

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

October 25, 2007

Council Chamber

RECONVENE: 9:04 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member (Leave 10:10 a.m.)
Councilmember Gladys C. Baisa, Member (Arrive 9:05 a.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member (Leave 9:40 a.m.)

EXCUSED: Councilmember G. Riki Hokama, Member

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

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation,
Planner, Department of Planning
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Charles Jencks, Owner's Representative, Honua'ula Partners, LLC
Steven J. Goodfellow, Goodfellow Bros., Inc.
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
B. Martin Luna, Esq., Carlsmith Ball, LLC (Applicant's attorney)
Joyclynn Costa
Additional attendees (5)

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

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

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. It is Thursday, October 24th. . .and, 25th--excuse me . . .(*laughter*). . . I'm a day behind--October 25th, four minutes after the hour of 9 o'clock. Well, I got that one right. Good morning, Members. For the record, in attendance, we have Members Mateo, Anderson, Johnson, Medeiros, Pontanilla, Victorino, and Molina. Excused are Members Baisa and Hokama. This morning, Members, we are, we will be discussing just two conditions or two proposals and, because we will be losing quorum sometime before, maybe on or about 11:00 a.m. So we will need to work as efficiently as we can today. Before we proceed, we have from Staff, Legislative Analyst, Carla Nakata; Committee Secretary, Tammy Frias; and from the Corporation Counsel's office, James Giroux; and Deputy Planning Director, Colleen Suyama. Members, we're gonna turn it over to Staff to open up. And we have a procedure issue with regards to Members Anderson's proposal, as well as the other consideration that the Chair wanted to take up this morning, which is Condition 11. Staff, can you explain what we need to consider this morning procedurally?

MS. NAKATA: At the last session, the Committee left pending a motion to amend for the Conservation Easement condition. And if the Committee would like to consider a, a possible vote to amend on another condition, it's probably best that that motion be withdrawn for the time being.

CHAIR MOLINA: Okay.

. . . So, Member Anderson, I guess the explanation from Staff procedurally, they're *suggesting* that the motion be withdrawn and then proposed later this morning again. . .so if, in order for us to possibly take action on Condition 11. So that's the explanation from Staff. Um--

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Why is my motion being pre-empted?

CHAIR MOLINA: That is why I want Staff to explain. So, Ms. Nakata, can you give further detail? Why is it being pre-empted?

MS. NAKATA: Well, if the Committee decides to consider another condition, currently, we normally don't have two subsidiary motions pending at the same time. So, it's just if we don't go immediately to the Conservation Easement condition, but consider another condition first.

COUNCILMEMBER ANDERSON: I, I understand that Mr. Chairman, but, you know, we had the motion on the floor and so to not continue on with that motion. . .is pre-empting it with another condition. So, I'm just wondering why we don't continue with it and finish, you know. You gave me the floor to make the motion, I made the motion.

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CHAIR MOLINA: The Chair is equally confused about it as well. I had a lot of questions about it. So, if it's a decision of the body that the motion be withdrawn, so be it. Otherwise, we can still continue. I don't think--

COUNCILMEMBER ANDERSON: Because--

CHAIR MOLINA: So let, let--

COUNCILMEMBER ANDERSON: Mr. Chair, I, I, I can only be here for an hour this morning.

CHAIR MOLINA: Okay. Maybe what we'll do Members, we'll just go ahead and address--the Chair had, initially had hoped to get Parks Department here this morning to address Condition 11. But I guess Mr. Matsui will be late. So we'll just maybe go ahead and start with Member Anderson's condition. . .at this point, or proposal for incorporating language into Condition No. 9. So, maybe it might be better we just go ahead and take care of that condition first, and then if the, whatever action is taken, then we can move on to Condition 11. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. And I would prefer to do that because I know that Member Anderson has been waiting quite a long while, and I think it's really important that we address this right now--whether we're gonna support it or not. Thank you.

CHAIR MOLINA: Okay. All right, Members, the motion is on the floor as you, those of you who were here on Tuesday, Member Anderson is incorporating additional language into Condition 9 related to a Conservation Easement proposal, which would basically set aside 110 acres to be preserved for native Hawaiian species. And, by the way, Chair would like to recognize Member Baisa to our meeting this morning. We understand that you were initially unable to come, but we thank you for making the effort to be here. And, I believe the Applicant has proposed from the initial 20 or 18 acres, the Applicant's proposed an additional 20, 23. Am I correct? So we're looking about 40-plus acres. So, that's where we're at on this motion. The Chair, the floor is open for discussion on it. I believe Member Anderson gave us a detailed discussion on this need. And, I think we left off with Member Medeiros on Tuesday.

COUNCILMEMBER ANDERSON: Chair, if I might, please?

COUNCILMEMBER MEDEIROS: Well, Chair, I just have--

CHAIR MOLINA: Hang, hang on.

COUNCILMEMBER MEDEIROS: --one, one point of information. So, give us a reference again?

CHAIR MOLINA: Yes, we're on Condition No. 9.

COUNCILMEMBER MEDEIROS: Is that Page 11, uh, 6 rather?

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CHAIR MOLINA: Uh, let's see, Members.

... Let's see, Condition 9--

COUNCILMEMBER MEDEIROS: Is that the far right column?

UNIDENTIFIED SPEAKER: Yes.

CHAIR MOLINA: Yes.

COUNCILMEMBER MEDEIROS: Of Page 6?

CHAIR MOLINA: ... Page 6, yes.

COUNCILMEMBER MEDEIROS: And that's what--

CHAIR MOLINA: The, the condition we're considering is, well, we, the Member Anderson's language hasn't been incorporated. It's Condition 9, as updated by the Maui Planning, Planning Department.

... Okay. And, Member Anderson's condition is in the back of the, your, your binder.

COUNCILMEMBER MEDEIROS: Oh, okay.

CHAIR MOLINA: Or. . .it's a very lengthy, lengthy condition, but the basic premise for it is to set aside 110 acres for native Hawaiian species. And, Member Medeiros, I know you, when we last left you had a question for that, and so I'll start with you first, Member Medeiros. So, and I know you had a question for the Applicant?

COUNCILMEMBER MEDEIROS: Chairman, I think I'll just defer to Member Anderson if she has any further explanations before I develop any questions. Thank you.

CHAIR MOLINA: Okay, I saw Member Baisa with her hand up prior to Member Anderson's. So, Member Baisa and then we'll go to Member Anderson.

COUNCILMEMBER BAISA: Thank you, Chair. I was just trying to get someone to state the motion because I was unable to be here in the afternoon where this was proposed.

CHAIR MOLINA: Okay, the motion is in the back of your binder. So, if you need to get, it's a very lengthy motion, so, and it's been already stated. So, Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Chair. That, that is actually what I wanted to do--is bring other Members up to date. And, I believe Member Baisa was not here. . .and if Staff could tell me who else wasn't here? Mr. Mateo, also was not here.

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CHAIR MOLINA: Okay, I'll, I'll permit you to give a *brief* synopsis of it, because we only have, the Chair's looking at . . .

COUNCILMEMBER MEDEIROS: Right . . .(laughter) . . .

CHAIR MOLINA: . . . a very short day, so I don't want a lengthy explanation to the Members. So, just touch on the main points on it, Member Anderson.

MS. NAKATA: Mr. Chair, if Staff could just note, the motion to amend that was left pending was to replace the Condition No. 9 that's in the Members' matrix with the Conservation Easement Condition that Member Anderson distributed on October 23rd.

NOTE: Silence.

CHAIR MOLINA: . . . Members, do you, are. . .everybody know where the, you found the condition? Okay.

COUNCILMEMBER ANDERSON: And Members. . .if I may, Chair?

