what was the methodology and what...how was it...how was is it derived. And whether or not it is actually true to...to Maui island, to...to our area. And we were told by an official with Housing Hawaii that they actually did a study and that the numbers came out comparable. The...the difference wasn't...was insignificant. So, just to let you know that, you know, we did...that was a question you had in a previous situation for a different development and we did go and look at it and we did ask the questions and...

COUNCILMEMBER ANDERSON: Okay. So, because I'm looking at, as I said and I'll provide this with you, this is right off HUD's website and they break it down for each island. Affordable rent guidelines based on 30 percent of income including utilities and, you know, it doesn't say anything about, you know, for Section 8 only. And so, I...I just want it to be, you know, a fair, comparable because it...the way I'm looking at it, it might be cheaper for someone to buy a house if they can get that \$15,000 down payment from our Homebuyers' Fund than it is to rent. And, you know, when we're talking affordability, you would think that renting a two-bedroom apartment would be cheaper than a mortgage payment. Thank you, Chair.

CHAIR MOLINA: All right.

COUNCILMEMBER ANDERSON: And I'll provide the information I have to Director Medeiros.

CHAIR MOLINA: Okay. Thank you very much, Member Anderson. Member Pontanilla, before I excuse Director Medeiros, your question?

VICE-CHAIR PONTANILLA: Thank you. If I can recall, yeah, we did review a particular project here in these Chambers on the 201H and I...I think Director Medeiros provided some information in regards to, you know, what Member Anderson...Anderson talked about. Also, the developer had also provided us with information on the per month rental which included the utilities as well as the association fee. If I recall, the conference that we went last week on Oahu, the Affordable Housing Alliance, they talked about the 30 percent, you know like Member Anderson had mentioned, as far as, you know, payment to a home mortgage for any home buyer in the affordable range. So, yeah, it's information that we already have regarding that 201H project that we reviewed, Chairman. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Okay, Members, I'm going to be excusing Director Medeiros. Thank you. I know we went a little bit over with you but I appreciate your coming by here.

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

**October 23, 2007**

---

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Mr....Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, I'm sorry. Once again, may I ask the Director for an additional comment?

CHAIR MOLINA: Okay. Make it quick, please? Thank you.

COUNCILMEMBER MATEO: Thank you. Mr...Mr. Chairman, the...in the opening remarks of the Director in terms of referencing the Workforce Housing Policy, under the proposed language that we're looking at—one, two—on the fourth column. The...all the underscored item, Ms. Medeiros, if you can just comment because the second sentence of that particular item is contrary to your comments regarding the Workforce Housing Policy is specific enough and provides the directions that needs to be adhered to. So my question to you, Madam...Madam Director, is whether that second sentence you think is needed to be left in?

CHAIR MOLINA: Mr. Mateo, can you, just for the record, state the sentence?

COUNCILMEMBER MATEO: Oh, I'm sorry. It reads, the second sentence, "Should any of the workforce housing be located off-site, the required 50 percent workforce housing shall be based on the total number of combined units for the off-site project in...and Kihei-Makena Project District 9".

CHAIR MOLINA: Okay. Director?

MS. MEDEIROS: Okay. I...I actually...I made this comment on September 12<sup>th</sup> in the Committee...same Committee meeting. And it was my recommendation that that particular sentence should be eliminated because, again, Chapter 2.96, if that is the condition placed on this development, does allow the developer to build their affordables off-site but within the community plan area. By doing this and leaving this in, this would inappropriately create another condition on top of the affordable condition and that would not be fair to the developers.

COUNCILMEMBER MATEO: Thank you. And...and Madam Director, in...in the on...ensuing discussion with the developer, the developer has indicated that if this...if this particular proposal does move forward, then the...these 250 units would be constructed prior to the construction of the market units. Would it...in...in your opinion, would it be appropriate to see that language put in...the condition as well?

MS. MEDEIROS: I...I believe that the developer did mention that in a previous meeting and certainly that would be appropriate to have that in and then we would include that in the affordable housing agreement as well.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

COUNCILMEMBER MATEO: Thank you. So, Mr. Chairman, when...when time permits, I would like to address both issues in removing the second sentence and adding language to the effect that these units would be constructed prior to their market units.

CHAIR MOLINA: All righty, Mr. Mateo. First I will dismiss Ms. Medeiros and the Chair is open right now, Mr. Mateo, for your consideration if you're ready right now? Sorry, I didn't mean to catch you off guard but we're ready to roll on this.

COUNCILMEMBER MATEO: Okay. Thank you, Chairman. Chairman, then I would like to move that the second sentence in...that I had read prior—

CHAIR MOLINA: In Condition 5?

COUNCILMEMBER MATEO: --in Condition 5 be omitted...omitted and that we add in another line that would indicate that the affordable units shall be constructed *prior to* the construction of the market units of this. . .(*inaudible*). . .

COUNCILMEMBER ANDERSON: Second.

CHAIR MOLINA: Okay. A motion has been made by Mr. Mateo to delete the last sentence of Condition 5 and insert in its place that 2...is it 250 affordable units?

COUNCILMEMBER MATEO: Yes.

CHAIR MOLINA: Be constructed prior to any market units. Okay. And it's been seconded by—I didn't get the second—by Member Anderson. Discussion? Mr. Mateo as the maker of the motion.

COUNCILMEMBER MATEO: Chair, I think we...I don't think we need continued discussion. I think the Director had indicated the redundancy as well as another limitation...or, unfair expectation on the develop...on the developer to add this...to add another component that is already indicated in the existing Residential Workforce Housing Policy. And I think it's important for us to be real clear that these 250 affordable units will, in fact, be constructed prior to any market units because this is what had been represented and this is what we're gonna hold them accountable to. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Mateo. Member Anderson, followed by Member Johnson and Mr. Pontanilla.

COUNCILMEMBER ANDERSON: I would ask for a friendly amendment to include that half the units be for purchase.

CHAIR MOLINA: Okay. Members,—

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: And...

CHAIR MOLINA: --let me ask Staff. Should that be done as an amendment or can we do that as a friendly amendment?

COUNCILMEMBER ANDERSON: . . .*(inaudible)*. . .

CHAIR MOLINA: Corporation Counsel, anybody care to...I just want to make sure what we do is \_\_\_\_\_.

COUNCILMEMBER MATEO: It's friendly.

CHAIR MOLINA: Everything we do is friendly, I hope. *(chuckle)*

COUNCIL MEMBERS: *(chuckle)*

CHAIR MOLINA: Okay. Staff?

MS. NAKATA: I...I...Staff is just unclear whether we should seek clarification from the Director as to how that will affect her percentages—

CHAIR MOLINA: Okay.

MS. NAKATA: --under the...under Chapter 2.96.

CHAIR MOLINA: Director Medeiros, any concerns with regards to Member Anderson's proposal that we set half of the 250 units to be, I guess, for purchase/ownership and half for rental. Any comments?

MS. MEDEIROS: Thank you. I don't see a problem with that. It would be looked at in terms of percentage of the whole total number of affordable units that would have to be provided. So that would be incorporated into that total percentage.

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

COUNCILMEMBER ANDERSON: Yeah, I just want to point out to the membership that in the residential workforce housing, there are restrictions and for ownership units it calls out that 30 percent of the ownership units shall be for below moderate income residents, which is 100...80 percent to 100 percent. And then, you know, the same thing applies in rental units. So it's basically very flexible. You can go either rental or ownership. So it's not like we're not asking for something that's already in the ordinance.

And then the other concern I have is, you know, I appreciate Member Mateo's request that these units be done prior to any...any market price housing being built—is that...is that the way it

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

**October 23, 2007**

---

reads? So that would be the first thing up. But we still don't know when that might be. I mean, there's still so many unanswered questions as to whether there's going to be enough water for these 250 units and so, you know, it could be end up being concurrent really, not...I mean, this was all brought up. The whole point in doing this off-site was so it could be done immediately. That was the term, "immediately". And I don't see anything immediate now in front of us. Anything that gives us hope that this could be immediate. So, that's my concern, Mr. Chairman, with this whole 250 unit thing. I mean, if...if we knew that Mr. Jencks had the water and if we knew where he was in his subdivision and that they were ready to break ground, you know, in the next 60 days and start doing all their infrastructure, that would be one thing. 'Cause then I could see, yeah, it's immediate. But two, three years down the road is not immediate to me.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Member Anderson, any consideration to still incorporate that 125 of these units be set aside for ownership?

COUNCILMEMBER ANDERSON: Yes, please. I think that's essential.

CHAIR MOLINA: Okay. Members, any objections to incorporating that language into the condition?

COUNCILMEMBER VICTORINO: No.

VICE-CHAIR PONTANILLA: No.

CHAIR MOLINA: Okay. Thank you. We...Staff, will work on the language. Member Johnson?

COUNCILMEMBER JOHNSON: And...and I was just wondering, you know, again and I can propose a separate amendment but I think Member Anderson raises what my concern is about the immediacy because if you put a time constraint, you know, and to me I would say one year at least to commence construction within, let's say, a one year period. Because that to me means immediate. That is a carrot because at least from that perspective, you know, we have some gauge of the time and I would really want to see some kind of a time constraint. And I can propose it as a separate condition. And if it flies, it flies. If it doesn't, it doesn't. But I think that from my perspective, I believe that if we're going to construct the housing, it's going to be built up front and it's outside of the...you know, this project district. I think it was Chair Hokama who had raised the issue, well, what's the incentive, you know, what's...because right now on that land, ostensibly they could build a standalone project that has nothing to do with the project that's under consideration. So there's no incentive other than as Member Anderson had mentioned previously, this benefit of time. Time being money and of course, filling the need. So...

CHAIR MOLINA: Member Johnson, if you don't mind. I know you...I believe yesterday, if memory serves me correct, and I know you were unable to attend.

COUNCILMEMBER JOHNSON: Yeah.

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

**October 23, 2007**

---

CHAIR MOLINA: Mr. Jencks did express some challenges that may be associated with setting a specific time parameter. I don't know if you—Mr. Jencks, if the Members have no objections, if you could refresh our memories.

VICE-CHAIR PONTANILLA: Chairman.

CHAIR MOLINA: So Member Johnson, you're considering adding a year or set a time parameter of a year?

COUNCILMEMBER JOHNSON: Well, you know, and I mean, that's the whole point of moving this forward in my view, and accepting this is that even if it was a year and a half. I mean two years is not immediate in my view. A year is more immediate but I don't know. I'm willing to compromise and say a year and a half, but I don't know. If that's a problem for him, if he says he can't do it, then I don't know why we're having this discussion about immediate to begin with.

CHAIR MOLINA: Mr. Jencks, if you could please come...

VICE-CHAIR PONTANILLA: Chairman. Chairman.

CHAIR MOLINA: Hang on, Members. I wanna get Mr. Jencks' input and I'll recognize you. Mr. Jencks, I'd like you to respond to Member Johnson's comments or consideration.

MR. JENCKS: Sure, I'd be happy to. I was...after yesterday's meeting just looking at time frames on...on how we would go forward on...on the big project which is going to pay to build the 250 units we've been talking about, frankly. And given the time frames that I'm faced with with regard to some work I have to do on...on water development, preparation of a Phase II submittal which would take at least six months, and then another six months in public discussion on a Phase II submittal. At the same time preparing detail...detailed engineering drawings for a Phase III approval, it looks to me as though I have a start of construction probably in three years on this project.

COUNCILMEMBER ANDERSON: On 670, not the affordables?

MR. JENCKS: On 670. I'm talking about the larger project.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: Three years, okay. So the term "sooner than later" is a relative term. We have to keep that in mind. I have a subdivision, once again, that has been in process with the County of Maui now for probably two years. The Department of Water Supply is overbooked. They've done yeoman's work in trying to get through the water development plans for the water tank. I mean, this is a big project. It involves the State Department of Transportation. I'm not telling you that I can't perform. I can perform. What I'm telling you is I think this Committee has to be realistic in the number of things that are variables that'll effect any specific time frame.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

If...if you want to be reasonable on a time frame, I would say *certainly* within two years 'cause that's going to be quicker than the three years. And that, I think, is a probably realistic time frame for starting construction in 670. That means that these units would be under construction and completed before I have any units completed in 670. So I think if we...if we're realistic and understand the time it takes to get something done, especially relative to what Mr. Eng said about water delivery 'cause I frankly can't get a building permit until he says there's water. I'm gonna throw in the two-inch meter that I've got and I'm gonna build the infrastructure to make this happen. I...if we're reasonable and we go forward that way, fine. I would say within two years is fine with me.

COUNCILMEMBER JOHNSON: And...and I appreciate that, Charlie, because I think at least it gives us a better idea of, you know, why we want to move forward with this kind of condition because I realize that the permitting process is something that's outside of your control. But—

MR. JENCKS: Absolutely.

COUNCILMEMBER JOHNSON: --you know, I...I would certainly be, if he's agreeable to the two years, I would certainly be agreeable to it. Thank you.

MR. JENCKS: We still have the issue, however, of the Department of Water Supply. I mean, I can...I can throw in the water I've got, and I can certainly start construction but until Mr. Eng says there's water, I can't build anything. So what do you do in that eventuality? It's...if I may, Mr. Chair?

CHAIR MOLINA: Proceed.

MR. JENCKS: The whole idea of this proposal was to get something done earlier than later, okay. I was straightforward with you folks. I said, look, I've got a two-inch meter. I do have a two-inch meter. It's there today. I can go out and turn it on for you. You can see the water come out of the meter. Yes, I have a lot of work to do. I have...I was explaining to Councilmember Anderson, I've gotta build a four-lane divided highway from Piilani Highway mauka to get those apartment units back out 'cause they can't go Ohukai. They gotta come down the new highway.

COUNCILMEMBER ANDERSON: At Federal standards.

MR. JENCKS: Pardon?

COUNCILMEMBER ANDERSON: At Federal standards.

MR. JENCKS: At State standards. It probably--

COUNCILMEMBER ANDERSON: Same.

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

**October 23, 2007**

---

MR. JENCKS: --does meet Federal.

COUNCILMEMBER ANDERSON: Same.

MR. JENCKS: So it's a significant improvement. I guess my point is—and the other point I would like to make is—that every piece of legislation I've reviewed—that's come out of...of Council in the last number of years—always says a priority for affordable housing, whether it's a water bill, whether it's a moratorium bill, except for affordable housing. What I've proposed is...an honest...honest-to-God, I've come here and said, look I'd like to do this. This is worthwhile pursuing and making it happen. My premise was we would be working together on this, to get something done. I think as a...as a group, this project, this partnership and this Committee can work together with the County and get the water. Let's get the housing built. Let's get that affordable stuff built. Once again, if the water isn't there, I can't pull a building permit. We've got to work together on this issue to make sure it works.

CHAIR MOLINA: Member Johnson.

COUNCILMEMBER JOHNSON: And...and because Mr. Eng said that given the two-inch water meter that you currently have, you, I guess, would have enough to complete or let's say do 64 of the units. I mean, that's—

MR. JENCKS: A start.

COUNCILMEMBER JOHNSON: --a drop in the bucket when you look...(end of tape, Change to 3A)...64 units--

MR. JENCKS: Right.

COUNCILMEMBER JOHNSON: --as opposed to the 250. But...you...you do believe, though, that you could probably do it within a two-year period?

MR. JENCKS: I could?

COUNCILMEMBER JOHNSON: It's just...I'm just saying not fully complete construction but begin construction?

MR. JENCKS: I could...I could start work but once again, if the...if...if the Department of Water Supply—

COUNCILMEMBER JOHNSON: Says there's no water.

MR. JENCKS: --can't...can't get the job done, well I'm left holding the bag here. And I'm not sure that's...that's fair to me if I'm making this commitment to...to the...to the County of Maui and you folks.

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

**October 23, 2007**

---

CHAIR MOLINA: So, Member Johnson, should we maybe consider a...caveat in there--

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: --based upon that?

COUNCILMEMBER JOHNSON: A proviso that provided all permits from the County are able to be obtained. That...that would be where I . . .(inaudible) . . .

MR. JENCKS: That's fine. That's fine.

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: All right. Members, any objections to that proposal? Two years...Member Johnson, if you wanna go ahead and restate your provision.

COUNCILMEMBER JOHNSON: Basically, it would be that construction of these units shall commence within a two-year time period provided that all of the permits from the County of Maui and other permits are able to be obtained. You know, so that, in other words he's not going to be held to the two years if we can't get him permits.

CHAIR MOLINA: Okay. Are there any objections, Members, to incorporating that? Okay. I know I have to play traffic cop here. We have Member Pontanilla followed by Member Mateo and Member Medeiros.

COUNCILMEMBER PONTANILLA: Yeah. I...I think the proposal is a fair one. My question was going to be directed to the Planning Department as well as—and he's not here, the Water Department because...and Public Works—in trying to expedite permits, how long does it take? And I think Mr. Jencks explained to us the process pretty good in a sense that, you know, one...one side would be six months, the other side probably another six months. And, you know, what the proposal is at hand right now, you know, I can support that. But my question has already been answered. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. And Mr. Jencks, having been our County's former Public Works Director, has a very intimate sense as to how permits progress along here in the County. Okay, we have Member Mateo followed by Member Medeiros and Member Anderson.

COUNCILMEMBER MATEO: Thank you, Chairman. I can support the two years. I believe, you know, the Members should be very aware that just shortly, not too long ago, we had the 201H project before us. That was supposed to be a fast track process. We were told by the Applicant that it would take them upwards to 18 months to secure all of the County permits. So, you know, it's time for us to take a look at our own backyard. We want things to progress but...but we...we

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

**October 23, 2007**

---

continue to allow obstacles to be in its way. So two years, I think, you know, and I'm just like Ms. Anderson. I'd like something to happen next week Wednesday but it's not. You know, the reality is, it's gonna take time. So I can support the two years and I hope that the next step for us is actually to initiate or engage the Administration to start helping us work in being able to get things done on a more timely basis. Thank you, Chair.

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I...I think the Applicant stated it correctly. You know, immediacy is relative to getting the approvals. And he has no control over that. So Member Johnson's proposal can...can you have Staff read that again, please?

CHAIR MOLINA: Okay. Staff?

MS. NAKATA: Mr. Chair, Staff isn't clear. There were two separate time frames being considered. One is "shall be built prior to any market rate units", and the other is "construction shall be commenced within a two-year time period". So is the Committee's intent to have both of those remain?

CHAIR MOLINA: A two...two-year time period prior...and all County—

COUNCILMEMBER JOHNSON: Provided.

CHAIR MOLINA: --provided—

COUNCILMEMBER JOHNSON: All of the County permits.

CHAIR MOLINA: --all County permits, yeah. That was also included in there.

MS. NAKATA: So both the "commence within a two-year time period" and "built prior--

COUNCILMEMBER JOHNSON: No.

MS. NAKATA: --to any market rate"?

CHAIR MOLINA: Okay. Member Johnson, you want to assist Staff?

COUNCILMEMBER JOHNSON: My understanding would be, you know, that they would be constructed prior to, you know, the market rate units being done. However, construction of the affordable units that are outside would commence within a two-year period—you know, from two years of the time that this ordinance is passed—provided that they can obtain all the permits. So one would...they would still, in other words, be constructed prior to the market price units but that the affordables...at least the target would be the two years. Hopefully, they'll be able to get their permits and if they needed, you know, a push from us, I'm sure, you know, at least the

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

**October 23, 2007**

---

Administration would do whatever they could to get them through. But...the intent is still there, to put them ahead of the market price units but certainly not begin construction later than two years provided they can get their permits.

COUNCILMEMBER MEDEIROS: Mr. Chair?

MS. NAKATA: Okay. So the condition, as Staff understands it, is currently, “Honua‘ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the Residential Workforce Housing Policy); provided that, 250 of the required workforce housing units shall be completed prior to any market rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of the workforce housing units shall commence”—I guess, it should be “construction of those workforce housing units shall commence within a two-year time period, provided all necessary permits shall be obtained”.

CHAIR MOLINA: Okay. That, in a nutshell, is what it is. So...so the first...the amendment on the floor, as proposed by Member Mateo, related to the 250 units being constructed before any market units. Then Member Anderson incorporated language to specify that 125 of these units be established for ownership and the other 125 for rentals. And then Member Johnson’s incorporation of language will add that the affordable units will be constructed two years after all County permits have been approved.

COUNCILMEMBER MEDEIROS: Okay. Mr. Chair?

CHAIR MOLINA: So that’s...

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR MOLINA: I believe is where we’re at.

COUNCILMEMBER MEDEIROS: Mr. Chairman, thank you. And thank you to Staff for being able to put that in a concise, understandable proposal. So I...I certainly will support the total proposal of three Members. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Point...

CHAIR MOLINA: Thank you, Mr. Medeiros. And now...

COUNCILMEMBER VICTORINO: Point of...

CHAIR MOLINA: Hang on, hang on. I’ll have Member Anderson and followed by Mr...Mr. Victorino, did you want clarification on what was?

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

COUNCILMEMBER VICTORINO: I wanted clarification.

CHAIR MOLINA: Okay. Go ahead.

COUNCILMEMBER VICTORINO: It's not a question. Two years after all permits have been obtained?

COUNCILMEMBER MATEO: No, within.

CHAIR MOLINA: Within.

COUNCILMEMBER VICTORINO: No, no. Okay. Can...can she state that part again?

MS. NAKATA: What Staff heard was that "In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits shall be obtained".

CHAIR MOLINA: Yeah. So the units are to be constructed within two years after the permits are...

COUNCILMEMBER MEDEIROS: No.

CHAIR MOLINA: So the start of construction, once the permits are approved--

COUNCILMEMBER VICTORINO: You're getting confusion in here.

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: --the 250 units will be in construction.

COUNCILMEMBER JOHNSON: Basically that the proviso is that they be constructed prior to the market priced homes.

CHAIR MOLINA: Right. Right.

COUNCILMEMBER JOHNSON: But that once all...well, it...it would basically say "that construction should *commence* within a two-year period, provided all the necessary permits can be obtained". So, if it's gonna take them another six months beyond the two years to get all their permits, then--

COUNCILMEMBER MEDEIROS: That's okay.

COUNCILMEMBER JOHNSON: --that's fine.

COUNCILMEMBER MEDEIROS: Yeah.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

CHAIR MOLINA: Yeah. Yeah.

COUNCILMEMBER JOHNSON: But that's the...that's the intent of it.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Yeah. So is that clear now, Mr. Victorino, so...?

COUNCILMEMBER VICTORINO: No, the way you said it was not in that manner.

COUNCILMEMBER JOHNSON: Yeah.

COUNCILMEMBER VICTORINO: So that's why I'm trying to clarify. So it's two years from whenever we get this part approved and it...and so long as they can get their necessary permits to...to do that construction. If there's any problems, they would have an extension because it was our fault.

COUNCILMEMBER JOHNSON: Right.

COUNCILMEMBER VICTORINO: Okay. But it's not two years *after* they get the permits?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Well...okay just to clarify. So to put it more simply, they cannot start the construction until all the permits are there. And they have a two-year window—that's the way...that's the way I'm...I'm looking at it.

COUNCILMEMBER JOHNSON: Two years, yeah.

CHAIR MOLINA: Yeah. Okay. All righty. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. You know, we discussed this yesterday. It's funny how quickly we forget things. I wish I could remember what we discussed in August. But anyway, I would like to add to that, somewhere in the amendment, that it shall include a minimum two-acre park with all amenities.

COUNCILMEMBER JOHNSON: Oh, right.

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: Because we got...we got a confirmation from Mr. Jencks that he would do a park. And based on our current park assessment, for the number of units he's building, he would at least have to do a three-acre park. So I just wanna make sure that upfront everybody knows a minimum two-acre park with all amenities. And that means, you know, the necessary parking...you know, you know...if this is gonna happen, then let's make it really a residential community where people can have soccer games and kids from other areas can...you know, their parents can come and drive and park at the park and enjoy the afternoon for soccer...what have you. But I think it's necessary we put that in the conditions upfront.

CHAIR MOLINA: Okay. All right. Mr. Jencks—

COUNCILMEMBER ANDERSON: And then...

CHAIR MOLINA: --can I ask for your comments just to. . .*(inaudible)*. . .

COUNCILMEMBER ANDERSON: And then I had other comments I wanted to make, Mr. Chairman.

CHAIR MOLINA: Okay. Once Mr. Jencks is done with the...his comments--

COUNCILMEMBER ANDERSON: Thank you.

CHAIR MOLINA: --on your first proposal, I'll go back to you.

MR. JENCKS: If you...if you look at Title 18 which includes the section with regard to parks and what you have to do to comply with...with park development for either a subdivision or getting a building permit, there are guidelines specifically on what you have...if you're...if you're intending on building a park in a project and get credit for it, against the park credit, there are specific requirements. And I think we should be obliged to follow exactly what the Code provides for. No more, no less. That's what the law provides for. I would ask you, in this kind of condition, leaving it open, yes, that we provide a two-acre park. That's fine. But the expectation would be when I go and pull my building permits, I'm not going to be building a two-acre park and paying a park fee.

COUNCILMEMBER ANDERSON: No, no, no. This would be...

MR. JENCKS: My point is I think you need to be specific enough to say, "in lieu of paying the park fee, build a two-acre park--

COUNCILMEMBER ANDERSON: Well that...

MR. JENCKS: --because otherwise it leaves it open for...for the parks to put...

COUNCILMEMBER ANDERSON: I see what you're saying.

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

**October 23, 2007**

---

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: Mr. Jencks, I appreciate that. But, and the reason I'm bringing this up, Mr. Chairman, is because there are very...so many variables within this park assessment ordinance. I mean, they could...they could do the park in the same community plan area but not in the subdivision. And...and we have seen time and time again, parks coming up without any amenities. They've been waived by the Department. They come to us after the fact and ask us to approve the waiver. So I just want it upfront. So maybe what we would say is, in accordance with Title...or Chapter 18.16.320, which is the park assessment ordinance, the developer shall provide a minimum two-acre park with all amenities. And then if it turns out when they figure out the assessment that what he really needs to do is three-acres, but he only wants to do two, then he'll have to pay the difference for that one acre that he's not doing. But I think it needs to be upfront. We're creating a whole new residential area that doesn't really have any amenities around it whatsoever so it needs to be self-contained. And I think we need to be sure that that's gonna happen.

CHAIR MOLINA: Okay. So noted.

COUNCILMEMBER ANDERSON: So that would be, I think, the language that we would need. Just cite in accordance with...and then it still leaves flexibility for the Department to work out any credits, any in-lieu fees, anything beyond what two-acres...what would be required of the two acres. I just want to make sure it's inside the subdivision and the developer knows that.

CHAIR MOLINA: Okay, thank you, Member Anderson. Members, any comments or support for the additional language Member Anderson has proposed incorporating? Corporation Counsel?

MR. HOPPER: I just wanted to make certain that if the intention is to have this park credited against the park assessments, that should definitely be stated in the condition, that it shall be considered a credit or...or in some format in satisfaction of 18.16.320 'cause we've...or in partial satisfaction, or a credit towards the obligations of 18.16.320, along those lines. Because we have had cases in the past where as a condition of zoning, land or money is given for parks that is *not* considered a credit against 18.16.320. So if that's the Committee's intention, I would...I would just urge that that be placed in the...in the language of the condition.

CHAIR MOLINA: The Chair...Chair agrees with Corporation Counsel.

COUNCILMEMBER ANDERSON: That's just what I said, in accordance with...

COUNCILMEMBER JOHNSON: Uh-huh. In accordance with...

COUNCILMEMBER ANDERSON: In accordance with 18.16. I don't think we need to say anything other than that because we don't want to color what the intention is. I mean, it's not in lieu of. It's not in full satisfaction of, or...or any of that. It's just in accordance with. And we don't know...I mean, Charlie told us yesterday that he thinks three acres is what the assessment would

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

**October 23, 2007**

---

be based on the 250 units. And that's fine. But, you know, I think that a two-acre park would probably be sufficient 'cause he's gotta have a lot of room for parking, not just for the park, but for all the multi-family units. And I want him to be generous in that regard, too, because if these multi-family units are going to be for real families, then, you know, two parking spaces per unit is not enough. That's enough for the mother and the father to have a car. And then if you wanna have, you know, a friend come and visit you, where do they park? You know, I...I've seen, you know, we're too stingy on parking. Everywhere in the County we gotta be more generous with parking. We got people parking in...in fire lanes and double parking everywhere. It's a mess. So anyway, I think that the language, "in accordance with", unless Corporation Counsel can feel...feel something more specific is necessary.

CHAIR MOLINA: Mr. Hopper, can you...is it sufficient at this point?

COUNCILMEMBER ANDERSON: 'Cause it's not really in satisfaction of, Mr. Hopper, because it's only...we're only calling out for two-acres and the assessment would require three.

MR. HOPPER: Oh, yes. I would understand that but it would be in partial satisfaction of it. It wouldn't certainly be in full satisfaction. In accordance with, I...I would like to look at the condition in its, you know, in its final form obviously. I don't know if there's other amendments to it. But I just, you know, I'm just saying be clear with that intention 'cause I...you know, there's other conditions on other projects. There's other conditions, I believe, on this project that deal with, sort of, additional money or additional land to be donated for parks purposes that...that...that is in addition to and completely separate from that which is required by 18.16.320.

COUNCILMEMBER ANDERSON: Right.

MR. HOPPER: So I just wanted to make that point.

COUNCILMEMBER ANDERSON: Yeah. I appreciate that. Such as the...the fee he's gonna be paying for the Little League field. But you do understand the intention? It's that a minimum of two acres in accordance with 18.16.

So then, Chair, the other question or comment I wanted to make...you know, in...in Title 18, there is actually a whole section—and Charlie must know this 'cause this was in...in...in effect when he was Public Works Director—that there is a fast-track...there are fast-track provisions for any affordable housing project that's over 50 percent affordable. And, you know, granted it's not a whole lot different than what's already in the ordinance. You gotta have your preliminary plat approved within 45 days. And I think this is a 30 day. And then there's another 15 day...there...anyway, there are some fast-track provisions that are in here.

So, you know, what we have to understand, all of us, is that the Department of Public Works can only move as fast as the information provided them. And I've reviewed enough subdivision files to see that many times developers only give minimal information, not enough to get the approval. Then Staff has to review it, redline the map, send it back, wait for more information.

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

**October 23, 2007**

---

You know, it's like sometimes, you know, trying to squeeze blood out of a turnip. And...and it's not the Department's fault. It's because the Applicant isn't forthcoming with enough information and...and then what they're trying to do is just get as little information on the record as possible and then bond everything. And when you bond everything, you don't have to do any of the improvements, you know, to get your final. You just bond it. You get your paper final, you go and you sell the lots on paper, get the money, and then you do the...do the improvements.

So, there's a lot of ways to manipulate the subdivision process and I think that we need to be very clear that it isn't the Department's fault that it takes so long. That many times, it's the fault of the Applicant. And...and we have to be very clear, Members. We are in an accelerated growth rate in the County of Maui to the point where not only do we not have enough staff to meet the demand but we're losing staff to the private sector because they can pay more. So, that's why it's so difficult to get anything done through the County because the market demand says let's...let's operate at 150 percent and the County is staffed to work at 100 percent. And so, please, you know, please respect all of the workers that we have in the County that do their very best to try to get and...and keep up with this pace and demand. But it's virtually impossible.

So, you know, when someone says it takes two years to get a subdivision through, you know, I would venture to guess that part of the reason is because they're dragging their feet, you know, just as much as the Department is backlogged. And, you know, I know the current Mayor wants to parcel out things and, you know, not do everything on a first-come-first-serve basis but try to do things based on, you know, if you...if you're doing something that has little or no impact and it's a small request, like you wanna extend a lanai, you know, that should get priority over full-fledged thing. But anyway, this whole thing in...of two years, in order for him to get his subdivision through, we already heard from the Water Director, it's gonna be two to three years before there's even water for it. So, you know, we're all just kinda taking a pig in a poke here and hoping for the best. Thank you, Chair.

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

COUNCILMEMBER MATEO: Chairman, thank you. I...I like poke the pig, too. (*Laughter*) I think Mr...I think Corporation Counsel gave us a real good recommendation in including the verbiage, "partial satisfaction".