CHAIR MOLINA: Go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: Thank you. Behind the condition, Members, are letters of justification for this condition. One is a letter from the Office of Hawaiian Affairs. They have not been consulted. . .in regards to the historic sites on this property since. . .the 2000. . .submittal of the application, which. . .really had a very inadequate. . .historic review. Since that time, the Department, the State. . .Historic Preservation Division. . .has sent letters of review asking them for . . .(cleared throat). . . further work. The last review letter that was received by the State Historic Preservation Division was January 2002. And in that, they asked for further revision to their survey report. . .further testing. . .better descriptions on the sites, and also asking that. . .they revise their draft. . .review of the inventory survey. And, I would just like to remind Members, back in August when I first brought this up. . .the historic preservation review process is a requirement, of course, of State law. And, in our. . .application process for a Change in Zoning, it says that a preservation/mitigation plan should be included in the application. Well, you cannot get to a preservation/mitigation plan until you have first done the survey and the survey has been reviewed and approved by State Historic. *That* has never been done. The survey portion is still pending. After the survey portion is approved, then they do their significance determination. And that determines what sites will be saved. . .and preserved and what sites will be. . .destroyed, basically. And then from that, they put together a preservation and mitigation plan for those sites that will be preserved.

. . . What the Applicant has given us is a draft *plan*, but the draft plan holds, holds no legal weight because it hasn't been submitted through the State historic review process. You can't get to that step until you have your surveys approved. And, back in August, I brought this up with Mr. Aki Sinoto and he assured me that he was moving forward. To date, there has been no further review by State Historic or from the Office of Hawaiian Affairs. So, my condition is to preserve. . .and additionally, this

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Conservation Easement, Members, is not just to make a *botanical* preserve, but also to incorporate the historic sites there. So, it would be a botanical and cultural preserve of the 110 acres in the most southern portion of this property where the a'a flow is.

. . . I, I, I'm sorry to say that the survey done by Doctor . . .

. . . Help me out Jo Anne. Dr. Altenberg. . . was never reviewed by the State agencies that are supposed to be reviewing it. The survey that we have for the botanical. . . well, for the, the Native Hawaiian plants and the low-land forest area. . . is totally inadequate. It was done in 1988. There's been no update whatsoever. The revised conservation and stewardship plan that the developer has provided us with. . . is just a lot of, you know, paper promises, but it doesn't say what they're gonna preserve, where, how they're gonna preserve it. And they want all of this done after we approve the project. However, in our application requirements, it calls out for this preservation/mitigation plan for critical habitats to be done . . . (*cleared throat*). . . prior to applying for the project. If that had been done, all that information would have been provided to us, and we wouldn't be going through this. There's a letter from Dr. Kepler, well-know botanist in Hawaii, and specifically in Maui County. I would draw your attention to her concerns. She fully supports Dr. Altenberg's survey and request for preservation of this area. Also, I have provided Members with excerpts from the Kihei-Makena Community Plan that shows all of the policies within this plan that specifically call out for the *type* of condition that I'm proposing. And I would please request that you look at those specifically. Under Cultural Resources, it says that all developments should be required 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 included, 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. So, if you would take a look, Members, of the portions of the Kihei Community Plan that I provided you with, I highlight, highlighted those specific areas that support and give justification to this Conservation Easement Condition. And to just briefly state the condition, Mr. Chair, for those who were not here--I'll not read the whole thing. Members do have it in their binder, but I just want people to know that this easement is supported by. . . peer-reviewed biologists, not only in the State of Hawaii, Dr. Kepler; Leighton [*sic*] Creighton, or Creighton Litton from UH Manoa; Dr. Cabin, who's done extensive work in Hawaii--all of these are peer-reviews, reviewed scientists. Scientists whose work has been reviewed by other scientists, thereby validating their work. So, we have more than enough justification for this, Mr. Chairman, and, Members, through our policies and objectives in the Community Plan--which I would remind Members in our criteria for approval for a Change in Zoning, we must find that the policies and objectives in the Community Plan are consistent with the project's proposal. The Conservation Easement, Mr. Chairman, sets forth a. . . a requirement that the developer set aside this 110 acres for the specific purpose of protecting this Native Hawaiian habitat and the historic sites contained therein in their. . . pristine condition that they're in right now. We have already heard from many botanists that. . . when you have something of value of, of this nature that is in such pristine condition, it makes no sense to tear it down and then propagate the plant somewhere else. Same could be said for the native site, Native Hawaiian sites--it's a pre-contact settlement, Members. It contains a rare ancient stepping stone trail, the remnants of which possibly connect it to the Piilani Trail, and also demonstrate a connection between the

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shoreline and the, the uplands demonstrating the ahupua'a system, one of the last remaining areas in Maui County where we could actually demonstrate to the children of Hawaiian ancestry how their ancestors. . .lived in ancient times and were able to keep the land sustainable by using this system. And, actually it would help us in future endeavors in this State because many people are looking at the ahupua'a system as a way to further develop the resources we have in this State in a sustainable manner. The Condition goes on to. . .allow for. . .a. . .land trust organization such as the Nature Conservancy, Trust for Public Lands, Maui Coastal Land Trust, or Maui Cultural Lands. . .to hold the easement for, in perpetuity, for the purpose of protecting the, the. . .botanical and cultural resources in the area to monitor it for. . .compliance with the conditions of this easement, and. . .to . . .

. . . at all times work in, in concert with the ownership, ownership to make sure that the ownership's rights are. . .upheld. The Conservation Easement would also allow for these nonprofits to get. . .funding. You know, the, the. . .the resolution we passed making Maui County a Preserve America. . .entity. . .makes us eligible for Federal funding that could come and help preserve this area. The easement also requires that the, the easement shall be managed for open public access, for public visitation, interpretation and educational purposes, and also allows the landowner to get considerable tax credits. So, Mr. Chairman, that is a very brief explanation of what I was allowed to present at the last meeting. And if there's any questions the Members might have, I'd be happy to answer to them. And I ask for their support. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Member Anderson. We'll start with Member Mateo, followed by Member Johnson.

COUNCILMEMBER MATEO: Chairman, thank you very much and I'm gonna ask Ms. Anderson to help me in clarifying one of the statements that was just made relative to OHA. The, she indicated that OHA has not really done the study or review on the *site* itself, but, but the letter in *receipt* from OHA is quite contrary in terms of *them* actually giving us a position from the Office of Hawaiian Affairs and if they had not done a site review or study, I don't know whose position we are looking at on this communication--whether it is the position of the Administrator himself based on criteria and guidelines alone versus what should have been done, which would have been the natural inspection of the site. So, I'm, I'm looking at two different--

CHAIR MOLINA: Let, let--

COUNCILMEMBER MATEO: --conflicting--

CHAIR MOLINA: Mr. Mateo, if I could add some clarification for you? It's been stated by the Applicant that the OHA representative of *Maui* was not consulted. He was not made aware of the letter until just recently. And, also the *Board*, to my understanding, did not even have a meeting. So, I am a little confused or concerned here--

COUNCILMEMBER ANDERSON: If I could explain, Mr. Chairman?

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CHAIR MOLINA: Hang on, let me finish my statements to Mr. Mateo. Is this letter from OHA only from Mr. Namu‘o as the Administrator, his point of view, or is it OHA’s? Because if you look in the letter, Page 6, it says, *OHA* this, *OHA* that. So I take that to mean as, I would *assume* that would be a position of the Board. But then, I, we have found, well, the Applicant has told us the OHA Board has not met, and we have not received any evidence to indicate the Board has met. So, I just wanted to add that clarification. Go ahead, Mr. Mateo, you can continue.