COUNCILMEMBER ANDERSON: Okay.

COUNCILMEMBER MATEO: I think that...that meets the intent of what Ms. Anderson is...has referenced because she's right. We don't know what the requirement is, whether it is two, three, you know, acres at this particular point. And it...the intent is still there, by recognizing the "partial satisfaction" because it is not a complete satisfaction at this point. So I think that is a good recommendation by Corporation Counsel and I would be able to support that inclusion, Chairman. Thank you.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay. Thank you very much, Mr. Mateo. Chair would like to call for a one-minute recess to work with Staff on the proposals because this...it's sort of morphed into something even larger. So just...just to assist Staff that we can get the language addressed.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Yes, Staff.

MS. NAKATA: Prior to the recess, could Staff just get clarification? The two-acre park, does assume that there...that the 250 workforce housing units will be built off-site and there's nothing currently in reference to those 250 workforce housing units that requires they be built off-site.

CHAIR MOLINA: Okay. That's the...that's the reason why I'm gonna ask for the recess--

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: --so we can work out these details.

COUNCILMEMBER ANDERSON: And Chair?

CHAIR MOLINA: Yes, Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah. Maybe we should specifically call out the site that Mr. Jencks is offering so that we know--

CHAIR MOLINA: Right.

COUNCILMEMBER ANDERSON: --you know, exactly what it is that.

CHAIR MOLINA: All right. Okay, Members, so we can go through all...all these, I guess, additions to this condition, let's take a brief recess. Let's make it three minutes. Meeting in recess. . . .(gavel). . .

**RECESS: 11:53 a.m.**

**RECONVENE: 12:00 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18<sup>th</sup> is now back in session. It is high noon, Tuesday, October 23<sup>rd</sup>. Members, we are at...we're dealing with Condition No. 5. An amendment is on the floor as proposed by Member Mateo with additional language incorporated by Members Anderson and Johnson. And the Chair was looking for clarification just so we can formulate the language and put it into its appropriate context. Staff, I'd like for you to share with the Committee what you have thus far so that way we're...we're...we all know where we're at.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

MS. NAKATA: Honua‘ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code, (the Residential Workforce Housing Policy); provided that 250 of the required workforce housing units shall be located at the Kaonoulu Light Industrial Subdivision and completed prior to any market-rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits can be obtained within that time frame. Honua‘ula Partners, LLC shall provide a minimum two-acre park at the Kaonoulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code.

CHAIR MOLINA: Okay. Members, is that...meet your satisfaction at this point?

COUNCILMEMBER ANDERSON: Good job, Carla.

CHAIR MOLINA: Okay. Corporation Counsel, you have a comment?

MR. HOPPER: Maybe I'm just being over-cautious but I don't know if you would want to state that that...that's in satisfaction of 18...or, credited against the requirements of 18.16.320 for *that* subdivision. I mean, I think maybe that was clear enough but for the particular subdivision referenced and *not* for the subdivision for Wailea 670.

COUNCILMEMBER JOHNSON: Oh.

CHAIR MOLINA: Okay. Staff...

MS. NAKATA: So the last sentence will read, "Honua‘ula Partners, LLC, shall provide a minimum two-acre park at the Kaonoulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code, for that subdivision.

CHAIR MOLINA: Mr. Hopper, is that...

MR. HOPPER: I mean, I obviously don't have authority to, you know, put in language but that's what I would recommend, so I mean.

CHAIR MOLINA: You would recommend...okay.

MR. HOPPER: Yeah. Just to make sure it's for that project and not for...for this project.

CHAIR MOLINA: Members, any objections to the suggestion from Corporation Counsel?

COUNCIL MEMBERS: No objections.

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

**October 23, 2007**

---

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: GB, RH).

CHAIR MOLINA: Okay, Members, if there...any other considerations? If not, we will move on with the vote for the amendment. Okay. All those in favor of the proposed amendment for Condition 5 as proposed by Member Mateo with additional language inserted by Members Anderson and Johnson, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

<b>VOTE:</b>	<b>AYES:</b>	<b>Councilmembers Anderson, Johnson, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.</b>
	<b>NOES:</b>	<b>None.</b>
	<b>EXC.:</b>	<b>Councilmembers Baisa and Hokama.</b>
	<b>ABSENT:</b>	<b>None.</b>
	<b>ABSTAIN:</b>	<b>None.</b>

**MOTION CARRIED**

**ACTION: APPROVE amendment to the main motion.**

CHAIR MOLINA: Okay. Thank you. Condition No. 5 moves on. So, Members, we will now take our lunch break. Let us return at 1:30 and we will work up until 4:30. That is when we will apparently lose quorum and then the Chair will come up with a recommended date for another recessed meeting upon this particular matter. This meeting is in recess until 1:30. . . .(gavel). . .

**RECESS: 12:03 p.m.**

**RECONVENE: 1:37 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting for October 18<sup>th</sup> is now back in session. It is 1:37, Tuesday, October 23<sup>rd</sup>. Okay. Members, thank you for that break. We will now resume our activity which is to discuss some of our other conditions. But we also have one proposed condition from Member Anderson that we'll try to get discussed today. Chair will be losing quorum at 4:30 so time is valuable, Members. So with that being said—I'm sorry. Oh, yes, thank you. Staff has reminded me. When we passed on Condition No. 5, which was

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

**October 23, 2007**

---

approved by seven votes, Chair neglected to mention that there were two excusals--Members Baisa and Hokama--on that matter. So just a matter of record.

So, why don't we go ahead with this...go ahead in this fashion, first. Member Anderson, do you...are you prepared to distribute your proposed amendment at this time or do you need a little bit more time?

COUNCILMEMBER ANDERSON: No, I think I can, Mr. Chairman. It's gonna take some lead in. So...

CHAIR MOLINA: Okay. In other words, it will...it will take some time, right?

COUNCILMEMBER ANDERSON: Yeah, that's why I'd like us to do it while we're all fresh from lunch. (*chuckle*)

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Let's...let's go ahead and do it that way. Chair concurs. Maybe...do you need some assistance from Staff to pass these down?

COUNCILMEMBER ANDERSON: Yes, please.

CHAIR MOLINA: And can...is this condition your proposed condition in a...related to any of the conditions that are here? Or this is just will be done as a separate condition, Member Anderson?

COUNCILMEMBER ANDERSON: Gee, Chair. I wish . . .

CHAIR MOLINA: It's...it's not an amendment to an existing condition, is it?

COUNCILMEMBER ANDERSON: I think it's...I think it would be...probably appropriate to Condition No. 9.

CHAIR MOLINA: Okay. All right, Members, we're looking at Condition 9 which was located on page 6...6 of your matrix.

COUNCILMEMBER ANDERSON: Okay. Let's do that first and then come back. I've got more.

CHAIR MOLINA: Okay. Thank you. And Members, that condition reads...we're going read it. If we're looking at the...the Department of Planning's recommendation for the condition, WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall prepare an assessment—you know what? Members, excuse me. Let's look at the far right column. I'm sorry.

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

**October 23, 2007**

---

COUNCILMEMBER MATEO: Far right?

CHAIR MOLINA: Yeah. Where it says, Honua‘ula Partners, LLC, its successors and permitted assigns, shall prepare an assessment of the owl (Pueo or Hawaiian Short-eared Owl) and the Hawaiian Hoary Bat in coordination with the Department of Land and Natural Resources, and, if appropriate, mitigative measures shall be incorporated into the Kihei-Makena Project District...and, I guess there’s a No. 9 included in Condition 9, which states “Said assessment shall be prepared prior to submittal of Phase II project district processing. Then it...there’s a note in here that says, “no conservation easement language received”. And this, I believe, is what Member Anderson will be proposing at this time?

COUNCILMEMBER ANDERSON: Yes. Thank you, Chair.

CHAIR MOLINA: Okay. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: So that’s No. 9, right?

CHAIR MOLINA: That is correct.

COUNCILMEMBER ANDERSON: Okay. What I’ve first done is passed out some background information, Chairman, that I’d like to go over to justify what I’m going to be proposing. And if the Members would follow along, I’m gonna start with the letter from Angela Kay Kepler, Ph.D., Pacific-Wide Ecological Consulting. And it’s the last one in the packet. Basically, those of you who know Dr. Kepler, she’s a longtime Maui resident by about...*(end of tape, Change to 3B)*...shoots! Back in the day when I worked for OEQC, she did a lot of the environmental assessments and I always highly regarded her reviews because they were very “to the book”. And what she has done is a evaluation of the report provided to us by the Applicant entitled, “Conservation and Stewardship Plan of Honua‘ula/Wailea 670 Kihei, Maui” *[sic]*. This letter is dated September 4<sup>th</sup>. And she is critical of the report. And I’m...I’m gonna just highlight a few main things so that the public understands where we’re going. Members, you can read...read it all the way through as you...as you would like. I would just like to make a point that Dr. Kepler is a professional ornithologist and botanist with a Master’s Degree from the University of Hawaii-Manoa and a Ph.D. from Cornell University and received post-doctorate work from Oxford University in England. She says, “I have had the good fortune to conduct...research in and photograph some of Hawaii’s most unique native plant habitat areas. In particular for several years during the 1980s, I worked with the U.S. Fish and Wildlife Forest Bird Surveys, and I also co-surveyed most of Maui’s offshore islands for native plants and seabirds, reaching these by boogie-board and camping overnight”. She was the President of the Mauna Ala Hiking Club for Maui for several years during the 1980s and helped found the Sierra Club on Maui during that same time.

I’m just going to pick out a few sentences that I think will give people an idea of what she’s saying without reading the whole letter. In her evaluation of the Applicant’s report...on the

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

**October 23, 2007**

---

native plant area in question, the report's main thrust is to convince readers that Wailea 670 has basically no native plants of any value. That the area is essentially degraded and has not been considered worth bothering about by any conservation agencies in Hawaii in the past or present and that there are no Federally-endangered species on the property. She, of course, disagrees with that. If...and...and she's also the author of many books and she's currently working on a book called "Bananas in Hawaii, Living Polynesian Heirlooms". She's been a consultant for many international conservation agencies, including the Smithsonian Institute, Bishop Museums, UNESCO World Heritage Center, South Pacific Regional Environment Program, Wildland Consultants New Zealand, Pacific Expeditions, and Conservation International.

She says, if we would truly want to preserve wildlife, native plants, and natural resources...if we truly want turtles, monk seals, healthy fish populations, seabird offshore, and clear waters around Maui, we need to read between the lines of reports such as this one by SWCA Environmental Consultants--done on the request of WCPT/GW Land Associates--and realize that it may look good to the untrained eye but it is totally aimed at private profit, not sound planning for biological diversity and habitat preservation.

This Conservation and Stewardship Plan claims to preserve small pockets of native plants. But these remnant populations of native plants will never recover and expand after they are hemmed in with lawns and landscaping on all sides. In this day and age of more and more pesticides, native plants have even less chance to spread into peripheral areas. What this plan avoids mentioning is the need to preserve extensive native plant habitat. These are the natural lands surrounding existing native plant populations, land that could be colonized by native plant seeds and offspring, thereby, expanding native dryland forest coverage and boosting survival rates.

She goes on to say, she's talking about the wiliwili trees that are endemic—found nowhere else in the world and important in past Hawaiian culture—on this property. It was introduced accidentally from Taiwan in a potted plant. Happily, according to recent pictures posted on community websites, it appears that the majority of wiliwili stands on the Wailea 670 lands, are holding their own against this pest, a fact which is not accurately portrayed in this stewardship plan. The report "Remnant Wiliwili Forest Habitat at Wailea 670, Maui, Hawaii" by Dr. Lee Altenberg, done in March of '07, is an excellent survey by a...biologist who is personally well acquainted with the area and literature pertaining to dryland forests in Hawaii, and who has lived on Maui for some time. His broad view of island conservation needs, unconstrained by loyalty to landowners, or the political realities limiting most government agency employees, makes his evaluation of Wailea 670 development and its future effects on native plant populations a valuable tool to help guide public policy.

Now, that letter, Members, is in support that I...I additionally gave you from Dr. Litton, Creighton, the Department of Natural Resources Environmental Management, University of Manoa. He also wrote in support of the stewardship plan that was put forward by Dr. Lee Altenberg as well as the Professor from Boston, Dr. Cabin, I believe is his name. And those I passed out at the last meeting so I'm not covering those today.

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

**October 23, 2007**

---

The next letter you have is from the Office of Hawaiian Affairs to this Committee, dated August 29, 2007. Again, I'm not going to read the whole letter. You can see it's quite lengthy but I believe I did tab certain portions of that letter for you. And I'm going to read portions of that letter into the record. The Office of Hawaiian Affairs provides this testimony in opposition to the proposed zoning changes and ordinances which seek to facilitate the Wailea 670 project due to the inadequacy of proper identification, assessment and mitigation of the traditional cultural landscape and associated historical and cultural sites, in accordance with statutory, constitutional and judicial mandates for the State of Hawaii and its sub-agencies, including the County of Maui.

I would like to read the purpose and intent--and, Members, just so you know why I'm going with this--the conservation easement that I will be proposing is not just a biological easement (conservation easement) but also a cultural conservation easement, one in...one in the same. To quote from chapter...from the State Constitution, which really supported the foundation for our State Historic Preservation law, Chapter 6E, Hawaii Revised Statutes, it says, "The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of [all] its citizens. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property." (*Clears throat*) Excuse me, Members. That is from our Hawaii Revised Statutes, Chapter 6E, Historic Preservation.

In the spirit of enforcing the State of Hawaii's mandate, OHA is highly concerned over a lack of adequate archaeological surveying and consultation regarding our historic and cultural assets impacted by the Honua'ula/Wailea 670 project. Despite any prior consultation with OHA, based on the Wailea 670 EIS of 1988, that may have taken place more than a decade ago, we now submit that whatever decision-making that might have occurred then is grossly outdated, especially in light of even more recent archaeological survey findings in 2000 and 2001, which identified a large number of significant historical/cultural sites on acreage subject to this Change in Zoning process. Further, OHA recommends the requirement of an additional updated environmental impact statement as well as a cultural impact assessment consistent with, but not necessarily limited to, Chapter 343, HRS, Hawaii Administrative Rules...and I won't read those.

We also request that in deliberations in Maui County Land Use Committee...the Maui County Land Use Committee heeds its own mandate by requiring the participation of the Department of Land and Natural Resources, the State Historic Preservation Division, and OHA in all

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

**October 23, 2007**

---

preliminary archaeological and historical data and preservation/mitigation planning...Maui...as cited in Maui County Code, Chapter 19.510.010(D) with applications.

The Maui County Change in Zoning ordinance specifically states that the developer's application must include preliminary archaeological and historical data and comments from the Department of Land and Natural Resources and the Office of Hawaiian Affairs of the State, and if applicable, a preservation/mitigation plan, which has been reviewed and approved by the Department of Land and Natural Resources and the Office of Hawaiian Affairs of the State. This lack of consultation is troubling in light of the legal mandates also requiring this consultation in historic preservation law and rule.

Members, I'm sure you'll recall that months ago I brought this up when we were talking about the adequacy of the application and the fact that OHA has not been consulted nor has DLNR. The letter itself is written on behalf of OHA by Clyde Namu'o, the Administrator. And in lieu of time constraints and with all due respect and apologies to him, I'm going to skip through some of the portions of the letter and Members you can read that at your leisure.

He goes on to state the purpose of the Office of Hawaiian Affairs and states very specific sections within HRS. I would like to skip to the...the guidance that OHA takes and mind you, the guidance that all of us must take as decision-makers and legislatures from our own State Constitution, Article XI [sic], Section 7 says, "TRADITIONAL AND CUSTOMARY RIGHTS, Section 7. The State affirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." "The right of our Hawaiian beneficiaries to access and traverse the *ala* of their *kupuna*, and to reconnect with their ancestors and '*aumakua* for guidance, is a traditional and customary practice, protected by the Constitution of the State of Hawaii."