COUNCILMEMBER MATEO: No, thank you, Chairman--

COUNCILMEMBER ANDERSON: If I could--

COUNCILMEMBER MATEO: Yeah, I would just like to ask Ms., Ms. Anderson to shed additional light on it.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: If I could clarify for the Members? If you look at the last page, Page 6 of the OHA letter. At the bottom it says “OHA Specific Concerns with Wailea 670”. And let me be very clear, Mr. Chairman, this letter is based on the survey letters. The *only* work that has been done through the State Historic Preservation on this project. . .the survey letters that all of us have in our binders, I’d be happy to pass them out and reiterate what they say. I just gave you a brief overview of them. OHA’s concern is that they have not been *consulted*. The surveys have not been completed. Mr. Jencks came up and said that he called OHA and talked to a Jerome Yasuhara who looked in the file and said there was nothing in the file. Well, there’s nothing in the *file* in regards to his draft preservation plan because it’s never been sent. It hasn’t been sent to State Historic and it hasn’t been sent to OHA. And that’s their concern--is that we’re moving forward on a project that hasn’t been adequately *reviewed* by the agencies required in State law and in our own Change in Zoning requirement, Mr. Chairman. So. . .the, the Council, the. . .OHA is concerned because they were not consulted in the cultural review process. They still believe that additional inventory level survey work needs to occur--and this is only reiterating what State Historic has already said in their letters. And, yes, they have reviewed those letters. Mr. Namama‘u [*sic*], I’m sorry --

CHAIR MOLINA: Namu‘o.

COUNCILMEMBER ANDERSON: --Namu‘o has reviewed the letters. And you will notice that he cc’d this letter to the OHA Board of Trustees. OHA is also asking for additional paleobotanical and paleoenvironmental study of the area. That is based on what State *Historic* is asking for since January of ‘02, Mr. Chairman. So, and they are concerned about the 100 acres of native dry land forest. Again, given our recognition of the critical importance of these areas to the overall well being of the land and eco-systems, the wiliwili devastation around the State, is another critical reason why preservation of this environment is critical. OHA’s involvement with Wai Kele O Puna is a direct result of our recognition of the importance of the Hawaiian forest. So, you know, they’re not saying anywhere, I, they, they didn’t even know about my Conservation Easement. I’m only telling, bringing this letter forward because they are concerned with the inadequacy of the preservation review to date and that they haven’t

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been adequately consulted. The OHA board never looks at review letters such as this. It's a standard review letter, Mr. Chairman, based on the documented record that... State Historic has in their files. And the whole point is, in this letter, is that the review process has not been completed. So why would we go forward and make a final decision until that review process has been completed, until OHA has had the opportunity to review a *legally* binding preservation and mitigation plan? So, *that* is the whole point of this and, you know, I could have done a condition saying that the Applicant will complete the Chapter 60 review process prior to Phase II approval and come back to this Council. . .in order to get our approval of the preservation plan--which we have a right to look at, Members, based on the application. . .requirements. They've been working on this application for *10 years* and they have not moved forward on the State Historic Preservation review process. And, you know, don't make me say it, Members, but. . .I'll pull out documentation if I have to that the, the consulting archaeologist on this project, his work is in question. And to not, you know, in August, Mr. Sinoto said that he would be moving forward, answering State Historic's January '02 letter, finalizing the survey, getting some adequate significant determinations made and, and moving forward with the preservation plan. Nothing has happened, not since August, not since January '02. So, my feeling is that in order to ensure the preservation of this area in its, in its. . .entirety--and the Community Plan calls for this type of preservation, not just for *exceptional* critical habitats, botanical habitats, but also for cultural resources of this nature, Mr. Chairman. And, and *because* the Applicant has not responded, their consulting Archaeologist has not responded with any kind of good faith effort to move forward in the, in the legally required historic preservation review process, I, I felt there was no other option but to set aside this portion of the property in a Conversation Easement. And that's the purpose behind this. And, you know...

CHAIR MOLINA: Hang on, Member Anderson. Mr. Mateo, does, has Member Anderson answered your question?

COUNCILMEMBER MATEO: More than once.

ALL: . . .(laughter) . . .

CHAIR MOLINA: Okay.

COUNCILMEMBER MATEO: I thank her for it, because the question was *not* one based on integrity of it, it was a concern that I wanted to be sure that this was a consensus by, by OHA and it wasn't just the comments being forwarded by the Administrator. And the reason for that is because OHA had already determined this to be a significant, a significantly archaeological site. And my, my question was they haven't even *seen* the site, so how do you *know* it's a culturally *significant* site? And that's what spurred my question, but Ms. Anderson has in fact responded to it. So, it wasn't, it wasn't anything based on specifics, just to be sure that the clarification that comes in this letter by the Office of Hawaiian Affairs is indicative of that entire agency. So, that was, that was it. So, thank you, Chair.

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

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COUNCILMEMBER JOHNSON: Yes, Mr. Chair, just for clarification. Because when I'm reading through the condition, I have. . .just a couple of questions for Member Anderson. And that would be because largely the condition doesn't state anything about animals, I'm wondering if language could be inserted into this, perhaps in Number E where Conservation Easement holder and property owner shall be required to allow access to charitable organizations on Maui dedicated to preservation of native plants and animals. Also, in, I guess it would be Section D, I want to make sure that I understand this properly because under the requirement that is cited on Page 2, which would be the biological preserve component, identification of environmentally sensitive areas, habitat and botanical features. I'm in, you know it says also endangered plants and animals and exceptional trees, baseline study, preservation/mitigation plan. And then in D, I want to be clear about who has the responsibility for developing the critical habitat plan and then who has the responsibility for implementation of the preservation/mitigation portion of that. Because if it's the intent to shift the responsibility from the developer to these other organizations, I think we just need to be clear about that. So, if she could address that question?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: Well, I, I guess, Ms. Johnson, I'll answer your last question first, 'cause I'm kinda fuzzy on the first one there. . .*(end of tape, start 1B)*. . . But under "D", it does say that . . .

. . . the developer 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 to a "Critical Habitat Plan" developed by groups and organizations that may include: Maui Botanical, Native Hawaiian Plant Society, U.S. Geological Survey Biological Resources Division, as well as biologists 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. So we're be, we're, we're leaving it up to these organizations and the, whatever type of land trust, who will assume the easement to put together a critical habitat plan. And they are the experts in the field. So, I, I don't think that I could call, call out any further how and, and who is to do this, because it's going to be up to the developer to. . .I'm, I'm, I've already *talked* to several of these organizations and they're all willing to take on this easement. So, it's not a matter of. . .*how* it's gonna happen. It's a matter of who's gonna do it. And I would think that that would be, you know, the landowner's purview to decide what land trust organization would assume the, the responsibility over the Conservation Easement.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, then that being the case. . .it, it's my *assumption* then that whatever critical habit plan and preservation/mitigation is developed by these groups, that it's understood *they* would then be providing OHA and other organizations--with regard to the cultural component, with regard to reports, such as, you know, on the Hoary Bat and the Short-eared Owl, the Pueo. . .I just want to make sure that, you know, we don't leave anything out. That *if* this responsibility will. . .remain or will, will be with an outside entity, I wanna make certain that in terms of compliance with Section 19.510.010.D, that with, with regard to the content of the application. 'Cause now what we're saying is. . .by putting the Conservation Easement *in* there, that should be sufficient satisfaction

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and then over time a preservation/mitigation plan will be developed. But essentially because the site is being preserved in its entirety, as opposed to having a golf course running through the middle of it and little trails and, you know, other things taking place, such as the former multi-family housing on this site, which has been, at least a portion of it, has been moved out of the entire Project District. I just wanna make certain that we're not leaving anything out. And in that spirit as a friendly amendment . . .(laughter). . . I, I would offer just a, and it's in D. . . I would just, it's just on Page 2, it just say "in accordance **with** a critical habitat plan" . . .(laughter). . . Small little English insertion. And then, the other thing I would insert would be--

COUNCILMEMBER ANDERSON: Now, wait a minute, Ms. Johnson. Where, where are you?

COUNCILMEMBER JOHNSON: I'm just looking under "D" on Page 2 where it begins "in accordance **with** a "Critical Habitat Plan".

COUNCILMEMBER ANDERSON: Oh, changing "to" to "with".

COUNCILMEMBER JOHNSON: Changing "to" to "with". And that's just simply . . .(laughter). . . you know, my English background. And on "E", I would say: Conservation Easement holder and property owner(s) shall be required to allow access to charitable 501(c)(3) organizations on Maui, get Maui dedicated to the preservation of native plants and **animals**--not to leave out the mention of animals. Because the, the emphasis largely has been, in Mr. Altenberg's. . .report with, with the, with the native plants. But I think because the Hawaiian Hoary Bat and also the Pueo--because those have also been mentioned specifically, I just do not want those to also be left out. Because I think that their habitat is also very important because whatever goes **next** to this habitat may also impact the critical habitat for these species who are seriously threatened. So, Mr. Chair, I, I do support this and my principal reasoning for supporting this is that in other situations where golf courses have meandered through . . .(laughter). . . conservation areas, it's just not a good fit. It, it doesn't bode well for people, number one. If you're gonna have cultural access and people coming who are exercising native rights, they don't want golf balls flying over their head. Even the front part of the property that **I** live at abuts a golf course. Our gardeners have been whacked . . .(laughter). . . cars, animals sometimes, you know, are really threatened. Because what they'll do, is even some of our domestic animals, when the people are out walking them, a golf ball comes flying through. It's just not a good fit. And if you're really gonna preserve something, the **principle** way to preserve is to not disturb. So that means no grading, no disturbance of any sorts, because that gives the **biggest** opportunity for those species to survive. There may even be species that through grading to put a golf course **in** may be completely disturbed. Because as we saw in Lahaina. . .if you look at the whole area along Ukumehame where the wetlands were graded, now the poor Nene are looking for their nesting areas, which have, you know, unfortunately, in some cases been destroyed. So, my thought is with us having taken an action, a positive action, to locate the multi-family housing of 250 units **outside** of the project area, I think it's really important that we now have taken a positive step and, therefore, freeing up some of this land for preservation. I read Mr. Jencks' letter, but frankly it's up to **us**. We're the stewards. The people are **depending** on us and our stewardship. And, I know these organizations, with all due respect to the paid consultant that produced these reports, the **general** public has **no** financial interest in this other than seeing that these species and

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the plants and animals are preserved. There's *no* ulterior motive. I believe that this is the proper thing to do. I think from a *cultural* perspective, it would give opportunities for Native Hawaiians, for OHA, for even a lot of our youth groups who are doing a lot of trail restoration and learning about critical habitat. . .even sites that *they* may gather knowledge from, from an educational perspective--I would love to be able to allow them to go onto that property without fear of any *conflict* with commercial activity and just be able to do what they have to do in preserving something. . .not just for the future generations of visitors . . .(laughter). . . but for future generations of Hawaiian people and *all* cultural groups to go and see something that actually is a site that once existed. So, that's why I'm passionate about supporting *this* particular amendment because we, after all, are the final arbiters of this and I just believe it's the pono thing to do. Thank you, Mr. Chair.

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

VICE-CHAIR PONTANILLA: Thank you, Chair. I, I, I think all of us that sit here are . . .

. . . mindful of, you know, conservation of our historical sites and preservations of floral. But my question to you, Chairman, is that on September the 28th, Mr. Jencks wrote a letter to Mr. Clyde Namu'o in regards to the letter that he sent this body on September the 10th. And, Mr. Chair, the question to you is that did we receive any response from Mr. Namu'o in regards to Mr. Jencks' letter?

CHAIR MOLINA: The only letter I'm aware of is the initial letter that Mr. Namu'o sent. As far as responses to Mr. Jencks' letter, to my knowledge we haven't received any additional response from Mr. Namu'o. If you'd like, you can, I could ask the Applicant for further clarification.

VICE-CHAIR PONTANILLA: Yeah, I'd like to ask Mr. Jencks if he received any, anything in writing from. . .his letter, you know, any, anything in writing in response to his letter dated September the 25th.

CHAIR MOLINA: Okay. Mr. Jencks?

NOTE: Pause while Mr. Jencks approached the podium.

MR. JENCKS: . . . Good morning, everyone.

COUNCILMEMBER BAISA: Good morning.

CHAIR MOLINA: Good morning.

MR. JENCKS: Direct answer is "no written response, but phone calls".

NOTE: Silence.

VICE-CHAIR PONTANILLA: . . . Thank you, Mr. Jencks . . .(laughter). . . that was short and sweet. Mr. Chair, you know, for me to, to move forward. . .I think we need some clarification from Mr. Namu'o

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in regards to the questions that are being posed to this Council and information being posed to this Council, and the questions and updates provided by Mr. Jencks to OHA. Um . . .

. . . If we could, you know, get some kind response from OHA in regards to the letter that was sent on September the 28th.

CHAIR MOLINA: Okay. And, Mr. Jencks, you sent that letter on September 28th, here we are October 25th.

COUNCILMEMBER BAISA: Yeah.

CHAIR MOLINA: And they, do you have a date of when OHA received your response? Because my, my point is I'm not gonna hold up decision making on this to wait for a response from OHA, because I think they've had an appropriate amount of time to respond--if that is the case with Mr. Jencks' letter. So, do you have a date of a receipt--

MR. JENCKS: I, I'm--

CHAIR MOLINA: --from OHA?

MR. JENCKS: I'm trying to think back. I received a phone call from Jerome Yasuhara . . .

CHAIR MOLINA: Uh-huh.

MR. JENCKS: . . . about a week after I sent the letter out. I don't recall the exact date, but that was the only conversation that I would have--

CHAIR MOLINA: So the response was via phone call from Mr. Yasuhara?

MR. JENCKS: That's correct. He asked about. . .as stated, I think the day before yesterday, getting the documents so they could complete their file.

CHAIR MOLINA: Okay, thank you. Mr. Pontanilla, any further clarification needs from Mr. Jencks?

VICE-CHAIR PONTANILLA: No. . .that's, that's one of the concerns that I have in regards to this particular letter. If any response was received from OHA. Thank you.

CHAIR MOLINA: All right. Thank you very much, Mr. Pontanilla. Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. I'm glad you're at the podium Mr. Jencks 'cause I was going to ask for you to come up. Unfortunately, I missed some of this discussion the other afternoon; I wasn't able to be here, so I'm trying to play catch up. But, what is your response to the amendment?

MR. JENCKS: To the, the condition that's before us today?

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COUNCILMEMBER BAISA: That's on the floor.

MR. JENCKS: Uh. . .my response was discussed, was it the day before yesterday?

CHAIR MOLINA: I think it was Tuesday.

MR. JENCKS: Tuesday.

COUNCILMEMBER BAISA: A summary will do.

MR. JENCKS: Was that we came up with a preservation conservation plan that's based upon the work that was done by SWCA and USGS and US Fish and Wildlife Service that provides for 18 acres of absolute conservation, preservation area in this same area that's described by Ms. Anderson in the southern portion of the project, and another 23 acres of area that would be a native plant enhancement area, buffer area that we could use for native plant enhancement and propagation tied into the original plan, the updated plan we provided to the Committee from SWC that provides for the establishment of financial support and management of that, of that area.

COUNCILMEMBER BAISA: I think something that's, you know, in the back of my mind is I remember several meetings ago we had a rather interesting meeting here and I'm using, I'm trying to use a nice word where there was testimony by a Mr. Ford.

MR. JENCKS: That's correct.

COUNCILMEMBER BAISA: And I believe he's the person that helped you with this and is our--

MR. JENCKS: That's correct.

COUNCILMEMBER BAISA: --is your expert?

MR. JENCKS: That's correct.

COUNCILMEMBER BAISA: And there was some discussion about credentials. You know, and it seems like during this whole process much of it centers around credentials and opinions of various experts. And trying to sort that out is always difficult. What is Mr. Ford's background? I had the opportunity to do some research on Dr. Altenberg. And it appears that Dr. Altenberg's primary education and interest is in genetics. And what about Mr. Ford?

MR. JENCKS: Mr. Ford works for SWCA Associates. SWCA specializes in environmental biological habitat mitigation, identification of issues and mitigation proposals. Mr. Ford's credentials, I mean, he presented them here that day, they go way back, working with the Nature Conservancy and many, many other organizations. He's right now actually in Beijing working with the Chinese government on some

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preserve issues in, in China. That's why he's not here today, I was gonna ask him to be here, he was on the airport, going to the airport. He's, he's well credentialed. His team that he used as a part of this effort, Councilmember, included USGS, US Fish and Wildlife Service, also the University of Hawaii botanists that are published botanists.