Members, I would just add in here for your refreshment of memory that there is remnants of stone trails, which is the *ala*, in this particular area that I will be requesting a conservation easement for. Mr. Namu'o also goes on to talk about judicial affirmation and guidance, citing case law within the Supreme Court. And I will also skip through that and you can read that at your...leisure. And for those who might be interested that are listening to this, Mr. Chairman, this letter that I am reading is part of the public record and anybody who wants to have a copy of it, I think it's extremely well-written on behalf of the native Hawaiian culture and the host residents of this island. They can receive this by calling the Council's Land Use Committee and asking the Analyst to provide them with a copy.

I will go on to state that...to continue on in his letter, not citing the case law, that "The State of Hawaii Historic Preservation Laws are modeled after the National Historic Preservation Act of 1966 and the National Park Service National Register of Historic Places presents certain standards for criteria in considering whether a historic property is eligible for listing on the National Register as follows:

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

**October 23, 2007**

---

**Criteria for Evaluation**

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield, information important in prehistory or history.”

Mr. Namu’o goes on to cite specific significant...evaluation criteria within our own State statutes. He also cites...you know, Members, I’m just going to shortchange this a little bit because of time but there are various criteria that have to be considered when...when sites are determined to have a...particular significance. And depending on the level of significance that are attributed to them, that determines whether or not you have to preserve the site in place or if you can just do, you know, data recovery and then destroy it. So criteria “e”, and, you know, some of the criteria have to do with how it’s associated with things of the past, whether or not it is prehistory that speaks to how old it might be. And then criteria “e”, which I would like to read, which is really the...the most important. Criterion “e” says—and...and mind you, this is a criteria that you must consider in determining a significant evaluation. If the site or property “have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group’s history and cultural identity. A group of sites can be collectively argued to be significant under any of the criteria.”

Furthermore, under Section 13-284, Hawaii Administrative Rules, and these are the rules that implement HRS 340 or...6E. “Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion “e”, to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion “e”, the Office of Hawaiian Affairs also shall be consulted.”

“The State of Hawaii’s addition of criterion “e” pertaining to an additional significance of an evaluated cultural site as having an “important value to the native Hawaiian people” and the duty to consult with the Office of Hawaiian Affairs regarding these significance assessments appears to have been wholly lacking in the Wailea 670 project’s historic preservation review process”.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

I'm gonna skip down, Members. "In the case of Wailea 670, to have lack of consultation during the critical identification phase of the historic preservation review process is even more negligent in upholding the public trust responsibilities. What little cultural, natural and historic resources left become increasingly important and crucial to the traditional and customary native Hawaiian practices that exist there due to the catastrophic loss of these resources in the larger areas throughout the island and the rest of the State". Excuse me, tripping on my own tongue.

"In addition, where surface structures are severely eroded, altered or destroyed, the likelihood of finding sub-surface cultural deposits, such as ancestral burial sites or important cultural layers, dramatically increases, especially along traditional trails. The temporary and permanent habitation areas associated with trails and paths often provide areas of greater significance in finding historic properties."

"OHA's specific concerns with Wailea 670: 1. OHA needs to be consulted on the cultural review process. 2. OHA firmly believes that the additional inventory level survey work needs to occur to properly identify important historic and cultural sites and that OHA needs to be involved in the identification, significance assessments and mitigation of these important components of the traditional cultural landscape"—excuse me—"of *mauka* and *makai*, and they relate to the already established historically significant Palaua area and as they relate to the exercise of constitutionally protected traditional and customary practices of native Hawaiians. 3. OHA would like additional paleo-botanical and paleo-environmental study performed due to the significance of this area. 4. OHA is very concerned with the preservation of over 100 acres of native dryland forest, given our recognition of the critical importance of these areas to the overall wellbeing of the land and ecosystems. The *wiliwili* devastation around the state is another critical reason why preservation of this environment is critical. OHA's involvement with *Wao Kele O Puna* is a direct result of our recognition of the importance of the Hawaiian forest."

I'm gonna skip that quote, Members, and just end with his final closing paragraph. "We look forward to intervention by your important committee to help safeguard the disappearing cultural landscape, not only for the benefit of fulfilling statutory, constitutional and judicial mandates, but for the benefit of all who have come to call Hawaii home. Thank you for your attention to this important and sensitive matter." Clyde Namu'o, Administrator, OHA.

Members, I would just like to skip back for those who may not be familiar with some of these terms. In the historic preservation review process, it does call out for...if...if a site is found to be of significance to any degree, it calls out for further testing such as carbon dating. And when he mentions that they would like additional paleo-botanical and paleo-environmental study, that has to do with testing for the age.

So, I bring these to...these letters to your attention, Members, because I want you to understand the importance of what I'm gonna be presenting here. It's not a minor thing. The cultural sites within this area and within this native wiliwili forest are part of the *ahupua'a* system. One of the last remnants that we have left to demonstrate to those native Hawaiians that we are lucky

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

**October 23, 2007**

---

enough to still have with us and their future generations, how their ancestors lived, and how they lived a sustainable lifestyle before Western man came here, using the *ahupua'a* system. This site is connected to the...to the sites that...that are below it, right down to the ocean, to the sea village of Palaua. And I would remind Members that all I'm asking you to do is to respect what's already law. The...the application should have provided us with a preservation/mitigation plan which has been reviewed and approved by the Department of Land and Natural Resources and the Office of Hawaiian Affairs. And the only thing they saw was what was done in 1988 in a very...cursory EIS that was done for a community plan amendment.

I have also passed out to you, Members, a copy of the Kihei-Makena Community Plan. And I would like to read into the record—mind you, Members, in our decision-making process in approving this application, we have criteria of approval that we must follow. And by law, that criteria of approval includes...

CHAIR MOLINA: Excuse me, Member Anderson. Before you go on, I'd like to ask the body's comments or if they have any questions related to the letter from Mr. Nama'u [*sic*] from OHA, if there's any—Namu'o, excuse me, Namu'o—it was dated August 29, 2007. Members, any questions related to that letter? We received the letter August 29<sup>th</sup>. I have not spoken to Mr. Namu'o personally on this. And I'll ask the Applicant if he had has...he has any contact with Mr. Namu'o and if there are no objections, I'll ask Mr. Jencks to give his comments. And after Mr. Jencks is done, Member Anderson, I'll let you continue with the discussion.

COUNCILMEMBER ANDERSON: Yeah. I mean, I think the letter pretty much speaks for itself, Mr. Chairman—

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --but certainly you're running the meeting.

CHAIR MOLINA: And I'm...I'm curious to see if Mr. Jencks had any conversations with the OHA on this matter.

MR. JENCKS: Thank you, Mr. Chair.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I did receive a copy of the letter from OHA after the September 10<sup>th</sup> meeting we had in Committee in Kihei. And actually I think this letter was intended to be submitted as testimony at that time but maybe they left earlier than they could, you know, stay for the finish of the meeting. I got the letter and took a look at it. I read it...read it through. And I decided to respond to OHA and put together a rather lengthy response talking not only to members of the project team that...that are here today but also Mr. Aki Sinoto who was the archaeological...archaeologist director for the project. And I think the interesting thing about this is that in my response to

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

**October 23, 2007**

---

OHA—Ms. Anderson was kind enough to read the letter and so we all now know what's in the letter. I can...and I really appreciate that effort.

When I read through the letter and then contacted OHA, and I responded to OHA, one of my key responses to them was that in 2000, OHA received the application from the Department of Planning as a part of the initial notification on the project. And one of the documents I sent to OHA in response to this letter was their actual letter that went back to the Department of Planning...and I'm trying to find it here. It's dated, as I recall, August of 2000. That letter basically said that—oh, yes, here it is right here. It's dated September 13, 2000. It says, "dear Mr. Min". "This is with regard to Wailea 670 application for Change in Zoning. Thank you for the opportunity to comment on the above-referenced project. At this time, the Office of Hawaiian Affairs has no comment to the proposed project. If you have any questions," etcetera, etcetera, etcetera. That was the response in September of 2000 on the application submitted to the Department of Planning.

CHAIR MOLINA: And who...who wrote that letter, Mr. Jencks?

MR. JENCKS: This letter was written by a Mr. Ronald B. Mun, Deputy Administrator for Colin C. Kippen, Jr., Deputy Administrator, OHA. Now, knowing that that letter was in the file and...then going back and evaluating every one of the claims that was in the letter from OHA and comparing that to the record, I wrote a response to OHA. The interesting thing about this is that OHA didn't review this letter with the trustee from Maui, Mr. Boyd Mossman, before it was sent out. Number one, Mr. Mossman met with OHA and reminded them that that was probably something they should be doing. In addition, I have been contacted by OHA. I was contacted by OHA prior to the September 10<sup>th</sup> meeting and asked, "who are the members of the cultural team for this project?" And I told the gentleman from OHA who the members were.

COUNCILMEMBER ANDERSON: And who did you speak to?

MR. JENCKS: A Mr. Jerome Yasuhara. I told him who the members of the cultural team were. After this letter was sent--my response was sent to OHA in response to the letter to me--I got a call from Mr. Yasuhara, nice...nice young man. We talked about the project. And in my letter to OHA, I said to them, I said, look, we have submitted documents to the State. There's an established procedure for us--transmittal of documents, review of documents by OHA, DLNR, SHPD and everyone is involved. We, the Applicant, or the County of Maui do not control that process. That's a State function. And it goes to SHPD to do. Mr. Yasuhara asked me, he said, "do you have a copy of the letter from September 13, 2000?" And I said, yes, I do; and it was attached to my response. "Could you send it to me?" Be happy to. He said to me—listen carefully. "Do you have all of the historical documents that are referenced in this letter?" And I said, yes. I have a complete file. I have all the letters from DLNR back and forth. I have the archaeological reports. I have the draft cultural plan. What would you like? And he says, "we would like all of it 'cause we don't have anything on this project in our file, which raises a very interesting question. Does it not? How could someone write a letter like this with no information in the file?"

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

COUNCILMEMBER ANDERSON: I'd like to tell you why, if I may, Mr. Chair? Since . . .

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: You know, I...I had the floor here. And...and all of a sudden Mr. Jencks is...discounting...

CHAIR MOLINA: Hang on. Member Anderson, I'll give you your opportunity.

MR. JENCKS: I'm...I'm not discounting.

CHAIR MOLINA: I just wanted to give the Members . . .

MR. JENCKS: I'm just trying to set the record straight. In my response to OHA, I said, look, if you don't have the documents you were sent, you can't find them, I'd be happy to provide them to you. We should be working together on this issue. No one's trying to exclude anybody in any process. We invite you to come in and participate. But this letter doesn't fairly depict the process.

CHAIR MOLINA: Okay.

MR. JENCKS: There is a...(end of tape, Change to 4A)...is involved in the process and I'll be happy to provide a copy of our letter to the Committee so you can understand how my response laid out the exact and...and accurate history of this project relative to SHPD and archaeological historic review.

CHAIR MOLINA: Okay. Mr. Jencks, before I turn matters over, back to Member Anderson for explanation, so you're implying that Mr. Nama'u [*sic*]...Namu'o wrote this letter without any background information then on the project?

MR. JENCKS: According to my call, the phone call I received from...or the...the...I got a call from Mr. Yasuhara. We talked and I was told they didn't have anything in the file on this project. And I'm gonna provide them hard copies of every document we've got.

CHAIR MOLINA: Thank you. Member Anderson.

COUNCILMEMBER ANDERSON: You know, I...I find that hard to believe, Mr. Jencks, because the...back when we first discussed this, Mr. Chairman, in August I believe it was, I was criticizing the...the historic review on this because I have every letter that State Historic Preservation has on this project. And the last letter that OHA provided...I mean, State Historic provided, was they were still asking for more survey. And so, whatever preservation plan (that draft plan that Aki Sinoto has provided for this project) has not even gone to State Historic, which is why OHA doesn't have anything in their records. The only thing OHA has in their

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

**October 23, 2007**

---

records was preliminary review letters that were provided when they first wrote that letter back in 2000 when it went to the Planning Commission. That's the only thing they've got. And, you know, if Mr. Jencks can provide something in writing to state otherwise, that would be fine.

But I don't know who Mr. Yasahara [*sic*] is, or who...you know. Phone calls don't cut it here. We're down to the...you know, I've been asking for months for them to submit their draft preservation/mitigation plan to State Historic and to OHA. And I just got a call actually last week from the gal at State Historic. They have not received any further documents from Aki Sinoto or Charlie Jencks on this project. The last letter that they issued on this asked for further survey work to be completed before they can even determine the significant evaluation. Yet, Mr. Jencks and his consultant have provided a draft preservation plan way, way out of the process. Just because they presented the draft plan to us, doesn't mean it's adequate and doesn't mean it meets State Historic Review law, especially since it hasn't been submitted to the State Historic Division or to OHA. And that is the basis for this letter, Mr. Chairman. And so, if I may continue? If Mr. Jencks has anything further to ask...to add to this, I would request that he please put it in writing and submit us a copy of the letter that he says he has written to OHA 'cause I haven't seen that and I don't think the Committee has either.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: If I may, Mr. Chair, continue?

CHAIR MOLINA: Okay. Continue with the community plan.

COUNCILMEMBER ANDERSON: The community plan calls out, and, Members, again, in our criteria for approving Change in Zoning, the Council must find that...that the request is consistent with the...is, excuse me. That the request meets the intent of the general plan and the objectives and the policies of the community plans of the County. So I want you to realize, Members, that the objectives and policies within the Kihei-Makena Community Plan specifically calls out on page 20 that we preserve and protect and restore unique natural areas with significant conservation value. Under Cultural Resources, the goal is to identify, preserve, enhance an appropriate use of cultural resources, cultural practice, and historic sites that: 1. provides a sense of history and defines a sense of place for the Kihei-Makena region; and b. preserves and protects native Hawaiian rights customarily and traditionally exercised for Hawaiians--excuse me--for subsistence, cultural and religious purposes in accordance with Article 7 [*sic*] Article 12, Section 7 of the Hawaii State Constitution. And under Objectives and Policies, identify, preserve, protect, restore significant historical cultural sites; foster an awareness of the diversity and importance of cultural and archaeological resources; and of the history of Kihei-Makena. Promote distinct cultural resources as an identifying characteristic of the region. Encourage and protect traditional *mauka/makai* accesses, cultural practices and rural lifestyles. Protect those areas, structures and elements that are a significant and functional part of Hawaii's ethnic and cultural heritage. Encourage community stewardship of historic sites. Preserve and restore historical roads and paths as cultural resources, and require such resources to be available to the public. Recognize and respect family ancestral ties to certain sites. Establish cultural parks and

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

**October 23, 2007**

---

heritage corridors for visitation and education. Establish cultural and educational programs to perpetuate Hawaiian and other ethnic heritages. Develop a County ordinance for indigeous *[sic]* architecture. Well, that's something we have done.

COUNCILMEMBER JOHNSON: Yeah.

COUNCILMEMBER ANDERSON: Under Implementing Actions for historic or cultural resources, specifically says that we must require development projects to identify all cultural resources located within or adjacent to the project area, prior to application, as part of the County development review process. Further require that all proposed activity include recommendations to mitigate potential adverse impacts on cultural resources, including site avoidance, adequate buffer areas and interpretation. Particular attention should be directed toward the southern areas of the planning region. You're not gonna get any more southern than this area.

Under Housing and Urban Development, provide for integration of natural physical features with future development of the region. New development shall incorporate features such as gulches and wetlands into open space and pedestrian and bikeway paths. Encourage the use of native plants and landscaping and...in the spirit of Act 73.

Page 30, Members, recommend to the Maui County Arborist Committee for consideration as "exceptional trees". All trees, or groves of trees, that...have historic or cultural value, that have historic or cultural value represent an important community resource, or are exceptional by reason of age, rarity, location, size, aesthetic quality, or endemic qualities. Healthy mature trees should be saved. Healthy mature trees should be saved and incorporated in the landscape plans of subdivisions, roads, or any other construction or development.