COUNCILMEMBER BAISA: Well, the other thing that is, is concerning me is the discussion of the "Hawaiian-ness" of the project and the proposed easement. And...you know, we've been hearing concerns about OHA and their position or lack of a position or response or whatever, and I am familiar with the fact that you have been working very closely with our kupuna. And I would look at them as people who I would want to pay a whole lot of attention to and their feelings about this and are they satisfied. Have they had an opportunity to comment on this?

MR. JENCKS: The, the cultural team that we've been working with, we've had out in the field, we've shared both (a) all of the archaeological data that we've gathered to date, as well as discussions with Aki Sinoto with them on site, as well as the draft cultural preservation plan, which is, you know, in my mind, I think there's two issues here. *One* of the issues we're talking about, and it, I think it's getting confused is the cultural preservation plan issue, and the, this habitat preservation, conservation issue. In terms of their relationship on the property, they overlap. And I think it's to everyone's benefit to *combine* the two. But the process of establishing the performance criteria in some ways are separate issues, but they all, they overlap. So, direct answer is we've involved all the kupuna in the cultural team in this process. The cultural plan that we, the draft cultural plan we developed, the archaeological group, they've been on site. They've been on site with John Ford. So, they've been involved in this process from the beginning.

COUNCILMEMBER BAISA: Well, that's good. Because I would definitely want to know that the kupuna of Maui have been involved in looking at whatever plans are gonna be put together. Because, you know, they are the experts.

MR. JENCKS: I, I would like to just add to that--that you have in your binders, we, the, Ms. Anderson talked about the, the...the biological assessments that were done for plants and animals that were done way back in 1988. Those were updated as a part of the application in 2000. And in 2005, I hired the same, tried to hire the same people. I did manage to get Winona Char to go out and do an, an update on the biological issues on the property. Her report was essentially the same. I also then, also hired Philip Bruner. Now these reports are in your binder. They were delivered in 2005 to look at the plants, the plant and the animal issues that were on the property--specifically, the native Hawaiian Hoary Bat and the Pueo. Mr. Bruner study, based upon days on property, resulted in no indications of either (a) Pueo, or native Hawaiian Hoary Bat on the property. Those reports are *in* your file, in your binder. They were delivered in 2005, and those have been sent to DLNR for review and comment. And we, they had no, no problem with Mr. Bruner review.

COUNCILMEMBER BAISA: You know, the reason why I'm so passionate about this, is I had the luck and the, and the *privilege* of having a pure Hawaiian mother-in-law who was born and raised in Kaupo. And

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she brought our whole family up with a lot of respect for, you know, the culture and understanding the flora and fauna and the does and don'ts of being a Native Hawaiian.

MR. JENCKS: Uh-huh.

COUNCILMEMBER BAISA: And so, I have great respect for our kupuna and their knowledge. And they know about preservation and how things should be treated with respect and whatever, so that's why I asked the question.

MR. JENCKS: Well, that's a good question.

COUNCILMEMBER BAISA: Thank you very much.

MR. JENCKS: You're welcome.

CHAIR MOLINA: Members, any other questions for the Applicant, Mr. Jencks?

. . . Okay, seeing none, Mr. Jencks, you're excused for the time being. Uh-huh. Be prepared to come up again . . .(laughter) . . .

COUNCILMEMBER BAISA: . . .(laughter) . . .

CHAIR MOLINA: Thank you. All-righty, Members, the Chair is ready to act on this condition. If there's no other comments, the Chair will reserve the last word. I believe everybody has had an opportunity to speak. Seeing none, Member Anderson, question?

COUNCILMEMBER ANDERSON: No, I just wanted to provide Members, you know, in the condition it calls out GPS. . .points. And I think it would be taken from Dr. Altenberg's survey.

. . . Just because of timeliness, I didn't print out the whole report, I just printed out the page that has the map that outlines this area. And I thought it would be helpful for Members to see it. If I could pass that out? Also, Members, through this area is a mauka . . .

. . . traditional access, mauka access trail that runs through this property, thereby preserving that also for mountain access, which we are legally required to do, Mr. Chairman.

NOTE: Silence.

COUNCILMEMBER ANDERSON: . . . And, you know, well I'll just leave it at that.

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

COUNCILMEMBER MEDEIROS: Chair?

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COUNCILMEMBER MOLINA: Member Johnson, followed by Mr. Medeiros.

COUNCILMEMBER JOHNSON: I'll, I'll defer to Mr. Medeiros, 'cause he hasn't spoken.

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: I just wanna ask a question about the GPS points that is referenced here. If we vote on this and it passes, do we have verification that these points are correct and we're not identifying a different area?

CHAIR MOLINA: Um--

COUNCILMEMBER MEDEIROS: Because, is Mr., or Dr. Altenberg, like a licensed surveyor or . . .

CHAIR MOLINA: UM--

COUNCILMEMBER MEDEIROS: --is he is certified?

CHAIR MOLINA: Well, let, let's put it this way--I believe Member Baisa touched upon it earlier. Mr., Dr. Altenberg, from my understanding, has a website with his credentials and I've been told that, I know his specialty is in genetics. When I chaired Public Works several years ago, we were working on the outdoor lighting ordinance, Dr. Altenberg was a member of the subcommittee. And I guess he has done a lot of work with the observatories as it relates to astronomy, but primarily, my understanding he is also an associate professor related to computer sciences. What his background in botany? I'm, you know, I'm not aware of, you know, formal--

COUNCILMEMBER MEDEIROS: Yeah--

CHAIR MOLINA: --credential--

COUNCILMEMBER MEDEIROS: Yeah, yeah, my, my question is not about botany.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: My question is about these GPS *points*.

CHAIR MOLINA: Right.

COUNCILMEMBER MEDEIROS: That if we taking it from one person and we're not verifying it by somebody licensed, such as a surveyor--

CHAIR MOLINA: Uh-huh.

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COUNCILMEMBER MEDEIROS: --are we possibly putting ourselves in, you know, adding a condition that may not be very accurate?

CHAIR MOLINA: Well, Mr. Medeiros, let me ask Deputy Director Suyama if she has comments on that, on your question.

MS. SUYAMA: Right. We have similar concerns that it's just a, it's GPS coordinates and we don't where this coordinates. What I would suggest doing is that if this is a condition that you want established, that you reference a specific map. Whether it's a map provided by Dr. Altenberg or, you know, Mr. Jencks had his proposed map, but actually specify which map you're talking about so we actually know what the boundaries are. And I believe, I don't know if this is the map that we're talking about.

COUNCILMEMBER ANDERSON: Yes.

MS. SUYAMA: But you reference the map so that it's very clear that based upon this configuration, this is the *intent* of the Council--that when you develop a Conservation Easement, that this is the Conservation Easement.

COUNCILMEMBER MEDEIROS: Okay, Chair, my, my further question is that, yeah, we can identify the *area*, but is it accurate in such as, you know, in a survey where you get metes and bounds? You know, how do we know what the exact area *is* and is it accurate according to the GPS points?

CHAIR MOLINA: That, that I cannot answer for you, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay, that, that, that'll be a continued concern of mine, Chair. Thank you.

CHAIR MOLINA: Okay, Member Johnson, followed by Member Anderson?

COUNCILMEMBER JOHNSON: Yes, I believe prior to any Conservation Easement being assigned to any entity, there would have to be, as Member Medeiros raised and also, Ms. Suyama, there *has to* be metes and bounds. You have to have a surveyor go out and *identify* what exactly the Conservation Easement is. Because when any organization takes over the actual management of the easement, it's a legal document.

UNIDENTIFIED SPEAKER: Correct.