Those are just some policies and objectives in the Kihei-Makena Plan that call out for preserving these cultural and natural resources, Mr. Chairman. Again, that's the basis for my condition and I will ask Staff if they would pass out the condition at this time. And I'd be happy to go over it.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: And...and while Ms. Nagata *[sic]* is doing that, I would also like to refresh Members. When we first discussed this some months ago, I brought up some of this, not in this much detail 'cause we didn't have the time. But I talked about conservation easements and you know, there's many mechanisms that are in place at the State level and also at the County level to allow us to put in place conservation easements such as this to protect and preserve for everyone, including future generations, to enjoy the natural and cultural resources that have been saved for us by...by previous generations because of their respect. And I think that it would behoove us to practice that same level of respect, especially since we have the tools in place with which to do that.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay. Member Anderson, hang on for a second. Members, this is about a five-page request for a condition. Would you like some, I guess, “quiet time” if you will, to look at the document and then we will come back and then we can--

COUNCILMEMBER ANDERSON: Mr. Chairman?

CHAIR MOLINA: --have Member Anderson and go over the condition?

COUNCILMEMBER ANDERSON: If I may? It’s only a page-and-a-half condition. The rest of it is justification for the condition.

CHAIR MOLINA: Oh, okay. So you’ll just go over the...

COUNCILMEMBER ANDERSON: And it’s basically stuff I’ve already read into the record.

CHAIR MOLINA: Okay. All right. So we’ll just do the first--front and back of the first two pages then. All right. Okay.

COUNCILMEMBER ANDERSON: I mean, you could go ahead and read the justification at your own leisure.

CHAIR MOLINA: Members, do you—

COUNCILMEMBER ANDERSON: But it’s basically what I’ve already said.

CHAIR MOLINA: --you need the recess? Or would you rather just go ahead and have the condition read and then...? Okay. Proceed, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. Conservation Easement Condition: That WCPT/GW Land Associates, its successors and permitted assigns, shall convey a perpetual conservation easement, as established by Hawaii Revised Statutes, Chapter 198, entitled “Native Hawaiian Biological and Cultural Preserve”, for the preservation of critical native Hawaiian habitat and significant historic sites located on the 110 acres of the southern one-sixth of the subject property. The specific coordinates of the conservation easement shall be--and I’m not going to read that into the record, Mr. Chairman. But they are GPS coordinates.

The scope of this conservation easement shall be set forth in an agreement between WCPT/GW and the County of Maui that shall include: (a) a commitment from WCPT/GW, its successors and permitted assigns, to protect and preserve this area, which provides critical habitat for the...endangered native Hawaiian low level...low elevation dry land forests that survives in this *a’a* lava substrate, and the listed and candidate Federal endangered species that survive on this property, such as wiliwili, awikawika [*sic*], nehe...nehe, maiapilo—my...my apologies—akoko, and naio. And the scientific names, which would even be harder for me to pronounce, are also listed. And native insects such as the Hawaiian bees of the *Hyaleaus* genus [*sic*], the Blackburn

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

**October 23, 2007**

---

Sphinx moth...moth, and contains significant historic sites worthy of preservation, restoration, and interpretation for public education and enrichment. This area also includes the historic sites of a native Hawaiian pre-contact settlement that contains remnants of a rare ancient stepping stone trail, possibly a segment of the Piilani Trail. This settlement connects geographically to the pre-contact sites in the coastal area below and provides the necessary link for preservation and interpretation of the ancient *ahupua'a* settlement pattern.

(b) That WCPT/GW, its successors and permitted assigns, shall agree to confine use of the property to activities consistent with the purpose and intent of the conservation easement and the protection and preservation of the *a'a* substrate.

That any activity on, or use of, the property, which is inconsistent with or detrimental to the purpose and intent of this conservation easement will be expressly prohibited.

(d) That WCPT/GW, its successors and permitted assigns, shall be prohibited from development in this area, the entirety of which is critical habitat, other than the provision of fencing, trails, and structures for the maintenance of the habitat, in accordance with a critical habitat plan developed by groups and organizations that may include, Maui Nui Botanical Garden, the Native Hawaiian Plant Society, the US Geological Survey Biological Resources Division, as well as...biologists who have published peer-reviewed research, ***who have published peer-reviewed research***, on native Hawaiian species and...who will work in coordination with cultural land preservation organizations such as Maui Cultural Lands and Maui Coastal Land Trust.

(e) That the conservation easement on the critical habitat area shall be held by an appropriate land trust organization, such as the Nature Conservancy, Trust for Public Lands, Maui Coastal Land Trust, or Maui Cultural Lands. The conservation easement holder and the property owners shall be required to allow access to charitable 501(c)(3) organizations on Maui dedicated to the preservation of native plants to help restore and perpetuate native species and engage in needed research activities. The conservation easement holder and other groups with legitimate activities shall have the right to enter the property at reasonable times to monitor the condition of the plants and habitat lands and review compliance with the conditions of the conservation easement on the property. These organizations shall have the right to enter the property at reasonable times to enforce compliance with or otherwise exercise its rights under this conservation easement. These organizations may not, however, unreasonably interfere with the owner's use and quiet enjoyment of the property.

That the conservation easement holder and the property owners shall commit to allowing the exercise of customarily and traditionally exercised rights of...native Hawaiians as set forth in Section 7 of the Constitution of the State of Hawaii, and by the Hawaii Supreme Court in *PASH v. Hawaii County Planning Commission* known as the...PASH Decision.

(g) That the conservation easement holder and the property owner shall provide and manage open public access to the conservation easement for public visitation and education.

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

**October 23, 2007**

---

That...WCPT/GW, its successors and permitted assigns, shall be allowed to receive all tax benefits allowed under current laws for the conservation easement placed on the property.

Thank you, Mr. Chairman. That is my motion to amend.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. The motion has been made by Member Anderson and seconded by Member Johnson to amend Condition 9, I believe to--is it to add to the existing condition? Or it would...are you considering striking out 9, or just adding to what's already there for Condition 9?

COUNCILMEMBER ANDERSON: I think that this condition would really...you know, the DLNR asked for an assessment of the Pueo and I think that we could add the Pueo as one of the species that would be protected. I...you know, the purpose of having the assessment of the Pueo is to make sure what the baseline is and what they're gonna do to protect that habitat. But I think it's sort of moot if we adopt this condition because this overrides all of that and makes the area a...conservation area in totality.

CHAIR MOLINA: Okay. Thank you. Committee Members, questions on the proposed condition? Member Johnson followed by Member Pontanilla.

COUNCILMEMBER JOHNSON: Yes, and I...I totally support Member Anderson's amendment and the condition because I think having read through this before and also having read through the Kihei Community Plan and also with being reminded that State Historic Preservation Division has had some serious issues and perhaps that is one of the reasons why there wasn't a fully developed record or there were no traces to be found of this communication.

I...I think it's really important that we do support the community plan in particularly because everything, and especially on shorelines or adjacent to shorelines, everything is under threat. We have invasive species which is one problem and we have development, which is the other problem that actually rather than preserving habitat, it's destroying it. And I go by it now everyday at Ukumehame where many of nesting areas for the Nene were in existence but they were shielded because of the wetland and the vegetation and now the Nene nesting places are totally exposed. So everyday when I go by, everybody can see the Nene and, of course, that is really not too beneficial. I mean, I suppose if you're gonna observe them, that's great. But I've seen firsthand what can happen. There was no mitigation plan. There was no environmental review. And to me, it's really important to protect the critical habitat. So I do support it.

I think that one of the things that could be done within the development of this conservation plan is to actually include the...the Pueo and also the Hawaiian Hoary Bat and at least attend to the habitat specifically that relates to these two species. But I think that in the actual conservation easement this can be developed and the emphasis can be placed on all of the species including the plants that should be protected and really are worthy of preservation.

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

**October 23, 2007**

---

And I especially think that Mr. Namu‘o who I’ve spoken with on occasion before, as his position, which is head of the Board of Trustees, is in a little bit different situation because I think he has seen some of the criticism that has been launched at the Board of Trustees of OHA for actually swapping lands because I had a long debate with him about Kapalua Mauka and all of the 226 acres of ceded land that was swapped for less than 2 acres in Oahu, which now is no longer in the public trust. So he and I have a, I wouldn’t say a working relationship but we know one another and I respect his opinion because I think he is also disturbed by some of the things that are taking place. And he will be the first to admit that he doesn’t have all the answers either. But I appreciate his letter and I appreciate Member Anderson bringing forward this particular measure because I think a conservation easement as we’re seeing in the media and with many other landowners, it’s something that is really important for our community. And as you’ve probably seen recently, there have been other landowners who have voluntarily entered into these agreements. And I think that, for me, this is something that we’re being asked right now, what is our thought, and I totally support this. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Member Pontanilla.

VICE-CHAIR PONTANILLA: Yeah. The question that I have here is in regards to the 110 acres, which is approximately one-sixth of the subject property, and it says that it’s on the southerly end. And if we do have a map of some kind for...well, for me, you know, I’d like to take a look at the proposal--the conservation area that is being proposed--the 110 acres, you know, the area for the preservation.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. That’s a reasonable request. It’s based on the latitude and longitude coordinates provided by Member Anderson. I believe Mr. Jencks—

COUNCILMEMBER ANDERSON: I’m sorry.

CHAIR MOLINA: --can...can...you have a . . .

COUNCILMEMBER ANDERSON: I’m sorry.

CHAIR MOLINA: --you have a reference that we can look at?

COUNCILMEMBER ANDERSON: I’m sorry, Chair, that I didn’t include a map with that. I meant to but, you know how things go.

CHAIR MOLINA: Okay. I know we’ve got a binder...binders full of things.

COUNCILMEMBER ANDERSON: Yeah. Basically, Members, this map or this site—and I’ll just pass this down real quickly so that you can see. Right now, the area we’re talking about is approximately this area, right here. And...and it’s, you know, I have a...topographical map you could actually see the *a’a* flow. So I’m gonna pass this down so Members can see what we’re

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

talking about and then I will also provide you with Dr. Altenberg's report, which specifically overlays this area onto the project district map.

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

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman. I just wanted to know that on Member Anderson's submittal for this condition at the top, it says submitted by Councilmember Anderson, August 3, 2007. Was that...was this submitted before or...?

CHAIR MOLINA: I think she had it...

COUNCILMEMBER MEDEIROS: I'm just confused with the date?

COUNCILMEMBER ANDERSON: I've had it ready since then--

CHAIR MOLINA: Yeah, she's had it ready.

COUNCILMEMBER MEDEIROS: Oh, really?

COUNCILMEMBER ANDERSON: --and I just never had the opportunity until today.

COUNCILMEMBER MEDEIROS: Oh, okay.

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: ... *(inaudible)* ... to our conditions.

CHAIR MOLINA: Yeah.

COUNCILMEMBER MEDEIROS: Okay. And yeah my...my other question was gonna be the same as Member Pontanilla's. Is, you know, if we could see it on the map and that's being distributed now. So, mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you very much, Mr. Medeiros.

COUNCILMEMBER ANDERSON: Mr. Chair, if I might just?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Just to make it very clear to Members. You all got the report from Dr. Lee Altenberg and...and the map that he provided us with all these GPS points--and for some reason I'm having difficulty locating it with all this stuff I have in front of me--but it is that specific area, Mr. Chair, and...here we go.

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

**October 23, 2007**

---

CHAIR MOLINA: You have the date of that, I guess, letter from Dr. Altenberg so we can possibly find it in our binders or something?

COUNCILMEMBER ANDERSON: No, I don't really have it. Oh, what I have here is...is actually Wailea 670's...

COUNCILMEMBER MEDEIROS: So it's . . . (inaudible) . . .

COUNCILMEMBER ANDERSON: Actually it's Wailea 670. I want to show you. These are the sites that Wailea 670 in their survey. This is what they wanna...they wanna save, all these little red circles. You know, in the area we're asking for the totality of the area to be saved because it doesn't really do any good to save native plants and then build all around them with non-native plants. Same thing with cultural sites. Save one little site; destroy everything else around it; and build a golf course or a housing development and turn it into a landscape feature. That totally destroys the integrity not only of the botanical life but of the life of that cultural site because it's all part and parcel of the larger whole. You know, it would be like, you know...I can't even, you know. To me, it's such a desecration, Mr. Chairman. We've lost so much of our historic past and here we have a chance to preserve something in a manner that could be used to demonstrate how the...*ahupua'a* system was utilized in the past for sustainable living and act as a model actually for us to go into the future and, you know, find a way.

You know, you know, I hate to sound like an alarmist or anything but just take a look at what's going on around the world and just across the ocean from us. The fires that are raging. The Southwest is drying up. Things are changing, big time. And, you know, the weather in Hawaii is changing. There may come a day, in the not too distant future, when we have to provide our own...our own fuel, our own food, and become self-sustaining as much as possible for many, many different reasons.

So I'm just going to pass off to the Members. I'm sorry that I don't. It's the...it's the southern one-sixth of the project area, Members. And I'm gonna pass down what the Applicant is asking or stating they want to save as opposed to the actual sites that were surveyed by Dr. Altenberg and earmarked with the GPS so that you get an idea of the difference in what we're talking about. And...and I don't know if...if maybe Staff can do a word search on our master agenda and find Dr. Altenberg's survey. I've pulled it out and somehow it didn't get back in my conservation file so I can't put my fingers on it immediately. But that would be helpful if we could find, I think, for other Members to see.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, any questions before I call the Applicant up for comments and clarifications? Okay. Mr. Jencks? I know you just got this condition today. Any initial comments? And if memory serves me correct, how much acres were you proposing to preserve in your original application?

MR. JENCKS: In the original application, Mr. Chair, this issue didn't come up, was not identified as an issue in the initial application for this project. In fact, this issue didn't come up as an issue until

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

**October 23, 2007**

---

Mr. Altenberg went on the property and did his own botanical survey and identified native plants and rang the bell. Subsequent to that event, the project team worked with SWCA, USGS, US Fish and Wildlife Service and others, and did an in-depth detailed survey and developed a...a conservation/preservation plan that was provided to the Committee in May 2006. That plan talked about preserving onsite native plants and a preservation plan. Subsequent to that, this last September a...an updated conservation/preservation plan was provided to the Committee that had a detailed program that really isn't that much different than what Ms. Anderson has provided and Subsections A through...through H, in terms of who would be managing this; how you would...how you would establish it; etcetera, etcetera.

I think getting directly to the question, Mr. Chair, relative to this proposal, the 110 acres that Ms. Anderson has identified as being a conservation easement area is the exact same area that Mr. Altenberg identified in his...his...his plan. And it is the...I think it's...it's the entire *a'a* basalt area that's in the southern, very southern area of the project district. I did submit to you, Mr. Chair, on October 4<sup>th</sup>, a proposal from the project team that, along with some maps—and I have additional copies of the maps if...if the Members don't have them here today.

CHAIR MOLINA: Yes. I think that will be helpful if you could get those distributed.

MR. JENCKS: Okay. Here. I'll just...well, I have these here. (*NOTE: He's distributing handouts.*) Well, don't you have this map?

COUNCILMEMBER JOHNSON: I do.

MR. JENCKS: Well this...(end of tape, Change to 4B)...

COUNCILMEMBER JOHNSON: That's the one Michelle had.

COUNCILMEMBER MEDEIROS: Yeah. Right.

COUNCILMEMBER VICTORINO: I got this map already.

MR. JENCKS: What I resolved to do, Mr. Chair, was make an attempt at addressing the issue of...of preservation and conservation by taking another look at this issue and coming back to you with something that is sustainable, is manageable, and doesn't reduce the opportunity for the project to do other things outside the project area and areas that have a much greater benefit in terms of...of conservation and preservation in the State of Hawaii, Maui County specifically. 'Cause there's other areas we would like to help with that are not in the project district but could receive the benefit of, you know, financial support, endowment, etcetera.

This plan that I...that I'm...I'm...I just gave out—and there's a...there's a detailed map in the letter I gave to you and I presume the Members have it. We're proposing...what we did, Mr. Chair, is we took...we took the GPS coordinates that Mr. Altenberg provided to the Committee in his report, took those same GPS coordinates and overlaid those on top of a...on

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

**October 23, 2007**

---

top of the...the concept plan. And we managed to create two different distinct areas. One is a...is a...identified as...in the crosshatched area is a native plant preservation area, which essentially does what Ms. Anderson is proposing here in general terms--set aside a specific area with a specific management control plan that would provide for its...its preservation and perpetuity, and...and provide for the protection of native plants, many of which she has listed here in her...in her proposed...her proposed condition.

COUNCILMEMBER ANDERSON: Could I ask a question, Chair, at this point?

CHAIR MOLINA: Okay. Go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: When you say the crosshatch area, that's kinda the squiggly kind of green area?

MR. JENCKS: Yeah. There's so...

COUNCILMEMBER ANDERSON: Where it says botanical preserves with interpretive trail? Like right here?

MR. JENCKS: That's it. Yeah, that's it. I'm looking at a detailed map, see? You don't have this map.

COUNCILMEMBER ANDERSON: Well, no. Unless you give it to me, I don't.

COUNCILMEMBER JOHNSON: (*chuckle*)

COUNCILMEMBER ANDERSON: But...

MR. JENCKS: (*Laughter*)

COUNCILMEMBER ANDERSON: (*Laughter*) It'd be nice if you gave us that information, Mr. Jencks.

MR. JENCKS: I...I...

COUNCILMEMBER ANDERSON: But nonetheless, it's the same area. And...and so my question is, the map underlying this says multi-family. So you're still gonna build multi-family in this area? Just preserving the native plants that happen to be there?

MR. JENCKS: No. Two things can't occupy the same space at the same time.

COUNCILMEMBER ANDERSON: Well, that's why I'm asking--

MR. JENCKS: Well, let...

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: --because it says multi-family.

MR. JENCKS: If I may...if I may continue, Mr. Chair? Thank you very much.

CHAIR MOLINA: Mr. Jencks, continue.

MR. JENCKS: The letter I provided to...to the Chair had two maps--a concept plan that showed the entire concept plan area, and a detailed exhibit at the end. I'm sorry if you don't have it. I will provide that to you immediately. But this map, as the Council Member just pointed out, is a specific area that's a conservation/preservation area. And, no. It...there is no development. It is purely for conservation and preservation. That area, as we've laid it out, is 18 acres. Now, the interesting thing about that is that it takes in the bulk...the bulk of all the GPS points that Mr. Altenberg identified as being native plants on his own GPS survey, which includes the awikiwiki, the wiliwili, and nehe. Now, there's other species in there as well.

The other increment that we'd like to propose, which is 23 acres, is a native plant management area which is areas that some of it...was proposed for development but would be taken out of development and used for native plant habitat as well as areas adjacent to fairways. This Committee talked about doing a target golf course. What we're proposing here implements the idea of a target golf course. It allows for us to generate and propagate and preserve native plant but...but still getting use out of it, separate from a detailed, defined conservation area, which is the 18 acres. So we have a total here, Mr. Chair, Members of the Committee, of 43 acres; 18 acres of which is detailed conservation/preservation, similar to what the Council Member proposed here, and then another--excuse me--23 acres, which is useable area but still maintained for the same purpose, native plant propagation and preservation. But more...it's more...it's...it's useable area we can...we can...we can...we can transit through. It's adjacent to golf course fairways. The same goal is applied but it's not as detailed and preserved as the 18-acre preservation area.

COUNCILMEMBER ANDERSON: Chair?

MR. JENCKS: In addition to that, Mr. Chair...

COUNCILMEMBER ANDERSON: Where's the 23 acres, Mr. Jencks?

MR. JENCKS: I'm sorry. The 23 acres on this map. . .*(inaudible)*. . .

CHAIR MOLINA: Hang on. Mr. Jencks, can you speak in the microphone, please? You know what? Can we...

MR. JENCKS: I'm sorry. The...23 acres, Ms....Ms. Anderson, is the area, the other areas that you see. We have the 18, which you identified in the multi-family. Then the 23 acres are the...other areas around the project in that area.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

COUNCILMEMBER ANDERSON: But, I mean, 23 acres where it says single-family...single-family?

MR. JENCKS: That's correct. It overlays . . .

COUNCILMEMBER ANDERSON: So that will not be single-family?

MR. JENCKS: That's correct. It'll be...it'll be preserved as native plant habitat.

COUNCILMEMBER ANDERSON: Then why is it at...isn't it outlined that way?

MR. JENCKS: Well...

COUNCILMEMBER ANDERSON: I mean...

MR. JENCKS: The whole point of this map was to show you how this would overlay on the concept plan. Okay?

COUNCILMEMBER ANDERSON: Yeah. Well...

MR. JENCKS: So you can understand the relationships. If it says single-family below the conservation area, it won't be single-family. It'd be conservation area. The primary use is a...it won't be developed.

COUNCILMEMBER ANDERSON: Do you have a map, Mr. Jencks, that more clearly defines what you're proposing here? Because what you're saying, I like what I'm hearing; but I don't see it on the map. And so...

MR. JENCKS: Well, I can give you a better graphic. I can provide one that would more clearly define these areas.

COUNCILMEMBER ANDERSON: 'Cause it's not defined at all here. The only thing that's defined is the botanical preserve.

MR. JENCKS: I can. What I can do is I can give you a map that clearly defines: a. the development areas; and b. the two different classes of preservation and conservation more clearly. I can do that. The idea with this map was to show you a concept that...that overlaps and incorporates the GPS coordinates we got from Mr. Altenberg, including the plans I just mentioned as well as...*as well as* some of the cultural sites that we were told we needed to preserve by the Cultural Resources Commission and State Historic Preservation Division. Okay?

CHAIR MOLINA: Okay.

MR. JENCKS: We didn't elect to preserve these. We were told these are the ones we want you to preserve.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay. Mr. Jencks, we'll await your...you getting a map to us.

MR. JENCKS: I'll do that right away.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: If you can get it to us, if not today, at our next session. Member Anderson?

COUNCILMEMBER ANDERSON: You know, here we are, how many months into this and finally Mr. Jencks is coming to the table. You know, the reason the issue didn't come up when it went in front of the...the Planning Commission is because all they had was a 1988 biological survey that was wholly inadequate. And we have doctors of PhD (scientists) telling us that over and over again. So, that is why this condition has come forward, Mr. Chairman. The...the survey that Mr. Jencks is referencing (the stewardship plan) it...it...it's not anywhere near what I'm asking for in this conservation easement. First of all, they don't even intend to do it until prior to Phase II. That's after it leaves our hands, Members. That's the whole point here, is we are the stewards; and if we don't call it out now, it ain't gonna happen. I guarantee it. It's gonna be spun away and there's nothing in this plan that specifically cites the areas that would be preserved.

There's no survey in here. You know, it's just a lot of, you know, good...good language as to the preserve...manager will...execute a program of regular control and eradication. Well, all...I mean all that is good but what is it they're gonna control? What is the site that's gonna be preserved? How are we gonna preserve it? Without a survey in this conceptual plan, it means nothing. That's why I was compelled to do this condition, Mr. Chairman. We've been waiting for months to get a real preservation plan that has been reviewed. There's nothing in here that shows that this has been reviewed by US Fish and...Wildlife, you know, the other agencies that are required to review this. I would like to see Mr. Jencks provide us with a firm map that not only gives us specifics. I mean, this map we have here he says there's 23 acres that's gonna be preserved; but on this map, it shows it's all single-family. Fifteen acres, eight acres, and then below the water treatment plant.

And I do have concerns when you have a golf course mixed within, you know, some...a native botanical preserve. You're gonna be adding pesticides and...and fertilizers that don't belong there. And, you know, I don't know how much construction is gonna go on to put in a road through the *a'a* flow, to put in golf course there. It's just all too iffy. And there's nothing in here that shows us the historic sites that are gonna be preserved.

And again, State Historic's last letter to Mr. Aki Sinoto on this project, Members, called out for--and this, their last review on this. And that's why I'm...I'm so concerned, Mr. Chairman, because they only go—and this is typical of consultant archaeologists—they only go so far and

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

**October 23, 2007**

---

then they stop. They stop short of getting a significant criteria and approval through OHA and...and State Historic before they get their entitlements. And you know why? Because then it's out of the public eye. But our application requires it. This should've been done, a done deal, with an approved plan, preservation/mitigation plan, through State Historic and OHA when we got the application. And, you know, I asked about this back in August. And Mr. Sinoto told me then, oh, we're almost done. We're almost ready to go. Still, nothing's been sent to State Historic. So, pardon me, for being suspicious. I think if you were, you know, fully intending to follow the letter of the law, it would've been done by now and there would be no question in anybody's mind whether or not Chapter 6E review has been finalized.

And, again, the last letter we got from State Historic, Mr. Chairman, was in January of 2002. And, again, this is a review letter on their survey. They haven't even got an approved survey done yet. The survey review letter says we want you to do some testing. You need to, prior to concurring that data recovery is necessary, we still recommending...we still recommend testing. We await the revision to draft two. Now, if Mr. Jencks or Mr. Aki Sinoto [*sic*] can show me any further legal review letters between this Applicant and State Historic, then I rest my case. But I talked to them last week. They have received nothing further. And, so therefore, this draft plan—well, I haven't got it in front of me but let's pretend this is it—it's not worth the paper it's written on, Mr. Chairman. It could change the day after he gets approval because it's not been reviewed by State Historic. It's not been reviewed and approved by OHA and we don't have it in front of us to say, oh, that's an approved, final preservation/mitigation plan that the developer can be held accountable to. They're waiting for us to approve this so they can do this all after the fact. Is that what we wanna do? I don't think so.

That's why this conservation easement is necessary. And, you know, I'm not going to beat a dead horse, Mr. Chairman. But if there's any other questions, you know, I passed out earlier to the Committee where the Council does have the legal authority to impose this condition to protect the historic sites. You know, this isn't good enough, Mr. Jencks. This is just, you know, saying okay, we're gonna preserve some of this. You're just taking the GPS points and overlaying it and that means, I guess, you're gonna move some of that multi-family somewhere else and make it denser and I'm all for that, I guess. But I don't...I wanna see a real preserve that the public can enjoy and that incorporates in its totality the historic sites so that we've got something here that isn't, you know—pardon my French—bastardized by, you know, man-made intervention. This is in its natural state. It's been there for hundreds of years. Let's respect it as it is and preserve it in place. And...and...and restore it and use it as an educational and interpretive area like our community plan directs us to do. Why destroy it? So somebody can, you know, make profit. Move your profit over and leave these hundred year, these several hundred year old trees and these ancient sites intact. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, the Chair is aware of the time. I know there's more questions on it.

VICE-CHAIR PONTANILLA: I got one question.

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

**October 23, 2007**

---

CHAIR MOLINA: The Chair's gonna make a recommendation. We do have a motion on the floor. The Chair has a preference to wait to see what Mr. Jencks can provide in terms of maps and additional clarification for his, I guess, counter proposal and we'll address it at our next session.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: And Members, I'd like you to save your questions for that moment. And we'll leave the motion on the floor and we'll address it when we come back from break. Ah, excuse me, when we come...when we meet again on this. At this point, the Chair would like to call for a recess and—

VICE-CHAIR PONTANILLA: Chair? Chair?

CHAIR MOLINA: --there's one other condition that I would like to address. Mr. Pontanilla before we...

VICE-CHAIR PONTANILLA: Yeah. Since we have Mr. Jencks here and we're talking about conserving some sites, the map that he provided us provide, you know, at least we got something that we can take a look at. I'm looking at a...a handout that was given back to us September 19<sup>th</sup>; and in there, he...they identified, like, ten conservation areas. And if that ten conservation areas can be imposed on this map here, clearly it will tell us the location of where we're gonna be preserving some cultural sites.

MR. JENCKS: Are you referring...?

CHAIR MOLINA: Mr. Jencks, can you could provide that?

MR. JENCKS: Are you referring...okay. Let me be real clear. Preservation--are you speaking of cultural preservation areas?

VICE-CHAIR PONTANILLA: Well, this is for native plants conservation.

MR. JENCKS: It's...I'm sorry?

VICE-CHAIR PONTANILLA: Yeah. You...you provided us this handout on September the 19<sup>th</sup> and in here you do note the native plant conservation plan.

MR. JENCKS: Yes.

VICE-CHAIR PONTANILLA: And you do show ten sites.

MR. JENCKS: Yeah.

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

**October 23, 2007**

---

VICE-CHAIR PONTANILLA: And I think the ten sites is...is basically what Member Anderson had already noted in regards to Dr. Altenberg's coordinates. It...it's very close. So if you can superimpose that on this map. You know, it clearly identify where these sites gonna be located.

MR. JENCKS: Be happy to—the letter that I provided the Chair included a map that showed all the GPS sites.

VICE-CHAIR PONTANILLA: Yeah. We don't have that.

MR. JENCKS: You don't have that? It's...it's an 8 1/2 by 11 and it color codes the different plants and the cultural sites. So I think once you have that, you'll see clearly. But I'll make sure that you have that map and it's clearly denoted how they correspond.

COUNCILMEMBER ANDERSON: Chair?

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you. Yes, Member Anderson.

COUNCILMEMBER ANDERSON: And...and you said that you provided that to the Chair on October 4<sup>th</sup>?

MR. JENCKS: October 4, 2007.

COUNCILMEMBER ANDERSON: Well, we don't have it, Mr. Chair. Do you have it?

CHAIR MOLINA: I have to look in my files. I have been swamped--

COUNCILMEMBER ANDERSON: I mean that should . . .

CHAIR MOLINA: --with a bunch of documents. I don't have staff.

COUNCILMEMBER ANDERSON: I mean shouldn't that have been transmitted to the Committee?

MR. JENCKS: Actually, you know what? I...I tell you what. I stand corrected. I delivered it to Council Services on the fourth.

COUNCILMEMBER ANDERSON: And so Council Services Staff...October 4<sup>th</sup>...Tammy's gonna check and see.

MR. JENCKS: Okay.

COUNCILMEMBER ANDERSON: And if not, could you leave a copy with us so we can make copies of it today, Mr. Jencks?

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

**October 23, 2007**

---

MR. JENCKS: I'll, yeah, certainly. I can leave this copy right here.

COUNCILMEMBER ANDERSON: And then the other thing I would like to ask you is, who did you speak with at OHA?

MR. JENCKS: I spoke with a Mr....Mr. Jerome Yasuhara.

CHAIR MOLINA: Yasuhara.

COUNCILMEMBER ANDERSON: Okay. Thank you.

MR. JENCKS: You're welcome.

CHAIR MOLINA: Okay. All right, Members. I'm gonna have to...I'll recess, and Member Johnson, we'll get...get to your question. Is it something, just a...is this a request?

COUNCILMEMBER JOHNSON: Yeah. I just, yeah, before the recess...

CHAIR MOLINA: Go ahead, then.

COUNCILMEMBER JOHNSON: Because we're gonna return to this at a later time, I just wanted to find out. Because the condition that's being proposed by Member Anderson also has not been transmitted to OHA, I...I would be real curious to know if this would be something that is acceptable to them. And, you know, I don't know if Member Anderson wants to communicate directly but I mean to me, I'd be real interested to know what their comments are because this is our version of the conservation plan so...

CHAIR MOLINA: Well, it is a...would be a public document so they, you know, they can comment. But, you know, when it comes time for a decision-making, they haven't commented on that.

COUNCILMEMBER JOHNSON: Yeah. No, I realize we're the final arbiters but—

CHAIR MOLINA: Yeah. Yeah.

COUNCILMEMBER JOHNSON: --you know...

COUNCILMEMBER ANDERSON: And I would be happy to do that, Mr. Chairman.

CHAIR MOLINA: Okay. So if you can get a response, if you'd like.

COUNCILMEMBER ANDERSON: Definitely. And the other thing I think that, you know, should've been done a long time ago is Dr. Altenberg's survey should've been sent to DLNR, US Fish and

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

**October 23, 2007**

---

Wildlife, you know. You know. If you have no comment on something because what you got had no information, that doesn't mean--

COUNCILMEMBER JOHNSON: There's no comment.

COUNCILMEMBER ANDERSON: --that, you know, you don't care about it. It means you didn't have enough information to know to care. And that's the way this application has been from day one. We've had to squeeze every drop of information out of them along the way. And, you know, I'm sorry but it says if applicable, identification of environmentally sensitive areas, habitat, botanical features, which include blah, blah, blah. Exceptional trees, if...applicable a baseline study and preservation/mitigation plan and comments from the Department of Land and Natural Resources, US Fish and Wildlife, and United States Corps of Engineers. So here we are months down the road and we finally have the information, and these folks haven't even had a chance to see it. So I will be happy to send to OHA my condition for their review as well as State Historic. I don't know that we'll get a—I'm sure OHA will respond immediately but State Historic, you might as well forget it. Although I was, you know, happy to get a phone call back from them last week telling me no further documentation has been presented to them since January '02. The survey is not complete, Mr. Chairman, which means the significance determination has not been done. A preservation/mitigation plan has not been done. Nothing has been done as far as State Historic review to the...to the extent that is required by our application.