COUNCILMEMBER JOHNSON: So they *have to* execute that. So, it, it's my understanding that this is, this is a *coordinate* for the Conservation Easement, but that when that is *assigned*, what will *have to* take place is that the surveyors must go out and do their work in order for that easement to even be accepted by any organization. You're not gonna accept it unless that's spelled out. So it's *my*, I mean if we need to spell that out, and if Corporation Counsel can offer sufficient language to ensure that it's clear enough that subject to establishment of metes and bounds by licensed, duly licensed surveyor, I have no problem with adding in that language for further clarification. But that was always my

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understanding. You, you can't just go and say, oh, well, you know, click, click, click, here's the. . .GPS coordinates because even Deputy Director Suyama will tell you, sometimes we're, you know there's accuracy but *not* always within maybe a meter. . .

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER JOHNSON: . . . a few feet. This has to be surveyed out. And, you know, the landowner would execute, you know, the documents that would give the Conservation Easement. But the purpose and intent of this Conservation Easement, not the *technical* aspects of it, to me, is very clear. And, Mr. Chair, with regard to the kupuna, I have the utmost respect for the kupuna. This is *not* an either or, this is not a . . .slugfest between kupuna and biologists and natural habitat, you know, I guess, management firms or even the professionals involved. This is a clear statement that we want to see the entire area preserved. So, from my perspective, rather than see this interspersed with the golf course, which I said earlier is *not* . . .(laughter). . . conducive, even to our kupuna . . .(laughter). . . You know, it's just what do you want to do? You wanna preserve it or do you want to commercialize it? The kupuna will have full access without fear of golf balls flying over their head, without any other things. And they will have that much more land to actually use for educational purposes. So, to me, it's not an either or, it's not a disrespect issue, it's about there will be a larger area for *all* people, but specifically for the cultural groups and the people that are concerned with all of the, you know, restoration and all the conservation of native plants and animals. And the kupuna are a wonderful resource. So, I think this will just enhance it for our kupuna and also for those of us that love nature. Thank you, Mr. Chair.

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. You know, the map that I just handed out Members, is from Dr. Altenberg's assessment of the area and it does call out the GPS coordinates. What I would suggest is in . . .(cleared throat). . . excuse me, the first paragraph, the last sentence of the first paragraph where it says: the specific coordinates of the Conservation Easement shall be from the area south of the line extending from 20 degrees, blah, blah, blah and it calls out the coordinates, north, south, west and such, and at the end of that add "as indicated in the attached map", and then attach this map. And as Ms. Johnson said, should this pass and the. . .the easement be created, you know they would work from the map and, and. . .and if any of these coordinates are not correct, which I seriously doubt, Dr. Altenberg is a *highly* respected scientist . . .

. . . not just nationwide, but worldwide and, as evidenced, in all the peer-reviewed journals that he's published in, as well as his work with the National Science Foundation. So, I, I, I have great faith that these coordinates are correct. But by attaching the map, it gives a visual as to the area that's. . .in, in question. And. . .you know, I, I guess that GPS coordinates are not necessarily used by everybody this day in identifying specific boundaries of property. So as Ms. Johnson noted, there would have to be a survey done to probably call out metes and bounds, as well. So, with no objections, I would add that to the, to the amendment, Mr. Chairman.

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CHAIR MOLINA: Members, any objections to incorporating the additional language, as suggested by Member Anderson? Okay--

COUNCILMEMBER __: No--

CHAIR MOLINA: --seeing no objections, that will be added.

CHAIR MOLINA: All-righty, Members, we have a motion on the floor. Any other comments, before the Chair makes his? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Just a quick. . .mahalo, Mr. Chairman. Just quickly, you know, I still have a lot of concerns that haven't been answered, one is OHA's letter and I, I would think it would be helpful to this Committee to hear from our representative on OHA, Trustee Mossman, is one of my concerns. The other concerns, concern is, you know, was this area prior to the Applicant's project identified, monitored, and maintained? And, if this project does not go through, what would happen to that area, anyway? So those are my concerns, why I, I don't think I'll be supporting this condition as it is because of some unanswered questions for me. Mahalo, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. All-righty, Members, seeing no other comments on the motion on the floor, the Chair will make his comments and then call for the vote. For me--

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: --I had. . .Mr. Mateo, go ahead.

COUNCILMEMBER MATEO: Chairman, I'm sorry to interrupt the Chair.

CHAIR MOLINA: No, go ahead. Go ahead.

COUNCILMEMBER MATEO: Just, just point of information, I guess. At this particular point and time because we're going through the multiple conditions. If this condition that we're currently discussing is withdrawn at this point, is there another time to, do we have another chance . . .(end of tape, start 2A). . .

CHAIR MOLINA: Chair would like to get the matter taken care of today--

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: --at this point. Member Anderson?

COUNCILMEMBER ANDERSON: I appreciate that, the opportunity given to me to bring this forward today. But given the fact that Mr. Jencks has brought forward a letter of September 25th that none, none of us have seen. . .that he sent to OHA and we have not yet had an opportunity to see if OHA has actually received the letter and what their response might be. . .and the fact that this is a . . .question in the minds

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of some of the Members, I would request that we defer this until we get full information in order to make an informed vote.

CHAIR MOLINA: Well, the Chair's comments is again, OHA was given nearly a month to respond to Mr. Jencks letter. And--

COUNCILMEMBER ANDERSON: Mr. Chair, we don't even know if OHA got this letter.

CHAIR MOLINA: Well, still ...

COUNCILMEMBER ANDERSON: And I would think--

CHAIR MOLINA: . . . it's my, my feeling--

COUNCILMEMBER ANDERSON: --that I would have gotten a phone call.

CHAIR MOLINA: Well, again, I spoke to Mr. Mossman, as well yesterday. He was not informed of the position statement. He did see the *letter*, but again, there's just for me--if I may have my say now--too many pukas with regards to the OHA letter. While I respect the letter sent to us from Mr. Namu'o, it sounds like *his* opinion only; and *if* OHA was aware of this project, why wasn't it scheduled for a Board discussion? And that, at this point, there's no evidence to indicate that any Board discussion took place and, if, *if* we're going to use the OHA letter as imputes for moving this, supporting this condition--and also to me, again, we also have to consider with letter E in the condition, do we have any verification from the nonprofit organizations that do want to take on this responsibility? So I would have hoped that we would have heard from any organizations *willing* to take on that responsibility, which is a very big responsibility. I can appreciate the, the condition. I mean, we're all concerned about preservation. The Applicant has added an additional 20-plus acres from the original proposal for preservation. So, for me, Members, I think to just wait without taking action on this, I mean, I, I believe there has been sufficient time for responses. Otherwise--

COUNCILMEMBER ANDERSON: Mr. Chairman, I withdraw my motion.

CHAIR MOLINA: Excuse me, let me finish, please. Okay? So I intend to take action. And, Members, if you want time to read the letter from Mr. Jencks, I will give you that time. We will take a 10-minute recess, and at 10:20 we will come back and the vote will be taken. Meeting in--

COUNCILMEMBER ANDERSON: I withdraw the motion, Chair.

CHAIR MOLINA: --recess . . .(gavel). . .

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RECESS: 10:09 a.m.

RECONVENE: 10:09 a.m.

CHAIR MOLINA: . . .(*gavel*). . . Meeting of October 18, 2007 is now back in session. Members, yeah, that was a quick 10 minutes. Chair will recognize Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. In light of the unanswered questions that are on the floor from other Members and the fact that we haven't had the opportunity to hear back from OHA, I withdraw the motion.

COUNCILMEMBER JOHNSON: Withdraw my second.

CHAIR MOLINA: Members? Okay, any objections to the withdrawal.

COUNCIL MEMBERS: No objection.

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

CHAIR MOLINA: Okay, seeing no objections, the motion has been withdrawn. Members, we will take a 10-minute recess. We will reconvene at 10:20. This Land Use Committee meeting, recessed Land Use Committee meeting of October 18th is in recess. . . .(*gavel*). . .

RECESS: 10:10 a.m.

RECONVENE: 10:29 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, thank you for that break. During the break, I consulted with Staff and things happened a little fast prior to the break. So, I just want to restate again for the record, Member Anderson's proposed condition was withdrawn, as well as the second made by Member Johnson. So just, so to ensure that we have it for the record and there's clarity to that. And I, during the break, I conferred with one of the Members. Member Pontanilla, I would like to go ahead and give you the floor. . .if you would like to speak on it? We're dealing with proposed Condition Number 11, related to the Little League field. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. I was hoping to get some clarification from the Parks Department in regards to the District Park in Kihei. I had a slight discussion with the Parks representative here, and rather than act on anything today, I'd like to sit down with the Parks Department to get more information before, you know, I come out with some kind of an amendment to ensure that the District Park in Kihei--I think it's 40-plus acres or 45 acres--is done. You know, once we start, we want to complete it, rather than piecemeal. But, there are some issues.

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CHAIR MOLINA: All right.

VICE-CHAIR PONTANILLA: So if you get, allow me that, you know, I wanna work with the Parks Department.

CHAIR MOLINA: Okay. Members, any objection to the request? Member, Member Pontanilla is considering an amendment to Condition 11; however, so you're not quite ready yet to have, have that amendment proposed. The Chair is open to that consideration if there are no objections to the, from the body. Mr. Medeiros?

COUNCILMEMBER BAISA: No objections.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Yeah, I just need a reference page, please.

CHAIR MOLINA: Condition 11--that can be found--

COUNCILMEMBER JOHNSON: Page 7.

MS. NAKATA: Page 7.

CHAIR MOLINA: Page 7 of your matrix. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and you know . . . *(laughter)*. . . it seems like I'm flogging a dead horse sometimes . . . *(laughter)*. . . but I still have this question. Because when . . . the original requirement was put on as part of a land use change. . . because this was a stipulation that was filed with the Unilateral Agreement, I'm *assuming* that at that time, that whoever had the authority to make the recommendation to the Council made that recommendation. And I just need to be clear about at the point in time in which this was *done*--and it doesn't, from 1992--who had legal oversight over park dedications? Because remember we put through, in 2001, that the Parks Director has the legal authority to make the determination as to whether its land and money or a combination thereof. So that wasn't *amended* until **2001**. So my question is, because this was an ordinance passed by the *Council* at that time and now its being, there's a *recommendation* coming *forward* from the Department, I just wanna know timing-wise, who has the authority or who would have been making this recommendation at the time? Was it the Department of Planning? Was it Parks? I don't think it's ever been Parks Director . . . *(laughter)*. . . So, I just wanna understand who at that, and, and I did send forward a letter because this is a bigger issue than *just* this specific thing. But I just wanna understand so that. . . I don't wanna disrespect anyone's authority. But if at the time, this was done by the County Council and was set under ordinance, then is it perfectly permissible for us at this point in time to *amend* that ordinance just on our own, with or without any recommendations from the Parks Department?

CHAIR MOLINA: Okay--

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COUNCILMEMBER JOHNSON: Because, you know, I just don't know who had that authority. Thank you.

CHAIR MOLINA: Okay, Member Johnson, I'll ask, see if Parks and Planning have any comments to your request. Mr. Matsui?

MR. MATSUI: You know, at the time, 1992, it was the Council that recognized that South Kihei or Kihei needed a Little League field, a game field. And at that time, there was no South Maui Park, we didn't, we hadn't bought the land yet. So the only park we had was Kalama Park and, and Kalama Park was already developed. So, you know, the Council put in that do the Little League field within the Wailea 670 development. And that was a condition of zoning that was *not* part of the park assessment. . .thing. It was a con, an added condition of zoning by the County Council.

. . . Since that time. . .we did acquire the South Maui District Park, the 40 acres, 40-plus acres and we intended to develop it. And we looked at the condition of zoning of putting a Little League game field at that end of South Maui, at Wailea. And we felt a more central area--because this would serve the whole entire, and, and would be more appropriate in the central area, which is that South Maui Park--would be more appropriate. So from the Parks Department side, we were saying, well, give us the value of the land and the construction costs and give us the cash, and we'll take that to go build at a different site. And we felt that was more appropriate *today*. And, and so that's where we are here. And it's still a condition of zoning, but we're just saying amend the condition of zoning as a cash contribution so we can go build a park in the central part of Kihei and not at the extreme south end of. . .Kihei.

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: Well--okay, thank you very much Pat, because I know that we've . . .*(laughter)*. . . you know, we've gone through this and gone through this and, and it is a condition. So, if I understand you correctly too, because it's irrespective of park assessment, then are you also saying that no portion of this counts towards any. . .of their park assessment satisfaction? Is that correct?

MR. MATSUI: That's correct.

COUNCILMEMBER JOHNSON: Okay, so this is completely separate and apart from that. And have you any better idea in terms of the actual value of the land upon which this was to be built, 'cause I think that was one of my earlier questions. And I don't mean just what's listed on our tax rolls because that's very inaccurate.

MR. MATSUI: You know, the 5 million has kind of evolved in being, was updated, and, and the figures came from the developer as far as like ballpark figures, you know, that seems a reasonable amount. I haven't seen the exact breakdown. You know, if, if you really wanna know what the value, you would have to get some appraisals. And, and, you know, I mean there's a lot of variables involved. But you know, the 5 million is a good. . .number. It's a good round number. That was one of my comments too, that I was gonna make on the proposed amendment--

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COUNCILMEMBER JOHNSON: Uh-huh.

MR. MATSUI: --was one that it should specify that this is not part of the park assessment or its gotta say that.

COUNCILMEMBER JOHNSON: Yeah.

MR. MATSUI: Okay? And it doesn't. Okay? It kinda got deleted along the way, but it should say that. And, it should, initially the 5 million was an *estimate*. Okay, but now it's a hard number. You know, it's the Council's prerogative to take the hard number. You know, the risk of *not* taking it and relying on appraisals--

COUNCILMEMBER JOHNSON: Uh-huh.

MR. MATSUI: --its gonna go back and forth. A lot of it is estimates. It might end up lower than 5 million, you know? On the plus side it may end up higher, but, you know, may not be that much higher. So, you know, at this time, it's the Council's prerogative, but you know, if, if you make 5 million a hard number, you know, that's something we can work with.

COUNCILMEMBER JOHNSON: Okay. And, and, I, I know your concerned that because oftentimes--and particularly right now, where the housing, or at least the real estate market is softening--some of those numbers, cause I know even our numbers for park assessment are headed, you know, in a downward direction, as opposed to upward. Do you have any idea what, what's the actual acreage for this park? What was originally proposed? Was it two acres or three acres, or . . .

MR. MATSUI: No, I haven't seen the exact plan. But, you know, knowing the land slopes somewhat, you know, if, if you, you're gonna need at least two acres. You know, there's a lot of "depends".

COUNCILMEMBER JOHNSON: Uh-huh.

MR. MATSUI: It depends on how much parking you put in. If you want to build retaining walls, the, the--

COUNCILMEMBER JOHNSON: Uh-huh.

MR. MATSUI: --area of the land gets smaller. But you then, you need to put retaining walls, which is a *cost*. So, you know, you, you kinda balancing it out. But I would imagine two to three acres would be kind of a . . . approximate area. And, and a lot of these, you know, you're really not gonna get into exact cost until you have like detailed construction plans and, you know, at this point in time. . . we're not there yet. And, and I don't think we wanna get into *that* kind of specifics.

COUNCILMEMBER JOHNSON: Yeah. And, and my only question would be, Mr. Chair, is *because* it says the, you know, its approximately \$5 million, which would include the cost of the land, whatever that would be at today's values, and then plus the cost of *amenities* which would have been expended by

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the developer in actually putting that park together. So that's the restrooms, parking, irrigation. I mean to me, \$5 million . . .(laughter). . . seems a little on the *low* side given, if you're looking at three acres. And in Kihei, Wailea . . .(laughter). . . if it's anything like Lahaina . . .(laughter). . . I mean just a *lot* for 10,000 square feet in some cases is going for half a million dollars. I mean, and that's conservative. So, I just don't know. If, if there's any way. . .Mr. Matsui, that you could kinda take a look at what the original proposal was, the number of acres and then look, even if its just looking in the real estate . . .(laughter). . . section of the newspaper, find out, I mean, what it would be. Because to construct *now*, all of our construction costs are astronomical. So that's another factor that, when you're adding in all those things. So, I don't know. Anyway, Mr. Chair, its just, you know, I, maybe I can try to have somebody else kinda take a look at this too, that's in the real estate business or development business. And, I'm not saying it's high or low, I'm just saying it *seems* a little bit low given what's going on in the market today, *even* with some of the softening. So, thank you very much.