CHAIR MOLINA: Okay. Thank you, Member Anderson. This meeting is in recess till 3:15. ...*(gavel)*...

**RECESS: 3:05 p.m.**

**RECONVENE: 3:25 p.m.**

CHAIR MOLINA: ...*(gavel)*... The recessed Land Use Committee meeting of October 18, 2007 is now back in session. It is 3:25, Tuesday, October 23<sup>rd</sup>. Members, we will spend the last hour today on condition...proposed Condition No. 3.

COUNCILMEMBER VICTORINO: Page?

CHAIR MOLINA: Page 3 of your matrix. The Chair has presented a recommendation on that as far as language, if you'd look towards the far right. I guess I'll go ahead and read it. "As represented, Honua'ula Partners, LLC, its successors and permitted assigns, shall make a voluntary contribution to the County for traffic improvements in an amount equal to \$5,000 per unit. The contribution shall be paid to the County prior to issuance of a building permit. Upon adoption of a traffic impact fee ordinance, Honua'ula Partners, LLC, its successors and permitted assigns, shall comply with the ordinance in lieu of this voluntary contribution." And if you'll take a look at the note below it, it says "deletes references to crediting contribution against future requirements". And it also "incorporates timing requirement for payment prior to issuance of

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

**October 23, 2007**

---

building permit. Provides for handling should traffic impact fee ordinance be adopted” and changes the entity.

And we also had a proposed revision from Member Johnson as well. So at this point, before I recognize Member Johnson, any comments from the Planning Department?

MS. SUYAMA: No comment.

CHAIR MOLINA: Okay. Thank you. Member Johnson, you have the floor.

COUNCILMEMBER JOHNSON: Yes. I just wanted to understand--you know, because I wasn't able to attend yesterday's meeting--the contribution of \$5,000 per unit. Now, is that going to be...it's prior to the issuance of a building permit. So I just wanna understand that if—the way I'm reading this—if the traffic impact fee ordinance is put into place at the time that they go forward for their building permits, then what they're saying is they'll comply with the ordinance rather than make the voluntary contribution. Is that the way I'm not reading it?

CHAIR MOLINA: Yeah, that's my assumption because we don't know exactly what traffic impact fees will be...if an...if and when an ordinance is adopted.

COUNCILMEMBER JOHNSON: Right.

CHAIR MOLINA: It could be more than what the developer is offering; it could be less. So that is basically why I...I, you know, recommended having that language put in this condition. I'll ask Planning Department to further elaborate with regards to a potential traffic impact fee ordinance as it relates to the contribution from the developer. Deputy Director Suyama?

MS. SUYAMA: Normally what happens, until the enactment of the traffic impact fee ordinance, an ordinance to that effect, there are no collection of monies. And any development that comes in prior to the enactment, basically, gets off free without any, you know, without any contribution. In this case, you know, because there wasn't any traffic impact fee and it's part of proposing mitigation, the Applicant came forward and said we'll contribute \$5,000 per unit, you know, with the understanding that at that time they had asked originally to be credited, you know, for whatever monies they gave the County would be credited to any future impact fees that were generated by the County. But what we're saying is that well, if you voluntary...volunteering something, it's given free without any, you know, consideration that you're gonna get something back in return for it. So up to the time the County can actually adopt an ordinance that will...that, you know, specify how much a person or a development has to contribute and...how you're gonna do the contribution, which is usually linked to the building permit, we're saying that well, since they're volunteering the \$5,000, the County will accept the \$5,000 volunteer...volunteered contribution; but as soon as an impact fee is created, you follow the impact fee.

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

**October 23, 2007**

---

COUNCILMEMBER JOHNSON: Yeah. And...and that was the whole purpose. I think, that Colleen just outlined basically my concern, too, is that--what I had originally stated was that if something is voluntary, if it's a contribution, that means they get no credit for it. And that my thought was whatever contribution they're making is voluntary and it's non-refundable and it's irrespective of any other improvements that are going to be required in order for the project to move forward because there are things, there's triggers within our community plan or certain concurrency requirements in the Kihei-Makena Community Plan that actually certain infrastructure should be in place. And some of those things, I think Mr. Jencks already mentioned, which are roadway improvements. But that to me is the main reason why I was trying to insure that this not be done in substitution for the traffic improvements, or it not be credited towards the traffic impact fees once the ordinance was developed because my understanding was originally that upon approval of, let's say, if this goes forward and gets approved, once the ordinance is filed, that they would pay the money. That...that was kind of like an upfront thing. That was my understanding. If that's not gonna take place now, I...I guess, you know, why are we even talking about \$5,000 per unit? You understand what I'm saying? So, if you could explain when this money was supposed to have been paid? Or if the developer would clarify when it was to have been paid?

CHAIR MOLINA: Okay. What I'll do, I'll call up Mr. Jencks at this point and then we'll go to the Planning Department. And this is a...you're...you're volunteering \$5,000 right off the bat per unit because there's no traffic impact fee ordinance that gives you a directive as to how much. Can you go ahead and respond to Member Johnson's inquiry?

MR. JENCKS: Be happy to, Mr. Chair. This proposal came up as a result of analyses that was done by the project team under Mayor Apana. We did...I was put in charge of a traffic...a traffic assessment committee--for lack of a better description--and, for South Maui, and we did a lot of work on the value of total improvements and the number of dwelling units that would be built and we came up with a number of \$5,000 per unit. It would be paid as a traffic impact fee. As you...and if you read the first column, which is the Maui Planning Commission recommendation, it says...it says "shall be paid to the County of Maui in an amount equal to \$5,000 per unit, which shall be credited against all future pro rata share of traffic requirements for the project". Okay?

That is now in the current condition. Between the Maui Planning Commission and today, the Council Planning Committee has been discussing it and the Planning Department did a lot of infrastructure analyses and came up with a bill for traffic impact fees. And it was...it was...it was our proposal that it would...this fee would mimic that proposed bill which is you pay. In some cases, you pay at issuance of building permit or you pay, for example, when you get a filed subdivision approval, which is just lots. Okay? But you pay on a per-unit basis. So if I go out and pull ten building permits, I pay \$5,000 per unit for those building permits. And I think that's pretty much what you're...the ordinance that you have in Committee says, except the fact that this fee at 5,000 per unit--which we volunteered and are sticking with--is higher than the fee that you have in your proposed ordinance by a measure.

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

**October 23, 2007**

---

COUNCILMEMBER JOHNSON: Yeah. So...so if I understand you correctly, what you're...in the original proposal, you were saying, look, if the fee that is, you know, contributed by you, or the monies that are contributed by you are greater than, I guess, whatever is adopted once we finally adopt the traffic impact fee ordinance, that you would just receive some kind of a credit. Is that correct? In the original proposal?

MR. JENCKS: I don't recall that. I think our position was—because this goes back nearly seven years. We would pay \$5,000 per unit as a traffic impact fee, period.

COUNCILMEMBER JOHNSON: Okay. And...and it would again be tied to what? It would be...it would not be...would it be paid upon enactment of the ordinance? Would it be paid when you pulled the building permit?

MR. JENCKS: Like I just described. When you pull the building permit--like the...like the ordinance you're contemplating now, talks about--when you pay...when you pull the building permit, you pay the fee. When you get a subdivision approval, you pay the fee for the number of lots on that subdivision then.

COUNCILMEMBER JOHNSON: Okay. Thank you, Mr. Jencks...*(end of tape, Change to 5A)*...Mr. Chair, I think that, you know, looking at this and looking at, you know--what do they say? A bird in the hand is worth two in the bush. I basically, am not sure when we're going to be able to enact our Traffic Impact Fee ordinance because there have been all of these. Since 1988, we haven't done it. So my concern is, of course, getting something rather than nothing. The reference that they make here, you know, I guess if I were to look at language that's similar to what I had proposed where, irrespective of all other transportation improvements or traffic improvements which involve roadways and other things, that I think I wanna make sure that we understand very clearly that this amount of money if it's a voluntary contribution and, let's say we have not enacted the traffic impact fee ordinance, that it's not gonna count against that because that to me is a separate issue. But what I would like to do is, I think in other language, in other conditions that we place and it might've even been in Kapalua Mauka where we inserted language that stated they would pay a certain amount and if the traffic impact fee ordinance was enacted in the interim, they would pay the greater of whatever the contribution was. So, whichever...I think we inserted language of "whichever is greater" because to me that way at least we know what we're gonna get now. If the fee comes in and it's \$3,500, it'll...it'll certainly help us a great deal more to get a greater contribution but I'd like language inserted then that basically just stipulates "whichever is greater".

CHAIR MOLINA: Either or type of...type of deal?

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: Okay.

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

**October 23, 2007**

---

COUNCILMEMBER JOHNSON: So that, you know, when they pay this, should the ordinance not be in effect, I would still like them to stipulate that they're agreeing to this amount and then upon enactment of the ordinance, if the fee is less, they'll still pay the 5,000 minimum but if the fee is greater than that, yes, they could be credited with the \$5,000 contribution that they made or the \$5,000 per unit. But I also see Ms. Suyama, too, you know, when...when you look at contribution, I don't wanna commingle the two. You know, in other words that they...they will agree to pay that stipulated amount. So if you don't want to call it a contribution, then they agree to pay a minimum of \$5,000 per unit or the traffic impact fee amount, whichever is greater. And that would be language that I would prefer to see inserted in here. Thank you, Mr. Chair.

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

VICE-CHAIR PONTANILLA: Thank you. When I was on the Planning Commission, basically what Member Anderson has just told us...

CHAIR MOLINA: Johnson.

VICE-CHAIR PONTANILLA: Oh, I'm sorry. Johnson told us, yeah, we would impose a traffic impact fee which the developer, I guess, volunteer. And the...the words, you know, additional words inserted was that once the traffic impact fee for a given area was approved, the developer would pay the greater of. The question I have for, I don't...maybe Planning Department is that, I...I don't know how many of these projects were completed and how much money we've collected. And as far as the collection of the money, where did it go?

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: If you got an answer for that?

CHAIR MOLINA: Director?

MS. SUYAMA: I really don't have an answer. I'm not sure how many projects had. If you're talking about at the Commission level, when they dealt with special management area permits, because I think that's the only time that we had put anything about a voluntary contribution. And normally, the voluntary contribution is collected at the time of the building permit being issued because you need a time to start. And it ran only until the point where if...if there was a traffic impact fee adopted, then they would pay. There were other conditions that were put by the Commission just referenced that if at the time of the building permit, a traffic impact fee ordinance was adopted, then at that point, they would pay whatever the impact fee was. So there was a variety of conditions that were placed. As to whether anyone actually collected monies, we don't usually get involved with the collection of monies. It would normally be associated with someone coming in with a building permit at the Public Works Department.

VICE-CHAIR PONTANILLA: Chairman, maybe under your signature, what I'd like to find out is that, in regards to traffic impact fees that has been volunteered, you know, how do we collect the

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

**October 23, 2007**

---

money if it does go for road improvements for the community plan area, or used for total Maui County (Countywide)?

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Staff, did you make a note of that request from Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: So noted, Mr. Pontanilla. Members, questions on Condition 3? Member Johnson, any type of language you would like to propose to incorporate in this condition?

COUNCILMEMBER JOHNSON: Basically, what I'd...what I'd like to propose is shall make a—and I wouldn't say voluntary—just say shall make a contribution towards...to the County for traffic improvements in an amount equal to \$5,000 per unit. Contribution shall be paid to the County prior to issuance of a building permit. And then what I would say is on the last sentence, should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the fee that is applicable shall be the greater of the two. Something along those lines and if Ms. Suyama has better language because she's put in this condition before, I would certainly welcome that. But essentially what it would be doing is it would say "whichever is greater" because we don't know when we're going to enact the fee. But if the fee ended up being \$7,000, then they should pay that. If it's \$3,000 and they're willing to pay 5, then at least we know ahead of time what the minimum is that we're gonna be collecting. And then, but I would also say that, you know, such traffic impact monies shall not be a substitution for any other traffic infrastructure requirements related to the Change in Zoning. I would like that language in there only because I wanna make it clear, which I think earlier Mr. Hopper said just be real sure what you're tying one to the other. Like, this is not instead of them making those improvements because they've already largely agreed with the Department of Transportation that there are certain things that they have to have in place to be concurrent, I guess, with the community plan.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Let me ask Staff. Are you able to repeat back Member Johnson's...well, let me ask Staff first. would it be cleaner to do that as a...as an amendment? Or if there are no objections, could we just incorporate that as a friendly amendment into the existing condition?

VICE-CHAIR PONTANILLA: Friendly amendment.

COUNCILMEMBER JOHNSON: Friendly amendment.

CHAIR MOLINA: Members, you're okay with having a friendly amendment?

COUNCILMEMBER MEDEIROS: Yeah.

COUNCIL MEMBERS: No objections.

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

**October 23, 2007**

---

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: GB, RH, DM).

CHAIR MOLINA: Okay. Fine. Okay. Staff, could you go ahead and read back Member Johnson's proposal? Do you need a minute to...

MS. NAKATA: If I understood Member Johnson correctly, the first two sentences in the rightmost column remain the same. And it's the third sentence...

COUNCILMEMBER JOHNSON: Except "voluntary" would be taken out, Carla.

MS. NAKATA: Okay. And then the third sentence would be revised. I believe she said something along the lines of "should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable fee shall be the greater of the two".

COUNCILMEMBER JOHNSON: Uh-huh. Yes.

VICE-CHAIR PONTANILLA: Right on.

COUNCILMEMBER JOHNSON: And then adding in that final clarification--"such traffic impact fee shall not be a substitution for any other traffic infrastructure requirements related to the Change in Zoning"--just to be clear. I don't think they're intending for this to be a substitution but I just want to be clear about it.

CHAIR MOLINA: Okay, Staff in...? She's quick. I'll have Staff repeat that back just so for the Members.

MS. NAKATA: Okay. So the entire condition would read, as represented, "Honua'ula Partners, LLC, its successors and permitted assigns shall make a"—and take out the word voluntary—"contribution to the County for traffic improvements in an amount equal to \$5,000 per unit. The contribution shall be paid to the County prior to issuance of the building permit. Should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable fee shall be the greater of the two. Such traffic impact fees shall not be a substitution for any other traffic infrastructure requirements related to the Change in Zoning."

CHAIR MOLINA: Okay. There you have it, Members. All right. So, Members, do I have consensus on incorporating the language into Condition 3?

COUNCIL MEMBERS: Consensus.

CHAIR MOLINA: Consensus? All right. So noted, Members. Any other considerations for Condition 3 before the Chair moves it on? Seeing none, Condition 3 has been moved on. Okay, very good, Members. Now that took a lot quicker than I thought it would.

COUNCILMEMBER ANDERSON: Mr. Chair?

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

**October 23, 2007**

---

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: I see that we got from Staff a copy of the . . .

COUNCILMEMBER JOHNSON: Oh, right.

COUNCILMEMBER ANDERSON: Members, in the binder, dated October 19<sup>th</sup>, the DOT, the bill for an act relating to education for the school.

CHAIR MOLINA: The...the proposal from the Applicant for the educational fees?

COUNCILMEMBER ANDERSON: Yeah. But this is the actual bill from the Legislature enacting impact fees. And I'm wondering if (*chuckle*) we need somebody to do this for us, maybe Corp. Counsel, with his legal brain might be interested in figuring this out. Because, you know, when Mr. Jencks worked out his arrangement with DOE, it was quite some time ago and prior to our having the Workforce Housing ordinance in place. So I know the total number of units is gonna still be 1,400 so it probably won't change much except that they may be anticipating more students now. And I would just like to have some comparison done before we get too far down the road because they're actually--in this impact, they're asking for not only land per student, but construction cost per student.