CHAIR MOLINA: Okay, thank you, Member Johnson. I think those are valid concerns. Members, the Chair's. . .will, or I guess recommendation would be to defer action on Condition 11. I will await, we will await a proposed amendment from Member Pontanilla, as well as I believe, if Member Johnson has some additional--

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: --questions for the Department, we will get that as well. And taking into consideration Member Anderson is not with us for the rest of the day, I would prefer not to take action on this, 'cause I'm sure Member Anderson has some input and some mana'o to share with us on this Condition 11. So, with that being said, Members, the Chair is. . .recommending a recess of Monday, October 29th. I know Mr. Pontanilla has an afternoon Budget and Finance meeting beginning at 1:30. The Chair is throwing out the time of 4:30 for consideration. Would you like a recess, Members, to go look at your calendars? The only options we have as far as recess dates I'm looking at, it's either the 29th or the 30th. I know Mr. Mateo has a, is looking at a very long Policy Committee meeting on Tuesday the 30th. So, would you like a recess to consider either one of those dates, Members, or are you ready to make a decision and go with the Chair's recommendation or other considerations? Recess, Members? Would you like a minute? Okay, we will take a three-minute recess. This meeting will reconvene at 10:45. Meeting in recess. . .(gavel). . .

RECESS: 10:42 a.m.

RECONVENE: 10:45 a.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18th is now back in session. Members, the Chair has given you an opportunity to check your calendars and see if you would consider the Chair's recommended recess date of Monday, October 29th at 4:30 p.m. Are there any other considerations, Members? Member Baisa?

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COUNCILMEMBER BAISA: Chair, I, I am assuming that the Budget and Finance Committee meeting will probably be a very lengthy one because of the items on the agenda, like property tax. They'll be a lot of people interested and they'll be here. So, I would imagine that meeting will not be over--of course, it's up to Chair Pontanilla how long he wants it to go. But let's assume it gets over at 4:30. It would be nice if we could have an hour dinner back and then come back refreshed and not with our stomachs rumbling and our backs aching, and then be able to stay here for at least three hours.

CHAIR MOLINA: Okay. I think that's a--

COUNCILMEMBER BAISA: That's my suggestion.

CHAIR MOLINA: Okay. All right, that will definitely be considered. Member--oh, just before I recognize you, let me get some comments from Mr. Pontanilla as the subject matter Chair for Monday. Any comments, do you, based on your agenda, do you foresee it being a long meeting, as well?

VICE-CHAIR PONTANILLA: Well, my intention is to go up to 4:30. The circuit breaker, basically would be an overview of the circuit breaker requirements. And this is just to let the people out there know about the circuit breaker because, you know, it's one way to reduce your taxes, if you qualify. So, basically that would be an overview. And, the second item is in regards to comments. . . a letter that they sent me that will be taken up.

CHAIR MOLINA: Okay, all right, thank you Mr. Pontanilla. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, I, I would support Member Baisa's recommendation of 5:30. And I would be available on Monday, October 29th at 5:30. Thank you.

CHAIR MOLINA: Okay, so the suggestion would be rather than convening at 4:30, once Mr. Pontanilla's meeting ends, everybody go out, grab something to eat, and then--

COUNCILMEMBER BAISA: Come back.

CHAIR MOLINA: --come back at 5:30? All right. Mr. Mateo, any comments?

COUNCILMEMBER MATEO: Chairman, thank you very much for the opportunity. I do have prior commitments on Monday. Those commitments, can be, can be rearranged.

CHAIR MOLINA: Okay.

COUNCILMEMBER MATEO: And, and, and I think 5:30 would be, would be a good start. And it's, it's too bad that the number of days required to recess ends on the 30th, because the following day, your scheduled Land Use Committee meeting, that would have been ideal to continue.

CHAIR MOLINA: Yeah, it's unfortunate. Yeah.

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COUNCILMEMBER MATEO: So, I would make myself available on, on Monday.

CHAIR MOLINA: Okay, thank you very much. Member Johnson, any comments?

COUNCILMEMBER JOHNSON: No, but I have a question with regard to what conditions we would be taking up--

CHAIR MOLINA: Okay--

COUNCILMEMBER JOHNSON: --at that point in time. Because I just wanna have an idea of what it is that we're gonna do for three hours, and if Staff, you know--

CHAIR MOLINA: Sure--

COUNCILMEMBER JOHNSON: --Administration, or resource people are available or not available. I think that's the other consideration. 'Cause like today's meeting, I mean . . . *(laughter)*. . . it, it, I don't like to, you know, just kinda spin our wheels, which. . . you know, particularly I think it gets frustrating when you wanna ask a question or Staff people are not available. And, so if we're gonna take up conditions at that meeting, I just think it's helpful if we know what we're targeting.

CHAIR MOLINA: Okay. All I can say, the conditions that we haven't reached consensus on--and I'll ask Staff to provide backup for me on this--I believe it's Condition 2 related to the traffic. . . issue, as well as Condition 4, infrastructural improvements. I believe there's also the golf course water and cultural plan, those conditions. So, we'll try to get to at least two, maybe three of them on Monday. So we will, we'll try to keep you folks posted, once we get everything, you know, confirmed with the resource personnel being here--

COUNCILMEMBER JOHNSON: Yeah, and, and that's just my--

CHAIR MOLINA: --give you an idea--

COUNCILMEMBER JOHNSON: --only concern. 'Cause I'll do whatever I have to do and rearrange my--

CHAIR MOLINA: And, and that way too--

COUNCILMEMBER JOHNSON: --schedule.

CHAIR MOLINA: --also, Members, if there's a particular person or resource personnel you need to hear from, please let the Staff know as soon as possible. So, that'll help us in, I guess, providing more leeway, more head time for the resource person to come here and make arrangements and adjustments in their schedule, as well. So, that is the plan at this point. Member Johnson?

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COUNCILMEMBER JOHNSON: Yeah, and I would not be able to stay beyond 8:30.

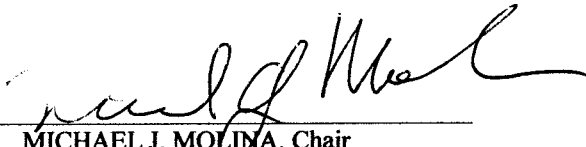
CHAIR MOLINA: Okay. Yeah. I, I don't think the Chair's looking at that far. The Chair was looking at least 8:00. Well, if, if Members can go to 8:30, then we'll, we'll take it by--Member Mateo, you said 10 o'clock?

COUNCILMEMBER MATEO: Ten o'clock, let's go for it.

CHAIR MOLINA: Oh, okay. Well, we'll see what kind of energy we have and we'll gauge it from there. Well, we'll look at, at a minimum of say 8:30, a minimum of time. All right, Members, is that clear, or clear as mud, or semi-mud, I think? So we are looking at a recess of Monday, October 29th, 5:30 p.m. right back here in the Chambers. Any other announcements? Okay, with that being said, this meeting is in recess until Monday, October 29th, 5:30 p.m. here in the Council Chambers. Meeting in recess . . . (gavel) . . .

RECESS: 10:50 a.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

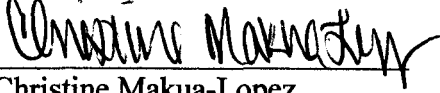
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Transcribed by: Christine Makua-Lopez

CERTIFICATE

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

DATED this 13th day of November 2007, in Kula, Hawaii.


Christine Makua-Lopez