CHAIR MOLINA: Okay. Mr. Hopper, are you available to comment? Members, it's in the back.

COUNCILMEMBER ANDERSON: And . . .

CHAIR MOLINA: The last document dated October 19<sup>th</sup> in binder 7, I believe.

COUNCILMEMBER ANDERSON: Yeah. And if I just might finish, Mr. Chairman, real quick?

CHAIR MOLINA: Go ahead.

COUNCILMEMBER ANDERSON: You know, it breaks down actually what the cost factors are and how to be able to determine the student generation rate for each school type. And it, you know, calls out how to go about doing that. And I'm just thinking that it might be wise for us to look at this. Let's see, they don't...they have Wailuku, Lahaina, Makawao. They don't have Kihei but I guess we would use Wailuku because they use it by, oh, districts (school districts). And Wailuku, I think, is still consider...or Kihei is still considered in the Wailuku district. So, and I just think that, you know, since we have this and it's now law, and it came into law prior to the agreement that Mr. Jencks worked out with DOE, I think we should do some checking on this to see if, you know, we're getting value for value in today's dollars and what the law calls out.

CHAIR MOLINA: Mr. Hopper?

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

**October 23, 2007**

---

MR. HOPPER: I don't really have a comment at this time. I'd like to review the binder and the information you're, you're talking about.

COUNCILMEMBER ANDERSON: Sure.

MR. HOPPER: I just haven't seen it yet. Could you restate sort of the main points that you want us to—

COUNCILMEMBER ANDERSON: Sure, Mr. Hopper.

MR. HOPPER: --to look at?

COUNCILMEMBER ANDERSON: Yeah. It's just that someone's gotta figure this out for us, Mr. Chair, between now and whenever next. And this legislation, Mr. Hopper, you know, puts in a methodology and a formula for calculating the amount of land per student; the in-lieu fee if you don't want to do land per student, you can do an in-lieu fee; how to figure out that in-lieu fee; and then there's also a construction cost component of the school impact fees. And they spell out specifically how it's to be calculated. And--

VICE-CHAIR PONTANILLA: Wow.

COUNCILMEMBER ANDERSON: --it doesn't look like it's a difficult thing to do because they give you all the information here. It's just would be a little time-consuming to have to sit down and figure it out. And I'm just hoping that somebody else can do it so I don't have to do it.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Yes, Staff.

MS. NAKATA: Staff would just note that the Committee Chair did send a letter to Heidi Meeker at the Department of Education yesterday asking for responses to three questions. One had to do with Member Johnson's question on the limitations on student-to-teacher ratios. The second had to do with if...a question as to whether if the Committee wanted the educational contributions to be used towards a new high school in South Maui, would the DOE support that intent; and how would such earmarking of the funds be memorialized. And the third had to do with the school impact fee legislation you're referring to, asking the DOE what is the status of its designation of school impact districts and the impact fees that would be required. We're hoping to receive a response later this week.

CHAIR MOLINA: Yeah. Hopefully we can get a timely one. We know how the State is when it comes to respond...responding. And I believe this was based on the discussions we had on the educational fees on October 18<sup>th</sup> so.

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: It just seems like since the information is all here, that at least we could do a...

CHAIR MOLINA: Maybe answer some of your questions, Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, we could just do, you know, a thumbnail sketch and see if we're even close and if...if we are, then great. But, you know, I don't recall. It was just a per-student amount. And I'm not so certain that it's gonna hold up because now they're talking about, you know, land per student and...construction cost per student. So I don't know, maybe even Mr. Jencks has looked at this but...it does say that "each designated school impact district shall be a separate benefit district and fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected". But that doesn't really, you know, narrow it down enough for Kihei High School.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: Members, any other discussion points? I had planned on...well I had assumed that we were gonna spend quite a bit of time on Condition 3 and I had Mr. Matsui here to discuss Condition 11 in which we had not reached consensus. I wanted to get a little bit more discussion with him on that. At this point, these are the conditions that have no consensus, Condition 2, related to traffic improvements; Condition 4, infrastructure improvements; Condition 11, related to the proposed Little League field; 13, the cultural plan; and 14, golf course water. And, of course, we have Member Anderson's proposed condition as well for our next recessed meeting day.

So what I'd like you to do is take a look at your calendars. The Chair is going to ask you to consider this Thursday, just a morning meeting, a very short meeting 'cause I do realize, I guess—Staff, can you...are you, do you have the information available, who would be available for Thursday? I believe it was just bare quorum and this would be for a very short meeting.

MS. NAKATA: Yes, Mr. Chair. We have the Committee Chair, Member Johnson, Member Victorino was available from 9 to 10 and 1 to 5; Member Medeiros from 9 to 5; and Member Pontanilla from 9 to 11. So...

CHAIR MOLINA: So we wouldn't have quorum for a full day.

COUNCILMEMBER JOHNSON: Oh, boy.

CHAIR MOLINA: All right. So, anyway, Members, I'd like you to mull over that. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I don't know what everybody has on their schedule on Friday, you know, if that would be better. But I'm also over here on that day as well.

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

**October 23, 2007**

---

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: So, I, you know, I'm...I'm open to, you know, meeting. I think it's difficult when we have bare quorum--

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: --because then if we don't all agree on something, it--

CHAIR MOLINA: Yeah. And . . .

COUNCILMEMBER JOHNSON: --just doesn't move forward.

CHAIR MOLINA: And it's rough during a non-committee week, you know. As I mentioned yesterday, we all have other commitments to our constituents so we just try to go with the days where we can get the most Members if we can. So, anyway, Members, you need a couple of minutes to mull over Thursday? Chair is recommending a 9 a.m. short meeting on Thursday.

COUNCILMEMBER ANDERSON: Like 9 to 10?

CHAIR MOLINA: Nine to 10, 9 to 11 if...

MS. NAKATA: Currently . . .

CHAIR MOLINA: But if Members do have to go out, at least the minimum of an hour to at least discuss your--Chair's intent was to discuss the rest of your proposal, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MOLINA: I wanna . . .

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah, I'll be available for a Thursday morning meeting.

CHAIR MOLINA: Okay, good. So, I...the main thing, I just want to get quorum for Thursday. And then, obviously, the Chair will discuss a proposed recessed date after Thursday as well. So, we'll go with that. So, Members, if there's...Member Pontanilla, you look like you have something to say. I know you don't have your hand up but you have that look on your face.

VICE-CHAIR PONTANILLA: Yeah.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

CHAIR MOLINA: You have the floor.

VICE-CHAIR PONTANILLA: When we do reconvene on Thursday, if we could take up the most, or the least controversial item—and to me, probably parks—if we can do parks in the morning.

CHAIR MOLINA: Squeeze in the Little League, that Condition 11? Okay. Staff, make note--see if Mr. Matsui is available. Again, it depends on how long we will have for Member Anderson's condition and how long we can maintain quorum as well 'cause I know some Members have to leave. So we'll put that...we'll put Mr. Matsui on the list then. See how much we can get in.

MS. NAKATA: Currently, we just have quorum from 9 to 10.

CHAIR MOLINA: Okay. Well, let's see, let's have Mr. Matsui available, be on standby. So we'll look at Condition 11 and Member Anderson's proposed condition for the conservation easement. Member Johnson?

COUNCILMEMBER JOHNSON: Mr. Chair, rather than just meeting for one hour, you know, which, you know, we may not even make that much progress. Could Members just check their calendars and see their availability on Friday?

CHAIR MOLINA: All right.

COUNCILMEMBER JOHNSON: You know, possibly, or you know, early next week?

CHAIR MOLINA: Okay. I'll . . .

COUNCILMEMBER JOHNSON: Whichever because I just, you know, I just hate (*chuckle*) I mean. I'm sure, you know, other people don't mind; but, I mean, Mr. Medeiros drives in all the way from Hana. I come in from Lahaina so, it's kinda rough.

CHAIR MOLINA: All right. Tell you what, Members, let's take a five-minute recess. Meeting in recess until 4 p.m. . . .(*gavel*). . .

**RECESS: 3:55 p.m.**

**RECONVENE: 4:05 p.m.**

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Five minutes after 4, October 23<sup>rd</sup>. Members, thank you for that recess. I believe everybody had an opportunity to check their calendars and there was a request for considering Friday, October—

COUNCILMEMBER JOHNSON: But nobody could make it.

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

CHAIR MOLINA: --twenty...is that 26<sup>th</sup>—as a recessed day instead of Thursday, October 25<sup>th</sup>. What is the pleasure of the body?

COUNCILMEMBER JOHNSON: Not . . .

CHAIR MOLINA: The Chair...

COUNCILMEMBER JOHNSON: Can't make it.

CHAIR MOLINA: Okay. My understanding is that...

COUNCILMEMBER VICTORINO: I cannot make it, Mr. Chair. I won't...

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: I'll be unavailable the whole day.

CHAIR MOLINA: Mr. Victorino. Mr. Pontanilla, yourself, for Friday?

VICE-CHAIR PONTANILLA: I do have HSAC meeting.

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

COUNCILMEMBER MEDEIROS: Yeah. I have some appointments already made.

CHAIR MOLINA: Okay. And Member Johnson, I know.

COUNCILMEMBER JOHNSON: I'm the only one I guess. (*chuckle*)

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: There goes quorum.

CHAIR MOLINA: Well, that's all right. It's...it's good that we had the discussion anyway. So, we will...take...continue the meeting on Thursday, October 9<sup>th</sup>, right back here in the Chambers and we will look at—

MS. NAKATA: October 25<sup>th</sup>.

CHAIR MOLINA: October 25<sup>th</sup>, excuse me. October 25<sup>th</sup>, and we will look at Condition 11 and continue on Member Anderson's proposed condition. That should leave us enough time. I know we will lose quorum in...within two hours that day, so time will be of the essence to get those two matters addressed. Member Anderson?

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

**October 23, 2007**

---

COUNCILMEMBER ANDERSON: Thank you, Chair. I just wanted to let you know that I do have some other conditions, but manini conditions--

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --that wouldn't probably take a whole lot of time, but I just want you to know I do have some pending.

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

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: If Ms. Anderson has conditions that could be shared with us so that we don't have to wait for long explanations and, I mean, I'd be happy to read them so that when we come in, we understand where we want to go with these conditions. I don't know if that's possible; but if it is, I'd appreciate it because to me it makes it a little bit easier if I've got it already. I know where we want to go.

CHAIR MOLINA: So it's sort of having a head start before the meeting?

COUNCILMEMBER VICTORINO: Especially if time is such an essence. I mean, I'm gonna be here just little under hour and I've gotta run. So, you know, I don't wanna waste a lot of time trying to read something and if it's as manini as she's saying or as simple as she's saying, hey. I'll be willing to read it up before I come on Thursday.

CHAIR MOLINA: Okay. Of course, this does not...this does not prevent any Member from talking to Member Anderson as well. But...that...tell you what, Members, we do have some time left from the Chair had told you that 4:30 would be the time we would be losing quorum. So we do have a few minutes. So what we'll do is I'll just have Member Anderson read the conditions and we'll refrain from Q & A until our next session, okay? So Member Anderson, roughly how many conditions do you have to propose?

COUNCILMEMBER ANDERSON: Well, you know, they're kind of...

CHAIR MOLINA: Ten? Twenty? Do you know?

COUNCILMEMBER ANDERSON: *(Laughter)*

COUNCILMEMBER VICTORINO: There goes "manini".

COUNCILMEMBER ANDERSON: They're all kind of kapakahi here and...and I—

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

**October 23, 2007**

---

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --I will try to make them a little bit more readable. But I think that we need to consider a condition to, you know, all of the information that we've received from the Applicant and, including all of the...the traffic impacts have been timed to a 100 units per year. So I think we need to condition the build out to 100 units per year so that it, you know, is in concert with the anticipated impacts and their mitigation measures.

Another thing I think that we need to consider is bonding the project because of all the...the huge amounts of infrastructure improvements and that allows us, Members, should the project not, you know, for some reason get off the ground if it gets approved. Who knows what happens down the road? In the County Code, it allows the Council to bond the project and if the conditions are not implemented or the improvements rather, are not implemented in a timely manner as required by the unilateral agreements that will run with the land; and if it's bonded, then the County can then use that bond money to make those...mitigation measures happen as required. So that was something I was looking at.

The other thing I'm...I'm thinking about...there...there was a requirement originally that ran with the land that talked about—I can grab that really quick—that I think was improbably inadvertently taken out when you folks, in January, adopted the...revised...was it community plan or Change in Zoning?

MS. NAKATA: The Project District ordinance.

COUNCILMEMBER ANDERSON: Sorry?

MS. NAKATA: The Project District ordinance.

COUNCILMEMBER ANDERSON: It was the Project District ordinance. Yeah. There is a condition in the Project District ordinance that currently runs with the land that I would like to see us re-institute. And it talks about native—oh, I don't have it right in front of me—but it talks about access for native Hawaiian gathering rights. And, you know, this was the condition that was imposed many, many years ago by our previous Council. And in the new Project District ordinance that was developed by the developer and you guys adopted, you...in adopting that Project District ordinance, you rescinded the...previous one and took that condition out. So I'd like to see that condition put back in and I'll...and I'll have that ready for you. I don't have it right now.

Then there is a condition that I would like to see. And these conditions basically, the rest of these conditions, really have to do with compliance with the application requirements. I think we need to have a sewage disposal analysis because they're doing a private sewage treatment plant. And it should be reviewed by the Department of Health and DLNR as well as our Public Works and Department of Water Supply. That should've been done prior to...it should have

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

**October 23, 2007**

---

been included in their application. That's called out as one of the application requirements. So I'd like to see that done and have that done prior to Phase II approval.

And I'd also like to see, again this was a requirement in the application, Mr. Chairman, that all topographical and drainage patterns that currently exist on the subject parcel and any proposed alterations to those patterns prior to any land alterations, which I guess would be prior—as Ms. Suyama said—prior to Phase II approval. 'Cause I am concerned about drainage and in...in as much as—and hopefully, you know, this project will improve drainage. But I'm really concerned because we don't have adequate drainage in South Kihei. We're years behind having our master drainage plan implemented. Oh, here it is. "Provide identification of traditional mountain access trails and additional trails which may be required for public access to the mountains and a preservation/mitigation plan, which has been reviewed by DLNR and OHA". That was also a requirement of the application and was never addressed. And it was a condition in the district project district zoning that currently runs with the land. So those are kind...those are the conditions. I'm not gonna say there's not gonna be any other, but that's pretty much it.

Oh, here it is. I'm sorry. Here...here's...here's what was taken out, Members, in the proposed project district zoning. And this still runs with the land. "Traditional native Hawaiian beach and mountain access trails across the property shall be provided and additional access trails may be required as determined by the Council". So, that's been totally overlooked and I know I...it also says...existing native Hawaiian species shall be retained. That's currently, you know, a condition on the land and that supports the conservation request or easement that I'm requesting. So I...I just think we have to be very careful before we override what...(end of tape, Change to 5B)...for a reason. And, you know, I did ask Mr. Jencks some time ago at one of our meetings, if he could provide us some kind of map showing mountain access trails. There's currently a jeep trail across his property. It's been there, you know. It's a traditional access (mountain access trail) and I wanna see that preserved. State Constitution, current zoning on the property calls for it, as well as our Change-in-Zoning application. And I still haven't seen anything from him on that. So, thank you, Chair, for the time. Those were just some of the issues that I still have pending.

CHAIR MOLINA: Okay. Thank you, Member Anderson. All righty, Members, so those are some of the conditions that Member Anderson is looking ahead at proposing for this Committee's consideration as it relates to this application.

So we shall end today and we will recess back here in the Chambers, Thursday morning, October 25<sup>th</sup>, 9 a.m. Meeting in recess. . . .(gavel). . .

LAND USE COMMITTEE MINUTES  
Council of the County of Maui

October 23, 2007

---

**RECESS:** 4:15 p.m.

APPROVED:



---

MICHAEL J. MOLINA, Chair  
Land Use Committee

lu:min:071023r

Transcribed by: Reinette Kutz

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

**October 23, 2007**

---

CERTIFICATE

I, Reinette Kutz, 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 day 15th of November 2007, in Wailuku, Hawaii.

  
Reinette L. Kutz